

## Chapter 28

# What to Do When Someone Dies: Responsibilities of the Personal Representative and Trustee Under Probate

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Dealing with the loss of a loved one is difficult. It is our goal through this chapter to provide you with some important information that may hopefully make the days and weeks after the passing a little easier.

### 28-1. Pronouncement of Death

If your loved one dies at home:

- ▶ Follow any religious observances that your family member requested.
- ▶ Call your physician or local hospital so they can come to certify the cause and approximate time of death.

- ▶ Call family members who may wish to spend private time with your loved one before the mortuary removes the body.
- ▶ Turn off any electrical equipment attached to your relative's body, but leave any tubes, etc., in place.
- ▶ Call your funeral director. He or she will remove the syringes, catheters, or tubes and transport the body to the mortuary.
- ▶ If it exists, find your family member's final arrangements plan to follow his or her final wishes with respect to whether a funeral, memorial service, cremation, organ donation, or whole body donation was desired. As much as possible, try to follow your loved one's plans. This will relieve you of the burden of making these decisions and will honor his or her last requests.
- ▶ Colorado requires a qualified medical professional to be notified and to make the official pronouncement of death.

### **Call the Coroner**

If the death occurs at home, you must call the coroner's office for the county in which the death occurs, or dial 911 if you want the support of emergency personnel. Paramedics will attempt resuscitation.

If you are using hospice care, do not contact the coroner's office or 911. Instead, call the hospice and they will handle these matters for you.

### **Notify Family and Friends**

Ask family and friends to help you with some tasks, including notification of other family and friends.

The Red Cross will help you notify family members if the deceased was in the military or if the relative to be notified is in the military. The Red Cross will need the following information:

- ▶ Service member's full name;
- ▶ Rank/rating;
- ▶ Branch of service;
- ▶ Social Security number;
- ▶ Military address; and
- ▶ Information about the deployed unit and home base unit (applies to deployed service members only).

## Follow the Deceased's Instructions

Look through the deceased's papers to find if she or he:

- ▶ Had a prepaid burial policy;
- ▶ Belonged to a memorial society; or
- ▶ Had written instructions regarding his or her arrangements for burial, cremation, and ceremonies the decedent did or did not want.

Note that these instructions could be legally binding even though they might be contrary to the wishes of others. If you have any questions about whether to follow them, contact a probate attorney or your mortuary.

## Make Arrangements for the Deceased Person's Body

Arrange for the body to be picked up according to the coroner's instructions and according to the instructions from a hospital if the body or organs are to be donated, or by the mortuary chosen for the funeral or by the crematorium if you are going to cremate the body.

*Note:* Federal law requires price information to be given over the phone. Prices range a great deal, so you may want to compare prices.

## 28-2. What to Do One to Three Days After Death

### Complete the Funeral and Burial Arrangements

Ask a trusted friend or family member to accompany you to the mortuary to advise and support you in making the funeral and burial arrangements.

Arrangements may include transfer to another location, burial, or cremation. You may ask a clergy member to assist you. If the deceased was a member of the Funeral Consumer Society of Colorado, (303) 759-2800, you can obtain a lower rate on cremation or funeral services. This also could be true for those who simply shop around. Cremation prices range from about \$900 to \$2,400 or so in the Denver metro area. Those prices should include the cost of the urn and other related services.

### Financial and Other Assistance

If the deceased was on public assistance, burial assistance may be available. Contact your local county Department of Social Services as soon as possible and ask for the Burial Assistance Department. There are strict spending limitations, so you must meet with Social Services prior to meeting with the mortuary. Total expenses of burial will be limited to qualify for the benefit.

If the deceased was in the military or is the spouse or dependent child of a person in the military, contact the VA cemetery or VA office. There may be burial benefits. The mortuary will call the VA at your request. Typically, unless the deceased was disabled due to service injuries, the only benefit a veteran receives is burial at a national cemetery.

If you have concerns that you cannot resolve with the funeral director or the management of the funeral home, contact the Funeral Service Customer Assistance Program at (800) 662-7666.

Finally, you should choose someone to:

- ▶ Answer the phone calls from family members and friends and collect mail;
- ▶ Care for pets and plants, and tend to other household chores;
- ▶ Assist with lawn care or snow removal;
- ▶ Stay at home during the funeral and visit the home to guard against break-ins occurring when the family is at the funeral; and
- ▶ Prepare food for family and friends after the funeral.

Also, to reduce the likelihood of vandalism to the home or condominium, gather two or three electronic light timers so that lights, a radio, or TV will go on and off at appropriate times.

### **28-3. What to Do One to Ten Days After Death**

#### **Death Certificates**

The most common and quickest way to obtain death certificates is through the funeral director. The cost is usually \$10 for each death certificate. In order to estimate how many to order, you should estimate the number of different assets held by the deceased or institutions that will require a death certificate. Some examples of assets that will require an original death certificate are homes held in joint tenancy, stocks, bonds, and bank accounts.

If you do not order enough, you can get more death certificates later through the Vital Statistics Department for the county in which the death occurred or through the Colorado State Department of Public Health and Environment's Vital Records Office. Many people waste money by ordering too many death certificates: six to eight copies are usually adequate. Remember, you can always obtain more death certificates later, if needed.

#### **In General**

Contact the following persons or institutions:

- ▶ Police, to inform them that the house of the deceased will be vacant and to request that they occasionally check the house;
- ▶ Attorney, to set up a meeting to discuss the probate process, such as how to transfer assets, how to deal with heirs or devisees, and how to report taxes;
- ▶ Accountant or tax preparer, to assist with gathering information as to the deceased's assets owned and to determine what returns should be filed;
- ▶ Investment professionals, to obtain information as to assets owned by the deceased;

- ▶ Insurance agents, to discuss insuring the decedent's assets and to obtain necessary death claim forms for life insurance or other assets;
- ▶ Social Security at (800) 772-1213, to stop monthly deposits and learn about benefits;
- ▶ Veterans Affairs, to stop monthly checks and learn about benefits;
- ▶ Agencies providing pension services, to stop monthly checks and obtain claim forms;
- ▶ Guardian, conservator, or agent under a power of attorney, to notify of the death and the end of their responsibilities;
- ▶ Utility companies, to alter or discontinue service;
- ▶ Employer, to notify of death and learn about benefits;
- ▶ Newspapers and magazines, to stop subscriptions (you may consider asking for refunds of the unused portions of the subscriptions); and
- ▶ Post office, to forward mail (if necessary).

### **Prior to Appointment as Personal Representative**

If you are nominated as the personal representative (also known as “executor”) in a will, you have the power (before you are appointed by the court) to carry out written instructions of the deceased relating to the body, funeral, and burial arrangements. You may begin to protect the deceased's assets. Do not remove or distribute assets before opening the estate. Brochures are available from the Colorado Bar Association that explain the duties and responsibilities of a personal representative and how a personal representative is appointed when there is no will.

### **Search for the Will**

The original will is usually in a safe place in the deceased's home, a safe deposit box, or an attorney's office, or is lodged with the court in the county in which the decedent lived. When the original signed will is found, lodge it within 10 days with the probate court in the county where the deceased lived. It is also possible the will was lodged with the court for safekeeping during the deceased's lifetime. If a will cannot be found, a probate attorney can help guide you through the intestate probate process. Also, look for a handwritten list of instructions, a letter to a family member, or other similar documents. In Colorado, these documents may constitute a will.

### **Entering the Safe Deposit Box**

Any person whose name is on the box may enter it at any time. An heir or beneficiary in a will can ask the bank to search for the will, a deed to a burial plot, or burial instructions. A representative of the bank will open the box in the presence of the heir or beneficiary and remove any will that is found. The bank will forward the will to the court, but first you should ask for a copy. After the will is filed with the court, the nominated personal representative can petition the court to appoint her or him.

## Search for Other Documents

The personal representative is the court representative who has the authority to search for any important documents. The search should include the home, office, place of business, and any safe deposit boxes. Meeting with advisors such as accountants, investment professionals, insurance agents, and attorneys is advised. Any information indicating that an asset exists or that bills are unpaid should be kept for use in the administration of the estate.

Look for:

- ▶ Funeral and burial plans;
- ▶ Safe deposit rental agreements and keys;
- ▶ Trust agreements;
- ▶ Nuptial agreements;
- ▶ Life insurance policies or statements;
- ▶ Pension, IRA, or retirement statements;
- ▶ Recent income tax returns for past several years;
- ▶ Gift tax returns;
- ▶ Marriage, birth, and death certificates;
- ▶ Divorce papers;
- ▶ Military records and discharge papers;
- ▶ Certificates of deposit, bank statements, checkbooks, and check registers;
- ▶ Notes receivable and payable;
- ▶ Motor vehicle titles;
- ▶ Deeds, deeds of trust, mortgages, leases, and title policies;
- ▶ Stock and bond certificates and account statements;
- ▶ Bankruptcy filings;
- ▶ Partnership, LLC, or corporate agreements;
- ▶ Unpaid bills;
- ▶ Health insurance papers; and
- ▶ Papers regarding fraternal organizations or professional societies (which may offer benefits upon the death of their member).

## **Avoid Unscrupulous People**

In the period following the loss of a loved one, be careful before accepting any telephone solicitation, and be careful about volunteering personal information about the decedent to strangers over the phone. You may receive fraudulent invoices, so be sure to review invoices carefully for validity. Thieves read death notices and obituaries, so avoid stating the address and other private information about the decedent. Avoid any major lifestyle changes for a period to allow for reflection on how the loss will affect the surviving family and friends.

## **Creditors**

Following a death, certain creditors may be very aggressive. An important purpose of the probate administration is to provide an orderly process for dealing with all of a decedent's creditors. Try to avoid depleting the available cash on the first "squeaky wheels," as doing so can cause bigger problems later in the estate administration, as well as expose the personal representative to a charge that he or she showed preference for a specific creditor over others.

## **Veterans Benefits and Social Security**

The mortuary may assist you with the paperwork for both VA and Social Security benefits. For information on VA benefits, call the nearest VA office for benefits information and assistance. For Social Security benefits, call the Social Security Administration at (800) 772-1213. Be prepared to identify the deceased's:

- ▶ Relationship to you;
- ▶ Social Security or VA claim number;
- ▶ Date of birth;
- ▶ Date and place of death;
- ▶ Surviving spouse or next of kin; and
- ▶ Medical history that bears on whether the death is service related.

If you do not know the deceased's VA claim number, then provide the service number and dates of active service.

Your call will stop the monthly payments currently being received by the decedent. You must return the check for the month of death. If the decedent was receiving benefits by direct deposit (which is most likely the case), excess payments will, in time, be electronically withdrawn from the account.

Social Security monthly benefits are available to the surviving spouse, children under 18, and certain disabled children. Benefits include a lump-sum death benefit (currently at \$255 for a surviving spouse). Ask for the "Survivors Benefits" brochure or review the Social Security Administration's website at [www.ssa.gov/pubs/deathbenefits.htm](http://www.ssa.gov/pubs/deathbenefits.htm) for more information about what to do when a beneficiary dies.

The surviving spouse may be eligible for veterans' benefits, which may include a lump-sum death benefit, if the death was service related; a continuing monthly payment; financial assistance with funeral expenses; and burial of the deceased in a national cemetery. Review the "Federal Benefits for Veterans and Dependents" publication (available for download at [www1.va.gov/opa/vadocs/current\\_benefits.asp](http://www1.va.gov/opa/vadocs/current_benefits.asp)) or visit the VA website at [www.vba.va.gov/survivors/index.htm](http://www.vba.va.gov/survivors/index.htm) for more information about survivor benefits.

## **28-4. Personal Representative Duties Under the Probate Code**

### **Your Duties in General**

You have a duty to act impartially in regard to all parties to the estate. You have to treat each person the same. You have a duty to administer the estate with care, making sure to put the interests of the estate in front of your own interests in the estate.

As a personal representative, you are responsible for:

- ▶ Collecting and inventorying the assets of the estate;
- ▶ Managing the assets of the estate during the probate process;
- ▶ Paying the bills of the estate;
- ▶ Making distributions to the heirs or beneficiaries of the estate; and
- ▶ Closing the estate after all of the above responsibilities have been completed.

### **Informal Versus Formal Probate**

There are two types of probate: informal and formal. Informal probate is if there is an uncontested will or, in the case of no will, if all of the potential heirs of the estate agreed on who should be personal representative and who the beneficiaries of the estate are. Formal probate applies if the heirs and/or beneficiaries cannot agree on those issues and they need the court to decide them. Formal probate is also necessary if the original will cannot be found. Filing for an informal probate usually is less expensive and takes less time than formal probate. This is true because there is less court involvement. You should consult your probate attorney to determine which type of probate you are required to file.

### **Pleadings Required to be Filed by a Personal Representative**

As a personal representative, you are required to file certain pleadings with the court as part of the probate process. Contact either the court or your probate attorney for more information about the particular pleadings that you must file.

## Potential Liability as Personal Representative

As a personal representative, you may be liable to the beneficiaries for any loss to the estate and for any gain the estate should have realized but did not. Situations in which a personal representative may be found liable include:

- ▶ You, for any reason, failed to exercise reasonable care and skill in managing the property of another;
- ▶ You negligently or intentionally did something that you *should not* have done, such as taken funds from the estate, failed to follow the will, or committed other actions that breached your fiduciary duty as personal representative; or
- ▶ You negligently or intentionally failed to do something that you *should* have done, such as properly inventoried the assets or failed to pay the heirs or beneficiaries of the estate.

This list is not exhaustive. It merely demonstrates some ways a personal representative potentially can incur liability. You should contact a probate attorney and seek his or her advice as to any potential problems that may arise.

## 28-5. Trustee Responsibilities

### Your Duties in General

Once you have been named trustee, co-trustee, or successor trustee of a trust, there are certain duties to perform and rules to follow. Your authority as trustee comes from the trust itself, and your duties and powers should be described in the trust. Read the trust in detail, as it should answer a lot of your initial questions. Your three basic duties to the trust and its beneficiaries are:

- 1) A duty of impartiality, not to favor the interest of one party over another;
- 2) A duty of undivided loyalty, not to put your own interest in a conflict with those of the trust; and
- 3) A duty to administer the trust with care and prudence.

You should consult your probate attorney or accountant as to any potential tax filings and other questions you may have regarding your duties as trustee.

### Accounting

As trustee, you must set up and keep a set of trustee's books. These records must make a clear distinction between property you handle as trustee and property that is your own. Any mixing of the two is strictly prohibited. The frequency with which you must provide an accounting to the beneficiaries should be stated in the trust. If it does not say how often, then an accounting should be provided at least annually.

## Trust Registration Statement

Colorado law requires all trusts to be registered with the probate court in the county where the trust is being administered. Registration should be done no later than 30 days after the trust is created. The trust registration statement should be amended or updated whenever there is a change in trustee or in the place of administration of the trust. There are court-approved forms for trust registration and amendment.

## Potential Liability as Trustee

As the trustee, you may be liable to the beneficiaries for any loss to the trust and for any gain the trust should have realized but did not. The following are examples of ways in which a trustee may be found liable:

- ▶ If, for any reason, you failed to exercise the care and skill of a person of ordinary prudence in managing the property of another;
- ▶ You negligently or intentionally did something that you *should not* have done, such as taken funds from the estate, did not follow the will, or took other actions that breached your fiduciary duty as trustee; or
- ▶ You negligently or intentionally failed to do something that you *should* have done, such as properly inventoried the assets or failed to pay the heirs or beneficiaries of the estate.

Again, this list is not all inclusive. It merely demonstrates some of the ways in which liability potentially may be incurred. Contact a probate attorney to seek his or her advice as to any potential problems that may arise.

## 28-6. Resources

### Words of Caution

This chapter cannot relate everything you need to know in the first few days following the death of a loved one. You should establish an early relationship with your probate attorney to properly address all matters and questions. Seeking your attorney's advice before you act may avoid more costly legal fees later. He or she should be able to provide you with very helpful information and explain the probate process to you. This will help alleviate a large amount of concern.

#### Colorado Bar Association

(303) 860-1115 or toll-free (800) 332-6736  
[www.cobar.org](http://www.cobar.org)

**Colorado Department of Public Health and Environment**

Vital Records Section  
4300 Cherry Creek Dr. S.  
Denver, CO 80246-1530  
(303) 692-2230  
[www.cdphe.state.co.us/certs](http://www.cdphe.state.co.us/certs)

**Funeral Consumer Society of Colorado**

(303) 759-2800  
[www.funerals.org/affiliates/colorado](http://www.funerals.org/affiliates/colorado)

**Social Security Administration**

(800) 772-1213  
[www.ssa.gov](http://www.ssa.gov)

**Department of Veteran Affairs**

[www.va.gov](http://www.va.gov)

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