



ESTATE

*Settlement*

IN UTAH



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## Estate Settlement Information

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Again, we express our condolences for your recent loss.

Settling an estate can be very challenging. The emotions and sense of urgency felt when a loved one dies often leave a family feeling overwhelmed.

The following Questions and Answers, and the checklist found on page 7, will acquaint you with estate settlement procedures, and help you gather and organize the necessary documents that will help you through the process.

Our observation is that regardless of the size of the

estate, an experienced estate settlement attorney can ease the process, often reduce immediate costs, and may help you avoid more costly legal services later. The most common (and often most costly) mistake made by a family is attempting to settle an estate without professional assistance.

**A word of caution:** Avoid the immediate collection of benefits, transfer of assets, or payment of debts owed by the decedent until you have sought professional advice. A capable advisor can help assure that you do not lose a valuable tax or creditor advantage.

## Begin by gathering this basic information

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Decedent's full legal name:	
Date of death:	
Date of birth:	
Social Security number:	
Address at time of death:	
Year residency in Utah began:	
Spouse:	
Spouse's Social Security number:	
Military ID # or VA ID #:	

## Frequently asked questions when someone dies

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### ***Do I need an attorney?***

When someone dies, a qualified attorney will help ensure that the affairs of the deceased are resolved correctly, fairly, and according to the law. Additionally, an attorney can help navigate legal complexities, advise on tax issues, and minimize potential legal problems and fairness issues that may occur among survivors. An attorney is particularly needed where a survivor may have trouble managing their affairs due to age, infirmity, or immaturity; where businesses are involved; where there may be conflict among survivors; when the decedent owes substantial amounts to creditors; or for other unusual or troubling circumstances. Regardless of the size of the estate, a qualified attorney can advise you before you act and help you avoid more costly legal services later.

### ***Do I need probate?***

In many cases, no. However, in Utah, probate is necessary when...

- (1) the deceased owned real property that was titled in his or her own name, such as land, a house or rental property; or
- (2) the deceased died owning property exceeding \$100,000.

Benefits that are paid to beneficiaries directly (like insurance or retirement benefits) are not included in the \$100,000 amount. If property (regardless of total value) is owned by a trust or owned in joint tenancy, probate is not necessary for that property. Even if probate is unnecessary, there are some

circumstances when it may be advantageous to file a probate, such as to more effectively deal with creditors or in certain family situations.

### ***What is probate?***

Probate is a legal process designed to safeguard the deceased's estate, pay all debts and taxes, resolve who is entitled to what assets, then disburse the property accordingly. It usually involves petitioning the probate court to open an estate, naming a personal representative to administer the deceased's property, printing notices to creditors in local newspapers, disposing of property to pay debts, and petitioning the court to close the estate. Probate law and the handling of estates presents several requirements and tasks to be performed by the personal representative, a tax consultant, and an experienced attorney. Because of the complexity that can arise in handling even a relatively small estate, it's a good idea to hire an attorney experienced in the field of Utah probate law.

### ***How much does probate cost?***

The costs and complexity of probate in Utah were dramatically reduced when Utah adopted the Uniform Probate Code. Ultimately, the cost of probate depends on the size and complexity of the estate. Most attorneys charge on an hourly basis. Attorneys who specialize in probate and estate settlement have the expertise to assist your family in a cost efficient and timely manner and can help avoid costly mistakes that can have seriously adverse tax consequences.

### ***How do I transfer or sell real property?***

This depends on how the real property was titled at the time of the decedent's death. Property owned in joint tenancy passes to the joint owner at death and the filing of probate is not necessary. If property is held in the individual name of the decedent, however, a probate will need to be filed in order to appoint a personal representative who can transfer or sell the property.

### ***What is a Small Estate Affidavit?***

A Small Estate Affidavit can be used to collect a Utah decedent's property, except real estate, if the combined value of all the decedent's property does not exceed \$100,000. The \$100,000 amount does not include assets passing outside of probate, like life insurance. Property that can be collected with a Small Estate Affidavit includes unpaid wages, checking and savings accounts, cars, boats, certificates of deposit, and stocks and bonds. A qualified attorney can prepare this Affidavit for you.

### ***What taxes are due?***

At death, the deceased and his/her estate may owe both federal and state taxes. An individual federal Form 1040 income tax return must still be filed for the deceased for the year of his/her death. Additionally, a federal Form 1041 estate income tax return may be required if the estate earns income during administration. Finally, for federal estate taxes, if the total value of the deceased person's assets (not just probate assets) are more than the federal estate tax exclusion amount, the IRS requires the filing of a Form 706 Estate Tax Return. The Utah Tax Commission also requires companion tax returns to those described above.



### ***How do I claim retirement benefits?***

Retirement benefits include assets invested in 401(k) plans, Individual Retirement Accounts, profit sharing plans, pension plans, annuity plans, Roth IRA's, or 403(b) plans (for tax-exempt organizations). To claim retirement benefits, a survivor should contact past employers of the deceased for information on any survivor's benefits and may talk to the personnel department, if there is one. A claim form is then submitted with a death certificate and other required information. Because of the complex income tax implications regarding

retirement benefit transfers, and the possible significant tax savings from strategies involving the deferral of taxes, a qualified attorney or accountant should be contacted to assist with the rollover of such accounts and to claim these benefits.



### ***How do I transfer stock?***

The transfer of stock depends on who holds title to the stock. A transfer agent is responsible for changes to a corporation's stock ownership. The transfer agent usually requires specific transfer forms and paperwork in order to transfer or redeem stock held by a decedent. If the stock is in the deceased's name, a probate may need to be opened in order to appoint a Personal Representative who would then have authority to transfer the stock to the beneficiaries. As described above, a small estate affidavit may be available in some instances to transfer stock, rather than having to file a probate. If the stock was held in trust, the trustee can transfer the stock to the beneficiaries. Titles to stock vary widely, so your circumstances may require the help of an attorney to assist with stock transfers.

### ***What if my parents had a trust?***

In many cases, a decedent who executed a trust during his or her lifetime can avoid probate. The trustee of a trust, however, must still follow the terms of the trust, and must distribute

assets according to the provisions of the trust. The distribution of assets often requires legal transfers of property, such as deeds, stock transfers, assignments, and life insurance claims. Because of potential legal and tax issues with trusts, a qualified attorney should be consulted regarding the trust when someone who established a trust dies.

### ***Should I add names of my children to property***

#### ***or bank accounts to avoid probate?***

Generally, no. Some individuals try to avoid probate by putting their children's names on certain property so that at the parents' death, the property will automatically transfer to the children. This strategy usually avoids probate, but

- (1) a person's assets may not go to the intended beneficiary;
- (2) a beneficiary may lose a step-up in basis, causing the children to pay higher income taxes; and
- (3) the strategy may expose the parent's assets to their children's creditors and liabilities.

Using a trust for transfer purposes is a much better vehicle that, when implemented by a knowledgeable professional (such as an estate or tax attorney), will avoid many of the dangers associated with transfers through joint tenancy.

*This checklist will help you gather the documents necessary to begin the estate settlement process. It mentions most of the items that will be requested by your attorney and other professionals who will assist you.*

	DOCUMENTS	PURPOSE	POSSIBLE LOCATION
<input type="checkbox"/>	Certified death certificates (usually 5-8 certified copies, depending upon benefits and assets owned by decedent).	<ul style="list-style-type: none"> <li>•Required to process claims.</li> <li>•Required to apply for Social Security benefits.</li> <li>•Required to apply for VA benefits, including burial allowance.</li> <li>•Required to change ownership on joint property, such as a house, stocks, bonds, automobiles, and bank accounts.</li> <li>•Required to access safe deposit box.</li> <li>•Required to file tax returns.</li> <li>•Required to furnish to creditors.</li> </ul>	Request certified copies from funeral director or Health Department's vital records.
<input type="checkbox"/>	Dated obituary notice and newspaper articles.	May be required for processing claims.	Clip from local paper or obtain on Internet.
<input type="checkbox"/>	Will, trust documents, any amendments, and other estate planning documents.	Determine beneficiaries of estate assets.	Safe deposit box, home or office desk, safe, file cabinet, or on file at the Probate Court.
<input type="checkbox"/>	Social Security numbers or cards.	Required to apply for Social Security benefits.	Wallet, W-2 form, paycheck stub, file cabinet, or employer.
<input type="checkbox"/>	Marriage certificate (photocopy OK).	<ul style="list-style-type: none"> <li>•Required to apply for Social Security benefits.</li> <li>•Required to apply for VA benefits.</li> </ul>	Safe deposit box, home or office desk, safe, file cabinet.
<input type="checkbox"/>	Marital agreements, pre- or post-nuptial agreements, divorce decree or property division, child support documents.	•Needed to give notice to court and other parties with whom the decedent had legal obligations.	Safe deposit box, home or office desk, safe, file cabinet.

	DOCUMENTS	PURPOSE	POSSIBLE LOCATION
<input type="checkbox"/>	Information about children, heirs, next of kin, beneficiaries (names, addresses, telephone numbers, dates of birth, SSNs, email addresses).	Probate filing or other notification.	Safe deposit box, home or office desk, safe, computer records, or personal knowledge.
<input type="checkbox"/>	Original life insurance policies or annuity contracts (or information on such policies from premium notices, correspondence, etc.).	Needed to file claims and determine payout options to beneficiaries.	Safe deposit box, home or office desk, safe, file cabinet.
<input type="checkbox"/>	Summary of deceased's assets.	Evaluate ownership and transfer.	Home or office desk, recent W-2 form, recent tax returns, property insurance records, statements, computer records (i.e., Quicken).
<input type="checkbox"/>	Real estate deeds or leases and county property tax notices (copies are OK).	Required to change the title on real property.	Safe deposit box, home or office desk, safe, file cabinet.
<input type="checkbox"/>	Bank statements, certificates of deposit (CDs), and passbooks; keys to safe deposit box.	<ul style="list-style-type: none"> <li>• Determine cash owned by decedent; needed to access safe deposit box to inventory contents and find important legal documents, personal property, etc.</li> <li>• Needed to evaluate proper transfer of cash assets.</li> </ul>	Home or office desk, safe, computer records, file cabinet.
<input type="checkbox"/>	Brokerage and mutual fund statements, stocks, bonds and securities certificates.	<ul style="list-style-type: none"> <li>• Determine assets owned by decedent.</li> <li>• Change ownership according to will, trust or applicable law.</li> </ul>	Home or office desk, safe, computer records, file cabinet.
<input type="checkbox"/>	Retirement account statements such as 401(k) plans, IRA accounts, pensions, profit sharing, annuities.	<ul style="list-style-type: none"> <li>• Claim benefits.</li> <li>• Change beneficiary designation.</li> <li>• Evaluate income tax consequences.</li> </ul>	Home or office desk, safe, computer records, file cabinet, or contact employer.

	DOCUMENTS	PURPOSE	POSSIBLE LOCATION
<input type="checkbox"/>	Automobile titles and boat, trailer, and recreational vehicle titles.	Required to change name.	Home or office desk, or glove compartment.
<input type="checkbox"/>	Promissory notes or other accounts receivable payable by or owed to decedent.	<ul style="list-style-type: none"> <li>• Needed to determine date of death value on note.</li> <li>• Needed to prepare legal documents on loan.</li> </ul>	Safe deposit box, home or office desk, safe, file cabinet.
<input type="checkbox"/>	Installment payment books, credit cards, checking account book, credit agreements, loan papers.	<ul style="list-style-type: none"> <li>• Find out if there is credit life insurance or disability insurance on installment loans, credit cards and checking account lines of credit.</li> <li>• Change name on existing accounts.</li> <li>• Determine obligations of decedent.</li> </ul>	File cabinet, home or office desk; also monitor mail for several months.
<input type="checkbox"/>	Water stock certificates.	Change owner of certificate.	Safe deposit box, home or office desk, safe, file cabinet.
<input type="checkbox"/>	Business records, such as LLC agreements, corporate records, partnership agreements, buy-sell agreements, tax returns, and financial statements.	<ul style="list-style-type: none"> <li>• Determine obligations to other owners.</li> <li>• Value business interests.</li> </ul>	Decedent's accountant, safe deposit box, home or office desk, safe, file cabinet.
<input type="checkbox"/>	Government life insurance policy number (or the "C" claim number, military service serial number, the branch and date of military service, or a copy of the discharge papers).	Required to apply for VA benefits.	Safe deposit box, home or office desk, safe, file cabinet (the VA can help you secure some of these documents).
<input type="checkbox"/>	Life insurance policies or annuity contract on spouse and other family members.	<ul style="list-style-type: none"> <li>• Change beneficiary if the deceased is named.</li> <li>• For life insurance, ask if children's coverage is automatically paid up.</li> </ul>	Safe deposit box, home or office desk, safe, file cabinet.

	DOCUMENTS	PURPOSE	POSSIBLE LOCATION
<input type="checkbox"/>	Deceased's approximate earnings during the year of death (W-2 form or pay stub).	Determine current year tax obligation and tax return filing.	Paycheck stub, or contact employer.
<input type="checkbox"/>	Federal and state income tax returns (IRS form 1040) for the past three years.	Determine tax issues, if any.	Decedent's accountant, home or office desk, safe, file cabinet.
<input type="checkbox"/>	Employee benefits statement for deceased.	Help determine the benefits payable to a surviving spouse or children.	Home or office desk, safe, computer records, file cabinet, or employer.
<input type="checkbox"/>	Copies of all gift tax returns (IRS Form 709) ever filed, if any.	Determine tax issues, if any.	Decedent's accountant, home or office desk, safe, file cabinet.
<input type="checkbox"/>	Current bills, including car loans, mortgage payments, utilities, credit cards, funeral, cemetery lot, medical bills, etc.	<ul style="list-style-type: none"> <li>• Evaluate creditors of the estate.</li> <li>• Prepare household budget.</li> <li>• Evaluate payment options.</li> <li>• Change mailing address.</li> </ul>	Monitor mail for two-three months after creditors have been notified.
<input type="checkbox"/>	Joint billing statements (utilities, phone bill, etc.).	Change name on these accounts.	Home or office desk, file cabinet.
<input type="checkbox"/>	Fire, homeowners, automobile and other casualty insurance coverage.	Change name and mailing address on policies and possibly cancel coverage.	Safe deposit box, home or office desk, safe, file cabinet.
<input type="checkbox"/>	Medical and disability insurance policies and certificates.	Needed to review amount and type of coverage needed for surviving spouse.	Safe deposit box, home or office desk, safe, file cabinet.
<input type="checkbox"/>	Membership cards or dues notices to organizations and associations to which the deceased belonged.	Help determine survivor benefits.	Home or office desk, briefcase, wallet.



The information provided in this brochure was prepared by Marc A. Austin, an attorney and CPA who practices law in Provo, Utah. Marc specializes in estate and trust settlement, probate, estate planning, tax planning, business and corporate law, limited liability companies, and non-profit organizations.

This brochure is a guide to general legal questions, but does not constitute legal advice. You should consult with a qualified attorney regarding your specific circumstances.

