

# PROBATING A DECEDENT'S ESTATE

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The death of a family member or friend is an emotionally challenging event that we will all experience. Some of us will be faced with the added responsibility of having to distribute the decedent's estate.

If the Decedent had a Last Will and Testament, he is deemed to have passed away 'testate' and the Will must be 'probated' in most instances. If the Decedent passes away without a Last Will and Testament, he is deemed to have passed away 'intestate' and the estate must be 'administered' in most instances.

The Decedent's Last Will and Testament will dictate how the assets are to be distributed. If there is no Last Will and Testament, New York State law<sup>1</sup> provides a detailed, complex line of 'intestate succession' (ranging from surviving spouse to great-grandchildren) that dictates how the estate is to be distributed.

Either way, the legal process is time sensitive and can be a difficult and daunting task for a layperson. For example, the executor must, in some circumstances, file an inventory of the Decedent's assets with the Surrogate's Court within six months after death and file an estate tax return within nine months of death. In addition, the executor has a fiduciary duty to protect and manage the Decedent's assets pending distribution to the proper heirs.

Whether or not you choose to retain counsel, here are a few tips to make things go smoother:

- Search the Decedent's house and other places for valuable papers and assets.
- Keep a detailed inventory of all accounts, life insurance policies, death benefits, investment accounts, real property owned and individual assets/effects.
- Keep detailed records and receipts for all income received such as rental income, dividends and pension/social security payments received after the Decedent's death.
- Keep a detailed account of and receipts for all expenses incurred on behalf of the Decedent's estate such as funeral/burial expenses, costs to maintain the Decedent's home and mortgage/rent/insurance payments made after the Decedent's death.
- Make sure that the Decedent's home is secure, maintained, insured and, as necessary, heated during the winter months.
- Do not sell, distribute or give away any of the Decedent's belongings/assets until you are given the specific authority and direction to do so by the Surrogate's Court.
- Discontinue unneeded expenses such as cable TV, telephone and periodical subscriptions.

Administering an estate is a daunting matter that must be performed during a difficult time. It gives the executor/administrator great authority and responsibility. Anyone faced with having to probate an estate should always consult with an attorney prior to doing so. The Legal Plan includes in its coverage an *Estates and Administration Benefit*.

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<sup>1</sup> Estates, Powers and Trusts Law ("EPTL"), Article 4