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EXECUTOR'S HANDBOOK

**What to Expect
How to Prepare Getting Professional Help**

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INTRODUCTION

A good friend or a member of your family is having a will drawn up, and asks you whether you would be willing to act as the executor. You feel honored by this request, and you give your consent. Or, perhaps someone close to you has passed away, and the time has come to assume your executorial function. You may be wondering exactly what the extent of your obligations will be, how much time your duties may demand, and where to go for help in fulfilling this important role.

This booklet is intended to give you an overview of the estate administration process, focusing on the executor's responsibilities to gather estate information, pay debts, expenses, and taxes and distribute the assets of the estate in accordance with the wishes of the deceased. It is not intended as a do-it-yourself manual or as a substitute for our legal or tax advice, but it may give you some idea of the duties that you can perform on your own, and it can help you to be an informed client when you hire us to perform many of these tasks.

Don't Be Intimidated by "Probate"

Many people are aware that estates may be required to "go through probate," but they may not know what this process entails, and as a result may be intimidated by the idea of becoming involved in it. "Probate" refers to the series of legal procedures by which New York state attempts to see that the debts, taxes, and expenses of its deceased residents will be paid and that the remaining assets will be distributed to the rightful heirs or beneficiaries. These procedures are overseen by a particular court in the county in which the decedent lived, known as the "Surrogate Court" but sometimes called by other names in other states.

The description of the probate process included in this booklet is intended to give you a general idea of what you are likely to encounter, although you should keep in mind that the specific procedures vary considerably from state to state and even from county to county. It is also possible that probate will not be required in your case, or that a simplified probate procedure can be used. The question of whether probate might be avoidable is discussed on p.15.

As the executor, you have the right to hire experts to help you undergo probate and complete your other duties, and you are entitled to charge their reasonable fees to the estate. The size and complexity of the estate, as well as your own level of expertise in handling financial and tax matters, will determine the extent to which you will need the assistance of a law firm. **YOU DON'T HAVE TO HIRE THE ATTORNEY WHO DREW THE DECEDENT'S WILL!**

Besides reimbursement for your out-of-pocket expenses, you will be entitled to receive a fee for your own services as executor. In New York the executor's commissions, stated as a percentage of the estate's assets, are set by law; other states merely provide for reasonable fees, with the reasonableness to be determined by the probate court. Of course, you may choose to waive this fee if you so desire, but this decision must be made early in the process in the case of large estate. See Exhibit A for a schedule of New York Executor's commissions.

PRELIMINARY MATTERS

Once you learn that you are named executor in a living person's will, it may be a good idea to make a tactful attempt to gather some general information about the will writer (known as the testator). Although most people are understandably concerned that their private affairs, including the contents of their will, remain private, there is a certain amount of information that an executor should have. Because the testator's trust in you has been shown by the fact that you were chosen to perform this important role, you probably can comfortably ask certain limited questions.

Know How to locate the Will

Although some testators may voluntarily share information with you regarding their wishes for disposition of their property, it is not necessary for you to know the particular property or percentage of the estate that will be passed to the beneficiaries. However, you should know the location of the original copy of the will, and have some idea of how to retrieve it when the proper time comes. Under the best circumstances, the testator may give you a copy of the will, in a sealed envelope to be opened only upon his or her death, with the understanding that you would not violate his or her confidence by opening it prematurely.

If you are not given a copy of the will, the testator may tell you that it is filed at an attorney's office (and give you the name of the attorney), that it is stored in a safety deposit box (and tell you the name of the bank or savings institution, and possibly the location of the key stamped with the box number), or that it is among his or her personal papers at home or that it is filed in the Surrogate Court of the county of the Decedent's domicile.

In addition to the location of the will, it is wise to know the whereabouts of close family members who are likely beneficiaries under the will. If you are a member of the family yourself, you probably already have the information you need. Otherwise, you might ask the testator for names, addresses, and phone numbers of close family and friends.

The Letter of Instruction

One of your major duties as executor will be to locate and gather together the assets of the estate (called "marshaling" assets). Although you may have some idea of the general nature of the estate through your relationship with the testator, the best way for the testator to be sure that none of his or her assets are overlooked is to prepare a detailed Letter of Instruction. Such a letter should be kept in an accessible place so it can be updated on a regular basis, and its existence and location should be made known to the executor and perhaps to other close family members. It might include:

Names, Addresses, and Phone Numbers of:

-Family and Friends

- Attorney
- Accountant
- Banker
- Stockbroker
- Insurance Agent
- Funeral Director
- Doctor
- Clergyman
- Employer/Business Associate(s)

Location of:

- Birth, Adoption, Baptismal Certificates
- Marriage Certificate
- Divorce Decree or Separation Agreement
- Will (original copy)
- Safety Deposit Box and Keys
- Bank Passbooks
- Brokerage statements
- Income Tax Returns
- Gift Tax Returns
- Household Inventory
- Military Service Records
- Social Security Number and Cards
- Employment Records
- Diplomas, Educational Records
- Medical and Health Records
- Cemetery Site Deed
- Citizenship Papers

Detailed Inventory of Assets and Liabilities:

- Bank Names
- Saving Bond Denominations, Numbers, Location
- Stock Names, Location of Certificates, Number of Shares, Purchase Prices
- Corporate or Government Bonds, Location, Purchase Prices
- Mutual Fund Names, Number of Shares, Purchase Prices
- Real Estate Descriptions, Dates of Purchase, Purchase Prices, Location of Deeds
- Pension/Profit Sharing Account Information
- Insurance Companies, Policy Numbers, Location of Policies, face Value of Policies
- Motor Vehicle Descriptions; Locations of Titles
- Valuable Personal Property (Jewelry, Art, Collections, etc): Description, Location, Value
- Mortgage Amount; Name and Address of Holder
- Other Loans: Amount, Name and Address of Creditor
- Credit Card Companies, Account Numbers

The letter may also contain instructions as to funeral arrangements and instructions as to disposition of particular personal effects. Although such instructions are not legally binding as they would be if contained in the will, such letters are much more easily revised than a Will. Moreover, during probate a will becomes a public record and its contents may be reviewed by any curious person, while a letter would remain private.

If the testator does not have such a letter, and does not respond to your suggestions that he or she may want to create one, you will still need to get some idea of the testator's record-keeping habits and the location of important documents.

FIRST DAYS AND WEEKS AFTER DEATH

See That Funeral Arrangements are Made

Funeral arrangements are generally made by surviving spouse, children, or other family members rather than by the executor as such. The deceased person's (decedent's) wishes should be respected if they are known, but do not have to be carried out if they are unreasonable or financially burdensome. Unfortunately, often the decedent's wishes are expressed only in the will, which might not be discovered or located before disposition of the body must occur. Obviously, such instructions cannot be binding.

In making final arrangements, the question of anatomical gifts should be considered. Under the Uniform Anatomical Gift Act, organ donations or gifts of the entire body for medical research made by the decedent must be honored by the survivors. However, if the gift was made by means of the will rather than through an Organ Donor Card, it may be impossible to respect since organ donations must take place within a few hours of death.

Although the executor does not necessarily make the funeral arrangements, he or she is responsible for keeping track of the expenses and paying the bills from the estate's assets. Virtually any reasonable funeral expenses that were incurred within nine months of death are payable from the estate. If a relative or friend pays the funeral director, he or she will be entitled to reimbursement from the estate. Deductible expenses are determined under state law, but generally include all costs for preparation, transport and burial of the body; costs of conducting memorial and burial services, including any traditional meal for family and friends; and costs of travel, meals, and lodging for the person who is in charge of making arrangements.

Funeral expenses are given priority when an estate has limited assets, and under federal tax and the laws of New York they are paid before any other obligations, except expenses of administration such as court costs, attorney fees, and executor fees.

At the time funeral arrangements are being made, it is a good idea to order a number of certified copies of the death certificate from the funeral director. These certificates may also be obtained from the county health department. You will generally need a separate certified copy in order to effect a transfer of each piece of real estate,

motor vehicle, stock certificate, bank account, etc.; to obtain insurance proceeds and death benefits; to gain access to safe deposit boxes; to complete tax returns; and for numerous other reasons.

Locate and Read the Will

Even if you were given a copy of the will before the testator died, you have an obligation to locate and retrieve the original. It is to be hoped that your prior communications with the decedent revealed its location; if not, you will have to thoroughly check all logical places before you can conclude that no will exists.

Original wills are usually retained by the attorney who prepared them. If you do not know the name of the decedent's attorney, it may be listed in the decedent's address book or collection of business cards, or you might find a canceled check or a notation in the decedent's checkbook. You may, but are under no obligation to, hire the attorney who prepared the will to assist in settling the decedent's estate. Although an attorney may resist handing an original will over to a nonlawyer, he or she is usually required under state law to file the will with the probate court, and to send the executor a copy. Once the will is filed, anyone, including the executor, may obtain a certified copy from the county probate clerk upon payment of a fee.

Another common place to find a will is among the decedent's personal papers at home.

If the will was stored in a safety deposit box, you might be permitted to open the box if you have obtained the key and if you were a joint signatory on the box, or if another person who is a surviving joint tenant of the box accompanies you. If state law required the box to be sealed upon death, however, you may have to file a petition with the probate court to open the box in order to search for the will. In New York, you will have to seek and obtain Court approval to open the box unless you are a joint lessee or otherwise authorized person.

Once the will is located, you may read it in the presence of close family members, or you may read it in privacy and send a photocopy or a summary of relevant provisions to the beneficiaries and to any legal heirs who were passed over by the will. Under modern practice, there is no requirement for a ceremonial reading of the will, although state law (not New York) may require that the will be filed with the probate court within a short time. It is a good idea to first make several copies for ready reference you should consult with the estate attorney on this matter.

Obtain Guardian for Minor Children

If there are minor children who are left orphaned by the death, a guardian must be appointed for them by the probate court as soon as possible, since minors cannot receive medical treatment or enroll in school without the consent of a parent or guardian. For this procedure, you will probably need an attorney's assistance. Where both parents are deceased, the court will almost always respect the nomination of guardian(s) made in the will, if the nominee is able and willing to serve.

However, if the decedent is a divorced parent, and the other natural parent is still living, custody will almost invariably be awarded to the surviving parent, regardless of

the nomination made in the will of the first parent to die. An exception would occur where the surviving natural parent is shown to be unfit or declines to act.

If the person died without leaving a will you will seek appointment as an Administrator rather than Executor. The Surrogates Court will issue Letters of Administration.

In some states, if the child's estate exceeds a certain amount such as \$5,000, the court will also appoint a conservator or "guardian of the estate" to manage the assets until the child reaches the age of majority. This conservator may be the same person as the guardian of the child's person.

Petition for Appointment as Personal Representative

In New York, the executor must petition the probate court for appointment as the decedent's Personal Representative (P.R.) Within a certain time period, such as 30 days, or be deemed to have waived the right to act. However, the filing of a petition to act as P.R. may preclude the estate from taking advantage of the simplified administration procedure available to smaller estate. Thus, it may be wise to make quick, preliminary inventory of the estate's assets to see whether formal probate procedures are actually necessary. The various types of probate procedures are discussed at p. 16.

Assuming that it is evident that the decedent held substantial assets solely in his or her own name, thus making formal probate a foregone conclusion, you will probably need the assistance of an attorney in petitioning to probate the will (i.e., proving that it is authentic), to be appointed the decedent's Personal Representative, and to receive Letters Testamentary. These "Letters" are certified court orders proving that you have the legal power to "stand in the shoes" of the decedent and manage his or her affairs and assets. You will need copies of the Letters to show to persons holding assets of the deceased, debtors, creditors, donees, and others so that they will comply with your requests. If decedent did not execute a valid will, your personal representative will be known as an "Administration" and the Court will issue "Letters of Administration".

Obtaining such Letters will probably take at least 30 to 60 days. The procedures for initiating probate and obtaining Letters Testamentary generally involve filing a petition, to which you have attached the original will, with the court; mailing notices of death and of the upcoming court hearing on your appointment to heirs and beneficiaries; obtaining written statements from witness to the will; and attending the hearing.

If the will did not specify otherwise, you will probably be required to be bonded, to protect interested parties against possible negligence, fraud or embezzlement. The bonding premium is based on the total value of the probatable assets, and is an administration expense chargeable to the estate. Our office can help you to arrange this coverage.

Personal Representative's Duty of Care

After the hearing, if all procedures have been properly completed and if no one contests the will, you will receive the Letters Testamentary. You now have the legal authority and the responsibility to conduct the decedent's business affairs as he or she would have done, had death not occurred.

However, there are a few restrictions on your powers. You have a duty to use the care and skill that an ordinarily prudent person would use with respect to his or her own affairs. As Executor or Administrator, your basic function is to marshal assets, and to liquidate and distribute them as speedily as possible. The total period of administration, from time of death to final closing, typically ranges from 6 to 18 months depending on whether full probate and/or federal estate tax return is required. If you retain an asset beyond a reasonable time and the estate suffers a loss, you can be held liable. You also run a risk of liability if you retain cash too long without putting it in an interest-bearing account. Your power to make investments will be restricted under state law, although the will may provide you with greater powers. You should review the decedent's investments with a competent investment advisor, and also discuss these investments with the estate beneficiaries as soon as possible.

Furthermore, when choices and elections are to be made, you must not seek to maximize your own advantage at the expense of the estate as a whole, particularly if you are also a beneficiary. At a minimum, this means you may not buy an estate's asset at an unreasonably low price. If in doubt as to the propriety of a particular action, you should seek advice from the probate court.

You will also be responsible for filing and paying applicable federal and state estate taxes on a timely basis (within 9 months of decedent's death). In some cases, you may be held personally liable for failure to fulfill these duties, under both federal and state law. There are also numerous criminal penalties that can be imposed on an executor for willful and deliberate violations of the tax laws. Do not forget the requirement to also file federal and state income taxes for the estate on an annual basis.

Notify the Internal Revenue Service

Whether or not formal probate is required, certain tax forms will need to be filed on behalf of the decedent. Upon assuming the role of executor, a decedent's representative should notify the IRS of his or her capacity in acting for the estate on Form 56, Notice Concerning Fiduciary Relationship. Filing this form is not mandatory, but it is strongly suggested if you live at an address that is different from that of the deceased. Until this form is received, the IRS will continue to send the decedent's mail, including any important tax notices, to his or her former address.

You will also need to obtain a federal tax identification number for the estate. To do this, you file IRS Form SS-4, Application for Employer Identification Number. This can be done online at www.irs.gov or by mail. Within 15 to 30 days, you should receive a number from the IRS if you file the application by mail with IRS. This number is required on the estate income tax form just as an individual income tax form would require a Social Security number.

IDENTIFY AND EVALUATE THE ASSETS

Probably the most difficult, but also the most important, duty you have as an Executor is to find the decedent's assets, list them in an organized fashion, and determine their fair market values. Doing this involves systematically going through virtually everything that belonged to the decedent at the time of death, and creating an itemized inventory.

The amount and type of assets that you find will determine whether and what type of probate procedures are necessary. In New York probate proceedings, you will need to file an inventory of assets with the probate court within six (6) months. If estate tax or state death taxes apply, you will need an inventory for tax purposes. And finally, the estate assets cannot be properly distributed accordingly to the will until their nature and value are known.

Locate the Assets

If the estate is very complex, the decedent's may name a corporate or professional co-executor, such as a lawyer or a bank. In this situation, your duties will be far fewer than if you were the sole executor. Nevertheless, you will ordinarily be asked to locate and provide records including the following:

- Bank records
- Canceled checks
- Checkbooks
- Income tax returns for the last three years
- All prior gift tax returns
- Insurance policies and appraisals
- Medicare information
- Salary records for any employees
- Business records
- Credit cards and statements
- Deeds, mortgages, etc.
- Information as to jewelry, art and other valuables

In the majority of cases, where the estate is about average in size, it is likely that you will be doing much of the inventory work yourself. Depending upon how well or how poorly the decedent's records were organized, you should be prepared to rummage through every room, closet, desk drawer, and "secret hiding place" you can discover in your search for valuable assets.

Sources of Information

If the decedent left an updated Letter of Instruction, your task will be simplified, although you should still check carefully to be sure nothing was overlooked. Otherwise,

a good place to start is with the *prior year's income tax return*. This should list most income-producing assets and a wealth of other information about the decedent's financial affairs; furthermore, other substantiating records are often kept in the vicinity of the tax forms.

Another excellent source of information is the decedent's checkbook and file of canceled checks for the previous year. Look for payments made for investments, insurance, debts, mortgages, medical expenses, tax payments, vehicle registration fees, gifts to family members and safety deposit box rental fees. Identifying the source of deposits can also give you needed information.

It is good idea to monitor the decedent's incoming mail for at least six months, and possibly a full year. Checks for dividends, pensions, and payments of various types owed to the deceased; clues as to the decedent's assets, liabilities, and some of these are sent out only on a quarterly, semi-annual, or annual basis. You can probably have the decedent's address changed to your own address if you provide the local postmaster with your identification and a copy of your Letters Testamentary.

Safety Deposit Box

You will also need to locate and inventory the contents of the decedent's safety deposit box(es), if any. You may find a small flat key with a number imprinted on it among the decedent's personal belongings, and you may also find a statement or a canceled check for the yearly rental fee from the depository institution. If not, you may have to check all banks at which the decedent maintained an account.

Once you have determined the institution at which the box is located, you may contact it for further instructions as to how to obtain access to the box. If the key cannot be found, a sizable charge may be made since the lock may have to be replaced.

Ordinarily, the box will be opened only for the surviving joint tenants, or for the court appointed personal representative. Even then, you will probably be required to have a representative of the financial institution present to inventory the contents and may be required to complete and file a New York State report of safe deposit box opening. Such an inventory serves to protect the state from possible tax evasion, but can also prevent disputes among beneficiaries as to exactly what was in the box. A bank officer can help you arrange an appointment.

Safety deposit boxes are the usual receptacle for important papers such as deeds, insurance policies, stocks and bonds, and promissory notes. They may also contain actual assets such as jewelry, coin collections, and cash. Any time you anticipate that cash may be found, whether in a safety deposit box or secreted somewhere among the decedent's belongings, you would be well advised to have at least one witness to watch you open the receptacle and to sign a statement as to the amount that was found.

Preserve the Assets

As you go through the decedent's papers and effects, your first concern must necessarily be to prevent the destruction or deterioration of any assets you discover. If there is a residence that will be unoccupied, you must make certain it is kept locked and take appropriate precautions to avoid burglary or vandalism. If there are motor vehicles, they should also be secured and kept in running condition. Valuables such as jewelry or securities that were not jointly owned but are part of the estate should be kept in a safe place, such as a safety deposit box rented in the name of the Estate. If the decedent maintained an ongoing business, you will need to decide whether to make arrangements to continue the business at least temporarily or to close it down, and you will need our advice in connection with the business.

During the period of administration you will be taking other precautions or preserve the assets. Following are some examples of actions you may need to take, depending on the estate:

- Make sure that insurance policies on vehicles and real estate are kept up
- Make sure mortgage payments are made
- Make utility payments if required to keep property from deteriorating
- File claims for Medicare, private medical insurance, or casualty insurance benefits
- Return to the issuer any charge cards that are not jointly owned, for possible refunds of annual fees
- Cash in unused airline tickets
- Cancel club memberships and magazine subscriptions if refunds are available
- Cancel any margin accounts or standing orders to buy or sell stocks or commodities with brokerage houses

Classify and Value the Assets

As you discover assets, you will have to compile an inventory and assign a value to each item. The method of valuation to be used is dictated by the Internal Revenue Code under rules applicable to the federal estate tax if it is eventually determined to be due. This is so because the value of the taxable (technically called "gross") estate must be determined before you can tell whether it is large enough to require filing of an estate tax form. Generally speaking, if the taxable estate amounts to \$1 million or more an estate tax return must be filed even if no tax is actually owed, and the return is due nine months from the date of death. Therefore, you should aim to complete your valuation within six months.

Time and Method of Valuation

Under federal law, all of the property owned by the decedent anywhere in the world, even property of which he or she owned a fractional share, must be counted. The value must be determined as of the date of death, although for estate tax purposes an alternative date may be used if it proves to be more advantageous in reducing taxes. The alternative date is the date six months after the date of death, or the date of sale of

property sold within six months. If the alternative date is elected, it must be used for every asset in the estate.

The value of property is its fair market value. IRS regulations define fair market value as “the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts.”

Joint Tenancy Property

As you make your inventory of assets, you will probably come upon some property held in joint tenancy with a surviving spouse, an adult child, or one or more other living persons. Most types of assets can be owned jointly, although most common are probably personal residences and joint bank accounts.

Although such property is not included in the decedent’s probate estate, it must be listed on the estate tax return. As a general rule, the value of the entire property will be included in the taxable estate of the first joint tenant to die, unless it can be proven that the other joint tenant(s) contributed to the cost of acquiring the property. If this can be shown, then the percentage of the decedent’s contribution to the total acquisition costs is the percentage of the property’s fair market value at death included in the decedent’s taxable estate.

Where the only other joint tenant is the decedent’s spouse, a special rule applies. One half of the property’s value at death is considered part of the taxable estate of the first spouse to die, regardless of how much each spouse contributed to the acquisition costs.

Keep in mind that even where a safety deposit box was rented in joint tenancy, the property inside the box will not be considered to be joint tenancy property without additional evidence. Such property is considered the sole property of the first renter to die, unless you can prove otherwise.

Specific Types of Assets

The following paragraphs present the general rule-of-thumb methods used in valuing different types of assets. The IRS regulations contain detailed instructions for virtually every type of asset, and they, or a qualified professional such as our attorneys, should be consulted whenever you run into an unusual or difficult situation.

Tangible Personal Property

One type of asset included in virtually every estate, no matter how small, is tangible personal property. This category includes everything from simple furniture, clothing, and memorabilia, to major appliances, motor vehicles, and farm machinery, to art collections, expensive jewelry, and antiques. The value of personal property is the price that a willing buyer would pay to a willing seller. Accordingly, if an item or

group of items is not saleable, such as well-worn clothing, there is no need to list it in your inventory.

You will need to visit the location(s) of the property and make a room-by-room survey, looking for the kinds of items that could be sold for more than a minimal, “rummage sale” price. All items that could realistically be sold should be listed, although items of a similar nature with individual values of less than \$100 can be grouped. For example, dining room furniture could ordinarily be listed as a single item. If the estate is very small and you find virtually nothing that could be sold, it may be a good idea to make an inventory entry such as “Personal effect - \$200” or some other nominal amount. This will show any interested parties, including tax authorities, that you did not forget to consider this category.

Whenever you encounter articles with artistic or “intrinsic” value such as jewelry, furs, silverware, works of art, or stamp collections, it may be a good idea to have an expert appraise the item(s). The IRS requires a professional appraisal if any one article is valued at more than \$3,000, or any collection of articles is valued at more than \$10,000.

Cash and Bank Accounts

Cash in possession of the decedent as well as money deposited in savings, checking, and money market accounts or invested in certificates of deposit is accorded its face value at the time of death. Interest accrued up to the date of death is generally included in these amounts. Checks outstanding at the time of death may be subtracted from the total if they are later honored and charged against the decedent’s account. If the cash includes foreign currency or foreign bank accounts, the value should be stated in terms of the official rate of exchange or the date of death. List the name and address of each savings institution, the account numbers, and the dollar amount for each account.

Real Estate

Where the decedent owned the real estate, such as a personal residence, commercial buildings, a summer or winter home, farmland, etc., a professional appraisal is almost always necessary, since under the law each parcel of real estate is unique. Under certain conditions, real property that consists of a family farm or a closely held business can be valued on the basis of actual use, when such a value is less than the value of its “highest and best” (most lucrative) use.

The property’s description and location should be listed, as well as the appraised value and the basis for the appraisal. Pay particular attention to any real estate that is located outside the decedent’s home state. You may be required to employ an attorney in that state and undergo ancillary (supplementary) probate proceedings there as well as in the home state.

Stocks and Bonds

The value of publicly traded stocks, bonds, and mutual funds can be determined by reference to a newspaper such as *The Wall Street Journal* or *New York Times* for the date of death. Where the decedent was enrolled in a dividend reinvestment program, you may have to contact the administrator of the program to find out the exact number of shares and fractional shares owned at the date of death. Interest, dividends, and capital gains accrued up to the date of death must also be included in the estate inventory. If the decedent owned a very large block of stock in a single company, or shares of privately traded or closely held stock, special rules apply, and an expert appraisal may be needed to determine the value.

The inventory description of each stock should show the number of shares, whether the stock is common or preferred, the issue, the par value, and the price per share. Bond descriptions should include quantity, denomination, name of the obligor, kind of bond, date of maturity, rate of interest payable, and interest due dates. The name, account number, number of shares, and price per share on the date of death should be listed for each mutual fund.

Business Interests and Partnerships

The valuation of unincorporated business interests held by the deceased requires appraisal of all the assets of the business, including goodwill. The portion of the business owned by the decedent should be given a net value equal to the amount that a willing purchaser would pay to a willing seller in view of asset value and earning capacity. An accountant's examination of the business will almost always be necessary. Where the decedent was a member of a partnership, the surviving partner(s) should be able to provide you with a certified statement of the decedent's ownership interest and capital worth. The partnership may charge the estate for the cost of providing this information. For estate tax purposes, you will need to obtain a statement of partnership or business assets and liabilities for the valuation date and for the five years immediately preceding the valuation date.

Loans, Notes and Mortgages

Loans, promissory notes, and mortgages held by the decedent as well as contracts to sell land are generally valued at the amount of unpaid principal, together with the accrued interest, unless you can establish a lower value or prove them to be worthless. If a note is forgiven in a decedent's will, it is nevertheless included in the gross estate. The following information should be listed: face value and unpaid balance, date of mortgage or note, date of maturity, name of maker, description of any property securing the loan, interest dates, and rate of interest.

Life Insurance

As the executor, you should be aware of every life insurance policy on the decedent's life, whether or not it is subject to estate tax or is part of the probate estate. If an estate tax return is filed, every policy must be listed regardless of whether it is

subject to tax. If you suspect the decedent had life insurance but cannot find any information about the policy. You may decide to engage a fee based service that will search insurance industry data bases for the existence of a policy. One such service is offered by MIB Solutions, Inc. and details are available at www.mib.com.

Your inventory description of the insurance must include the name of the insurance company, the name of the beneficiary, the face amount of the policy, the policy number, the amount if any outstanding loans against the policy, the interest on any loans, and the amount of any accumulated dividends on the policy. Accident insurance is treated as life insurance for estate tax purposes.

The value of life insurance is the net proceeds received, if paid in a lump sum. If the proceeds are not paid in a lump sum (if, for example, they are payable to the beneficiary as an annuity), the value is the value of the future proceeds as of the date of death. To obtain this value, you will need to contact the life insurance company. For each policy, a company representative must complete an IRS Form 712 and return the form to you.

Generally speaking, the proceeds of life insurance policies are taxable for the estate tax purposes if (1) the proceeds are payable to the estate, or (2) the proceeds are payable to a named beneficiary but the insured had one or more of the “incidents of ownership” in the policy. “Incidents of ownership” include the power to change the beneficiary, to surrender or cancel the policy, to assign the policy, to revoke an assignment, to pledge the policy for a loan, or to borrow against the cash value. If the decedent transferred all the incidents of ownership to another person, if he or she did so within three years of death, the policy proceeds are included in the decedent’s estate. Accordingly, most life insurance proceeds will be part of the taxable estate, despite the fact that there are very likely not to be part of the probate estate.

Insurance that a decedent may have taken out on the life of another individual is taxable for estate tax purposes to the extent of the replacement value of the policy.

Annuities

Annuities are included in the inventory because they are generally taxable for estate tax purposes, although they are not usually part of the probate estate. The amount includable is all or a portion of the lump-sum, annuity, or other payment received by a survivor by reason of the death of the decedent, depending on whether and how much the decedent contributed to the plan. The term “annuity” covers a very broad range of contracts or agreements, and includes private annuities purchase by the decedent, as well as many types of employer-provided deferred compensation plans. Complex rules apply to the valuation of annuities, and you will probably need to contact the organization making the payments as well as an experienced tax professional if your decedent’s estate includes this type of asset.

Gift Transfers and Powers of Appointment

You must also attempt to reconstruct all taxable gifts, transfers of property for less than fair market value, and powers of appointment held by the decedent during his lifetime. This can be a very complicated matter requiring more than a little detective work. If the decedent filed any federal gift tax returns during his or her lifetime, you must attempt to obtain a copy of each form. If not, you must do your best to elicit information from the decedent's family and friends. You should write to the Internal Revenue Service and request copies of any gift tax returns.

Every individual is permitted to make a tax-free gift of up to \$13,000 per year for 2009 (indexed for inflation) to each of an unlimited number of people (prior to 1982, the amount was \$3,000). If the individual's spouse consents to the gift, the annual amount is \$26,000 per person. There are additional exclusions for gifts to pay medical expenses or tuition, but generally speaking, gifts over the \$13,000 exclusion are subject to federal gift tax unless made to one's spouse.

Transfers between spouses are tax free, as are transfers of property incident to a divorce, but transfers prior to marriage under prenuptial agreements may well be taxable.

In effect, the law operates to add all taxable gifts made after 1976 to the value of the estate before computing estate taxes. Gifts are normally valued at their fair market value at the time the gift was completed, unless the donor retained a life estate or control over the property.

A general power of appointment may be described as the ability to use up, invade, or take over property of another person or entity for the benefit of the power holder, his or her estate, his or her creditors, or the creditors of the estate. If the decedent held any such powers at his or her death (for example, in connection with a trust created by someone else), the value of the property subject to the power is included in the decedent's estate, whether or not the power was ever used. Powers of appointment are governed by a multitude of technical rules and, if you believe your decedent may have possessed such a power, you will almost certainly require professional advice in this regard.

Miscellaneous Assets

Decedent's estates may contain other types of assets such as rights to receive royalties on patents or trademarks, judgments in lawsuits, and reversionary or remainder interests. Professional assistance in identifying and appraising these kinds of assets will probably be necessary.

IS PROBATE REQUIRED

In creating your inventory, you included all assets that could potentially be subject to the federal and state estate tax. As soon as it is apparent that the total value of the taxable estate amounts to \$1 million or more, you will know that a New York estate tax return must be filed. For Federal returns the amount is now \$3.5 million or more.

However, the size of the taxable estate does not in itself determine whether probate is necessary. You will have to classify these assets as “Probate” or “Nonprobate” property before you can determine whether and what kind of probate proceedings are required.

Separate Probate from Nonprobate Assets

“Nonprobate” assets are those that pass to survivors independently of the will. They are not subject to claims for the decedent’s debts and expenses, though they may be subject to certain death taxes. Furthermore, they need not be reported to the probate court, and you are generally not responsible for administering them. If the entire estate consists of nonprobate assets, and if there are no minor orphans to consider, no probate procedures are required and the assets may simply be distributed. This usually results in much faster settlement of the estate and substantial savings in administration costs.

The most common types of nonprobate assets are joint tenancy property; life insurance benefits; other contractual benefits such as annuities, pensions or similar plans; IRA and Keogh accounts with named beneficiaries; Totten (bank accounts) trusts; and revocable living trusts. The ownership of joint tenancy property automatically passes to the surviving joint tenant(s) upon the death of one of the joint tenants, regardless of will provisions. Trust property is governed by the trust document rather than by the will. Life insurance proceeds and other contractual benefits normally pass directly to the beneficiaries, but may become probate property in two situations: (1) where the beneficiary is the decedent’s estate or a trust created by the will, or (2) where all the named beneficiaries predeceased the decedent.

A special rule may apply to motor vehicles that were solely owned by the decedent. State law may provide that vehicles not exceeding a certain value (\$15,000.) can be transferred directly to the surviving spouse or other next of kin through the state department of motor vehicles, thus removing the vehicles from the category of probate assets. You can contact the department of motor vehicles in your state to see whether such a procedure is available. In New York you will need the following forms; DTF-803, MV 82, MV 349.1.

Once you have determined which of the decedent’s assets are nonprobate assets, you can, conversely, add up the value of the probate assets. The total value of these assets, and the relationships of the surviving beneficiaries to the decedent, determine the kind of probate procedures that are available to the estate when more than one form of probate is provided by state law.

Type of Probate Procedures

As noted above, probate procedures vary considerably from state to state, and even from county to county. Although most states permit more than one kind of procedure, not all states permit all of the kinds of probate procedures described below.

Small Estate or Affidavit Procedure

In New York, this type of procedure may be used where the “probate estate is made up of personal property not exceeding a maximum value of \$30,000.00 effective January 1, 2009.

Under the affidavit procedure, no Person Representative is appointed. The person settling the estate, usually the surviving next of kin, signs a legal form known as an affidavit stating such things as that the statutory waiting period following the death has elapsed, that the estate does not exceed the legal limits, and that the person signing the form is legally entitled to receive the decedent’s assets. These forms are available from the county surrogate court. Parties receiving the affidavit are required to transfer the decedent’s property to the designated person.

Because the probate court is not involved in overseeing the process of administration, the costs of using the affidavit procedure are low even if some assistance from a lawyer is required. The lack of court involvement also usually results in much faster settlement. Accordingly, if your decedent’s estate qualifies, the small estate procedure will usually be most advantageous, provided that there are no serious conflicts among the beneficiaries.

Formal Probate Administration

If the small estate procedures are not applicable, you will be required to undergo formal probate proceedings. This necessitates more extensive involvement by the probate court and higher legal fees, and can take up to several years to complete. Again, the necessary procedures vary considerably from state to state. The following is a brief summary of the kinds of steps you, with your attorney’s assistance, will be required to take.

To initiate probate proceedings, you must petition the court to be appointed the decedent’s Personal Representative, as discussed above, at page 8. After receiving your Letters Testamentary, you will be required to submit a detailed inventory of assets, within a specified time limit.

As part of the process of initiating probate, you must notify any known creditors of the death, and such creditors have a certain amount of time, determined by local law, within which to submit their claims to you. You will be required to pay the legitimate claims, debts, and expenses of the estate, following the priority sequence established in New York.

Along the way, you will be liquidating the estate’s probate assets as necessary to pay such claims. You will be required to obtain court approval before selling certain assets such as real estate or before taking many other types of actions.

When all properly filed claims and taxes are paid, you must compile and submit for court approval a complete accounting of all your activities. This final accounting also shows the current value and the proposed distribution of the remaining assets according to the will. Another hearing may be held, to give beneficiaries and others an opportunity

to contest your actions. After the hearing, assuming the court approves the final disposition and you carry it out, you will prepare a closing statement verifying that you have fulfilled all your duties, discharged all debts, and paid all taxes. Copies of this statement must be sent to the court and to all interested parties. Upon acceptance of this statement, the court officially discharges you from your duties, and the estate is closed.

PAY CLAIMS, EXPENSES, AND TAXES

While you are in the process of identifying the estate's assets and creating a detailed inventory, you should also be creating a list of the estate's liabilities. Your list may include bills such as insurance and mortgage payments, charge account payments, utility bills, payments on other outstanding loans, and bills for medical expenses, as well as expenses incurred after death for funeral expenses, attorney fees, court costs, appraiser's fees, and your own executor's fee. In addition, you will eventually need to compute and pay any federal or state individual income taxes, and any death or income taxes applicable to your decedent's estate.

Establish an Estate Checking Account

Before you can pay any of the decedent's bills, you will need to establish an estate checking account. Choose a bank or savings and loan association that is convenient to you, but be sure that it is federally insured.

You will probably want to choose the type of account that requires a low minimum balance and charges low fees, rather than the type that pays the highest interest, because this account is only a temporary "parking place" for funds during the period of administration. If it later turns out that there is much more money in the checking account than is needed to pay the estate liabilities, state law or instructions in the will might permit you to transfer some of the money to a savings account or a money market fund that invests solely in government securities.

The account should be opened under a name such as "Estate of Mary Catherine Blake, Deceased, John Quincy Doe, Executor." The savings institution will tell you the exact format of names that it requires. To avoid delay, you may want to open the account using your personal funds, which you can later recover from the estate.

Once the account is opened, you can deposit all checks payable solely to the deceased, endorsing them in your name as executor from the estate of the decedent. Whenever you liquidate any of the estate assets, you will deposit the proceeds to this account. Whenever you pay an estate debt, you should use a check from this account rather than your personal check.

You will be required to keep careful records regarding the source of every item that goes into the account, as well as every check you write. The size and complexity of the estate will determine the extent of the records you need to keep.

Decide When and Which Bills to Pay

Ideally, you would pay the decedent's bills, debts and expenses as soon as it was apparent they were legitimate, thus avoiding any late payment charges. However, from a practical standpoint, you may want to postpone payment until you are sure that the estate will have sufficient probate assets to cover all expenses. Furthermore, some debts might be covered by insurance. You will want to investigate whether the decedent had credit life insurance that will cancel the unpaid balance on credit cards or credit union loans, whether mortgage insurance will cancel the unpaid balance on a mortgage, and whether health insurance will cover medical expenses.

Although you might feel a moral obligation to pay the debts of a deceased relative or friend, you are not legally required to take on another person's debts no matter how close your relationship. If the estate's assets are insufficient, some creditors will not be entitled to be paid in full. Furthermore, if the estate is a small estate, state law might not require you to deplete it by paying all creditors even if the estate is not insolvent. Where a spouse and/or dependent children survive, some states provide for a "family allowance" of a specific amount that is exempt from creditors claims.

Nevertheless, you will want to make timely payments for items needed to preserve the probate assets, such as continued insurance coverage and possibly mortgage and utility payments. Thus, many factors must be considered before making any payments, and you may need to consult an attorney to help you decide which creditors to pay and when to pay them.

If you are undergoing formal probate proceedings, you will probably be permitted to pay only those claims that are properly submitted according to whatever procedure the court requires.

Keep in mind that only probate assets are used to pay the estate's expenses and claims. Conversely, when you receive bills, pertaining to assets that were held in joint tenancy, you will have to allocate the expenses between those incurred prior to death, for which the decedent's estate is partially responsible, and those incurred after the death, which are properly the responsibility of the surviving joint tenant(s).

New York law provides for a priority sequence that is used when an estate's assets are insufficient to pay all claims. Liabilities are divided into classes, and all claims in the first class must be paid before any in the second, all those in the second class must be paid before any in the third, and so on. A typical class system is as follows: (1) funeral expenses (2) costs of administering the estate and medical expenses incurred at the decedent's final illness; (3) debts entitled to a preference under the law of the United States and the State of New York; (4) taxes and other debts specified by state law, and (5) all other legitimate debts. If the assets are insufficient to pay all claims in a particular class, each creditor in the class will receive a uniform percentage of his or her claim.

Liquidate Assets as Needed

Where do you get the funds with which to pay the estate's claims, expenses, and taxes? You will have to liquidate the probate assets as needed, and deposit the proceeds into the estate checking account. Usually, your primary sources of funds would be those that are already in the form of cash: savings and checking accounts, and insurance proceeds that are paid to the estate rather than a named beneficiary. If these assets are insufficient to pay all claims, you will have to sell other assets such as securities, real estate, promissory notes, vehicles, and other personal property.

The decision as to which assets to sell and which to distribute to the beneficiaries 'as is' will rest on many factors, including tax considerations and beneficiaries' preferences, and you may well need our advice in making this decision if the estate has insufficient liquid assets. Where formal probate is being undertaken, approval of the probate court may be required before certain assets can be sold.

Your primary source in deciding which assets to sell is in the decedent's will. If the will does not provide otherwise, New York law provides an order of priority in reducing gifts (bequests) made in the will, when necessary to pay claims. The gifts out of the residue of the estate are the first to be cut. If there is still a deficiency, the general money bequests (bequests of a specific amount but not from any particular source) are reduced, followed by the money bequests payable out of specific sources (i.e. from the sale of named assets). Bequests of specific property may be sold only as a last resort.

Even when it is not necessary to sell assets to pay claims, in some instances it may be more convenient to sell them in order to carry out the distribution made in the will. For example, an unmarried decedent may have left her home to her six nieces and nephews, and the most practical way to effect this bequest may be to sell the property and distribute the proceeds. As another example, a decedent may have left shares of a number of different stocks to be divided among his four children, and distributing the shares themselves might mean that some heirs would get stocks that are appreciating in value more rapidly than others. Where the will does not contain specific instructions, the executor usually has a very broad range of discretion in deciding how to handle these situations.

Make sure that you keep careful records of any sales you make. It may well happen that some items will have to be sold for less than their inventory value, and the estate's beneficiaries may expect you to explain why.

Compute, File and Pay Taxes

As the Executor, you are responsible for filing the federal, state and local income tax returns the decedent would have been required to file if he or she had lived. You are also required to file any necessary federal or state income tax returns applicable to the estate itself.

After death, there are three potential taxpayers: the estate, which may have to pay federal income tax, estate tax, and generation-skipping tax; the decedent, who is subject

to income tax for the portion of the year before he or she died; and the beneficiaries, who may have to pay income tax when income from estate assets is distributed to them.

Careful consideration must be given to the rules and the different tax rates that apply to each taxpayer and each type of tax, so that proper elections to minimize taxes may be made. For example, some deductions can be reported on one of several different forms, depending on what is more advantageous under the circumstances. The tax preparer may need to make several calculations using different alternatives before deciding which form should get the deduction.

Clearly, the job of filing tax forms is a complicated one and you will probably need our assistance particularly where a federal estate tax return is required. Some of the major requirements and considerations are described below, but space does not permit a full treatment of tax issues in this booklet.

Final Income Tax Returns

You must file a final federal individual income tax return for the decedent, unless he or she did not earn enough income in the final calendar year to be required to file. The due date is April 15th of the year after the year of death, although extensions may be available.

On the final income tax return, you report only income that the decedent received (for cash basis taxpayers) or accrued (for accrual-basis taxpayers) up to the date of death. Any income received or accrued after that date is ordinarily reportable on the estate income tax return (discussed below). If the decedent receives any year-end 1099 forms from banks, savings and loans, or other financial institutions reporting interest or dividends earned both before and after death, the institution should be notified of the death so they can correct their records, and special care should be taken to correctly allocate the amounts between the final individual return and the estate income tax return.

If the decedent was married at the time of death, and the surviving spouse does not remarry before the end of the year, the decedent's final return can be in the form of a joint return with the surviving spouse. The income reported is that of decedent for the portion of the year he or she was alive, and that of the spouse for the entire calendar year. A full personal exemption can be claimed for the decedent even if his or her income was less than the minimum filing amount. Filing a joint return usually results in significantly lower overall taxes, but this election must be agreed to by both the surviving spouse and the personal representative. Otherwise, both the survivor and the decedent will have to file as "married filing separately".

In New York, you will also be required to file a final state individual income tax return, if the decedent would have been required to file one if he or she lived.

Estate Income Tax Return

The estate of a decedent is a taxable entity separate from the decedent. It comes into being upon the decedent's death, and generally continues to exist until the final distribution of the estate's assets to the heirs and other beneficiaries. The income earned by estate assets during the period of administration is subject to income tax.

Like other taxpayers, the estate is required to report its income annually. If the estate has gross income of \$600 or more in a taxable year, the executor must file a federal Fiduciary Income Tax Return (Form 1041) for that year. The executor may choose to report estate income on a calendar or a fiscal year basis. The tax year selected begins on the date of death and ends no later than December 31, but the executor can select a fiscal year ending on the last day of any earlier month. Thus, the executor can spread the estate income over a longer period and reduce taxes by choosing a fiscal year end that results in a very short first tax year, a 12-month second tax year, and possibly a third tax year that is also short. If the estate is not closed within two years of the death, you will have to make quarterly estimated tax payments.

Taxable Income and Deductions

In determining what income is taxable to the estate and what is taxable to the beneficiaries, the general rule is that income that is retained by the estate during the tax year is taxed to the estate, but income distributed to the beneficiary of an estate will be taxed to the beneficiary. Thus, where the estate would pay a higher marginal tax rate than a beneficiary, it may be advantageous to distribute the income to the beneficiary as soon as possible. The beneficiary will then be required to report the income on his or her individual income tax return.

When estate assets must be sold to pay taxes or claims or to effect a distribution, any gain or loss on the property must be reported on the estate income tax form. The basis or starting point for computing gain or loss is the asset's value at the time of death, not the price the decedent originally paid for it.

Estate income is not the only item that can "pass through" to the beneficiaries. If, in the final year of its existence, the estate has deductible expenses that exceed its income, the "excess deduction" may be claimed by the beneficiaries on their individual income tax returns. Expenses of administration, such as the executor's commission, attorney fees, and appraisal expenses, generally will be the most significant type of excess deductions. Because of the availability of these deductions to beneficiaries, estates with income of less than \$600 may file an estate income tax form even though not required by law.

State Fiduciary Income Tax Returns

In New York, the estate will also be subject to state income taxes. An estate is considered a resident of the state in which the decedent was domiciled at the time of death. In general, the federal tax rules apply in determining what basic income is taxable and what basic expenses are deductible by the estate. However, each state makes various

adjustments to federal taxable estate income before arriving at the state taxable estate income base.

Federal Estate Tax Returns

As mentioned above, a federal estate tax return (Form 706) must be filed whenever the decedent's taxable estate exceeds \$3.5 million even if it is ultimately determined that no estate tax is due. The return is due within nine months of the date of death, although extensions might be available. This form is extremely lengthy and complex, and traditionally the IRS has manually examined each and every Form 706 filed. Therefore, it is almost inevitable that you will need the advice of any experienced tax professional if your inventory of the estate shows that its value exceeds \$3.5 million or even approaches that amount.

By completing the detailed inventory and valuation process described on page 13, you already have much of the information needed to fill in the estate tax form. The next step is to determine and claim available deductions and credits. Only then can the amount of any tax due be computed.

Deductions

Available deductions against the gross estate are: (1) administration and funeral expenses; (2) claims against the estate; (3) outstanding mortgages and debts; (4) casualty and theft losses; (5) the charitable deduction, and (6) the marital deduction.

Deduction funeral expenses ordinarily include all amounts actually expended, provided the amounts were billed within nine months of death and are deductible from the estate under state law.

Administration expenses consist of attorney fees, including contingent fees for wrongful death lawsuits, the executor's fee; accountant's fees; and any other expenses incurred in the collection of assets, payment of debts, and distribution to beneficiaries, such as court costs, appraiser's fees, secretarial help, cost of maintaining, storing, or preserving estate property, and costs of selling property if necessary to pay debts, expenses, or taxes, or to carry out the will.

Legally, enforceable debts and mortgages that date from before the death are deductible, even if they were not billed before the death (e.g., medical expenses, recent charge card purchases). Mortgages on specific property are deductible to the extent that the value of the property was included in the gross estate, so 50% of the mortgage on spousal joint tenancy property is ordinarily deductible.

Losses resulting from theft, fire, storm, shipwreck, and war are deductible to the extent they are not compensated for by insurance.

An unlimited deduction is allowed for the amount of property transferred to any organization operated exclusively for charitable, religious, educational, scientific, or

literary purposes, as well as to veterans organizations, or to the United States or any political subdivision for exclusively public purposes. Gifts to needy individuals or to organizations that participate or intervene in political campaigns are not deductible.

Finally, if the decedent was married at the time of death, an unlimited marital deduction applies to any property transferred to his or her surviving spouse. With certain exceptions, the deduction does not apply when the gift is of a life estate or other interest that is classified as “terminable,” the rationale being that the marital deduction property must eventually be includible in the surviving spouse’s estate.

Credits

Once all available deductions are computed and subtracted from the gross estate, a tentative estate tax can be computed using the tax tables pertaining to Form 706. Then, a second set of subtractions is made, for any available tax credits that apply. The most important of these is the applicable exclusion amount is allowed to every decedent. The credit is the equivalent of exempting the first \$3.5 million in the estate form tax; as a result, very few decedents actually end up owing any federal estate tax.

A credit for tax on prior transfers is allowed when the decedent inherited property from someone else who died less than 10 years earlier, if the property was already taxed in the first decedent’s estate. The credit is equal to 100% of the prior tax if the decedents died within two years of each other, 80% if the second died within four years of the first, 60% if within six years, 40% if within eight years, and 20% if within 10 years.

Other credits exist for state death taxes paid, for foreign death taxes paid on property located in foreign countries, and for prior federal gift taxes.

Additional Federal Taxes

After all credits have been taken, a special type of additional taxes may have to be computed and added to the federal estate tax due. This is the generation-skipping tax, which applies when the decedent has made transfers exceeding \$3.5 million to grandchildren or great-grandchildren.

State Death and Inheritance Taxes

New York imposes a “pick-up” tax intended to absorb the difference between the New York estate taxes paid and the maximum credit against the federal estate tax. Therefore, New York does not adopt the decreases in the federal estate tax credit for state taxes that are applicable after 2001. Instead, an estate must compute the New York estate tax owed using federal tax rates that were applicable to deaths prior to 2002.

Since New York did not adopt the current federal estate tax changes, the state filing threshold will remain at \$1 million and a New York estate tax return may be

required in 2004 and beyond even if a federal return is not required (due to higher federal filing thresholds being in effect).

DISTRIBUTE THE REMAINING ASSETS

Nonprobate Assets

Although we have saved the discussion of distribution of assets for the end, in reality you may begin to help distribute certain assets in the first few days after the death. At the time of death, nonprobate assets pass to survivors by operation of law, independently of the will or any action by the probate court. They are not subject to claims against the estate, so they may be immediately available for use by survivors.

Accordingly, when you come upon a nonprobate asset, your main responsibility is to ascertain its value for estate tax purposes and then notify the joint owner or beneficiary of this existence. Although not strictly necessary, many executors also consider a part of their duty to help the beneficiary transfer the asset to his or her own name. Retitling the property in the survivor's name must be done before the property can be sold, and usually involves presenting a certified copy of the death certificate to the custodian of the asset or the transfer agent.

For example, where the residence was owned in joint tenancy, the surviving joint owner records a certified copy of the death certificate with the county Recorder of Deeds. A joint bank account may be retitled in the survivor's name by filing a new signature card. Stock brokers or transfer agents can help you transfer stocks and bonds, but a copy of the death certificate may be needed for each certificate.

Life Insurance and Survivor's Benefits

Life insurance policy proceeds are often an important source of cash for survivors. Such proceeds are nonprobate assets if the designated beneficiary is anyone other than the estate of the deceased. Recovering the proceeds generally involves filing a claim form, which you have obtained from the insurance company, together with a certified copy of the death certificate. Sometimes the company will also require you to surrender the policy, or submit an affidavit stating the policy has been lost. It may be a good idea to make a copy of the completed claim form and supporting documents, and to submit the claim via registered or certified mail.

The surviving family may also need assistance in filing for the social security death benefit and survivors' benefits, veterans' burial benefits, or any employee, union, or workers' compensation benefits available.

Personal Effects and Motor Vehicles

Even if the decedent's residence was jointly owned, the furniture and personal effects in the residence are not necessarily joint property. In practice, however, they are often treated as belonging to the surviving joint owner of the home, or to the decedent's

next of kin, except for items specifically be bequested to others by the will. Once you have made your inventory for tax and probate purposes, and once it is apparent that the estate's expenses can be paid without selling off these times, the personal effects can be divided among family members according to the will's instructions. Where the will is silent or imprecise, it may be helpful to appoint one family member to take charge of the distribution and to see that unwanted times are donated to charity or otherwise disposed of.

As mentioned above, New York provides for the transfer of title to motor vehicles to the next of kin by a simple procedure involving the state department of motor vehicles rather than the probate court. Use of this speedy procedure may be especially important if a spouse or other relative depends on the vehicle for transportation.

Probate Assets

Once all expenses, claims, debts and taxes are paid or provided for, you will be ready to distribute the probate assets that remain and settle the estate. Of course, the instructions in the will govern this process; in addition, you must follow whatever procedures are required by the probate court in your situation. For example, you may be required to file a final accounting or statement with the court within a certain period of time, such as 12 or 18 months following the death.

When the estate is large or complex, the process of planning distributions should begin very early in the administration period, with our aid. Many considerations must be taken into account. Most important are the immediate needs and legitimate demands of the beneficiaries, along with directions and limitations imposed by the will and local law. Within these boundaries, careful planning can do most to minimize taxes that would otherwise be paid by the estate and/or beneficiaries.

In certain cases the distribution scheme provided in the will may be altered. New York law permits a surviving spouse to take an "elective share" equal to one-third of the net estate in lieu of whatever he or she received in the will. State law determines what property is counted in computing the elective share. Some beneficiaries may decide to refuse or "disclaim" part or all of their share; in such case, they will not suffer any adverse gift tax consequences if their disclaimer is made in writing **no more than nine months** after the transfer. State law then determines who gets the disclaimed property.

During the period of administration, some of the noncash assets may have gone up in value, while others may have declined. You may need to obtain final appraisals before you can determine how to divide up the assets under the will.

Generally speaking, once you have specially determined which assets are to be distributed to each beneficiary, and you have obtained any necessary formal approval from the probate court, you will write a letter to each distributee explaining that the final settlement is being made and describing in detail the property being distributed to him or her. You will attach copy of the probate court's judgment order, if any was required, as well as a check for the amount being distributed, and/or the title to any real property,

stock certificates, copies of appraisals, etc. The letter should be delivered personally or sent by registered or certified mail, and you should obtain a signed, written receipt from the distributee. Then you will be ready to file any required final statement with the probate court, and the state can be considered closed.

A FINAL WORD

As you can see, the role of Executor is an important one, involving a wide variety of skills and requiring you to make decisions that can affect the lives of survivors for many years to come. Nevertheless, the job is manageable, if you follow the steps outlined above and consult with our experienced professionals as needed. You should be able to proceed with confidence, knowing that when your tasks are completed and the estate is closed, you will have honored the memory of the deceased in a very concrete way.

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Exhibit "A"

Executor's Commissions

SCPA § 2307. Commissions of fiduciaries other than trustees

1. Except as otherwise provided in paragraph (f) of this subdivision on the settlement of the account of any fiduciary other than a trustee the court must allow to him the reasonable and necessary expenses actually paid by him and if he be an attorney of this state and shall have rendered legal services in connection with his official duties, such compensation for his legal services as appear to the court to be just and reasonable and in addition thereto it must allow to the fiduciary for his services as fiduciary, and if there be more than one, apportion amount them according to the services rendered by them respectively the following commissions:

(a) For receiving and paying out all sums of money not exceeding \$100,000 at the rate of 5 percent.

(b) For receiving and paying out any additional sums not exceeding \$200,000 at the rate of 4 percent.

(c) For receiving and paying out any additional sums not exceeding \$700,000 at the rate of 3 percent.

(d) For receiving and paying out any additional sums not exceeding \$4,000,000 at the rate of 2 ½ percent.

(e) For receiving and paying out all sums above \$5,000,000 at the rate of 2 percent.

(f) If the will makes provisions for specific rates or amounts of commissions for a corporate executor, or, if a corporate executor has agreed to accept specific rates or amounts of commissions, or, if the will provides that a corporate executor shall receive commissions as provided or stipulated in the corporate executor's published schedule of fees in effect at such time or times such commissions become payable, including a stipulated minimum commission and asset base for calculating such commissions, a corporate executor shall be entitled to be compensated in accordance with such provisions, agreement or schedule, as the case may be, even though such provisions, agreement or schedule are not executed in accordance with the provisions required for wills and are not attested as required for the recording of deeds in this state.

Such commission shall be computed separately for receiving and for paying out sums of money, at one-half the statutory rates for receiving and at one-half the statutory rates for paying out sums of money.