

Robert M. Maxwell
Director of Estate and Trust Settlement
Glenmede
(215) 419-6914

robert.maxwell@glenmede.com

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Estate Checklist

DRAFTING STAGE:

Is there an opportunity for someone in your organization to review client's draft Will before client signs the Will?

Will review:

- 1) Disposition of Assets:
 - a. Are there unequal distributions that may cause strife among beneficiaries?
 - b. Are there beneficiaries that are disinherited?
 - c. How is personal property distributed? Will beneficiaries fight over items?
 - d. Are there confusing terms of the Will? Drafting mistakes?
 - e. Does the Will refer to a Memorandum or List of Personal property that may never be found or may not be enforceable?
- 2) Challenging Assets-how will your company manage these:
 - a. Real Estate
 - b. Valuable Personal Property (works of art, collectibles)
 - c. Partnerships
 - d. Business Interests
 - e. Patents, Royalties
- 3) Executor Compensation:
 - a. Does the Will refer to your company's standard schedule of Executor fees?
 - b. Is there an agreement between your company and client for Executor fees (discounted?)?
 - c. If no mention of fees, what is the statutory fee?
 - d. Does the fee adequately cover the anticipated work involved?
- 4) Is there a Co-Executor that your company will need to work with to settle the estate?

CLIENT DIES:

WILL YOUR COMPANY SERVE AS EXECUTOR?

- 1) Review Will and assets involved (see the questions above).
- 2) Does there need to be an Executor?
 - a. Are there any “probate” assets that pass under the Will?
 - b. If all assets are “non-probate”, may not need to probate a Will or serve as Executor.
 - c. May need to probate a Will if decedent exercises a power of appointment over a trust even if no probate assets in order to verify this Will as Last Will of decedent.
 - i. Non-probate assets:
 1. Beneficiary Designation Assets:
 - a. IRAs
 - b. Trusts
 - c. Life Insurance
 2. Joint Property / Property with Rights of Survivorship
 - a. Joint Tenants With Right of Survivorship (JTWROS)
 - b. Tenancy by the Entireties (TBE)
 3. Pay on Death Accounts
 - d. If no “probate” assets, and no Executor appointed, someone will still need to handle death tax filings, payment of debts, etc. This may fall on surviving spouse, family, or Trustee of decedent’s Revocable Trust.
- 3) Will your company serve as Executor or renounce?
 - a. Can your company collect and manage the assets? Does your company want to deal with these types of assets?
 - i. Business? Partnership? Gas Station with Environmental Cleanup Concerns? Italian Villa?
 - b. Will your company get paid fairly for the work involved – fee clause or statutory fee?
 - c. Business benefit to your company:
 - i. Are there continuing trusts where your company will serve as Trustee?
 - ii. Will beneficiaries keep investments at your company?
 - iii. Goodwill to beneficiaries and family?
- 4) Hire Estate Attorney
 - a. Engagement Letter for Fees:
 - i. Hourly Fee?
 - ii. Percentage of estate?
 - iii. What will attorney do for estate? What will your company do?
 1. Court filings
 2. Accountings
 3. Tax Filings
 4. Beneficiary Notice and Communication

PROBATE WILL

- 5) Probate Will
 - a. Petition for Probate – attorney
 - b. Original Will – where is this?
 - i. Attorney’s office
 - ii. Vault at your company
 - iii. Decedent’s papers
 - iv. Safe Deposit Box
 - c. Probate Fees
 - d. Is a Bond required for Executor to serve?

COLLECTION AND VALUATION OF ASSETS:

- 6) Collection and Valuation of Assets – Probate and Non-Probate Assets
 - a. Probate Assets
 - i. Assets in decedent’s own name that pass under Will terms
 - b. Non-probate Assets
 - i. Assets with beneficiary designation
 - 1. Life Insurance
 - 2. IRAs
 - 3. Trusts
 - 4. Pay on death accounts
 - 5. Joint Property with rights of survivorship
 - ii. Executor will need to value for death tax purposes
 - iii. Executor usually does not collect
 - c. Locating Assets:
 - i. Search decedent’s papers
 - ii. Monitor decedent’s mail
 - iii. Access decedent’s email
 - 1. Is there a clause in the Will dealing with access to digital assets?
 - 2. Does federal or state law apply to decedent’s digital assets
 - 3. “Envelope” vs. “Contents”
 - a. Does the Will or law allow for access to only the “envelope” – who sent decedent emails, OR
 - b. Does the Will or law allow for access to “contents” of emails and digital files?
 - c. If you see decedent received emails from Bank of Texas and Janney Brokerage Services, you can guess that you need to reach out to those institutions to see if there were assets there. This you could get from just

- the “envelope” – the list of who decedent received emails from.
 - d. Full access to “contents” of emails and digital records may provide bank and brokerage statements, but might reveal other information about the decedent— photos, writings, websites visited, personal messages, etc.
- iv. Review decedent’s income tax returns for income producing assets – stocks, bank accounts, rental properties, royalties, etc.
- v. Unclaimed property – Run website search with State Comptroller to locate unclaimed property
- d. Valuing Assets
 - i. Appraisal
 - 1. Real Estate
 - 2. Personal Property
 - 3. Business Interests – partnerships, closely held corporations
 - ii. Sale Value
 - 1. Real estate, personal property
 - iii. Marketable Securities
 - 1. Mean value – High/Low on date of death
 - iv. Bank Accounts
 - 1. Bank statements
 - 2. Date of Death Letter from Bank
- e. Prepare an Inventory – A list of all probate assets and values. May need to be filed with Court.

PAYING FUNERAL, DEBTS, ADMINISTRATION EXPENSES, TAXES AND SPECIFIC BEQUESTS

- 7) Raising Cash/Investments
 - a. Prepare Cash Requirements for Estate
 - i. Taxes, Debts, Administrative Expenses, Funeral, Specific Cash Bequests to Beneficiaries (\$10,000 to my friend, Fred)
 - b. Raise cash (sell securities) to hold in cash to pay known expenses?
 - i. Sell just enough to cover expenses?
 - ii. Sell all assets?
 - iii. Market risk?
 - iv. What if not enough cash?
 - 1. Estate holds real estate, illiquid assets?
 - 2. Obtain loans to pay expenses?
 - v. Capital Gains on Estate Assets (assets held at death)
 - 1. Income Tax basis is date of death value (or alternate value).

2. Sales are long term regardless of how long held by estate.
3. This is a “step up” in basis.
 - a. Minimizes gain/loss to estate or beneficiaries if assets sold
 - b. Allows for reinvestment strategy – clean slate
4. Example: James buys Amazon shares on 1/1/2000 for \$10,000. James dies on 6/19/2013. The date of death value of Amazon on 6/19/2013 is \$20,000 (mean of high/low on 6/19/2013). The estate’s basis of Amazon is \$20,000. If estate sells Amazon on 7/1/2013 for \$20,500, only a long term capital gain of \$500 is realized (\$20,500 sales price less \$20,000 stepped up basis).
5. Alternate Value for federal estate tax purposes
 - a. For Federal Estate Tax purposes, Executor can elect Alternate Value if the Alternate Value reduces Federal Estate Tax that is due, AND the Alternate Value of Estate Assets is less than the Date of Death Value of Estate Assets.
 - b. If Alternate Value is elected, basis of assets is the Alternate Value and not the Date of Death Value.
 - c. To determine Alternate Value: Look at each estate asset and what happened to it during the six-month period after decedent’s death:
 - i. Asset sold within six months of date of death: Alternate Value is the sale price.
 - ii. Asset distributed to a beneficiary within six months of date of death: Alternate Value is value at date of distribution.
 - iii. Asset held on six-month anniversary of date of death: Alternate Value is value of asset on six-month anniversary of death.

8) Paying Debts

- a. Identifying Debts
 - i. Monitor Mail for Bills
 1. Forward mail
 - ii. Creditor Notice – Advertise / Court Order
 1. Sets time limit for creditor claims

9) Administration Expenses

- a. Real estate
 - i. Ongoing utilities and insurance until sold
- b. Personal property

- i. Safeguard property
 - ii. Ship to beneficiaries?
 - iii. Insurance
- c. Executor Fees
- d. Attorney Fees
- e. Appraiser Fees
 - i. Real estate, business, personal property appraisals
- f. Accountant Fees
 - i. Income Tax Preparation
 - ii. Estate Tax Preparation

10) Taxes

- a. Forms to File
 - i. Form 56 – Notice Concerning Fiduciary Relationship
 - 1. Tells IRS your company is Executor so IRS sends notices to you
 - ii. Form 4810 – Request for Prompt Assessment
 - 1. Shorten IRS statute of limitations to 18 months from 3 years for income and gift tax returns
 - iii. Form 5495 – Discharge from Personal Liability
 - 1. Discharge Executor from liability for estate, income or gift tax
- b. Personal Income Tax Returns
 - i. Life Period Return
 - 1. Return from 1/1 until decedent's date of death
 - a. Due 4/15 of year following death
 - b. Depending on when decedent dies, the executor might be responsible for filing two years of returns.
 - ii. Unfiled Returns
 - iii. Obtain copies of last three years of returns
 - 1. Statute of limitations open
 - 2. May want to get six years of past returns
- c. Gift Tax Returns
 - i. Form 709 – Gift Tax Return
 - 1. For gifts made in year of death
 - 2. Due the earlier of:
 - a. Federal Estate Tax Return due date (nine months after death), OR
 - b. 4/15 of year following death
 - 3. Unfiled Gift Tax Returns
 - a. Executor must make reasonable inquiry as to whether decedent filed all required gift tax returns
 - i. Review bank, brokerage statements for gifts
- d. Federal Estate Tax Return

- i. Form 706 Required in 2022 if decedent's gross estate plus adjusted taxable gifts exceeds \$12,060,000
 - 1. 2023 Basic Exclusion Amount is \$12,920,000
- ii. Form 706 can be filed for portability if there is a surviving spouse with any size estate.
- iii. Federal Estate Tax Return
 - 1. Who files?
 - a. "Executor" – could be court appointed Executor if Will probated. If no "probate" assets, holder of assets is "Executor" responsible to file return and pay tax.
Example: James dies, and all of his assets are held in a Revocable Trust. The Trustee of that Revocable Trust becomes the de facto "Executor" responsible for filing the Federal Estate Tax return and paying the federal estate tax. The Revocable Trust will usually give the Trustee powers to perform other "estate like" administrative functions like paying debts, funeral expenses, and administration expenses. The Revocable Trust also will delineate how assets are distributed after James' death (what beneficiaries get what). (If all assets are held in a Revocable Trust, this avoids "probate" of the Will, but the Trustee must still administer the trust assets, pay expenses, file taxes and distribute the trust assets pursuant to the trust terms.
 - 2. Return is due nine months from date of death
 - 3. Tax is due nine months from date of death
 - 4. Six-month automatic extension of time to file is available
 - 5. Extension to pay tax can be applied for if
 - a. Business interest exceeds a percentage of estate, or
 - b. Illiquid assets – patents, royalties, lottery winnings
 - 6. Federal Estate Tax Closing Letter
 - a. IRS approval of return and tax paid
 - b. Usually took one year from FILING of Return
 - i. During COVID – two years from filing return
 - c. IRS Audit Notice
 - i. Top reasons for audit:
 - 1. Valuation issues
 - a. Discounts
 - b. Business Interests
 - c. Artwork

- d. Hard to value assets
 - e. Real estate
 - 2. Gift tax returns with large gifts or gift tax paid
- 7. Who pays the Federal Estate Tax?
 - a. Review death tax clause in Will
 - i. Are death taxes paid from residue of estate? Or apportioned in some other way?
 - ii. All-inclusive clause– Executor pays death taxes on EVERYTHING subject to federal estate tax.
 - iii. Limited to probate assets (Executor to pay estate and inheritance taxes only on assets passing under the Will – Executor pays on probate assets.) Beneficiaries may pay estate tax on non-probate assets:
 - 1. Life Insurance Proceeds §2206
 - 2. General Power of Appointment over Trust §2207
 - 3. Marital Qualified Terminable Interest Property (QTIP) Trust §2207A
 - 4. Property with a retained life estate §2207B
 - e. IRS Form 8971 – Information Regarding Beneficiaries Acquiring Property from a Decedent
 - i. Due one month after Federal Estate Tax Return filed
 - ii. Executor sends a notice to beneficiaries of income tax basis of assets that they have inherited or MAY inherit
 - iii. Informational only – no tax due
 - f. State Death Tax Returns
 - i. The following states have an estate tax or an inheritance tax:
 - 1. Connecticut
 - 2. District of Columbia
 - 3. Hawaii
 - 4. Illinois
 - 5. Iowa
 - 6. Kentucky
 - 7. Maine
 - 8. Maryland
 - 9. Massachusetts
 - 10. Minnesota
 - 11. Nebraska

12. New Jersey
13. New York
14. Oregon
15. Pennsylvania
16. Rhode Island
17. Vermont
18. Washington
- ii. <https://media.mcguirewoods.com/publications/state-death-tax-chart.pdf>
- g. Fiduciary Income Tax Returns – Form 1041
 - i. After death, the Decedent's assets still earn dividends, interest, rental income etc.
 - ii. Executor files Form 1041 to report income earned in the estate.
 - iii. Form 1041 must be filed for each year the estate is open.
 - iv. Fiscal Year Return vs. Calendar Year Return
 1. Executor can choose the fiscal year end of the first Return.
 2. James Gandolfini died 6/19/2013
 - a. Longest initial fiscal year end 6/19/2013 – 5/31/2014
 - b. Shortest initial fiscal year 6/19/2013 – 6/30/2013
 - c. Calendar year end 6/19/2013 – 12/31/2013
 3. Return reports income and deductions on a cash basis.
 4. Return is due 15th day of fourth month after year end.
 5. Annual returns continue for each 12 month period following the first year return.
 6. Income tax
 - a. Estate pays income tax on undistributed income and capital gains each year until final year.
 - b. If residuary beneficiaries receive distributions, those beneficiaries receive a K1 to tell them what portion of their distribution is subject to income tax on their personal income tax returns. Estate pays tax on capital gains in estate.
 - c. Final year 1041 – there is no income tax paid by the estate. All income and capital gains/losses or excess deductions are reported by residuary beneficiaries. Residuary beneficiaries receive form K1.

DISTRIBUTIONS TO BENEFICIARIES – CLOSING THE ESTATE

11) Distribution of Estate Assets

- a. When all potential liabilities are resolved the Executor will distribute the estate assets to the beneficiaries named in the Will.

- b. Timing of Distributions:
 - i. Specific bequests:
 - 1. Examples:
 - a. \$10,000 to Doylestown Presbyterian Church
 - b. My Rolex Watch to my cousin, Fred
 - c. Personal Property to my children
 - 2. Distribute after these items are inventoried and appraised
 - ii. Residuary beneficiaries
 - 1. James Gandolfini's estate leaves the residue as follows:
 - a. 30% to Leta Gandolfini (sister)
 - b. 30% to Johanna Antonacci (sister)
 - c. 20% to Deborah Lin (wife)
 - d. 20% to Liliana Ruth Gandolfini (she was eight months old at time of James' death) Will provides that if anything is payable to a beneficiary under 21 years of age, that is held in trust for that person's benefit until they attain age 21.
 - 2. Conservative Approach to Distributions -- If the residue of James' estate (assets after payment of all taxes, debts, administration and funeral expenses, and specific bequests of personal property and dollar amounts) is worth \$30,000,000, the most conservative approach is for Executor to retain that \$30,000,000 until all expenses paid, tax clearances obtained, and creditor period expired (maybe 3+ years after death).
 - 3. Advance Distributions--Executor could advance funds to residuary beneficiaries and hold a reserve for potential expenses, or increased taxes as a result of any audit.
 - a. Example: After filing the Federal Estate Tax Return, Executor decides to advance \$15,000,000 to the residuary beneficiaries. The Executor holds \$15,000,000 as a reserve for additional expenses, debts or additional taxes as the result of tax audits. If the IRS audits the Federal Estate Tax Return, and says the estate owes \$20,000,000 of additional taxes, the Executor will have to go back to the beneficiaries for the money, or may be liable for the tax.
 - 4. Final Distributions – When all liabilities are addressed, Executor distributes remaining funds to the beneficiaries.
 - a. Accounting: Executor provides an accounting to beneficiaries that lists all collected assets, all estate

receipts and expenses paid, and the proposed distribution to beneficiaries.

- i. Informal Accounting – Provided to beneficiaries for their review and sign off.
 - ii. Formal (Court) Account – Filed with the Court for Court Approval of Executor’s actions and release of liability.
 1. Formal Court Accounting may be required if charities are beneficiaries or in certain states.
- b. Receipt and Release and Indemnification – Beneficiaries acknowledge:
- i. That they have reviewed (or had the opportunity to review) all estate records of assets received and expenses;
 - ii. They approve of the administration of the estate by the Executor;
 - iii. They have received what they are entitled to;
 - iv. They won’t sue the Executor;
 - v. They will refund any receipts if the Executor comes back to them for taxes, debts, etc.
- c. Court Adjudication – The Court approval of an accounting is another alternative to absolve the Executor of liability.