

THE PERSONAL REPRESENTATIVE ROLE BASIC RESPONSIBILITIES



Being named as Personal Representative can often appear overwhelming, particularly if you are still in the grieving process, and it is best to understand the role before accepting the responsibility. One of the worst calls you can receive is when someone calls to tell you a loved one has died, followed closely by a call from the deceased's attorney informing you that you are named as Personal Representative (aka "executor") of the Estate. Arguably, the third worst call is if the IRS calls to announce that you are being audited.

Even if a decedent named you as a Personal Representative in their Will, you do not have to accept the role. A Personal Representative of an estate is a fiduciary tasked with administering the probate estate of a decedent. As a fiduciary, the Personal Representative's failure to fulfill his duties and/or adhere to the terms of the Will can result in lawsuits for breach of fiduciary duty. Given the importance and duties of the role, you are given a choice whether to accept to serve as or decline to be Personal

Representative. This brief description of what a Personal Representative does is presented to allow you to make an informed decision.

The Personal Representative must efficiently settle and distribute the estate pursuant to the terms of decedent's Will, if any. If there is no Will, the laws of the state where the estate is being administered govern the distribution of the estate, and similar processes are followed. This summary focuses only on situations where a Will is involved. Typically, the decedent's Will is probated where the decedent resided at death.

The laws and procedures may differ from state to state and between jurisdictions within a state. Depending upon state law and the terms of the decedent's Will, sometimes estates are deemed "unsupervised," meaning the Personal Representative may generally conduct the estate's business without court supervision between the time of opening the estate and petitioning to close the estate. Other times, the estate is "supervised," meaning the Personal Representative must involve the court in the administration of the

estate more often. The following steps are generally necessary in all states, whether the estate is supervised or not.

Although the steps are listed generally here, probating an estate can be complex and nuanced. The Personal Representative should engage an experienced estate administration attorney.

1. The Personal Representative must review the Will and become familiar with the duties of managing the estate.

2. The Personal Representative opens the estate by filing a Petition for Probate documents, known as Letters Testamentary. Typically, this requires presenting an original Death Certificate along with certain other paperwork to the applicable Court. Generally, an estimate as to the date of death value of probate assets must be provided as well. The Letters Testamentary provide the Personal Representative with the legal authority to act on behalf of the estate. Until these Letters are obtained, the Personal Representatives may be unable to gather information and assets regarding the decedent's assets.

3. The Personal Representative must marshal and value the assets of the estate (e.g., identify, collect, appraise, and protect the assets). This includes any probate property owned by the deceased at death. Assets of the estate generally include assets titled in decedent's name, as opposed to being titled in joint names with right of survivorship in another. Jointly titled property passes to the other named person outside the probate process. Property titled solely in the decedent's name may include assets such as real property interests, business interests, checking and savings accounts, brokerage accounts, and any unpaid amounts due the deceased, such as interest and dividends. Note that the Personal Representative may also be involved in handling the non-probate assets of the estate, including being Trustee of the decedent's revocable trust.

Non-probate assets include items governed by title (such as property title in joint names with right of survivorship with another or Beneficiary deeds) or beneficiary designations (such as life insurance policies or retirement accounts or Transfer on Death/Pay on Death designations). The Personal Representative may also need to coordinate with the Trustee of any revocable trust the decedent established during life.

4. The Personal Representative may be required to file an inventory and other information with the court within a set time frame. These reports list the assets held by the decedent, both individually and jointly, and provide the date of death value of such assets.

5. The Personal Representative gives notice and appropriate accountings to beneficiaries as required by state law.

6. The Personal Representative will likely need to obtain a Federal Tax ID Number for the estate once opened. This number will be used to open the estate's bank account. The Personal Representative will then transfer funds from decedent's accounts into the estate's account(s). Estate expenditures—such as payment of debts, taxes and attorney expenses—will be made from the new account. Funds remaining when the estate closes will be distributed to the beneficiaries according to the Will's terms.

7. The Personal Representative gives legal notice of the decedent's death to known creditors and potential creditors. Creditors generally have a prescribed time after receiving notice—directly or via publication—to file claims against the decedent's estate. Upon the expiration of this period, most claims not filed do not have to be paid. The Personal Representative should consider the validity of all claims filed against the estate before paying them.

8. The Personal Representative creates an initial summary of estate assets and claims and pays the various probate fees and expenses incurred by the estate. For example, the Personal Representative may incur attorney and accountant fees and other costs related to protecting or administering the estate. The Personal Representative will eventually need to account for all these expenditures in an itemized list of all payments and receipts.



9. The Personal Representative is responsible for preparing and filing (and paying any tax liabilities) all outstanding applicable state and federal income tax returns on behalf of the decedent and on behalf of the decedent's estate. Note that death terminated the decedent's tax year. The decedent's estate is a separate taxpayer. These responsibilities may touch upon the following returns:

- ◇ decedent's final income tax returns;
- ◇ federal and state income tax returns of the trust and/or estate;
- ◇ federal and state estate tax returns, if any; and
- ◇ gift tax returns, if necessary.

An accountant or attorney can guide you with these filings, including obtaining release from personal liability regarding the estate from the service.

10. Once all the assets are collected, and the claims are satisfied, the Personal Representative must distribute the assets in a manner consistent with the terms of the Will. When the court approves the final account and the assets have been distributed, the estate is considered closed. At this point, the responsibilities of the Personal Representative end, assuming the release from tax liability has been obtained from the service.

As the above list indicates, taking on the role of Personal Representative is a job with several responsibilities tied to fiduciary obligations. The issues can be detailed and nuanced. You should engage experienced attorneys and accountants to assist you in fulfilling the obligations.

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