AFTER THE LOSS OF A LOVED ONE:

A SURVIVOR'S GUIDE TO LEGAL ISSUES

D. Scott Manning, Esq.
Sullivan, Tabaracci & Rhoades, P.C.
Missoula & Bozeman.
(406) 721-9700 & (406) 556-1121

Sullivan, Tabaracci & Rhoades, P.C.

After the death of a loved one, the survivors must address many complicated issues. A funeral director can provide assistance with the most immediate needs. In the days, weeks and months afterward, significant legal issues usually arise. This Guide provides a brief explanation of some of these issues and how they may be addressed.

One Step at a Time:

When a loved one dies, it may feel overwhelming to deal with the loss and all of the other issues that arise. The most important advice we have to offer is to take things one small step at a time and to keep making gradual progress. When you need help, ask for it.

First Things First:

Get organized. You will find it helpful to have a file folder or a three-ring binder to help you organize information.

As soon as possible, you should obtain a Death Certificate. Request at least five copies. A funeral director can usually assist you.

Try to locate a Will even if you are not sure one exists. Any document that indicates what your loved one wanted to happen to his or her property may function as a Will.

Your Loved One's "Estate":

The assets and debts of the loved one who has died are referred to as the "Estate." The law requires that the assets of the Estate be used to pay final expenses and other debts of the Estate. After all of the debts of the Estate are paid, the heirs and other beneficiaries may receive the rest of the Estate.

What is Probate?

"Probate" is the legal process that transfers property from the Estate to creditors and surviving heirs or other beneficiaries of the Estate. Although "probate" technically refers to the determination of whether a Will is valid, it is commonly used to describe all aspects of the administration of a person's Estate, whether or not there was a Will.

Is Probate Necessary?

Probate may not be necessary if:

- the Estate is fairly small,
- all real estate was owned jointly, or
- all of the property was held in a trust.

It is likely that Probate will be required if the Estate includes:

- assets of substantially more than $40,000.00,
- real estate that is not owned jointly,
- accounts without joint owners or named beneficiaries,
- controlling ownership of an interest in a business, or
- contractual rights such as promissory notes.

What Happens if No Probate is Needed?

If the Estate does not contain any assets that require a probate transfer, then creditors of the Estate can be paid and the remainder of the Estate can be distributed according to the Will, if there is one, or according to the inheritance laws if not. This can usually be done by a surviving spouse, children or someone appointed in a Will. When there is not a Will, the law provides specific rules for distribution in particular situations. §§ 72-2-112 and 72-2-113, Montana Code Annotated (MCA). Usually, a surviving spouse is entitled to a large portion of the Estate. When there is not a probate, it may be necessary to present a Death Certificate to transfer Estate assets.

Who is in Charge?

The appointment of a Personal Representative is the first step in a probate. The Personal Representative is also called the Executor. A Personal Representative has the responsibility and authority to administer the Estate. If there is a Will, it may specify who will serve as the Personal Representative. If there is not a Will, the law (§ 72-3-502, MCA) determines who has priority for appointment as a Personal Representative. Often a surviving spouse will have priority as the Personal Representative. The Court will provide the Personal Representative with "Letters" proving the Personal Representative has authority to act on behalf of the Estate.

What Happens During Probate Administration?

During probate administration a number of tasks must be accomplished including:

- an inventory of all of the assets of the Estate,
- publication of formal notice to potential creditors of the Estate,
- payment of the Estate's debts, including all taxes,
- distribution of the remaining Estate according to the Will or the inheritance laws, and
- filing a final accounting and closing statement with the Court.

Who Does the Work of Administering the Estate?

The Personal Representative has the authority and responsibility to administer the Estate, but the Personal Representative may use Estate assets to hire assistants and advisors including attorneys, accountants, and appraisers. It is up to the Personal Representative to determine how much professional assistance they want to hire. However, it is very difficult for a Personal Representative to administer an estate without at least some assistance from an attorney.

Inventory of the Estate:

Whether or not a probate is required, the Estate should be inventoried to make sure that all the Estate property is properly distributed. A list and documentation of all of the following should be compiled:

- debts including all unpaid bills, especially medical bills;
- deeds, water rights, and other real estate documents;
- titles to vehicles or other property;
- bank accounts (check for safety deposit boxes);
- stocks, and retirement or other investment accounts;
- valuable items of personal property;
- veterans, Social Security and employment benefits;
- other assets including:
  livestock, copyrights, royalties, mineral rights, real estate contracts, etc.

It is helpful to collect this information in a three-ring binder or file folders.

What are Non-Probate Assets:

Non-probate assets do not require a probate to transfer. Common types of non-probate assets are:

- life insurance;
- jointly owned bank accounts;
- real estate held as joint tenants with right of survivorship;
- investment accounts with pay-on-death or transfer-on-death beneficiaries.

These types of assets can generally be transferred by simply providing a death certificate to the bank, insurance or investment company.

Whenever a death ends joint ownership of real estate, a simple document indicating the change in ownership should be filed with the county Clerk and Recorder.

This Guide is intended to provide a brief informational overview of estate and probate issues. It is not intended as legal advice and does not create an attorney-client relationship.

Please feel free to contact us with any questions.
There is no charge for brief, initial consultations.

Sullivan, Tabaracci & Rhoades, P.C.

www.montanalawyer.com

Sullivan, Tabaracci & Rhoades, P.C.
1821 South Avenue West, Third Floor
Missoula, Montana 59801
(406) 721-9700

Our Probate Team includes:

Attorneys:

D. Scott Manning - manning@montanalawyer.com
Craig Mungas - craig@montanalawyer.com
Aleea Sharp - aleea@montanalawyer.com

Paralegal:

Joni Bush - joni@montanalawyer.com