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ACTION LIST FOR SURVIVORS

"*What do I do now?*" is a question we frequently hear when a friend or family member passes away. The following 16 points are intended to provide some direction and guidance as to the many issues a survivor will be facing over the next number of months. It is our hope that this general list will provide some help to you and others and make things easier during this very difficult time.

1. **TAKE CARE OF YOURSELF**: The first and most important thing is to take care of yourself --- nothing will need to be done for at least ten days. Do not make any major decisions for some time -- until you have had an opportunity to think through the issues and have talked with your family and/or advisors.

2. **BUY A NOTEBOOK**: Because of confusion and stress you are probably going through, we recommend that you purchase a spiral notebook to keep track of everything you are doing. Often, this notebook takes the form of a journal, listing important information, account numbers, names, addresses, phone numbers and other general information obtained in the process. This will help preserve the important information that you may need in the future.

3. **FIND THE WILL**: Probably the most important thing that can be done in the short run is to find the decedent's most recent original Last Will and Testament or revocable living trust and other estate planning documents. If the original cannot be found, a copy may be sufficient. The Will is important because it names who will be the Personal Representative of the probate estate. The name, address and social security number of the Personal Representative will also be needed.

4. **FUNERAL EXPENSES**: Generally, the funeral home will require that you pay for the funeral expenses in advance or guarantee the payment. To the extent that there are adequate resources in the probate estate, reasonable funeral expenses can be reimbursed as a claim against the probate estate. Funeral expenses include reasonable amounts for the funeral, tombstone, mausoleum, burial plot, costs of shipping the body and travel expenses for one person. Such expenses are deductible only on the estate tax return and *not* on the income tax return.

5. **THE PROBATE PROCESS IN ALASKA**:

a. Probate in Alaska is often very simple. The horror stories you hear about "probate" typically are not related to the probate process. Rather, the horror stories often relate to preexisting problems that now surface because of the decedent's death.

b. After application is made to the probate court for the Personal Representative to be appointed, it will take the court approximately 10 days to approve the application and appointment of the Personal Representative.

c. The duties of the Personal Representative officially begin when the probate court issues Letters Testamentary. Thereafter, the Personal Representative will be responsible for collecting and conserving the decedent's assets, income earned by those assets, pay the decedent's valid debts and the expenses of administering the Estate, file any income and estate tax returns which are required and pay those taxes, distribute the remaining assets of the Estate to the beneficiaries, and render an accounting to the Court and to the beneficiaries in order to be relieved of potential liability to creditors or beneficiaries of the Estate.

d. The Personal Representative must prepare an inventory of assets and publish notice to creditors. This is typically done with the assistance of an attorney.

e. If the decedent did not have a valid Will at the time of his or her death, Alaska statute provides for another simplified form of probate.

6. **DISTRIBUTION of ASSETS**: No distributions of the decedent's assets should occur until there is a probate of the estate and a qualified attorney is consulted.

7. **IDENTIFY ASSETS**: Over the next 30 or 45 days, it will be necessary to identify and value all assets owned by the decedent, or assets he or she held an ownership interest in ---- such as land, bank and investment accounts, business interests, life insurance, retirement accounts, cars, boats, planes, and assets owned in other states. Attached is a checklist that might help you identify assets.

8. **OWNERSHIP OF ASSETS**: It is very important to carefully identify how all of the decedent's assets were owned on the date of his death. Typically, asset ownership falls into one of three categories:

a. First: Jointly owned assets all pass directly to the surviving joint-owner by operation of law[1] and are typically not subject to the probate process.[2] Examples of these type of assets may include vehicles, bank accounts, investment accounts, land, etc. The following information will be needed for each asset:

i. Account number and/or description of asset

ii. Account balance or value on the date of death

iii. Name, address, SSN and relationship of other joint owner

b. Second: Assets that pass by "designation of beneficiary" normally pass outside of probate directly to the person(s) listed on the designation of beneficiary form on file with the company.

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[1] For there to be "**rights of survivorship**" in Alaska, the title to the asset or account will need to have <u>one</u> of the following key terms: (i) John "or" Jane Smith; (ii) "joint tenants"; (iii) "jointly owned with rights of survivorship"; (iv) "JTWROS"; (v) "husband and wife"; (vi) "tenants by the entirety"; (vii) "pay on death to John Smith"; or, (viii) "community property with right of survivorship." You will need to specifically check each account and the title to each asset very carefully.

[2] In some cases, jointly owned assets can be brought back into the probate to pay the decedent's creditors if there are not sufficient other assets to pay his/her last debts and obligations.

Examples include: “pay on death” bank accounts, life insurance and retirement accounts.[3] Once death certificates are issued, then the named beneficiaries can start applying for the death benefits from any life insurance, retirement accounts, annuities, etc. The following information will be needed for each asset:

i. Complete description of asset
ii. Account or policy numbers
iii. The death benefit or account balance on date of death
iv. Name and SSN of the beneficiary of the account or policy.

c. Third: All other assets that are separately owned or owned by the decedent as tenants in common will need to pass through probate and will be distributed pursuant to the decedent’s Will (or if no Will, then by intestate succession). This might include land, bank and investment accounts, partnership and business interests, etc.

9. **CHECKLIST of DOCUMENTS NEEDED**: The following documents and information will be needed to give proper advice regarding probate and estate administration:

a. Last Will & Testament: the original and any amendments or codicils.
b. Trusts created during lifetime by the decedent or for the benefit of the decedent.
c. Death Certificates (10 or more certified copies)[4]
d. Copies of deeds to all real property
e. Title to personal property: cars, boats, planes, trailers, etc.
f. Bank and investment account statements [a copy of the most recent statement for each account]
g. List of assets and liabilities (with approximate fair market value) as of the date of death
h. Business agreements (buy-outs, partnership agreements, etc.)
i. Life Insurance information:
    i. Insurance Company name and address
    ii. Policy number for each policy
    iii. Beneficiary(-ies): name, address, SSN
    iv. Principal amount paid and to whom
    v. IRS Form 712 (issued by the insurance company --- similar to Form 1099)
j. Retirement account information:
    i. Name and address where the retirement account is held
    ii. Beneficiary(-ies): name, address, SSN
    iii. Principal account balance on the date of death

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[3] There are numerous methods an IRA or qualified retirement plan can be distributed to minimize income taxes. Any beneficiary of an IRA or retirement account should consult with their tax advisor before any distribution or transfer is made.

[4] To minimize the risk of identity theft, consider faxing a copy of the death certificate to the three national credit reporting bureaus (Equifax, Experian, and Trans Union) as soon as possible.

10. **BENEFICIARY INFORMATION**: You will need to obtain the following information for each person named in the Will or revocable trust. If there was no Will or other estate planning documents, then you will need to provide information for the spouse, natural and adopted children, the decedent's parents (if living) and siblings. If there is a charitable beneficiary, please provide its address.
   a. Full Name
   b. Mailing Address
   c. Date of Birth
   d. Relationship to the Decedent [parent, child, friend]

11. **PROFESSIONAL ADVISORS**: You should obtain a list of the professional advisors, address and phone numbers for the following:
   a. Attorney
   b. CPA
   c. Stock Broker or Investment Advisor
   d. Banker
   e. Life Insurance Agent
   f. Property Insurance Agent [State Farm; Allstate; etc.]

12. **ESTATE (Death) TAX INFORMATION**: There are three different sets of estate tax laws that need to be considered depending on when the person passed away.
   a. Death Before 2010.
      i. As a general rule, all assets that pass from the decedent to the surviving spouse pass estate tax free if the surviving spouse is a US citizen and validly married to the decedent.
      ii. As a general rule, for tax year 2009, the first $3,500,000 of assets that pass from the decedent to a non-surviving spouse (*i.e.*, children) will pass estate tax free; any amount that passes to a non-spouse greater than $3,500,000 will be subject to federal estate taxes at 45%.[5]
      iii. A federal estate tax return (IRS Form 706) must be filed within 9 months from the date of death (plus extensions) if the decedent has assets in excess of $3,500,000.
   b. Death During 2010. There are two federal estate tax options available for those dying in 2010. The personal representative will need elect one.
      i. Option A - Estate Tax - The General Rule:
         (1) If the total gross estate (probate and other assets) is <u>less than</u> $5,000,000, it is likely that the estate will want to fall under the new tax law which exempts the first $5,000,000 (less prior taxable gifts) from federal estate taxes.
            (a) Note: this Option A is actually the default rule and is not an option or an election.
         (2) In addition, under this Option A, the beneficiaries of the estate will receive the assets with an "adjustment" in income tax basis equal to the asset's fair market value on the date of death. Normally, this will mean that the assets will receive a "step-up" in income tax basis; but, it also can result in a "step-down" in income tax basis if the asset's fair market value is less than the asset's basis.

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[5] The exemption amount in 2009 was $3,500,000 per person. For 2006-2008 the exemption amount was $2,000,000.

ii. Option B - No Estate Tax - The Exception:

(1) If the total gross estate (probate and other assets) is <u>greater than</u> $5,000,000, then the estate may want to <u>elect</u> to have the estate NOT subject to federal estate tax.

(2) The law for 2010 provides that no federal estate tax is due or payable if an election is filed by the personal representative on Form 8939. The due date for Form 8939 is now January 17, 2012 (IRS Notice 2011-76).

(3) If Option B is elected, the income tax basis on inherited assets is equal to decedent's income tax basis just prior to the date of death. Thus, the deceased owner's income tax basis in assets will "carryover" to the person(s) who inherit the assets. There are two exceptions to the "carryover" basis rule. The personal representative may elect to allocate:

(a) $1,300,000 of basis increase to assets selected by the personal representative.

(b) $3,000,000 of basis increase to assets that pass directly to a surviving spouse or to a qualified spousal property trust.

(c) Note: The income tax basis increase of $1.3 million and $3.0 million is <u>not</u> based on assets having a <u>value</u> of $1.3 million and $3.0 million, but rather it is based on assets having income tax basis adjustments equal to those dollar amounts.

c. Death After 2010.

i. As a general rule, all assets that pass from the decedent to the surviving spouse pass estate tax free if the surviving spouse is a US citizen and validly married to the decedent.

ii. As a general rule, for tax year 2011, the first $5,000,000 of assets that pass from the decedent to a non-surviving spouse (*i.e.*, children) will pass estate tax free; any amount that passes to a non-spouse greater than $5,000,000 will be subject to federal estate taxes at 35%.

iii. A federal estate tax return (IRS Form 706) must be filed within 9 months from the date of death (plus extensions) if the decedent has assets in excess of $5,000,000.

iv. Even if the estate is less than $5,000,000, it may still be prudent to file a Form 706 given that there is now portability to a surviving spouse of the first spouse's basic exclusion amount. Please discuss "portability" with your tax advisor.

d. The above rules are very general in nature and different tax rules may apply to your situation. It is *very important* that you contact a qualified tax advisor relating to your specific needs and situation. With proper planning, significant tax savings can be accomplished.

13. **INCOME TAXES:**

a. If the decedent was married at the time of his/her death, then the current year income tax return will most likely be filed jointly with the surviving spouse.

b. If the decedent was not married, then a Form 1040 will need to be filed by April 15 of the year following the decedent's death.

c. The probate estate will also need to file an income tax return (Form 1041) if the estate earns income in excess of $600 in any year after the decedent's death.

d. Typically, a federal tax identification number (TIN) will need to be applied for using IRS Form SS-4. Your CPA or attorney will assist you with this.

14. **DISCLAIMERS:**

a. Some Wills and Trusts provide for after-death estate planning by using a "qualified disclaimer," which can result in a substantial savings of federal estate taxes on the death of the second spouse. If the decedent's document makes such provision, care should be taken to ensure the opportunity is not inadvertently lost.

b. A qualified disclaimer allows a person to give up assets that were left to him or her, and then those assets pass to the next beneficiary. For example, if dad passes away and leaves everything to his only daughter, but daughter does not need all of the assets, she might disclaim some of the assets and the assets then pass to her children.

c. A "qualified disclaimer" requires numerous technical requirements be satisfied, including restrictions on use of the asset prior to making the disclaimer, and signing the disclaimer documents within **nine (9) months** from the date the interest is created.

d. If a beneficiary is interested in making a qualified disclaimer, it is important that qualified tax advisor be consulted regarding the mechanics of making a disclaimer.

15. **RETIREMENT BENEFITS:** Often the decedent may have owned a retirement plan account (IRA or 401(f), etc.). Generally, this type of asset is not part of the probate given that account will normally pass by designation of beneficiary and outside of probate. In all cases, an account beneficiary should consult a qualified tax advisor as how to best handle the distributions or possible rollover of such funds to minimize adverse income tax consequences. Federal tax law imposes certain important and strict deadlines that need to be carefully considered. In addition, if the decedent was over 70, then a minimum required distribution may need to be taken from his or her retirement account no later than December 31 in the year of death.

16. **SOCIAL SECURITY BENEFITS**:

a. Monthly survivors benefits can be paid to certain family members, including the decedent's widow or widower, dependent children and dependent parents.

b. A family member or other person responsible for the beneficiary's affairs should do the following:

   i. Promptly notify Social Security of the beneficiary's death by calling Social Security Administration at 1-800-772-1213.

   ii. If monthly benefits were being paid via direct deposit, notify the bank or other financial institution of the beneficiary's death. Request that any funds received for the month of death and later be returned to Social Security as soon as possible.

   iii. If benefits were being paid by check, DO NOT CASH any checks received for the month in which the beneficiary died or thereafter. Return the checks to Social Security as soon as possible.

c. Booklets containing more information about Social Security benefits can be downloaded by visiting the Social Security Administration web page at www.ssa.gov.

17. **MAIL DELIVERY:** We recommend that you go to www.usps.com and search "deceased person mail" for information on how to have mail redirected to a new address.

18. **HOW MUCH WILL IT COST?** The cost of probate or trust administration will depend on many factors. In Alaska, an attorney will charge by the hour for all work and not a percent of the assets (like is common in California). You can plan on spending $2,000 and more depending on the complexity of the issues involved. Some of the factors that may impact professional fees and costs are:

a. Family members in conflict and disagreement
b. Conflicts between co-personal representatives or co-trustees
c. Lack of proper estate planning documents (wills, trusts, etc.)
d. Out of date estate planning documents
e. Spouse not provided for in the estate plan
f. Children from current or past relationships not provided for in the estate plan
g. Conflicting codicils or terms within estate planning documents
h. Lack of liquidity to pay off debts and creditors
i. Lack of liquidity to provide for family
j. Lack of liquidity to pay estate taxes
k. Liquid assets passing by designation of beneficiary to the "wrong" person (underage children, ex-spouses, problem children, etc.)
l. The number of pieces of real property in Alaska and outside of Alaska
m. Business interests: ownership interests are not defined; continuation plans; buyout provisions; valuation; etc.
n. Specific Bequests: Not correctly identifying assets to be given away causing confusions and disputes or making bequests that conflict with the estate plan.
o. Designation of beneficiary on life insurance not current (passing to wrong person)
p. Designation of beneficiary on retirement accounts not current
q. Loan/debt/mortgage financing or recorded liens on real estate or personal property like autos, boats, planes, etc.
r. Local or federal tax liens.
s. Co-ownership of assets (real property, planes, etc.) with third-parties
t. Bank or investment accounts not titled correctly
u. Real property not titled correctly or the title is unclear
v. Owning difficult to value or sell personal assets (art work, coin collections, etc.)
w. Encroachments on other land [septic; wells; driveways; buildings; retaining walls]
x. Environmental problems on real property
y. Unfinished construction on real property
z. Failure to update or name the "correct" person as:
    i. Personal Representative (executor)
    ii. Guardian of minor children
    iii. Trustee over funds for the benefit of others
    iv. Agent under the financial power of attorney
    v. Agent under the health care power of attorney (living will)
aa. The decedent had poor accounting, financial, personal records
bb. Filing federal and state income and estate tax returns

19. **QUESTIONS and INFORMATION**: MANLEY & BRAUTIGAM is a full service law firm. If you have any questions or if you would like to learn more about our attorneys and our practice, please visit our web site at www.mb.law.pro

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ASSET / LIABILITY INVENTORY LIST

You may use the checklist below to assist in the preparation of the inventory of the Estate. We recommend that you contact the decedent's CPA, banker, investment advisor and insurance representative for additional information and assistance. You should also review recent income tax returns and account statements carefully for additional information as to specific assets. In your preparation of the inventory, you should also consider other states where the decedent either owned property or lived prior to moving to Alaska.

Technically, the assets to be listed by a Personal Representative for Alaska probate need only to include those owned in the separate name of the decedent. It is those assets that are listed in the INVENTORY AND APPRAISEMENT filed with the probate court. However, if a Federal Estate Tax return needs to be filed, a much more comprehensive list of all assets that the decedent owned an interest in on the date of his death needs to be provided. If you are not sure what needs to be listed, it is better to list everything you are aware of and then let us determine how and where to report or disclose it.

As you are compiling this information, please retain photocopies of all relevant documents (legal descriptions, account numbers, etc.) since it is likely this information will be needed either by us or the accountant. If you know how the decedent owned the asset -- separately (in his own name), jointly with another, etc., please make note of that. In addition, you will need to supply any information you obtain relating to the value of an asset or amount of liability on the date of the decedents death.

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Personal Effects

Household items
Collectibles (coins, stamps, art, guns, etc.)
Jewelry
Clothing and Furs
Auto, trucks, recreational vehicles, trailers
Aircraft
Boats, ATVs, snowmachines, etc.

Bank Account(s)

Checking
Savings
Certificates of Deposits
Safe Deposit box(es)
Contract Collections

Brokerage Accounts

(Merrill Lynch, Dean Witter, Schwab, etc.) holding cash, stocks, bonds, and mutual funds; please obtain copies of the most recent account statement from the broker, along with values on the date of death.

Retirement Account(s)

IRA
Profit Sharing Plans
401K Plans
Defined Benefit Plans
Non-qualified Retirement Accounts
Stock options

Death Benefits and Annuities

Annuities owned or payable to the decedent
Life Insurance on the decedent's life or owned by the decedent on the life of another
Life Insurance through memberships or professional organizations (credit union; the National Rifle Assoc; ASCPA; etc.)
Flight/Travel insurance through credit cards, etc.
Accidental death benefits
Mortgage insurance
Military benefits
Employer

Business Interests

Sole proprietorships
Partnership interests
Limited Partnership interests
Limited Liability Company
Corporation, shares of stock

Payables to the Decedent

Promissory notes or mortgages payable to the decedent
Income earned prior to death, but not collected prior to death
Property settlements from divorce/separation
Judgments payable to the decedent

Real Property (residential, recreational, commercial, undeveloped)

Sole ownership
Jointly owned with spouse
Jointly owned with others
Leasehold interests
Out of State Interests

Debts, Mortgages and Liens of the decedent

Debts owed
Mortgages on real or personal property
Bank Loans (auto, business, etc.)
Insurance Policy Loans
Credit Card obligations
Installment obligations
Contingent Liabilities (guaranties, indemnity agreements)
Tax liabilities

Other Points to Consider

Safe located at home or office
Stock certificates in decedents possession
Inheritances or benefits from a trust
Copyrights or patents
Powers of Appointments
Beneficiary of a trust or another estate
Income earned yet not yet paid on the date of death
Accounts Receivable
Airline Miles
Income earned but not yet received [IRD]
Income tax refunds
Alaska Permanent Fund Dividend
Fishing permits and IFQs