

Estate Administration

Estate Administration refers to the process of distributing a person's property after he or she passes away. If the person died with a Last Will and Testament, he or she is said to have died "testate," and the Will controls the distribution of property. If the person did not have a Will, he or she is said to have died "intestate," and state law will direct the distribution of property to surviving relatives.

The following terms and definitions are helpful in understanding the estate administration process:

- **Decedent**: the person who has passed away.
- **Administrator**: a person appointed by the court to administer the estate of a decedent who died intestate.
- **Executor**: a person named in a decedent's Will to administer the estate.
- **Personal Representative**: a general term used to refer to either an administrator or an executor.
- **Beneficiary/Legatee/Devisee**: a person who is named as a beneficiary in a Will.
- **Heir**: a person who would inherit from the decedent through state intestacy laws.
- **Probate**: the process of filing the decedent's Will with the Circuit Court so that it can be given effect.
- **Commissioner of Accounts**: an attorney who is appointed by the court to oversee personal representatives during the estate administration process.

PROBATE AND QUALIFICATION

In order to probate a Will, the executor should take the death certificate and the original Will (not a photocopy) to the Clerk's Office of the Circuit Court of the city in which the decedent resided at the time of his or her death. The clerk will require information about the

decedent in addition to a list of heirs before admitting the will to probate.

Some assets can be transferred outside of the probate process. (These are called "non-probate" assets.) Common examples are: real estate held in a joint tenancy; life insurance policies with beneficiary designations; and payable/transfer-on-death accounts.

If the decedent's estate contains probate assets, then qualification is necessary. Before taking control of the estate's probate assets, the personal representative generally must qualify in person before the Clerk of the Circuit Court. One exception, however, is that Virginia's Small Estate Act allows for the distribution of assets without a qualified personal representative when the value of the probate estate does not exceed \$50,000.

DUTIES OF THE PERSONAL REPRESENTATIVE

The personal representative is responsible for collecting estate assets, paying the decedent's debts, and distributing the remaining assets according to the decedent's Will or, if there is no Will, then according to the state's intestacy laws.

The personal representative has a duty to protect the estate from waste and must ensure that the decedent's home and valuable items are secure. If the decedent had a Will, the executor should examine it for any potential issues (e.g., ambiguous provisions, omitted family members).

Additionally, the personal representative must file the following with the Court and/or the Commissioner of Accounts:

- **Notice of Probate** – Must be submitted to the decedent's heirs and legatees within thirty days of probate and qualification.
- **Inventory** – A list of the decedent's personal property, with estimated values, is due four months after qualification.

- Accountings – Reports of estate activity (assets delivered to the estate; expenses paid from the estate; distributions to beneficiaries/heirs), due annually, to the Commissioner of Accounts.
- Income Tax Returns – The estate must file federal and state income tax returns each year.

RIGHTS OF THE SURVIVING SPOUSE

Virginia law does not allow a decedent to “disinherit” his or her spouse without the spouse’s consent. If a surviving spouse is left out of the decedent’s Will, and the spouse did not waive his or her rights in a pre-marital or marital agreement, he or she can usually claim an “elective share” of the decedent’s estate within six months of the date of probate or qualification, whichever is later.

The following allowances are also available to surviving spouses:

- Family Allowance – an amount not to exceed \$24,000 payable to the surviving spouse for his or her support (and support of any minor children).
- Exempt Property Allowance – the surviving spouse may select up to \$20,000 worth of personal items from the estate.
- Homestead Allowance – the surviving spouse may claim a \$20,000 share of the estate, provided that (i) the spouse is not entitled to more than \$20,000 through the decedent’s will or through intestate succession; and (ii) the spouse did not claim an elective share.

PAYING ESTATE DEBTS AND TAXES

If an estate’s debts and expenses exceed the value of its assets, the estate is insolvent. Virginia law sets forth the following hierarchy to determine the order in which debts of an insolvent estate are paid:

- (1) Costs of administering the estate.
- (2) Certain family and homestead allowances.
- (3) Funeral expenses.
- (4) Certain debts with priority under federal law.
- (5) Medical bills from the decedent’s last illness.
- (6) Debts and taxes owed to the Commonwealth of Virginia.

- (7) The decedent’s debts as fiduciary to another (*e.g.*, as trustee, personal representative, guardian, or conservator).
- (8) Municipal debts and taxes.
- (9) All other claims.

The personal representative may become personally liable for unpaid debts if he or she fails to follow this hierarchy.

FUNERAL AND BURIAL ARRANGEMENTS

If the decedent left instructions for his funeral or burial in a Will or in letter of instructions or similar document, then those instructions should be followed. If the decedent had a Will, the named executor can use funds from the estate to pay reasonable funeral expenses, even before he or she qualifies as executor in court. If there is no Will, the family can pay the funeral expenses and seek reimbursement from the administrator after he or she is appointed.

Learn More

Call Oast & Taylor at 757-452-6200 or visit www.OastTaylor.com to schedule a consultation with an attorney at one of Oast & Taylor’s convenient office locations in Virginia Beach, Portsmouth, Chesapeake, or Elizabeth City, North Carolina.

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Virginia Beach | 277 Bendix Road, Suite 400 | Virginia Beach, Virginia 23452
 Olde Towne Portsmouth | 355 Crawford Street, Suite 720 | Portsmouth, Virginia 23704
 Chesapeake | 115 Bruton Court, Suite A | Chesapeake, Virginia 23322
 Elizabeth City | 905 West Church Street | Elizabeth City, North Carolina 27909
 757.452.6200 | F: 757.452.6201 | www.OastTaylor.com