

# Seven Steps to Handling Your Loved One's Estate

*A Plan of Action: How to close out accounts, notify key authorities, access death benefits, and begin the probate or trust administration process after the loss of a loved one.*



**By: Attorney Erik Martin**

# Getting Started

Handling the estate of a loved one is a huge and solemn responsibility. Your loved one must have thought very highly of you to leave you with this important duty of overseeing his or her end-of-life affairs.

Though you are likely humbled by being placed in such a position of trust, you might also feel stressed out, confused, and overwhelmed as you try to figure out the best way to administer your loved one's estate.

This uncertainty leaves a lot of questions unanswered, including: "Am I doing this right?" or "What if I accidentally choose something that goes against my loved one's wishes?" or "Will the other family members hold me responsible if they don't like the outcome of the will or final wishes?" or simply, "WHAT DO I DO NOW!?"

Our goal is to help you minimize the headache and ease the burden of handling the estate so you can get back to what is most important – remembering your loved one and celebrating their life.

## Start With The Basics

The seven steps we outline in this guide are among the most important and practical things you will need to know when handling a loved one's end-of-life affairs.

However, there may be additional steps your family will need to address to properly administer your loved one's estate. This will depend on your loved one's unique circumstances and the type of estate plan he or she had in place at the time of death.



Estate distribution involves quite a bit of paperwork, as well as the need to meet very specific, government-mandated deadlines. If mistakes are made during this process, or steps are missed, it can result in delays and financial difficulties for all involved, including potential liability for YOU as the administrator.

It may be that hiring an attorney who specializes in probate and estate administration is the best way to ensure your loved one's affairs are handled in a timely and efficient manner. Further, it may be the best way for YOU to get through the process and minimize the stress involved. We are happy to provide your family with more information on this and answer all of your questions during a free consultation, which you can schedule now by calling me at (817) 752-3307.

# Seven Steps to Take After the Loss of a Loved One

As you work to make final arrangements after your loved one's passing, you can (and should) begin the process of administering the estate by taking inventory and securing the estate property. Acting quickly despite emotions running high is important to save valuable time and estate resources down the road.

While there is much to do during this difficult period, here are the top 7 steps to take immediately after the loss of a loved one.

## I. Take an Inventory of Property and Important Documents

After a loved one passes, you may find it difficult to remember all of the property that he or she owned, as well as all of the paperwork you will need to handle their estate. Believe us, this task is not an easy one, especially when you factor in the emotion of your loss. But the point is, just get started! Start by jotting down assets on a scratch pad and make a pile of invoices, statements, etc. by going through the latest month's mail. You can formalize the Inventory as you proceed, but you will never finish what you don't start, and time is of the essence here.

To make things easier on you, we've created a checklist of paperwork you will need to handle the estate, as well as a list of property your loved one may have owned. It is important to keep this information secure at all times, and it is not a bad idea to use a lockbox to store these documents when not in use.

### *Your loved one's documents:*

- Certified copies of the decedent's birth certificate, death certificate, and marriage certificate
- Divorce decree(s) from all previous marriages
- Will or Trust papers
- Insurance policies
- List of assets (house, car, jewelry, etc.)
- Bank account numbers
- Social security card or number (for both you and the deceased)
- Credit card numbers and statements
- Deeds to any real estate
- Tax return from the previous year

### *List of property:*

- Real estate, including those that are business-related or for vacation
- Stocks and bonds
- Bank accounts
- Retirement accounts
- Contents of safe deposit box, including jewelry
- Boats, RVs and any other recreational vehicles
- Trailers or tools used in any trade
- Any other assets of significant value

## II. Notify Social Security

If your loved one was receiving money from Social Security, they will need to be notified upon his or her death. The Social Security Administration can be reached by calling (800) 772-1213, or by visiting [www.socialsecurity.gov](http://www.socialsecurity.gov). Oftentimes, the funeral home will notify Social Security so check with the funeral director first. You should also assume that any payments that are being made via direct deposit will either be stopped by the government or frozen by the bank.

## III. Keep Property Safe from Theft or Vandalism

It's a good idea to remove any valuables from your loved one's home and take extra steps to secure the house from theft or vandalism, like making sure the alarm system is up to date or installing one, checking the safety lights and/or installing a video connected doorbell. You should keep a list of the items removed during this process and where they are being stored so that you can locate them and give an account later. Stop all mail coming to the house, and remember that unless you are the surviving spouse or child living at the residence, the post office may require you to provide extra documentation, like an appointment as administrator or executor by the Court.

## IV. Address Outstanding Debt

Many people falsely assume that their loved one's debts will automatically be forgiven upon their passing. This, unfortunately, is not true; however, there are steps that can be taken to address any outstanding debt still owed to creditors even before the probate process begins. Many creditors will accept less than full value for a claim – you just have to call them up and ask!

Freezing the decedent's bank account and credit card accounts may allow more time to pay certain debts from the estate, and it is also a great way to avoid any fraudulent charges associated with identity theft. Notifying all credit cards and canceling them in writing can help you avoid this problem as well as hefty interest charges and late fees.

Finally, you'll want to gather all of your loved one's bills and bank statements, and speak with an attorney if you feel uncomfortable dealing with the creditors. Time is of the essence, so move quickly!

## V. Open Claims for Insurance Benefits

As the person handling your loved one's affairs, you must gather information regarding any policies or accounts that the decedent may have had, including life insurance and any accidental death policies. Be prepared with the policy number and a copy of the death certificate when you call the insurance company to make a claim. The insurance company will then forward the proceeds of the policy to whoever was named beneficiary. Sometimes the insurance will require a certified original death certificate which you can get through the county clerk of the decedent's resident county or online at the Texas Vital Statistics' website at [www.dshs.state.tx.us/VS/](http://www.dshs.state.tx.us/VS/) under Death Records.

## VI. Research Additional Benefits from Employer

Contact the human resource department at your loved one's place of employment to find out if they offer death benefits to the spouse or family of the decedent. Occasionally, these benefits are made to both current and former employees, so contact all places that your loved one may have worked in the past. Also, be sure to ask about any 401(k) accounts, pensions, or stock benefits and get a point of contact for each account.

## VII. Contact an Estate Planning Attorney

Administering a loved one's estate is an important process that generally comes up during a very emotional time. The process can be costly, time consuming, and even confusing, but it doesn't have to be!! Working with an attorney will not only alleviate much of this stress but will ensure that your loved one's affairs are handled without mistakes, and that all court and government-mandated deadlines are met. Generally, estate attorneys' fees are very reasonable and oftentimes a fraction of the money that the attorney will save the estate in the long run, so give yourself and your family the peace of mind knowing that your loved one's wishes are being carried out in the best way possible. In my honest opinion, hiring a knowledgeable estate attorney is worth it.

# Understanding Probate: What Is It and How Do I File?

At the same time that you work to complete the seven steps detailed above, you may also need to start the probate process with the local probate court.

Probate is a legal process of finalizing and administering a loved one's estate after death. Your family may work closely with the County Court or Statutory Probate Court in the county where your loved one died to:

- Confirm the validity of the Will;
- Identify and inventory the deceased's property;
- Appraise the property;
- Pay your loved one's debts and taxes; and
- Distribute the remaining property according to the Will or according to state law in the absence of a Will.

In **Texas**, if someone has a net total of \$10,000 in assets or real property, their Estate will likely need to be probated.



## How Long Does Probate Take?

Here in Texas, the probate process can take anywhere from a few months to a few years to complete. The length of the probate proceedings depends on the value and complexity of the estate, the existence of a will, the extent of and the location of the decedent's record-keeping, location of real property and potential disputes with creditors or other heirs.

## What Does It Cost?

The cost of probate varies widely depending on the size of the estate and whether your loved one had a will, but common expenses include executor's fees, attorney's fees, accounting fees, court fees, appraisal costs, and surety bonds. These expenses typically account for 5-10% of the total estate value and cost anywhere from \$1,500 for a simple estate with a will to over \$10,000 for a complex estate or estate without a will.

## Do All Assets Go Through Probate?

Fortunately, not all assets are subject to the expenses and delays of the probate process following the death of a loved one. Here is a brief overview of some assets that may avoid oversight from the probate courts:

- Life Insurance policies;
- Property held in joint tenancy;
- Other jointly owned assets with a right of survivorship;
- Assets with named beneficiaries such as IRAs, and annuities;
- Assets placed in a living or revocable Trust;
- Payable on death (POD) bank accounts;
- Banking and investment products, such as savings accounts, checking accounts, CDs, and brokerage accounts with a Transfer on Death (TOD) beneficiary;
- The surviving spouse's share of the community property the couple owned together
- Small gifts of the decedent's personal property
- Certain "exempt" assets.

Keep in mind that while these assets generally are not subject to probate, there may be instances when they *will* need to go before the court. This typically happens when a beneficiary is not properly named or is no longer alive at the time of the deceased's passing, or the estate is insolvent.

## Do I Need An Attorney to File Probate?

Because probate is such a time-consuming, costly, and complicated process, you should seek the help of a **probate attorney with experience in the county your loved one lived in before passing**. A skilled attorney will help to ensure that all legal obligations are met, help speed up the overall process, and will also help you to minimize costs commonly associated with oversights, tax problems, and long, drawn-out claims. Further, many jurisdictions, like Tarrant County for instance, require that the administrator hire a licensed attorney before the Court will grant an application admitting a will to probate.

## Probate For Property In Multiple States

If your loved one owned property outside of Texas at the time of his or her passing, you will likely need to file for probate in that state as well. This process known as “ancillary administration.” As you can imagine, this could complicate things, and you will likely need to hire an attorney in that state to handle this separate probate matter. We will assist you in finding an out-of-state attorney who will best meet your needs during this sensitive time and help you make sure that attorney handles things timely and efficiently.

## My Loved One Had a Trust...Can I Avoid Probate?

If your loved one died with a Trust in place, it may be possible to avoid the probate process altogether.

So long as the Trust has stayed updated and all of your loved one’s assets are properly owned by the Trust, the Trust can be administered privately with the help of your **attorney**. If the Trust was not properly funded (meaning assets were not titled in the name of the Trust), or your loved one owned assets outside of the Trust, you may still need to go through the probate process. Your attorney will help to determine your next steps.

# The Role of a Trust Administrator

It is generally easier to manage and distribute assets out of a Trust since the Courts are not involved; however, the Trustee should be aware that a Trustee is held to a fiduciary duty to beneficiaries, being the highest legal duty an individual can have to another. It is nothing to be scared of, but extremely important to understand.

The Trustee's fiduciary duty includes protecting and managing the assets of the Trust in an ethical and moral manner and acting at all times in the best interest of the beneficiaries. These requirements and obligations often vary from state to state, but in Texas some of the requirements include:

- Notifying beneficiaries of a death or other major change in circumstances;
- Valuation and Liquidation of Assets;
- Paying Debts and Taxes of the Trust;
- Filing Tax Return;
- Distribution of Remainder of the Assets to Beneficiaries; and
- Transferring title to Trust Assets.

The Trustee also has to follow certain state and federal accounting and reporting requirements and defend the Trust against all claims of creditors or excluded heirs. It's important to take these duties very seriously as you could be held personally liable for mistakes or oversights.

Oftentimes the Trustee is also the Executor appointed by a Will and has to wear both hats, or has to work hand-in-hand with the Executor (if it is someone else) in administering the Trust and the Estate. Again, a qualified attorney can assist you with these duties to ensure they are carried out properly and that the Trust's assets are distributed in a timely manner.



# Getting Help and Final Steps

Whether your loved one had a small estate or a large estate, and whether or not their assets were held by a Trust, as you can see, the process to administer that estate can be costly, time-consuming, and many times, confusing. However, one thing it doesn't have to be, is scary, and I think that you will find that most estate attorneys love helping people navigate the process.

Working with an attorney will not only alleviate much of your stress but will ensure that your loved one's affairs are handled timely, efficiently and with as much privacy as the law allows.

At a time when you may not already be thinking clearly and are feeling overwhelmed with grief, the benefits of having a professional on your side to deal with creditors, financial statements, taxes, and squabbling family members should not be underestimated. A good attorney may provide the advice and assistance you need to get through this difficult time.

More importantly, if you are a surviving spouse or child depending on your loved one's death benefits or inheritance to cover daily living expenses, working with an attorney can help you expedite the process and receive what you are entitled to more quickly and with less stress. Texas law provides the surviving spouse and children living at home a statutory right to use most of the estate property, for up to a year; however, many don't take advantage of this right because they simply don't know about it!

The attorneys at **Martin Lawyers** can help during your family's time of need. We offer free consultations, and will tell you upfront the best avenue to take - even if that road doesn't involve an attorney. Call us at (817) 752-3307 and ask to schedule a consultation at no charge with the mention of this guide.

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