

Probate Administration in Vermont

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The median age of Vermont residents is the second highest in our country.¹ Fifteen per cent of our residents are over the age of 65, our nation's seventh highest percentage.² Although an increasing number of estates are settled in Vermont without benefit of counsel, these demographic trends mean that more clients will be turning to us to help them settle estates, especially when real estate is an asset of those estates.

When I began practicing law I compiled a comprehensive estate administration checklist to help guide families through what can seem like the daunting process of probate. This checklist derives largely from my experience as a bank trust officer before I attended law school. I updated this checklist recently, and it may be downloaded from our firm's website.³ As I was updating this checklist, I realized that I learned several things while settling estates in Vermont over the last thirty years that might help other practitioners and their staffs to help guide executors and administrators (“executors”) through probate.

Family members often call our office distraught, not knowing where to begin to settle the estates of their loved one. I begin by sending, delivering, or e-mailing them our estate administration checklist. At the end of that checklist is a list of the documents that we will need to get started. It includes the death certificate, will, bank, brokerage and individual retirement account statements, life insurance policies, deeds, mortgage deeds and statements, property tax bills, the decedent's last year's income tax return, the funeral bill, and the names and addresses of the heirs and any other individuals or institutions that are named in the will. I ask them to bring as many of these documents as they are able to assemble to our initial conference.

My objective at our initial conference is to draft all of the documents that are required in order to have the will allowed by the probate division of the superior court, and the executor appointed. I review our checklist with the executor and family members, and we discuss who will be addressing the various aspects of administration. To minimize expenses, I try to delegate as much as possible to executors. For example, I encourage them to arrange for any appraisals that might be appropriate, and collect the proceeds of any life insurance policies and individual retirement accounts, which usually pass through beneficiary designation outside of the probate estate. If the executor plans to charge the estate for their time, mileage and disbursements, I advise them to keep accurate records, as statements will be required for their accounting to the court.

I usually ask executors to obtain the consent of all of the heirs to the allowance of the purported will and their appointment.⁴ If there is an unusual number of heirs, or if some of those heirs have been disinherited in the will, I ask the probate division of the superior court to schedule a hearing for the allowance of the will.⁵

As we get older, many of us become more forgetful. Tax refunds, dividend checks, securities, and bank accounts often find their way to the Vermont State Treasurer's Office of Unclaimed Property. It only takes a few seconds to search for that property online. At our initial conference I also apply online for an employer identification number for the estate, as it will be required in order to open a bank checking or

brokerage account. I request a copy of the executor's driver's license, since banks are now required to verify their identity in order to establish an account as result of the Patriot Act.⁶

The most daunting and expensive obligation for executors involves preparing an accounting to the probate division of the superior court, and having that accounting balance. With some forethought and the cooperation of your clients, the preparation of those accountings can be simplified and expedited. I encourage executors to let us write the estate checks for them to sign, either make deposits or have them provide us copies of those deposits, and authorize us to receive duplicate bank statements. Paralegals in our office write those checks and reconcile our estate accounts.

After we receive our client's Certificate of Appointment from the probate division of the superior court, I fax that Certificate of Appointment, the death certificate, the estate's employer identification number, and the executor's driver's license to a bank or brokerage firm, and ask them to fax me a starter check. I order those checks online, and they arrive within a few days. Those checks are compatible with Quicken, which is networked in our office, and are formatted to print on our office printers. I established categories in Quicken to coincide with Form 56A, the probate accounting. Our paralegals assign each check a category as they write them.

Although appraisals of real and personal property are not required for estate inventories,⁷ I often advise executors to obtain them. If real property is to be sold, an appraisal can be invaluable in negotiating the sale of that property without a broker, and helps to establish an asking price when it is listed with a broker. In addition, the amount reflected on the inventory for the estate becomes its basis for determining gain or loss on the subsequent sale of property.⁸ With tangible personal property, an appraisal can enable family members to effect an equitable division of that property. Automobiles can usually be valued online within a few minutes. I prepare most estate inventories in Excel.

I advise executors that their job is to marshal the assets of the estate, and effect the prompt distribution of the residue. They should not speculate with stock prices or interest rates. The estate accounting will be simplified if bank accounts are closed and securities are sold promptly, and all of the estate assets are consolidated into one account. It takes time to keep track of recurring dividends and interest payments. Reinvested dividends and capital gains are especially problematic. Under no circumstances should an executor or the executor's broker be purchasing securities within an estate.

Although this entails publication costs, I usually encourage executors to publish a notice to creditors in the newspaper of record. Otherwise, the executor may be personally liable for any unpaid claims that may arise within three years.⁹ This is now often done online. If it is clear that there is sufficient cash with which to pay the debts of the decedent, we simply pay those debts as they are known. If the estate is insolvent, or if it is not clear that there is sufficient cash with which to pay those debts, we send a copy of the notice to creditors and a written statement of claim to all known creditors.¹⁰

At the end of our initial conference I give executors an estimate of the time that will be required in order to settle the estate. For purposes of this article I am assuming that estates are not taxable, as they fall below the \$2,750,000 Vermont estate tax threshold.¹¹ This time estimate depends upon when the decedent died, and the extent of their taxable income. If they died late in the year, or if they died early in the year with insufficient income to warrant filing a final income tax return, their estate can often be settled within about six months, after the four-month period allowed creditors has expired. If the decedent died earlier in

the year with enough income to require filing a final income tax return, their estate can usually be settled within about one year.

If real property within an estate is to be retained, I advise executors to have us commission an owner's title search. The cost of such a search is considerably less than the cost of reopening an estate, should the executor inadvertently neglect to provide us one or more deeds that are in the chain of title. With interest rates near historic lows, and town tax bills due quarterly, semiannually, or annually on different dates, we usually pay town taxes for the balance of the fiscal year as soon as the executor has been appointed. I advise executors to confirm the adequacy of property insurance. When real property is sold, I do not charge for my services at closings, as this complicates the preparation of the estate accounting. I advise executors to file Form HS-132 to withdraw the homestead declaration by April 1 of the year following the date of death, unless the properties are sold before that date, when that form should be filed.¹² I also remind executors to cancel homeowner's insurance policies after the property has been sold.

Since it usually takes about a month to secure tax clearances from the Vermont Department of Taxes, I prepare Form E2A, the Vermont Estate Tax Information and Application for Tax Clearances, for executors shortly before the estate is ready to close. I enjoy preparing final accountings, since all of the information is within Quicken, where it can be readily retrieved. I generate a report in Quicken, and have it subtotaled by category. I then export that report to Excel, where those categories can be converted into schedules to accompany the probate accounting.

When the estate is ready to close I ask the bank or brokerage firm to send us a check for the balance, which we deposit in our firm's client trust account. At that point all of the estate income has been earned. I generate another report in Quicken in order to prepare the fiduciary income tax returns for the estate. I send those tax returns to the executor, together with checks payable to the residuary legatees, receipts therefore, along with stamped, self-addressed envelopes, and the decedent's estate closing report and discharge.

With proper planning, estate administration can become an enjoyable and important practice area for many practitioners. We do our clients and courts a service by leading them through this process promptly and efficiently.

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¹ U.S. Census Bureau, 2010 Census Summary, File 1.

² *Id.*

³ <http://www.southernvermontattorneys.com/profiles/documents/estateadministrationchecklist.pdf>.

⁴ 14 V.S.A. § 108.

⁵ 14 V.S.A. § 107.

⁶ 68 F.R. 25090.

⁷ 14 V.S.A. § 1052.

⁸ 26 U.S.C. §1014 (2006).

⁹ 14 V.S.A. § 1207(b) and § 1203(a)(2).

¹⁰ V.R.P.P. Rule 64(a).

¹¹ 32 V.S.A. § 7442a(c).

¹² See <http://www.state.vt.us/tax/pdf.word.excel/misc/PROPERTY%20TRANSACTIONS%20Info.pdf>.