

407 E. Maple St.
Suite 104
Cumming, GA 30040
jfoxlaw@comcast.net

Fox Law, LLC



Jay Clinton Fox
Attorney at Law

2950 Cherokee St. NW #700
Kennesaw, GA 30144
Office 678-250-6999
Fax 470-648-1105

Duties of Executor/Administrator of Estate

The following list of general and specific duties provides guidance to you as the person representing the estate of the decedent. **However, this list is not exhaustive and is not intended to be legal advice; you should retain competent legal counsel to ensure the proper administration of the estate.**

Most Urgent: Actions to be Taken in the First Few Days

One of the most urgent tasks is to make final arrangements for your loved one's body. The options are as plentiful as each family is unique. You should call a local funeral home to help you decide and execute these arrangements. You need to keep all of the receipts as these expenses are reimbursable from the estate and maybe the VA if your loved one was receiving benefits from the VA.

You also need to secure any unoccupied residence. You should cancel home deliveries (including Meals on Wheels) and notify the Post Office to change mailing address to your (the estate's personal representative) mailing address.

Items That Can Wait Until You Receive the Death Certificate: 2-6 Weeks

You want to determine if your loved one had a Will, and if so, locate the original Will. If probate is necessary, you will need the original Will. The funeral home should have notified Social Security of the death, however there is a small (\$200) death benefit that a family member can claim by calling Social Security.

You also need to notify any other agencies or companies that were providing income. Often there is a continued pension or annuity to a surviving spouse or child. Sometimes an employer or union will have a life insurance or death benefit that will pay out.

You will also need the death certificate to make a claim as beneficiary of any life insurance, investment, or financial accounts. If your loved one did not name beneficiaries, then they will be payable to their estate. Accounts that are payable to the estate require probate. You also want to contact all their other insurance carriers such as Supplemental, Prescription, or Health to cancel the policies; or Homeowners or Auto insurance to determine what needs to be done to continue these policies.

Whenever You Are Ready

Contact an attorney to review the assets and determine whether probate is necessary. You may just need to transfer title of joint tenancy assets to the co-owners and make claims on accounts with beneficiaries.

If there is a Safe Deposit Box that you have access to, you should have at least 2 people present when it is opened and make an inventory. If no one besides your loved one has a key and access, you will need to file a petition in the probate court to open the box.

Your loved one will have a tax return due for the year of their death. There could potentially be a refund if they were having taxes withheld from their income. If your loved one was named as your beneficiary or as an agent in your estate planning documents, then it is time for you to make update to your estate plan.

Specific Tasks

1. Locate the original Will and Trust documents (if applicable) and review the desired funeral arrangements. Contact the funeral home and make arrangements. The funeral home is responsible for the death certificate. Order at least 12 certified copies of the death certificate.

2. Prepare and deliver notice to newspaper (include date, time, and place of funeral). This notice is commonly known as an obituary. If the estate (or Will) will be probated, the probate court will require an additional publication called "Notice to Creditors and Debtors." This additional publication is made in the official newspaper of the county in which venue is proper for probating the estate. Some probate courts facilitate this publication; most do not. Check with legal counsel.

3. Determine the following:

- a. Full name of decedent: _____
- b. Social Security Number: _____
- c. Date of Death: _____
- d. Address at Time of Death: _____
- e. Legal Domicile at Time of Death: _____
- f. Marital Status: _____

4. Advise Social Security (if receiving or eligible for benefits).

5. Notify the following advisors (as applicable): Trustee, Guardian, Financial, Attorney, CPA.

6. Determine if a Guardian for any minor children was appointed in the Will.

Name: _____

Address of Guardian: _____

7. Determine the appropriate venue to probate the estate; most of the time, the appropriate venue is the decedent's county of last residence. Check with legal counsel if the decedent passed away while living in an assisted living facility or a nursing home.

8. File the Will with the appropriate Probate Court. Under Georgia law, if you are in possession of the Will, you have a duty to file the Will with "reasonable promptness." You may be held in contempt for failure to do so. "Filing" the Will does not necessarily mean that you are "probating" the Will. In most cases, if a Will exists, the person desiring to be appointed to represent the estate (an Executor or Personal Representative) will file a Petition to Probate a Will with the probate court that has jurisdiction of the estate. You will likely need legal advice for this step; the staff at the probate court may be helpful, but they are prohibited from "giving legal advice." You will need to answer the questions in Step 10 below as part of any petition to probate a Will or any petition to administer an estate if the decedent had no Will.

9. Go to the decedent's post office and complete a change of address form (have the decedent's mail forwarded to your address). It may be easier to perform this change of address online at usps.com. There is a small charge to do this (as of March 2021, the fee was \$1.05). When completing the form online, the "requester" name should be the decedent's name and their former address (not you as executor or administrator).

10. Determine Legal Heirs and/or Beneficiaries. You will need to know the full legal names of the spouse (if still legally married), all children (living or deceased) to include natural born and legally adopted children; the definition of "legal heirs" does NOT include step-children unless legally adopted. If any person is

deceased, you will need to know their date of death.

11. Determine other beneficiaries (as specified in the Will). These beneficiaries may or may not be legal heirs (spouse and children for example), and may be specific persons or charities. You will eventually need to verify a beneficiary's current address so determining contact information is important. If a beneficiary is a minor child (or otherwise incompetent), you will have to determine their guardian (or person legally able to receive the gift).

12. Determine life insurance coverage, locate policies, and notify life insurance companies. Each company will require a copy of the death certificate.

13. Determine if decedent had any Safety Deposit Boxes and whether you (as representative of the estate) will have immediate access. If the bank does not have your name as one with permissible access, you will need permission from the probate court by filing a petition with the court.

14. Determine creditors and all assets subject to lien. Notify creditors as appropriate. It is very important that creditors be notified of the decedent's death; most, if not all will require a copy of the death certificate. Do **not** wait until you have copies of the death certificate to notify creditors; inform them and send a copy of the death certificate when its available. Your list of creditors will include the following: medical providers (note whether the medical provider gave services as part of the decedent's "last illness" OR whether the medical service occurred prior to the last illness – sometimes its difficult to determine – do the best you can); utility companies; credit card companies; loan holders (student loans, car loans, mortgage loans, etc.). If the loan is a "secured" loan, meaning if the loan is secured by collateral (car loan and home mortgage loans are the common examples), these creditors will not want to wait until the estate is settled to receive their regular payments. You will need legal advice to deal with secured lenders.

- a. Expenses of Last Illness (doctors, nursing home, hospital, etc.)
- b. Other Medical Expenses
- c. Utility Providers (you may be able to cancel some – cell phone for example)
- d. Georgia Real Estate Owned (is there a mortgage on the property?)
- e. Out of State Real Estate Owned (is there a mortgage on the property?)
- f. All motor vehicles, including boats or anything with a title (is there a loan on this property?)

15. Was the decedent receiving Medicaid? Note that this asks if the decedent was receiving Medicaid benefits (not Medicare benefits). Medicaid is needs-based and if the decedent was receiving Medicaid, there MAY be a debt that must be repaid to the state Medicaid recovery office. If the answer to this question is YES, you need to speak to a legal professional for advice.

16. With the aide and counsel of the advisors notified above, review the estate for type and amount of assets. Determine assets that will transfer outside of probate. Determine assets that will be held in trust or disclaimed (if applicable). Determine assets subject to probate; these may include the following:

- a. Cash, Savings, CDs, Annuities & Brokerage Accounts
- b. Stocks & Bonds
- c. Retirement Benefits
- d. Business Interests (owner, partner, shareholder, etc.)
- e. Trusts to which the decedent is the Beneficiary
- f. Trusts the decedent established while living or through the Will
- g. Personal Property: (Cars-Year/Make/Model, jewelry, boats, furniture, paintings, collections, etc.). Obtain copies of titles to cars, boats, RVs, motorcycles and the most current billing statement if applicable.

17. You may or may not have to open an estate account; the bank will require: 1) the Order from the court appointing you as executor or administrator; and 2) an estate tax ID number. You must obtain the tax ID number from the IRS; although you can easily do this yourself, you may want to check with legal counsel beforehand.

18. Determine whether the estate is subject to state or federal inheritance taxes or any other type of tax. These taxes may include gift tax, generation skipping transfer tax, and income tax.

19. You are responsible for filing **all** applicable tax returns for the decedent. This may include the previous year (if the decedent had not filed the return prior to their death), and the year in which the decedent died. You must file the applicable returns within the prescribed timeframe.

20. If required, you must file an inventory of all assets of the estate within 6 months of your appointment as executor or administrator. Check with legal counsel to determine whether you need to do this. The earliest time that you need to deal with creditors is six months after your date of appointment. By this time, you should have marshalled all estate assets available for payment of debts and determined who the creditors are and the amount of the debt owed. You are well-advised to get legal counsel when preparing to pay creditors; there is a well-defined priority of creditors under the Georgia Code and although legal counsel comes with a cost, the cost is most often well worth it.

21. If required, you must file an accounting of your actions within 12 months of your appointment as executor or administrator. Check with legal counsel to determine whether you need to do this.

22. You are entitled to compensation as executor/administrator; whether you claim this compensation is up to you. The amount of compensation is determined by the Will; if there are no specific compensation provisions, the amount of compensation is determined by Georgia law. Again, check with legal counsel to determine how to calculate this compensation; note that this compensation should be paid **BEFORE** paying debts of the estate. Note that this compensation is taxable to you personally and you must claim this compensation on your personal tax return.

23. You are also entitled to reimbursement for any expenses that you incur as part of your administration of the estate. This reimbursement may include any payments you made on behalf of the decedent or the estate, travel, food and lodging expenses, etc. As with compensation, check with legal counsel to determine how to calculate your reimbursable expenses. Note that this reimbursement is **NOT** taxable.

24. After all debts and expenses of the estate are paid (to the degree and amount prescribed by law), you must then distribute assets and personal effects, as per the Will and/or any special instructions. You **MAY** want to “hold back” a certain amount in the estate account to pay for unanticipated expenses. Most often, the main “unanticipated expense” of concern is a federal or state income tax bill. Whether this is a concern or not depends on the facts of your situation. Check with legal counsel to decide whether to hold back funds or not.

25. Under Georgia law, you are not required to “close” the estate; however, it is often advantageous to do so. There is a court filing required (and associated costs); check with legal counsel.