

Make estate settlement easier for loved ones

FARM & FAMILY

BY KRISTIN GUNSOLUS



LAST MONTH, WE discussed how creating an estate plan can help your estate to settle seamlessly. Trust me: your loved ones will thank you for it.

This month, we will examine what actually goes into an estate settlement. The process exists to 1) inventory assets of the decedent, 2) distribute them to designated individuals and 3) pay any estate taxes due.

There are essentially two avenues the estate settlement process can take: through

the probate process (if the decedent had a will, or no will, and the decedent's probate assets totaled \$75,000 or more) or through private trust administration (if the decedent had a revocable living trust).

LOCATE THE DOCUMENTS

If the decedent left a will, the latest original document, including any codicils, needs to be located. The document typically nominates one person to serve as personal representative of the estate, and that person petitions the court to be appointed and open a probate. When a decedent dies without a will, which is known as "intestate," an interested family member or creditor can petition the court 45 days after the death.

Similarly, if the decedent had a revocable



MAKE TIME: Those who have gone through the estate settlement process after the death of a loved one know the value of having an estate plan in place, and where to find needed documents. If you do not have an estate plan in place, business advisers and attorneys encourage you to work on one now.

cable living trust, the documents must be located. Trusts may also be amended or restated, so finding the most recent version is important. The trustee(s) appointed in the document is responsible for closing out the trust through private administration, according to the terms of the trust document.

Confirm who will be providing copies of the death certificate with your funeral home director. Sometimes the funeral home provides them. Typically, numerous originals are needed in the estate settlement process.

INVENTORY THE ASSETS

Assets of the decedent must be identified, valued and managed. Large assets, including real estate and business interests, may require an appraisal. Valuations are as of the date of death, although the estate can elect to use an alternate valuation (six months after date of death) if the alternate valuation would increase the cost basis for beneficiaries or reduce the estate tax due.

Accounts with beneficiaries, such as life insurance, retirement accounts or payable-on-death accounts, can be transferred to the beneficiary by completing the paperwork required by the institution and providing a death certificate. For jointly held real estate, an affidavit of survivorship must be recorded and the deed updated.

PAY DEBTS AND DISTRIBUTE THE ASSETS

Probate assets must be administered through the probate process, which can proceed as either formal or informal. Informal probates are typically less time-consuming and less costly, but not every estate qualifies to proceed informally — such as estates that are insolvent, or if the original will cannot be found. Notice is given to heirs and creditors, who by statute are allowed four months to file their claims against the estate. A probate hearing may be held. Debts of the estate are paid in order of priority. An inventory is filed with the court, and any assets remaining in the estate are distributed according to the will.

The concept is the same for trust ad-

ministration. However, it is a private process that does not involve a court, and it typically requires significantly less time and expense than the probate process. The trustees need to apply for a tax identification number for the trust. They inventory and value the assets, pay the debts of the estate, costs of administration and any tax due, and distribute the assets as designated in the trust document.

DISCLAIMERS AND ESTATE TAX RETURNS

If the document includes a disclaimer provision, or if accepting an inheritance would have adverse consequences to a beneficiary, such as causing him or her to become a taxable estate upon his or her death, a beneficiary may choose to disclaim his or her inheritance. To be effective in Minnesota, the disclaimer must be formally made, and no part of the property to be disclaimed can be accepted. A disclaimer becomes irrevocable once it has been effectively filed or delivered, as required by statute.

Regardless of the asset transfer device used, estate tax returns are due within nine months of the date of death of the decedent. A return is required to be filed in Minnesota if 1) a federal return is required to be filed, or 2) the gross estate of the decedent exceeds the Minnesota exemption amount, currently \$1.8 million for 2017. Even if a Minnesota return is not required, in order to preserve the decedent's federal exemption amount by electing portability, a federal return must be filed.

Many of us will at some point be responsible for the estate administration of a friend or family member. For many faced with the task, it's common to be unsure where to start. A basic understanding of the main components of the settlement process will serve to guide you in the right direction. However, it is wise to seek the guidance of an experienced estate attorney to ensure the estate is settled correctly.

Gunsolus is an attorney based in southern Minnesota. Note: This is her last column since she is no longer with Miller Legal Strategic Planning Centers, P.A., Rochester.

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