

What to Expect In Estate Administration

When a loved one passes away there can often be many things to be done to wind up their affairs. This process is known as “settling the estate” of the deceased. It begins with the probating of the Last Will and Testament by the Executor, or if the person dies without a will, the appointment of an Administrator. Both of these are done at the Office of the Surrogate of the county in which the deceased lived. In New Jersey this cannot be done until ten days after the person has died.

Once an Executor or Administrator is appointed, that person, also known as the “fiduciary”, is responsible for winding up the affairs of the deceased and seeing to it that the terms of the Will are carried out, or if there is no Will, that the estate is distributed in accordance with New Jersey statutes. The fiduciary must determine all of the assets and debts of the decedent. This often takes several months.

The fiduciary must also establish an estate checking account into which assets of the estate are deposited and from which debts are paid and distributions are made.

If the estate is subject to New Jersey Inheritance or Estate tax or Federal Estate tax, the fiduciary must prepare and file the necessary returns and pay any tax due.

The State of New Jersey imposes a lien on all of decedent’s property located within this state. Before such property, including bank accounts and real estate, can be transferred tax waivers must be obtained. These are obtained either by filing the applicable returns or, in the case of estates not subject to any inheritance or estate tax, by the filing forms showing exemption from tax. If funds are needed to pay the tax in order to obtain the waiver, institutions are permitted to release the funds they are holding as long as the check is made payable directly to the Division of Taxation.

Fiduciaries are entitled to take commissions as allowed by statute. Any commissions taken are income which must be reported by the fiduciary on his tax return in the year taken in which they are taken. Commissions taken are a tax deduction for the estate.

The decedent’s final income tax returns for the year of his death (IRS and NJ forms 1040) must be prepared and filed.

If the deceased was receiving social security or any other government benefits the appropriate agency must be notified of the death. Any payments made after death will have to be returned to these agencies.

If there are any life insurance policies the issuing companies must also be notified of the death.

A federal fiduciary income tax return for decedent’s estate (IRS and NJ forms 1041) will be required in all years in which the estate’s income exceeds \$600.00.

The fiduciary may make distributions or payment of administration expenses when the administration of the estate is at an end or may make partial distributions earlier if factors so warrant.

After all known debts, administration expenses and taxes have been paid or provided for the fiduciary must prepare a final accounting which may be either informal (all beneficiaries consent to the accounting) or formal (approved by the Court).

Once the fiduciary has received all tax waivers and releases of liabilities for taxes and after the estate accounting has been approved either formally or informally, the fiduciary is in a position to make final distribution of the remaining assets. Each time a distribution is made the fiduciary must first obtain a Refunding Bond and Release from the beneficiaries. This document signifies that the appropriate beneficiaries have received their share of the inheritance and that they release the fiduciary from further liability. It also stipulates that in the event additional taxes must be paid or other liabilities are found, each beneficiary will refund their proportionate share of funds distributed to them which are required to satisfy any such deficiency.

The administration of an estate is time consuming and requires great attention to detail. It can be a daunting task for even the most sophisticated fiduciary. The firm of Graziano & Campi, LLC is available to assist families in accomplishing estate administration efficiently and thoroughly. Please contact us if you have questions or would like more information.