



# Simplifying The Probate Process



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In my last article I pointed out to our readers the general benefits of making a Will to provide direction for those you love. At this time I would like to provide a general and somewhat simplified outline of what a loved one, as personal representative for a deceased person, needs to do to fulfill their duties. I will also point out specific areas where an attorney would be of great assistance in this procedure.

If you are the next of kin, chances are you will be directly involved in making funeral arrangements. Even where the decedent has already pre-planned and paid for services, the interaction with a funeral director is important. They will almost always assist the family with publishing death notices, obtaining death certificates, and insurance and social security benefits for the payment of funeral expenses. They may work with religious leaders and churches in the community to arrange for appropriate religious services. But even before a decedent's funeral, the job of the personal representative has already begun.

The probate process that is the formalities of winding up the affairs of a decedent and distributing their estate, begins with the location of the decedent's Will. Oftentimes,

it is in the possession of the attorney who prepared the document, but frequently it is in a safe deposit box, file cabinet or drawer. Ideally, the decedent has already communicated the whereabouts of the document to the personal representative. The Will should be presented to your attorney at the earliest possible time. If access to a safe deposit box is not readily available, your attorney can assist you in the process. It is most important to point out here that first and foremost the personal representative (executor or administrator) is a fiduciary. This means that they work for the estate and its beneficiaries. They cannot favor or self-deal for themselves personally. I always make this clear in my first meeting with a personal representative. The assistance of an attorney can help avoid any situations that might be interpreted as self-dealing by the personal representative. Under the general heading of "gathering and caring for the property of the estate", an administrator's specific duties include safeguarding the home and any perishable property, securing motor vehicles, locating asset and debt documents such as deeds, financial statements, bank accounts, unpaid bills, credit cards, military records, social security information, motor vehicle titles, birth certificates, divorce documents, income tax returns and insurance policies. This is a partial list, but these are generally the most important documents to be secured and reviewed with your lawyer to assist in the probate and administration of the decedent's estate. Often there can be an issue with the handling of a decedent's pets. Your obligations will vary depending upon the wishes of the decedent and the ability of family members to care for or adopt the pets of a loved one.

Probating a decedent's Will is essentially filing the document with the proper Court. In New Jersey

the Surrogate of each county has the power to recognize properly executed Wills, file them and issue Letters of Administration to the personal representative. Letters of Administration provided by the Surrogate allow the personal representative to contact, in the name of the decedent's estate, the institutions, banks, creditors, employer,



post office, professional and religious organizations for and from whom benefits to the estate may be obtained or to whom verification of indebtedness must be made.

Valuing assets as of date of death is often necessary where Transfer Inheritance Taxes or New Jersey or federal estate tax returns need to be filed. Your attorney can assist you in consulting with accountants, appraisers and brokers for these purposes and where long term planning is required, the services of financial planners are best sought at this point.

Once a personal representative knows what the assets of the estate are and has control of them, they can begin to evaluate and pay the debts of the estate while maintaining the assets for the benefit of beneficiaries and eventual distribution.

It may be necessary to file a final income tax return for the decedent and inheritance/estate tax return and see to the timely payment of taxes due. During the course of administration, your attorney can assist you in deciding which assets can be distributed in kind and which need to be sold to raise cash.

Finally, to make distribution, the personal representative needs to account to the beneficiaries for

the assets and income that came into their hands, and the debts and obligations that have been paid, resulting in a net amount for distribution. It is recommended that this accounting be approved by all beneficiaries prior to distribution. In certain cases, formal application for approval must be made to the Probate Court upon notice to all beneficiaries, but in the vast majority of cases, an informal accounting can be prepared and sent for written approval by beneficiaries. This is almost always best prepared by an attorney as is the account and written approval. The execution of a release to the administrator is required to discharge the administrator's obligation to the beneficiaries. The law also requires a personal representative, to ascertain whether any beneficiary is responsible for the payment of unpaid child support or other governmental obligations. An administrator's failure to obtain this information or make a diligent search and payment may subject them to liability. Again, an attorney's assistance to comply with these procedures is the best advice. The personal representative is

allowed commissions on the assets as income administered by them as provided by Statute.

This is a general outline and describes a situation where the decedent has left a Will and administration can be promptly initiated. We know that in the real world, no two situations are alike and people sometimes can't agree what the intention of a testator was or how an estate is to be administered. These can be the topic of a future article.

Generally, the probate process is anticipated to be completed within 12 months. However, this may not always be possible where there are disputes among heirs or with taxing authorities, difficult to locate assets or assets that are difficult to value or sell. In those instances, partial distributions may be made throughout the administration with the consent of the beneficiaries and, where necessary, the Courts.

*At Basile & Testa we welcome your inquiries and interest and look forward to meeting with you confidentially to discuss your needs and concerns about the probate process.*

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***ROBERT J. CASELLA** was born in Vineland, New Jersey. Robert is a graduate of the Widener University School of Law and was admitted to the New Jersey Bar in 1977. He is also admitted to practice before the United States District Court to New Jersey and the United States Supreme Court. He has represented and counseled clients in Municipal Court, Superior Court, and Federal District Court. Mr. Casella concentrates his practice on the areas of Wills, Estates, Probate, Real Estate, Zoning and Planning, Bankruptcy and Corporations. Prior to joining the law firm of Basile & Testa, PA, Robert was a partner in the law firm of Casella & Casella from 1977-2003. Mr. Casella's professional associations include Cumberland County Bar Association and the South Jersey Business Association.*