

THE TONEY LAW FIRM

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Personal Representative Memorandum of Instructions and Duties

Below is a list of common duties of the Personal Representative. This list is a general guide to the responsibilities that may arise as the estate progresses. Additional duties may arise and should be discussed with our office. If you ever have a question about these duties, please call us.

Gathering of Information and securing the Decedent's House and Personal Property.

As Personal Representative, you are the appointed individual to gather the information for the Decedent's assets. This includes information regarding any real estate deeds, bank accounts, life insurance policies, retirement accounts, outstanding bills, etc.

You should secure the Decedent's belongings and home. If you feel the need, you may change the locks to the home. Also, we suggest that you check the water connections to any appliances in the home to ensure that leaks do not occur. Reset any programmable thermostats to save on energy costs. Vacant homes should be monitored closely to be sure that they are secure.

You are required to inventory all the Decedent's assets and provide a list of such assets to the Court within sixty (60) days of your appointment as Personal Representative by the Court. Please provide a list of all assets and their values to our office to properly prepare the Inventory needed.

The Decedent's tangible personal property includes items such as household furniture, furnishings, and appliances. These items may be lumped together in value and are not required by the Court to be individually itemized in detail.

Motor Vehicles

To avoid risk of liability, you should secure all automobiles, boats, jet-skis and other recreational vehicles to ensure that no unauthorized individual operates during the estate proceeding. The Estate and/or Personal Representative may be liable if there is damage to another person or property by someone operating Decedent's vehicle prior to conclusion of the estate or distribution of that asset to a beneficiary or purchaser.

Safe Deposit Box

If the Decedent maintained a safe deposit box, please contact the institution where the box is located to determine the requirements for you to open the safe deposit box and examine or remove its contents. If you are allowed to remove items or make copies of the documents inside, please do so and provide a copy of those items to our office for review.

Insurance Policies

Please notify all known insurance companies (home, automobile, life, etc.) of the Decedent's death and request a copy of the Certificate of Insurance for each policy. Please provide copies of any life insurance policies received to our office for review if the estate is the beneficiary.

If the cause of death was accidental, such as resulting from a fall or car accident, check with banks/broker's or other agencies that may have

accidental death insurance available.

If the Decedent had a life insurance policy, the listed beneficiary of said policy should be provided a copy to claim the benefits.

If the Decedent had medical insurance policy, you will need to apply for medical and hospital benefits under those policies and Medicare, if applicable for outstanding medical bills. Cancel all policies of health insurance the decedent was paying for and apply for a refund, if any.

Creditors

You MUST determine all reasonably known creditors for the Decedent to send them notice directly of the pending estate.

Please review all mail, bank statements, checkbooks, tax returns, funeral expenses, online accounts, medical bills, etc. and make a list of any individual or institution that the Decedent owed money to. Cancel all items that have a monthly or yearly subscription (magazines, etc.) Please provide the attorney with a copy of the creditor list and any copies of statements or invoices for outstanding debts of the Decedent.

Please note: if a creditor is known by you or reasonably known by you, and you do not notify them of the pending estate, you may be personally liable to the creditor for the debt owed and not paid out of the Estate. Therefore, we strongly urge you to notify our office of ALL possible creditors for the Decedent.

Verify whether any monthly payments are due for Mortgages, Homeowner's Associations, telephone, utilities, etc. If funds are available from the Estate, please pay outstanding amounts and disconnect/terminate any unnecessary utilities or services. Please speak to the attorney prior to using any personal funds to pay these expenses.

Termination of Powers of Attorney

Please notify all reasonably known financial institutions of the Decedent's death so that the financial institutions do not release any funds based upon a Power of Attorney executed by the Decedent prior to his or her death. The authority of Power of Attorney is extinguished by the death of the Decedent.

Taxes and Tax Returns

If a tax identification number (TIN) for the estate is required, our office will apply with the IRS for you. You have already executed the SS-4 authorizing our office to obtain this information. We will contact you with the TIN for opening of an estate checking account.

Enclosed is IRS Form 56 (Notice Concerning Fiduciary Relationship). This lets the IRS know that you are now appointed as personal representative of the estate. Please complete this document and return the original to our office.

A tax return may or may not be required to be filed for the estate. We strongly urge you to consult with a tax professional to determine if the estate will be required to file a return. If you don't have a tax professional, we can

make a referral for you. However, at this time, there is no estate tax for estates of Florida residents outside of the Federal Government tax. If the estate is less than \$11,400,000.00, it is typically exempt from estate tax.

The most common tax returns filed are listed below:

- 1040 federal income tax returns of the decedent
- 1041 federal income tax returns of the estate
- 706 federal estate tax return (for estates over \$11,400,000.00 in 2013)
- Florida tangible tax return

Distribution.

You are required to promptly settle an Estate (typically within 1 year) and to distribute the assets. Unless a waiver or consent is signed, a beneficiary may request a final accounting prior to accepting a distribution from the estate.

If the personal property has no value, you may distribute the personal property to the beneficiary entitled to the personal property under the Last Will and Testament of the Decedent. If there is no Will, a list stating the Decedent's wishes for distribution is acceptable and you may surrender those possessions to the beneficiary. If there is no list or specific directions left by the decedent, you should speak with the beneficiaries to get a consensus for distribution. If there is no consensus possible, please contact us.

If the Decedent was in possession of items not owned by the Decedent, please return those to the owner immediately. We strongly encourage that you have the owner sign a receipt for the items as proof of return.

Assets are typically distributed at the end of the estate process. However, partial distribution to a beneficiary is permissible with the prior permission of the Court. We strongly recommend that no assets are distributed without first consulting with the attorney and always have the beneficiary sign a receipt accepting the distribution. Any partial distributions MUST be disclosed to the Court and evidence must be provided that the partial distribution would not affect payment of any claims against the estate, family allowances, payment of taxes, expense of administration or exempt property (homestead property, personal property, etc.)

Some assets may be retitled upon distribution. For example, Certificates of Deposit can be retitled or cashed without penalty. Assets that are held jointly with right of survivorship or assets that are held in a revocable living trust will not need to be retitled.

Transfer of title vehicles and boats can be handled at the Department of Motor Vehicles with a copy of the title, Last Will and Testament and Death Certificate.

Please confer with our office prior to making any distributions.

**Maintaining and
Managing Assets of the
Estate**

The Personal Representative has an obligation to administer the estate unless restricted by the Decedent's Will or by court order. In managing the Estate, the duties will depend on the amount and variety of assets and liabilities. Some duties include:

The Personal Representative shall retain and protect the Decedent's assets. Reinvestment of the decedent's assets (stock, money market accounts, cash, etc.) is permitted. However, as a good rule, it is generally required that these funds should not be needed for administration of the estate. Any investments should be very conservative and not risk loss.

You, as Personal Representative, may abandon any estate asset that is of no benefit to the estate (i.e., motor vehicles with large loan amounts, properties in foreclosure, etc.) Though rarely done, you may file a petition with the court and hold a hearing after notice regarding the abandonment. Please advise immediately of any known assets exist in this case that should be abandoned.

An estate checking account should be opened by using a certified copy of the Letters of Administration and the TIN. This account may be established at the bank or credit union of your choice. Proceeds of asset sales, Decedent's personal cash funds, refund checks, and other cash assets should be deposited into this account. These monies are used to pay debts, claims and administration expenses. Careful record keeping is very important. All deposits and payments should be clearly described for the final accounting, if necessary. Prior to issuing any checks, please verify with the attorney whether the payment is an authorized payment under the estate administration. All transactions should have complete records to create a paper trail of each transaction.

Mail

You should secure all mail. If you don't live at the mailing address of the Decedent, you should have the mail permanently forwarded to your mailing address.

List of Documents Beneficial to Determining the Decedent's Assets/Debts:

- 1) Financial statements prepared by the Decedent or his/her accountant/CPA.
- 2) Cash and un-deposited checks written to the Decedent.
- 3) Records of inventories prepared by Decedent.
- 4) Life Insurance policies.
- 5) Homeowners, casualty and liability insurance policies. These insurers need to be notified of the Decedent's death so that claims, if any can be paid to the estate.
- 6) Medical bills. These bills may have been fully paid by the Decedent and should be claimed against the Decedent's health insurance, if any.
- 7) Prior income tax returns.
- 8) Benefit reports of any retirement plans, pension plans, profit sharing plans, etc., and the beneficiary designation forms.
- 9) Gift tax returns filed with the IRS.
- 10) Revocable and irrevocable trust agreements created by the decedent, or those where decedent has a beneficial interest.
- 11) Deeds, abstracts or title insurance policies.
- 12) Mortgages and notes.
- 13) Home appraisals or inspection reports.
- 14) Appraisals for personal property (i.e. jewelry, motor vehicles, boats, etc.)
- 15) Rental agreements.
- 16) Contracts for deed.
- 17) Current real property ad valorem tax statements.
- 18) Any deeds or other evidence of joint ownership of real property.
- 19) Mutual fund and other investment fund statements.
- 20) Copies of brokerage statements.
- 21) Copies of bank Statements.
- 22) Checkbooks, savings passbooks, certificates of deposit, and other evidence of deposits titled in the Decedent's name. The check register may be useful to determine creditors or existence of life insurance policies.
- 23) Title certificates for mobile homes, trailers, automobiles, boats, motorcycles, recreational vehicles and aircraft.
- 24) Personal property that has no title such as furniture, furnishings, jewelry, guns, art, antiques and collections should be inventoried as soon as possible.
- 25) Stock certificates or bonds registered in the name of the Decedent.
- 26) Stock certificates representing the Decedent's interest in any closely held business.
- 27) Stock purchase agreements or shareholder agreements.
- 28) Partnership Agreements.
- 29) Final salary, commissions, or other income payable to the decedent.
- 30) Income tax refund checks
- 31) Medical insurance payments and premium refunds.