



The Estate Settlement Process

The estate settlement process is often viewed as overwhelming and complicated. The overriding purpose of this process is to settle the deceased individual's personal affairs, including collecting his/her assets, paying his/her funeral bills, debts, etc., and seeing that the decedent's remaining assets, after payment of debts, expenses and taxes, are distributed according to the decedent's wishes as set forth in his/her will, trust agreements, beneficiary designations, etc. In order to carry out the estate settlement process, however, tasks must be completed in two administrative areas. The completion of the tasks and the filing requirements in each of these areas are more easily completed with the assistance of an attorney experienced in estate administration.

The Probate Process

The first administrative area is the probate process. Usually a probate or surrogate's court in the town or county where the decedent was domiciled has the authority to oversee this process. The decedent's will must be admitted to probate, and an individual (called an executor, administrator or personal representative) must be appointed to settle the estate. In addition, if the decedent owned any real estate or tangible personal property located outside his or her state of domicile, then a second probate process must be carried out in the state where such tangible personal property or real estate is located. This additional process is known as "ancillary probate."

Even if a decedent had no will or related estate planning documents, his/her estate still must be settled and go through the same probate process. The difference is that after payment of debts, expenses and taxes, the

decedent's assets are distributed in accordance with the intestacy laws of the state in which the decedent resided. Intestacy laws act as a will substitute which each state's legislature has crafted based on the legislature's assumption of an appropriate distribution of the decedent's assets among family members. Within each state, this distribution plan varies depending on which relatives survive the decedent.

The probate process is concluded after final distributions have been made to the beneficiaries and the executor or personal representative has accounted for his/her transactions to the estate beneficiaries and/or the court.

The Death Tax Process

The second area of administration involves death taxes. Most decedents' estates are required to file some sort of state death tax return in the state where the decedent was domiciled. In addition, if there is ancillary probate, a death tax return must be filed in that state as well. For larger estates (currently, where the taxable estate exceeds \$1.5 million), a federal estate tax return must be filed. These state and federal tax returns are required to be filed even if there is no tax due. Until the state and federal death tax returns have been approved as filed or settled upon audit, the decedent's estate must remain open for probate purposes. After the death tax approvals are received or the audits completed, the final probate process tasks can be completed.

Tasks and Timeframe of the Estate Settlement Process

The following chart shows the various probate and tax filing tasks usually involved in the settlement of a decedent's estate for the states of Connecticut, Massachusetts and New York. Also listed are the number of months within which each task must be completed after the decedent's date of death.

Timeframe of Estate Settlement Process

Task	Number of Months from Date of Death		
	<u>Connecticut</u>	<u>Massachusetts</u>	<u>New York</u>
1. File Will and Probate Application	1	1	1
2. Executor/Administrator Appointed	1-2	2-3	1-2
3. Pay Debts and Funeral Expenses	1-3	1-3	1-3
4. Collect and Value Assets	1-6	1-6	1-6
5. File Probate Inventory*	2-3	2-3	6-9
6. Estimate (a) Decedent's Assets and Liabilities; (b) Cash Needs (for debts, funeral, administration expenses and death taxes)	3-5	3-5	3-5
7. Disclaimer Analysis	3-5	3-5	3-5
8. File State Succession Tax Return* and Pay Any Tax Due	6	N/A	N/A
9. Review Possible Use of Alternate Valuation (if federal estate tax due)	7	7	7
10. File Federal Estate Tax Return (if required) and Pay Any Tax Due	9	9	9
11. File State Estate Tax Return (if required) and Pay Any Tax Due	9* *6 months if death occurs 7/1/04-12/31/04	9	9
12. Pay Bequests and Specific Distributions	6-12	6-12	7-12
13. Analyze Income Tax Plan for Estate (and Possibly Decedent's Revocable Trust)	6-12	6-12	6-12
14. Analyze Possible Advanced Distributions to Remainder Beneficiaries of Estate (and of Decedent's Revocable Trust)	10-12	10-12	10-12
15. File Initial Federal and State Income Tax Returns for Estate (and Decedent's Revocable Trust) and Pay Any Tax Due	Up to 15	Up to 15	Up to 15
16. Respond to Possible Audit(s) of Death Tax Returns	12-24	12-24	12-24
17. File Return of Claims and List of Notified Creditors	After death tax returns accepted	N/A	N/A
18. File Probate Administration Accounting	After death tax returns accepted	Minimum 12	After death tax returns accepted

* Filing extensions often requested.

The above chart shows the estimated timeframe in which to carry out the various tasks of the estate settlement process in Connecticut, Massachusetts and New York. Where an estate involves other complexities, such as difficult-to-value assets, issues related to pre-death gifts, etc., the timeframe may be significantly longer. An experienced estate administration attorney, however, can help to keep the process moving forward until the estate is finally settled.

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