

## GUIDE FOR INDEPENDENT EXECUTORS IN ILLINOIS

An executor is the person or institution named to carry out the instructions in the Decedent's will. The executor has very limited authority before being appointed by the Court. Most wills provide that the administration of the Estate is pursuant to "independent administration," which means the executor does not need to obtain the court's permission for every action.

### 1. INITIAL LEGAL PROCEEDINGS

The executor retains an attorney to represent the executor in the probate proceeding. Note that the attorney does not represent the Estate, but rather the executor, in his/her capacity as executor.

To open an Estate, the executor must first file a Petition for Probate of Will and for Letters Testamentary, pay the court fee, and schedule a hearing to open the Estate.

At the hearing, the attorney for the executor presents the court with the following documents:

- a. Oath and Bond of Representative – No Surety (assuming surety is waived by the will)
- b. Waivers of Notice (if signed by all heirs and legatees)
- c. Affidavit of Heirship
- d. Pre-printed Order Admitting Will to Probate and Appointing Representative

After the will is admitted and the executor appointed, the court clerk issues "Letters of Office" to the executor. These are a piece of paper from the court advising everyone that the executor has the authority to act as to the Decedent's assets.

If Waivers of Notice were not obtained for every heir and legatee, notice of the will being admitted and the executor being appointed must be mailed to heirs and legatees within 14 days of the Estate being opened.

Notice to all unknown creditors must be published in the newspaper. In Cook County, such notices are usually published in the Chicago Daily Law Bulletin.

## **2. INFORMATION GATHERING**

The executor must gather a complete list of the assets owned by the decedent, any trusts established by the decedent or in which the decedent had any interest or involvement, and any life insurance owned by the decedent or insuring the decedent's life.

## **3. OPEN A CHECKING ACCOUNT**

The executor should open a checking account in the name of "\_\_\_\_ [the executor], as Independent Executor of the Estate of \_\_\_\_\_, Deceased." To open the checking account, the bank will need a copy of the letters of office, the death certificate, and the Tax Identification Number (TIN or FEIN) of the Estate. The attorney should obtain and provide the executor with the TIN. The executor should sign checks as executor. (The executor should not use an ATM/debit card.)

## **4. RECEIPTS**

- a. All assets and receipts should be transferred or deposited into the Estate checking account.
- b. Excess cash in the checking account should be invested in an interest-bearing account or investment.
- c. Checks received in the decedent's name should be reissued in the name of the Estate. Some checks, such as Social Security or pension checks, may need to be returned.

## **5. KEEP GOOD RECORDS**

The record of each asset, receipt, and payment will be recorded in an accounting. The executor should keep detailed records about each check written and all amounts received. List each item separately.

## **6. PAYMENT OF DEBTS AND CLAIMS**

- a. Notice must be sent to all of the decedent's known creditors. This includes, for example, credit card companies, lenders, and doctors/hospitals.
- b. Debts and expenses should be paid from the Estate checking account.
- c. If there are sufficient assets in the Estate, the executor may pay small routine bills after letters of office have been issued and the Estate checking account is established.
- d. Creditors of the Estate have six months to file claims. If there is a question as to whether all creditors will be paid, then it is improper to pay claims before the expiration of the claims period.

## **7. DISTRIBUTION TO HEIRS AND LEGATEES**

- a. Personal property should be distributed according to the terms of the will. Personal property not specifically disposed of by the will may be sold.
- b. Distribution of Estate assets other than personal property to heirs or legatees should be made only after consultation with the executor's attorney.
- c. Life insurance proceeds may be paid to the designated beneficiary.

## **8. ESTATE MANAGEMENT**

- a. Utilities that are no longer needed, such as phone and cable television, should be disconnected. The executor should ask for a refund of any deposit and keep a record of any refunds.
- b. A change of address for the decedent should be filed with the post office listing the executor's address.
- c. Insurance should be obtained to protect the assets of the Estate. Automobiles owned by the estate should not be driven unless insurance coverage is available.
- d. Unneeded insurance policies should be cancelled and refunds of earned premiums should be obtained.
- e. Sometimes a beneficiary will disclaim (i.e., refuse to accept) assets from the Estate. Disclaimers must be made within nine months of the date of death and before the beneficiary has accepted any of the benefits of ownership of the assets.

## **9. FINANCIAL MANAGEMENT**

- a. The executor will need to determine whether the Estate's investments should be liquidated. An executor may be liable for any decrease in value of the investments unless the will permits the investments to be held.
- b. The decedent's credit cards and debit cards should be destroyed and the accounts closed.
- c. The executor should notify all banks and investment firms of the change of the decedent's mailing address to the executor's address.
- d. Social Security may provide a burial benefit. Many funeral homes will help the executor apply for this benefit. Otherwise, the executor may contact the Social Security Office to obtain the necessary forms. The executor

may receive the payment from Social Security upon proof of payment or direct that the benefit be paid to the funeral home.

## **10. INCOME TAX RETURNS**

- a. Final federal and state income tax returns (Form 1040) will need to be filed for the period from January 1 of the year of the Decedent's death until the date of the Decedent's death. The due dates for the returns are April 15 of the year following the year of the Decedent's death.
- b. Fiduciary income tax returns (Form 1041) will need to be filed for income received after death.

## **11. ESTATE TAX RETURNS**

- a. A federal estate tax return will be required to be filed within nine months after the date of death for estates in excess of \$5,340,000.00. An automatic six-month extension is available if requested during the nine-month period, but any estate tax due must be paid within the nine-month period. The State of Illinois also has an estate tax return with the same deadline, but that must be filed if the estate is in excess of \$4,000,000.00.
- b. Even if the Estate does not exceed \$5,340,000.00, the executor may want to file a federal estate tax return to elect "portability."
- b. Typically, the personal property will not need to be appraised. However, collections, such as artwork or coins, may need to be appraised.
- c. A Form 712 should be obtained for each life insurance policy insuring the life of the Decedent or owned by the Decedent.

## **12. ANCILLARY ADMINISTRATION**

The executor will need to open ancillary probate estates in any state in which the Decedent owned real estate.

## **13. CLOSING THE ESTATE**

When the Estate is opened, the court automatically schedules a 14-month status hearing. Hopefully, the Estate can be closed at that hearing. A sooner hearing can be scheduled if the administration of the Estate is complete before then. Likewise, a continuance may be requested, extending the time to close the Estate.

Thirty days prior to the hearing to close the Estate, the executor must mail to all interested parties an Inventory and Final Accounting. If they approve, they sign a Receipt and Approval on Closing of Decedent's Estate in Independent Administration.

At the hearing to close the Estate, the executor presents the court with the signed receipts, the Final Report of Independent Representative, and a pre-printed

Order of Discharge. Following the closure of the Estate, the final distributions to legatees are usually made.

If the legatees do not sign receipts, then the executor presents the court with the Final Report and a Proof of Mailing and Publication. Then, another hearing 42 days later is held, at which time, assuming no one objects, the Estate is closed.