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Duties of the Personal Representative and Your Attorney

Please carefully review your responsibilities as the Personal Representative and how our law office will be assisting you through the probate process:

Personal Representative: Notification

- At your earliest convenience, contact the decedent's accountant, investment advisors, insurance agent and any other professionals.
- Notify the Social Security Administration at (800) 772-1213. If the decedent was receiving veterans' benefits, call (800) 827-1000.
- Notify each of the retirement plans in which the decedent had an interest.
- If no surviving spouse still lives at the decedent's residence, file a change of address form with the post office as personal representative, indicating where the decedent's mail should be sent.

Attorney: Notification

- Your attorney will notify the heirs-at-law and beneficiaries. Please provide the contact information.

Information for Personal Representatives

You have been or are applying to be appointed by the Chancery Court as personal representative of the estate. Your attorney will represent you in your capacity as personal representative of the Decedent's estate. With regard to such representation and your duties as the personal representative, the matters below are called to your attention.

Some of the matters raised in this document may not apply, but they are included for the sake of thoroughness and to assist you in understanding your duties as a personal representative. Not all of the information below applies to you or to this estate, so please ask your attorney if you question whether any particular statement applies to your situation.

1. Your attorney represents you in your fiduciary capacity as the personal representative of the estate. You may also be a beneficiary or creditor of the estate and, if so, the attorney does not represent you in such individual capacities. If a conflict arises between you and any beneficiary or creditor of the estate, the beneficiary or creditor will be advised that the attorney represents you as personal representative, that the attorney does not represent such beneficiary or creditor and that he or she should seek the advice of his or her own attorney.

2. As a personal representative, the law imposes on you a "fiduciary duty," which means that you must demonstrate the highest degree of honesty, diligence and good faith, and must act impartially, toward the beneficiaries and creditors of the estate. You must keep accurate and up to date records of all financial transactions involving the estate. You may not sell any estate assets to yourself, to any of your business associates, or to any of your immediate family members unless all the residuary beneficiaries of the estate consent to the sale in writing or unless you obtain approval of the sale from the Chancery Court.

If you feel you may have difficulties performing your duties, you should let your attorney know this information immediately. Do not delay in notifying your attorney of any problems or concerns as this may result in very serious consequences.

3. As a personal representative, you have a duty to keep the beneficiaries of the estate informed as to the status of the estate. The attorney may report to the beneficiaries of the estate from time to time. The attorney-client privilege may not apply to you as a fiduciary, so any information we receive from you may be shared with the beneficiaries of the estate. If it comes to our attention that you have breached your fiduciary duty or have otherwise acted in an improper manner, we may be required to disclose this to the beneficiaries of the estate.

4. The rest of this document serves as a checklist of sorts of actions that are normally required in a decedent's estate. Some of these actions must be taken by you but other actions can be, and often are, delegated by you to your estate attorney or to others, such as accountants or insurance agents or financial advisors. Once you have reviewed this document, we can discuss this checklist to determine what particular actions are applicable to this estate and to decide who will be responsible for each particular action.

Probate Checklist:

FEIN

Federal tax identification number for the estate will need to be obtained from the IRS. We will obtain this on your behalf if you sign the appropriate IRS document.

ESTATE CHECKING ACCOUNT

Once the estate tax identification number has been obtained, an estate checking account should be opened to receive all estate deposits and pay all estate bills (unless the estate is insolvent). When the account is opened, please request that a duplicate copy of each statement be sent to us. A detailed record of all estate transactions should be kept. No checks should be written on the estate account unless they are for the proper debts of the Decedent, for taxes owed by the Decedent or the estate, or for funeral or administration expenses. We do not recommend using a debit card or credit card. We prefer paper checks with a banking institution that provides an image of both sides of the check. If there is any question whether there will be adequate funds to pay everything, please discuss this issue with me before paying any debts or expenses, because as personal representative you can be found personally liable if you prematurely paid or distributed estate assets and it turns out that there are not sufficient funds remaining to pay debts, taxes or expenses.

You must not mix estate assets with your personal assets. To avoid complications, title each asset belonging to the estate that comes into your possession in the name of the estate as follows:

Your Name, Personal Representative

NOTICE TO CREDITORS

Probate Court is required by Tennessee law to publish in a local newspaper a notice to creditors of the estate informing them they must come forward with their claims in order to be paid. Therefore, before the amount owing each credit of the estate can be paid, the creditor must file a claim with the Court. This applies even if you know there is an outstanding bill. Generally, if the creditor does not file the required claim within four (4) months, the creditor cannot enforce payment of the amounts due.

We will also provide you with a Notice to Creditors.

Creditors who file a claim timely (within the 4-months) must be paid if there are assets. Contact our office to discuss these debts prior to making payment as we may be able to negotiate with creditors (such as credit card companies).

When a claim is received, the Court will send a copy of the claim to you and a copy to our office. If there is a question, keep in mind we have 30 days after the end of the four (4) months' notice. If we do not file an exception during that 30 day period, we cannot raise any questions regarding the debt and the claim becomes a judgment against the estate.

You must make a diligent effort to identify anyone the decedent owed money. You must carefully review medical bills, credit card statements, bank records and tax returns.

The priority of claims is as follows:

First: Costs of administration, including but not limited to premiums on the fiduciary bonds and reasonable compensation to the personal representative and the personal representative's attorney.

Second: Reasonable funeral and burial expenses.

Third: Taxes and assessments imposed by the federal of any state government or subdivision thereof and claims by the Bureau of TennCare (Medicaid).

Fourth: All other general creditors who filed a timely claim.

DISTRIBUTIONS IN THE WILL

A personal representative certainly has the discretion to make distributions in an estate prior to closing. However, any such distributions should be made thoughtfully and in keeping in mind any anticipated claims of creditors, claims of a spouse (if applicable), or expenses of administration. Making distributions prior to the close of the 4-month claims period is always risky. We must follow the mandatory distributions as listed above prior to making distributions to beneficiaries.

YOUR EXPENSES

You can, of course, reimburse yourself or others if any funeral or similar expenses were advanced prior to the opening of the estate account. If the will waived compensating you for services, you will not be paid for your time as a personal representative.

ASSETS

All "probate assets" ("probate assets" are assets owned solely in the decedent's name, that is, not jointly owned assets, and not assets that are payable to a designated person as the beneficiary) should be located, gathered and brought under your control and possession. If practical, estate assets should be re-titled in the name of the estate and under the estate's tax identification number. Consult previous tax returns to help identify assets.

Real Estate: All the real estate must be located in addition to the decedent's home. Search for property deeds, mortgage statements and insurance policies. Secure the property. It may be necessary to change the locks. Store valuable property such as expensive jewelry and art.

We will evaluate the Will to determine if the Personal Representative has the authority to sell the property. If not, all the beneficiaries must sign the deed. If the decedent died intestate (without a Will), all the legal heirs must sign the deed.

Personal Property - Cars, Boats, Motorcycles and Other Vehicles: Locate the registration and insurance documents to determine if the decedent owned the vehicles in whole or in part. The surviving spouse, if applicable, must have the vehicle reregistered in his/her name.

Small Business: If the decedent owned a business, we will need to value the business as of the date of death. A decision must be made whether to continue the business or to sell it.

Mail: Read through the decedent's mail and look for bank statements and brokerage statements.

Digital Assets: If the decedent owned a computer or other electronic device including a smart phone, determine if there is a password list with the decedent's valuable papers. Make a complete backup of the hard drive. You may use an external hard drive or flash drive. There may be very important financial information stored on the device. Additionally, there may be photos important to the family members.

Value of Estate

A list of all the Decedent's assets (including account or policy numbers, if applicable) and showing the fair market values of these assets as of the Decedent's date of death needs to be created. This would include any bank accounts, certificates of deposit, real estate, stocks, bonds, mutual funds, and other securities, pensions, annuities and other retirement assets, life insurance, automobiles, and other property of any nature whether owned solely in the Decedent's name, jointly with another person, or payable to a designated beneficiary. Some assets may need to be formally appraised, but please discuss this with me before incurring that expense.

We would like to review this information with you once the list of assets has been substantially completed in order to determine if any particular assets require any special care and to discuss any appropriate issues regarding their valuation and/or administration.

SAFE DEPOSIT BOX

If the decedent had a safe deposit box and the bank prepared an inventory of the box, we will need a copy of that inventory.

LIFE INSURANCE

Any life insurance payable on the Decedent's life will need to be applied for by the beneficiary of each such policy. If you need help in filing claims on any life insurance policies, please let us know. With respect to each life insurance policy, the beneficiary should request a Form 712 from the insurance company. A Form 712 is an official form from the insurance company showing the exact amount of the death benefit or other insurance proceeds.

GIFTS

If the Decedent made any gifts during his or her life that were over the annual exemption amount to any individual person during any single year, information needs to be gathered concerning the date(s) of the gift(s), the name(s) of the recipient(s) of the gift(s) and the amount(s) of the gift(s). If any federal and/or gift tax returns were ever filed by the Decedent, copies of these returns will need to be gathered.

SOCIAL SECURITY

The Social Security Administration will need to be notified of the Decedent's death. Please let us know if you would like for us to notify the Social Security Administration on behalf of the estate.

CREDIT CARDS

If the Decedent had any credit cards, those credit cards will need to be cancelled and each credit card company should be notified of the Decedent's death. Please let us know if you would like for our office to notify any credit card companies on behalf of the estate - especially if we can negotiate a lower settlement payment.

TENNCARE

We are required by statute to file notice with TennCare with the decedent utilized TennCare benefits or not if the decedent was age 55 or older. If the decedent utilized TennCare benefits, the State has the right of recovery. In this scenario, if the decedent utilized long term care benefits through the State's program (TennCare –Medicaid), the State has a right to recover the amount paid for the decedent's care from the assets probated such as the real estate. The State is paid prior to beneficiaries. We will discuss this matter with you in greater detail.

TN INHERITANCE TAX

Tennessee inheritance tax does not apply to individuals who died after December 31, 2015.

FEDERAL INHERITANCE TAX

A federal estate tax return is also due nine months from the date of death if the entire estate exceeds the federal limit. Please consult this link to determine what the current amount is: <https://www.irs.gov/businesses/small-businesses-self-employed/estate-tax>

DISCLAIMER OF ASSETS

Any decision regarding the disclaimer of assets by any beneficiary must be signed and filed by the date that is nine (9) months from the date of death. For a disclaimer to be valid, the recipient cannot receive the assets he or she chooses to disclaim, so we need to discuss as early as possible the issues concerning disclaimers.

FEDERAL INCOME TAX RETURN

The federal income tax return (Form 1040) and Tennessee income tax return, which will probably be a joint return with the decedent's spouse, if the decedent was married, for the final year of the decedent's life needs to be filed. THIS INDIVIDUAL FEDERAL INCOME TAX DEADLINE IS APRIL 15th. At such time as the final income tax returns for the decedent are filed, we will need copies. You are responsible to make an appointment with a certified public accountant or bookkeeper to prepare these returns.

It may be necessary for a fiduciary income tax return (Form 1041) to be filed for the estate if the probate assets produce interest, dividends, rents or other income while the estate is open, but this can be determined later. This is another reason why it is essential to maintain complete and accurate records of all financial transactions regarding the estate.

BOND

If there is no Will or if the Will did not waive the need to have a bond, you may be required to purchase a bond in handling your duties. We will provide you with instructions.

LETTERS

You will take your Oath that you will properly perform your duties as the personal representative of this estate to the best of your ability and the Clerk's Office will issue you Letters Testamentary or Letters of Administration. You will need these letters to open the estate bank account and in handling your duties as the representative of the estate.

CLOSING THE ESTATE

Once the creditors are paid and the assets are distributed, we will close the estate. We will file the remainder of the paper work with the Court such as a Final Settlement and then your duties will be completed.

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Definitions:

Probate: Probate defines the process of administering the estate of the decedent whether he or she had a Will or not.

Decedent: The deceased person.

Executor / Executrix: The personal representative of the estate is entrusted with the responsibility of making sure the decedent's wishes as outlined in the Last Will and Testament are granted with regards to the disposition of their property including real estate and personal property. The personal representative ensures that debts are paid and property is distributed according to their wishes.

Administrator / Administratrix: The personal representative of the estate appointed by the Court to administer the estate. In this case, the decedent died "intestate," without a Will. The estate shall be divided by statute. The personal representative ensures that debts are paid and property is distributed according to statute.

Testate: A legal term indicating that the decedent died leaving a Will.

Intestate: A legal term indicating that the decedent died without a Will.

Testator / Testatrix: Term used for the person writing a will. Testator is male and testatrix is female.

Beneficiaries: Persons inheriting through the Will. Such persons may or may not be related to the decedent. Beneficiaries are identified in the petition.

Legal Heirs: Persons related to the decedent. Although a legal heir may be disinherited, heirs must be notified of the probate process. Heirs are identified in the petition.