

INSTRUCTION LETTER TO PERSONAL REPRESENTATIVE

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[ADDRESS OF PERSONAL REPRESENTATIVE]

Re: Instruction Letter to Personal Representative

Dear P.R./Executor:

Now that letters have issued appointing you personal representative (or administrator) of the estate, I wanted to give you a checklist of do's and don'ts regarding the probate. While I am sure that you will have many questions as to specific items, and while I encourage you to continue direct contact with me, this letter will perhaps clarify the events and paperwork to take place on the probate matter. Here are some guidelines:

1. Introduction: The personal representative (or P.R.) is the only person authorized to act on behalf of the estate. The term "personal representative" is the term we now use to describe the person having the capacity of what was formerly known as either an executor (when the decedent left a will) or an administrator (where there was no will). The basic duties of the P.R. include:

- (a) Collect, inventory, and appraise the assets.
- (b) Protect and preserve the assets.
- (c) Pay the taxes and debts of the decedent and his/her estate.
- (d) Distribute the remaining assets to the proper parties according to law.
- (e) Close the estate proceedings.

2. Inventory and Appraisal: We have already filed the Application or Petition for your appointment, providing a list of the heirs and a short summary of the size of the estate. The next document to be filed is labeled "Inventory and Appraisal," which is a detailed listing of all of the assets of the estate. Values are to be at the time of death. Now that the letters have issued, you are authorized to contact various banks, credit unions, financial consultants, etc. to determine the value of any account, stock, or other asset as of the date of death. We will then assemble this information into the inventory document.

3. Appraisals: Ordinarily, all real estate owned by the decedent should be appraised during the probate process. Homestead property or other property passing under the right of survivorship does not have to be appraised, nor is that property included on the inventory, since such property is "non-probate." On a case by case basis, it may be possible to avoid the cost of an appraisal.

4. Vehicles: Automobiles can generally be valued by the "blue book" value. The same is true for snowmobiles, trucks, etc., with the alternative method being to contact a respectable dealer in that type of item.

5. Filing: The Inventory and Appraisal must be filed six months from the date of your appointment as personal representative. Generally the six months starts to run with the date of the letters, which will roughly coincide with the date the probate file was opened. A blank Inventory and Appraisal form is enclosed.

6. Court Instructions: You may also get a letter or notice from the probate court providing some instructions. Since these instructions change from time to time, please forward a copy to the attorney immediately.

7. List of Creditors: The personal representative is required to give notice to all creditors of the decedent. Therefore, the client must work up a detailed list of any debts of the decedent, including name and address of the creditor, phone number of the creditor, account number or loan number, total amount due as of the date of death, and monthly payments required, if any. This list must include all creditors of the estate, including doctor/medical bills, funeral expenses, bank loans, automobile loans, taxes owed, credit cards, etc. It should include business debts and personal debts.

8. Notice to Creditors: You should work closely with the attorney to prepare the list of creditors. The notice to creditors must be mailed to them within three months following the first publication of the probate court notice. Creditors will be notified that they have 30 days to file a claim for payment.

9. Joint Debts: Joint debts are sometimes difficult to handle. Under some circumstances, it is appropriate for the estate to pay for joint debts of the decedent and a third person. However, then the estate may have a claim for "contribution" against the third person. For example, if the estate pays 100% of a joint debt of the decedent and his brother, then the estate may be forced under the law to seek a 50% contribution of the debt from the brother who was also liable to pay the debt. In addition, any payments on joint survivorship property, including mortgages, second mortgages, real estate taxes, and utilities, are expected to be paid by the survivor, because the survivor automatically takes title to said property subject to the outstanding debts. As always, the personal representative should avoid even the appearance that he or she is using estate funds to pay off the personal debts of the personal representative. Do not pay off any joint debts without obtaining prior approval from the attorney, and always make sure that any debts being paid are debts of the decedent only.

10. Priority of Payment: Payment of debts should be made only after careful consultation with the attorney. Debts must be paid in a very specific priority according to probate rules. The priority is as follows:

- (a) Costs and expenses of administration including filing fees, attorneys fees, and appraisal fees.
- (b) Reasonable funeral expenses.
- (c) Debts and taxes with preference under federal law.
- (d) Reasonable and necessary medical, hospital or nursing home expenses of the last illness.
- (e) Reasonable and necessary medical, hospital and nursing home expenses for the care of the decedent during the year immediately preceding death.
- (f) Debts with preference under other laws of this state, and state taxes.
- (g) All other claims.

If the estate has enough funds to pay all claims, the priority is not normally a problem. However, if the estate is "insolvent," meaning that the claims exceed the assets, then payment is to be made under the above priority checklist.

11. Estate Bank Account: Any checks payable to the decedent should be put into the checking account set up for the estate by the personal representative. Normally, this account is set up immediately following issuance of the letters. The best type of account is a checking account which also draws interest. I normally recommend going to banks within the Wells Fargo or US Bank groups, or some other larger bank system, since these banks are normally familiar with personal representative accounts.

12. Taxes: The personal representative should in most cases hire a CPA or other tax advisor to handle tax filings and tax issues. I generally do not give tax advice, and refer such matters to the CPA. You should raise with your accountant the following issues:

- (a) Final income tax return for the decedent.
- (b) Tax issues relating to the decedent's business, if any.
- (c) Tax returns to be filed by the estate as a separate entity, if necessary.
- (d) Whether the decedent had any outstanding tax debts which need to be paid.
- (e) The tax impact of sale or disposition of assets during administration of the estate.
- (f) Tax planning for the surviving spouse, heirs, etc.
- (g) Obtaining any tax ID numbers for the estate.

13. Distribution: Another job of the personal representative is to "distribute the assets." Sometimes it is necessary to obtain a court order to confirm which persons will receive the assets. Normally, assets of the estate are sold and converted into cash, for a final lump sum payment to the heirs. In other cases, such as real estate, it is appropriate to directly have the estate transfer property into the name of the heir, which is done by a "Deed of Distribution." When real estate is sold for cash to a third party, the deed for that is labeled "Deed of Sale." The P.R. is not authorized to sign such deeds until 30 days have passed since issuance of the letters.

14. Non-Probate Assets: The personal representative will also normally coordinate transfer of any non-probate assets. This would include life insurance payments, transfer of joint tenancy real estate (like the homestead), and transfer of any joint checking accounts. While these transfers are not listed in the formal probate court papers, the task of transfer generally falls upon the personal representative.

15. Final Account: Only when all assets are sold, transferred, or distributed to heirs is the personal representative in a position to file the required "Final Account." The Final Account will list all assets distributed, all debts paid, and other transactions. In this document, the P.R. will have to account for all transactions which occurred during probate.

16. Closing Statement: As a final act of the personal representative, the "Closing Statement" will be prepared. This is a formal document to close the estate, and thereafter the personal representative can apply for a formal discharge of his or her duties. Normally this will not take place until a year or so has passed following opening of the probate. In some cases no formal discharge is necessary.

Hopefully this letter will help to explain the process. The main two projects at this point are to begin working up the Inventory and Appraisement, and making a very detailed and inclusive list of the creditors.

Very truly yours,

Douglas P. Radunz

DPR:jko

Enclosures:

Certified Letters (unless already delivered)

Form Inventory and Appraisement.

Information provided courtesy of
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