

When a loved one passes, what should I do next?

The most important thing you can do at this point is gather all the documents you can find. If you are going to be the personal representative, you will need to track down all of the decedent's assets and debts.

- **THE WILL** - Try to find a Will. It may be in a filing cabinet, safe, or safety deposit box. If you know who the decedent's lawyer was, they should have a copy. The Personal Representative is appointed in the Will.
- **DEATH CERTIFICATE** - You will need several certified copies of the death certificate, which are available from the office of vital records.
- **BANK ACCOUNTS** - Look for bank account statements. Some types of bank accounts automatically transfer into another name when the decedent dies. Other types require a personal representative to access the account.
- **INVESTMENTS** - Look for statements from investment accounts such as an IRA or 401K. Tax returns may be useful to help you find the decedent's investments. You will also want to look for any ownership interest in a business.
- **DEBTS** - Look for all decedent's debts including any credit cards, car payments or any other credit accounts.
- **INVENTORY OF PERSONAL PROPERTY** - Begin an inventory of all the decedent's personal property. Some of it may be left to certain people named in the Will. The rest will be divided among the heirs, or sold and the money divided among the heirs.
- **TAX RETURNS** - The Personal Representative will need to file a final tax return for the decedent. They may also need to file an estate tax return. Consult with your CPA on this issue.

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**UNDERSTANDING
PROBATE**

A guide to estate administration.

What is Probate?

If you have recently lost a loved one, you are undoubtedly going through a difficult time. In addition to actually losing a cherished family member, you are forced to deal with a myriad of challenges including planning the funeral and winding up your loved one's affairs. If you have never been in this situation before, you probably have questions about what Probate is and what needs to be done.

Probate is essentially the legal process of settling one's affairs through collecting assets, paying debts, and distributing whatever is left. In the world of Probate, your lost loved one is referred to as the *Decedent*. The family member or friend of the Decedent who is appointed by the court to conduct the winding up is called the *Personal Representative* (a position that used to be referred to as the Executor). All the property of the Decedent, including real estate, cars, bank accounts or investment accounts, and any other property is collectively referred to as the *Estate*. Probate is a court proceeding held before a Judge who determines how the Estate is to be distributed to the heirs.



Is Probate required?

If the Decedent had a Trust, there is a good chance you won't have to deal with Probate. The key will be if the Trust was funded properly. Without a Trust, the purpose of Probate is to divide up the Decedent's estate. If the Decedent left a Will, the Will must be approved through the Probate Court before it can take effect. In addition, if the Decedent owned real estate, a Personal Representative must be appointed by the Probate Court to be able to sell the property.

What about the will & trust?

One of the best reasons to have a Will and Trust is to provide certainty as to what you intend to be done with your property when you are gone. A well-drafted Will or Trust can avoid many family disputes before they start and should leave no question as to what you intended. In addition to providing Probate services, KKO Lawyers offers the full gamut of estate planning service, from a simple Will to comprehensive estate plans designed to avoid unnecessary estate taxes and penalties.

A Will provides directions from the Decedent about how he or she wants the estate to be divided. If the Decedent dies without a Will, they are considered *Intestate* (meaning "no will" or "no testament"). In this case, there are default rules that determine how much of the estate should be given to a surviving spouse and any surviving children. A Trust is basically a legal entity that can hold property. A well drafted and funded Trust will allow the Decedent's family to avoid Probate and all of the costs related to the process. Anyone with assets should consider a Trust of some sort.

What does Probate cost?

A simple Probate should not cost much more than \$1,500. However, if there are heirs who dispute the amount of their inheritance, it can get very messy and expensive. The Personal Representative and family are not responsible for paying attorneys fees for Probate. Instead, those fees are considered a cost paid by the estate, just like funeral costs and other debts.

Who is the Executor?

As the title suggests, the Personal Representative essentially steps into the Decedent's shoes and acts on his or her behalf to settle their affairs and divide the Estate. After a Personal Representative is appointed, the court issues documents that the Personal Representative can use to prove their position and act for the Decedent. These documents are called *letters testamentary* if there is a Will, or *letters of administration* if there is no Will.

