

# PROBATE AND ESTATE ADMINISTRATION

in Montgomery County, PA

A Guide for Executors and Administrators in  
Montgomery County, PA

Most people have little experience dealing with what happens when they are appointed as executor or administrator to settle the estate of a loved one who has died. The purpose of this guide is to provide a concise overview of the probate and estate administration process in Montgomery County, Pennsylvania. Topics covered include opening the estate, what to do if there is no will, locating estate assets, handling claims against the estate, filing the Pennsylvania Inheritance Tax Return, distributing assets to beneficiaries, and more.



# Probate and Estate Administration

A GUIDE FOR EXECUTORS AND ADMINISTRATORS IN MONTGOMERY COUNTY, PA

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## The Martin Law Firm

is a probate and estate administration law firm located in Blue Bell, PA. Our experienced probate and estate administration attorneys assist executors and administrators with the Montgomery County, PA probate and estate administration process. Our goal is to provide compassionate, effective guidance to those who are tasked with handling the affairs of deceased loved ones.

Contact an experienced Montgomery County, PA probate lawyer at The Martin Law Firm for a free case evaluation.

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## INTRODUCTION

When a Montgomery County, PA resident dies, it is often necessary to follow formal procedures under state and federal law to administer and settle the estate. This is known as **estate administration**. Estate administration generally includes collecting assets, satisfying obligations of the estate, (e.g. debts, expenses and taxes), and distributing property to the heirs and beneficiaries.

The person responsible for estate administration is called the personal representative. The personal representative is either the executor/executrix named in the will or the closest surviving relative of the decedent, known as the administrator, if there is no will.

The executor or the administrator must present to the Montgomery County, PA Register of Wills office and petition the Register of Wills to be officially appointed as the representative of the estate. The executor will present the will for probate, which is the process of determining the will's legal sufficiency. The Montgomery County, PA Register of Wills office is located at One Montgomery Plaza, 4<sup>th</sup> Floor, Norristown, PA 19404. The Register of Wills can be reached by phone at 610-278-3400, and their office website is [www.rwoc.montcopa.org/](http://www.rwoc.montcopa.org/). If the will is accepted, Letters Testamentary are granted to the named executor. When there is no will, Letters of Administration are granted to the administrator. In either case, the executor or administrator is then tasked with administering the decedent's estate.



## PERSONAL REPRESENTATIVE'S ROLE

Once Letters Testamentary or Letters of Administration are granted, the personal representative is legally empowered to act. Generally, the personal representative must locate and notify the heirs, locate and protect the estate assets, pay debts and expenses of the estate, calculate and pay taxes of the estate, comply with procedures set forth under state and federal law, and distribute the property to the beneficiaries or heirs after all proper procedures have been followed.

In Pennsylvania, a personal representative is considered a fiduciary, meaning that he or she is held to the highest standard of loyalty and care under Pennsylvania law. If the personal representative fails to comply with any of his or her obligations, he or she can be held personally liable. For these reasons, personal representatives often retain an experienced PA probate and estates attorney for assistance.

The estate administration process may be challenging for the inexperienced person. Personal

representatives often find themselves attempting to administer the estate on their own, only to find that at some point, they need an attorney for assistance. Sometimes, the personal representative, acting alone, makes decisions that are harmful to the estate. Therefore, it is always recommended that a personal representative choose an attorney for assistance immediately.

## ROLE OF AN ESTATE ADMINISTRATION LAWYER

Selecting an experienced Montgomery County, PA estate administration lawyer is important from the outset. In Pennsylvania, attorneys must charge a reasonable fee. The value of the estate, the types of assets, creditor claims, and so on help determine the reasonableness of an attorney's fees. Before the attorney begins, the personal representative should always have a written engagement letter with the attorney that clearly defines the attorney's role and the agreed upon attorney's fees. The fees are paid from the estate assets and are considered an estate expense, which can later be added as a deduction on the tax return(s).

Retaining a qualified and experienced [Montgomery County, PA estate administration attorney](#) will allow for the efficient and proper administration of the estate and help ensure that the personal representative is fulfilling his/her duties and responsibilities towards the estate and the beneficiaries.

When the personal representative meets with a qualified and experienced [Montgomery County, PA estate administration lawyer](#), the lawyer will likely request the following documents to facilitate the estate administration process:

- Original Last Will & Testament of the decedent
- Death Certificates
- Copies of bank and brokerage statements and the values at the date of death
- Copies of any stock or bond certificates that the decedent may have held
- Copies of any general or limited partnership certificates or agreements
- Copies of any mortgages, mortgage notes, and related amortization schedules
- Copies of IRA, pension, or retirement plans and the values at the date of death
- Life insurance policies
- Past three (3) years' state and federal income tax returns (Form 1040)
- Copies of any Gift Tax Returns (Form 709) that have been filed
- List of all personal property the decedent owned with its estimated value
- Safe deposit box numbers, location, and inventory
- Any other evidence of assets the decedent owned not otherwise noted

## NOTICE REQUIREMENTS

The personal representative and the attorney will be responsible for notifying several parties of the estate administration, including all estate beneficiaries and heirs as well as estate creditors. Estate creditors and other interested parties may include the IRS, charities named in the will, attorneys-in-fact under a power of attorney, the PA Department of Public Welfare, or parties to litigation. Proof that notice has been given must be properly filed with the Montgomery County Register of Wills. Additionally, Pennsylvania law mandates that the personal representative advertise notice of the estate administration in selected county newspapers.

A probate attorney can help the personal representative comply with the notice requirements. Failure to provide proper notice to estate creditors can expose the estate as well as the personal representative to unforeseen liability in the future.

## ESTATE ASSETS

The personal representative must work closely with the attorney to identify, value, disclose, and distribute assets of the estate to the proper beneficiaries. Assets of the estate include all assets owned by the decedent at the time of his or her death. These assets can include tangible and intangible personal property, real property, jointly owned property, probate and non-probate assets.

## CHECKLIST: LOCATING ESTATE ASSETS

The personal representative should diligently search for assets. Some helpful suggestions include:

- [ ] Notifying the Post Office, in writing, where the decedent's mail should be delivered. All mail should be reviewed to ascertain financial information regarding the assets and liabilities of the decedent.
- [ ] Searching the decedent's home or place of business for other asset and liability information.
- [ ] Considering whether litigation should be instituted on behalf of the estate for any cause of action related to the decedent's death.
- [ ] Reviewing personal income tax returns for several years prior to the decedent's death to locate sources of income.
- [ ] Reviewing bank statements and cancelled checks to determine if there were large deposits made, assets purchased, or gifts or other transfers made within three (3) years of



the decedent's death.

- [ ] Reviewing bank statements to determine where safe deposit boxes may be located, and consider writing to all banks near the decedent's residence to search for possible bank accounts or safe deposit boxes.
- [ ] Contacting the decedent's accountant, lawyer, and financial advisor.
- [ ] Locating any and all debts owing to the decedent. Debts owing to the decedent are an asset of the estate. The personal representative has the power and duty to collect all debts, and the personal representative may commence litigation to collect outstanding debts.

## DUTY TO VALUE AND PROTECT ESTATE PROPERTY

The personal representative is responsible for gathering, protecting, and valuing the assets of the estate, including household goods, antiques, art, and collectibles. The home and the contents of the home should be insured (liability, fire, etc.). Other property may need to be stored. The personal representative should maintain a detailed inventory of the assets. Automobiles should be stored safely with adequate insurance.

Determining the value of the estate assets is another responsibility of the personal representative. Antiques, art, and collectibles may require the personal representative to hire an expert appraiser whose valuation will be acceptable to the taxing authorities. For the value of an automobile, a reliable tool is the N.A.D.A. Official Used Car Guide. If this or a comparable resource is not available, most banks and car dealers have access to this type of publication.



For household goods, if the items have significant value and need to be sold, the personal representative can commission an auctioneer or dealer to conduct the sale. An experienced [Montgomery County, PA estate administration attorney](#) can help the personal representative to understand the provisions of any agreement with an auctioneer or dealer. If items are to be distributed to beneficiaries, the personal representative should make arrangements for the insured packaging and delivery of these items to the beneficiaries. If the household goods are not of significant value, then the personal representative should obtain a “walk-through” appraisal or assign an estimate of the resale value of these items.

The personal representative may want to consider installing or maintaining a home security system for the house and should make arrangements for lawn service and snow removal. The personal

representative may also want to contact the local police department to inform them that the property is vacant. If the decedent had a newspaper subscription, the personal representative should cancel its delivery. The personal representative also must see to it that the mortgage is paid.

Determining the value of real estate may be obtained from a reliable tax assessment value, a reliable recent comparable sale, or through an appraisal from a certified real estate appraiser or broker.

If the home is not specifically devised, it may be necessary for the executor or administrator to arrange for the prompt sale of the home. Any sale to a related party, including to the personal representative, should not be completed without the assistance of an attorney, as court approval is required.

## DEBTS & LIABILITIES OF THE ESTATE

Equally as important to collecting and valuing the estate assets is the personal representative's responsibility to gather, value and list all debts and liabilities of the estate with the assistance of the probate lawyer.

All estate debts must be paid and all claims must be settled before final distributions can be made. If the estate assets are not sufficient to cover the debts, the lawyer can help resolve the debts with the creditors.

## ESTATE BANK ACCOUNT

The executor or administrator must close any bank accounts belonging to the decedent and should establish a new checking account for administering estate money and payment of estate expenses. The bank will require a copy of the Letters Testamentary (or Letters of Administration) and/or an original Short Certificate. Our estate administration attorneys generally advise a personal representative to open an interest-bearing account unless the estate has only minimal funds. A federal Tax Identification Number must be obtained for the estate in order to establish an estate bank account, and an attorney can provide this for you.

## PENNSYLVANIA INHERITANCE TAX

In Pennsylvania, decedents' estates are required to file a [Pennsylvania Inheritance Tax Return](#) (Form REV-1500). A Pennsylvania Inheritance Tax Return should be filed on behalf of any

### PA Estate Recovery Program

Changes to the federal Social Security Act in 1994 require each state to operate an estate recovery program. In Pennsylvania, this program is run through the Department of Public Welfare (DPW), which mandates that the personal representative of a decedent who was 55 years or older at death must discover whether the decedent received Medical Assistance (Medicaid) during the five years prior to his or her death. If so, you must provide notice of the estate administration to the DPW to ascertain whether a claim exists.

decedent who (1) resided in Pennsylvania at the time of his or her death, and/or (2) owned or had an interest in reportable property that is subject to inheritance tax.

The Pennsylvania Inheritance Tax applies to a decedent's estate regardless of its size. The inheritance tax rate is based on the decedent's relationship to the beneficiary. In 2012, for example, the tax rate for asset transfers from a parent to a child or other lineal descendant is 4.5%. The rate for transfers between siblings is 12%, and the rate for transfers to nieces, nephews, and other beneficiaries is 15%.

The tax applies only to the net value of the estate. Debts, funeral expenses, and other estate costs and expenses, including attorneys' fees, can be deducted from the gross estate. There is a \$3,500 family exemption that may be available as an additional deduction depending on the particular circumstances of the estate.



Certain property is exempt from the PA Inheritance Tax altogether, including jointly owned property between spouses, insurance proceeds, and many retirement plans. An experienced estate administration attorney as well as a qualified tax professional should be consulted before submitting the Pennsylvania Inheritance Tax Return.

The Pennsylvania Inheritance Tax Return is the REV-1500. The REV-1500 must be filed within nine months of the date of death unless an extension is applied for and granted by the PA Department of Revenue. Late returns are subject to penalties and interest. If an estimated tax payment is made within three months of death, a five percent (5%) discount will apply.

The REV-1500 must be filed in duplicate with the Register of Wills office of the county in which the decedent resided at the time of his or her death. The return must be complete and accurate. It is very important to be thorough in completing the return and to attach copies of all documents referenced in the return, including a copy of the will, expense statements, bank statements, receipts, and home appraisals. An attorney can prepare the REV-1500 and its attachments for review and approval by the personal representative. The personal representative must sign and date the return, and the attorney will submit the required documentation in accordance with all applicable deadlines.

## FEDERAL ESTATE TAX

The federal estate tax is a tax on the decedent's right to transfer property at death. It consists of an accounting of everything owned by the decedent at his or her date of death. Fair market value of these items is the valuation to be used for estate tax purposes. Property subject to



estate taxes may include cash, securities, real estate, insurance, trusts, annuities, business interests, and other assets.

The estate executor or administrator should work with an attorney and/or tax professional to first calculate the decedent's gross estate. Once the gross estate has been calculated, certain deductions are permissible in arriving at the "taxable estate" value. An experienced estate administration attorney should be familiar with all acceptable deductions, including, but not limited to, mortgages and other debts, estate administration expenses, attorneys' fees, and property that passes to surviving spouses and qualified charitable organizations.

Although most relatively simple estates do not require the filing of an estate tax return, the personal representative should be sure to double check with an experienced attorney. One common estate administration mistake is to assume that the federal estate tax does not apply because the estate is not "rich enough." Be sure that an attorney reviews the amount of the estate tax exemption for the year in which the decedent passed away, and be certain that the personal representative includes all assets, including any life insurance or real estate owned by the decedent. Many people are surprised how quickly the value of an estate reaches and exceeds the federal estate tax exemption amount.

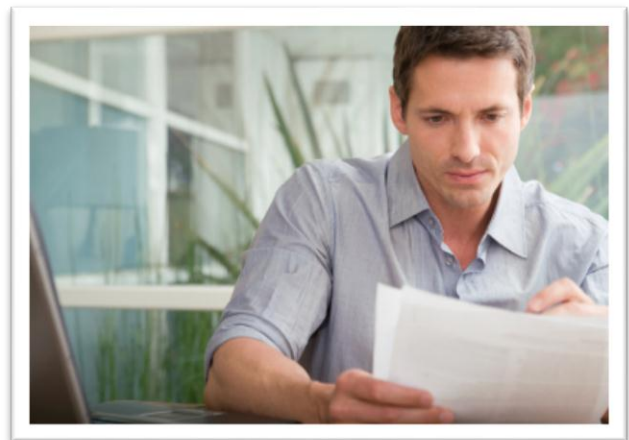
## FINAL INCOME TAX RETURNS AND FIDUCIARY TAX RETURNS

The personal representative is also responsible for completing and filing final income tax returns for the decedent as well as a fiduciary income tax returns for the role as estate executor or administrator. An executor or administrator should consult an attorney for guidance regarding these tax issues.

## CLOSING A PENNSYLVANIA ESTATE

There are two main ways to close a Pennsylvania estate. The first and often easiest way is to have a probate attorney prepare a **Family Settlement Agreement**. In Pennsylvania, a Family Settlement Agreement is often the easiest way to close an estate because it does not involve any judicial proceedings, which can slow down the estate administration process considerably.

If all of the beneficiaries and the administrators of the estate agree, an attorney can prepare a contract that details all of the estate distributions and payments that have been made. It is extremely important to have a Family Settlement Agreement prepared by an experienced attorney since this document has very significant legal consequences.



The other option to close an estate in Montgomery County, Pennsylvania is to file an **accounting** with the Montgomery County Orphans' Court. If the personal representative chooses to close the estate using this method, the personal representative must file a legal breakdown of the estate assets and expenses. The accounting is accompanied by a request for an audit date. If any objections to the accounting are properly filed, the Orphans' Court judge will set a date to hear the objections. If there are no objections, then the personal representative is given permission to file a Petition for Adjudication. The Petition for Adjudication requests the right to make all distributions and to pay all of the remaining bills. Once the judge approves the Petition for Adjudication, distributions and payments can be made.



## CONCLUSION

If you're faced with wrapping up the affairs of a loved one who has passed away, you may feel overwhelmed by all of the work ahead. With the right legal guidance and access to resources, however, the estate administration process will be simplified, and you can rest assured that the estate will be settled properly.

The Martin Law Firm is an experienced [Montgomery County, PA probate and estate administration law firm](#) that regularly assist executors and administrators with the Montgomery County, Pennsylvania estate administration process. Our skilled probate and estate administration attorneys provide compassionate guidance throughout the process, providing you with assurance that you remain compliant with all applicable laws and deadlines and that you remain shielded from personal liability for claims against the estate.

Our probate and estate administration attorneys represent clients in southeastern Pennsylvania, including Montgomery, Bucks, Chester, Delaware and Philadelphia counties. Please [contact the skilled PA probate and estate administration attorneys at The Martin Law Firm](#) at 215-646-3980 for a free case evaluation.



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