



IMPORTANT
CONSIDERATIONS
WHEN YOU HAVE
LOST A LOVED ONE

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Those who lose a loved one face many challenges. In addition to the emotional loss, the bereaved may struggle with legal and financial issues. This booklet provides guidance for resolving some of these issues.



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This booklet is intended to provide general information and is not intended to constitute legal advice relative to a specific situation. Wisconsin law is the basis for state law issues, which may not be applicable in all cases. You should consult with an attorney regarding your particular situation before acting on any information contained in this booklet.

1 *Inventory of Assets & Debts of the Decedent – Check the Mail*

Preparing an Inventory of the assets and debts of the decedent is a primary part of all estate administrations. Some basic techniques can be used to uncover most of the decedent's assets and liabilities. Perhaps the best way is to monitor the mail of the decedent for account statements and bills. Monthly and quarterly bank and investment account statements provide detail as to the decedent's cash and investment assets; they also provide information as to which institutions the decedent may have a safety deposit box. Safety deposit boxes should be checked for important legal documents of the decedent. The bills that the decedent receives should provide substantial insight into what debts, if any, the decedent left behind.

The decedent's income tax returns for the few years prior to the decedent's death are also good sources of information. These returns may include pension, interest, dividend and capital gain information. Obtaining a credit report is another method of isolating the debts of the decedent. A credit report can be obtained by the personal representative of the decedent's estate. To run a free credit report, go to www.freecreditreport.com.

An inquiry to the U.S. Treasury can be made to determine if the decedent had any U.S. Treasury Bonds which have not been redeemed. This inquiry is made by filing a Form PD F 1048 which is available online at www.treasurydirect.gov.

2 *Find & File the Last Will & Testament*

An original or a copy of the Will of the decedent must be found and filed with the probate court of the county in which the decedent died a resident. A Will normally sets forth a decedent's intentions for the distribution of his or her assets, the appointment of a personal representative of his or her estate, and the appointment of a guardian for any minor or disabled children of the decedent. If only a copy of the decedent's Will can be found, then testimony of witnesses may be required for the copy to be accepted by the probate court.

If a Wisconsin decedent dies without a Will, then the probate estate must be distributed according to the Wisconsin rules of intestacy. These rules, among other things, provide that if a decedent is survived by a spouse, then all of the probate assets are to be distributed to the surviving spouse. However, if the decedent is also survived by one or more children from outside of the current marriage, then approximately half of the probate assets are to be distributed to the surviving spouse and the other half to the surviving children. If the decedent is not survived by a spouse or children, intestacy provides for a plan of distributions among the decedent's parents, brothers and sisters, nieces and nephews, and so on.

3 What is Probate & Does It Apply to the Estate of the Decedent

“Probate” describes a court proceeding in which the property of the decedent is transferred to those who are entitled to it by provisions of the Will or intestacy, but only after the rights of all interested parties are protected, certain creditor’s claims are paid, and taxes, both state and federal, are determined and paid. The extent to which probate applies to an estate depends upon the amount of the decedent’s assets that are subject to probate.

Generally all of the assets of a decedent are subject to probate, except those assets which transfer outside of the provisions of the decedent’s Will or intestacy, such as: (i) assets the decedent transferred to a trust prior to his or her death; (ii) assets transferred according to the provisions of decedent’s marital property agreement upon the decedent’s death; (iii) assets in which the decedent owned a joint tenancy interest with one or more surviving tenants who have the “right of survivorship”; (iv) assets in which the decedent held only a life estate interest; (v) bank accounts, investment accounts and savings bonds in which the decedent named as a pay on death (“POD”) or transfer on death (“TOD”), an individual who survives the decedent; and (vi) life insurance policies, annuities, individual retirement accounts (“IRA(s)”), 401(k)s and other qualified retirement accounts. These assets are not subject to probate.



If the total value of the assets subject to probate exceeds \$50,000, a full probate proceeding is required in Wisconsin to transfer the assets of the decedent. The initiation of such a proceeding requires the filing of an application with the applicable probate court. If the total value of the assets subject to probate is \$50,000 or less, certain summary probate procedures may be used to transfer the assets without court involvement.

More information on probate is available online, including frequently asked questions, forms and addresses and telephone numbers to the Wisconsin probate courts at the website of the Wisconsin Register in Probate Association at www.wripa.org.

4 *Transferring Joint Assets & Pay on Death Accounts, Obtaining Life Insurance Benefits, & Transferring Vehicles*

Many accounts are held jointly or include a designation of a POD or a TOD. Such accounts transfer, without probate, to a joint owner or the beneficiaries named on the POD or TOD upon the death of an owner. Joint ownership or the designation of a POD or TOD is normally reflected on the titling of an account. These accounts can be transferred following an owner's death by providing the custodian institution with a certified copy of the deceased owner's death certificate.

Real estate can also pass without probate to a joint owner or to a TOD beneficiary. For example, real estate owned jointly with the "right of survivorship" passes automatically upon the death of an owner to the surviving owners. Similarly, real property subject to a TOD passes, without probate, to the designated TOD beneficiary upon the death of the owner. A survivorship interest in real property or a TOD designation generally must be reflected on the deed to the property. Certain forms need to be filed in order to reflect the transfer of real property by way of survivorship or TOD. The termination of a decedent's interest in jointly owned property is acknowledged by the filing of a Form HT-110, "Termination of Decedent's Property Interest." Similarly, the filing of a Form TOD-110, "Transfer on Death" is used to complete the transfer of property subject to a TOD. Forms HT-110 and TOD-110 and instructions are available online at www.wrdaonline.org.



Life insurance benefits can also be distributed without probate. These benefits are available to the named beneficiary upon the production of a certified death certificate and a completed application for benefits. The life insurance company should be contacted to obtain the required beneficiary forms.

Finally, a decedent's vehicles can be transferred to a surviving spouse or surviving heirs without probate by filing a Form MV2300, "Statement of Transfer of Vehicles to a Surviving Spouse or Surviving Heir" with the Wisconsin Department of Transportation. For a vehicle to be transferred to a surviving heir through a Form MV2300, however, the decedent must leave solely owned property that in the aggregate does not exceed \$50,000 in value. This limitation does not apply to a surviving spouse. The Form MV2300 is available online at www.dot.wisconsin.gov.

5 *Qualified Tax Deferred Accounts, Individual Retirement Accounts, & 401(k)s*

Special consideration must be paid to qualified tax deferred accounts, such as IRA(s) and 401(k)s. It needs to be determined whether the decedent's "minimum required distribution" needs to be withdrawn. The minimum required distribution refers to the amount required to be withdrawn annually to avoid tax penalties. If the decedent dies on or after his or her "required beginning date," then the decedent's minimum required distribution for the year of his or her death must be made as if the decedent lived through the year. The required beginning date refers to the date in which a person must begin withdrawing funds from his or her IRA(s) or 401(k)s to avoid penalty; this date is normally April 1st of the year following the year in which the account owner reached the age of 70½. To the extent that the decedent did not take his or her entire minimum required distribution before his or her death, it must be taken by the decedent's beneficiary before the end of the year to avoid tax penalties.

In addition, the beneficiary designations of these accounts need to be examined to determine who is to receive the balance of the accounts. A proper designation allows the beneficiaries to receive these funds without probate. Depending on the manner of the beneficiary designations, moreover, the beneficiary may continue the tax deferral on the income of the account for a period of years up to the beneficiary's life expectancy. The determination of who is the beneficiary of each such account must be made by September 30th of the year following the account owner's death. The rules for continuing the income tax deferral on IRA(s) and 401(k)s are highly complex; they should be discussed with a tax advisor before funds are withdrawn from an account.

6 *Government Benefits*

Many benefits are available to surviving spouses and children of a decedent through both federal and state programs. The most common government benefits are provided through the Social Security program.

For qualified individuals, Social Security provides both a one-time death payment of \$255 as well as continuing monthly Social Security survivor's benefits. Individuals who may be entitled to Social Security survivor's benefits, include widows, widowers (and divorced widows and widowers), children and dependent parents. Applications for survivor's benefits can be made by telephone or in person at any Social Security office. An application should be made promptly because some benefits only start upon the date of the application.

The amount of monthly Social Security payments to which the decedent was entitled is the base for determining the amount of the survivor's benefits. This base amount is adjusted according to the survivor's relationship to the decedent. The adjustment may vary from 100 percent of decedent's benefit for a surviving spouse, who has reached full retirement age, to 75 percent of the decedent's benefit for a child of the decedent. The total survivor's benefits permitted a single household are capped, moreover, at 180 percent of the decedent's benefit. More information on Social Security Survivor's Benefits is provided by the Social Security Administration electronic booklet entitled "Survivors Benefits" which is available online at www.ssa.gov.

The State may have a claim to recoup certain government benefits received by the decedent during his or her life. For example, the estate may be subject to a claim for medical assistance the decedent received under Wisconsin Family Care or Medicaid. The State can seek payment of these claims in a probate as well as against joint accounts and POD accounts and through liens on the recipient's home.

7 Income Tax Returns Need to be Filed

Death does not eliminate a person's income tax liability. A final income tax return may need to be filed to report the income of the decedent for the period beginning January 1st and ending on the date of the decedent's death. If the decedent is survived by a spouse, then a joint return may be filed for the decedent and the surviving spouse for the year of the decedent's death. A surviving spouse who maintains a household for qualified dependent children may use the lower joint income tax rates for two years following the death of the decedent.

An income tax return may also need to be filed to report income earned by the estate of the decedent and/or any trust of the decedent. Income tax returns filed by estates or trusts are referred to as "Fiduciary Income Tax Returns." If the estate is subject to probate, the State of Wisconsin requires the filing of a Form CC, "Request for Closing Certificate for Fiduciaries." The Fiduciary Certificate to Close Estate reports that the decedent has no outstanding tax liability to the State of Wisconsin.



8 *Estate Tax Returns – Probably Not Required*

Despite all of the press about the horrors of the “death tax,” very few estates are actually subject to estate taxation. Under the federal estate tax law for 2009, only “taxable estates” of \$3.5 million or more are subject to federal estate taxation. As of the date of this publication, there is no federal estate taxation for people who die in 2010, but for 2011 and later years, federal estate taxation is imposed on taxable estates of \$1 million or more. Wisconsin currently has no estate tax, but in the recent past it imposed an estate tax on estates of \$675,000 or more.

The amount of a “taxable estate” is determined through complicated rules for the inclusion of certain items, such as all property owned by the decedent at death as well as certain taxable gifts made by the decedent during life, and for the subtraction of other items, such as certain bequests to or for a surviving spouse or a qualified charity. Key to an estate tax determination is the value of all assets the decedent is leaving to beneficiaries other than a surviving spouse or a qualified charity.

For the vast majority of people, estate tax does not apply. Less than two percent of all estates are subject to federal estate tax. According to the statistics published by the United States Treasury, only 38,031 Federal Estate Tax Returns were filed in 2007 as compared to 142,978,806 Federal Income Tax Returns. Nevertheless, a tax advisor should be consulted for a more detailed discussion of the calculation of a decedent’s taxable estate and a determination of any estate tax liability.

9 *Potential Creditor Claims of the Decedent – Pay the Mortgage but Perhaps Not the Credit Card Bill*

The manner in which a decedent’s debts can be dealt with depends upon whether the debt is secured or unsecured. Secured debts refer to debts in which the creditor retains an interest in the debtor’s property as collateral. Examples of secured debts include car loans and mortgages. These debts are generally not dischargeable through an estate administration. Secured debts must either be paid or the property transferred subject to the debt. For instance, real estate encumbered by a mortgage is generally transferred subject to the mortgage. A failure to pay secured debts can result in foreclosure and the loss of the property.

With some exceptions, the collection of unsecured claims can be barred through an estate

administration. Unsecured debts include credit card bills, utility bills, hospital bills, etc. To bar collection of these debts specific statutory procedures must be followed, including the publishing of legal notice of the decedent's death and of a deadline for filing claims against the estate or trust of the decedent. For known creditors, whose addresses are readily obtainable, notice must be served upon them to bar their claims. Providing unsecured creditors with notice can decrease the time in which they can seek collection from years to only a few months.

The collection of certain unsecured claims cannot be barred by these procedures. These claims include: federal and state tax liabilities, claims for medical assistance provided by the State through Wisconsin Family Care or Medicaid, personal injury claims, claims arising out of a marital property agreement, and funeral or trust administrative expenses.

10 *Materials to Provide an Estate Attorney*

Because of all the complications involved in settling the affairs of a decedent's estate, the assistance of an attorney is recommended. To move the estate administration forward promptly, certain materials should be brought to an initial meeting with an attorney or provided to the attorney prior to the initial meeting. Such materials may include:

- Certified copies of the decedent's death certificate
- An original or copy the decedent's Will
- A copy of any trust executed by the decedent or in which the decedent was a beneficiary
- Any written statement the decedent prepared for the distribution of tangible personal property, e.g., jewelry, collectibles, automobiles, and furniture
- The names and addresses of the decedent's spouse, all of the decedent's living children, all of the children of any of the decedent's deceased children, and any other beneficiaries named in the decedent's Will
- A copy of the federal and state income tax returns for the decedent for the two years prior to his or her death
- Recent bills or account statements
- A copy of a deed to any of the decedent's real estate together with a recent real estate tax bill
- A list of any government benefits received by the decedent during his or her life

These materials should allow the attorney to effectively evaluate the nine considerations described above, and proceed with the estate administration accordingly. A great deal of time and expense can be saved by providing the attorney with this information at or before the initial meeting.

Key Terms in the Administration of a Decedent's Estate

Decedent:

Refers to a person who has died recently.

Estate:

Refers to the property that one leaves after death.

Estate Administration:

Refers to the process of administering the affairs of the decedent's estate including the gathering and distributing of the decedent's assets and resolving the decedent's debts.

Intestate Succession or Intestacy:

Refers to a statutory plan for the distribution of the probate estate of an individual who dies without a Will.

Last Will and Testament ("Will"):

Refers to a document by which a person directs his or her estate to be distributed upon death.

Pay on Death Accounts ("POD") and Transfer on Death Accounts ("TOD"):

Refer to accounts that provide for the designation of a beneficiary to whom the account transfers without probate upon the death of the account owner.

Personal Representative:

Refers to a person appointed by a probate court to manage the probate estate of a decedent.

Probate:

Refers to a court proceeding through which the affairs of a decedent's estate are resolved and assets of the decedent's probate estate are distributed.

Probate Estate:

Refers to the assets of the decedent subject to probate administration.

Right of Survivorship:

Refers to a surviving joint owner's right to receive a deceased owner's interest in the property upon the deceased owner's death without the need for a probate.



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Practice Areas

- Estate Planning
- Tax & Succession Planning
- Elder Law, Medicaid & Medicare
- Probate & Trust Administration
- Tax Controversies
- Business Matters
- Tax Exempt Organizations
- Real Estate

Education

- Marquette University, B.A., 1995
- DePaul University, J.D., 1998
- University of Florida, LL.M., Taxation, 1999

Peter assists clients with estate and business planning, trust and probate administration, taxation and elder law issues, including Medicaid and Medicare. Peter has also litigated tax and non-tax issues for clients in Federal and State courts. Peter has a masters of law degree in taxation, and he is licensed to practice law in Wisconsin, Illinois and Florida.

Examples of Peter's Recent Work

- Preparation and implementation of more than 500 estate plans for distinct clients with interests in Wisconsin, Illinois and Florida
- Successful representation of taxpayers in multimillion dollar Income, Estate and Gift Tax Audits at the Federal and the State level, involving various legal issues and valuation disputes
- Successful representation of Lac La Belle Golf Club, Inc. in a multimillion dollar real estate tax dispute with the Village of Lac La Belle
- Successful representation of parties in Will contests and a wrongful death action
- Serving as co-lead counsel for the participants of the 401(k) Savings Plan for Harnischfeger Industries, Inc. in the case of *Kling v. Fidelity Management Trust Co.* which led to the recovery by the participants of \$10.85 million
- Successful resolution of Title XIX eligibility issues permitting the qualification of clients for needed government medical assistance

Articles

- "Save Transfer Taxes with Family Limited Partnerships," *Tax Strategies (an RIA Publication) June, 2001*
- "No Swing Vote Premium on Minority Interest in Family Business," *Tax Strategies (an RIA Publication) December, 2001*
- "Kimbell Decision Breaths Life into FLPs," *Tax Strategies (an RIA Publication) July, 2004*

Professional Associations and Affiliations

- Member, State Bar of Wisconsin (Member, Tax, Elder Law and Real Property and Probate sections)
- Member, State Bar of Illinois
- Member, State Bar of Florida (Member, Tax and Elder Law sections)
- Member, Milwaukee Bar Association
- Member, National Academy of Elder Law Attorneys, Inc.
- Member, Wisconsin Chapter of National Academy of Elder Law Attorneys, Inc.
- Admitted to practice in the U.S. Court of Appeals for the Seventh Circuit, the U.S. Federal District Courts of the Eastern District of Wisconsin and the District of Massachusetts.



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