

# Evaluating Your Estate Plan: The Estate Settlement Process

The process of estate settlement is designed to accomplish three things: determine what assets were owned by the deceased and place a value on the assets, transfer the assets to the correct people or institutions, and pay any taxes that may be due. This process may be accomplished with either a will (through the probate process) or a trust (generally done through a private process). In either case one should consult an attorney to help with the process.

## First Step – locating the documents

It is often said the first step is locating the documents. Hopefully the process started before this with good recordkeeping and organization. This includes making the family aware of where records are kept, making sure others have access to lock boxes, and knowing what your final wishes were as far as burial.

If the decedent had a will, the estate settlement process will begin with locating the most current valid will. Usually one (or possibly several) person is nominated as the personal representative for the estate. There may be more than one copy of a will or the will you find is stamped “copy.” The original may be located in a lock box, retained by the law firm that drafted it, or have been filed at the courthouse. It is helpful if the location of the will is known ahead of time; especially if it includes final wishes about burial, and that someone is able to access the lock box. If you are not listed on the lockbox you may need to retain an attorney for the estate to gain access. It is helpful to know the location of the key!

## Working with an Attorney

As you start in on the estate settlement process you may need to select an attorney. Select an attorney that is familiar with estate law and has experience in the settlement of estates or trusts. Select one that you think will be comfortable to work with. The process may take an extended period of time depending on the complexity. Just because an attorney prepared the will does not mean they should be retained as the estate’s attorney. However, they may have insight into the thought process of the deceased. Keep in mind that the attorney does not work for the heirs. The attorney has a fiduciary obligation to work for the deceased since they are no longer there. Before retaining an attorney there should be a discussion about the fees. The Iowa Code sets the maximum amount allowable unless the court approves additional charges. The amount is approximately 2 percent. (Iowa Code Ch. 633.197, Compensation) Some attorneys will work on an hourly fee basis. This needs to be agreed on before the attorney is retained. The court will approve the appointment and then the estate will be opened.

## No Will

If the decedent died without a valid will they are said to have died **intestate**. When a person dies without a will, Iowa Code provides a surviving spouse with an exclusive right for 20 days to file with the court a petition to initiate administration of the estate. Other heirs in succession, starting with surviving children, if any, have an additional 10 days to file such a petition. After those time periods have elapsed,

creditors and others with an interest in the estate may file the petition. The court will designate an administrator to work with the estate attorney in the settlement proceedings. Generally the court would appoint a spouse or adult child if they are willing to serve. The Iowa Code then determines the distribution of assets.

If you don't have a will when you die a surviving spouse may not receive all of your assets. This depends on (1) if you had children and (2) if all of your children were also your surviving spouse's children. If you and your spouse had no children or all of the children are also children of the surviving spouse, then your spouse gets your entire estate. If you have children who are not children of your surviving spouse, your spouse will get the first \$50,000 plus half of the remaining property. Your heirs divide the other half in equal shares.

If you die without a surviving spouse your children will inherit your entire estate. If a child predeceased you the heirs of that child will inherit his or her share. If you leave no descendants then your estate goes to your living parents. If no living parents then to your siblings or their children. If not, then to your grandparents or their descendants.

Not all estates will need to go through probate. If your estate doesn't exceed \$25,000 and doesn't include real estate you may not need to go through probate. Creditors must be paid however.

### **With a Will**

A will controls what persons or organizations receive the property that you own such as jewelry, automobiles, investments and real estate. You can also leave special items to a particular person or organization.

You can also recommend who you prefer to be the guardian if you have minor children and who should be the trustee to handle their money. You can also nominate your personal representative(s) for your estate. Another purpose of the will may be to reduce "death taxes" at death or in the future.

In your will you can choose to leave your property to whomever you chose. A married person cannot completely exclude a spouse without the spouse's consent in the form of a written relinquishment. Iowa law provides that a surviving spouse is entitled to receive a minimum amount of the estate known as the "elective share." Essentially, the surviving spouse is entitled to one-third the value of certain property owned by the deceased spouse, which may include personal property, real estate, financial instruments, and property held in trust. As to deceased person's children or other heirs, there is no obligation to leave any bequest whatsoever to surviving children.

As long as a person is competent, a person can change their will as often as they desire. Wills should be reviewed periodically or upon certain occasions such as marriage, divorce, births, deaths or needs to change a guardian, trustee or executor.

### **Probate**

Probate is a court procedure that serves to transfer "clear" title to property (unless held in joint tenancy), to establish your official will, and to pass on assets to beneficiaries after the payment of debts and to cut off creditors from further claims against the assets that are passed on. The probate court will appoint the attorney as the estate attorney after filing to start the process. Then the court will appoint the personal representative (executor/executrix). The will or court may require the executor to be

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bonded. The court also monitors the payment of creditors, payment of taxes (possibly state and federal income tax and federal estate tax and Iowa inheritance tax), and disposition of assets.

Probate can take two years or more depending upon the complexity. Federal and State tax returns need to be filed within nine months after the date of death. Iowa law requires that an estate be closed within three years of publishing the second notice to creditors, unless the court grants an extension. Some assets do not go through probate. Life insurance and retirement plans will go to named beneficiaries. Property owned by you in joint tenancy with another person (bank account, car, real estate) will be automatically passed on at time of death. Property held in trust will pass according to the trust document.

### Inventory of Assets

Working together with the attorney, the executor will need to inventory all of the assets. Within ninety days after qualification by the personal representative, unless a longer time is granted by the court, the personal representative shall file with the clerk a report and inventory of the property of the decedent, so far as the same has come to the knowledge of the personal representative. The report and inventory shall be verified or affirmed under penalty of perjury. After the list is complete a value will need to be placed on the assets. The State or Federal government may require a certified appraiser for assets such as land. Property is listed at fair market value. Certain property cannot be used to pay debts (exempt from execution) it is included in inventory, as is property held in joint tenancy.

The gross estate contains all of the property owned outright by the individual (bank

accounts, stocks, mutual funds, frequent flyer miles, retirement accounts, IRAs, life insurance, etc.), property transferred with retained powers (i.e. life estate), and some transfers within three years prior to death.

The main responsibility of the executor is to collect, preserve, manage and distribute the property along with paying expenses, debts, taxes and other court approved allowances such as support for the surviving spouse and minor children.

### Payment of Claims

Creditors are required to present claims within four months after the second notice is published. If claims are denied they may be submitted to the court and a hearing is held to consider the claim. Claims are paid out of assets specified in the will or in accordance to the Iowa Code.

When all claims, debts and taxes have been paid, the executor distributes property to persons named in the will or according to Iowa Code if there was no will.

Through the whole process the executor needs to keep detailed records. All expenses should be paid from the estate checking account insuring traceability of all income and expenses along with corresponding invoices and receipts. It is also a good idea to keep the beneficiaries informed on a regular basis of what is happening with estate assets. All payments made by the personal representative without order of court are at the personal representative's own peril.

The estate may be required to file Federal and Iowa income tax returns for the year of death for the decedent along with Federal and Iowa income tax returns for the estate as well as

Federal Estate tax and Iowa Inheritance tax returns. If income was distributed the estate may also need to file 1099s for recipients.

The executor may file reports to the court on the progress of settling the estate. It is possible to make partial distributions from the estate before it is closed. When ready for the final distribution the estate representative makes a final report to the court showing the inventory of assets and what was done with it or how it will be distributed. Any interested party can object to the report at this time. If the report is approved the property is distributed and the estate is closed.

Probate proceedings are public records held at the county courthouse so anyone can see the inventory of assets and values placed on properties, as well as the distribution of those assets.

### Additional Resources:

**Center for Ag Law and Taxation** - [www.calt.iastate.edu](http://www.calt.iastate.edu)

*Estate Planning* - [www.calt.iastate.edu/system/files/PM993.pdf](http://www.calt.iastate.edu/system/files/PM993.pdf)

**Iowa State Bar Association** - [www.iowabar.org/](http://www.iowabar.org/)

### Iowa Code:

Ch. 633.197 Compensation

Ch. 633.198 Attorney fee

Ch. 637 Uniform Principal and Income Act

Ch. 633.357 Custodial independent retirement accounts

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