

CHECKLIST FOR RECENTLY DEPARTED MATTERS

INITIAL FAMILY MEMBER ACTIONS (First Week After Death)

- _____ Check if decedent had a “Disposition of Remains Directive” instructing how he / she wants remains taken care of.
- _____ Did the decedent want to be an organ donor?
- _____ Who will take care of minor children, adult incompetents and pets (short term) formerly taken care of by decedent?
- _____ Funeral Arrangements: (1) Contact clergyman, (2) Did decedent have pre-existing burial plot, does the cemetery need the Deed to the plot to bury?
- _____ Keep ALL records of expenses for funeral and other related matters.
- _____ Inform family members of decedent’s passing; provide date of funeral; also (1) the name of the funeral director, and (2) the location and phone number of the funeral home (may be needed for airline bereavement discounts).
 - _____ Order Death Certificates (10 – 25) from Funeral Home: _____ **Copies.**
- _____ Print an obituary in a local paper after the funeral

INITIAL ATTORNEY ACTIONS (First Week After Death)

- Is there a Will, Trust, Disposition of Remains?
- Draft Retainer Agreement (explaining fees)
- Is there a Conflict of Interest that will prevent the attorney from working with the fiduciary?
- Avoid interference in family funeral arrangements unless asked:
 - Family should obtain more than one estimate from funeral homes (prices vary)
- Determine survivors’ immediate cash needs.
- Warn family members of potential break-ins, both during the funeral and thereafter.
- Avoid talking about legal details with the bereaved UNLESS they are necessary parties to the estate AND live far away:
 - Obtain signatures on (1) Petition, and / or (2) Waivers and Consent
 - Provide each party with a copy of the Will / Trust
 - Advise beneficiaries they have the right to object to the Will / Trust...
 - ...BUT if not objecting, signing the Waivers and Consent shall speed up the Probate / Administration process and reduce expenses

FIDUCIARY DUTIES AFTER INITIAL BEREAVEMENT (First Month)

- _____ Open a separate Bank Account to fund initial expenses.
- _____ Contact Social Security, Pension Providers, Medicaid, Military in order to cease further payments of benefits.
- _____ Determine names, addresses and phone numbers of beneficiaries.
- _____ Cancel credit cards and other revolving debts.
- _____ Sign ALL checks as:
 “ (Name) as *Trustee / Executor for the Estate of* (Decedent's Name) ”
- If decedent was the only person living at the residence:
 - _____ Notify post office to hold mail (check on it every other week to pay bills), and any other regular deliveries.
 - _____ Take many pictures of the house (inside and outside)
 - _____ Consider having door locks changed and changing alarm codes.
 - _____ Take steps to procure valuable (jewelry, small collectables), place in a safe deposit box and take pictures to minimize future conflicts.
 - _____ Notify police if house is vacant.
 - _____ Notify ALL insurance carriers of decedent's death (auto, home), and ensure policies remain in force.

ATTORNEY DUTIES (First Month)

- Procure Original Documents (send letter to drafting attorney)
- Apply for Tax ID Number for Estate / Trust
- Inform former POAs their power has lapsed
- Draft letter from fiduciary informing other family members that they have set up a short-term account to deal with estate matters and will ask for reimbursement for incurred expenses.
- Arrange for meeting with nominated fiduciary(ies) or persons entitled to Letters of Administration as soon as practical after the funeral.
 - Discuss terms of the Will / Trust
 - Identify and discuss the roles of the fiduciaries and the attorney
 - ONLY the fiduciary is the attorney's client (NOT the decedent), BUT attorney and fiduciary owe undivided loyalty to the beneficiaries (unless separate representation)
- Advise against destroying or hiding any of the decedents property, documents or records
 - (may be pursued by IRS for tax fraud, NYS Courts for fraud, or beneficiaries)
- Ask for several Death Certificates from the parties:
 - Life Insurance

- Joint Bank Accounts / Investment Accounts
- Totten Trust bank accounts
- Employee death benefits
- IRAs and annuities (payable to a named beneficiary)
- Application for “Letters Testamentary” or “Letters of Administration” from the Surrogate’s Court
- Ancillary Probate (required is real property located outside NY passes by NY law)
- Transfer on Death securities
- Determine decedent’s assets; determine if joint accounts are “true joint accounts” or “convenience accounts”
 - If funeral expenses are paid from joint accounts the account should be reimbursed from the probate estate
- Immediate Cash Needs for Family Members (prior to fiduciary appointment):
 - Joint Accounts / TOD Accounts
 - SCPA 1310: \$30,000 to surviving spouse, \$15,000 to certain relatives
 - “Exempt Property” – EPTL
- Check NY “Unclaimed Funds” Website
- Consider “Safe Deposit Box” search
 - “NY State Safe Deposit Box Registry”
 - If one exists a bank employee will make an inventory (court receives contents)
- Review Original Documents (even if attorney drafted them)
 - Wills and Trusts
 - Bene Designation Forms
 - Does spouse have right of election issues?
 - Are charities involved? (contact the charity and NY Attorney General)
- Discuss Commission w/ Fiduciary (SCPA 2307, 2309)
 - Unless Will provides, NO commissions for:
 - Exempt Property
 - Specific Legacies
 - Jointly Owned Assets
 - Insurance payable to a named beneficiary or a totten trust
 - Real Estate not sold by the fiduciary
 - Transfer on Death accounts
 - Potential benefits of waving commissions for sole beneficiary / fiduciary
- Discuss Legal Fees and Accounting Process