

What to Do After the Death of a Loved One

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It may be difficult to focus and think clearly after the death of a loved one. Despite this there are a disturbing number of tasks that need to be attended to immediately following the death of a loved one. Hopefully, the following checklist will provide some guidance and structure in this difficult time.

Call Appropriate Authority

If your loved one dies in the hospital, notify a nurse or doctor immediately. If your loved one was in a hospice or under the care of a hospice at home, notify the hospice staff. If the death occurs outside of a medical facility (e.g. home, work), call 911. If the death was expected, make sure to inform the operator of this fact.

Donate Organs

If your loved one wanted organ donation and died someplace other than a medical facility, call 911 and report the death and that the person is a potential organ donor. If your loved one had consented to be an anatomical gift, follow the instructions of the donee organization. The authority for organ donation comes first from an appropriate legal document executed by the decedent (e.g., Will or Advance Directive). If there is no such writing, Maryland law describes who has the authority to make such a decision. The list starts with a spouse or domestic partner, then to a child, and so forth.

Notify Funeral Home or Crematorium

Notify the funeral home or the crematorium of the death. The funeral home or crematorium will typically arrange for the transportation of the body. The decedent's written wishes as to the final disposition of the body are given first priority. If there are none, the Maryland statute lists the individuals and their priority to make these decisions. Arrangements will also have to be made for payment for the funeral or cremation. If there was life insurance for that purpose, many funeral homes will accept an assignment of those benefits.

Contact Family & Friends

Inform family and friends of the death. In this day and age of email, it should be a relatively simple process to notify extended family and friends. It is an effective tool for notifying them of not only the death but the funeral service details. If this is too difficult, don't be afraid to ask for help as the notification process can be particularly emotional.

Notify Guardian/Agent

If your loved one had a power of attorney or guardian appointed by the court, notify these agents of the death. As a matter of law, their power ceases at death.

Immediate Care for Pets

If your loved one had pets, take the necessary steps to ensure their immediate well being.

Care for Property

Houses need to be secured. A vacant house is a target for criminals. Arrangements need to be made for the continuation of necessary utilities for the house. You don't want the pipes to burst because the gas was cut off and the house had no heat. It is also important to notify the insurance company of your loved one's death and make sure that the house is still insured. Similar care should be taken for any automobiles owned by the decedent. The appropriate insurances, taxes, and inspections need to be kept current.

Schedule Service

Work with the funeral home or crematorium to schedule the appropriate funeral service.

Notify Newspaper

Write an obituary and contact the local newspaper to have it published.

Obtain Death Certificates

The funeral home or crematorium should be able to assist you in obtaining original death certificates. Obtain 10 – 15 original death certificates as copies in most instances will not suffice. Life insurance policies and retirement benefits will require original death certificates before making any payments to beneficiaries.

Open Safe Deposit Box

You need to find out whether your loved one had a safe deposit box. If so, you need to open the box. It may contain important legal documents like the Will. It might also contain valuable property. If your name was put on the safe deposit box as an owner prior to your loved one's death, you will be able to accomplish this task easily. If your name is not on the box, the bank will not honor a power of attorney after the death of the agent. The only way to access the box in Maryland is by the duty appointed personal representative or, if needed to find the Will, an Order from court specifically authorizing the opening of the safe deposit box to find an original Will.

Deliver Will to the Court

You need to locate your loved one's original Will and deliver it to the Court. In Maryland and the District of Columbia you deliver the will to the Register of Wills in the County in Maryland that your loved one was domiciled at the time of death or in the District of Columbia. Copies of the Will (albeit extraordinary circumstances) cannot be admitted to probate - you must find the original.

The Will is most often found in a secure location like a safe or fireproof box in the house or in a safe deposit box. In Maryland, the Register of Wills may also be holding your loved one's Will. So you can contact the Register of Wills in the county in which your loved one is living to see if they are holding the original Will for safekeeping. The Will may also be in another county (or state) if your loved one was living someplace else at the time they executed the Will.

Contact Employer

Notify your loved one's employer of his or her death. You may need to request their last paycheck or a payout of unused leave. In addition make sure to inquire as to whether there are any death benefits through the employer.

Contact Life Insurance

Find your loved one's life insurance policies. If you are unsure, look through bank account statements for annual or semi-annual payments that might have been insurance premiums. Once identified, provide them with the death certificates so that the life insurance company can send checks to the designated beneficiaries.

Contact Social Security Administration

If your loved one was receiving monthly Social Security benefits you must notify the Social Security Administration (SSA) so that they can stop the monthly direct deposit. You may also be entitled to lump sum or monthly benefits. These benefits are not automatic; you must complete an application with the SSA.

Contact Veterans Administration

Just like with the SSA, the Veteran's Administration (VA) must be notified if your loved one was receiving monthly benefits. The VA may also offer funeral or burial benefits.

Contact Decedent's Professionals

Make contact with your loved one's lawyer, accountant and financial planner. These trusted advisors may be able to assist you in locating important documents and identifying assets.

Notify Credit Card Companies

You need to notify all of your loved one's credit card companies of his or her death. The immediate reason is to prevent any unauthorized use. You will also want to terminate all automatic payments. If there are outstanding balances, you need to inquire as to whether there was any credit life insurance in place would pay off the balances.

Notify Banks

Call all the financial institution where the decedent had accounts and inform them of the death. Like credit cards, it is important that automatic payments be discontinued. If you owned the bank account jointly with your loved one, those accounts are now legally yours and can be used without limitation. For any accounts in your loved one's sole name, contact the banks about whether any of the accounts were pay-on-death (POD) accounts. If so, proof of death with a death certificate should be all that is needed to transfer the funds to the beneficiary.

Review Mortgage Situation

The immediate instinct to notify mortgage lenders of the death of your loved one needs to be considered carefully. First, so long as the mortgage is kept up to date after death, the mortgage lender will typically be content to receive the monthly amount due. All that the mortgage lender ultimately cares about is that the payments continue. Second, most mortgages contain language which provides that if the mortgagee dies they can accelerate the loan. In other words, they can demand payment in full. Ultimately whether or not you decide to notify the mortgage lender probably depends upon whether you intend to keep the property, sell the property, or let the property be foreclosed upon. Note that there is an exception for spouses -- the mortgage cannot be accelerated against the surviving spouse. Finally, there may be another reason to contact the mortgage lender -- to learn whether there was any mortgage life insurance that would pay off the mortgage balance.

Collect Mail

You need to start collecting the decedent's mail. Important information regarding assets and creditors will be missed otherwise. Additionally, in order to ensure that property is preserved in the short term it will be necessary to see any notices concerning utility bills, taxes, etc. Finally, it is important that mail does not just pile up in the mailbox. This is a clear sign to criminals that the house is vacant. Unfortunately, you probably will not be able to officially forward mail until and unless someone is appointed the personal representative of the estate.

Notify Digital Providers

Each individual internet service provider has a different policy about who has access to the information following a subscriber's death. So if you do not have the user identification and password, you may or may not be able to access this information.

If you do have access, it may be helpful to create a rule forwarding your loved one's email to your email address. This is particularly important as so many bills and financial transactions occur via email now. Again, assuming you have user identifications and passwords, you might also attempt to access sites that your loved one used (e.g. Facebook) and retrieve personal information, stories, pictures, and videos. With regards to Facebook, once Facebook learns of the user's death, the account is placed in a "memorial" status. At this point no one can log in and the information cannot be altered or removed. Friends can still view the pages and post comments. The personal representative can also ask that the memorialized pages be removed.

Check Recent Tax Return for Assets

Locate the last couple years of the decedent's tax returns. This is especially helpful if you are having a difficult time identifying all of the decedent's assets. Any income will have been reported and should be identified in the appropriate W2s and 1099s attached to the tax return.

Gather Bills From Creditors

By monitoring the decedent's mail and email after death you should be able to create a detailed list of all creditors of your loved one. Please note that you (or anyone else for that matter) are not responsible to pay your loved one's debts unless you had co-signed on the obligation. The creditors may have a legal claim on the assets in the estate of your loved one if they file a claim. It is important to know this information if and when you open up an estate.

Determine Whether Probate Needed

At some point in this process, you need to determine is whether probate is needed. Simply put, probate is the legal system used to transfer property owned by your loved one to living persons or entities. So the collection of the decedent's property is the "estate" and the process to transfer legal ownership of the estate is called "probate."

To determine whether probate is needed, make a list of all assets your loved one owned at the time of death. If there are assets like a house, vehicle or bank account titled in their sole name with no pay-on-death (POD) beneficiary -- you must go through probate. This is the only mechanism to change the name on the deed, title, or account.

- *Nonprobate assets.* If, however, all of the assets were owned jointly or with a beneficiary, then there may be no reason to go through probate. These assets are called "nonprobate assets." As a matter of

law, jointly owned property becomes owned by the surviving joint owner immediately at death. No official legal action must be taken to accomplish this. Property with a beneficiary (e.g. life insurance, 401k) or pay-on-death designation passes directly to the named beneficiary simply upon proof of death.

- *Joint accounts.* Although not necessary, it is advisable to notify financial institutions of the death of the joint owner so that they can change the name on the account and make sure that income is no longer reported to the deceased's social security number.

- *Jointly owned vehicles.* There is no need to make an immediate trip to the Department of Motor Vehicles until the registration needs to be renewed. At that time, you will need to use the death certificate to change the legal ownership of the vehicle.

- *Jointly owned houses.* In most cases, the deed to the jointly owned house does not need to be changed. Most property is owned as joint tenants and, as such, passes to the surviving co-owner. Upon the sale of the house, the surviving owner will just need to produce an original death certificate to the title company at closing. An exception to this general rule occurs if the property was titled as "tenants in common." With this type of property, the deceased owner's share of the property passes to his or her heirs. In that scenario, probate would be needed.

- *Personal property.* Items such as wearing apparel (other than jewelry or furs) and provisions for family consumption are also nonprobate assets.

- *Exceptions.* In a few circumstances probate is still needed even though all of the assets are nonprobate assets. After petitioning for probate, the court will appoint a personal representative. The personal representative is the legal agent of the deceased and the only one who has the power to act on behalf of the estate. A personal representative is required to obtain copies of the decedent's medical records and to file a lawsuit.

Evaluate Potential Tax Liability

As a final matter, you need to consider whether any taxes returns need to be filed. For instance, if the total value of the estate, both probate and nonprobate property, exceed one million dollars an estate tax return is required in the State of Maryland. This is true even if no Maryland estate tax is actually due. Also, if individuals further removed in relationship than a sibling are receiving nonprobate property, Maryland inheritance tax may be due. For example, inheritance tax may be due if the decedent jointly owned a house with a friend or had designated a niece as a life insurance beneficiary. In both of these circumstances, an application to file inheritance tax will need to be filed in Maryland.

CONCLUSION

If you have determined that probate is needed or taxes due (or simply don't know) - it is advisable to seek professional guidance. In small estates in Maryland (probate assets less than \$50,000 for a single person or \$100,000 for a married person), an attorney is often not necessary. Otherwise, proper legal counsel can be an invaluable tool. At Berman, Sobin, Gross, Feldman, & Darby, LLP we can assist with all of these services from the filing of a simple small estate to complicated Maryland and Federal estate tax returns.

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