

JOHNSON, GASINK & BAXTER, LLP

TWO THINGS CERTAIN®

September 2015

WHEN SHOULD I MEET WITH MY ESTATE ATTORNEY AFTER A LOVED ONE HAS PASSED?

By: Spencer M. Baxter, Esq.

Although it may sound a bit odd, the best time to meet with your estate attorney to discuss the death of a loved one is actually before they have passed away. This meeting can provide important guidance on disability, medical/financial decisions, and identify future problems with estate administration. As long as someone is still alive, even if they are disabled, there are options to address and alleviate problems.

With that said, once a loved one has passed away, most people are comfortable meeting with their estate attorney a few weeks after the death. It is my recommendation to wait no more than a few months to start the administration process; waiting beyond a few months gets you too close to certain tax and financial deadlines. Additionally, the quicker you get started with estate administration, the less likely you will lose documents pertinent to the administration process.

Secure the House

One of the first steps I recommend in the time before you meet with your attorney is to secure the decedent's house and tangible personal property. It's almost impossible to know who has a key/access to the home after a loved one's death. This is particularly the case when someone was receiving home health care or daily attendants for meals and cleaning. A locksmith should be contacted and all locks changed on the residence. This is to ensure no one other than the executor or trustee has access to the house. After all, it is the executor/trustee's legal responsibility to ensure nothing is lost or stolen from the home. It's awful to say but when things ARE stolen from the decedent's home, it's usually the direct heirs and family members, rather than a nosy neighbor gaining access with a spare key.

Keep Records for Everything

In the weeks following death, there will be a significant influx of mail and paperwork. The executor/trustee must be organized and keep track of all important documents. The mail will likely include medical bills, refunds for services, and even checks from life insurance policies. In

some situations the checks have expiration dates, thus timeliness in starting administration is the best course of action. There are also more advantageous options for dealing with medical debts and other creditors of the estate, if addressed in a timely manner.

Do not go to the court without first contacting your estate attorney

In many cases, a child or spouse presumes that simply going into the court and qualifying as the executor is the best course of action. This is not always correct. The clerks at the circuit court are always helpful, but in no way are they allowed to provide you legal advice. There are a variety of options for an expedited estate administration that can be lost, and cannot be undone, once someone qualifies as an executor. You should always be aware of your estate administration options before EVER qualifying as an executor.

Conclusion

When you take control of a loved one's estate, either as a trustee or as executor, you are bound by law to administer the trust or estate correctly. The liabilities from an improper administration will rest squarely on your shoulders as the trustee or executor. Ignorance of the law, regardless of your best intentions, will never be a viable defense. Appropriate advices from your estate planning attorney can not only alleviate your personal liability, but can also make the estate administration a much smoother process.



Johnson, Gasink, Baxter, LLP.

1100 Professional Drive
Williamsburg, VA 23185
(757) 220-9800
(804) 824-9690

GENERAL DISCLAIMER:

This newsletter is intended to be used for informational purposes only and should not be construed as personal legal advice. Transmission of this information is not in-tended to create, and receipt does not constitute, an attorney-client relationship.



About the Author:

Spencer Baxter is an experienced problem solver who helps individuals and businesses achieve and protect their goals of prosperity, stability and growth through appropriate planning. Spencer takes great pride in making sure that his work for clients is always reliable, correct, and on time.