

What Not to Do Immediately After Someone Dies

By Abbe I. Herbst

The death of a loved one or dear friend is one of the most traumatic events that we experience. We may be so upset that our judgment is impaired or, in an effort to put the episode behind us, we may react with whirlwind speed, trying to accomplish everything as quickly as possible and move on. Although speed can be admirable in some cases, in others it creates problems that can actually result in additional delay and expense. My advice is not to be hasty. Just as living (and sometimes dying) is a process, so too is the administration of an estate.

Don't Be in a Hurry to Remove the Contents of the Home

A fundamental rule is, the person named in the will as executor has no authority to act until the proper court has admitted the will to probate. This means that the nominated executor should not dispose of the decedent's possessions, although he or she is permitted to take actions to safeguard them, such as storing jewelry or disposing of perishables in the refrigerator before they become a health hazard.

Even after the will has been admitted to probate and the executor has been appointed, the contents of the decedent's home should be appraised before they are distributed to the beneficiaries, donated or disposed of. The appraisal is required if an estate tax return must be filed, and will establish the recipients' new tax basis in the assets received. In addition, under certain circumstances, items of significant value must be photographed and the details submitted to the IRS Art Appraisal Services. If the assets are no longer within the control of the executor, appraisals may not be possible.

Don't Commit to Vacate and Surrender the Decedent's Apartment in One Month, and Don't Conduct a Wholesale Destruction of the Records

There is a great deal to be done following a death, including a review of the decedent's records. Sometimes everything is neat and orderly, and can be found in a centralized location and removed, or is saved on a computer with known passwords. More commonly, however, things are scattered and in a state of disarray, requiring more time to go through them. If you make a commitment to surrender possession of the decedent's residence in the month immediately following death, you may discard important records before you or your attorney has had an opportunity to review them.

A careful review of the decedent's records is essential, and often leads to the discovery of additional assets, such as life insurance policies, stocks held in book entry, out-of-state properties for which real estate taxes have been paid, items of value whose existence is disclosed on the personal articles floater of a homeowner's policy, etc. Without a careful and painstaking review of the decedent's records, discovery of these assets may be lost forever.

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who's who

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Don't Rush to Cancel Credit Cards

Except in the unusual situation where you think that someone may continue to incur charges on the decedent's credit cards, my advice is to wait at least one month following death to notify the credit card companies of the death. In one of my estates, the nominated executor notified the issuing bank of his mother's death within a few days after her passing. That bank was the same bank in which his mother had her checking account. As soon as it learned of her death from its credit card unit, the bank placed a hold on the checking account, with the result that checks his mother had issued shortly before her death, but which had not yet cleared when she died, all bounced. The payees sought to impose late payment and interest charges, which they eventually agreed to waive after the mishap was explained to them, but additional legal fees were incurred to do so, which could have been avoided if the son had waited a bit longer to notify the credit card issuers.

Don't Enter Into Contracts on Behalf of the Estate Until the Court Appoints You as Executor

As stated at the beginning of this article, the person named in the will as executor lacks the authority to act until the court with jurisdiction over the decedent's affairs admits the will to probate and appoints the executor. Until that action by the court, the nominated executor has no legal right to enter into a listing agreement with a real estate agent or to enter into a contract of sale to sell the decedent's home. Moreover, if the nominated executor is ultimately not appointed by the court, perhaps due to a will contest in which a different person is appointed as executor, the nominated executor who entered into the agreements prematurely could find him or herself personally liable for damages.

If you must enter into an agreement before being appointed executor by the court, then at least disclose in the agreement that the court has not yet recognized your status as executor.

***Helpful Tip:** Sometimes a person dies before any medical personnel can arrive, as in the recent death of actor Philip Seymour Hoffman, who was discovered in his apartment by friends who went to look for him when he failed to meet his children after an event. Although an extremely unnerving experience, if this ever happens to you, try to remain calm and contact the person's physician so that he or she can issue a death certificate, thereby avoiding having the police seal the premises. If it is the coroner, rather than a personal physician, who declares the death, the home may be sealed and access to the residence may be restricted until the executor has been appointed.▲*

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