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WHAT TO DO WHEN A PERSON DIES

By Charles H. McClenaghan, Esquire

The purpose of this article is to give you guidance on some of the questions you may have when your spouse or other loved one dies. This article is written to suggest actions to take rather than setting forth questions.

I. NOTIFY LOVED ONES, FRIENDS, AND OTHER IMPORTANT PERSONS.

- A. Notify family members as soon as possible.
- B. Notify funeral home.
- C. Notify persons relating to the Decedent's business or employer, if applicable.
- D. Notify good friends.
- E. Notify appropriate faith representatives (clergy, rabbi, or other).
- F. If you are aware of any appointments of the Decedent in the coming days, notify those parties of the Decedent's death.
- G. Within a few days, notify advisors including:
 - 1. Attorney
 - 2. CPA
 - 3. Investment advisor
 - 4. Life insurance agent

II. FUNERAL ARRANGEMENTS.

- A. Contact funeral home.

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B. If the Decedent had not already made arrangements, you will need to decide on the following:

1. Do you have the authority to make funeral decisions? If the Decedent had executed a Disposition of Last Remains, the person named as the Decedent's agent may have the sole authority to make the arrangements. Most people do not execute such an instrument; so if you cannot find one, you will have to determine who has the authority to make the arrangements. If the Decedent was married and had children by another marriage, you may want to involve them with the regard to the arrangements.
2. Burial or cremation?
3. If burial, where?
4. Funeral service or memorial service or both?
5. Private or public burial
6. Place of religion or funeral home?
7. Grave side: private or public?
8. Biographical/notification information in paper.

C. Payment for Funeral.

1. The funeral home will require someone to assume responsibility for payment of its services. If you advance your own funds, the Decedent's estate should reimburse you under most circumstances.
2. If the funds are not available, funeral homes will accept
 - a. Credit Cards.
 - b. Assignment of life insurance policies to help you collect the life insurance.
3. You may be entitled to funds for funeral services from
 - a. Social Security.
 - b. Veteran's Benefits.

D. Determine when to hold the appropriate services, if any, after considering:

1. Religious beliefs.
2. Availability of family and friends.
3. Availability of facility.

E. Contact the Decedent's faith representative (priest, pastor, rabbi, imam, or other).

1. You may want to discuss the arrangements with the Decedent's faith representative in addition to the funeral director.

2. Depending on whether the service will be a funeral, memorial services, or both, you will need to decide.
 - a. Who will officiate?
 - b. Where?
 - c. Music and/or choir?
 - d. If funeral, whether the casket will be open.
 - e. Who will be pallbearers?
 - f. Whether there will be a homily or not.
 - g. Decide whether other people will be involved in such things as:
 - 1) Readings from scripture.
 - 2) Additional homilies.
 - 3) An open microphone.

F. During the services, arrange for someone to stay at the home to protect it.

G. Reception after the service.

1. Where there be one?
2. Where?
3. What type?
4. Who will be in charge?

III. IMMEDIATE FINANCIAL SECURITY FOR SURVIVING SPOUSE.

A. If the Descendent was married at the time of death, this discussion focuses on several actions the surviving spouse may take to protect you and your spouse's resources and to ensure that you have enough operating funds to maintain you lifestyle for the next few months. It is crucial that if you take any action regarding funds belonging to either or both you and your spouse, that you maintain accurate records to show funds and assets you took into your possession and if you for what they were expended. You may be required to repay some of the assets or funds.

B. Locate financial documents or instruments and protect, such as:

1. Checkbook.
2. Broker's statements.
3. Credit cards.

C. Withdraw enough funds to live off of for several months:

1. If you do not have sufficient funds in your own name;

2. From the accounts in your spouse's name only over which you have withdrawal authority;
 3. Accounts in both your names that may be frozen once the financial institution learns of the death of your spouse; and
 4. Warning: withdrawal of funds from these accounts does not necessarily mean the money is yours. The account agreement of the financial institution or your spouse's testamentary instrument will control who is entitled to these funds.
- D. Destroy your spouse's credit cards that might be lost or stolen.
- E. Notify the Social Security Administration to stop any payment of checks or direct deposits if your spouse was receiving social security and inquire about your own ability to receive spousal death benefits.

IV. PROBATE AND ESTATE ADMINISTRATION

- A. Probate is the process by which a Will is submitted to an appropriate court for review and determination if it is a person's last, valid Will. If the probate court finds that the Will is valid and has not been revoked, it is "admitted to probate." When a Will is probated, it passes title to the property the deceased person owned to the person's beneficiaries effective the date when the person died.
- B. A Will names a person or entity to be the executor, and in Texas most Wills are written to name the executor to operate independent of the court except for a few requirements. When the Will is admitted to probate the person or entity is appointed Independent Executor.
- C. To gain control of the Decedent's assets, someone will need to be appointed Executor or Independent Executor. You have four (4) years to probate your spouse's Will, but if you want to gain control over his or her assets, you will need to take action as soon as possible.
- D. To probate the Decedent's Will, you will need to follow the following steps.
1. Contact us, and ask us to initiate the probate.
 2. If we do not have the original of the Decedent's Will, you will need to deliver it to us. The original of your spouse's Will is delivered to the

court with an Application to Probate, which we will prepare for you. The original of the Decedent's Will becomes a permanent record of the court and is even cross-referenced in the deed records once it is probated.

3. The Application to Probate and the original of the Will are filed with the Probate Court, who sets a date for a hearing for the probate. The probate hearing will be held approximately two weeks after the Will is submitted for probate with the application.
4. The probate process normally takes place in the county where the Decedent resided permanently, even if the Decedent died elsewhere. If, however, the Decedent owned real property in more than one state, it may be necessary to initiate some form of probate in each state.
5. You will also need to furnish the filing fees for probate; these change every time the legislature meets, but for the time being should be between \$200-\$300.
6. At the probate hearing, the probate judge reviews the application and the Will and then asks for proof that the person has died. A "Proof of Death" which we will have prepared is presented to the probate judge, along with a proposed order admitting the Will to probate. If the judge finds everything to be in order, she/he signs the order. We will advise you if there is anything amiss with your spouse's Will and find a means by which it can be admitted to probate, if possible. Please note, if a Will is contested by another person, the probate process can be extended and expensive. Very few Wills are ever contested.
7. Once a Will is probated, the Executor executes an oath that she or he will carry out the terms of the person's Will. Once the oath is signed, the Probate Court will prepare Letters Testamentary which are the Executor's documentation of authority to take control and possession of the Decedent's property.