

THE DECEDENT ESTATE PROCESS: AN OUTLINE

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Key Question # 1

-Did The Decedent Leave Any Probate Estate Property?

No, if-

- Joint Tenancy (JTWROS) – real estate- stocks, bonds & equities
- Payable to Either or the Survivor – deposit accounts-
- ITF (“in Trust for”) – deposit accounts
- POD (“pay on death”) savings bonds
- A named beneficiary - Life insurance – Retirement accounts (IRA; 401(k))
- Asset held in a Trust (not owned by Decedent)

Key Question # 1

-Did The Decedent Leave Any Probate Estate Property? (con't)

Yes, if

- Individually owned real estate
- Bank accounts with sole owner name
- Stocks, bonds, equities individually owned
- Life Insurance or retirement accounts with no listed beneficiary (NOTE- some contracts contain “default language” which may designate heirs)
- Vehicles (NOTE- By law a surviving spouse is considered a joint owner of a “pleasure vehicle – RSA 261:17)
- Open, pending or potential legal claims or actions.

Key Question # 2

-Did The Decedent Leave A Last Will & Testament?

If yes ("Testate"),

- Was it validly Executed (witnessed & acknowledged)?
- Was the Decedent capable of executing it (legal age, competent, not subject to undue influence)?
- Does it reference the required individuals (i.e., are there "pretermitted heirs" RSA 551:10)?

Key Question # 2

-Did The Decedent Leave A Last Will & Testament? (con't)

If no ("Intestate"),

- State law determines who receives the estate assets and in what shares- RSA 561:1.

Key Question # 3

- Is the estate eligible for a "Waiver of Administration" process under RSA 553:22?

Yes if,

- Testate, and the sole beneficiary serves as fiduciary.
- Testate and all beneficiaries serve as co-fiduciaries, or if they all consent to a fiduciary.
- Testate and the beneficiary is a trust and the Trustee serves as fiduciary of the estate.
- Intestate, and sole heir serves as fiduciary.
- Intestate and all heirs serve as co-fiduciaries, or if they all consent to a fiduciary.
- The Probate Court approves a request for Waiver of Administration. RSA 553:32(l)(a)(6).

The process begins:

Step 1- The Decedent's Death Certificate and Last Will and Testament (if Testate) are filed with the Probate Court Filing Center in Concord.

Step 2 - Determine who will be the Petitioner (RSA 553:2)

- Named fiduciary in Will
- Heir at law
- Named party with written consent of Heirs.
- Devisee
- Creditor (TOWN is creditor for unpaid taxes!)
- A suitable Party as determined by the Court.

Step 3 - A "Petition for Estate Administration" is filed with the Probate Court Website (all Probate filings are done electronically through the designated Website).

Step 4 - File any other needed forms:

- Appointment of Resident Agent (for out-of-state fiduciaries)
- Certification of Trust (if Trust is beneficiary)
- Certificate of Foreign Counsel (if Will is executed outside New Hampshire)
- Petition to Administer as Insolvent (if necessary)

The "Petition for Estate Administration" -

- Asks the Court to "approve" the Decedent's Will (if Testate).
- Asks the Court to appoint a "fiduciary" of the estate:
 - An Executor/Executrix if named in Will
 - An Administrator WWA if there is a Will, but the named Executor
 - An Administrator/Administratrix is there is no Will
- Requests "Waiver of Administration" if eligible.
- Lists beneficiaries of estate (if Will) and "heirs at law"
- Indicates estimated value of estate.

Step 5. Upon receipt of the Petition, the Court will issue a "Notice to Beneficiaries (persons named by Will to inherit)/Heirs (no Will, persons to inherit by law)/Heirs at Law (person who would inherit IF there was no Will, but are not named as beneficiaries)

Step 6. Unless the Filing is done as a Waiver of Administration, the Court will order the filing of a Fiduciary Bond. The purpose of the Bond is to protect creditors and beneficiaries in the event of defalcation by the Fiduciary. Generally the bond amount is the value of the estate.

Step 7. The Court issues an "Appointment Order" appointing (one or more) fiduciary of the estate. The Court issues a Certificate of Appointment (additional certified copies can be secured) under Court seal, which allows the appointed person/entity to take custody of estate assets.

Examples:

- Withdraw and close bank and investment accounts.
- Transfer assets (e.g. vehicles; stocks, bonds equities).
- Collect items without named beneficiary (e.g. life insurance and retirement accounts).

Step 8. Unless the filing was done as a Waiver of Administration, within ninety (90) days of filing, complete and file a Fiduciary Inventory, listing all assets of the deceased, and their "date of death" values. This includes:

- Value of real estate, by appraisal, BPO (broker price opinion) or equalized tax assessment
- Bank accounts as of date of death
- Stocks, bonds and equities with closing price as of date of death
- Business assets
- Receivables due (notes, IOUs, funds due the Decedent as of date of death from estate or trust distributions, etc).
- Vehicles

Inventory of Fiduciary, (con't)

- Personal property at estimated value
- Cash on hand

Step 9 . Wait six (6) month statutory claims period. RSA 554:

By law creditors of the estate must "exhibit their claim" within six (6) months of the date of appointment (NOTE: Purpose of so-called Tombstone notices). RSA 556:3. As a result, an estate must be "open" at least that long. No lawsuits can be commenced against an estate during this 6 month period (RSA 556:1), and any suit against an estate must be brought within one (1) year. RSA 556:6

Step 10 – Closure of the estate. If the six (6) month claims period has passed, and (i) all the assets have been collected and/or liquidated, (ii) there are no unresolved claims, the fiduciary can move to close the estate.

If the estate was done as a "Waiver of Administration", closure involves completing and filing a brief Affidavit, affirming all administration has been completed, and the estate can be closed.

If the estate was not done as a Waiver, in a Testate Estate, any "pecuniary bequests" should be satisfied (items delivered to recipients; cash bequests paid).

In closing an estate, the Fiduciary the has two (2) options:

- Motion for Summary Administration. This eliminates the need for an "Accounting" filed with the Court, but does require written consent of all Interested Parties. Once approved a Bond Discharge is issued and the estate is closed.

- Filing a "First and Final Account" which is a financial summary of
 - Amounts on Inventory
 - Additions, including assets discovered (not Inventoried), income dividends, refunds, etc.
 - Amounts paid out, representing debts, taxes, probate expenses and legal fees
 - The amount left for distribution for the beneficiaries and/or heirs.
 Notice is given of the filing of the Account, and Interested Parties can file Objections, in which case the Probate Court will schedule a hearing. If there are no Objections, or any Objections are overruled by the Court, the distribution is completed, a Bond Discharge issued, and the estate is closed.

Real Estate-

Real Estate owned by a Decedent must appear on the Inventory of the Fiduciary (if one is required). HOWEVER, the Decedent's Real Estate cannot be sold by the Fiduciary unless-

- Written Consent is received from all the devisees (persons entitled to receive under a Will) or Heirs (Intestate Estate)(RSA 559:18), or
- The Fiduciary requests and receives a "License to Sell" from the Probate Court, either because the sale is needed to pay debts (RSA 559:1) or because the Will (in a Testate Estate) specifically directs that the real estate be sold. RSA 559:17.

Real Estate- (con't)

If the real estate is sold by the Fiduciary, a "Return of Sale" form must be filed. The proceeds of the sale (except as needed to pay debts, expenses, etc.), pass to the person(s) who would have inherited the real estate. RSA 559:19

Real Estate- (con't)

If real estate is NOT sold out of an estate, a Fiduciary must complete and file a "Notice to Cities and Towns" under RSA 554:18-a. A copy of this Notice must be sent to the Town. The form includes the name of the deceased, the address (and Book and Page) of the real estate, and the name and address of the new owner(s). This form is typically relied upon to change the assessed owner of the real estate from the Decedent to the new owners.

Not a filing copy

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
183 www.courts.nh.gov

Court Name: _____
Case Name: Estate of _____
Case Number: _____

NOTICE TO TOWNS AND CITIES PURSUANT TO RSA 554:18-a
Notice to filing cities for completion of the real estate identification form to be filed (issued by the decedent or estate) from the decedent to the parties listed.

1. Decedent Name: _____ Date of Death: _____
Residence: _____ City: _____ State: _____

2. Location of Real Estate: _____

3. Name and address of recipient(s)
Name: _____ MAILING ADDRESS: _____

4. The deed to this real estate is recorded in the _____
COUNTY _____ BOOK/PAGE _____

5. I certify to the Probate Division that the notice was sent to the Assessor of the City of _____ or Assessor of the Town of _____ as required by law.

Name of filer: _____ in _____
Capacity of filer: _____
City/Town/Village: _____ Telephone: _____
Address: _____ E-mail: _____
City: _____ State: NH ZIP: _____
File No. _____ Date Filed: _____

Real Estate- (con't)

Applicable Statutes for Tax Assessment

73:10 Real Estate. – Real and personal property shall be taxed to the person claiming the same, or to the person who is in the possession and actual occupancy thereof, if such person will consent to be taxed for the same; but such real estate shall be taxed in the town in which it is situate. Any assessments report issued by the commissioner pursuant to RSA 21-J:11-a shall not affect the obligation of the taxpayer to pay property taxes otherwise lawfully assessed.

73:21 Estates. – Estates of persons deceased may be taxed to the widow, to any of the children, to the heirs, or to any other person who will consent to be considered as in possession thereof, otherwise to the heirs generally of such deceased person.

Owner/Taxpayer has deceased- Suggestions:

- Is there a surviving co-owner? Assess them!
- If property was individually owned, has an estate been opened? Contact Probate Court for county of Decedent.
- If an estate is opened, assess the Estate c/o the named fiduciary.
- If no estate, assess to surviving spouse (if any) or to children (RSA 73:21). Check for obituaries.
- If nobody can be found, assess to heirs generally at "address unknown"

- Consider filing a Petition for Estate Administration as "creditor" and then request License to Sell Real Estate. This will result in taxes being paid, and the property getting back on the tax role sooner.

So what does this mean for Tax Collectors?

In one sense, nothing- the Tax Collector works with the Warrant they are given-

However, understanding the process allows you to share knowledge with other Town officials.
