

# Your Guide to Probate & Estate Administration



631.390.5000 • [genserlaw.com](http://genserlaw.com)



## Introduction

---

After the death of a loved one, managing the seemingly countless number of tasks involved when you are the Executor or Administrator of the Estate can be overwhelming and challenging — to say the least. However, you are not alone. The experienced probate and estate administration attorneys at Genser Cona Elder Law are on your team to help you every step of the way. When the unthinkable happens, let us be your lifeline.

Probate and the estate administration process can be complex, requiring not only legal assistance but financial and tax expertise as well. We have created this Probate and Estate Administration Guidebook to help our clients and their families by breaking down these important topics to relieve some of the stress so that you are able to focus on yourself and your family.

We have selected the topics based on the most commonly asked questions and issues raised by our clients throughout the Probate and Estate Administration process. This Guidebook is an excellent educational tool but by no means does it replace the valuable case-specific legal advice you will receive from us as your legal counsel. Genser Cona Elder Law is always available to meet with you and your family to help you through the legal process.



# Your Guide To Probate & Estate Administration

## Disclaimer

The information in this Guidebook is provided by Genser Cona Elder Law for informational and educational purposes only. The information contained herein is not legal advice and must not be construed as such. The information is accurate as of the date of publication (June 2020) but is subject to changes in the law. Please consult us before taking any legal action.

If you have questions of a legal nature or would like legal advice, please call us at 631.390.5000. We are always available to help you.

Attorney Advertising

© Genser Cona Elder Law, 2020

## Table Of Contents

---

First Steps After Your Loved One Has Passed .....	5
Estate Administration .....	7
What is Probate? .....	9
Probate vs. Non-Probate Assets .....	11
The Probate Court .....	13
What Does an Executor Do? .....	15
Checklist for Executors .....	17
Executor and Trustee Commissions .....	21
Estate Accountings .....	23
Estate Taxes .....	25

# First Steps After Your Loved One Has Passed

It's easy to get overwhelmed with the tasks at hand while grieving the loss of your loved one.

## Here Are a Few Items That Need Immediate Attention:

- Notify the Social Security Administration that your loved one has passed (if the funeral home did not do this for you).
- Contact pension companies to notify them that your loved one has passed.
- Secure original death certificates for each bank, brokerage, financial institution and insurance company where your loved one had accounts.
- Close your loved one's credit card accounts to prevent fraud and identity theft.
- Collect mail to gather bank statements, bills and other financial documents.
- Locate the original Last Will and Testament, Trust, and any other Estate Planning documents.
- Gather all insurance policies.



The rest can wait and can be handled by us as your legal counsel. Your job is to take care of yourself and your family. Call the experienced and compassionate attorneys at Genser Cona Elder Law. When the unimaginable happens, pass the baton to us.

# Estate Administration

In the event your loved one passes without a Last Will & Testament, someone will be required to step in to administer the estate. This person, known as an Administrator, will be tasked with collecting assets, paying bills, selling property and distributing assets to your heirs in accordance with New York State Laws (the Laws of Intestacy). Under New York law, the priority of who can serve as Administrator starts with:

- Surviving spouse
- Children
- Grandchildren
- Parents
- Siblings
- Any other heir who is eligible to qualify



The individual with the highest priority has first right to serve as the Administrator of the estate — unless they are disqualified.

## Who Can't Serve as Administrator?

People who are disqualified from serving as the Administrator of an estate include:

- Convicted felons
- Incapacitated individuals
- Minors
- Non-domiciliary people and
- Anyone else who is "unfit". This final category is intentionally broad and leaves discretion to the courts to determine whether a person is qualified.

## What Happens If More than One Person Has a Right to Serve?

If more than one individual has the same priority position, each person will have an equal right to serve as Administrator. For example, if a decedent leaves behind two children and no spouse, the two children have an equal right to serve. As a result, they can decide to:

- Agree that only one child will serve
- Agree to serve together or
- Litigate and let the Court decide who is the most qualified to serve as Administrator.

# What Is Probate?

---

When an individual passes away, their Last Will and Testament must be admitted to probate. This allows their nominated Executor to be issued “Letters Testamentary” by the Surrogate’s Court which gives them the authority to collect assets, pay bills, sell property, and distribute assets to those listed in the Will. This estate settlement process happens over several stages.

As an Executor, you’ll have several responsibilities and the process can be daunting and confusing. First, the Executor must prepare all required Court petitions and appear in Surrogate’s Court before the Court will award Letters Testamentary. Once you are appointed as the Executor of the estate, your responsibilities will include:

- Protecting and marshaling assets
- Creating a comprehensive inventory of the estate assets
- Paying claims made against the estate
- Paying bills
- Making distributions to beneficiaries
- Preparing tax returns

As the Executor of the estate, you have a fiduciary responsibility to act in good faith, prudently, and with undivided loyalty to the beneficiaries of the estate. You will often hear the word fiduciary, a term that is interchangeable with the words executor and administrator.



## Do I Need A Lawyer for Probate?

As you can see, many of these duties require legal assistance, and in some cases, financial and tax expertise as well. The probate attorneys at Genser Cona Elder Law prepare the Court petitions and appear in Court for and with you. We also handle:

- All probate court proceedings
- Collection and sale/liquidation of assets
- Preparation of asset inventories
- Payment of bills
- Negotiation and payment of claims against the estate
- Distributions to beneficiaries
- Estate tax planning and tax return preparation
- Preparation of Accountings
- Litigation that may ensue between the beneficiaries

The probate attorneys at Genser Cona Elder Law will help you navigate the complex legal and financial considerations of the probate process every step of the way.

# Probate Vs. Non-Probate Assets

It is important to understand the difference between probate and non-probate assets. Probate is the legal process overseen by the Surrogate's Court where a deceased person's assets are distributed in accordance with their Last Will and Testament, or according to the laws of their state if they did not have a Will.

Probate is necessary for those assets that were owned solely in the name of the decedent or if the assets were owned as "tenants in common", where each owner has a distinct share and interest in the property.

Not all assets owned by the decedent at the time of their death will need to go through probate; these are called non-probate assets. Non-probate assets will pass directly to the named beneficiaries. Non-probate assets, or assets that will pass outside of the estate, include accounts payable on death ("POD") or transferable on death ("TOD"), accounts held jointly with rights of survivorship, accounts in a living trust (revocable or irrevocable), and accounts with named beneficiaries.

It is important that you understand how your assets are held so that you can make sure they will pass in accordance with your "testamentary plan" or how you intend for your assets to be inherited when you pass away.

## What Do I Need to Know?

Be aware of jointly held accounts, as they may not end up passing to your intended beneficiaries. For example, if you have an account held jointly with one of your three children for convenience sake, it may be your intent that said account pass equally to all of your children. However, the joint account will pass 100% to the child who is named jointly on the account. The joint account holder has no legal obligation to divide the account with their siblings. The better approach is to name that child your agent under a Power of Attorney.

## What Should I Do?

It is a good idea to periodically check your beneficiary designations to make sure they fit with your testamentary plan. You should also be sure to update your beneficiaries after major life events, such as marriages, divorces, births, and deaths.



# The Probate Court

Probate is the process the Courts use to supervise the distribution of assets after your loved one passes away. The Surrogate judge must be convinced that the Will is legitimate and that your loved one meant to have their assets pass in the way they describe. Most Wills that are drawn up today have an affidavit for the witnesses to sign, which makes it very easy for the Surrogate to determine that your loved one was competent to sign a Will and that the Will reflects their intentions.

The Surrogate’s Court first determines whether the Will is valid. If it is, the Court remains available to oversee the process under which the decedent’s heirs inherit the assets.

The Executor will be given “Letters Testamentary.” These “Letters” authorize the Executor to collect assets. For example, the Executor will close your loved one’s bank accounts and re-title or liquidate stock certificates. All assets may be deposited into a single estate bank account. Once all debts have been paid, the Executor will distribute the assets pursuant to the terms of the Will.



Court fees for the probate of a Will are not prohibitive; they are on a sliding scale. The following is a schedule of probate fees (as of 2020):

Value of Estate	Court Fee
Less than \$10,000 .....	\$45
\$10,000 but under \$20,000 .....	\$75
\$20,000 but under \$50,000 .....	\$215
\$50,000 but under \$100,000 .....	\$280
\$100,000 but under \$250,000 .....	\$420
\$250,000 but under \$500,000 .....	\$625
\$500,000 and over .....	\$1,250

If your loved one did not have a Will, state laws determine how their assets will be distributed. This is called the Laws of Intestacy. In that instance, the Court will appoint one of the heirs as the administrator of the estate and will give such person letters of administration authorizing the administrator to collect the assets. The Court will supervise the collection and distribution of assets under these laws. One of the heirs will do the actual work or the Court can appoint a Public Administrator.

If the heirs are at odds, each step of the way can be expensive, as the fighting is mediated by the Courts, with lawyers representing each party. But if the Will is drafted properly, many Will contests can be avoided.

# What Does An Executor Do?

Executors have wide-ranging responsibilities and most rely on legal counsel to properly administer an estate. Courts hold Executors to the highest standards. The fiduciary must be prudent, wise and honest.

## The Executor of a Will is responsible for the following duties:

- Locate the Will and petition the Court for Letters Testamentary after all beneficiaries and distributees have been notified
- Open a checking account for the Estate
- Search the house for valuable papers and assets
- Inspect all real estate and have it appraised
- Examine and file claims for life insurance, Veterans' death benefits, union death benefits, etc.
- Contact banks, brokerages and other asset holders and collect all assets



- Review old tax returns and make sure all income and estate tax returns are filed on time
- Pay debts of the Estate
- Invest/sell all assets wisely
- File an inventory with the Court
- Prepare an accounting of all assets and debts of the Estate
- Distribute all assets
- Obtain waivers from beneficiaries and file them with the Court

This is not an exhaustive list. If complications arise, the procedure can become lengthy and costly.

The experienced attorneys at Genser Cona Elder Law will help you navigate the complex legal and financial issues and will be part of your fiduciary team throughout the estate administration process.

# Checklist For Executors

---

Without an estate administration checklist, being the executor of your loved one's estate can be intimidating and sometimes confusing. As the executor of the estate, you'll be responsible for filing a probate petition with the Court, marshaling assets, paying debts, preparing accountings, filing tax returns, distributing assets, and more. You will need legal help along the way and the attorneys at Genser Cona Elder Law will be part of your team. But to get you started, here's a checklist you can follow:

## Get Copies of the Death Certificate

Before any estate administration functions can be performed, it's imperative that you obtain original (raised seal) copies of your loved one's death certificate. In most instances, the funeral home will be able to provide this. Make sure you request multiple copies.

Moving forward, you'll need to provide the death certificate to complete a range of tasks, such as:

- Filing and completing insurance claims
- Filing and completing the Probate Petition
- Accessing certain financial accounts

## Meet with Your Genser Cona Attorney

Hiring the right attorney is critical. Your attorney will partner with you throughout the administration of the estate. Your

attorney will handle all legal services including the initial court filings and court appearances required to secure your appointment as executor. Thereafter, you can decide how much of the administration work you wish to handle and how much you would like your attorney's office to handle. Many executors prefer to let their experienced estate administration attorney administer the estate, saving time, money and reducing the likelihood of costly errors with potential long-term effects.

## Locate, Secure & Manage All Assets

In the beginning, it's imperative to locate all of the assets, including bank and brokerage accounts, retirement accounts, insurance policies and real estate. You may be required to make decisions about which assets you should sell and when. You may need to change the locks and otherwise secure real estate and change insurance coverage if the property is now vacant. The process of locating, securing, and managing assets may take a significant amount of time.

## Maintain Communication with Professionals

In addition to your estate attorney, you may need support and assistance from insurance agents, accountants, investment advisors, and a handful of other professionals. These individuals may offer assistance with access to accounts and help make sure all of the necessary paperwork is filed properly. You may choose to delegate this work to your estate administration attorney.

## Manage Daily Details

You'll be required to manage the daily details of the estate, such as managing and terminating outstanding contracts like leases. You may also be required to notify a range of agencies and businesses about the death of your loved one. For instance, you may need to notify and provide a copy of the death certificate to:

- Banks and credit card companies
- The Department of Veterans Affairs
- Mortgage Company
- The Social Security Administration

You'll be required to establish a bank account for the estate to hold all of the financial assets belonging to your loved one before those assets are distributed to the heirs. All debts of the estate must be paid first before any distributions can be made to heirs.

## Pay Ongoing Expenses

Until your loved one's estate has been settled, you'll need to pay their expenses, such as:

- Mortgage
- Insurance premiums
- Utility bills
- Estate taxes



## Payment of Taxes

You'll also be required to pay any income taxes and file an income tax return for your loved one in the year they died.

## Notify Creditors and Pay Debts

If the estate is legally required to pay debts, it's up to you — the executor — to ensure those debts are paid. Creditors have seven months to file a claim for payment. As the executor, it's up to you to determine whether a claim is valid or not. It's important to understand that all valid debts must be paid prior to any assets being distributed to heirs.

## Manage the Distribution of the Property

You will need to contact the people who are named in the Last Will & Testament to let them know of their inheritance and make sure they receive the property as listed in the Will. If there is no Will, state laws determine who will inherit and how much. This is known as the Laws of Intestacy.

It is easy to get overwhelmed with the tasks at hand when a loved one has passed. An estate administration checklist can help you get started and prioritize the necessary duties. Fortunately, you're not alone. The experienced estate administration attorneys at Genser Cona Elder Law can help you every step of the way.

# Executor And Trustee Commissions

Executors and trustees are entitled to fees based on statutory law in New York State. The Surrogate's Court Procedure Act sets all such fees and commissions based on the value of the estate or trust. For executors, the fee is based only on the value of the assets that pass under your Will and not on assets that pass directly to your beneficiaries, such as an IRA, life insurance policy or joint bank account. The fee schedules are as follows:

## Executor Commissions:

- 5% of the first \$100,000
- 4% of the next \$200,000
- 3% of the next \$700,000
- 2½% of the next \$4,000,000
- 2% of all sums over \$5,000,000

## Annual Trustee Commissions:

- \$10.50 per \$1,000 on the first \$400,000 of principal
- \$4.50 per \$1,000 on the next \$600,000 of principal
- \$3.00 per \$1,000 on all additional principal



**When Your Loved One Passes Away...Pass the Baton to Us**

In addition, your executor and/or trustee will be entitled to reimbursement for reasonable and necessary expenses paid by him or her in the administration of your estate or trust. If you appoint two or more executors or trustees, each shall be entitled to a full commission, provided your estate is valued over \$300,000 or your trust over \$400,000. If it is not, then such commissions may be apportioned between your executors and trustees.

Your executor and/or trustee can waive commissions and, when the estate is distributed equally amongst the children and there are no disputes, the executor often does waive his or her commissions.

# Estate Accountings

---

Before an estate can be concluded, an accounting must be prepared reflecting all financial transactions occurring within the estate. The fiduciary must account for all assets received, income and interest earned, all bills paid, commissions earned and bequests and gifts paid. Once approved, the accounting absolves the fiduciary from liability.

An accounting is commonly prepared at the end of the administration of the estate and just before distributions are made to the beneficiaries. Generally, an accounting entails a statement showing:

- The assets of the estate
- Income from assets
- Liquidation of assets
- Payments of debts and expenses
- Interim distributions
- All remaining property

## Informal Accounting

An informal accounting is an out-of-court procedure where the fiduciary delivers a written accounting to the interested parties. The recipients will review each transaction of the estate. If everything is acceptable, a “Receipt & Release” will be executed, which acknowledges the receipt of the proper distribution from the estate and releases the fiduciary from liability.

However, if the accounting isn’t acceptable, the fiduciary will be informed of the inaccuracies — with the intention that they will be corrected. If the fiduciary fails to make the required corrections, litigation may ensue.

## Judicial Accounting

Certain estates require a judicial accounting. In contrast to informal accountings, judicial accountings involve submission of the accounting to the Surrogate’s Court for approval.

Very often judicial accountings are required when there is disagreement over whether the Executor or Administrator accurately administered the estate. A judicial accounting can be commenced in one of many ways:

- The court can order a judicial accounting
- Beneficiaries can request an accounting
- Creditors and interested parties can petition the court to require the fiduciary to provide an accounting
- The fiduciary can petition to have their accounting approved by the Surrogate

In many instances, the court will demand an accounting from the fiduciary. This is often the situation when a fiduciary requests to resign or a request is submitted for the fiduciary to be removed.

If the fiduciary fails to provide an accounting to an interested party or to a beneficiary, the party can petition the court to compel the fiduciary to file a judicial accounting. If the fiduciary fails to do so, they can be held in contempt of court and be subject to legal ramifications.

If there is a fiduciary bond, the surety company can request an accounting. In addition, creditors can also request a judicial accounting.

It is critical that you hire experienced probate and estate administration counsel like the attorneys at Genser Cona Elder Law who will support you every step of the way.

# Estate Taxes

Both New York State and the federal government impose an estate tax on the value of an individual's estate upon death. The federal and state estate tax limits fluctuate based on the tax laws and political climate. Clients need to be constantly vigilant and in touch with their trusted estate attorneys at Genser Cona Elder Law to be sure their plan is up to date.

## What Is Included in the Value of an Estate?

The value of an estate for estate tax purposes includes everything that your loved one owned or held in their name, whether individually or jointly with someone else, as well as everything over which they had control. This includes:



- Jointly held assets
- Life insurance proceeds (including group life insurance received through a union or employer)
- Retirement accounts
- Assets in certain types of trusts that they created or that were created for their benefit

Your loved one's estate will receive certain deductions, such as:

- Expenses incurred while administering their estate
- Debts paid after they passed away (including funeral expenses)
- Assets that were left outright to their spouse (so long as the spouse is a United States citizen)
- Assets left to a qualified charity

As the federal and state estate tax laws are subject to change, be sure to stay informed and connected with your attorneys at Genser Cona Elder Law for all the latest updates.



**Grow Older With Us<sup>SM</sup>**

*Empowering You and Your Family to Embrace Tomorrow*

631.390.5000 • [genserlaw.com](http://genserlaw.com)