

DISTRIBUTION AND CLOSING THE ESTATE

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Beneficiaries are always anxious to wrap up and close the estate. It is important to make sure all elements of the probate are complete prior to closing to avoid the need to reopen the estate. An estate is ready to be closed with there is no longer a need for Letters Testamentary/Administration for any task.

As a checklist, an estate is ready to be closed when:

- Four months have passed since publishing notice to creditors or thirty (30) days have passed since mailing notice to a known creditor;
- All creditor's claims, administrative expenses, and legal fees have been paid or disposed of and an affidavit or declaration of due diligence regarding known creditors is filled;
- All expenses (legal, accounting, appraisal, and executor fees) have been paid;
- A final accounting and inventory has been prepared;
- Assets are ready for distribution to beneficiaries;
- The Fiduciary has been discharged; and
- Federal and state estate tax returns have been filed and taxes paid.

1. Inventory and Final Accounting

The Estate Inventory should be completed within three months of appointment and always prior to closure of the Estate. The Personal Representative of an estate is required to prepare an inventory of estate assets and debts. The Inventory is not required to be filed with the court per RCW 11.44.15(2) but must be mailed to any heir, beneficiary, or unpaid creditor that requests it within ten days. Therefore, contrary to popular belief, a Decedent's assets typically do not become public via the probate process.

In addition to the Estate Inventory, the Personal Representative should keep track of and prepare a final estate accounting which provides for all assets received, all debts paid, and all distributions made from the estate during the probate process. Having an estate bank account distributions made from the estate during the probate process. Having an estate bank account is a useful tool in tracking expenses and distributions from the Estate. Although Washington doesn't require a formal accounting upon completion of the probate, if requested by an estate beneficiary, the Personal Representative must provide a formal accounting. The final "Declaration of Completion of Probate" only requires the Personal Representative to set forth fees paid to: (i) the Personal Representative, (ii) lawyers, (iii) appraisers, and (iv) accountants (see attached form). Personal Representative's are allowed to charge a reasonable fee for their services.

2. Distribution of Estate to Beneficiaries

Once taxes, expenses and creditors have been paid and the creditor's claims period has expired, the Personal Representative can begin the process of distributing assets to the beneficiaries of the estate. Note: if the estate is large enough, it is advisable to make interim distributions throughout the probate holding enough funds back to safely pay for creditors, taxes, and expenses.

Real Estate

If there is real estate going to a specific heir, a Bargain & Sale Deed (Personal Representative's Deed) should be prepared transferring title from the Estate to the receiving heir. The costs for recording and effectuating the conveyance are customarily borne by the Estate and must be done prior to closing as certified Letters are needed by the Treasurer to process the transaction. Use the applicable WAC exemption to avoid a transfer tax. Currently, the probate exemption is WAC 458-61A-202(f).

401k, IRA, Pension, Life Insurance

For some beneficiaries, a liquidation of all assets is desirable. For many others, it is fiscally responsible to roll over certain assets into their own IRA/401k plans or into a new inherited IRA. Life insurance often has a beneficiary but if it does not, it is income to the estate. For certain high valued accounts, it is incumbent on the Personal Representative to claim these funds, either roll them over to the beneficiaries or transfer the proceeds therefrom directly to said beneficiary quickly. By doing so, the Estate can avoid paying the tax at the higher rate and K-1 the income out to the beneficiaries to claim on their own returns. This is often a better setup, most heirs' tax brackets will be lower than an estate's.

Miscellaneous items – Automobiles, Jewelry, Etc.)

Where there is agreement between the heirs on the distribution of certain tangible personal property, the Personal Representative can effectuate said agreement. Where everyone wants to fight over mom's wedding ring and dad's guns, a petition for instructions to the court may be the only way to resolve the issue. The Personal Representative can reduce the overall cash inheritance of an heir receiving contested/high-valued property by virtue of the in-kind distribution. In-kind distributions are distributions that have a set value and the heir taking possession of the same has an offset in cash or other inheritance to equalize the distribution.

Distribution to Minors, Surviving Spouse, Trusts

An heir must be 18 years of age to be eligible to inherit. If they are not, a court-appointed Guardian ad Litem would already have been appointed to deal with their share. If the child is close to the age of majority, the estate may just remain open to effectuate the transfer. If the heir is not close to reaching this age, a UTMA account may be a good solution to block the funds for the benefit of the minor. **NOTE:** UTMA directs transfer to a minor upon reaching the age of 21 years. The law requires distribution upon reaching the age of 18. Make sure the bank notes this so there is no issue for the heir accessing their inheritance at 18. See RCW 11.76.095.

Surviving spouses often take possession by their right to community property. A Personal Representative can clear title to certain assets by transferring the same to said spouse prior to closing probate.

Transferring to trustees are just as simple as transferring to an heir. Transfer real estate to the name of the Trustee of said trust. In Washington, the trustee holds title to assets, not the trust itself.

3. Unclaimed Assets/Uncooperative Heirs

It is highly advised every Personal Representative or attorney for the Estate check with the Department of Revenue – Unclaimed Property Division for unclaimed property. Don't leave any miscellaneous assets unclaimed. Uncooperative heirs and non-locatable heirs are a bigger thorn in a probate. Chapter 11.80 RCW lists some cumbersome steps a Personal Representative can take to resolve and close a probate when there is a missing or absent heir. RCW 11.76.200 authorizes the court-appointment of an agent who can take possession, as a fiduciary, for the absent heir's share. The statute does not require the agent be a professional thus, a family member who can satisfactorily safe-keep the share for the benefit of the absent heir could be selected. The agent must post bond and file an oath. The subsequent sections of RCW 11.76.200-.247 direct the process for the agent being relieved of their duties after the prescribed period. This process includes the court registry taking possession of the share and then ultimately having the share issued to Washington's Department of Revenue – Unclaimed Property Division for a prescribed period until escheatment is authorized by the State. An estate does not have to remain open for this process. Once due diligence to locate an heir is complete, an agent can be appointed and the Estate can be closed.

4. Methods of Closing

- *Simple closure of estate and distribution of assets.*

Often times the estate can be closed in a very simple manner. This is accomplished by filing a statement from each heir and beneficiary entitled to receive property that he or she has received all the property he or she is entitled to and having them sign a "Release and Receipt of Heir" (see attached form). If the Personal Representative can obtain this form from all beneficiaries, then they can file the Receipts with a Declaration of Completion of Probate and the estate closes upon filing (See RCW 11.68.104(4)). There is no objection period or waiting period with this method.

- *Alternative closure of estate and distribution of assts.*

If it is not possible to accomplish a "simple" closure of the probate estate, the Personal Representative may close the estate with a formal notice process.

1. First, a Declaration of Completion of Probate is filed with the court containing notice that the Personal Representative intends to distribute the estate to the heirs and beneficiaries.
2. Second the Personal Representative puts the heirs and beneficiaries on notice that a Declaration of Completion of Probate has been filed and provides thirty (30) days to object to the payment of final expenses and distribution of assets. If an objection is received a hearing will be set to address the objection.
3. Third, if no objection is received within the required time frame, the Personal Representative may begin distributing assets over a five (5) business day period beginning on the day after the expiration of the thirty (30) day objection period
4. Fourth, it is recommended that the Personal Representative provide receipts but failure to receive them from any particular heir will not affect the closing. See "Receipt of Estate Share" form attached. Note – this is different than the "Release and Receipt of Heir" executed when doing a "simple" closure of the estate.

If you are involved in a contentious probate and you anticipate objections by heirs or beneficiaries, it is advisable to hold back any distributions until after the Declaration of Completion of Probate has been filed and the objection period has expired. Beneficiaries would then have to weigh whether they want to prolong the process by objecting or whether they would rather receive their distribution. In the alternative, it is common to utilize a "Final Report and Plan for Distribution" process when there are multiple heirs or a complex estate. A sample form is attached hereto for reference. This pleading is prepared, filed, and a hearing is set with notice to each beneficiary. Notice on a final report is customarily twenty (20) days from the date of mailing per RCW 11.76.040. This process is not required, however, in an estate being administered without intervention of the court.

If the Estate is not closed within one (1) year, the Personal Representative is required to file an Interim report with the court reporting on the affairs of the estate (RCW 11.76.010). See sample form attached hereto.

In the event taxes are not paid in full and the Personal Representative still wants to close the estate, he or she may do so and maintain special powers to hold reserve and deal with taxing authorities per RCW 11.62.114. Adding this reserve language will maintain this authority and any remaining funds should be distributed to the beneficiaries once the tax issues are handled.

5. Discharge of Fiduciary

In Washington, a Personal Representative is automatically discharged upon thirty (30) days following the filing of the Declaration of Completion of Probate so long as all property notices were given per RCW 11.68.110. Therefore the potential liability for the Personal Representative typically ceases once the Declaration of Completion of Probate becomes final unless the Personal Representative committed fraud or failed to provide the statutory notices.

After filing any federal income or gift tax return for the Decedent, the Personal Representative may request to be discharged from personal liability for any remaining tax due. The IRS has nine (9) months after receipt of the Personal Representative's request to notify the Personal Representative of the amount of any remaining tax due or be barred from its collection. The request for discharge may be attached to and filed with the estate tax return (Form 706) or may be submitted separately at any time during the three (3) years period following the date the Form 706 was filed.

6. Tax Returns – What Needs to be Filed and When

- **Federal Income Tax Returns.** There are two (2) income tax returns that need to be filed – one on behalf of the deceased individual and one on behalf of the Estate. to the extent individual income tax returns were not filed for the deceased individual prior to death, the Personal Representative is responsible for filing any outstanding income tax returns and reporting income received by the deceased in the year the deceased died (or in previous years if income tax returns are outstanding). The return will be filed for all income earned from January 1st through the date of death and will be due by April 15th of the following year.

The Estate could also generate enough income to warrant an estate income tax return to be filed. The Personal Representative will need to file an income tax return for the Estate for all income earned from the Decedent's death through December 31st of the year he or she died. If the estate is not closed in that same year, there may be an additional income tax return for the following year. The Estate will only be required to file an income tax return if it meets the threshold income required for a return by the IRS which is Six Hundred Dollars (\$600) in annual gross income.

Keep in mind, the income tax returns to be filed on behalf of the individual and on behalf of the Estate are separate from any estate tax returns that must be prepared and filed. It is also important to note that real property has a stepped up basis in value.

- **Washington State Taxes:**

Although Washington has no income tax, the following are tax matters the Personal Representative should consider if the Decedent was a business owner:

- *Washington Business & Occupations Tax:* The B & O tax is essentially a state income tax on the gross receipts of a business. If Decedent was conducting business then the Personal Representative must report and pay any B & O tax due. The relevant statute addresses the general question of the taxpayer's quitting business provides that the tax is "immediately due and payable" and shall be paid "within ten (10) days thereafter," and makes no allowances for the quitting of business activities due to death (see RCW 82.32.140).

- *Washington Sales Tax:* Similarly, if Decedent was conducting business as an individual and as a part of that business collected Washington sales tax, *eg.* Calculated on the price of goods sold or services rendered, then the Personal Representative is responsible for Decedent's reporting and paying any sales tax due. RCW 82.32.140.

- *Closing Department of Revenue Account:* The Personal Representative should also close the Decedent's account with the Department of Revenue.

- **Federal and Estate Tax Returns.**

Upon death, the Personal Representative should meet with advisors to determine whether state and/or federal income tax returns are necessary. In 2019, the threshold requirements for paying Washington State and Federal income tax returns are as follows:

	Washington	Federal
Exemption	\$2,193,000	\$ 11,400,000
Rate	10-20%	40%

- *Federal Estate Taxes:* The Federal estate tax return must be filed within nine (9) months of the date of Decedent's death. In order to compute the federal estate tax due, first the "gross estate" of the Decedent is determined. The Decedent's "gross estate" is calculated by the date of death fair market value of all property the Decedent has an interest in, including: transfers made without full consideration, annuities, portion of joint estates, life insurance proceeds, Decedent's share of community property, separate property, etc. The

Taxable Estate is the gross estate less allowable deductions, i.e. funeral expenses, expenses related to estate administration, debts at death, the value of property passing to charities, and value of property passing to surviving spouse.

After the Net amount is computed the value of the lifetime taxable gifts is added to this number and the tax is computed; the tax is then reduced by the available unified credit. Most estates will not require the filing of a federal estate tax return unless over the threshold amount listed in the chart above.

- Federal Portability Election. Beginning in 2011, the surviving spouse may elect to pass any of the Decedent's unused exemption to the surviving spouse. This election is made on the timely filed estate tax return.
- State Estate Taxes: Like Federal estate tax, Washington State estate taxes are due within nine (9) months after the Decedent's date of death. The filing threshold for Washington State estate taxes is the same as the exclusion. Previously, an estate return would be required if the gross estate exceeded \$2,000,000 even though the exclusion amount was higher, however, taxes are only owed for the portion of the estate that exceed the exclusion amount. The Taxable Estate, similar to the federally Taxable Estate, is the gross estate less allowable deductions.