



Estate Administration for Financial Advisors

**Growing Your Investment Practice by
Working with Families in Transition**

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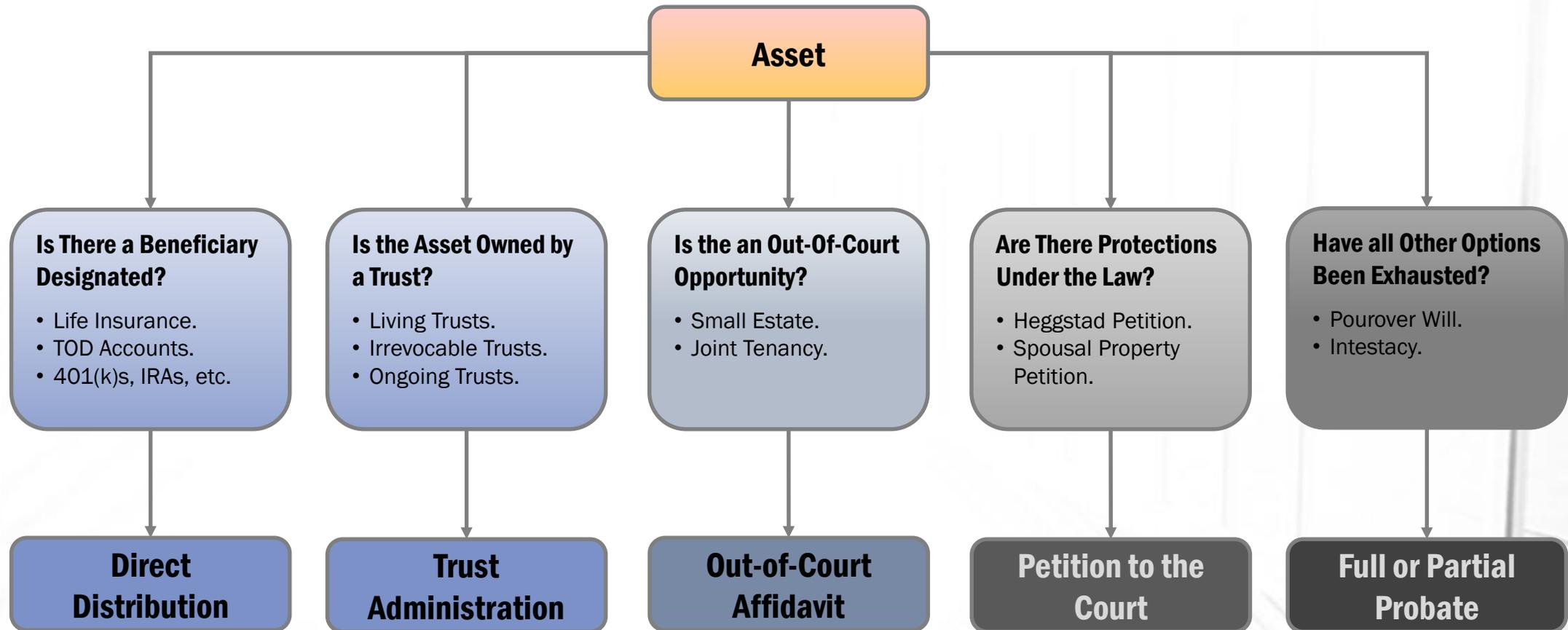
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Why is Understanding Estate Administration so Important?

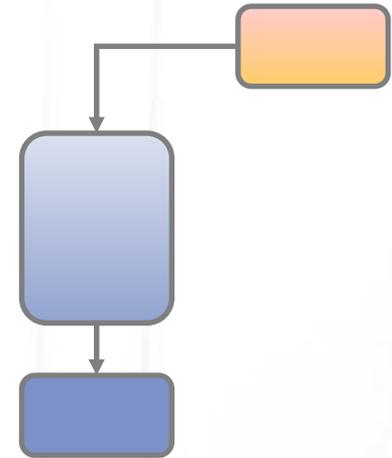
- Prospective clients usually find themselves in new circumstances and are **actively looking for advice**.
- During times of transition, **new relationships** with wealth managers are actively being sought.
- In estate administration situations, the **assets are typically larger** than in more conventional situations.
- Maintaining contact during an estate administration **solidifies your relationship** with the client.
- **Add value** where not many other advisors are adding value.

Possible Paths of an Asset After Death



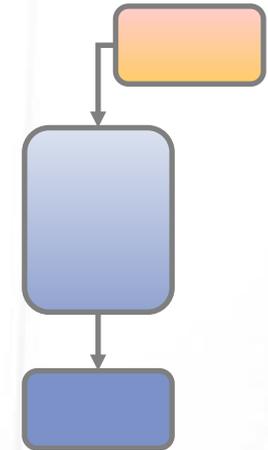
Administering a **Direct Distribution** Asset

- Distribution is based solely off a **contractual agreement** the deceased had with the financial institution.
- **Exempt from any sort of court involvement** unless there is a dispute or other problem.
- Financial institution typically requires:
 - Certified copy of the decedent's **death certificate**.
 - Internal **form**.
- Asset is re-issued in the name of **the beneficiary**.
 - There may be **additional administration** at the beneficiary level (e.g., if the beneficiary is a trust).



Administering a Trust Asset

- Distribution is based solely on **terms of the trust**.
- **Exempt from any sort of court involvement** unless there is a dispute or other problem.
- There are some **preliminary administration** tasks the trustee needs to perform prior to distribution.
- Asset is distributed **per the terms of the trust**.
 - **Outright** distribution of asset.
 - **Divided** distribution of asset (two different distributions).
 - **Partial** distribution of asset (income, then principal).
- Distribution will either be a **check**, or an **asset in-kind**.



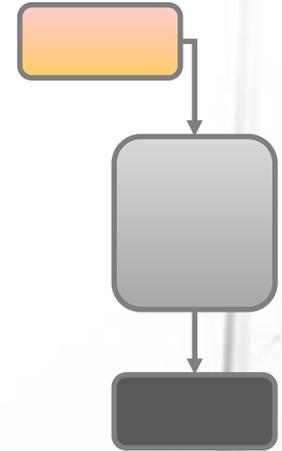
Administering an **Asset Out-of-Court**

- Opportunities afforded by law for **clearly simple issues**.
- **Exempt from any sort of court involvement** unless there is a dispute or other problem.
- Distribution relies on a **sworn affidavit** of a related party.
- Only **two** common opportunities.
 - **Affidavit of Small Estate**
 - **Affidavit of Death of Joint Tenant**
- Distribution will be the **release of the asset** to the **affiant**.



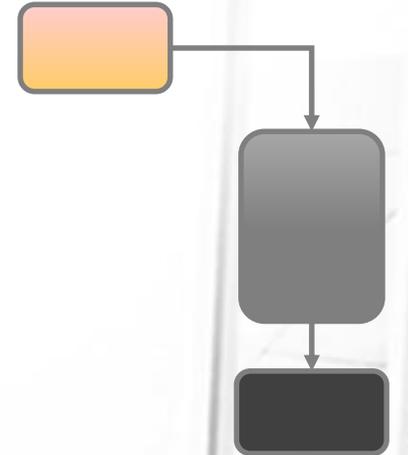
Administering an Asset **by Petition**

- Opportunities afforded by law for **straight-forward issues** supported by **well-defined law**.
- **Court involvement is required.** Could be extensive if there is a dispute or other problem.
- Court process is relatively **streamlined**:
 - **Petition** is prepared and filed with court.
 - **Hearing date** is set and notice is given.
 - Judge reviews petition and **approves, denies, or continues**.
- Judge issues order approving **distribution request** in petition.



Administering an Asset Through Probate

- **Last-resort option** due to unnecessary expense and inefficiency.
- Probate is always an option (i.e., the process is designed to **handle any issue**).
- Multi-step process typically **lasting for more than a year**. Any disputes add years to process.
- **“Letters of Administration”** or **“Letters Testamentary”** are issued by the court granting authority to distribute.
- Distribution and accounting **must be approved** at the end of the process.



Estate Administration Reference Table

	Direct Distribution	Trust Asset	Out-of-Court Affidavit	Court Petition	Probate
What are the Typical Circumstances?	<ul style="list-style-type: none"> Named Beneficiaries TOD, Policy, Etc. 	<ul style="list-style-type: none"> Owned by Trust Asset is Distributed by Trust Terms 	<ul style="list-style-type: none"> Small Estate Jointly-Owned Property 	<ul style="list-style-type: none"> Supposed to be Owned by Trust Surviving Spouse 	<ul style="list-style-type: none"> No Trust All Other Options Exhausted
Is Court Involvement Required?	No	No	No	Yes	Yes
What is Required?	<ol style="list-style-type: none"> Death Certificate Internal Form 	<ol style="list-style-type: none"> Administration of Trust Estate Compliance with Trust Terms 	<ol style="list-style-type: none"> Signed Affidavit Death Certificate 	<ol style="list-style-type: none"> Petition Notice to all Parties Court Hearing Court Order 	<ol style="list-style-type: none"> Petition Notice to all Parties Court Hearings Court Oversight Court Approval
How is the Asset Finally Distributed?	Asset Re-Issued in Beneficiary's Name.	Asset Re-Titled in Beneficiary's Name	Institution Transfers Asset to Affiant	Court Order is Issued Requiring Change in Ownership	"Letters of Administration" or "Letters Testamentary"

Why You Should Get Involved

- **Expedite the process** of clearing ownership of investable assets.
- **Maintain contact** with client and investable assets in transition.
- **Add value** to your clients' lives during a difficult and confusing time.

How You Can Get Involved

- **Educate** client and provide some context for what needs to happen.
- **Coordinate** and facilitate tasks given to client by their attorney.
- Introduce client to an **attorney** willing to keep you involved.
- **Do not practice law** (the following strategies are not intended to facilitate you practicing law or replacing an attorney).

Tools & Techniques

Direct Distribution

- Step #1: Encourage client to obtain **multiple certified copies of death certificates**. (One copy per asset).
- Step #2: **Contact financial institution** and ask for specific process and/or any forms needed.
- Step #3: **Open an empty after-tax brokerage account** if needed to receive assets. (The institution may be able to wire the funds).
- Step #4: **Become authorized** by client to follow-up with institution.

Tools & Techniques

Facilitating the Administration of a Trust

- Step #1: **Encourage the client** to educate themselves on the trust administration process and their rights to information.
- Step #2: Ensure **trustee is engaged** and moving forward. Create direct relationship if possible.
- Step #3: Offer **introduction of attorney** to trustee.
- Step #4: Offer introduction of attorney **to beneficiary** if needed.
- Step #5: **Open an empty after-tax brokerage account** if needed to receive assets. (The institution may be able to wire the funds).
- Step #6: **Coordinate** further next steps (e.g., sale of real estate).

Tools & Techniques

Affidavit of Small Estate (§15100)

- Step #1: Ensure the client is willing to sign an affidavit (under penalty of perjury) stating the entire (undistributed) **estate is under \$150,000 in fair-market value**.
- Step #2: Recommend client consider locating and filling out an **Affidavit of Small Estate** (free all over the internet).
- Step #3: Attach a **certified copy of the death certificate** to the affidavit and send to financial institution.
- Step #4: Attorney involvement **does not add much value** in small estate situations.

Tools & Techniques to Stay Informed

Spousal Property Petition (§13500)

- Ensure **asset is community property** (but perhaps only in the name of deceased spouse), or under §13500, any asset transferring to spouse (even intestate).
- **Petition is filed** with court stating facts and requesting order.
- **Hearing date** is set, but petition can be pre-approved prior to hearing.
- **Order is issued** 4-6 weeks later (depending on the judge).

Tools & Techniques to Stay Informed

Heggstad Petition (§850(a)(3))

- Used when an asset was **not properly or formally transferred into the trust**, but there was an objective intent to do so.
- Relies on the common law definition of “trust” which focuses on substance over form (i.e., **intent alone can theoretically create a trust**).
- Language in the trust or in an affiliated document **must state intent** for trust to own specific asset.
 - Recent case law has allowed statements manifesting intent for “**all property**” to be owned by trust as sufficient.
- **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).

Tools & Techniques to Stay Informed

Probate

- The entire probate process **can take years**. However, the process does not necessarily need to be completed before the assets can be invested.
- **“Letters of Administration”** or **“Letters Testamentary”** authorizes executor to make distribution and/or manage assets.
- Letters can be obtained in **as quick as two months**.
- The **relationship with the executor is valuable**, but not so much with the attorney.