

What We Know

ARTICLES & INSIGHTS

ABOUT THE AUTHOR



Andrew is a member of the firm's Trust and Estates practice area. He primarily represents clients in matters involving estate planning, estate administration, special needs law and elder law. Originally from Grand Haven, Michigan, Andrew attended the University of Michigan, graduating with a Bachelor of Arts degree in Political Science. He earned his J.D. from Michigan State University College of Law.

Estate Administration Mistakes to Avoid

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If you have been named or appointed as the personal representative (also sometimes called "executor" or "administrator") for a loved one's estate, it is important to understand the responsibilities the role entails. Missteps in the estate administration process can be costly and may result in personal liability. Four of the most common mistakes involve taxes, the timing of distributions, creditors, and taking other actions that you may not recognize as risky behavior.

TAX RESPONSIBILITIES

One of the personal representative's responsibilities involves preparing and filing tax returns and paying taxes owed by prescribed deadlines.

In addition to the final individual income tax filing, which is due by April 15 in the year after the decedent's death, there may also be estate income tax and estate tax obligations. While North Carolina does not currently have a state estate tax, the estate could owe federal estate taxes. And, if a North Carolinian owned property in another state that does levy estate taxes, there could be state filings and payments required in that jurisdiction.

Personal representatives need to be aware of these obligations and deadlines and ensure filings occur and payments are made in a timely manner. Failing to properly handle the decedent's and the estate's taxes can lead to fines and penalties from the IRS and state tax authorities. Hiring an estate attorney and leveraging the skills and expertise of estate tax professionals can help you avoid this pitfall.

HASTY ADMINISTRATION

It is normal and understandable for a personal representative to want to settle and finalize the estate administration process as quickly as possible. Heirs are often anxious to receive their shares of estate assets and may pressure the personal representative to make distributions quickly. However, doing so can be risky for a couple of reasons.

First, in North Carolina, creditors have a 90-day period from the publication of the notice to creditors to file claims for payment. Moreover, if a creditor is "known" or "reasonably

ascertainable” by the personal representative, then the creditor must receive personal notice of the notice to creditors within 75 days of the granting of letters. If you distribute the estate before that claims period has tolled, you could be in the uncomfortable position of having to ask heirs to return some or all of their inheritance to satisfy obligations. If the money has been spent already, the situation becomes even more problematic, as the estate is still responsible for satisfying debts.

There’s also a risk that assets will be missed if the estate is distributed too quickly. With the proliferation of accounts offering paperless communications, there is a real possibility that a personal representative could initially miss a bank or investment account when gathering and distributing assets. Taking the time to administer the estate diligently, without caving to pressure from heirs, can help limit the risk that you’ll need to go through the same process multiple times.

OBLIGATIONS TO CREDITORS

As mentioned above, North Carolina law provides protections for creditors when someone dies, giving them 90 days from the publication of the notice to creditors to file claims against the estate for payment. There are several scenarios related to creditors’ claims that can be problematic for personal representatives.

When creditors demand payment from an estate that has sufficient assets to pay all claims, personal representatives are expected to make timely payments on behalf of the estate.

There are also state statutes that govern the order of creditors’ claims. In an estate that has more assets than liabilities, not following this order isn’t necessarily critical as long as valid debts are timely paid, and paid in full. However, in an insolvent estate (an estate with more debts than assets), personal representatives must carefully follow this prescribed order and prorate payments accordingly. Your estate attorney can help you understand and meet your obligations to creditors.

OTHER LIABILITY RISKS

Another potential mistake personal representatives often make is risking unnecessary personal liability related to estate assets during the administration process.

Among other duties, personal representatives must take reasonable steps to safeguard and protect assets from the time of appointment until assets are distributed and the estate is settled. This seems fairly straightforward, but in practice, personal representatives often act without thinking, and in ways that could be costly.

For example, using a deceased parent’s vehicle may not seem like a big deal. However, if that vehicle is damaged, the personal representative could be on the hook to make the estate – and its heirs – whole. Similarly, if there is real estate owned by the estate, the personal representative owes a duty to protect the property until it is sold or retitled. It’s important to keep property insurance in force and to take reasonable precautions to ensure both the interior and exterior of the home are maintained throughout estate

administration.

CHOOSE AN EXPERIENCED ESTATE ATTORNEY AS YOUR GUIDE

Acting as a personal representative for an estate means exercising care and responsibility as you work to honor your loved one's wishes, while at the same time making sure your actions adhere to the law. Without a knowledgeable, experienced guide to walk you through the process, it can be fraught with potential risk and liability.

If you have been nominated or appointed as a personal representative, you can protect yourself by hiring a skilled estate administration attorney.

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