

ESTATE ADMINISTRATION FOR FINANCIAL ADVISORS

Growing Your Investment Practice by Working with Families in Transition

INTRODUCTION

1. Families in transition and estates being administered are **amazing opportunities** to capture investments.
2. Understanding the estate administration process allows you to **maintain contact with the client** during this time and be the one they turn to when assets are received.
3. **Clients are desperate for education and advice**, and not many financial advisors seek to add value in this area.

POSSIBLE PATHS OF AN ASSET AFTER DEATH

4. Direct Distribution
 - a. When an asset has a **named beneficiary** or other direct arrangement with a financial institution, the asset is **distributed directly** to the beneficiary after the institutions processes are followed.
5. Trust Administration
 - a. When an asset is **owned by the trust**, the asset is distributed to the **stated trust beneficiaries in the portions indicated, and in the manner indicated**. There are some administrative procedures the trustee needs to go through prior to distribution.
6. Out-of-Court Affidavit
 - a. The California Probate Code allows out-of-court affidavits in a couple limited circumstances: 1) When the **total estate is less than \$150,000**, or 2) when the asset in question was **jointly owned with a surviving individual**.
7. Petition to the Court
 - a. Where the **law is clear but certain circumstances need to be verified**, one can petition the court to administer or distribute an asset. For example, if an asset was intended to be owned by the trust but wasn't, a petition allows the court to verify the intent and will then grant the petition. Also used for transfers between spouses when needed.
8. Full or Partial Probate
 - a. **When all else fails, a traditional probate is commenced**. The probate process is designed to handle any and all issues, so if no other option is available, the asset will go through the probate process prior to distribution.

ESTATE ADMINISTRATION STEPS

1. Direct Distribution
 - a. Distribution is based solely off a **contractual agreement** the deceased had with the financial institution.
 - b. **Exempt from any sort of court involvement** unless there is a dispute or other problem.
 - c. Financial institution typically requires:
 - i. Certified copy of the decedent's **death certificate**.
 - ii. **Internal form**.

- d. Asset is re-issued **in the name of the beneficiary**.
 - e. There may be **additional administration at the beneficiary level** (e.g., if the beneficiary is a trust).
2. Trust Administration
- a. Distribution is **based solely on the terms of the trust**.
 - b. **Exempt from any sort of court involvement** unless there is a dispute or other problem.
 - c. There are some **preliminary administration tasks** the trustee needs to perform prior to distribution.
 - d. Asset is distributed **per the terms of the trust**.
 - i. **Outright** distribution of asset.
 - ii. **Divided** distribution of asset (two different distributions).
 - iii. **Partial** distribution of asset (income, then principal).
 - e. Distribution will either be a check, or an asset in-kind.
3. Out-of-Court Affidavit
- a. Opportunities afforded by law for **clearly simple issues**.
 - b. **Exempt from any sort of court involvement** unless there is a dispute or other problem.
 - c. Distribution relies on a **sworn affidavit** of a related party.
 - d. Only **two common opportunities**.
 - i. Affidavit of **Small Estate**
 - ii. Affidavit of **Death of Joint Tenant**
 - e. Distribution will be the **release of the asset to the affiant**.
4. Petition to the Court
- a. Opportunities afforded by law for **straight-forward issues supported by well-defined law**.
 - b. **Court involvement is required**. Could be extensive if there is a dispute or other problem.
 - c. Court process is relatively stream-lined:
 - i. **Petition** is prepared and filed with court.
 - ii. **Hearing date** is set and notice is given.
 - iii. Judge reviews petition and **approves, denies, or continues**.
 - d. Judge **issues order** approving distribution request in petition.
5. Full or Partial Probate
- a. **Last-resort** option due to unnecessary expense and inefficiency.
 - b. Probate is always an option (i.e., the process is **designed to handle any issue**).
 - c. Multi-step process typically **lasting for more than a year**. Any disputes add years to process.
 - d. **“Letters of Administration”** or **“Letters Testamentary”** are issued by the court granting authority to distribute.
 - e. **Distribution and accounting** must be approved at the end of the process.

TOOLS & TECHNIQUES FOR YOU, THE ADVISOR

- 1. Direct Distribution
 - a. Encourage client to obtain **multiple certified copies of death certificates**.
 - i. One certified copy per asset.
 - b. **Contact financial institution** and ask for specific process and/or any forms needed.
 - c. **Open an empty after-tax brokerage account** if needed to receive assets.
 - i. The institution may be able to wire the funds into account.
 - d. **Become authorized** by client to follow-up with institution.
- 2. Facilitating the Administration of a Trust

- a. **Encourage the client** to educate themselves on the trust administration process and their rights to information.
 - b. **Ensure trustee is engaged** and moving forward. Create direct relationship if possible.
 - c. **Offer introduction of attorney** to trustee.
 - d. Offer introduction of attorney **to beneficiary** if needed.
 - e. **Open an empty after-tax brokerage account** if needed to receive assets.
 - i. The institution may be able to wire the funds into account.
 - f. **Coordinate** further next steps if possible (e.g., sale of real estate).
3. Affidavit of Small Estate
- a. Ensure the client is willing to sign an affidavit (under penalty of perjury) stating the **entire (undistributed) estate is under \$150,000**.
 - b. Recommend client consider locating and filling out an **Affidavit of Small Estate** (free all over the internet).
 - c. **Attach a certified copy of the death certificate** to the affidavit and send to financial institution.
 - d. Attorney involvement **does not add much value** in small estate situations.
4. Spousal Property Petition
- a. Used to transfer property to **surviving spouse**.
 - b. Simplest situation is where an asset is **community property** but only in the name of one spouse, but §13500 allows **any asset transferring to spouse** (even intestate).
 - c. **Petition** is filed with court stating facts and requesting order.
 - d. **Hearing date** is set, but petition can be pre-approved prior to hearing.
 - e. **Order is issued** 4-6 weeks later (depending on the judge).
5. Heggstad Petition
- a. Used when an asset was **not properly or formally transferred into the trust**, but there was an objective intent to do so.
 - b. Relies on the common law definition of “trust” which focuses on substance over form (i.e., **intent alone can theoretically create a trust**).
 - c. Language in the trust or in an affiliated document **must state intent** for trust to own specific asset.
 - i. Recent case law has allowed statements manifesting intent for **“all property”** to be owned by trust as sufficient.
 - d. **Petition** is filed with court, hearing date is set, but petition can be pre-approved prior to hearing. Order is issued 4-6 weeks later (depending on the judge).
6. Probate
- a. The entire probate process **can take years**. However, the process does not necessarily need to be completed before the assets can be invested.
 - b. **“Letters of Administration”** or **“Letters Testamentary”** authorizes executor to make distribution and/or manage assets.
 - c. Letters can be obtained in as **quickly as two months**.
 - d. **The relationship with the executor is valuable**, but not so much with the attorney.

CONCLUSION

1. Understanding estate administration **creates investment opportunities** and **solidifies client relationships** by adding value during a critical time.