

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 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 the 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, phone number, 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. **DEATH CERTIFICATES:** As a general rule, we recommend that you obtain at least ten (10) death certificates. The funeral home will order these for you. In normal cases, it will take 10-25 days to obtain the death certificates. Also, when third-parties requests a copy of the death certificate, give them a certified copy, but tell them you want the document back - they can scan and keep a copy

for their records. In most cases, they do not need a certified copy. If we are required to open a probate, the court will need one true and correct stamped/certified death certificate.

6. **PRE-DEATH TRANSFERS:** Prior to death, some ask if it is beneficial to transfer (gift) assets out of a loved-one's name "to make things simpler" – like real estate, business interests or stocks. As a general rule, the answer is "no," assets should NOT be transferred away prior to death if the following are true:

- a. The person has a taxable estate [see below regarding "Estate Taxes"];
- b. The asset has highly appreciated in value; and/or,
- c. The asset has substantial accumulated income tax depreciation.

Again, this is only a general rule, and many considerations and factors need to be discussed to arrive at the answer that is best for the current situation. Please call us to discuss your specific facts and issues.

7. **PROBATE - Smaller Estates:** In some cases, "probate" will not be necessary if the decedent had a "small estate." In general, assets can be transferred to a "successor" by an "affidavit of collection" if at the time of death, the decedent: (i) owned no real property in his/her name; (ii) had vehicles with a total combined current fair market value of less than \$100,000; and (iii) had other tangible personal property with a total value of less than \$50,000. Other additional rules also apply – see AS 13.16.680.

8. **PROBATE - Larger Estates:**

- 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 21 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, paying the decedent's valid debts and the expenses of administering the Estate, filing any income and estate tax returns which are required and pay those taxes, distributing the remaining assets of the Estate to the beneficiaries, and rendering 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.

9. **REVOCABLE TRUST ADMINISTRATION:**

- a. Like a probate, after the death of a person, their Revocable Living Trust will need to be administered pursuant to the specific terms of the trust.
- b. The named successor trustee of the Revocable Trust should plan on preparing an inventory of assets held in the name of the trust and in the name of the decedent.
- c. The successor trustee will likely need to publish notice to creditors
- d. The administration of a Revocable Living Trust is typically done with the assistance of an attorney.

10. **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.
11. **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.
12. **OWNERSHIP OF ASSETS:** It is very important to carefully identify how all of the decedent's assets were owned on the date of his/her 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 law¹ and are typically not subject to the probate process.² Examples of these type of assets may include vehicles, bank accounts,³ 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. Examples include: "pay on death" bank accounts, life insurance and retirement accounts.⁴ 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.

¹ For there to be "**rights of survivorship**" in Alaska, the title to the asset or account will need to have one of the following key terms: (i) John "or" Jane Smith; (ii) "joint tenants"; (iii) "jointly owned with rights of survivorship"; (iv) "JTWRORS"; (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.

³ For six months or more, *do not close* any joint bank/investment accounts to which automatic deposits/payments were being processed, such as paychecks, pension payments, Permanent Fund checks, payment of mortgages or utilities, etc. *Do not remove* the decedent's name from the account until all automatic deposits/payments have been processed. The surviving joint owner is free to withdraw excess funds and re-deposit those funds to another account.

⁴ There are numerous methods an IRA or qualified retirement plan can be distributed. Any beneficiary of an IRA or retirement account should consult with their tax advisor before any distribution or transfer is made.

13. **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 a lifetime by the decedent or for the benefit of the decedent.
 - c. Death Certificates (10 or more certified copies)⁵
 - 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 and a copy of the statement closest to date of death]
 - g. List of assets and liabilities (with approximate fair market value) as of the date of death
 - h. Business agreements (buyouts, 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
14. **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]
15. **BANKS AND PAPERWORK.** Dealing with banks and financial institutions has become more challenging over the years as to what they require to transfer or rename accounts. What should be simple, they have made it more difficult. We have no control over what requirements any financial institution may or may not require now or in the future to transfer an account or funds after death. Each financial institution has its own ever-changing internal policies and requirements. We encourage you to talk to the financial institution or advisor to determine what papers will be required.
16. **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.]

⁵ 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.

17. **ESTATE (Death) TAX INFORMATION:**

- a. General Rule #1: 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.
- b. General Rule #2: For deaths occurring after 2019, the first \$11,580,000 of assets that pass from the decedent to a non-surviving spouse (*i.e.*, children) will pass federal estate tax free; any amount that passes to a non-spouse in an amount greater than \$11,580,000 will be subject to federal estate taxes at 40%.⁶
- c. 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 \$11,700,000.
- d. Even if the estate is less than \$11,700,000, it may still be important 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*" of the remaining basic exclusion amount with us or your other tax advisors.
- e. Some states (Hawaii, Oregon & Washington) impose state estate taxes.⁷
- f. If a federal estate tax return (IRS Form 706) must be filed, then IRS Form 8971 (Information Regarding Beneficiaries Acquiring Property From a Decedent) must be filed within 30-days after the Form 706 is filed.
- g. 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.
- h. See: <https://www.irs.gov/pub/irs-pdf/p559.pdf>

18. **INCOME TAXES:**

- a. If the decedent was married at the time of his/her death, then the current year income tax return (federal and/or state) will most likely be filed jointly with the surviving spouse, but not always.
- 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.
- e. See: <https://www.irs.gov/pub/irs-pdf/p559.pdf>

19. **INCOME TAX BASIS:** In general, all assets that the decedent owned or controlled on the date of death receive a new income tax basis equal to the asset's fair market value on the date of death (excluding qualified retirement accounts). It is important to carefully coordinate with your tax advisors the information needed to obtain a new income tax basis in the decedent's assets.

⁶ The amount that passes free from federal estate taxes has increased over the years: 2009 - \$3,500,000; 2010-2011 - \$5,000,000; 2012 - \$5,120,000; 2013 - \$5,250,000; 2014 - \$5,340,000; 2015 - \$5,430,000; 2016 - \$5,450,000; 2017 - \$5,490,000; 2018 - \$11,180,000; 2019 - \$11,400,000; 2020 - \$11,580,000, and 2021 - \$11,700,000.

⁷ The exemption from state estate tax is often much lower, which may result in the payment of a state estate tax. For example, the exemption for Hawaii is \$5,490,000; Oregon is \$1,000,000; and Washington is \$2,193,000.

20. **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 document 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 a qualified tax advisor be consulted regarding the mechanics of making a disclaimer.

21. **RETIREMENT BENEFITS:** Often the decedent may have owned a retirement plan account (IRA or 401(k), etc.). Generally, this type of asset is not part of the probate estate given that account will normally pass by designation of beneficiary and outside of probate; but the value on the date of death is included in the gross estate for estate tax purposes. 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 72, 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.

22. **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.

23. **MAIL DELIVERY:** We recommend that you go to www.usps.com for information on how to have mail redirected to a new address.

24. **CREDIT BUREAU REPORTING:** Once you have the death certificate, we recommend that you mail or fax a copy of the death certificate to each of the three credit reporting agencies to minimize any ID theft. We recommend that you send the death certificate with a cover letter with decedent’s social security number and ask that the death certificate be put in the decedent’s record. At this time we

are aware of three credit reporting agencies; there may be more: Equifax; Experian; and TransUnion.

25. **AUTO & PROPERTY INSURANCE:** Call the property and auto insurance carrier and confirm coverage. Care should be exercised in using any vehicle that was owned by the decedent until liability insurance coverage is confirmed in writing. If there is no coverage after death, the estate can be held liable if there is an accident. We recommend that you take control of all vehicle keys until proper coverage is confirmed in writing.
26. **SECURE THE PROPERTY:** Until a personal representative is appointed, you or someone else in the family should work to secure the house and other assets from taking or destruction. Often criminals will search the obituaries and break into a house while everyone is out for the day. In some cases, locks should be changed or made more secure. In addition, it might be wise to make sure that the property fire and loss insurance is in force; this will require a call to the property insurance company.
27. **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 \$5,000 or more depending on the complexity of the issues involved. Some of the factors that may impact professional fees and costs are:
 - a. Difficult Assets
 - b. Family members in conflict and disagreement
 - c. Conflicts between co-personal representatives or co-trustees
 - d. Lack of proper estate planning documents (wills, trusts, etc.)
 - e. Out-of-date estate planning documents
 - f. Spouse not provided for in the estate plan
 - g. Children from current or past relationships not provided for in the estate plan
 - h. Conflicting codicils or terms within estate planning documents
 - i. Lack of liquidity to pay off debts and creditors
 - j. Lack of liquidity to provide for family
 - k. Lack of liquidity to pay estate taxes
 - l. Liquid assets passing by designation of beneficiary to the “wrong” person (underage children, ex-spouses, problem children, etc.)
 - m. The number of pieces of real property in Alaska and outside of Alaska
 - n. Business interests: ownership interests are not defined; continuation plans; buyout provisions; valuation; etc.
 - o. Specific Bequests: Not correctly identifying assets to be given away causing confusion and disputes or making bequests that conflict with the estate plan.
 - p. Designation of beneficiary on life insurance not current (passing to wrong person)
 - q. Designation of beneficiary on retirement accounts out of date
 - r. Loan/debt/mortgage financing or recorded liens on real estate or personal property like autos, boats, planes, etc.
 - s. Local or federal tax liens
 - t. Difficulty dealing with banks and financial institutions
 - u. Co-ownership of assets (real property, planes, etc.) with third-parties
 - v. Bank or investment accounts not titled correctly
 - w. Real property not titled correctly or the title is unclear
 - x. Owning difficult to value or sell personal assets (art work, coin collections, etc.)
 - y. Encroachments on other land [septic; wells; driveways; buildings; retaining walls]
 - z. Environmental problems on real property

- aa. Unfinished construction on real property
- bb. 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
- cc. The decedent had poor accounting, financial, personal records
- dd. Filing federal and state income and estate tax returns
- ee. Filing federal IRS Form 706

28. **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-lawyers.com No attorney-client relationship is created until a written and signed engagement agreement is entered into with Manley & Brautigam, P.C.

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PBB

January 11, 2021

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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 decedent's death.

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Personal Effects

- Household items
- Collectibles (coins, stamps, art, guns, etc.)
- Jewelry
- Clothing and furs
- Autos, 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 decedent's 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