

What To Do When Someone Dies....(April 2010)

This article provides an overview of the steps to take when a family member or friend (Decedent) passes away, and answers frequently asked questions.

Make Funeral Arrangements. The first task to tackle when someone dies is to make the final arrangements and to notify others of the death. If the Decedent left specific funeral and burial instructions, with a list of people to be notified, your job is that much easier. If not, you'll need to consult with other family members. Generally speaking to be cremated the Decedent either needed to leave written instructions with regard to cremation in a Will or similar document or have made prior arrangements. If the Decedent failed to make these types of arrangements pursuant to state law, a majority of the closest family must agree to cremation. However, most funeral homes will require the consent of all of the closest relatives. If not, the Decedent will usually be buried or an order for cremation may be sought from the Probate Court. Thus an address book, mailing matrix or holiday card list may be helpful to determine who needs to be contacted.

Most people contact a funeral home for help with arrangements. If the Decedent was religious, call the pastor, priest, rabbi or other religious leader for guidance. It is also traditional to put together an obituary to run in the local paper. The funeral director usually assists with this, the number for the Las Vegas Review Journal, the newspaper with the largest circulation in Nevada or you can call the newspaper and ask about its procedures for publishing obituaries.

Order Death Certificate. The funeral home director will assist with ordering death certificates, or you can contact the Department of Vital Statistics in the county where the Decedent lived. Death Certificates in Clark County are handled by the Health District (www.southernnevadahealthdistrict.org). A form to order copies from the Health District needs to be filled out completely and submitted with a form of identification. How many certificates you need depends on how complex the Decedent's finances were and what estate planning was done before death. I suggest five if matters appear simple, ten if there are multiple accounts or life insurance policies. Others can be ordered at a later date if necessary.

Notify Social Security. It is necessary to notify both the Social Security Administration and any pension company that the decedent has passed away. The social security payment for the month of the decedent's death, under most circumstances, may need to be returned to the Social Security Administration.

If the Decedent has direct deposit, the Social Security Administration will automatically withdraw the funds from the account where they were deposited. You should keep enough funds in that account to cover the indebtedness. Some pension companies, but not all, also request that the pension for the month in which the decedent passed away be returned. You should discuss these issues with the company.

Locate Important Papers. Locate the important paperwork, such as wills, trusts, insurance policies, investment accounts, credit card statements and other evidence of assets and liabilities. If

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the Decedent had financial advisers, such as an accountant, attorney, or insurance agent, you should contact them and ask if any matters need to be taken care of immediately.

Determine Who Has Responsibility. The responsibility for handling an estate falls on whomever is named the personal representative in the decedent's will. If there is a trust, the responsibility falls on the successor trustee for assets titled in the trust. If there is no will or trust, then the Nevada Revised Statutes set forth which family members have priority to serve as the personal representative. The person named is responsible for locating all assets, making sure creditors are paid, tax returns are filed, and assets are distributed. Under Nevada law, if no one is named in the Will, the personal representative must be a Nevada resident or serve as a Co-Personal Representative with a Nevada resident. This is usually the person who will investigate what benefits or insurance proceeds, if any, are owed to any named beneficiaries. If you are the person selected and don't feel up to the task, you can decline. But remember that you are allowed to hire professional help. If you proceed, you probably should have a professional help you.

Change Mail. To help determine assets and liabilities, the Personal Representative/Trustee should complete a change of address form with the United States Postal Service so that he or she receives the decedent's mail.

Secure the Tangible Property. The Personal Representative/Trustee should take steps to secure tangible property, such as silverware, furniture, or artwork. The Personal Representative/Trustee will need to determine accurate values, which may require appraisals.

Determine If Assets Have Named Beneficiaries. Many types of financial accounts can have a payable on death beneficiary or transfer on death designation. These accounts will pass directly to the named beneficiary without the need for probate. The named beneficiary should send the death certificate and a letter of instruction directly to the financial institution with instructions on distribution. For real property with a beneficiary deed recorded on the property, one of the named beneficiaries should record an Affidavit of Death of Grantor along with a certified death certificate.

IRA's, annuities, and life insurance policies frequently have a named beneficiary, and will pass directly to the named beneficiary without the need for probate. The named beneficiary should present a certified death certificate and a letter of instructions directly to the financial institution with instructions of distribution. If the named beneficiary is deceased, or there is no named beneficiary, then the asset would be subject to the probate process.

Handle Property In Joint Tenancy. Assets held in joint tenancy pass directly to the surviving joint tenant or joint tenants without the need for probate. A surviving joint tenant should take steps to remove the name of the Decedent from the asset. For real property, a surviving joint tenant should have prepared and recorded an Affidavit Terminating Joint Tenancy. For bank accounts, a surviving joint tenant should present a certified death certificate to the bank and request removal of the deceased joint tenant. Alternatively, the account may be closed and all the proceeds withdrawn. For vehicles, the surviving joint tenant should present a certified death certificate to the

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Department of Motor Vehicles. For manufactured homes, the surviving joint tenant should present a certified death certificate to the Division of the State of Nevada for Manufactured Housing.

Determine If Probate is Needed. For assets titled in a trust, the successor trustee will need to administer those assets according to the terms of the trust and according to law. A certificate of incumbency should be prepared and recorded. A 90 day notice to creditors needs to be completed. Probate is not needed for assets titled in trust.

For estates not exceeding \$20,000, where the property is titled solely in the name of the Decedent without any beneficiary designation and there is no real property in Nevada, the property may be passed by an Affidavit of Entitlement. This avoids the need for a probate, but does not apply to real estate no matter the value of the real estate. At least 40 days must have passed since the Decedent's death.

If a total value of assets held solely in the Decedent's name, without a beneficiary designation, exceeds \$20,000 a set aside proceedings or a probate is necessary. Please contact our firm to discuss how to proceed.

File Proper Income Tax Returns. If there was sufficient gross income, the Decedent's final income tax return, covering the period beginning on January 1 and ending on the date of death, must be filed and any tax owed must be paid on or before April 15 of the year following date of death. A Federal fiduciary income tax return (Form 1041) for income received by the estate will be required for each year in which the income of the estate exceeds \$600. The beginning of the first year is the date of death. A Form 1041 will also be required if the income received by a trust exceeds \$600.

As of the date of this article, there is no federal income tax for estates of those who die in 2010. If no new law is enacted, the federal estate tax law returns in 2011, and if the gross estate exceeds the exemption amount at time of death, a Federal estate tax return (Form 706) must be filed and any tax due paid within nine months after the date of death.