

BACK 2 BASICS

Administering the Estate or Trust - Part 1

About me



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Founder and CEO,  trustate

- Settled **hundreds** of estates, nationwide.
- Administered over **\$50B** via estate administrations.
- **12+ years experience** as estate attorney (JD & LLM) with multi-jurisdictional estate/trust admin practice.
- Learn more: trustate.com



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What grieving families want from their lawyer during a time of need

Compassion	This is the most difficult time of your client's life.
A sense of control	Their world is collapsing. Clients are looking for things they can control.
Clarity	Estate administration work is often improperly described to clients. Explain to them how you will get them through the probate process, which is where their work as executor begins. They need to be aware that there will be a lot of additional legwork, responsibility, and fiduciary duties that fall on their shoulders.
More than just guidance	This time period is overwhelming and emotional. Executors want the administrative burden taken off their shoulders.



Estate Admin helps you create better Estate Plans

Doing estate administrations makes you a better estate planner. Say it with me again: Doing estate administrations makes you a better estate planner.

Why? It provides insights: You are better able to foresee issues from dealing with them during administration.

How estate planning clauses work in theory is not always how they work in practice.

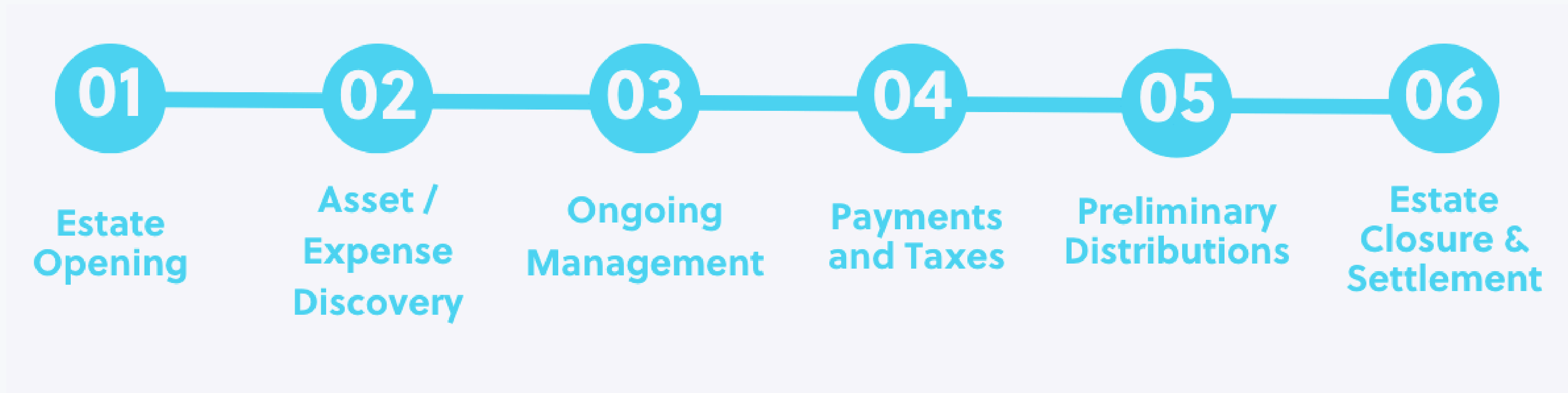
Implementing plans given family dynamics can provide you with greater insight when you are counseling planning clients on familial matters

Having the hindsight allows you to better have foresight with future planning clients.

Hindsight: "Gee, I wish the Will in this estate administration had a waiver of bond clause in it"

Foresight: You will never forget to add a clause that created problems in an estate administration you once handled.

How to Handle Estate Administrations



Checklist

- ✓ **Get information from the client. Initially get:**
 - Documents: Photo ID of client; Death Certificate(s)/Divorce Decree(s); Estate Planning documents.
 - Names and birth dates of all children of decedent - living and deceased, if any. (If none, inquire about parents/siblings)
 - Initial ballpark info of where bank accounts are and where assets might be located/if there is a named beneficiary.
 - Ballpark estate value if possible and check estate tax thresholds for state of residence of deceased & federal.
 - Initial info of real property possibly owned by decedent.
- ✓ **Set tax and court filing deadlines.**
 - This is one of the most overlooked but most important parts of the administration. Family drama
- ✓ **Have client conduct reasonable search for latest copy of Will.**
- ✓ **Up to 3 years of decedent's last tax return(s).**



Pro-Tips

Find out what is keeping your client awake at night.	Order 6-10 death certificates.	Know that general ideas of what the assets are is okay for now.	Review resume or LinkedIn.
<p>Find out what part of this is the most stressful for them.</p> <p>Prioritize that work once the fire alarm deadlines are met and dealt with.</p> <p>This will pay dividends.</p>	<p>You can order them FOR the client to make their life easier.</p>	<p>Do not grill client on this if they do not have this information.</p> <p>You will find out over time and here are tools to help w/this.</p>	<p>Notify employer (present and former) and inquire as to presence of unpaid benefits.</p> <p>There are tools to help w/this, too.</p>



PHASE ONE

Estate Opening



This is the initial "probate" part.

It goes one of three ways.

Why? It provides insights: You are better able to foresee issues from dealing with them during administration.

Client has a Will	Client <u>does not</u> have a Will	The client has a Will with issues
<p>Individual nominated as Executor* by the decedent testator applies to the court to act in this role and submits the Will to the court for them to "rubber stamp" its validity.</p> <p><small>*Called a Personal Representative or PR in many states. Different term, same meaning.</small></p>	<p>Next of kin applies to serve as the Administrator (i.e. like an executor but without a will) of the estate, and has to prove his/her relationship and identify the heirs under the laws of the state where the decedent resided.</p>	<p>This could be an improperly signed will, a contested will, a will contest, a will with no self-proving affidavit, etc.</p>



Probate Facts

①

Though its avoidable, it's not always that bad.

②

If real property is located across more than one state, an ancillary probate is needed if a probate asset.



★ Know the difference

Probate Assets



Court filing required to gain control



A Will directs where these assets end up



Estate

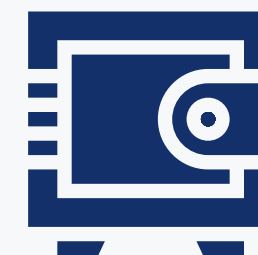
EXAMPLES

Payment & checks

Assets held in sole name

Assets held as "tenants in common"

Non-Probate Assets



Assets pass directly to named beneficiaries / surviving owners



Named Beneficiary / co-owner


EXAMPLES

Jointly held assets

Trusts

Accounts with named beneficiaries





The thing about non- probate assets...

- Cannot be transferred into an estate account. The **ONLY** assets that can go into an estate account are probate assets.
- Can only be transferred directly to the named beneficiary or surviving account holder.
- Offer more protection from creditors of the estate.
- Expenses of the estate are typically paid from the probate assets.

There is sometimes a way for a creditor to attach a non-probate asset (i.e., a TOD account). For instance, in CA, a creditor must prove that (1) the creditor's claim arose before death, (2) the transfer was made by the decedent without receiving reasonably equivalent value, and (3) the transfer made the decedent insolvent, such that the assets in the probate estate are insufficient to satisfy the decedent's debts. Even assuming the petition to recover the TOD accounts is successful, the creditor must still prove the validity and enforceability of the debt.

Other items needed



Obtain estate EIN.



**Run notice in newspaper
depending on probate
jurisdiction.**



Open an estate account.



PHASE TWO

Asset & Expense Discovery



This phase takes the longest but is the most important...

...and is the highest risk area for attorneys.

Though this period sometimes overlaps with onboarding and estate opening, the majority of the discovery (i.e. figuring out what someone owns and owes), happens after probate letters are issued and the Executor has been given the legal authority to make information requests.

- Don't miss an asset or liability. It is not fun to open an estate that was closed in 2013 in 2020 because an asset (like a HOUSE or land) needs to be administered.
- Appraisals are CRITICAL if the estate is likely of a certain value.



Pro-Tips

Use technology to help the executor figure this part out!

Missingmoney.com - locate all unclaimed property. Similar to a state's lost & found. There is paperwork to complete but you can get these funds back.

If federal employee- contact OPM

Counsel executor to hire a professional to help them get everything out of the house where the decedent lived. It is a big burden to bear.

1. They might throw something out that is of value and can be auctioned off or sold.
2. It is emotionally difficult to go through a loved one's stuff, and clients often need a push from someone they trust to advise them in order to make the decision to get help with this task.



PHASE THREE

Estate Management



Estate Management - Part 1

Obtaining DOD Values -

Important for

- Inventorying
- Tax Return Prep
- Understanding what needs to be done





Pro-Tip

When it comes to appraisers- make sure the executor hires good people and obtains **qualified appraisals.**

What is a qualified appraisal?

- Requiring a qualified appraiser who specializes in “hard to value” assets is a must for an estate with non-traditional assets.
- The appraiser must conduct a qualified appraisal that meets the criteria outlined by the IRS.
- Multiple appraisers with different specialties may be needed for an estate with a variety of assets.

Technology can help!

With respect to certain types of artwork and assets, there are now appraisers who can work with you remotely, even on tangible assets.

Tools like EVP or Yahoo Finance can be used for stock.



Resources



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