



VAUGHAN, FINCHER
& SOTELO, PC
TRUST & ESTATE ATTORNEYS

A Survivor's Guide: What To Do When You Lose A Loved One

Our Condolences...

Please accept our condolences on the loss of your loved one. The dreaded news of the death of a loved one brings a new reality to those whose lives were dependent upon and entwined with the one who is no longer with them. In addition to the tremendous emotional impact you are probably experiencing, there are also legal and economic issues that demand your attention, even as you grieve over your loss. How are the bills paid? Is there a will? Who are the beneficiaries? What is probate and when is someone required to go through probate?

These are just a few of the questions that often surface soon after the death of a loved one. This Survivor's Guide is designed to help you identify and address some of these immediate questions and issues that need to be resolved during a time when most people are the least prepared to address them. In addition, our goal is to provide you with some general guidelines about some legal and tax issues that should be considered before the assets of your loved one can be distributed and the estate settled.

We hope that you find this guide to be a helpful and useful tool during this difficult time.

Sincerely,

The Attorneys and Staff at Vaughan, Fincher & Sotelo, PC.

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Prepared By: The Trust and Estate Attorneys
of Vaughan, Fincher & Sotelo, PC

Focus First: The Emotional Needs Of You, Your Family And Others

When a family member or a friend dies, there are so many emotions to be dealt with – denial, sadness, anger, fear, guilt, hopelessness, and in some cases, relief that the suffering of the loved one is finally over. Be patient with and forgiving of yourself and others during this initial period as emotions fluctuate during this time of grief.

Your initial focus should be on the emotional well-being of yourself and others. Families and friends often need the support of others to cope with their loss and to make immediate decisions and arrangements for memorial services and for the burial or cremation. The survivors can often find this support through their friends and extended families, as well as through clergy and other professionals trained to guide them through the grieving process. Do not be afraid to ask for help and support through this initial period.

Even as you make plans for the burial of your loved one and try to deal with the emotional whirlwind that death often brings, the issues of the family finances and how to deal with the assets of the loved one demand your immediate attention as well. Our firm recognizes that each family's situation is unique and our goal is to provide whatever individualized assistance and advice you need to address these issues. We also understand the complicated emotional dynamics that often exist among family members as they deal with settling the estate and adjusting to life without their loved one.

Focus Next: Gathering And Organizing Information

It is important to begin to collect and organize information regarding your loved one's assets as soon as possible. Sometimes the information has already been organized by the loved one before death, but often that is not the case.

Some common places to find such documentation are: a bank safe deposit box, a lockbox or safe located in the residence, desk, furniture drawers, a filing cabinet or saved on a computer. In addition, you will want to carefully check the mail for bank and brokerage statements, bills or other documentation concerning your loved one's assets. If the circumstances warrant, you may want to consider contacting the US Post Office to have the mail forwarded directly to your home.

Locating all the information you will need can be a time-consuming process, so it helps to be aware of what you are looking for ahead of time so you can quickly identify it. Such items to look for include:

- Original will and trust documents
- Bank and brokerage account statements
- Prior years' income tax returns
- Deeds to real estate
- Tax assessments for real estate
- Life insurance policies
- Original stock and bond certificates
- Savings bonds and treasury notes
- Original titles to automobiles, boats, etc.

Answering Your Initial Questions

Over the years of providing this assistance and advice to others, we have found that there are some initial questions that people often need to have answered as soon as possible. The following includes our answers to some of those most frequently asked questions:

Who should pay the funeral expenses and valid debts of the loved one?

The personal representative* or the surviving trustee should pay these from the loved one's assets before the remaining assets are distributed to the beneficiaries.

What if there is not enough money to pay for the funeral expenses?

In the event that your loved one's assets are insufficient to cover his or her debts at the time of death, you should take special care to seek legal advice prior to incurring any funeral expenses. Virginia, Maryland and the District of Columbia have different limitations regarding the payment of funeral expenses in situations where there are not adequate funds and the estate is insolvent.

** In Virginia the personal representative can also be referred to as executor if named in the will or administrator if there is no will.*

How many death certificates do I need?

Usually the funeral director will ask the family how many death certificates they would like and will take care of ordering them for you. You will usually need death certificates for each life insurance company, retirement account, brokerage account, and individually held assets your loved one owned at death. Also, you need a death certificate if you have to probate the will, if the loved one owned real estate in states other than his or her domicile at death, or if you have to file estate tax returns. In addition, copies of the death certificates should be kept with other family records for future use if the need arises. Though you can always order more copies, it is better to get a few extra copies right from the beginning.

What happens to joint accounts at the death of one of the owners?

If the account is joint with rights of survivorship, the survivor is now the sole owner of the account. The surviving owner should contact the institution where the account is held and take the steps required by that institution to remove the loved one's name from the account.

Though joint accounts with rights of survivorship are not probate assets, the value of the account at death and any contributions to the account made by the survivor(s) (other than a spouse) must be determined when calculating the total value of the estate assets for estate tax purposes.

How should the ongoing living expenses of the decedent's dependents be paid?

If there is adequate cash available in a joint checking account or a trust account to meet the immediate needs of the family for living expenses, then the immediate short-term financial needs of the family can be met by using these accounts. However, the long-term financial concerns should be discussed with your financial/legal advisor as part of the overall estate administration process. Determining how these expenses should be paid and from what source to pay these expenses are issues we address when we meet with the personal representative or trustee.

What is a Durable Power of Attorney?

The Power of Attorney is a document that specifically authorizes the person appointed as your agent to continue to act on your behalf even if you become incapacitated and unable to handle your financial affairs.

Is a Power of Attorney effective after death?

No, a Power of Attorney – even a Durable Power of Attorney – can only be used during the lifetime of the person who signed the document.

What is probate?

Probate is a court procedure that requires the person named in your loved one's will, or a person appointed by the court, to qualify to carry out the terms of your loved one's will, or to distribute the assets as the law directs if there was no will. Through the filing of an inventory of the assets and detailed accountings, the court supervises the personal representative until all the estate's assets have been collected and distributed to the appropriate heirs or beneficiaries.

Do all estates go through probate after a person dies?

No. If there are no assets titled in the loved one's sole name at the time of death, then there are no probate assets and no one has to qualify before the court as the personal representative of the estate. Assisting the family in determining whether probate is necessary, by identifying all the assets owned by the loved one at death and determining how those assets are titled, is an essential service we provide.

If there is a will, does it have to be probated?

Whether the will has to be probated depends on the legal requirements of the jurisdiction in which the loved one died. Each jurisdiction (Virginia, DC and Maryland) has its own unique requirements about which we can advise you. Generally, as indicated above, the will is only required to be probated when there is property in the loved one's sole name at the time of death. However, some jurisdictions do require the will to be recorded in the clerk's office even when there are no probate assets.

What are non-probate assets?

Non-probate assets are those assets not registered in your loved one's sole name alone. This may include assets registered jointly with rights of survivorship, assets transferred to a trust account during lifetime, or assets that have beneficiary designations, such as life insurance, retirement accounts, IRAs, or "payable on death" accounts, as long as the estate is not the named beneficiary. Such assets can be transferred without the necessity of requiring someone to qualify before the court as a personal representative. In addition, non-probate assets are not controlled by the will. A will can only control assets that are registered in the sole name of the decedent at the time of his or her death.

Who can get into the safe deposit box?

Any surviving joint owner can access the safe deposit box. However, if the safe deposit box was registered in the name of the loved one alone, then someone will have to qualify as personal representative in order to access the contents of the box. If the original will is located in the safe deposit box, special arrangements will usually have to be made with the probate clerk and the bank to remove the will from the box so it can be probated and someone can qualify as the personal representative.

What death taxes have to be paid when my loved one dies?

Typically, when your loved one dies, the estate or the beneficiaries may have to pay estate and/or inheritance taxes. Whether or not your loved one's estate or the beneficiaries have to pay these taxes depends upon:

1. The size of your loved one's estate.
2. Who the beneficiaries are in relationship to your loved one.
3. Where your loved one lived at the time of his or her death.
4. Where real property in the estate is located.

Federal and state estate taxes must be paid if your loved one's estate exceeds the amount that is exempt under the laws in effect at the time of your loved one's death. However, the estate may be entitled to certain deductions for assets left to certain beneficiaries, such as a spouse and charity. Federal estate taxes, if due, must be paid within nine months after your loved one's death.

The assets that are subject to estate taxes include everything owned by your loved one, e.g., bank accounts, investment accounts, tangible personal property, real estate, jointly held property, assets held in certain types of trusts, partnership interests, life insurance, business interests, retirement accounts and everything else owned by your loved one.

In addition, some states also impose inheritance taxes on your loved one's beneficiaries. We can help you determine whether any estate and/or inheritance tax returns must be filed and whether any estate and/or inheritance taxes are due upon the death of your loved one.

Getting The Legal Advice And Support You And Your Family Need

The questions addressed in this guide are really just the tip of the iceberg in getting the family through all the hurdles necessary as they recreate their lives after the death of their loved one. We encourage you to call us as soon as possible after your loved one dies, so that we may address any immediate concerns or questions that you may have.

Once you have had time to gather some of the basic information about your loved one's assets, we suggest that you schedule an appointment so that we can meet with you and assess what steps will be necessary to complete the estate settlement process given your particular circumstances. Our goal is to provide whatever assistance you may need in an efficient, caring manner. We are committed to helping you through this difficult time. Here is a list of some issues that may need to be addressed and that we can assist you with:

- Identifying and determining the date-of-death value of the assets in accordance with IRS requirements, including tangible personal property, real estate, marketable securities, life insurance, annuities, IRAs, partnership interests, etc.
- Ensuring the residence and other vulnerable assets are properly secured.
- Addressing the legal issues to be considered and priority of payments to creditors if there is not enough cash to pay the debts, expenses, taxes, etc. of the loved one and the estate.
- Obtaining a tax identification number for the estate and/or trust and notifying institutions of the new number.

- Opening estate accounts and/or contacting the financial institutions and preparing the necessary paperwork to retitle existing accounts.
- Determining whether qualified disclaimers are appropriate and preparing and filing disclaimers.
- Identifying prior gifts made by the loved one during life and determining whether gift tax returns were filed or are required to be filed, as well as preparing the gift tax return.
- Preparing and filing Federal and State Estate Tax Returns, if required.
- Identifying the income tax issues involved and assessing whether there is planning needed to optimize income tax savings.
- Supervising the preparation of income tax returns or preparing the returns, either for the loved one, their estate, and/or the trust.
- Preparing the court-required documents and reports necessary to settle the probate estate.
- Determining whether probate is required in any other state.
- Transferring title of assets to the appropriate beneficiaries.
- Assessing the most advantageous retirement distribution options.
- Calculating the funding of any marital distributions, as well as other beneficiary distributions.
- Assisting in funding the credit shelter/by-pass trust, if applicable and advising you of the requirements in maintaining such a trust.
- Revising the surviving family member's estate planning documents as a result of the change in life circumstances.

Our Firm

The estate administration professionals at Vaughan, Fincher & Sotelo, PC have more than 100 years of combined experience in assisting clients through the estate and trust administration process. We have the expertise to guide personal representatives and trustees through the many legal and administrative hurdles that can arise due to a death. But more importantly, we are people who truly care about helping clients successfully navigate this difficult time.

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