

A photograph of an elderly woman with short, curly, light-colored hair, standing barefoot on a sandy beach. She is wearing a white lace-trimmed tank top under a light-colored, open cardigan, and white wide-leg trousers. She is looking out towards the ocean under a clear, pale blue sky. The scene is bathed in the warm, golden light of late afternoon or early morning.

# *What To Do When Your Spouse Dies*

*- Leonard F. Bittner, J.D.*





## *It happens to half of us*

What *do* you do when your spouse dies?

My first piece of advice when I first encounter the survivor of a couple is to try to relax and just breathe. There is plenty of time to handle the technicalities that may present themselves regarding the estate, probate and other details.

There are no big, bad unknowns lurking out there waiting to pounce. So, we want to shake the feelings of being rushed and fearful and just take a little time to grieve. Take care of the arrangements for your loved one, meet with family and friends, have a glass of wine and take time to reflect and reminisce.



## *The emotional response*

While the sense of loss and grief may be the same between men and women, I have found in my years of working with survivors that widows and widowers experience different emotional responses when facing the loss of their spouse.

While there are exceptions, men tended to handle the 'work' of the family finances, income taxes, investments, property taxes, car tags, etc., while their spouse was still alive. Their primary reaction seems to be feeling not only a sense of loss, but also a sense of *being* lost. While they may have handled the 'technical' aspects of the marriage partnership, they are not any good at suddenly living alone. They are lost and not sure how to dress themselves, feed themselves and take care of the household chores that the spouse took care of in their daily routine.

On the other hand, the most common response of women that I have worked with over the years is one of semi-panic. Widows can be more susceptible to the fear of the 'lurking big, bad unknowns'. They feel an overwhelming rush of anxiety which leads to a feeling of vulnerability and being at the mercy of the outside world, particularly if their husbands did indeed handle all the 'technical' aspects of their lives. They feel a great need for a speedy resolution to these 'great unknowns'.

So, the primary "chore" of widowers is to learn to live alone by learning to do all the "inside" chores, while the primary "chore" of the widow is to learn to handle all the "outside" chores.

After the loss of a spouse, a widower's overriding emotion tends to be a sense of loss while a widow is overcome with anxiety and fear.



## *First step – Find two baskets*

The next action I advise my clients is to find two large baskets. Yes, literal baskets—primarily because at this point in time most people are still not up to poring through the mail. And there *will* be mail.



In **Basket #1**, you will throw all the bills, credit card statements, bank statements, brokerage account statements and anything that indicates a liability or an asset.



Once the formal probate process has begun, the law says that you have six months to pay your spouse's bills; however, mortgages can still be foreclosed and utilities can be cut off. If you are not set up with automatic payments, watch for these particular types of bills and send in those checks.

In **Basket #2**, you throw anything that looks like a tax related document, and usually they are identified as such on the outside of the envelope. You will need to keep up with these documents because you will be responsible for filing the final income tax return for your spouse.

There *will* come a time, and each person is different, when you feel ready to take on whatever needs to be done. Some people are anxious to get started and almost *need* something to do, so they want to begin the process within days. In that case, start this process as soon as you feel like it.

Others seem to go to the opposite extreme and feel lethargic for an extended period. The system is set up to help protect you, but if you still don't feel like it after five or six weeks, you're going to have to force yourself to act because there are a few matters that will require your attention. You can do it by yourself if you feel capable, but you can always request help if you need it.

As the baskets start to fill there are a few other important items you will want to find, including any original Wills or Trusts, your marriage license, car titles, DD214 (Department of Defense Discharge from the Armed Forces if your spouse was in the military service), and warranty or quit-claim deeds to your home and any other real estate your spouse owned.

At this point, the funeral or memorial service has been held, and death certificates have been ordered through the funeral home or cremation provider. Then, the Social Security office must be called. They've had the same phone number for decades: **(800) 772-1213**



If your spouse was receiving benefits, you need to advise Social Security of the death so they can stop payments immediately (if they overpay, they will extract money out of your account later). At the same time, you should inquire whether there are any enhanced benefits for you.



## *Next steps*

When you start feeling up to it, you can begin by checking “bill” basket #1.

As I mentioned before, the primary bills to pay attention to are the mortgage, if you have one, and the utility bills, for obvious reasons. We don’t want to deal with having gas or electricity cut off because we took too long to take a look. Other bills to pay attention to are car payments and homeowners and auto insurance. These are usually billed way in advance for semi-annual or annual amounts, so they are usually easier to catch up on without causing any problems.

**Quicktip:** You are not automatically responsible for your spouse’s debts.

Any other bills should NOT be paid at this time. Credit card bills in your spouse’s name alone, and any other unsecured debt may or may not require payment from your spouse’s estate.

Do not assume you are responsible for your spouse’s debts, because you aren’t, and your spouse’s estate may or may not be. These questions need to be thought through and each bill decided upon individually.

There is no question that this process can be overwhelming and confusing—particularly if you are still dealing with grief and loss—and unscrupulous people know it. Do not be talked into putting your name on your deceased spouse’s credit cards or paying off a questionable “bill”. If you are not sure, be safe rather than sorry—turn to a trusted friend, family member or professional for help. Remember, you legally have six months to clear up your spouse’s liabilities and our goal is to move all the assets to you and as few of the liabilities as possible.

## *Settling the estate*

Once you are ready, we can begin the process of settling the estate. Some estates can be incredibly complicated, especially if there are multiple pieces of real estate across several states with varying degrees of indebtedness, with a layer of different tax issues relating to some or all of them. These estates can go on for years prior to resolution; however, most estates will be relatively simple and can be probated within 6 months to a year.

So what is the “estate”?

As far as the probate court in Georgia is concerned, only property in your spouse’s name is in the “estate”. Therefore, if your spouse only owned property in a trust, or if everything was owned with your spouse jointly with right of survivorship, there is no “estate” that would require going to probate.

How and why your assets should be owned in a particular way is based on the unique goals, objectives and tax consequences of the individuals involved.





*pro·bate* • 'prō, bāt/



If there *is* any property in your spouse's name, such as real estate or brokerage or bank accounts, then we will be required to go through probate to gain access to these assets. So what, exactly, is it to 'probate' something?

Probate is Latin for "to prove". In practice, probate is a court supervised transfer of assets. Any asset in your spouse's name, no matter how small, must be distributed through the probate court.



**We are presupposing that as the surviving spouse, you have been named the Executor of your spouse's estate.**

If your spouse had a valid will, we will file a "Petition to Probate a Will in Solemn Form", and if your spouse died intestate (without a will), we will file a "Petition for Letters of Administration".

During the probate process, as the Executor (alternatively "Administrator" or "Representative"), you will "marshal the assets", as they like to say, and determine to whom and the manner in which each asset shall be distributed from the estate.

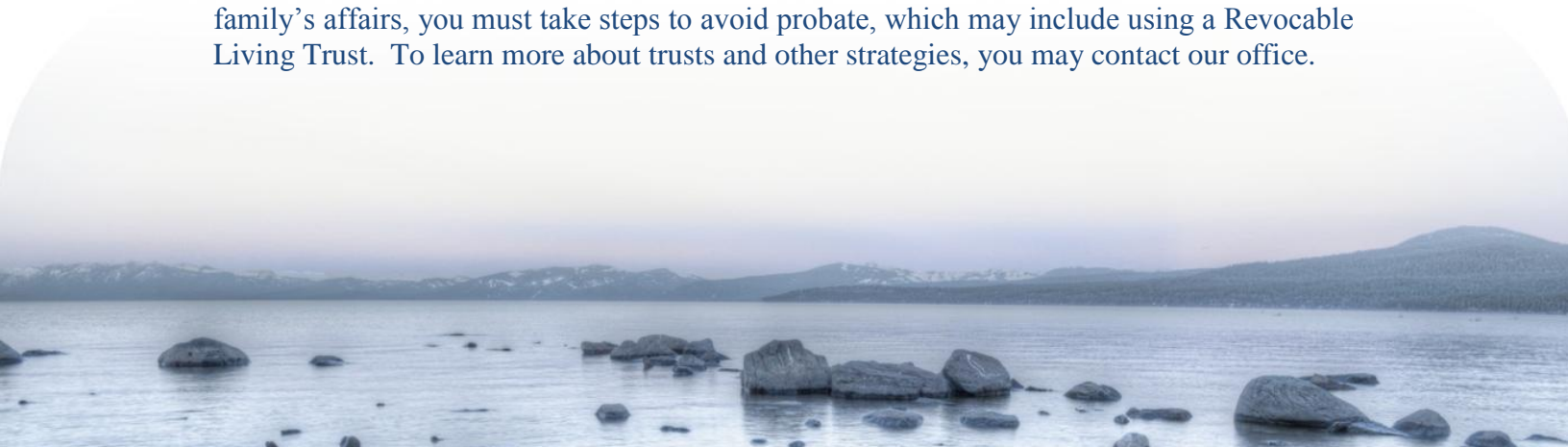
## ***Taking Stock***

The first place you're going to turn to is Basket #1, where all those statements have accumulated. Additional "paper" assets could include deeds to real estate, investment accounts, government bonds, CDs, life insurance policies, annuities, automobile titles, business interests and the like.

"Physical" assets could include coins and stamps, precious metals, art, firearms, musical instruments, and jewelry to name a few. You may locate these valuables in a bank deposit box, a home safe or on the living room wall. Generally, most of these types of assets are distributed after the death of the second spouse.

With regard to the investment accounts, certain money may be "qualified", meaning it is held in an IRA, 401(k), or some other tax qualified (tax deferred) account, and other money may be "non-qualified". Qualified money will be distributed directly to the named beneficiary on the account, and non-qualified money will be distributed through the estate.

It's worth noting that the probate process is a matter of public record. To avoid airing the family's affairs, you must take steps to avoid probate, which may include using a Revocable Living Trust. To learn more about trusts and other strategies, you may contact our office.





The purpose of this article is to try to simplify what can seem like an overwhelming situation, and inform you that if you are facing the loss of your marital partner, there is no need to panic.

The second purpose of this paper is to advise you that, with a little pre-planning, both single people and married couples can set up their estates so that the probate / distribution process can be greatly simplified for the survivor.



## ***Planning Ahead***

In any event, the very least you should do before you lose your spouse is:

1. Learn how the bills are paid. If your spouse does it online, obtain the passwords and create a master spreadsheet (which can be password protected). Also, ask him/her to teach you the basics of how to do it.
2. If some bills are paid by automatic debit out of your account, you need a list of these.
3. If there are ways to simplify your life, especially financially, you should do it. For instance, if you have three bank accounts that you've had forever, but now can't remember why, perhaps you should reduce that to one account. The same with brokerage accounts and anything else you see that you can simplify.
4. Look at how your assets are titled and determine if they should be changed. For example, you may want to re-title from one name on the house deed to both names with right of survivorship. If that is done, probate will be avoided for the homestead. That simple change beforehand will save a lot of paperwork in probate on the back end.
5. Take an hour or two and have your attorney review your estate planning documents, and make sure they are coordinated with how your assets are titled, how your investments are set up and how your taxes can be minimized.

## ***In a nutshell***

So, if you've lost your spouse:

Get two baskets and put bills and account statements that come in the mail in one, and anything that looks like a tax related document in the other. You will eventually work your way through each of them.

Continue to pay your utility bills and mortgage, car payment and insurance.

Gather your assets and put them in your name (the probate process).

If you still have your spouse:

Learn how the bills are paid and review how your assets are titled.

Simplify your life.

## ***Best of luck!***





## About Leonard F. Bittner

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Leonard Bittner is a graduate of the University of Tennessee College of Law, where he earned Order of the Coif by graduating second in his class. He served as Editor-in-Chief of the Tennessee Law Review his senior year and was the Phi Delta Phi Legal Fraternity Graduate of the Year. Len previously graduated from Florida Atlantic University with a BS in Business Administration and Accounting.

Len has been practicing law for over thirty years with a primary focus in trust and estate law. He was one of the early members of the National Academy of Elder Law Attorneys. He is also a member of the American Bar Association, the Georgia State Bar Association and the Atlanta Bar Association.

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