

# What to do when a loved one dies: Guide to Estate Settlement



The process of administering a loved one's estate can be a confusing task that must be undertaken during a particularly stressful time. Therefore, SECU has provided this educational material to help persons handling the estate begin the process. A glossary of terms is available at the end of this brochure. See SECU's *Guide to Account Settlement* brochure for information specific to SECU accounts.

## 10 Steps to Estate Settlement

- 1. Gather information about the decedent's assets and secure his or her property**
  - Property should be secured until someone is authorized by the Clerk of Superior Court to handle the estate.
  - A basic inventory of the decedent's property should be created using his or her personal records, files and mail. Catalog the property using SECU's *Decedent's Property Worksheet*.
- 2. Contact the Clerk of Superior Court in the decedent's county of residence**
  - If the decedent had a will, the person nominated as executor should provide the will to the Clerk of Superior Court. If the decedent did not have a will, the surviving spouse or another heir should contact the Clerk of Superior Court to be appointed as administrator. Applying to be a personal representative (executor/administrator) requires a preliminary inventory of the decedent's known assets, including the estimated value of each item. Use SECU's *Decedent's Property Worksheet* to assist with this inventory. Once appointed, the personal representative will complete a more detailed inventory.
  - The Clerk of Superior Court will determine whether a personal representative needs to be appointed based on the information provided. The types of documents issued by the clerk appointing an executor or administrator include:
    - *Letters Testamentary* - appointing an executor for a testate estate or
    - *Letters of Administration* - appointing an administrator for an intestate estate.
  - \*In some cases, an abbreviated estate settlement may be an option.
- 3. Discuss options for abbreviated estate settlement**
  - An abbreviated estate settlement process may be available, depending on the value of the estate's assets and the persons who are entitled to benefit from the estate.
  - The types of abbreviated estate administration are *Collection of Property by Affidavit*, *Administration by Clerk* and *Summary Administration*. (See FAQ # 6 for more information).
- 4. Take control of the decedent's property**
  - Present clerk-issued documentation to the decedent's financial institutions.
  - Collect and preserve the decedent's property, including the decedent's home, household items, and accounts that will be part of the probate assets.
  - Determine if you need to open a deposit account titled in the name of the estate. If so, obtain an Employer Identification Number (EIN) from the IRS.
  - Collect any payments or property owed to the decedent, including rental income, dividend payments, and interest payments.

**5. Publish notice to creditors**

- Notice to creditors is a newspaper publishing which gives notice of death and asks the decedent's creditors (all persons, firms and corporations) to make claims against the estate.
- The notice must state a date (at least 3 months in the future) by which creditors must submit claims. There are additional requirements for notifying known creditors.

**6. Determine whether a year's allowance should be provided**

- The decedent's surviving spouse and minor children are entitled to a year's allowance, which will be paid from the estate's probate property. Generally, any year's allowance should be applied for within one year after death.
- The surviving spouse or someone acting on the child's behalf must apply using the *Application and Assignment Year's Allowance*.
- The year's Allowance is a priority claim. Therefore, a year's allowance must be paid prior to paying the estate's debts or distributing money to other heirs or devisees from the estate.

**7. File a 90 day inventory**

- File a detailed inventory of the decedent's real and personal property, financial information, etc. within 90 days from the date of your appointment as personal representative.
- This inventory must include the estimated value of each type of property, copies of signature cards and date of death balances. In some cases, a professional appraisal may be necessary for real or personal property.

**8. Pay the decedent's debts in priority order**

- To settle the estate, use the decedent's assets to pay claims. Pay these claims according to a specific order found in the NC General Statutes. (See FAQ #14 for more information).
- If you need to use the decedent's real property or non-probate assets to pay debts, petition the Clerk of Superior Court for the right to acquire those assets.

**9. Distribute the decedent's remaining property to heirs or devisees**

- Once you have paid all claims and appropriate estate expenses, distribute the remaining property to the decedent's heirs or devisees. If the decedent left a will, distribute property in accordance with the will. If there is no will, distribute the property in accordance with North Carolina General Statutes.
- Always obtain receipts for claims and estate expenses paid and distributions to heirs or devisees.

**10. File all necessary taxes and accountings**

- As personal representative, you will be responsible for filing the decedent's individual and estate tax returns. Therefore, you may need to seek advice from a tax professional.
- If the estate administration takes longer than a year, you will need to provide an annual accounting to the Clerk of Superior Court.
- Before closing the estate, the Clerk of Superior Court will require a final accounting. This accounting will include a detailed list of all estate transactions, and copies of checks, statements, and receipts. When the Clerk of Superior Court is satisfied with the final accounting, he or she will release you from the duty of serving as personal representative.

## Frequently Asked Questions Regarding Estate Settlement

### Where do I obtain copies of a death certificate?

Funeral homes often provide a few copies of the death certificate. In North Carolina, if more copies are needed, contact the Register of Deeds in the county where the decedent died or the NC Department of Health and Human Services Vital Records in Raleigh.

### What if the will is in a safe deposit box?

It may be necessary to search the decedent's safe deposit box for a will. However, North Carolina General Statutes allows only a co-lessee, deputy, or other person authorized by the Clerk of Superior Court to access the box. If there is no authorized co-lessee or deputy, the Clerk may provide a letter of authority to a loved one to search for the will or may send a Clerk representative authority to search for the will.

### Must I take the will to the Clerk of Superior Court?

Yes. **Only** the Clerk of Superior Court can determine whether a will is valid and appoint a personal representative.

### What happens when a person dies without a will?

The personal representative must follow state law when determining the decedent's heirs and distributing assets of the estate. The Clerk of Superior Court or an attorney can assist with determining how to distribute property of a decedent who died without a will.

### What is the difference between an executor and an administrator? For which should I apply?

- The Clerk of Superior Court appoints an executor when he or she determines that the decedent's will is valid and admits it to probate. The clerk will issue Letters Testamentary to the executor.
- The Clerk of Superior Court appoints an administrator when the decedent had no will or the Clerk of Superior Court determines that the will is invalid. The clerk will issue Letters of Administration to the administrator.
- Executors and administrators are personal representatives. He or she represents the estate and must act in the estate's best interest.

### Is an abbreviated form of estate administration available?

Maybe. The Clerk of Superior Court will make this determination based on the circumstances of each particular estate.

- *Collection of Property by Affidavit* may be available when the value of the decedent's personal property minus liens is less than \$20,000 (\$30,000 when the surviving spouse is the sole heir and serving as the collector by affidavit). A collector by affidavit is responsible for collecting and distributing the decedent's property.
- *Summary Administration* may be available if the surviving spouse is the sole heir or devisee. With summary administration, the spouse assumes the decedent's liabilities. Therefore, it is important to seek legal advice regarding summary administration. Summary administration is not available if the decedent's will specifies that it is not an option or if the decedent's property is left to the spouse in trust.
- *Administration by Clerk* may be available when the value of the decedent's property does not exceed \$5,000. The Clerk of Superior Court will collect and distribute the decedent's probate estate.

The North Carolina Administrative Office of the Courts provides a brochure entitled *Estate Procedure* to assist personal representatives of a loved one's estate. In addition, State Employees' Credit Union, through Members Trust Company can serve as executor of a member's estate. For more information, contact your local branch and ask to speak with a Trust Representative.

### What steps should be taken to protect the decedent's property?

Change locks on the decedent's residence, change the decedent's mailing address and stop newspaper delivery. The personal representative will need to close the decedent's credit and debit cards and open an estate account.

**Are assets with named beneficiaries part of the probate estate?**

Generally, no. These assets will avoid probate as long as at least one beneficiary survives the last account owner. However, these assets may still be subject to claims against the estate.

**Are assets held jointly with right of survivorship part of the probate estate?**

Generally, no. Upon the death of one joint owner, the assets will avoid probate as long as at least one owner survives. However, these assets may still be subject to claims against the estate.

**Do assets with named beneficiaries allow the estate or beneficiaries to avoid tax?**

No. These assets generally avoid probate, but are still part of the gross estate and may be subject to estate tax. Beneficiaries may be concerned about inheritance tax; however, currently there is no inheritance tax in effect, federally or in NC.

**How does a beneficiary claim property?**

The beneficiary should contact the financial institution, custodian or insurance company to request payment. Most institutions, including SECU, require a certified copy of the decedent's death certificate.

**Why does a personal representative need a deposit account titled in the name of the estate?**

- An estate account keeps estate funds separate from personal funds, and allows the personal representative to provide a clear record of estate transactions to the Clerk of Superior Court.
- A personal representative is prohibited from commingling estate funds with personal funds.

**What is an Employer Identification Number (EIN)? Why does the estate need one?**

An EIN is a number issued by the IRS. This number serves as the estate's taxpayer identification number. An EIN is required to open deposit accounts and file tax returns in the name of the estate. Go to [www.irs.gov](http://www.irs.gov) to obtain an EIN. \*The Social Security number of the decedent must not be used.

**What is the order for paying claims against the estate?**

Creditors' claims must be grouped into classes and then paid in the following order:

- Year's allowances and reasonable estate administration expenses
- Claims which are based on a specific lien on the decedent's property
- Funeral expenses up to \$3,500
- Costs for gravestone and burial plot up to \$1,500
- Federal income and estate taxes
- NC income and estate taxes
- Judgments which place a lien on the decedent's property
- Wages which the decedent owed any employees
- All other claims

\*Note: Payments owed to the personal representative do **not** receive a higher priority claim.

**What happens if claims are not paid in order?**

If a lower priority claim is paid before a higher priority claim, the personal representative will be **personally** liable to the higher priority creditor if there are not enough assets in the estate.

**What happens if property is found after the estate administration is closed?**

Contact the Clerk of Superior Court. He or she will reopen the estate and issue the appropriate documents to appoint a person to handle the property.

**What if I am uncomfortable serving as executor/administrator?**

There are many factors to consider when making this decision. First, consider your experience level. Have you served as a personal representative before? Are you familiar with the forms and recordkeeping requirements? Second, consider the size of the estate. Administration of large estates can be very complicated and could involve various tax issues. Third, consider the effects an estate administration will have on family relationships. An estate planning attorney may be able to assist you with your responsibilities and duties as executor/administrator. In addition, SECU through Members Trust Company offers corporate executor services. For more information regarding SECU's corporate executor services, contact your local branch and ask to speak with a Trust Representative.

## Glossary of Terms

**Administrator:** A person who is appointed by the Clerk of Superior Court to represent a decedent and settle his or her estate by paying debts and distributing assets according to the law of intestate succession. Administrators serve on behalf of intestate estates. The Clerk of Superior Court will issue *Letters of Administration* to administrators.

**Clerk of Superior Court:** An officer of the court in each county who has jurisdiction over the administration and settlement of estates and probate of wills.

**Creditor:** A person or company to whom a debt is owed.

**Decedent:** A person who has passed away.

**Devisee:** A person who inherits real or personal property under the provisions of a valid, probated will.

**Estate Tax:** A tax on your right to transfer property at your death. The tax is calculated on the value of all assets minus certain deductions. Most relatively simple estates do not require the filing of an estate tax return. For questions regarding whether an estate tax return is required, contact an attorney and/or tax professional.

**Executor:** A person who is appointed by the Clerk of Superior Court to represent a decedent and settle his or her estate by paying debts and distributing assets according to the decedent's will. Executors serve on behalf of testate estates. The Clerk of Superior Court will issue *Letters Testamentary* to executors.

**Gross Estate:** The total value of all assets a decedent owns at death, including real estate, deposit accounts, life insurance and household furnishings.

**Heir:** A person who inherits real or personal property under the law of intestate succession.

**Intestate:** The decedent died without a valid will.

**Non-Probate Assets:** Generally, these assets are not subject to administration by the personal representative. These assets include property which the decedent owned jointly with right of survivorship or with named beneficiaries

**Personal Representative:** A person who has been appointed by the Clerk of Superior Court to represent the decedent and settle his or her estate by paying debts and distributing assets. Executors and administrators are personal representatives.

**Probate:** The process by which the Clerk of Superior Court determines whether there is a valid will and oversees the estate administration process. The Clerk of Superior Court will appoint a personal representative of the estate during this process.

**Probate Assets:** Subject to administration by the personal representative. Generally, these assets include property which the decedent owned individually.

**Testate:** The decedent died with a valid will.

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