

21. SETTLING THE ESTATE

Estate Settlement

The settlement of an estate or trust after the death of the testator/trustor is a complex process requiring attention to details and deadlines. For the purpose of this chapter many final settlement tasks are similar for probate estates and matured trusts. Timely and efficient settling of estates and trusts has many benefits. In addition to securing the gift to the church in a cost effective and timely manner, the trustee/ personal representative who settles matters quickly and efficiently will earn the appreciation and confidence of heirs and beneficiaries. On the other hand, if the estate/trust settlement is inefficient, observers may be critical not only of the trust services ministry, but also of the church organization, creating a potential for legal disputes and fewer bequest gift in the future.

Obviously, it is to everyone's advantage to close the estate as soon as possible. If the distribution is inadvertently delayed, efforts should be made to apprise the beneficiaries of the reason, or they will assume it to be the fault of the trustee/personal representative.

Four basic requirements are necessary in order to ensure prompt settlement of estates and trusts:

Mandatory Internal Deadlines

Target dates for the various procedures of administration should be established in order to assure the earliest possible distribution date. These dates should be selected based on reasonable estimates of how long it will take to complete these functions. If target dates are not established, the trust officer involved may only take care of the most pressing current problems and the estate may be kept open longer than necessary. It must be kept in mind that federal or state statutes or procedures may dictate parts of the timetable.

Managerial Monitoring System

Management should regularly review the checklists in process to ensure that all necessary tasks are performed in a timely manner.

There are several ways of encouraging compliance with established deadlines. One method is to develop a tickler system to keep track of deadline dates. Another approach is to maintain a control log reflecting target dates for each estate. If the procedure is not completed on time, an explanation should be provided by the person in charge of the estate.

Communication with Legal Counsel and Interested Persons or Parties

Consult with legal counsel to determine the necessity of initiating a probate proceeding and what type of probate proceeding to utilize (supervised, informal, or independent). If the decedent had a trust determine with counsel the relationship of the decedent's trust to the probate proceeding and review the organization's role in settling the matured trust. Obtain guidance and develop a

strategy for administering the estate or trust during the settlement phase. Acknowledge the maturity and secure appropriate authorizations from the Trust Committee or other governing board. Notify beneficiaries and other interested persons as required by state statute. Communication and disclosure of appropriate information can alleviate concerns

Comprehensive Administrative Checklist

The following suggested reference checklist is designed to help ensure that no important details are overlooked. The actual working checklist will include other tasks and not have the detail included below. Organizations should create their own checklists to suit their specific needs in harmony with legal counsel and local law.

Suggested Checklist

1. Determine the trust officer's responsibilities by identifying the following:
 - A. Personal Representative or Executor (will)
 - B. Trustee (trust)
 - C. Interested parties (attorney-in-fact, conservator, creditors, heirs at law and beneficiaries)
 - D. Rights of spouse and children
2. Notification of Death
 - A. A relative, friend, or the local pastor should inform Trust Services of the death. Use cards, stickers, and instructions on document copies as reminders.
 - B. Notify relatives and send a letter of condolence. Express genuine sympathy, describe the role of the church organization, and indicate the desires of the decedent.
 - C. Local church—pastor, other friends
 - D. Memorial Association—file claim
 - E. Social Security—stop checks (this is typically done by the funeral director), obtain Social Security death benefits
 - F. Retirement/Sustentation—request final check, death benefits
 - G. Treasury/Accounting—establish a matured trust account, check last income statement

- H. Trust officer should create a matured trust or probate estate file
 - I. Did the deceased wish to be an organ donor?—communicate with his/her doctor, family, attorney
 - J. Stop annuity payments--notify issuer
3. Document Review
- A. Will, including all codicils
 - B. Trust—assets, liabilities, notes, other records
 - C. All amendments—note assets, beneficiaries
 - D. Special instructions—written or oral
4. Funeral Arrangements
- A. In some situations you will be very involved perhaps making all final arrangements, in most however, you will be an observer and assist only when requested. In yet others your involvement will not be welcome. Great sensitivity and understanding is essential.
 - B. Burial
 - (1) Who is in charge of finances? Inform the undertaker.
 - (2) Time, place, pastor; are you involved?
 - (3) Contact the mortuary; plot or cremation? Grave marker?
 - (4) Casket—if family is to choose, give conservative guidelines.
 - (5) Ensure that the hospital will release the body; autopsy is not necessarily required.
 - (6) Provide clothing for the deceased.
 - (7) When will you meet family? Before or after the funeral, or later?
 - C. Funeral Services
 - (1) It is wise to attend. Your absence will be noticed.
 - (2) Open or closed casket; will you attend viewing/visitation?
 - (3) Information on death, life history of deceased.
 - (4) Friends to send flowers or donations—to what?
 - (5) Make yourself known to the funeral director; he/she may introduce you to the closest relatives.
 - D. If Meeting the Relatives

- (1) Arrange introduction as trust officer or personal representative--by next-of-kin, if possible.
- (2) Express genuine sorrow, even if deceased is unknown to you.
- (3) Express willingness to help.
- (4) Delay most business until after the funeral.
- (5) Determine if the relatives are friendly or hostile.
- (6) Discuss distribution of personal items and the contents of the house.
- (7) Indicate your involvement (i.e., executor or trustee). Note: The will is considered a public document once it is filed; a trust document is a private document; however, local law may require disclosure of certain aspects of the trust or even the entire trust document and financial activity.
- (8) Make any comments you deem advisable regarding the church's involvement.
- (9) Discuss the possibility of retaining an attorney—the need, the cost.
- (10) Distribute your business cards. Create open communication lines as needed.
- (11) Indicate how you plan to proceed.
- (12) Indicate how you will be communicating with them in the future and the input you want from them.
- (13) Be friendly and helpful—accept suggestions.
- (14) Assist with arrangements for relatives coming from distant locations. Church members may help with refreshments.
- (15) Remember, you represent the church.

E. Expenses

- (1) Mortuary bill
- (2) Cemetery bill
- (3) Grave marker
- (4) Obituary in appropriate journals
- (5) Casket—honor known wishes of the deceased
- (6) Trust department usually sends flowers

5. If You Are Not the Personal Representative (Executor)

- A. Determine who the executor is, contact him/her and indicate your intent to cooperate with him/her.
- B. Indicate your involvement (i.e., trustee) and discuss your future relationship with the executor.
- C. If you have the original will, file it with the probate court located in the county where the decedent was living at the time of death and notify the executor that you have filed. State laws vary as to the responsibilities of the custodian of a will. Consult your local counsel for specific requirements.

6. Securing Residence (if the corporation/association is responsible and no adult family member will continue to reside there)
 - A. Obtain all keys, change locks
 - B. Verify property insurance in force. Add to organization's general liability and property insurance as needed. Protect property from loss.
 - C. Check refrigerator, remove perishables
 - D. Care for house plants and pets
 - E. Perform yard care, remove garbage
 - F. Contact utilities and pay final bills: telephone, gas, electricity, water, etc.
 - G. Cancel publications
 - H. Notify police to patrol empty residence
 - I. Instruct the post office to send all mail to you
 - J. Inventory house contents and personal effects; perhaps videotape or photograph
 - K. Photograph antiques, special items
 - L. Secure photo albums, pictures, etc., for relatives
 - M. Obtain latest address book
 - N. Secure medical bills and receipts for the last year
 - O. Secure credit cards and notify of cancellation
 - P. Find property insurance policy and note terms of vacancy
 - Q. Locate bank safety deposit box key
 - R. Secure all titles, certificates, contracts, deeds, abstracts, leases, and evidences of ownership
 - S. Locate property tax bill
 - T. Locate prior years' tax returns

- U. Secure all bank books, blank checks and deposit all uncashed checks
 - V. Secure all coins, cash, securities, collections, silver, and antiques
 - W. Use care in disposing of personal property. Remember, one person's junk is another person's treasure.
 - X. Secure and recover all unused traveler's checks
7. If You Are the Personal Representative (Executor)
- A. Avoid this responsibility if at all possible; a family member is often a better choice.
 - B. Volunteer to "decline" the responsibility in favor of a family member or other person when advisable.
 - C. Obtain Trust Committee approval to accept appointment and responsibilities as Personal Representative.
 - D. Register the will with the probate court in the county where decedent was living at the time of death, even if no probate is intended. Consult your local legal counsel to determine the specific requirements in your state.
 - E. Petition the court for temporary appointment as Personal Representative if you need to act immediately in case of emergency, operate a business, or to preserve or protect assets (i.e., livestock, farm).
 - F. Obtain appointment as the Personal Representative. You cannot act prior to receiving court appointment. You will then be accountable to the probate court.
 - G. Verify insurance coverage for personal and real property.
 - H. Check hospital, funeral home, for personal belongings.
 - I. Secure motor vehicles.
 - J. If real estate is part of probate, see Section 6, "Securing Residence."
 - K. Obtain several copies of the death certificate and Letters of Authority.
 - L. Consider independent probate.
 - M. Note that some states have a simplified procedure for small estates.

8. Retaining a Lawyer and/or a CPA (where necessary)
 - A. Consider the family wishes regarding selection. Consider competence and experience of professional advisors.
 - B. Consider the need for an accountant, especially when filing estate income and/or inheritance tax returns. Be aware of state and federal requirements.
 - C. Consider costs. The estate pays all expenses and, consequently, the family share will diminish.
 - D. Consider proximity to the probate court.
 - E. Is a challenge anticipated?
 - F. Is a wrongful death claim being pursued?
9. Power of Attorney

Notify, in writing, any known holder of such a power that the death has occurred.
10. Business as an Asset
 - A. Stopping a business operation may be detrimental to its future sale.
 - B. Contact the manager and determine your level of involvement as personal representative/trustee.
 - C. Determine if there is an existing buy/sell agreement or any other terms or arrangements.
 - D. Determine if the business is to be sold, liquidated, or continued.
 - E. Who will control, employ, finance?
11. Open Bank Account for Probate Estate
 - A. Should be used to keep detailed records of income and expense.
 - B. Letters of Authority will be required by financial institution
 - C. Personal Representative should have sole access to account
 - D. Not necessary if all assets are held in a trust.

12. Establish Value of All Assets for Tax Purposes and Distribution Purposes (consider six-month alternative valuation for estate tax purposes)
 - A. Real estate—appraisal
 - B. Bank accounts—value at date of death
 - C. Cash
 - D. Rents due
 - E. Notes due—principal and interest (sue if necessary)
 - F. Securities, certificates held, and street accounts. Consult with financial advisor, organization, and legal counsel about timing of security liquidation.
 - G. Life insurance—check employer, credit union. Obtain death claim forms.
 - H. Appraise personal property, furniture
 - I. Appraise collections: coins, stamps, china, glassware, etc.
 - J. Appraise business interests, oil and mineral rights
 - K. Appraise gold, silver, diamonds, jewelry
 - L. Appraise automobiles, trucks, recreational vehicles, equipment
 - M. File wrongful death action, if appropriate

13. Record Keeping of All Transactions
 - A. Income
 - B. Expense
 - C. Retain all supporting documents, bills, checks, etc.
 - D. Utilize formal trust or estate accounting system.
 - E. Provide regular accounting to court, heirs, beneficiaries, interested parties as required or necessary

14. Determine Liabilities
 - A. Credit card charges, medical expenses, other current debts
 - B. Claims—determine if valid or invalid (i.e., if services were rendered). Consult legal counsel before paying claims. Court instruction may be desirable/necessary for claims against probate estate. There may be a priority list to determine payment order.
 - C. Mortgages payable
 - D. Notes—secured and unsecured
 - E. Funeral expenses
 - F. Probate court fees
 - G. Attorney's fees and expenses
 - H. Executor's fees and expenses
 - I. Real estate and motor vehicle taxes
 - J. Insurance on real estate and vehicles
 - K. Utility bills—gas, electricity, water, maintenance
 - L. Estate and inheritance taxes
 - M. CPA fees and expenses
15. Support of Legal Dependents and Others
 - A. Spouse, dependent children, parents, disabled persons
 - B. Cats, dogs, horses, fish, other pets
16. Lifetime Gifts for Gift and Estate Tax Purposes
 - A. Search for records of gifts made.
 - B. Note gifts given to non-charitable entities that were in excess of the annual exclusion amount.
 - C. Consult decedent's income tax preparer.

17. Form of Ownership of Assets
 - A. Life interest only—notify remaindermen
 - B. Jointly held—send death certificate to survivor
 - C. Tenants-in-common—what percentage?
 - D. Community property
 - E. Solely owned
18. Bequests—Personal Property
 - A. Distribute as soon as the court allows; obtain receipt.
 - B. Distribute cash after all debts have been paid.
19. Selling Real Estate
 - A. Clean out house.
 - B. Fix up?
 - C. Broker? Realtor?
 - D. Local residents are usually the greatest potential buyers.
20. Selling Home Contents—Not Distributed
 - A. Auction
 - B. Private sale
 - C. Relatives

21. Cash in Banks, Credit Unions, etc.
 - A. Determine the ownership and nature of the account.
 - B. Certificates of deposit mature on date of death.
 - C. Locate and present passbooks, if used by the financial institution.

22. Sell Stocks, Bonds, Mutual Funds
 - A. High priority especially in periods of volatility. Fiduciary has duty to preserve asset value not to maximize or grow assets. Consult with financial advisor, organization, and legal counsel about timing of security liquidation.
 - B. Determine ownership and if held in certificate form or brokerage account
 - C. Determine if distribution in kind is required by document or preferred by beneficiary
 - D. Most require proof of ownership, e.g.:
 - (1) Affidavit of domicile and debts
 - (2) Certificate of Death
 - (3) Letters of Authority; some companies require “fresh” Letters of Authority,” that is, less than 60 days since issue
 - E. Proceeds of sale can be held in liquid asset account until needed.
 - F. Never sign the certificate itself; use “Assignment of Stock Separate From Certificate”

23. Rents or Notes Due
 - A. Notify obligor in writing to make payment to you as Personal Representative/Executor, or have future payments made payable to “The Estate of _____, deceased.”
 - B. Send obligor a copy of your authority.
 - C. Notify tenants of intent to sell, subject to terms of rental agreement and statutory obligations.

24. Selling Cars and Other Vehicles
 - A. Keep vehicle insured until sold

- B. Verify how title is held
 - C. Obtain two appraisals or offers from dealers
 - D. Advantage of bids
 - E. Heir or relative may wish to purchase
 - E. Some jurisdictions provide for vehicle transfer outside of probate
25. Trusts
- A. Contact beneficiaries—do they want cash or do they desire to receive the asset as is? Some jurisdictions have specific time, recipient, and disclosure requirements for notification.
 - B. Make sure deeds are recorded. Verify with legal counsel if unrecorded deeds held in trust are recordable.
 - C. Check for pour-over will.
 - D. Determine if there is a continuing trust—education or other.
 - E. Secure all collectible assets.
 - F. Obtain estate assets, via probate, pursuant to pour-over will if applicable.
 - G. Value all assets as of date of death. Appraisals may be needed for some assets. Values in accounting records may need adjusting to date of death values.
 - H. Determine if any challenge to the distribution of the trust assets is likely.
 - I. Obtain signed “Receipt of Beneficiary” forms for all distributions. Some jurisdictions may prohibit requiring receipts prior to making the distribution.
26. Small Estate Procedure
- A. Simple form—paid funeral bill, small fee
 - B. Probate court assigns asset—assignment may be limited to heirs or certain creditors only.
27. Tax Returns
- A. Obtain Tax Payer Identification (TIN) number from IRS for probate estate and matured trust. See Tax Reporting chapter for additional information.

- B. File Federal Estate Tax Return Form 706, within nine months of death
 - C. File state inheritance tax return, if necessary
 - D. File Federal Income Tax Return
 - (1) Final Form 1040 for decedent
 - (2) Form 1041 for the estate for each year until estate closes
 - (3) Final Form 1041 for Revocable Trust in year of surviving grantors death
 - (4) File initial Form 1041 for matured trust in year of maturity and each year as required until termination
 - (5) Determine if trust can be combined with estate for income tax reporting
 - E. File state income tax return(s), where required
 - F. File Gift Tax Return Form 709 for taxable gifts made during the last year of life
 - G. Check previous years' Form 1040 returns for proper filing
28. Distribution
- A. Obtain Trust Committee action authorizing each distribution
 - B. Consider state law, anticipated expenses and beneficiary needs in distribution timing
 - C. Make initial partial distribution with a full report as soon as possible
 - D. Make interim partial distribution with report
 - E. Make final distribution with report
 - F. Keep beneficiaries informed and provide adequate information
 - G. Provide evidence of receipt by beneficiaries
 - H. Keep beneficiaries' current addresses

This list of tasks is intended to serve as information regarding the kinds of items that need to be addressed when closing an estate or winding up a trust; however it is not necessarily comprehensive. There may be additional tasks that need to be accomplished. Consult your legal counsel and other professional advisors as each estate and trust is unique.