

**GUIDE FOR PERSONAL REPRESENTATIVES**

<b>I. INTRODUCTION</b> .....	<b>1</b>
<b>II. THE FIRST WEEK</b> .....	<b>1</b>
<b>A. Physician’s Certification and Death Certificate</b> .....	<b>1</b>
<b>B. Autopsy</b> .....	<b>1</b>
<b>III. THE FIRST MONTH</b> .....	<b>1</b>
<b>A. Find the Will</b> .....	<b>1</b>
<b>B. Set Up a Filing System</b> .....	<b>2</b>
<b>C. Order Copies of the Death Certificate</b> .....	<b>2</b>
<b>D. Wrap-Up Accounts</b> .....	<b>3</b>
<b>E. Collect Benefits</b> .....	<b>4</b>
<b>IV. DUTIES OF A MARYLAND PERSONAL REPRESENTATIVE</b> .....	<b>7</b>
<b>A. Open An Estate Banking Account</b> .....	<b>7</b>
<b>B. Take Control of Estate Assets – Obtain Appraisals</b> .....	<b>7</b>
<b>C. Handle Debts and Expenses</b> .....	<b>7</b>
<b>D. File Tax Returns</b> .....	<b>8</b>
<b>E. File Inventory Report</b> .....	<b>8</b>
<b>F. File Information Report</b> .....	<b>8</b>
<b>G. File Accounts</b> .....	<b>9</b>
<b>H. Personal Representative’s Commission and Attorney’s Fee</b> .....	<b>9</b>
<b>I. Funding the Bequests; Making Distributions</b> .....	<b>9</b>
<b>J. Closing the Estate</b> .....	<b>10</b>
<b>K. Co-Personal Representatives</b> .....	<b>10</b>
<b>V. FREQUENTLY ASKED QUESTIONS</b> .....	<b>11</b>
<b>VI. IMPORTANT DATES TO REMEMBER</b> .....	<b>12</b>
<b>VII. DEFINITIONS</b> .....	<b>13</b>
<b>How To Obtain Maryland Death Certificates</b> .....	<b>15</b>
<b>How To Transfer Vehicle Ownership In A Maryland Estate</b> .....	<b>16</b>
<b>Maryland and D.C. Appraisers</b> .....	<b>18</b>

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## I. INTRODUCTION

This Guide assumes you're entitled to act on behalf of a deceased person's estate, either because:

- you are named as the executor (Personal Representative) in the decedent's will;
- a living trust named you as successor trustee (in which case you have authority over trust assets, but nothing else);
- there is no will and under state law you (as surviving spouse, only child, or closest living relative) are first in line to serve; or
- no probate is necessary (because there is so little property or because everything was owned jointly or in a way that avoids probate and everyone concerned agrees that you are the right person to take charge).

Even if you haven't yet been appointed as executor or administrator by a probate court (and may never be appointed, if probate isn't necessary) you should go ahead with some important tasks.

That's what this Guide is for. You probably won't have to do everything discussed here, and you certainly don't have to do it all at once. Do what you need to do to look after yourself and your family. Most legal matters really can wait.

## II. THE FIRST WEEK

### A. Physician's Certification and Death Certificate

Within a day after someone dies (the deadline depends on state law) a doctor must sign a certification of death. That's no problem in a hospital, but if the death occurs at home you'll need to call the person's personal physician or, if that's not possible, the county medical examiner or coroner.

Within the next few days, someone at the funeral home or cremation organization will prepare the death certificate. This document contains information about the deceased person.

When the certificate is entirely filled in, it must be signed by the physician and filed with the count before the body can be buried or cremated. Usually the mortuary, or whoever else is in charge

of the person's remains, files the certificate. (Later, you'll need certified copies of the death certificate (see section III C. below).

### B. Autopsy

Autopsies—a doctor's examination of a body to determine what caused death—once was routine. Today, they are seldom conducted unless doctors are puzzled by the cause of death or an autopsy is mandated by law. State law generally requires an autopsy if the death appears to have been the result of an accident or of violence, or if the person had not seen a doctor in some time (from a few days to about a month, depending on state law).

The thought of an autopsy can be disturbing to survivors. But autopsies often reveal surprising facts about the cause of death. What the doctor learns from this investigation may help others at risk of death from similar causes—perhaps even family members, if they share a medical condition with the deceased person.

An autopsy that's required by law will probably be performed by the county medical examiner in the first few days following a death, after which the body is released for cremation or burial. (The autopsy report may not be available until weeks later, however, if tissue is sent to a lab for testing.) The procedure does not preclude an open-casket funeral; a funeral home can disguise signs of the autopsy if necessary.

## III. THE FIRST MONTH

After the first shock has worn off and you've taken care of immediate concerns, you may not feel ready to wade into the piles of papers and belongings that must be dealt with.

But to their surprise, many people find that dealing with some tangible items and handling some financial matters actually makes them feel better. The hardest part is getting started.

### A. Find the Will

You need to find the will, if there is one. The will is the basis of your job as executor, because it both says who should inherit what and puts you in charge of making it happen. (Remember, though, that some—perhaps all—of the deceased person's

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property may pass outside of the will. In such a case, the will may not control any assets).

Many people don't have a will. If your search doesn't uncover one, it's not a problem. Other documents—for example, living trust beneficiary designations, or joint ownership deeds—will provide a substitute, and state law will supply the rest under the “laws of intestacy.”

## **B. Set Up a Filing System**

The most important thing you can do is set up a system to keep track of all the paperwork that will shortly come your way. A good filing system will keep you from wasting hours later, searching for things you need, and it will also make it much easier to answer the inevitable questions from beneficiaries, banks, insurance companies, accountants, and others.

Many people set this up on a computer, but because you may be shuffling a lot of paper, a paper-filing system also will be necessary.

Buy a package of file folders and a container (file box or drawer) in which to keep them. Hanging files are the easiest to use. Look at the list below and label the folders you think you'll need before you need them. You can add others later.

If you use a computer, there are many simple record-keeping databases available, many quite inexpensive. Microsoft *Works*, which comes free with many computers, includes such a program.

### **FILES YOU MAY NEED**

- Appraisals
- Bank Account-Estate
- Bank Accounts-Personal
- Bills-Unpaid
- Bills-Paid
- Correspondence With Beneficiaries
- Death Certificates
- Employment
- Funeral and Cremation or Burial
- Life Insurance
- Living Trust
- Medical Expenses
- Military Service/Veterans Benefits
- Pensions/Survivors Benefits
- Probate Court
- Property Inventory

- Real Estate
- Retirement Accounts
- Social Security
- Stocks and Bonds
- Tax Returns-Estate
- Tax Returns-Personal
- Will

### **RECORDS TO LOOK FOR**

- Annuity policies
- Bank statements
- Birth certificates (of the deceased person and of any minor children)
- Brokerage account statements
- Business co-ownership agreements
- Checkbooks
- Child support documents
- Credit card statements
- Disability-related documents
- Divorce papers (including property settlement agreements)
- Health insurance policies
- Immigration and citizenship documents
- Investment records
- Life insurance policies and premium payment records
- Marriage license (if you don't have a copy, order one from the county where the wedding took place)
- Military service records (branch, dates of service, discharge or “separation” papers)
- Pension records
- Prenuptial agreement
- Real estate deeds and tax records
- Registration papers for vehicles or boats
- Retirement account statements
- Social Security records
- Tax returns
- W-2 form (showing wages for the most recent year)
- Workers' compensation paperwork

## **C. Order Copies of the Death Certificate**

As you wind up the deceased person's affairs, you'll need a number of certified copies of the death certificate, which will serve as official evidence of the death. For example, you'll need one whenever you claim benefits or property that you or someone else becomes entitled to because of the death, such as union, veterans, or other

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funeral and burial benefits, life insurance proceeds, payable-on-death bank accounts, or Social Security benefits.

Typically, the mortuary arranges for you to receive some certified death certificates. It's a good idea to ask for at least a dozen, more if the deceased person owned many types of property.

### **1. Where to Order**

In Maryland, death certificates can be ordered from the Department of Health and Mental Hygiene Vital Statistics Administration (\$12.00 per copy). A copy of the application can be downloaded from the Department's web site.

Within 30 days of a death, copies of the record also may be obtained from the local health department in which the funeral director filed the death certificate, with the exception of Baltimore City and Baltimore County health departments. (You must apply in person at the appropriate local health department.)

If the death occurred in other states, you can contact either the state or county vital records office. The county office is probably your best bet, because it receives the documents sooner. Typically, there is a lag time of several months before certificates are available from a central state office.

Expect to pay from \$10 to \$15 for the first certified copy; if you order multiple copies at one time, the rest are likely to be cheaper. If you don't pick them up in person, you may also be charged a mailing fee. You can pay for them yourself, and later get reimbursement from the estate.

### **2. Who May Order**

In an increasing number of states, not just anyone can get a certified copy of a death certificate. (These restrictions are aimed at preventing identity theft; thieves use birth and death records to get and misuse personal information.) But as the executor or a member of the immediate family, these rules should pose no problem for you.

## **D. Wrap-Up Accounts**

### **1. Credit Cards**

You should cancel all of the decedent's credit cards.

If you're the surviving spouse, and the credit card account is a joint one, contact the issuer and ask to have the account changed into your name alone. You may need to provide a certified copy of the death certificate.

Watch out for automatic billing! If the credit card is billed automatically for certain regular costs—utilities or subscriptions, for example—don't cancel it unless you either want to stop paying those debts or you make other arrangements to have them paid.

### **2. Post Office**

If the deceased person lived alone, contact the post office and have mail forwarded to you, so you won't miss anything important. Keep close tabs on all checks, statements, bills, and other items you receive; they may help you track down assets you didn't know about, or warn you of expenses on the horizon.

To get the mail forwarded, submit a change of address card to the post office closest to where the deceased person lived. You can pick up a form from any post office. Or go to the post office website at [www.usps.gov](http://www.usps.gov), where you'll find a form that you can print out or submit online.

If you use a paper form, write "DECEASED" across the top of the card and attach a copy of the death certificate when you turn it in. The post office may ask to see evidence of your authority: if so, you can produce a copy of the will that names you executor, the living trust that names you as trustee or later, your letters of administration from the probate court.

Be aware that some mail, marked for personal delivery only, may not be forwarded. Generally, items such as driver's licenses, credit cards, and government checks are returned to the sender.

Be sure that only one person submits a change-of-address form. Before you make a forwarding request to the post office, make sure no other surviving family member has done so.

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### **3. Utilities and Other Services**

If the deceased person lived alone, you'll probably want to cancel various services that are no longer needed, such as:

- phone
- cell phone
- cable TV, and
- Internet access.

Don't cut off the electricity, gas (for heating in cold climates), trash collection, or water (for lawn maintenance and cleaning). When the house or condo is sold or a rental unit is turned over to the landlord, the new occupant can transfer the accounts into his or her name.

### **4. Leases**

If the deceased person was a renter, you'll need to check the lease or rental agreement to see what is required in the event of death of a tenant.

If the agreement doesn't cover the situation, you can find your answer in the law. The general rule is that in the absence of a contrary lease provision, the death of tenant or landlord does not terminate the lease and does not terminate responsibilities under the lease.

Many cities and counties, however, have laws providing that if the tenant dies, the surviving spouse or other person may be substituted.

Most landlords will voluntarily consent to a termination upon the death of a tenant. If you can terminate the lease, don't forget to ask for the security deposit.

### **5. Membership Organizations**

You'll want to notify organizations to which the deceased person belonged, so they can adjust their records.

Look for a chance to get a few dollars back. Organizations may be willing to refund dues and fees paid in advance

You're likely to keep getting fundraising appeals and junk mail addressed to the deceased person for quite a while, until his or her name disappears from mailing lists. To get the process started, notify charities, political organizations, schools, and any other entities the deceased person donated to during life.

## **E. Collect Benefits**

### **1. Insurance Policies**

If you haven't had any luck finding an insurance policy in the usual places (file cabinets, desk drawers, and so on), here are some other ways to track it down.

Look through cancelled checks. Even if you find a ten-year-old check to an insurance company, contact the company. The policy could still be in force.

Ask former employers and associations to which the person belonged. Some companies and unions provide free group life insurance coverage for employees and members; family members may not be aware of the policies.

If the deceased person had credit insurance (to pay off credit card balances or, sometimes, amounts owing on major purchases such as furniture) or mortgage insurance (to pay off a mortgage), be sure to take advantage of it. Keep in mind that the policy proceeds are earmarked for the particular debt; you can't use them for other expenses.

To find out who the beneficiary of an insurance policy is, look at the policy—it will tell you. Usually, it will list both a primary beneficiary and an alternate. The alternate beneficiary (sometimes called the secondary or contingent beneficiary) is entitled to the policy proceeds only if the primary beneficiary has died.

If any beneficiary is under age 18, an adult will have to take charge of the money. If the policyholder named someone on the form provided by the insurance company to serve as custodian or trustee for the money, it can be turned over to that person with a minimum of fuss. If not, you may need to get the probate court to appoint a guardian before the company will release the proceeds.

### **2. Annuities**

Annuities, like life insurance policies, are contracts with insurance companies. Usually, annuities provide retirement income to the policy owner, but under certain circumstances they can result in payments to a beneficiary. People buy individual policies or may get them as part of their

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employment. The chief benefit of an annuity is that unlike most other non-retirement plan investments, the earnings are not taxed until they are distributed.

When the annuity owner (annuitant) dies, benefits may be available to a beneficiary the owner named. The benefits depend on what kind of annuity the deceased person owned. If the policy was a “life-only” annuity, then no one receives anything after the owner’s death. But if the annuity contract guaranteed payments for a certain amount of time, and the annuity owner died before the term ended, the beneficiary will receive the rest of the payments.

Like an insurance policy, an annuity policy will tell you who the beneficiary is. It may list both a primary (first-choice) beneficiary and an alternate. The alternate beneficiary (sometimes called the secondary or contingent beneficiary) is entitled to benefits only if the primary beneficiary has died.

### 3. Social Security Administration

Social Security should be notified as soon as possible when a person dies. In most cases, the funeral director will report the person's death to Social Security. You will need to furnish the funeral director with the deceased's Social Security number so he or she can make the report.

**If the deceased was receiving Social Security benefits,** you must return the benefit received for the month of death or any later months. For example, if the person dies in July, you must return the benefit paid in August. If benefits were paid by direct deposit, contact the bank or other financial institution. Request that any funds received for the month of death or later be returned to Social Security. If the benefits were paid by check, do not cash any checks received for the month in which the person dies or later. Return the checks to Social Security as soon as possible.

However, eligible family members may be able to receive death benefits for the month in which the beneficiary died.

*One-Time Death Benefit.* If the deceased person had enough Social Security work credits, the Social Security Administration (SSA) makes a one-time lump sum payment, currently a modest \$255, to the surviving spouse or dependent

children. (You get credits by working and paying Social Security taxes, anyone who worked for at least ten years qualifies. Someone who worked less may also qualify, depending on his or her age at death: the younger the age at death, the less work is needed.)

This payment is in addition to ongoing survivor’s benefits to which the spouse or children may be entitled.

The spouse receives the payment if the couple was living together at the time of death. If they were living apart, a spouse who was eligible for Social Security benefits on the deceased spouse’s earnings record is entitled to the payment.

If there is no surviving spouse, the payment goes to the children (split equally among them) who were eligible for benefits based on the parent’s earnings record,

To apply, the beneficiary should go to the local Social Security office. The staff can help with the paperwork and explain what information and documents—a certified copy of the death certificate, for example—are needed. It’s helpful to call and make an appointment before visiting, to avoid the long lines that sometimes clog these chronically understaffed offices. To find the closest office, check the government listings in the phone book, use the “How to Find Your Local Office” service on the SSA website at [www.ssa.gov](http://www.ssa.gov), or call the SSA, toll-free, at 800-772-1213.

*Monthly Survivors Benefits.* Far more important than the one-time death benefit discussed just above are monthly benefits, based on the deceased person’s earnings, to which a family member may be entitled. You don’t have to be of retirement age to receive benefits: dependent children, surviving spouses, and even some ex-spouses may be eligible. The more quickly survivors apply for these benefits, the better, because some of them are not retroactive.

Applicants can start the application process over the telephone (800-772-1213) or online at [www.ssa.gov](http://www.ssa.gov), which may speed things up, but they won’t be able to complete the process without a face-to-face meeting with a staffer at an SSA office. Again, making an appointment before the trip will probably save time.

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*The Surviving Spouse.* How a surviving spouse goes about claiming benefits depends on the spouse's circumstances. A surviving spouse who is already receiving Social Security benefits based on the deceased person's earnings just needs to report the death to the SSA at 800-772-1213. The SSA will change his or her monthly benefits to survivors benefits.

If, however, the surviving spouse is not already getting benefits or is receiving benefits based on his or her own earnings record, he or she will need to apply for survivors benefits. If the spouse already is getting benefits, the SSA will check to see whether or not the survivor's benefit would be higher.

If the surviving spouse must apply, eligibility will depend on the survivor's age and family circumstances. Benefits are given to any surviving spouse who:

- takes care of the deceased person's child who is under 16 or disabled (this is commonly called the "mother's benefit" or "father's benefit")
- is 60 or over, or
- is 50 or older who becomes disabled within seven years of the worker's death or within seven years after the mother's or father's benefit ends.

*Former Spouses.* Generally, divorced spouses are eligible for benefits under the same rules as surviving spouses, if the marriage lasted at least ten years and the divorced spouse does not remarry before age 60. If, however, the ex-spouse is taking care of the deceased person's young or disabled children, it doesn't matter how long the marriage lasted.

These benefits don't affect the benefits paid to other surviving family members.

*Dependent Children.* Unmarried children of the deceased person are eligible for benefits if they are 17 or younger (or up to age 19 if they are attending high school full time).

#### **4. Pensions**

The deceased person may have been entitled to pension benefits from a private company, government agency, or union. Some pensions end at death, but many provide for payments to a surviving spouse or dependent children.

As you go through the deceased person's papers, you may find documents that alert you to a pension—or a record of payments deposited directly into the person's bank account.

If you turn up a pension, you can find out about what (if any) benefits survivors are entitled to. They may receive the payments the person would have received, although usually only for a few years unless it was a government pension.

**Retirement plans and IRAs.** Funds from IRAs, 401(k), and other retirement plans generally are distributed by beneficiary designations, similar to life insurance, but are subject to special rules and tax consequences can be complex. You should seek the help of a competent tax advisor before taking any action.

#### **5. Veterans' Benefits**

Most veteran's families are not entitled to any monetary benefits. But here are a few programs that may provide some help:

- Most veterans are eligible for flags and grave markers. Many veterans also qualify for burial in a national cemetery.
- A veteran's surviving spouse (and any children under age 18) may be entitled to payments if the deceased veteran:
  - died while in the service
  - died from a service-related disability, or
  - received or was entitled to receive compensation for a service related disability.

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## IV. DUTIES OF A MARYLAND PERSONAL REPRESENTATIVE

If you are appointed by a probate court as “Personal Representative” (“P.R.”) of an estate, it is important that you understand your responsibilities and duties.

(For help with terminology, see Section VII below.)

You hold an extremely important office and have the fiduciary responsibility of insuring that the estate is properly administered.

Make absolutely sure that estate property is separate from your own property. You also are obligated to keep receipts and accurate records of all expenses and payments while administering the estate, because you must account for all financial activity before the estate can be closed. Your records are subject to audit by the Register of Wills and the court.

The following are the steps you should take as a Maryland Personal Representative in a **Regular Estate**. There are different requirements for a Small Estate – e.g., no Inventory or Account is required – see Section VII for definitions of these terms.

### A. Open An Estate Banking Account

*You should open an estate bank account through which all estate business is conducted.* In order to do this you will need to obtain a tax identification number for the estate. Generally we will obtain an EIN when the estate is opened.

### B. Take Control of Estate Assets – Obtain Appraisals

It’s your responsibility to make sure that the deceased person’s property remains safe until it can be transferred to the people who inherit it, so you must take control of and value all assets comprising the estate as soon as possible.

*Bank and brokerage accounts.* These may be accessed immediately, as soon as you have your Letters of Administration. Existing accounts of the decedent should be closed and their proceeds placed in an estate checking or savings account. (Alternatively, you may simply convert the name of the account to that of the estate). You will need

the estate EIN to set up new accounts. Make sure that you get a statement showing the value of the account as of the date of death.

*Tangible personal property.* Unless the decedent is survived by a spouse (when household furnishings may be treated as held “by the entirety”), the personal representative must engage a professional appraiser to value the decedent’s solely owned tangible property, such as household furniture, automobiles, jewelry, artwork, and collectibles, excluding only family and wearing apparel. (See the listing of appraisers in the Appendix) Depending on the nature and value of the property, this may be a routine activity, but you may need the services of a specialist appraiser if, for example, the decedent had rare or unusual items or was a serious collector. Any business interests also must be valued, usually by a specialist business appraiser.

*Automobiles.* Automobiles can be appraised using the NADA or “blue book” value. To transfer title to a legatee or heir, or sell the automobile, see “How to Transfer Vehicle Ownership” in the Appendix.

*Real estate,* whether it is a home or commercial property, may be valued at its Maryland tax appraisal. If you wish a separate appraisal, contact this office.

Besides providing a valuation for assets that may be reported on a court-required inventory or on the state or federal estate tax return, these appraisals can help you gauge whether the decedent’s insurance coverage on the assets is sufficient. Appropriate insurance should be maintained throughout your tenure.

### C. Handle Debts and Expenses

#### 1. Debts of the Decedent

Before any beneficiary can inherit from the decedent, the decedent’s debts must be paid. As personal representative, this is one of your most important duties. You are under a duty to make a reasonably diligent effort to locate each creditor’s name and address. In addition, you must deliver or mail by first-class mail, postage prepaid, a copy of the Notice of Appointment to all of the decedent’s creditors whose names and addresses are known. Thereafter, you are under continuing duty to send a

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copy of the Notice of Appointment to any creditor found before the deadline expires for filing claims. This deadline is six months after the decedent's death. Upon the expiration of the six-month period from the date of death of the decedent for filing claims, the personal representative must pay all claims allowed against the estate. If there are insufficient assets to pay all claims, Maryland law provides a priority of payment of claims for an insolvent estate. It is your duty to determine when bills unpaid at death should be paid, and then pay them or notify creditors of temporary delay.

## **2. Estate Expenses**

Most expenses that a P.R. incurs in the administration of the estate are properly payable from the decedent's assets. These include funeral expenses, appraisal fees, attorney's and accountant's fees, insurance premiums, etc.

In some cases, such as property or casualty insurance bills or real estate taxes, the estate may be harmed if the bills are not paid promptly. While most bills will present no problem, consult our office in unusual circumstances, as the P.R. can be held personally liable for improperly spending estate or trust assets.

## **D. File Tax Returns**

The P.R. (or surviving spouse) is responsible for a number of tax returns. First are the personal returns of the decedent: the final income tax return for the year of the decedent's death; a gift or generation-skipping tax return for the current year, if needed; and prior years' returns that may be on extension also may need to be filed.

If the value of the estate (whether under a will or trust) before deductions exceeds the amount sheltered by the federal "applicable exclusion amount," which is \$5.34M for 2014 (adjusted annually for inflation), a federal estate tax return must be filed within nine months of the date of death. If the entire estate passes to a spouse, however, there will be no tax due. (Note that if you have tax-savings wills with disclaimer bypass trusts, other issues may apply.)

**Whether or not a federal estate tax return is required to be filed with the IRS, however, a Maryland estate tax return must be filed within nine months of date of death if the value of the**

**taxable estate is \$3M or more in 2017.** And, in order to complete the Maryland return, a federal "pro forma" return must be completed in any event! *Therefore, if the taxable estate is more than \$1M (including life insurance, retirement accounts, joint property, etc); count on completing a federal estate tax return.*

In addition, a "fiduciary" income tax return must be filed for the estate if it earns more than \$600 in income (dividends, interest, rents, etc.) in any year. It is important to note for planning that the estate or trust and the beneficiaries may not be in the same tax brackets. Thus, timing of certain distributions can save money for all concerned. Some tax preparers and accountants specialize in preparing such fiduciary income tax returns and can be very helpful. They are familiar with the filing deadlines and will be able to determine whether the estate or trust must pay estimated taxes quarterly.

## **E. File Inventory Report**

Unless the estate is a "modified administration" (see Definitions) you must file an Inventory Report within three months after your appointment as personal representative. The Inventory Report is the form used to report the assets held in the decedent's individual name or as tenants in common. Describe each item on the Inventory Schedule in reasonable detail and indicate its appraised gross fair market value as of the date the decedent died. Also, describe any encumbrance on any item. Real and leasehold property must include Liber (book) and folio (page) numbers, as referenced on the deed or other recorded instrument. In listing personal property, wearing apparel need not be listed, except for furs and jewelry.

If retained by you, this office will prepare this Inventory for your signature based on the information you provide.

## **F. File Information Report**

The Information Report, which must be filed within three months after your appointment as personal representative, lists all property the decedent owned or co-owned that is not listed on the Inventory Report. The personal representative is required to file an Information Report in all estates. However, it only is necessary to report and

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value property passing to someone who is subject to the Maryland inheritance tax.

- The valuation requirements are the same as those explained above for the Inventory Report.
- The Information Report includes:
- jointly held property;
- any transfer of a material part of the decedent's property within two years of death that was in the nature of a final disposition (including property placed in a joint tenancy, trust, or joint bank account);
- any property over which the decedent retained an interest such as a retained life estate in a deed or a trust, whether the trust is revocable or irrevocable;
- joint or P.O.D. bank accounts and U.S. Savings Bonds;
- any interest in a public or private pension or benefit plan' including any I.R.A.;
- any interest less than absolute in real or personal property such as a life estate or interest in a trust; or
- any real property owned by the decedent located outside of Maryland.

If any of the decedent's property was owned jointly, held in trust, or in an interest less than absolute, the Information Report must be filed.

If retained, our office will prepare this Report for your signature based on the information you provide.

#### **G. File Accounts**

Within certain time frames of your appointment as P.R., you must file either an estate accounting (regular administration, within nine months) or Final Report (modified administration, within ten months).

If you are required to file an Account, you must account for the total value of the property shown on all Inventories. You are required to submit an itemized listing of all estate receipts during the accounting period, showing the amount and a description of the receipts. You must account

for all financial activity in the estate, including purchases, rent, sales, redemptions, and dividends, etc. Include an itemized list of all payments and disbursements that satisfy estate liabilities, including funeral expenses, family allowances, filing fees, appraisal fees, death taxes, personal representative's commission, attorney's fee, and all other expenses of administration.

The account must disclose your proposed distribution to estate beneficiaries and, if applicable, set forth the amount of inheritance taxes due.

If retained, this office will prepare the Account for your signature based on the information you provide.

#### **H. Personal Representative's Commission and Attorney's Fee**

As a personal representative, you are entitled to receive a commission for the work you perform for the estate. Unless all Interested Persons consent, the personal representative's commission and attorney's fee must be approved by the Orphans' Court and, under no circumstances, is a personal representative or attorney entitled to a commission or fee from estate assets until the commission or fee has been approved by the Orphans' Court.

Maryland law sets guidelines for a personal representative's commission.

#### **I. Funding the Bequests; Making Distributions**

Wills often provide for specific gifts of cash ("I give my niece \$50,000 if she survives me") or property ("My grandfather clock to my granddaughter Nina") before the balance, or residue, is distributed. The residue may be distributed outright or in further trust, such as a trust for a surviving spouse or for minor children. Be sure that all debts, taxes, and expenses are paid or provided for before distributing any property to beneficiaries. Although it is usual to obtain a receipt from the beneficiary that states that he or she agrees to refund any excess distribution made in error by the fiduciary, as a practical matter it is often difficult to retrieve such funds. You should consult with this office before making any distributions. Tax consequences of a distribution

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sometimes can be surprising, so careful planning is important.

#### **J. Closing the Estate**

The Register of Wills is required to audit the account and has the right to require you to furnish proof of any disbursement or distribution shown in the account. After the Register's audit, the account is submitted to the Orphans' Court for approval.

It is important to remember that if exceptions to the account are filed, they must be filed within twenty days after the entry of the Court's Order approving the account. A copy of the exceptions must be served on the personal representative. When the Orphans' Court approves the final account, and after the assets have been distributed, the estate is considered closed.

A final income tax return must be filed and a reserve kept back for any tax that may be due.

#### **K. Co-Personal Representatives**

Under Maryland law, where two or more persons are appointed co-personal representatives, the concurrence of all is required on all acts connected with the administration and distribution of the estate. Exceptions are if:

- (1) the act involves simply receiving or receipting for property due the estate;
- (2) all P.R.s cannot readily be consulted in the time necessary for emergency action; or
- (3) a P.R. has validly delegated to a co-personal representative his power to act.

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## V. FREQUENTLY ASKED QUESTIONS

### *How do I title accounts?*

Each bank or investment firm may have its own format, but generally you may use, "Alice Carroll, Personal Representative of the Estate of Lewis Carroll".

### *How do I sign my name in a fiduciary capacity?*

For deeds and other formal papers, an executor signs: "Alice Carroll, Personal Representative of the Estate of Lewis Carroll, Deceased". For checks and other documents, "Alice Carroll, P.R. of the Estate of Lewis Carroll."

### *Where do I hold the estate or trust assets?*

You must open an insured estate checking and/or savings account with a bank or brokerage company in the name of the estate (you'll need the estate tax EIN). All expenses and disbursements must be made from these accounts, and you should receive regular statements.

### *How (and how much) do I get paid?*

Fiduciary work is time-consuming and can be difficult; it is appropriate to seek payment for your services. The decedent's Will may set forth the compensation. If it does not, Maryland provides a fixed schedule which takes into account the size of the estate. This is called the personal representative's "commission." In general, the combination of the P.R. commission and estate attorney's fees cannot exceed \$1,800 plus 3.6% of the excess over \$20,000 of the gross estate.

The P.R. commission will be taxable income to you. In general, you should not take this commission until notified by our office. Our office will explain the procedure.

### *What about my expenses?*

Your personal expenses as executor, such as travel and lodging, are not expenses of the estate, and should not be paid from the estate account. These expenses are intended to be compensated through payment of the personal representative's commission. To the extent that the commission

includes repayment of these expenses, they will not be income to you.

### *What if a legatee or heir complains?*

Even professional fiduciaries, such as trust companies, receive complaints from time to time. The best way to deal with them is to do your best to avoid them in the first place by following these guidelines and consulting with our office. Many complaints arise because beneficiaries are not kept up to date on the administration of the trust or estate. Frequent communication with beneficiaries is a must.

### *Can I be sued or be held personally liable?*

Your errors or mismanagement of a trust and estate can indeed subject you to personal liability. Common pitfalls include not paying tax or filing returns on time, improper investment choices (whether too conservative, too speculative, or favoring one beneficiary over another), self-dealing (buying assets for yourself or your family from the estate or trust, whether or not at market price), or allowing property or casualty insurance to lapse, resulting in a loss to the account. Your best protection is to get good professional advice and to fully document your actions and decisions.

### *How am I discharged as fiduciary at the end of the administration? What if I want to resign?*

Whether you stop acting because the estate has terminated, or you wish to resign before the conclusion of your administration, you must be discharged by the local court. In Maryland, this is a formal process, involving the preparation of an accounting or final report. If you are resigning prior to the conclusion of your administration, you may need a court proceeding to appoint a successor before you can be discharged.

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## VI. IMPORTANT DATES TO REMEMBER

This office will prepare all filings, based on information received from you. You should note these deadlines so that you can timely provide the information we will request.

FORM OR DOCUMENT	FILING DEADLINE
Information Report for Non-Probate Assets	Within three months of appointment
Election for Modified Administration (with Consents)	Within three months of appointment
Inventory Summary and Supporting Schedule (unless Modified Administration is elected). All appraisals must be completed at least two weeks before this deadline.	Within three months of appointment
First Account (Regular Estate)	Within nine months of appointment
Subsequent Accounts, if necessary	Intervals of six months
Final Report (Modified Administration only)	Within ten months of appointment
Disclaimers of Interest in Estate	Within nine months of date of death

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## VII. DEFINITIONS

**ADMINISTRATION OF AN ESTATE** — the process by which a decedent's assets are collected, managed and distributed to those entitled to them.

**ADMINISTRATIVE PROBATE** — the one proceeding started when a person files a Petition for Probate (for a regular estate) or Petition for Administration (for a small estate) with the Register of Wills. The purpose of probate is to appoint the personal representative, collect the decedent's property, pay the decedent's debts and death taxes, and distribute the remaining property as specified in the will or, if no will, by the intestate law of distribution,

**CLAIMANT** — a person filing a claim against the decedent's estate.

**DECEDENT** — a person no longer living,

**DOMICILE** — the place where a person has his or her true, fixed, permanent home or principal residence without any intention of moving to another place. A person may have more than one residence but only one domicile.

**ENCUMBRANCE** — a lien or claim on property; for example, a mortgage.

**ESTATE** — property of a decedent regardless of whether the decedent had a will.

**EXECUTOR** — (Also called "personal representative"; a woman is sometimes called an "executrix") An individual or trust company that settles the estate of a testator according to the terms of the will.

**FAMILY ALLOWANCE** — in addition to property passing under the will or by intestate succession, the surviving spouse and each unmarried child of the decedent who was not eighteen years at the time of the death of the decedent are entitled to receive a family allowance as specified by Maryland law. The family allowance is subject to the Maryland inheritance tax.

**FIDUCIARY** — An individual or trust company that acts for the benefit of another. Trustees, executors, and personal representatives are all fiduciaries.

**FIDUCIARY DUTY** — an obligation which imposes fairness, good conscience and of self-dealing on a person appointed to certain positions such as a personal representative of an estate. It is the standard of care that the law recognizes imposes substantial personal liability to the fiduciary if he or she fails to meet the standard of duty.

**GROSS ESTATE** — the value of the estate assets without deducting outstanding liens or debts.

**HEIR** — a family member who inherits from a decedent who dies without a will.

**INFORMATION REPORT** — the document that lists all of the decedent's non-probate property; for example, property that passes by operation of law such as a jointly held property, a life estate or remainder interest in a trust or deed, a revocable or irrevocable trust in which the decedent had an interest, a joint or P.O.D. bank account or a pension or benefit plan, including an I.R.A.

**INHERITANCE TAX** — a tax imposed on the right to receive probate or non-probate property from a decedent unless exempted by law from tax. The rate of tax is determined by the date of death of the decedent.

**INTERESTED PERSON** — the person named as the personal representative in a will, the person serving as personal representative, a legatee, an heir (even if the decedent had a will), and the trustee of a trust created by the decedent in the will.

**INTESTATE/INTESTACY** — dying without a will.

**JOINT TENANTS WITH RIGHT OF SURVIVORSHIP** — type of ownership of real or personal property by two or more persons in which, upon the death of one of the joint tenants, the remaining tenant receives the deceased tenant's share by right of survivorship. It is possible for individuals to own property in joint tenancy regardless of the blood relationship between them. Common types of jointly owned property are real property, savings bonds, and bank accounts. (Compare with "tenants by the entirety" and "tenants in common" listed below.)

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**JUDICIAL PROBATE** — a proceeding conducted by the Orphans' Court when matters cannot be handled administratively. For example, when the validity of the will is at issue, or the will is lost, stolen or damaged.

**LEGATEE** — a person named in a will to inherit.

**LETTERS OF ADMINISTRATION OR LETTERS OF APPOINTMENT** — an official document which authorizes a personal representative to administer a decedent's estate.

**MODIFIED ADMINISTRATION** — a procedure available when the residuary estate consists only of the personal representative, spouse or children. Instead of an Inventory or Account, a Final Report must be filed within ten months of appointment.

**NET ESTATE** — the property remaining after the payment of the family allowances, expenses, and enforceable claims.

**NON-PROBATE ESTATE** — property of the decedent which passes by operation of law such as a joint tenancy, tenants by the entireties, or property passing under a deed or a revocable or irrevocable trust. Non-probate property must be reported to the Register of Wills on the Information Report.

**OPENING THE ESTATE** — starting the probate procedure by filing a Petition for Probate (regular estate) or Petition for Administration (Small Estate) requesting appointment of the personal representative by the Register of Wills (administrative probate) or the Orphans' Court (judicial probate).

**PERSONAL REPRESENTATIVE** — the person appointed by the Register of Wills or Orphans' Court to administer the estate (formerly known as the executor or administrator).

**PETITION FOR PROBATE/PETITION FOR ADMINISTRATION** — a probate proceeding is started by filing this petition.

**PROBATE** — see "administrative probate".

**PROBATE ESTATE** — the property of the decedent owned individually or as tenants in common.

**REGULAR ESTATE** — when the value of the decedent's assets to be probated exceeds the limits for a small estate. A determination of whether you have a regular estate depends on the date of death. For decedents who died on or after July 1, 2000, assets in excess of \$30,000 (\$50,000 if the spouse is the sole legatee or heir) must be administered as a regular estate.

**SMALL ESTATE** — A determination of whether you have a small estate depends on the date of death. The assets subject to administration must have a value of \$30,000 or less (\$50,000 or less if the spouse is the sole legatee or heir).

**TENANTS BY THE ENTIRETIES** — a special form of joint ownership of property which can only be held between husband and wife. At the death of one, the property automatically passes to the surviving spouse with no inheritance tax due.

**TENANTS IN COMMON** — two or more persons having an interest in the same piece of property. Legally, each person has a separate and distinct ownership interest, with each owning an individual share of the property. On death, the part owned by the deceased passes in accordance with the decedent's will or the laws of intestacy.

**TESTATE** — dying with a will.

**TESTATOR** — a male who makes a will.

**TESTATRIX** — a female who makes a will.

**TRUSTEE** — An individual or trust company that holds legal title to property for the benefit of another and acts according to the terms of the trust.

**VALUE** — The value of a small estate is determined by the fair market value, less debts of record secured by the property, if insurance benefits are not payable to the lien holder or secured party for the secured debt. An example is mortgage insurance.

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## How To Obtain Maryland Death Certificates

Death records in Maryland are restricted for 10 years after the date of date and are available from the Division of Vital Records only to surviving relatives or an authorized representative of the estate (Personal Representative). If authorized to obtain a death record, provide the full name at death, date of death, place of death (County or City), your relationship to the person named on the record and your name and mailing address.

### Ways to Apply

*In person, at:*

Division of Vital Records  
Department of Health and Mental Hygiene  
6550 Reistertown Avenue  
P.O. Box 68760  
Baltimore, MD 21215-0020  
Phone: (410) 764-3038

If application is made in person, certificates can be received the same day if valid photo identification is provided.

*By mail.* Go to <http://www.vsa.state.md.us/vsa/html/death.html> and download the mail application. Requests by mail take approximately one to two weeks to process.

*By online service.* Go to the VitalChek Express Service at [http://www.vitalchek.com/agency\\_locator.aspx?providerid=9263#](http://www.vitalchek.com/agency_locator.aspx?providerid=9263#). You can use a credit card, and for an extra charge obtain overnight or two-day service.

NOTE: Within 30 days of a death, copies of the record may also be obtained from the local health department in which the funeral director filed the death certificate, with the exception of Baltimore City and Baltimore County health departments. You must apply in

person at the appropriate local health department.

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## How To Transfer Vehicle Ownership In A Maryland Estate

The law requires that a variety of actions be taken to safeguard the rights of the deceased person's heirs. There are several different types of transactions involving the transfer of ownership of the deceased person's vehicle. While these transactions are not routine, they are also not difficult.

### Transferring Ownership

**If the vehicle is jointly owned**, on the existing Maryland Certificate of Title, and you are the surviving owner, this is what you need to do:

- **If you want to keep the vehicle**, you must apply for a new title before the present registration tags expire. To apply for a new title and registration, please complete the “assignment of ownership” and “application for title and registration” section on the back of your “Certificate of Title.” If the transfer of ownership is between spouses or children the registration tags on the vehicle may be transferred to the surviving spouse's or child's name. In all other cases, new registration tags must be purchased. Please make certain you have a certified copy of the death certificate, the deceased's driver's license and the vehicle's registration card to complete your request.
  - ◆ If there is an existing loan, please complete all required lien information on the back of the title. If there are no liens on the vehicle, then just simply write “none” in the space provided for lien information. If the lien on the vehicle is released, attach a “Notice of Security Interest Filing” or a letter written by the lienholder, on their letterhead, releasing the lien. If there is a lien on the vehicle (the vehicle is being financed), you must contact the lienholder for a letter of authorization approving the transfer of ownership. The letter must be attached to your transfer of ownership request. No security interest filing fee is required.
  - ◆ If you are retaining ownership of the vehicle, a Maryland vehicle safety inspection is not needed.
- **If you intend to transfer the ownership of the vehicle to another person**, either by sale or as a gift, please complete the “assignment of ownership” section on the back of the “Certificate of Title.” To the new owner you will need to give the title, a certified copy of the death certificate, and if there is a lien, a lien release that you must obtain from the lienholder. The person receiving ownership of the vehicle will then take these documents to the MVA and register the vehicle in the new owner's name.
  - ◆ Please note, to sell or give the ownership of a used vehicle to another person, a Maryland safety inspection must be completed. The inspection certificate must accompany the transfer request.
- **If you intend to give the vehicle to an immediate family member in Maryland** you will need to complete the Assignment of Ownership section, the family member needs the title, a certified copy of the death certificate, and if there is a lien, a lien release that you must obtain from the lien holder, and a completed Gift Certification form (VR-103). If the last names of

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the family members are different, a proof of the relationship between the giver and the receiver of the vehicle is required. The family member can then take the documents to the MVA and register the vehicle in the family member's name.

- ◆ Please note, if the transfer of ownership of the vehicle is between a parent and child, spouse, or a surviving joint owner, a Maryland safety inspection is not required.

**If the vehicle is owned by the deceased person alone** and its ownership is to be transferred to a legal heir, legatee, distributee or sold, you will need to your Letters of Administration from the Register of Wills. When presenting the MVA with letters of administration to complete the transfer of ownership for a vehicle, the MVA can accept only the original. The original letters, which are issued by the Register of Wills, have a raised seal.

**If you are the estate executor or administrator this is what you need to do:**

- If the vehicle is being sold by the executor or the administrator, the “assignment of ownership” section on the back of the “Certificate of Title” must be filled out.
- The buyer's full name and address must be filled in with the amount the buyer is paying for the vehicle. The letters of testamentary or administration must be presented with the original title.
- If there is a lien shown on the title for the vehicle, a letter from the lien holder giving authorization for the vehicle to be sold must be given, along with the original title, to the buyer of the vehicle. If the vehicle has been paid off and no money is owed, a “Notice of Security Interest Filing” or a letter on the lienholder's original letterhead must be given to the buyer of the vehicle along with the original title. In both cases, the required lien information on the back of the title must be filled in. If the vehicle is not subject to a lien, write “none” in the lien section.
- New tags must be purchased for the vehicle regardless of how the transfer of ownership is made.
- Vehicles being sold in this manner must have a complete Maryland safety inspection. The inspection certificate must be presented with the request for
- the transfer of ownership if registration plates are requested.

**Excise Tax**

Excise tax is six percent (6%) of the fair market value or purchase price of a vehicle as certified on a notarized bill of sale. If a deceased person's Maryland titled vehicle is transferred to a surviving spouse, legal heir, legatee, or distributee they are exempt from paying an excise tax.

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## Maryland and D.C. Appraisers

### Home:

1. Kitzmiller Appraisals -- **(Home and contents)**  
Susan Harrison Kitzmiller, President  
6606 22nd Place Hyattsville, MD  
20782-1751  
Phone: 301 422-3442  
Fax: 301 422-7142  
Email: mdappraisal@earthlink.net
2. James M. Wilson **(Home only)**  
Wilson & Associates  
4515 Maple Avenue  
Bethesda, Md 20814  
Telephone Number: 301-706-7629  
Fax Number: 301-915-0015  
[jmwk1sl@msn.com](mailto:jmwk1sl@msn.com)
3. Stephen Rochkind -- **(Home only)**  
Area Appraisal Services  
7012 Exeter Rd, Bethesda, MD 20814  
5-7567  
steve@areaappraisal.com
4. Riley & Riley Associates  
Real Estate Appraisers & Consultants  
Commercial and residential real estate  
[www.BuddyRiley.com](http://www.BuddyRiley.com)  
P.O. Box 342202  
Bethesda, MD 20817

### Personal Property only:

Debbie Rosen McKerrow  
Chesapeake Estate Services  
410-279-3382  
ChesapeakeEstate@verizon.net  
[www.ChesapeakeEstate.Com](http://www.ChesapeakeEstate.Com)

### Antiques and Personal Property

Milton Kulczynski  
Probate Appraising Services –  
(410) 529-1674.

### Jewelry:

1. Ramon Garcia, Silver Spring Jewelry  
11205 New Hampshire Ave,  
Silver Spring, MD 20904  
(301) 439-4260
2. Sherlene Bradbury (mobile)  
<http://ybassociates.net>

### Art:

1. Weschler's Auctioneers & Appraisers, LLC  
40 West Gude Drive Ste 100  
Rockville, MD 20850  
Tel: 202.628.1281  
Fax: 202.628.2366  
Email: [info@weschlers.com](mailto:info@weschlers.com)
2. Tad Tharp with Sloans and Kenyon in Bethesda  
202.744.7033  
tadtharp@aol.com
3. Suzanne Alessi, ISA AM  
Washington, D.C. & Houston, Texas  
Tel. 240-346-6101  
[alessi.suzanne@gmail.com](mailto:alessi.suzanne@gmail.com)
4. Andrea Moody Fine Art Appraisals Washington DC  
206.899.6391 or  
email: [dcartappraisals@andreamood.com](mailto:dcartappraisals@andreamood.com).

### Coins and currency:

1. Coins of the Realm  
1331 F Rockville Pike  
Rockville, MD 20852  
(301) 637-0792
2. Golden Eagle Coins A+ BBB - Wide Variety Of Gold & Silver  
[www.goldeneaglecoin.com](http://www.goldeneaglecoin.com)  
(866) 637-4020  
3386 Laurel Fort Meade Road,  
Laurel, Maryland
3. Stephen Goldsmith  
Director of Numismatics  
145 W. 57th St., 18th floor

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New York, NY 10019  
Tel: 212-262-8400  
Fax: 212-262-8484

4. (Coins & Firearms)  
    Stouffer's Auction & Real Estate  
    301-791-6896

**Books:**

Allan J. Stypek  
Second Story Books in Rockville.