Post-Death Administration of Estates & Trusts

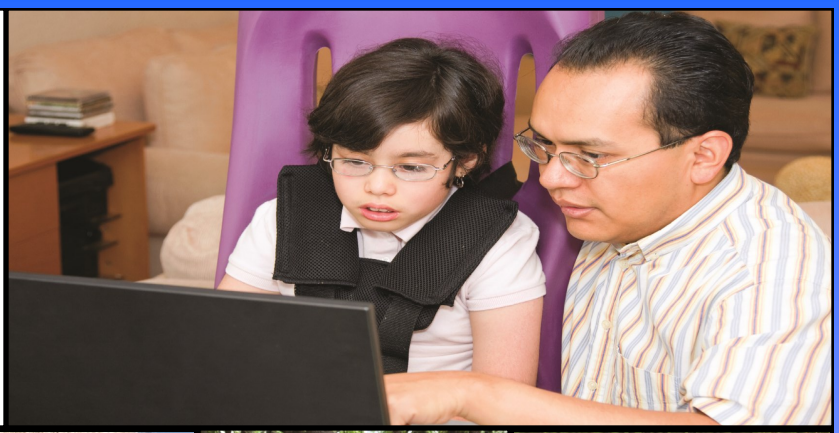
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About The Faculty

BETH K. FLOWERS is a shareholder at Mathis, Marifian & Richter, Ltd. (MM&R) who focuses her practice in estate planning, real estate law and business law.

Beth works with clients in establishing wills and trusts, estate and gift tax planning, trust administration, real estate transactions and corporate and business law. She practices principally in the areas of death and disability planning (wills, trusts, estate and gift taxes, and powers of attorney), probate administration, real estate matters and business entity formation. Beth spends a great deal of her time helping executors and trustees administer estates and trusts during the difficult time after the passing of a loved one in an effort to make the administration process as smooth and uneventful as possible. Beth joined MM&R in 2011 following its merger with Coffey & McCracken Law Firm, where she previously served as an associate.

FRED WEBER currently serves as Of Counsel in the Trusts & Estates Department at Kirkland & Ellis in Chicago, where his primary focus is on post-death administration of estates and trusts. Prior to returning to private law practice in 2022, Fred spent 18 years working as a professional fiduciary, first at JPMorgan and most recently with Northern Trust Wealth Management. As a professional fiduciary, Fred focused primarily on guiding families and beneficiaries through the process of post-death administration of estates and trusts. In addition to his experience working in private law practice and as a professional fiduciary, Fred has also worked on charitable planned giving and charitable bequest administration matters. Prior to law school, Fred spent three years in Washington, DC, working on Capitol Hill as an aide to the late U.S. Senator Paul D. Wellstone (D-MN). A frequent speaker, Fred has presented to the Illinois Institute for Continuing Legal Education (IICLE), the American College of Trust and Estate Counsel (ACTEC), the Chicago Estate Planning Council (CEPC) and the National Association of Charitable Gift Planners. He also developed and taught a full semester course on post-death administration of estates and trusts for the John Marshall Law School. Fred has served on the board of the Chicago Estate Planning Council and is a member of the Chicago Council on Planned Giving and the National Association of Charitable Gift Planners. He is also a long-time board member and past president of Shalva: A Response to Domestic Abuse in Jewish Homes and serves on the Professional Advisory Committee for the Jewish Federation of Metropolitan Chicago. He holds a B.A. in International Relations from the University of Minnesota and a J.D. from DePaul University and is licensed to practice law in Illinois. Fred resides in Chicago with wife, Michelle, and is the proud dad of 3 college-aged sons.

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ARTICLE I

Efficient Administration of Decedents' Estates and Trusts

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I. Introduction

In his 2009 book, "The Checklist Manifesto: How to Get Things Right," best-selling author and surgeon, Atul Gwande, argues that in today's world, the sheer volume and complexity of knowledge that must be acquired in order to succeed in almost any profession has exceeded the ability of individuals to deliver the information to customers, clients, patients and colleagues in a consistent, correct and safe manner. Dr. Gwande further points out that even though we often respond to this new complexity with additional training, greater specialization and strategic use of ever advancing technologies, we continue to fail at an alarming rate. The solution that Dr. Gwande proposes is one that is simple and humble and one that should be familiar to most trust, estate and probate attorneys: the lowly checklist. In his book, Dr. Gwande explains how the use of checklists has made possible some of the most complex tasks that people do—from brain surgery to building skyscrapers to safely landing a crippled commercial airliner in the Hudson River. In this presentation, we will explore how the use of simple checklists and timelines in the process of settling decedents' estates and trusts can help practitioners enhance the efficiency of the administration and avoid many of the common

mistakes that at best can lead to mild dissatisfaction with the process, and at worst, costly litigation.

II. The Initial Post-Death Meeting Checklist

For those of us who have participated in more than one meeting with family members and other interested parties in the immediate aftermath of a death, we know that they often live up to the Forrest Gump truism that life really is like a box of chocolates, and you truly have no idea what you are going to get. Nevertheless, the goal of that first meeting for the fiduciary, or the attorney representing the fiduciary, is always the same: Gather as much information as possible about the decedent and the assets that comprise the decedent's estate and open the lines of communication with the stakeholders (heirs, legatees, beneficiaries, co-fiduciaries and creditors). At first blush, the tasks associated with this goal seem straightforward. However, the environments, the context and the backgrounds in which these meetings occur are often fraught with emotional and irrational distractions that can easily sidetrack even the most sophisticated and disciplined fiduciaries and their attorneys.

The "Initial Post-Death Meeting Checklist" is therefore critical to ensuring that the first post-death meeting is productive and effective, even though it may include seemingly mundane and simple tasks. Therefore, no fiduciary or attorney should ever walk into that first meeting without some version of an "Initial Post-Death Meeting Checklist." It may also be a good idea to bring extra copies for the stakeholders and for those individuals who may be assisting with the gathering of information and the collection of assets.

A sample Initial Post-Death Meeting Checklist is attached to these materials at Exhibit A. This Initial Post-Death Meeting Checklist includes some very mundane tasks,

including, among other things, Item #1, which reminds us to obtain a certified copy of the death certificate. An example of how the simple failure to obtain a certified copy of the death certificate can lead to more complex and costly errors down the road is worth examining.

In this example, the initial meeting with the family takes place two days after the funeral, and the family is exhausted. Prior to the death, many of them spent several long days and nights at the hospital with the decedent and may have even been in the room with the decedent when she died. After the death, there was a mad scramble to make funeral arrangements and alert other family members and friends of the death. While they do not have a copy of the death certificate, those present at the meeting are absolutely certain that the decedent died late in the evening on October 31, and since they were all in the room that night, there is no reason to doubt them. However, if they had a certified copy of the death certificate, they would realize that in fact, the decedent died shortly after midnight on November 1.

As a competent, professional and diligent attorney, you leave that initial meeting and you immediately return to your office to begin preparing the probate court pleadings, ordering appraisals, running date-of-death valuations of the publicly traded securities based on brokerage account statements provided at that meeting, and stepping up the cost-basis of those securities to their date-of-death values (assuming that the current carryover basis regime is abolished). In addition, you begin drafting letters to beneficiaries and other stakeholders to advise them of their interest in the estate and you notify the accountant of the need to split the decedent's pre-mortem and post-mortem

income between the decedent's final income tax return (IRS form 1040) and the estate or trust income tax return (IRS form 1041).

Within a couple of weeks, the beneficiary letters are on their way, you have valued and perhaps stepped up the basis of some of the assets, you have filed your probate pleadings and obtained a court date to open the decedent's estate and you have ordered real estate and personal property appraisals and a valuation of the decedent's minority interest in a closely held business. You have also notified the Social Security Administration that the decedent is entitled to her full benefits for the month of October. As soon as all of this has been done, you receive in the mail a package of certified death certificates from the funeral home and it is only then that you discover that your pleadings are wrong, your "date-of-death" valuations are wrong, your cost-basis information is wrong, you have given the accountant the wrong information about splitting the income and you have given the wrong date of death to the various appraisers that you have retained. While these mistakes are certainly correctable and are unlikely to rise to the level of legal malpractice or fiduciary liability, it is likely to take several hours to correct them, and even though you were relying on information provided to you by so-called "eye witnesses," the simple act of obtaining a certified copy of the death certificate and confirming the date of death would have prevented every one of these mistakes. Query: If you are charging by the hour, is it appropriate to charge for the time that must now be spent in order to correct these errors?

III. Probate Checklists

As soon as a person dies, certain statutory responsibilities kick in immediately. Notably, there is the duty to file the original will within 30 days in the county in which

the decedent was domiciled at death.[1] This is the first step in the probate process and probably the easiest one to satisfy. It is also the step that, at least in Illinois, brings about the greatest potential for severe consequences if it is not followed. At death, the decedent's will and all codicils become public documents and the whole world must be put on notice that anything in the will or codicils is available for public scrutiny. For the person (or entity) in possession of these original documents upon the death of the decedent, the failure to file the will is deemed a theft of property under Illinois law, and can be criminally prosecuted as a Class 3 felony.[2]

While the potential for criminal prosecution ought to be a sufficient incentive to begin the probate process as soon after death as possible, the duty to file the original will and the strict deadline associated with that duty are merely the first steps in a lengthy series of duties, responsibilities and associated deadlines imposed on the parties responsible for the probate of a decedent's will. However, while every original will must be filed in Illinois, it is not always necessary to initiate a probate proceeding to admit the will to probate and formally appoint the designated executor. Accordingly, before initiating a formal probate proceeding, the named executor must go through a series of steps to determine if a formal probate proceeding is actually necessary.

A. Checklist to Assess the Need for a Formal Probate Proceeding

The threshold question for determining the need for a formal probate proceeding in Illinois is whether the value of the personal property in the decedent's probate estate as of the date of the decedent's death exceeds $100,000.[3] If the value of the probate assets exceeds $100,000, then the executor has an affirmative duty to either initiate a formal

[1] 755 ILCS §5/6-1.
[2] 755 ILCS §5/6-1(b)
[3] 755 ILCS §25-1(b).

probate proceeding within 30 days after learning that he or she has been named as executor, or formally decline to accept the appointment.[4] However, there may be circumstances in which an executor may choose to initiate a formal probate proceeding even when the executor is not required to do so.

The checklist attached to this outline at Exhibit B provides a series of questions that the named executor ought to answer in order to determine if a formal probate proceeding is necessary. While not all the answers to these questions will be immediately obvious to a nominated executor, as a general rule, if the executor answers "yes" to any of them, then the executor should either initiate formal probate proceedings as soon as possible, or sign and deliver a formal declination to act as executor.

1. Probate Estate in Excess of $100,000

As you begin to review the checklist at Exhibit B, the answer to the $100,000 question should be easy to ascertain, and, as noted above, if the answer to that first question is "yes," then the rest of the checklist is academic, at least as it pertains to the need for a formal probate. However, the answers to other 8 questions may not be so obvious.

2. Disharmony Among the Interested Parties

Disharmony among the interested parties, while not always obvious at the outset, is one of those red flags that as soon as it surfaces, and assuming that it does not result in a declination to act, should immediately send the executor running to probate court to get the estate opened. While the obvious need to get the probate claims period running as soon as possible is paramount, we would further argue that this is an issue of control. The Illinois Probate Act is very clear that "*Anyone* desiring to have a will admitted to probate

[4] 755 ILCS §5/6-3(a).

must file a petition therefore in the court of the proper county" (emphasis added).[5] The term "Anyone" in that provision means that literally *anyone*, whether or not they are an interested party under the decedent's will (named legatee or fiduciary) or an interested party pursuant to the Probate Act (heir; creditor; or legatee or fiduciary under a prior-revoked document),[6] can petition to have the will admitted to probate even if the only reason they are seeking to have the will admitted is for the purpose of contesting it. Accordingly, if an executor has any reason to think that a will contest or some other claim or cause of action may be brought against the estate, then it is in the best interest of the executor to get the estate open as soon as possible in order to run the six-month will contest period[7] and the six-month claims period for unknown creditors.[8] Note that the Illinois Probate Act makes a slight distinction between the six-month will contest period and the six-month claims period for unknown creditors. The six-month will contest period begins to run immediately upon the admission of the will to probate.[9] The six-month claims period for unknown creditors, on the other hand, only begins to run on the date upon which the first publication of notice of the admission of the will to probate and the appointment of the executor occurs.[10] Irrespective of this distinction, it is far better for the named executor to petition the court in order to lock in these dates (and the certainty that they can provide) and avoid the unnecessary tolling of these limitations periods in such a way that would provide additional time for potential contestants and claimants to bring an action against the estate.

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[5] 755 ILCS §5/6-2.
[6] 755 ILCS §5/1-2.11.
[7] 755 ILCS §5/8-1(a).
[8] 755 ILCS §5/18-3(a).
[9] 755 ILCS §5/8-1(a).
[10] 755 ILCS §5/18-3(a).

3. Decedent in a Risky Profession or Business

For decedents who were in a risky profession or who owned (either outright or in a revocable living trust) assets that could give rise to unknown claims against the estate, the start of the six-month statutory claims period for unknown creditors can be critical for the efficient administration of the decedent's estate. For most decedents, the identity of claims against their estates are often easy to ascertain by going through their mail and reviewing bank statements, credit card bills, mortgage notices and invoices for services that were rendered to the decedent prior to death. However, for decedents who were engaged in risky professions, such as doctors or lawyers, or decedents who may have owned rental real estate or other assets that could expose them to personal liability for claims from the general public, it is much more difficult for an executor to anticipate these claims or determine the identity of these potential claimants. It is precisely for these types of claims that the requirement for the publication of notice and the six-month claims period for claims of unknown creditors were written into the Illinois Probate Act. Because of the fundamental tension that exists between need for timely, efficient and complete administration of decedent's estates and the need to provide legitimate creditors with appropriate due process necessary to obtain a forum in which their claims can be adjudicated, the Illinois Probate Act provides for a six-month limitations period for unknown creditors from the date of publication of statutory notice in situations where a formal probate proceeding has been initiated,[11] and a two-year limitations period from the date of death in situations in which no formal probate proceeding was initiated.[12] Accordingly, while the two-year bar provides the potential claimant with a larger window

[11] 755 ILCS §§5/18-3(a) and 5/18-12(a) (3).
[12] 755 ILCS §5/18-12(b).

of opportunity within which to file a claim in the absence of a publication of statutory notice, the six-month claims period, by barring all claims filed after six months from the date of publication, provides the executor with the appropriate protection necessary to complete the administration of the estate in a more timely and efficient manner, particularly in situations in which the risk of unknown creditors is elevated.

4. Disinherited Heirs

When heirs of a decedent have been disinherited, particularly in cases where the heirs had little or no relationship with the decedent, the disharmony may not be so obvious or pronounced. In fact, one may even encounter situations in which disinherited heirs are initially supportive of the decedent's decision to leave assets to charity or to favor certain heirs or other beneficiaries who may have had a closer relationship to the decedent than the disinherited heirs. Nevertheless, even in circumstances in which there is no obvious disharmony, tension can increase dramatically as additional disinherited heirs are located and made aware of the decedent's plan., In other words, the attitudes of previously cooperative disinherited heirs can change significantly as they begin to acquire additional information about the assets and amounts passing to other beneficiaries. Accordingly, while the mere disinheritance of heirs on its own may not trigger an obvious need for a formal probate proceeding, it is one to which the nominated executor should give very careful consideration.

5. "Insolvent" Probate Estate

While an "insolvent" probate estate may have assets with an aggregate value that is less than $100,000 and therefore might not meet the formal requirement for probate, it is often the case that decedent's gross taxable estate is much larger than $100,000 due to

the inclusion of joint tenancy assets, payable-on-death assets such as life insurance proceeds and retirement plan assets, and assets titled in the name of the decedent's revocable living trust. It is also possible for decedents with lots of assets to be highly leveraged and have lots of creditors thereby rendering even large estates insolvent. Creditors with claims against an insolvent probate estate may also attempt to go after non-probate assets. While joint tenancy assets and other payable-on-death assets are often quite difficult for claimants against the decedent's estate to attach, if the decedent had a pour-over will to a fully funded revocable living trust, the ability of a claimant to get access to the trust assets will vary depending upon the language of the trust's governing document.

6. Pour-over Will to a Revocable Living Trust

While it is often the case that the successor trustee of a decedent's revocable trust will have the authority to use trust assets to satisfy legitimate claims against the decedent's estate to the extent that the assets in the probate estate are not sufficient, that is not always the case. In some cases, the trust instrument may specifically bar the satisfaction of claims against the estate, and in those cases in which the trust document *allows* the trustee to satisfy claims against the estate, the document may not *compel* the trustee to do so. In any event, even in those situations where the trust may be able to satisfy certain claims against the estate, there may still be a need to shorten the contest period, make a partial payment to a creditor, disallow a creditor's claim altogether or abate or eliminate a specific distribution of cash or property to a legatee named in the will.

Under the Illinois Trust Code, any claim of a creditor that would be barred against the personal representative of a settlor's estate or the estate of a settlor would be barred against the trust property of a trust that was revocable that the settlor's death, the trustee of the revocable trust, and the beneficiaries of the trust.[13] The classification and priority of creditor claims under the Probate Act applies to creditors seeking payment from the assets of a revocable trust.[14]

In addition, admitting a pour-over-will to probate will set a statute of limitations for contesting the terms of the trust that is the same as the statute of limitations for contesting the will admitted to probate.[15]

The Illinois Trust Code provides also provides a statute of limitations for an action against a trustee for any matter disclosed in writing.[16] The statute of limitations is 2 years from the date the information is provided to the beneficiary, including an accounting.[17] Accordingly, since trustees have a duty to furnish a current accounting to the trust beneficiaries on an annual basis, a current trust beneficiary will have a rolling two-year limitations period during which he or she may bring an action against the trust for a breach of a fiduciary duty owed to a beneficiary.[18] Further, upon the termination of a trust, the current beneficiaries as of the termination date have two years from the date upon which the final account is furnished to bring an action against the trust (or 3 years if the trust became irrevocable after the effective date of the Illinois Trust Code).[19]

7. Reduction or Disallowance of Claims; Legacy Abatement

[13] 760 ILCS §3/505.
[14] 760 ILCS §3/505(d)(C)
[15] 760 ILCS §3/604(a)(2(A).
[16] 760 ILCS §3/1005(a).
[17] 760 ILCS §3/1005(a)(1).
[18] 760 ILCS §3/1005(a)(1).
[19] 760 ILCS §3/1005(a).

For the reduction and/or disallowance of claims against the estate and the elimination or abatement of specific legacies under the will, a formal probate proceeding will provide the executor with a court order that can be used to fend off further challenges from the aggrieved creditor or legatee. Accordingly, even if the probate court issues a ruling that is contrary to the ruling that the executor was seeking, the order should provide the executor with the finality that is necessary for the orderly and efficient administration of the estate.

8. Collection of Debts Owed to the Decedent

In situations where there may be a need to collect debts or receivables owed to the decedent, it may be easier for a court-appointed executor to collect them, particularly if they were not assigned to the decedent's revocable trust prior to the decedent's death. Likewise, even for relatively simple assets like bank accounts or brokerage accounts, collecting assets using certified letters of office as opposed to small estate affidavits or a certified copy of the will and the revocable trust, is often easier as banks and brokerage houses will be more cooperative when they are presented with a court order as opposed to an affidavit signed by a nominated (but not appointed) executor or some other interested party. This is often the case even though a small estate affidavit would be perfectly appropriate for collecting the asset.

9. Continuation or Initiation of Litigation on Decedent's Behalf

If the decedent was a party to any unresolved litigation prior to his death or there is a need to initiate litigation on behalf of the estate, a formal probate proceeding will likely provide the best forum for the executor or administrator to pursue the litigation and/or negotiate a settlement. Accordingly, if there is a need to seek a citation to recover

assets of the estate or to discover information that is necessary for the proper administration of the estate, a probate estate must be opened.[20] Likewise, a wrongful death action, a suit to quiet title to real estate and other matters that the executor or administrator may need to pursue on behalf of the estate will require a formal probate proceeding even though the value of the claim or claims cannot be immediately ascertained.

10. Exercise or Non-Exercise of Testamentary Powers of Appointment

While it is not absolutely necessary for the will to be admitted to probate in order to effect the exercise or non-exercise of a testamentary power of appointment over outside trust property, getting the will admitted to probate provides the highest level of protection for the trustee who is responsible for disposing of the trust property that is subject to the power.[21] Accordingly, if that trustee has any reason to believe that there will be a challenge to the disposition of trust assets pursuant to the exercise or non-exercise of the power, the trustee may want to get the will admitted and the executor appointed.

11. Gut Feeling

The last item on the checklist at Exhibit B is merely a catchall. As noted above, every estate is different. There are different assets, different beneficiaries, different heirs, different jurisdictional issues and different creditors, and of course, no two decedents are alike. Accordingly, if the named executor or person most likely to be nominated as administrator, or the legal counsel for either of those parties believe there may be a reason, no matter how remote or implausible, to cut off the claims of creditors quickly, or

[20] 755 ILCS §§5/16-1 – 5/16-3.
[21] 755 ILCS §5/4-2(c).

to get the contest period running, then err on the side of caution and open a probate estate.

B. Illinois Probate Opening Checklists

Once it has been determined that a formal probate proceeding is necessary or appropriate, the next checklists, found at Exhibit C and D, respectively, take us through the process of opening the probate estate in Illinois for testate and intestate estates. As with the Initial Meeting Checklist, most experienced trust and estate practitioners know intuitively what they need to do in order to get representative appointed and/or get a will admitted to probate. Nevertheless, simply missing only one or two of the items on the Probate Opening Checklists can lead to costly and unnecessary delays in the estate administration process, malpractice liability for the attorney and fiduciary liability for the executor. In addition, such inactions may serve to exacerbate and enhance pre-existing tensions or distrust among the heirs, legatees and the fiduciary, provide the tipping point for the initiation of a costly will contest or inadvertently lead to the allowance of a claim that would have otherwise been disallowed.

1. Establishing the Domicile of the Decedent

Failure to accurately determine the decedent's domicile could easily result in the inadvertent opening of a probate estate in the wrong jurisdiction. While this may seem like a difficult thing to miss, elderly decedents often relocate to nursing homes and rehabilitation centers in different states or jurisdictions, usually so they can be near a family member or friend who is monitoring their care. In some cases, the decedents had no intention of ever returning to jurisdiction that had been their primary residence, even if they still owned real estate there. In other cases, the decedent may have fully intended to return "home" after a relatively brief stint in a nursing home or rehab center, but

complications led to a premature and unanticipated death, and the decedent was never able to return home. As domicile is a function of intent, and is subject to a facts and circumstances test, it is a mistake that could be very easy to make, particularly under the circumstances described above. While opening a probate estate in the wrong jurisdiction may not be the most difficult mistake to fix, the time, effort, energy and additional court filing fees that went into making, and then correcting that mistake, could be very significant to the fiduciary, the attorney and the beneficiaries. Further, it will provide creditors and potential contestants with additional time to file their claims and initiate their causes of action.

2. Use of Appropriate Court Forms

Another seemingly innocuous mistake is simply a failure to use the appropriate court forms for the jurisdiction in which the estate will be administered. This could easily occur if you are an attorney who handles lots of estates in a single jurisdiction, and you are retained to handle a probate estate in a neighboring county where you are not as familiar with the local customs. Without thinking about it, you arrive in the Probate Court in Will County on the appointed date to open your probate estate, and you have prepared all of your pleadings using Lake County forms. Again, this is not necessarily a fatal mistake, but one that could require a second court appearance and a further delay to the start of the claims period and the contest period. Further, since most jurisdictions now make their local court forms available on-line, it would be very difficult to explain to the executor and beneficiaries why the pleadings were prepared using the wrong forms.

3. Proper Determination of Heirship and Appropriate Satisfaction of Notice Requirements

Failure to properly determine heirship is another common mistake that can slow down the process for opening a decedent's estate. In addition, in cases in which there are unknown heirs or known heirs who cannot be located, the failure to publish notice to unknown heirs could further toll the contest period as to those heirs.[22] In addition, depending upon what county you are in, local court rules may impose additional notice requirements for unknown heirs. In Cook County, for example, if you need to open an estate in which not all of the heirs have been identified, Section 12.2 of the rules of the Circuit Court of Cook County requires that notice of the petition for letters be provided to the office of the Cook County State's Attorney prior to the hearing on heirship.[23] For those practitioners who handle probate estates in other counties in Illinois, check your local court rules to determine if there are additional notice requirements to unknown heirs over and above the publication requirements contained in the Illinois Probate Act.

4. Notice Requirements for Known and Unknown Creditors

In addition to the publication and notice requirements for known and unknown heirs, failure to meet the publication and notice requirements for creditors of the estate can further delay the administration of the estate and result in increased costs to the estate by requiring the estate to pay claims that might otherwise have been time-barred. For known creditors, the representative must deliver or mail actual written notice, and the known creditor then has three months from the date of the notice in which to file a claim, after which date, the claim will be barred.[24] For unknown creditors, the representative

[22] 755 ILCS §5/6-10(a); 755 ILCS §5/9-5(a).
[23] *See* Rule 12.2(c) of the Rules of the Circuit Court of Cook County, Illinois.
[24] 755 ILCS §5/18-3(a).

must publish notice once a week for three successive weeks in a newspaper published in the county in which the estate is being administered, and then file proof of publication with the clerk of the court in the county in which the estate is being administered.[25] Unknown creditors then have six months from the date upon which notice was first published to file their claims, after which date, all claims of unknown creditors will be barred.[26] Typically, the attorney for the representative will publish notice immediately after the order appointing the representative has been entered. In Cook County, the Chicago Daily Law Bulletin has a representative that actually sits on the 12th Floor of the courthouse building. Accordingly, as soon as the order has been entered, the attorney can simply take a copy of the order to the 12th floor, complete the publication form and pay the fee, and notice will be published within 2 or 3 days after the date of the order, and the six-month claims period will begin to run. For those who practice in counties where publication may not be as convenient, or for those Cook County practitioners who may have inadvertently forgotten to stop on the 12th floor on your way out of the courthouse, the failure to publish notice in a timely fashion is an easy mistake to make. And even though it is relatively easy to correct the mistake by publishing notice as soon as the error is discovered, each day that passes until the mistake is corrected provides an additional day of exposure by the estate to the claims of unknown creditors. As a result, claims that may have otherwise been time-barred could end up being allowed at great cost to the estate, and ultimately, to the beneficiaries. The beneficiaries will then look to the representative, personally, and to the attorney for the estate, to be made whole and a seemingly innocuous and easily fixable mistake could lead to otherwise avoidable

[25] 755 ILCS §5/18-3(a) and (b).
[26] 755 ILCS §5/18-3(a).

fiduciary litigation and a possible action for legal malpractice, not to mention unnecessary and costly delays to administration of the estate.

5. Allowance and Disallowance of Creditor Claims

In cases in which the representative is seeking to disallow the claim of a known creditor or creditors, it is possible to shorten the claims period for such creditors from three months to two months. As noted above, the representative has an affirmative obligation to deliver or mail notice to all known or reasonably ascertainable creditors, and said creditors then have three month from the date of the actual notice to file their claims.[27] However, the Illinois Act also provides that if a representative wishes to disallow a claim, the claimant has two months from the date of the notice of the disallowance of the claim to either file the claim or contest the disallowance of the claim, after which date, the claim will be barred.[28] Accordingly, to shorten the claims period from three months to two months, the representative must simultaneously deliver to the claimant the actual written notice of the decedent's death and the appointment of the representative and actual written notice of the disallowance of the claim. While this simultaneous notice technique is probably most appropriate in situations where the representative has a legitimate reason to disallow the claim, the Illinois Probate Act gives representatives broad discretion to disallow the claims of creditors as long as the proper notice requirements are satisfied. Further, the representative can always allow the claim if the claimant files the claim within the two month period following the receipt of the notice of disallowance.[29] Using this technique to shorten the claims period for creditors to come forward can thus encourage creditors to act more quickly thereby accelerating the

[27] *Ibid.*
[28] 755 ILCS §5/18-11(b).
[29] 755 ILCS §5/18-11(a).

pace of the administration. Alternatively, for those creditors who fail to respond to the Notice of Disallowance, the barring of their claims will enhance the value of the estate for the beneficiaries.

6. Intestate Estates – Notice to Persons Entitled to Preference in Nominating an Administrator and Obtaining Letters

When a decedent dies testate with a qualified executor nominated to act and the executor accepts the appointment, there is no requirement to give notice to the interested parties (heirs, legatees and creditors) until after the will has been admitted and the executor has been appointed.[30] The requirement for intestate estates (and testate estates where the named executor is unavailable to act) is slightly different, at least as it pertains to heirs or other parties who may have greater or equal preference in nominating an administrator and/or obtaining letters of administration than the party who has filed the petition.[31] As a result, if you are representing a petitioner who is seeking to obtain letters or nominate an administrator of his or her choosing, and there are other persons with equal or greater preference to administer or nominate an administrator, then you must either obtain written waivers or provide written notice of the hearing on your petition to those persons at least thirty days prior to the date of the hearing on the petition.[32] As the checklists at Exhibits C and D would indicate, there are several other differences between the processes for opening testate and intestate estates. However, failure to give proper notice to persons with equal or higher preference is one of the most common mistakes in intestate administration and one of the easiest to avoid. In addition, because the petitioner could very easily be seen as "going behind the back" of other persons entitled to

[30] 755 ILCS §5/6-10 and §5/18-3.
[31] 755 ILCS §5/9-3.
[32] 755 ILCS §5/9-5.

preference (think siblings of the petitioner or children of the decedent who are not the children of the decedent's surviving spouse), this seemingly innocuous and correctible mistake can either exacerbate already existing tensions among the parties or serve to create tension and disharmony where none had previously existed.

C. Asset Collection, Inventory and Accounting

Now that the probate estate has been opened (or not) and the representative has been appointed (or not) in a highly efficient manner and in the absence of costly errors, a brief look at asset collection, inventory preparation and accounting is merited.

1. Asset Collection

Before the decedent's assets can be collected by the representative, they must first be identified. By the time the probate estate has been opened, the process of identifying the decedent's assets should already have been well underway. In fact, a closer examination of the Initial Meeting Checklist at Exhibit A reveals that of the 41 items on that checklist, at least 14 of them relate to or provide information about the decedent's assets. Accordingly, even before the formal probate proceeding begins, the informal communication and the gathering of asset information must already be in progress. As noted above, this typically occurs in that initial meeting with the available heirs, legatees and beneficiaries, the attorney, the accountant and any other parties that might be able to provide information about the decedent, the decedent's assets and the decedent's liabilities. While the parties often think that the initial meeting is a mere formality, one of its main purposes is to gather information about the types of assets, determine the manner in which the assets were titled, assess the estate's liquidity needs and compile information about the decedent's debts and expenses and other potential liabilities.

While the representative needs to focus on probate assets for purposes of the probate inventory and the accounting, if the estate is taxable and/or if the representative is also the trustee of the decedent's revocable living trust, the representative must also be mindful of the assets that make up the decedent's gross taxable estate, how they are titled and what determines their ultimate disposition. Therefore, in addition to probate assets, the representative must also account for assets that are payable on death to a specifically named beneficiary (other than the decedent's probate estate) or to a surviving joint tenant as well as assets that were titled in the name of the decedent's revocable living trust as of the date of the decedent's death.

Once the assets have been identified, the process of collecting assets in estate administration is pretty straightforward, but will vary depending upon the type of asset, how the asset is titled and whether or not the asset is payable on death to a named beneficiary. To simplify this process, the checklist found at Exhibit E provides a lengthy list of the different types of assets that decedents can own at death, and the documents that are necessary to collect them based on how the decedent held title to them and whether they were payable on death to a named beneficiary. There is no reason to discuss Exhibit E at any great length as most of us are familiar with certified letters of office, small estate affidavits, death certificates and certified copies of trust documents, but the checklist may be something that you can give to individual fiduciaries and beneficiaries that you represent so that they can do some of the asset collection work on their own.

Having said that, however, assets owned in the decedent's individual name as of the date of death, as noted above, are subject to the probate process and the responsibility for collecting them, accounting for them and disposing of them falls squarely upon the

shoulders of the representative of the estate.[33] Accordingly, even in the case of a pour-over will where all of the decedent's assets (other than those with a joint tenant or named beneficiary) may ultimately end up in the decedent's revocable trust, the assets that were titled in the decedent's name at death cannot escape the probate process. For assets that were already titled in the name of the decedent's revocable trust as of the date of death, the responsibility for collecting, consolidating and accounting for such assets falls to the trustee. If the executor and the trustee are not the same person or entity, then this process will require significant cooperation and coordination between the executor and the trustee.

2. Inventory

Of all the asset information documentation that is listed on the Initial Meeting Checklist, the most significant, the most critical and the most comprehensive asset information will be obtained from the decedent's personal income tax returns. This is the case because the decedent's 1040's should have with them all of the decedent's K-1's and 1099's which will allow the executor to identify the decedent's bank accounts, brokerage accounts, marketable securities, partnership or other closely held assets, retirement accounts and pension plans. In addition, if the decedent owned a residence (or residences), the deductions taken for mortgage interest and property taxes can help identify the decedent's interests in residential real estate. Further, the depreciation schedules will provide information about the decedent's ownership interests in any income-producing real estate or valuable capital assets used in the decedent's trade or business. The tax return may also provide clues about any notes receivable that the decedent may have owned or any other debts that may be or may have been owed to the

[33] 755 ILCS §§5/2-1through 5/2-9.

decedent. In other words, the decedent's income tax returns basically function as the representative's roadmap for identifying the assets that the decedent owned as of the date of death.

It is important to note, however, that not all assets will be easily identifiable from the decedent's income tax returns, and as hard as it may be for some of us to believe, not all decedents were totally candid or accurate when it came to reporting their asset income on their 1040's. Accordingly, the other items on the Initial Meeting Checklist should not be overlooked merely because the decedent's 1040's provide such robust asset information.

Antiques and collectibles, for example, can be incredibly valuable, but typically do not generate income for the decedent. As a result, the decedent's tax return will only provide information on such assets if the return is for a tax year in which the decedent may have bought, sold or donated their expensive artwork or jewelry. Therefore, it is important to get access to the decedent's residence (or residences), safe deposit box (or boxes) and storage lockers as soon as possible to look for tangible personal property as well as documentary evidence of cash, securities, cryptocurrency, NFT's, offshore bank accounts and other tangible and intangible assets that for whatever reason may not have found their way onto the decedent's income tax returns. In addition, a rider to the decedent's homeowners' insurance policy can sometimes contain detailed information about valuable jewelry, artwork, antiques or other collectibles upon which the decedent carried additional insurance. In the real world, we know that personal property often "disappears" before the fiduciary or the attorney for the fiduciary has an opportunity to secure it, inventory it and get it appraised. While these "disappearances" are often

innocuous and in some cases consistent with the wishes of the decedent, if there exists documentary evidence (e.g. a rider to a homeowner's policy or a bill of sale) of the decedent's ownership of tangible personal property that has "disappeared," that documentary evidence is discoverable by the IRS in an estate tax audit or by a creditor or other interested person seeking satisfaction of a claim against the estate or trust. Accordingly, if the estate is taxable, the fiduciary will at least need to obtain appraisals of the assets that have disappeared, and if the estate is insolvent, the fiduciary may have to recover them.

A final asset information gathering technique is, as soon as possible or plausible after the decedent's death, to put a forwarding order on the decedent's mail so that instead of being sent to an empty house, the mail can go directly to the representative or to the attorney for the representative. This way, any asset information that was typically mailed to the decedent will be automatically forwarded to the representative or to the representative's counsel. This technique is also helpful in obtaining all of the decedent's year-end tax information, which depending upon the date of death, may not be mailed until several months after the decedent has died.

3. Accounting

In death-related situations, there are probate accounting requirements, trust accounting requirements and estate tax accounting requirements, some or all of which may apply depending upon the size of the gross taxable estate, the existence or non-existence of a revocable living trust, the presence or absence of payable-on-death assets, and the identity of the fiduciaries.

a. Probate Assets

Probate cash should be collected into a single deposit account under the estate's tax identification number and titled in the name of the decedent's estate. Marketable securities that are subject to probate, regardless of where they are held or how they are held, should be collected into a single similarly titled investment or brokerage account that is also under the estate's tax identification number. While it is not absolutely necessary, it makes the most sense for the estate brokerage account and estate checking account to be housed at the same financial institution. The purpose of this consolidation is two-fold. First, if the fiduciary can pay all of the debts, expenses and taxes out of a single account, it will streamline the asset collection process, make the preparation of the fiduciary income tax returns (Form 1041) more efficient, and consolidate all of the information that is necessary for the preparation of the accountings that the fiduciary must provide on an annual basis to the interested persons. Secondly, it can enhance the process for communicating with the residuary beneficiaries, and the co-fiduciaries (those parties who are entitled to total transparency), as well as the attorney and the accountant by setting all of them up to receive monthly or quarterly account statements so that they can monitor the activity in the estate or trust in real time.

b. Payable On Death Assets

For assets that are payable on death to a named beneficiary (other than to the decedent's estate), such as life insurance proceeds, qualified retirement plan assets or individual retirement accounts, payable-on-death bank and investment accounts and joint tenancy property, the responsibility for collecting such assets falls on the named beneficiary or beneficiaries and the checklist at Exhibit E should prove helpful to

confused beneficiaries. Note, however, that these assets often end up payable to the decedent's estate due to the failure of the decedent to designate a beneficiary or due to the death of named beneficiary and the failure to designate a contingent beneficiary or beneficiaries. Accordingly, the representative should obtain copies of all beneficiary designations and not automatically assume that payable-on-death assets will escape the probate process.

For those payable-on-death assets that do escape the probate process, the representative still must account for such assets, particularly if the estate is taxable. Accordingly, once the representative determines the nature of the payable-on-death assets and the identity or identities of the beneficiaries, the representative will need to communicate with those beneficiaries in order to obtain accurate valuation information for federal and state estate tax purposes. This is critical because it is the representative who must sign the estate tax return, but often times, valuation information will only be made available to the named beneficiary or beneficiaries. A frequent example of this dilemma is the valuation of life insurance proceeds for federal and state estate tax purposes. The only acceptable form for the valuation of life insurance proceeds on a federal estate tax return is IRS form 712. Form 712 can only be issued by the insurance carrier, and most carriers will only issue Form 712 to the beneficiary or beneficiaries who received the proceeds and usually only upon request. The fiduciary must therefore ask the beneficiaries to request Form 712's from the insurance carriers for all includable life insurance policies, and then obtain copies of the Form 712's from those beneficiaries.

c. Assets Titled In the Name of a Revocable Living Trust

As with probate assets, all cash and marketable securities titled in the name of the decedent's revocable trust should also be collected into single deposit and brokerage accounts under a new tax identification number that should be obtained by the successor trustee as soon after death as possible. Likewise, title to all real estate, interests in closely held businesses, oil and gas interests and tangible personal property should be reviewed in order to determine exactly how they were titled as of the date of the decedent's death. If they are not titled in the name of the trust at death, and they are distributable to the trust pursuant to the pour-over provisions in the will, the estate representative may want to have them retitled into the trust right away, unless they are subject to the claims of creditors of the probate estate, in which case, retitling should wait until the probate claims period has passed. However, if the decedent has a will that pours over to a qualified revocable trust, and a 645 election is made, all of the probate and revocable trust assets can be collected into a single trust account under the trust's tax identification number and it will not be necessary to obtain a separate tax identification number or separate accounts for the estate.[34] This would be appropriate to do before the probate claims period passes because the assets that passed to the revocable trust at death would be subject to the same claims period for creditors that would apply to probate assets (six months from date of

[34] Pursuant to Sec. 645 of the Internal Revenue Code, if both the executor (if any) of an estate and the trustee of a qualified revocable trust so elect, the "electing" trust--a qualified revocable trust (QRT) that makes the Sec. 645 election--will be included for income tax purposes as part of the estate, and not as a separate trust, during the election period. For a revocable trust to qualify for a 645 election, it must have been fully revocable by the decedent prior to death, the executor and the trustee must agree upon the election and the election must be made using IRS Form 8855 prior to the date upon which the electing trust's first trust income tax return (Form 1041) is due.

publication if probate estate is open and two years from date of death, if there is no probate estate).[35]

In pour-over situations in which the revocable trust does not qualify for a 645 election (usually because the representative and the trustee cannot agree), then the probate assets must be collected separately under the estate tax identification number, and the representative of the estate will have to prepare a separate estate income tax return (IRS Form 1041) for the estate, and then issue a K-1 to the revocable trust and to any other estate beneficiaries who receive distributions from the estate that carry out income or losses. Further, in such cases where the estate and the revocable trust have different fiduciaries and no 645 election is made, the representative and the trustee must pay careful attention to the language in the will and the trust in order to determine which entity bears the responsibility for the decedent's debts, taxes and expenses of administration, and then work together on a plan for the payment or disallowance of such claims in manner that is consistent with the governing language in the documents.

Finally, and as with payable-on-death assets, even if the estate representative is not the trustee of the trust, it is the estate representative (executor or administrator) who must account for the value of the trust assets on the federal estate tax return and apply the appropriate estate tax deductions for any debts or expenses that may have been paid from the assets in the revocable trust. This means that in any situation involving a pour-over will to a revocable living trust, the estate representative and the trustee of the trust are going to have to work together. Accordingly, it will often be advisable in the planning process (and efficient in the administration process) for the testator/grantor to name the same person or entity as both the executor and successor trustee.

[35] *See* 735 ILCS §5/13-223; 755 ILCS §5/8-1(f); 755 ILCS §5/18-3; 755 ILCS §5/18-12.

d. Closely Held Assets and Real Estate

Closely held assets present a separate set of challenges. The ability or need to continue an ongoing business needs to be evaluated immediately after the death. The interest also needs to be formally appraised with appropriate discounts taken in order to obtain an accurate value for estate tax purposes. The proper disposition of the interest also needs to be determined, particularly if the interest is subject to a buy-sell agreement. The checklist at Exhibit F lists the documents that the fiduciary will need to obtain in order to determine the nature and the value of the decedent's interests in closely-held assets and real estate.

For real estate and interests in closely held businesses, the representative should immediately begin the process of collecting the documents listed on Exhibit F, some of which may have already been obtained at the initial meeting. As the documentation is collected, critical information (such as how the decedent held title to the asset) about how the asset needs to be managed will begin to come to light very quickly. The fiduciary should then order appraisals for these assets and clearly identify each individual asset in as descriptive a manner as possible on the estate or trust inventory. Even if the value of the gross estate does not necessitate the filing of an estate tax return, the estate tax is not the only reason that a fiduciary will want to get these assets appraised. Appraisals can help the fiduciary determine the amount of unrealized capital gain that is built up in the asset, provide a value necessary to determine the equitable division of the estate or trust among the residuary takers and provide the fiduciary with expert guidance in setting the price at which to market the asset for sale. In addition, many buy-sell agreements among

partners or shareholders in closely-held entities require professional appraisals in order to set the purchase price for the decedent's interest.

To the extent the that any of these assets generate income for the estate or trust, the income should be deposited into the estate or trust bank account as it is received, and clearly identified as income for income tax reporting purposes. Likewise, if any of these assets are sold during the period of administration, all cash proceeds should be deposited into the estate or trust bank account, and gains and losses on such sales should be properly documented. If these assets are to be distributed in kind in satisfaction of a specific bequest or general legacy, they should be accounted for as a distribution based on their appraised value with any asset-specific income or losses identified as passing out to the beneficiary or beneficiaries who receive the asset. Again, if the fiduciary is consolidating all of the liquid assets in a single bank account and a single brokerage account at one financial institution, the process of accounting for the illiquid assets is greatly simplified because all of the asset income and sales proceeds will show up on the monthly account statements issued by that financial institution.

D. Closing the Probate Estate

The checklist at Exhibit G provides a quick summary of what needs to be done in order to close a probate estate, discharge the representative and make final distributions from the estate to the residuary legatees. As noted above, however, the probate process is slightly more complex than simply opening and closing the probate estate. The checklist at Exhibit G thereby assumes that the items on the checklist at Exhibit C (or Exhibit D in the case of an intestate estate) have been completed, that all of the assets have been collected and/or inventoried, that the representative has properly accounted for all debts,

expenses and taxes, all allowable claims have been paid or provided for, and federal and state estate tax returns (if necessary) have been filed (and applicable closing letters have been received).

As noted above, the representative of an estate has a duty to account, at least annually for all of the financial activity in the estate from the date of death until the estate is closed.[36] If the assets in the estate have been consolidated, then preparation of the annual accounts is really just the compilation of the monthly or quarterly account statements that the representative should have been receiving since shortly after the probate estate was opened. The only difference between the annual accountings and the final accounting is that the final accounting is the last accounting that the representative must prepare before closing the estate.[37] In situations where the probate estate can be closed within a year, the final accounting will also be the first accounting. The first accounting period begins with the inventory of all assets held in the estate as of the decedent's date of death. In Independent Administration, the inventory and the accountings must be provided to the residuary legatees and other interested persons, but they need not be filed with the probate court. [38] In Supervised Administration, however, the inventory and all of the annual accountings must be filed with the court.[39] It is critical to point out that even though there may not be a duty to **file** the accounting with the court; there is still a duty to **prepare** the accounting.[40] Accordingly, the fact that you are not required to file the accounting does not prevent the judge from asking you for a copy when you show up in court to close the estate.

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[36] 755 ILCS §5/28-11.
[37] 755 ILCS §5/24-1.
[38] *See* 755 ILCS §5/1-2.11.
[39] 755 ILCS §5/24-1.
[40] *See* 755 ILCS §5/24-1 *and* 755 ILCS §5/28-11(a).

While there is not necessarily a standard form that the court accounting must take, the general requirements are that it provides details around receipts, disbursements, recapitulation and assets on hand as of the end of the accounting period.[41] By consolidating the estate assets into as few accounts as possible, and by paying all of the bills out of a single account, not only will the representative have a much easier time preparing the accounting, but all of the estate's income tax information will also be consolidated in one place as well. As noted in the checklist at Exhibit G, after the final accounting has been prepared, the representative must prepare the Final Report of Independent Representative, and Receipts and Approval on Closing of Decedent's Estate in Independent Administration for all beneficiaries and claimants who are entitled to an accounting.[42] Note that the form used in the Cook County Probate Court for the Final Report of Independent Representative (see: https://services.cookcountyclerkofcourt.org/Forms/Forms/pdf_files/CCP1011.pdf) follows very closely the provisions of Article 28, Section 11 of the Illinois Probate Act and that both the form and the provision of the Probate Act read a lot like a checklist.[43] Accordingly, if the representative has not completed or is not prepared to address all eleven of the items listed on the Final Report of Independent Administration, the representative is probably not ready to close the estate.

Assuming, however, that the estate is ready to close, receipts should be prepared for all beneficiaries and claimants who have not yet been paid, but whose claims and legacies will be satisfied before the estate is closed. The representative should then mail copies of the Final Accounting and the Final Report along with the appropriate receipts

[41] 755 ILCS §5/24-1(a).
[42] 755 ILCS §5/28-11(b).
[43] 755 ILCS §5/28-11.

and waivers of notice, to all beneficiaries and claimants who are entitled to receive them. Those parties entitled to notice of the filing of the final report may include creditors whose claims have been paid pursuant to statutory priority, creditors whose claims have been compromised by agreement between the representative and the creditor, heirs and/or residuary legatees whose interests have been affected by the amount of fees paid to the representative and the representative's attorney, and trust beneficiaries in cases in which the trust is a residuary legatee and the trustee is an interested person in the estate.[44] For situations in which the decedent had a pour-over will to the decedent's revocable living trust, and the executor and the successor trustee of the revocable trust are the same person or entity, additional notice may be required for the residuary takers under the trust. In Cook County, this requirement is known as the Norris Rule and it requires the executor to give notice to the residuary takers of the trust and/or obtain waivers of notice from them. The executor/trustee must then sign an affidavit indicating compliance with the Norris Rule, and the executed affidavit should be filed with the Probate Court.[45]

As soon as the representative receives the signed receipts back from all of the interested persons noted above, the representative should prepare the Order of Discharge, and schedule a date to close the probate estate.[46] However, if the representative does not receive signed receipts and waivers of notice back from all of the interested persons noted above, then representative will have to file the Final Report with the probate court, and then mail a file-stamped copy of the Final Report within 14 days to those interested persons and notify them that they have 42 days from the date of filing within which to file any objections to the Final Report. In those cases in which the address of the

[44] 755 ILCS §5/28-11(c).
[45] *See* Rule 12.13(c)(iii) of the Rules of the Circuit Court of Cook County, Illinois.
[46] 755 ILCS §5/28-11(d).

interested party is unknown, the representative must publish notice for three successive weeks with the first publication occurring within 14 days after the filing of the Final Report with the Probate Court. If proper notice is published, the representative may close the estate on a date after the 42-day period has lapsed.[47]

E. Small Estate Affidavits

If a formal probate is not necessitated (as discussed above) but there are assets that are "probate assets" otherwise, a small estate affidavit may be used to claim the assets that would otherwise have been administered as part of a formal probate estate. The Illinois Probate Act of 1975 allows for estates with a total value not exceeding $100,000 to be administered without opening a probate estate. The mechanism for this is set forth in Section 25-1 of the Act, which allows an individual to essentially assume the role of an administrator or executor by preparing a small estate affidavit. By executing the affidavit, the affiant assumes responsibility for paying claims against the estate and then distributing the estate in accordance with the decedent's will or with the intestacy provisions of the Probate Act. Upon being presented with a properly executed small estate affidavit, persons holding property belonging to or owing to the estate are required to turn the property over to the affiant and said person is fully protected and released to the same extent as if the person had turned the property over to an administrator or executor of the estate. The affiant in turn is obligated to indemnify and hold harmless any person who incurs loss due to reliance upon the small estate affidavit.

The small estate affidavit must contain several pieces of information, including the affiant's name, address, and relationship to the decedent; the decedent's name, address, and date of death, along with an attached death certificate; a list of known claims

[47] 755 ILCS §5/28-11(e).

against the estate and the affiant's promise to pay said claims; the decedent's spouse and minor or dependent children and the amounts of their statutory allowances; a list of heirs or legatees and the amount each is entitled to; and a certification that the affiant is unaware of any dispute or potential conflict as to heirship and that the affiant will indemnify and hold harmless persons who incur loss due to reliance upon the affidavit. If the affiant is not an Illinois resident, the affiant must also nominate an in-state agent for service of process.

IV. Communication with Co-Fiduciaries, Beneficiaries, Creditors and Other Interested Parties in Death-Related Administration

We know from the various checklists that have been discussed so far, that communication is a critical component of death-related administration. In fact, the Illinois Probate Act and the Illinois Trust Code, together, contain at numerous provisions that require executors, administrators and trustees to provide notice of some sort to heirs, legatees, creditors, beneficiaries and other interested persons.[48] The Illinois Probate Act defines an "interested person" as "one who has or represents a financial interest, property right or fiduciary status at the time of reference which may be affected by the action, power or proceeding involved, including without limitation an heir, legatee, creditor, person entitled to a spouse or child's award and the representative."[49] The Illinois Trust Code defines "Interested Persons" as "A) the trustee; and (B) all beneficiaries, or their respective representatives determined after giving effect to the provisions of Article 3, whose consent or joinder would be required in order to achieve a binding settlement were the settlement to be approved by the court. "Interested persons" includes a trust advisor,

[48] *See* Index - West's Illinois Probate Act and Related Laws, 2009 Edition.
[49] 755 ILCS §5/1-2.11.

investment advisor, distribution advisor, trust protector, or other holder, or committee of holders, of fiduciary or nonfiduciary powers, if the person then holds powers material to a particular question or dispute to be resolved or affected by a nonjudicial settlement in accordance with Section 111 or by a judicial proceeding".[50] In spite of the notice requirements and the very broad definition of an "interested person," most (if not all) disputes that arise during death-related administration of estates and trusts, arise, at least initially, from a "failure to communicate."[51] Accordingly, proper communication with those parties entitled to information is critical to the efficient administration of decedent's estates and trusts and the avoidance of costly and time-consuming disputes. The Communication Checklist for Death-Related Administration found at Exhibit H may be of assistance in this regard.

A. Identifying the Interested Parties

1. Executors, Trustees and Administrators

The first and most interested parties are the fiduciaries themselves: the executors, the administrators (in intestate estates) and the trustees. For attorneys who represent fiduciaries, these are the interested parties to whom you owe the highest duty. The fiduciaries are also the parties entitled to the greatest level of transparency in the administration of trusts and estates, and particularly to each other in cases in which there are multiple fiduciaries acting over a single estate or trust. In addition, it is the fiduciaries and the attorney for the fiduciaries who must determine the level and type of communication that is owed to the other interested parties, and then ensure that each

[50] 7601 ILCS 3/103(18)

[51] In the 1967 Film, "Cool Hand Luke," the prison captain played by Strother Martin uttered this now-famous line in an exchange with a defiant inmate, Luke, who was played by Paul Neuman.

interested party receives or has access to the information required by the governing documents and the applicable statute.

2. Heirs, Legatees, Trust Beneficiaries, Creditors and the General Public

As the original will, the petition to admit the will and/or the petition for letters of administration are all public documents, the duty of the executor or the administrator to communicate and share certain information about the estate with heirs, legatees, creditors and the general public is somewhat obvious.[52] It is also obvious from the various publication and notice requirements contained in the Illinois Probate Act that effective and appropriate communication with all interested parties and potential interested parties, regardless of their level of interest, is critical to the effective and efficient administration of a decedent's estate or trust in Illinois.[53] As a result, the biggest communication challenge for fiduciaries and the attorneys who represent them is to understand, comply with and distinguish between the various levels and types of communication that are required for each interested party based upon that party's level of interest.

B. Communication with Interested Parties

Assuming that the interested persons have been identified, and the level of their interest has been determined, the fiduciary must then comply with all of the notice and publication requirements, many of which were discussed above in the sections on opening and closing probate estates, and are reemphasized below in this section.

1. Communication with the General Public

The first and most important "communication" with the general public is the requirement that all original wills and codicils be filed within 30 days of the decedent's

[52] *See* 755 ILCS §§5/6-1and 5/6-2
[53] *See* 755 ILCS §§5/6-10, 5/9-5, 5/9-6, 5/18-3, 5/28-2, 5/28-11 and 5/28-12.

death with the clerk of the court in the county in which the decedent was domiciled as of the date of death.[54] As soon as the probate estate has been opened and the executor or the administrator (in intestate estates) has been formally appointed, the various publication requirements impose a further obligation to put the general public on notice.[55] Effectively, the purpose of publication is to put those members of the general public who might be heirs, legatees, creditors or fiduciaries or legatees named in a prior-revoked document, but whose names, addresses or identities are not known and not reasonably ascertainable by the executor or the administrator.[56] Those members of the general public then have 6 months from the date of publication to assert their interests or risk forfeiting them forever.[57] Note, however, that even in situations in which no formal probate proceeding is necessary or appropriate, members of the general public still have opportunities to assert their interests, but instead of having six months from the date of publication of notice to bring their claim, they have two years from the date of death within which to assert their interests.[58] The one exception to the two-year limitations period on claims from the general public is for will contests. If the decedent had a will and the will was not admitted to probate, any member of the general public can petition to have the will admitted to probate at any time after the decedent's death, even if only for the purpose of contesting it.[59] Once the will has been admitted to probate, whether it's two years or ten years after the decedent's death, any interested person will have six months from the date of the admission of the will, within which to bring an action to

[54] 755 ILCS §5/6-1.
[55] *See* 755 ILCS §§5/6-10 and 5/9-5.
[56] 755 ILCS §5/9-5(b) and §5/18-3.
[57] *Id.*
[58] 755 ILCS §5/18-12(b).
[59] 755 ILCS §5/6-2.

contest it.[60] The six-month contest period still applies even though all other claims against the estate may be barred by the two-year rule discussed above. Accordingly, if the fiduciary or the attorney for the fiduciary is even remotely aware of any member of the general public who may seek to contest the admission of the will to probate, it would be advisable to get the will admitted as soon as possible in order to get that six-month contest period running.

2. Communication with Heirs, Legatees and Creditors

As previously discussed, the Probate Act specifically requires executors and administrators to provide formal written notice to all of the heirs and legatees listed in the petition for letters of office within 14 days after the admission of the will to probate and/or the issuance of letters of office.[61] There is also an affirmative duty to provide actual written notice to all of the decedent's creditors whose names and addresses are known to or reasonably ascertainable by the executor or the administrator.[62] Further, the rights of residuary takers to receive information is paramount as it is those interested persons to whom the executor or administrator owes the most comprehensive duty to account for all of the assets and liabilities of the estate.[63] For known heirs, legatees or creditors who cannot be located, the executor or administrator must make a legitimate effort to locate them in order to provide actual written notice. However, if, after all reasonable efforts to locate these parties have been exhausted, then they should all be specifically identified by name in the notices that are required to be published.[64] If the fiduciary is unable to ascertain the identity and the location of an heir or heirs in a Cook

[60] 755 ILCS §5/8-1.
[61] 755 ILCS §5/6-10 and §5/9-5(b).
[62] 755 ILCS §5/18-3.
[63] 755 ILCS §5/28-11(a), (b) and (c).
[64] 755 ILCS §§5/6-10 and 5/9-5.

County probate estate, actual notice must be provided to the Office of the Cook County State's Attorney on behalf of the unknown heirs.[65] For other counties in Illinois, check your local court rules for additional notice requirements that might be required for unknown heirs. For unknown creditors, notice by publication should suffice as long as the identity or existence of the unknown creditor is not reasonably ascertainable by the fiduciary.[66]

3. Communication with Trust Beneficiaries

In situations in which the residue of the estate is payable on death to the decedent's revocable trust under the terms of a pour-over will, the executor or administrator need not provide actual notice or publish notice to the trust beneficiaries unless the trust beneficiaries are also heirs of the decedent and/or legatees named in the will.[67] In these situations, the executor or administrator is only obligated to give notice to the trustee of the trust.[68] Similarly, if the decedent's will includes the exercise or non-exercise of a testamentary power over a trust created by somebody else or adds property to a trust other than the decedent's own revocable trust, it is the trustee who is the interested party and not necessarily the trust beneficiaries. The one exception to the rules regarding the status of trust beneficiaries may apply in Cook County in situations in which the executor of the estate and the trustee of the decedent's revocable trust are the same person or entity. Known as the "Norris Rule," this Cook County Court Rule

[65] *See* Rule 12.2(c) of the Rules of the Circuit Court of Cook County, Illinois.
[66] 755 ILCS §§5/6-10 and 5/9-5.
[67] *Id.*
[68] 755 ILCS §5/6-10.

requires the executor/trustee to provide notice to the individual trust beneficiaries even though they do not technically have an interest in the probate estate.[69]

C. Determining the Level of Communication Required

Once the executor/administrator has ascertained the identities of the interested persons and complied with the notice and publication requirements for those persons, the next step is to determine the amount of information owed to each interested person, the duration of the obligation to provide that information beyond the actual or published notice, and if and how further communication obligations can be terminated by the elimination of a person's interest.

Among the several items that must be contained in the petition to admit the will are the approximate value of the real and personal property titled in the decedent's name at death, the names and addresses of the heirs and legatees and the name and address of the executor.[70] In the absence of a will, the petition for letters of administration must also contain the approximate value of decedent's probate assets, the names and addresses of the heirs (there are no legatees if there is no will) and the name and address of the person or entity being nominated to act as administrator.[71] Since the petition is a public document, this information will be available to members of the general public, regardless of their interest in the estate.

Once the executor or administrator has formally complied with the notice requirements contained in the Probate Act, the best way to continue the dialogue between the fiduciary and the estate and trust beneficiaries is to follow up with a letter from the fiduciary (or the attorney for the fiduciary) to each of the beneficiaries.

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[69] *See* Rule 12.13(c)(iii) of the Rules of the Circuit Court of Cook County, Illinois.
[70] 755 ILCS §5/6-2.
[71] 755 ILCS §5/9-4.

1. Beneficiaries with Specific Beneficial Interests

There are two types of specific beneficial interests in estates and trusts. The first specific beneficial interest to which a beneficiary may be entitled is a specific distribution from the estate or trust—for example, a specific item of tangible personal property or specifically identifiable intangible property such as a fixed number of shares of stock in a particular company. Where this type of distribution is made, the beneficiary will only receive the asset if the asset is owned by the estate or trust at the time of death. If the specific asset or interest is not owned by the estate or trust at death, the distribution fails and the beneficiary receives nothing. If the specific asset is owned, the beneficiary must receive it, together with any income earned by the asset between the date of death and the date of payment or distribution.

The second specific beneficial interest is a pecuniary distribution from the estate or trust—a specific amount of money. Pecuniary distributions will be paid as long as there are sufficient funds in the estate or trust to provide for their payment. These distributions may be funded with cash or (in certain circumstances) with other assets equal in value to the amount specified in the will or trust. In general, pecuniary bequests (unless paid to a surviving spouse) do not receive any income from date of death to date of payment. It should be noted that some states do provide for statutory interest on pecuniary bequests that are not paid within a specified period of time (usually one year). Illinois does not provide for interest on pecuniary bequests.

For estate or trust beneficiaries who are only entitled specific or pecuniary distributions, the letter to the beneficiaries need not be lengthy, as long as the estate or trust is solvent and the fiduciary does not anticipate any abatement of the distributions.

The purpose of the letter is really to confirm the identity and the address of the beneficiary, describe their interest in the estate or trust, and try to provide the beneficiary with an accurate timeframe during which they can expect to receive their distribution. The letter should also provide the beneficiary with the name and phone number of the fiduciary or the attorney for the fiduciary whom the beneficiary may contact with questions. If the estate is relatively liquid and the assets have been collected or are in the process of being collected when the letters go out, it is probably safe to commit to a complete distribution of the beneficiary's interest shortly after the six-month claims and will contest periods have lapsed. If the estate is illiquid or assets are spread across multiple institutions or there exists the possibility of insolvency, abatement or litigation of any kind, the letter to a specific beneficiary should at least allude to some of these potential issues and make no promises as to a date for a potential distribution. Also note that if abatement or elimination of a specific legacy or gift occurs due to insolvency, the fiduciary should be prepared to provide a full accounting to the beneficiary whose share has been eliminated or abated.

2. Beneficiaries Entitled to a Share of the Residue

A residuary distribution is a portion of what is left in the estate or trust after all of the expenses, debts, taxes and specific and pecuniary distributions have been paid out. This type of interest is most often expressed as a fraction (e.g. one half of the residue). Beneficiaries entitled to a residuary share are also entitled to their proportionate share of the remaining income. The residuary distribution is reduced by any payments made for administrative expenses or taxes, which can make it difficult to estimate the value of the

residuary gift, as the amount will vary based on what takes place during the estate settlement process.

For estate (or trust) beneficiaries entitled to a share of the residue after the payment of debts, taxes and expenses of administration, a much more detailed letter should be sent, as residuary beneficiaries are entitled to complete transparency throughout the entire administration process. The letter should describe in some detail, the terms of the will and the trust (if any), enclose complete copies of the will and the governing document for the trust, estimate the total value of the estate and trust assets, list the names of all pre-residuary takers and describe their interests, and state clearly that no distributions to residuary takers will be made until all debts, taxes, administrative expenses and specific distributions have been paid or provided for. In addition, the Illinois Trust Code requires that the notice letter also include statements about the beneficiaries right to request a full copy of the trust (if one has not yet been provided) and whether or not the beneficiary is entitled to receive or request trust accountings.[72]

If the estate is taxable, provide the date upon which the estate tax return is due and a rough (and generous!) estimate of the amount of the estate tax that will be due. If partial distributions will be made during the course of the administration, provide a timeline, and be very clear about the fact that it could take as long as two years (or more) to complete the administration and make final distributions. If there is any possibility (even a remote possibility) that the residue could be completely consumed by debts, expenses, taxes and specific distributions, that possibility should also be mentioned in the letter. Further, since, as noted above, all of the residuary distributions will carry out income to the residuary takers, include with each letter an IRS Form W-9 for the

[72] 760 ILCS 3/813.1

beneficiary and ask that they complete the form, provide their social security or tax identification number, sign the form and return it to the fiduciary. Finally, to the extent that the liquid assets of the estate and/or trust assets are consolidated into one checking account and one brokerage account titled in the name of the estate or trust (and they should be!), set the residuary beneficiaries up to receive monthly or quarterly statements on those accounts until the death-related administration has been completed and final distributions have been made. While this practice of consolidation of assets and information is fairly standard when a corporate fiduciary is acting (mainly because corporate fiduciaries are required by statute to take custody of the assets[73]), it is surprising that more individual executors and trustees either do not adopt this approach or are not advised by their attorneys to adopt this approach.

3. Creditors

To the extent that the interest of a creditor can be satisfied right away, it is probably best to simply pay the creditor as soon as the cash becomes available because once the creditor has been paid, the creditor is no longer an interested person. If there will be assets available to pay the creditor, but they are just not available right away, it might be advisable to send a short letter to the creditor advising them that they will be paid as soon as the estate or trust is able to raise the necessary cash. If the fiduciary believes that the claim will have to be partially abated or disallowed completely, then the letter should invite the creditor to file their claim in the probate court or provide formal notice of disallowance of the claim. It is important to note, however, that if the claim is abated or disallowed, the creditor remains an interested person until the claim is discharged, and the executor/administrator may then have a duty to provide the creditor with a full

[73] 760 ILCS §5/9.

accounting.[74] In general, creditors are not set up for regular statements, even though they may be an "interested party." Even in an insolvent estate, it is preferable to provide a single accounting to a creditor showing all receipts and disbursements at the time that the request to discharge the claim is made, rather than providing monthly statements.

4. Charitable Beneficiaries

In general, charitable beneficiaries are not treated much differently than individual beneficiaries in terms of the information to which they are entitled. However, there are a few additional requirements for charitable beneficiaries that do not apply to individual beneficiaries. The checklist at Exhibit I contains a list of information and documents that should be obtained from charitable beneficiaries.

In most cases, a gift to a charitable beneficiary simply requires that the organization be a charity, without further restrictions. However, it is often the case that charitable gifts include restrictions on the use of the gift by the charitable organization. The fiduciary therefore has a duty to ensure that the organization is in fact a charity, and that the organization will comply with any restrictions on the gift. In most cases, the confirmation of the organization's charitable status can be accomplished by obtaining a copy of the organization's letter of determination of exempt status under Section 501(c)(3) of the Internal Revenue Code, and to have the appropriate officer sign and attest to a corporate resolution. The determination of exempt status letter is issued to the organization by the IRS and provides clear documentation as to the charitable status of the organization, thereby allowing the fiduciary to ensure that the distribution is being made to a qualified charitable organization. While it is also possible to confirm the

[74] *See* 755 ILCS §5/28-11(b).

charitable status of an organization via the IRS website, fiduciaries should still obtain a copy of the letter for their files.

The corporate resolution serves multiple purposes. First, it is a statement that the correct organization is receiving the bequest. It should also reflect an agreement by the charity to accept the restriction on the use of the gift that may have been imposed in the Will or trust, and it identifies the individuals who are authorized to bind the charity. The resolution therefore protects the fiduciary by allowing the fiduciary to rely on the information contained in the resolution and accept the signature of the individual or individuals who sign the resolution.

For Illinois trusts and estates with charitable beneficiaries, there is one additional notice requirement. The Illinois Charitable Trust Act applies to any trusts with assets in excess of $4,000 held by a "trustee" as the term is defined in the Charitable Trust Act.[75] The Charitable Trust Act defines the "trustee" of a charitable trust as "any person, individual, group of individuals, association, corporation, not-for-profit corporation, estate representative, or other legal entity holding property … for any charitable purpose"[76] In other words, an estate or trust that has assets in excess of $4,000 and has a single charitable beneficiary, be it specific, pecuniary or residuary, meets the statutory definition of a charitable trust in Illinois.

As a charitable trust, any estate or trust with assets in excess of $4,000 and a charitable beneficiary must register with the Illinois Attorney General under the Illinois Charitable Trust Act.[77] This requirement seems excessive to many practitioners, particularly if the charitable distribution is pecuniary or specific and the charity can be

[75] 760 ILCS §55/2.
[76] 760 ILCS §55/3.
[77] 760 ILCS §55/5.

eliminated as an interested person fairly quickly. In reality, very few executors and trustees actually comply with this requirement, especially if the charitable bequest is specific or pecuniary and is paid off right away. However, a strict reading of the Illinois Charitable Trust Act requires registration with or at least notice to the Illinois Attorney General, and a failure to comply with this requirement might create an opening that could be exploited by a disgruntled beneficiary or creditor in an action against the fiduciary. Accordingly, it may not be a bad idea to provide actual written notice to the Illinois Attorney General for those estates and trusts with charitable interests that bring them within the purview of the Illinois Charitable Trust Act.

V. Estate and Income Tax Compliance

Among the many transitions that death brings, the transition of the responsibility for tax compliance is one that often befuddles even the most sophisticated executors, administrators and successor trustees. Like other responsibilities in death-related administration, some matters associated with tax compliance require immediate attention while others must be dealt with within a few weeks, and still others within 6 or 9 months. In any event, after the death of a decedent, the fiduciary may have to coordinate among three separate tax regimes: the decedent's remaining individual income tax liability; the estate, gift and generation skipping transfer taxes; and the fiduciary income tax liability of the estate and/or trust. As each of these tax regimes can and will impact the other, it is important for attorneys and their fiduciary clients to understand that in post-mortem tax planning and compliance, there is tremendous interplay and overlap among these three tax regimes, and that the preparers of each of the tax returns (if there is more than one preparer) must have open lines of communication.

A. Transfer Taxes

After the death of the decedent, the process for determining the applicability of any transfer taxes begins. First, all of the assets must be valued for federal estate tax purposes and the cost basis of the capital assets must be stepped up to their date-of-death or alternate values. The Federal Estate Tax Return (and associated state returns) must be prepared and filed within nine months after the date of death (or fifteen months after date of death if a request for an automatic six-month extension to file the return is filed). The estate tax return presents a snapshot of all assets owned on the decedent's date of death (or on the six-month anniversary of the date of death, if the cumulative value of all of the assets as of that date is lower), all debts owed as of the date of death, and all expenses related to the administration of the estate. Under Current Federal Estate Tax Laws, the Federal Estate Tax is assessed on the net estate, at a rate of 40% on amounts in excess of $12.06 million (2022).[78] Illinois Estate Tax is assessed on the net estate over $4 million at the highest marginal rate of 16%.

B. Portability

Under the American Taxpayer Relief Act of 2012, portability under §2010 became permanent. Portability is the ability to transfer a deceased spouse's unused federal gift and estate tax exclusion at death to the surviving spouse. The surviving spouse then has the benefit of both the surviving spouse's exclusion as well as the deceased spouse unused exemption (the "DSUE").

In order for a surviving spouse to elect portability, a timely filed United States Estate (And Generation Skipping Transfer) Tax Return (Form 706) is required. A timely filed return is a return that is filed by the due date (typically 9 months after date of death

[78] Rev. Proc. 2021-45, 2021-48 I.R.B. 765.

plus any extensions actually granted). An estate of a predeceased spouse makes the portability election by timely filing a "complete and properly-prepared" estate tax return.[79]

The executors of estates that would not otherwise be required to file an estate tax return under §6018(a) are not required to report the value of certain property that qualifies for the marital or charitable deduction unless:

1. The value of that property related to, effects, or is needed to determine, the value passing from the decedent to another recipient;
2. The value of that property is needed to determine the estate's eligibility for the provisions of §§ 2032, 2032A, 6166 or another provision of the Code;
3. Less than the entire value of an interest in property includible in the Decedent's estate is marital deduction property or charitable deduction property; or
4. A partial disclaimer or partial QTIP election is made with respect to a bequest, devise, or transfer of property includible in the gross estate, part of which is marital deduction property or charitable deduction property.

The executor, however, is required to estimate the fair market value of the entire gross estate to the nearest $250,000 and include that estimate with the return.

Estates that are obligated to file an estate tax return, but do not wish to make the portability election should attach a statement to Form 706 indicating that the estate is not making the election under §2010(c)(5), or write "No Election Under Section 2010(c)(5)" across the top of the first page of Form 706.

[79] Temporary Reg. §20.2010-2T(a)(2).

Not timely filing a Form 706 will also effectively prevent the election. EXCEPTION: If no Form 706 is required to be filed, executors now have two (2) years from the date of Decedent's death to file to elect portability.[80]

A surviving spouse (or the executor of the predeceased spouse's estate) that timely made a portability election would calculate the surviving spouse's applicable exclusion amount as follows:

	Surviving spouse's basic applicable exclusion amount
+	Aggregate DSUE amount
=	Applicable exclusion amount

Under §2010(c)(4), DSUE is defined as equaling the lesser of the following two items:

1. The basic exclusion amount; or

2. The excess of (a) the applicable exclusion amount of the last such deceased spouse, over (b) the amount with respect to which the tentative tax is determined under § 2001(b)(1) on the estate of that deceased spouse.

Once made, the portability election is irrevocable. Note that the definition of the DSUE refers to the exclusion of the "last" deceased spouse. A surviving spouse is not permitted to "stack" the exclusion of multiple predeceased spouses.

The regulations create an ordering rule which provides that, when a surviving spouse makes a taxable gift, the DSUE of the decedent who is the last deceased spouse of such surviving spouse will be considered to apply against the amount of the surviving spouse's taxable gifts for that calendar year before the surviving spouse's own basic exclusion amount will apply.[81]

[80] See Rev. Proc. 2017-34.
[81] Treas. Reg. §25.2505-2.

The estate of nonresident decedent who was not a U.S. citizen at the time of death is not eligible for the portability election. Similarly, a nonresident surviving spouse who was not a U.S. citizen at the time of such surviving spouse's death may not take into account the DSUE of any deceased spouse of such surviving spouse (except to the extent allowed under a U.S. treaty).

Portability is only a federal tax concept. There is no portability of the Illinois (or other state) estate tax exemption.

C. Decedent's Final Income Tax Return

The responsibility for preparing filing and signing the decedent's final income tax return falls to the fiduciary who is responsible for the death-related administration. However, for taxpayers who died before they have filed their individual income tax return for the year before the year of death, the fiduciary may be responsible for the preparation and filing of two personal income tax returns for the decedent, one for the year in which the death occurred and one for the year prior to the death. If the decedent had a personal accountant, it may be advisable for the fiduciary to retain the decedent's personal accountant to prepare the final income tax return(s) as the decedent's accountant will have some history to draw upon.

Once the preparer has been retained, the next step is to verify the last period for which an income tax return was filed. An inquiry should also be made as to whether the decedent was making estimated tax payments. If the decedent was a principal in his or her own closely held business, this inquiry should extend to business tax returns as well. Even if a tax return is not required for the year of death because the decedent's income is below the filing threshold, it may be a good idea to file a tax return anyway to close out

the decedent's final income tax year, and to obtain the benefit of the statute of limitations on assessment of income tax.

Preparation of a decedent's final income tax return is not much different than preparing a return for a living client, except that the decedent's tax year terminates on the date of death. If the taxpayer was married on the date of death, the decedent's filing status will be either married filing separate or married filing joint. The election to file a joint return may be made by the surviving spouse, if an executor has not yet been appointed at the time the return is filed. If an executor has been appointed, a joint return can be filed only with the executor's consent. If the spouse has already filed a joint return, the personal representative of a deceased taxpayer is authorized to amend the return to married filing separate, provided that the amended return is filed within one year of the return's due date. The decision to amend a joint return to married filing separately is a function of how the liability is apportioned between the estate and the surviving spouse, and depends on whether the estate or the deceased taxpayer will take certain deductions. Medical expenses incurred but not paid before death, for example, may be deducted by the estate or by the individual. Income accrued to the date of death on savings bonds held by the decedent may be reported on the decedent's final tax return or the accrued income may be reported on the income tax return of the estate or the recipient who collects the interest. After the final income tax return is prepared, a request should made for prompt assessment on Form 4810 and discharge from personal liability for the fiduciary who signs the return should be requested on IRS Form 5495. If the requests for prompt assessment and discharge from personal liability are honored, the statute of limitations on assessment will be reduced from three years to eighteen months and the liability of the

personal representative will be released nine months after Form 5495 is filed. However, the representative's discharge will not discharge the liability itself nor prevent the IRS from seeking payment from estate assets or from asserting transferee liability against beneficiaries of the estate.

Because the taxpayer's tax year terminates on the date of death, not all the income shown on Forms 1099 or Schedules K-1 may be appropriate to report on the decedent's final income tax return. As a result, the accountant may have to split the income between the decedent's final income tax return and the trust or estate income tax return. Because the failure to report 100% of the decedent's 1099, K-1 and W-2 income for the full calendar year on the decedent's final income tax return may trigger questions from the IRS, it may be advisable to request that the entities issuing 1099's, K-1's and W-2's to the decedent prepare and file separate 1099's, K-1's and W-2's for pre- and post-death income. If it is not possible or practical to obtain separate pre- and post-death income tax reporting documentation, then the accountant for the fiduciary should manually split the income between the final income tax return and the estate or trust income tax return, clearly mark the final income tax return as being filed on behalf of a deceased taxpayer with a short tax year, back out the portion of the income that will be picked up by the estate or trust, and include a note that cross-references the taxpayer identification number of the estate or trust.

D. Trust and Estate Income Tax Returns

All income earned by the decedent's estate and/or trust during the period of death-related administration must be reported to the IRS on Form 1041. Form 1041 must be filed for any taxable period during which the estate or trust's gross income exceeds $600 or if a beneficiary of the estate is a non-resident alien. The return must be filed on or before the 15th day of the fourth month following the close of the estate's tax year, which can be a fiscal year or a calendar year.

1. Obtaining a Tax ID Number for the Estate - IRS Form SS-4

Form SS-4 is an administrative form that is used to request a taxpayer identification number for an estate or trust. It can now be completed and filed on-line by visiting the IRS website at http://www.irs.gov/. Once the taxpayer identification number obtained, the fiduciary may also wish to complete IRS Form 2848 to authorize the accountant or the attorney to deal directly with the IRS on the income tax matters related to the estate or trust.

2. Selection of the Estate's Taxable Year

The fiduciary may initially elect to report the estate's income on a fiscal year rather than on a calendar year basis. The representative must elect a fiscal year within 3½ months after the close of the fiscal year selected. If no timely election is made, the estate must report its income on a calendar year basis. If a fiscal year is not elected, the first taxable year of the estate will end on December 31 of the year in which the decedent died. If a fiscal year is elected, the fiscal year must end on the last day of a month that is not more than 12 months from the decedent's death. For example, if the decedent dies on March 15, the representative can choose a fiscal year that ends on the last day of any

month from March 31 following the decedent's death until February 28 (or 29) of the year following the year of death.

3. Revocable and Testamentary Trusts and the 645 Election.

A revocable living trust becomes irrevocable upon a decedent's death. Unless the trust distributes all trust property outright, the trust will become a new tax paying entity. Testamentary trusts also become tax-paying entities when they are funded. Section 645 of the Internal Revenue Code provides that an executor may elect to treat a qualified revocable living trust as part of the decedent's estate for income tax purposes. In order to qualify for this election, the following conditions must be met:

a. The Executor and the Trustee must agree on the election;
b. IRS Form 8855 must be filed by the due date of the estate's first Form 1041; and
c. The Trust must be a qualified revocable trust in that the grantor/decedent had the power to revoke it.

The advantage of the 645 election is that it will eliminate the need for the preparation of separate income tax returns for the decedent's estate and the decedent's revocable trust. In the case of a pour-over will to revocable trust where the 645 election is <u>not</u> made, the estate will have to file its own Form 1041 and then issue a K-1 to the trust. The trust would then have to file its own Form 1041 and issue K-1's to the trust beneficiaries.

VI. Non-Probate Transfers; Payable on Death

Non-probate transfers such as Transfer on Death and Payable on Death designations are becoming increasingly popular. It is important to understand how these designations operate as well as how they can impact the payment of creditors and the payment of taxes related to the decedent's estate.

A. Illinois Real Property Transfer on Death Instrument Act

One such mechanism is the Illinois Real Property Transfer on Death Instrument Act. Previously known as the Illinois Residential Real Property Transfer on Death Instrument Act[82], the Illinois Real Property Transfer on Death Instrument Act was amended earlier this year. The changes are effective as of January 1, 2022. The amendments are highlighted as follows:

1. May be used of any type of real property (previously has been limited to residential real property).
2. The beneficiary of a transfer on death instrument (" TODI") may be a trust.
3. A surviving spouse may renounce a TODI in much the same way as renouncing a Will.
4. A beneficiary of a TODI is subject to creditor, administrative and funeral/burial expenses and statutory claims to the same extent and in the same manner as provided in Section 505 of the Illinois Trust Code (dealing with revocable trusts at death of grantor).
5. A TODI may be contested using rules similar to contesting a Will.

B. Estate Tax Apportionment

Accounts that contain payable on death and beneficiary designations are included in the gross estate of a decedent. Determining who bears the burden of the estate tax can be important. Unless there is a contrary intention expressed by the decedent, under the doctrine of equitable apportionment, the burden of estate taxes is allocated *pro rata* to the portions of the taxable estate that generated the tax.[83] This applies regardless of whether the decedent left a will or died intestate.[84] This apportionment rule may result in a beneficiary who receives non-probate assets that generated tax liability being held liable

[82]755 ILCS 27/1 et. seq
[83] *Lurie v. Comm'r*, 425 F.3d 1021, 1025 (7th Cir. 2005) citing *Roe v. Farrell's Estate*, 69 Ill. 2d 525, 532 (1978).
[84] *In re Gowling's Estate*, 82 Ill. 2d 15, 22 (1980).

to the estate for contribution.[85] With regard to the taxes apportioned to the probate estate, these taxes by default are paid solely out of the residuary estate.[86] However, if the residuary estate is insufficient to cover the probate estate's share of estate taxes, then the remaining taxes are paid out of the remining probate assets according to the rules on abatement.[87]

VII. Accessing "Digital Assets" Post-Death – The Revised Uniform Fiduciary Access to Digital Assets Act ("RUFADAA")

A. Significance of Digitally Stored Asset and Liability Information for Fiduciaries

As the exponential growth in the storage of asset and liability information on digital platforms and devices continues unabated, the ability to gather critical asset and liability information following a death is becoming ever more complicated. Fiduciaries responsible for post-death administration must collect, secure, inventory and value all assets and account for all debts, expenses and administrative costs. The inability to access critical information that is stored digitally significantly increases the risk that fiduciaries will fail to meet these obligations and therefore risk exposure to personal liability for any losses that may occur.

B. Promulgation of RUFADAA

In response to this relatively new need for fiduciaries to gain access to critical asset and liability information stored on digital platforms, the Uniform Law Commission ("ULC") issued the Revised Uniform Fiduciary Access to Digital Assets Act

[85] *Estate of Maddux*, 93 Ill. App. 3d 435, 437 (5th Dist. 1981).
[86] *In re Estate of Maierhofer*, 328 Ill. App. 3d 987, 989-90 (3d Dist. 2002).
[87] *See In re Gowling's Estate*, 77 Ill. App. 3d 548, 554 (4th Dist. 1979).

("RUFADAA") in 2015.[88] As of this writing, RUFADAA has been enacted in 45 states, the District of Columbia and U.S. Virgin Islands.[89] Only California, Oklahoma, Louisiana, Delaware and Massachusetts have not enacted RUFADAA, though a bill to enact it is currently pending in the Massachusetts legislature.[90] The fact that RUFADAA has been enacted so quickly and in so many states without amendments or changes to the ULC language is evidence of just how challenging it is for the law to keep up with the pace of change in the digital world.

C. "Digital Asset" as Defined by RUFADAA

The term, "Digital Asset," is defined by RUFADAA as "an electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record."[91] Knowing how RUFADAA defines the term "digital asset" is important to understanding what is *not* deemed to be a digital asset under the statute. Because most underlying assets that fiduciaries will identify or uncover using the access afforded to them by RUFADAA will not be digital in nature, the definition also speaks to the limitations of RUFADAA.

For example, even if a person opens a bank account online using a digital application, funds the account via electronic transfers, receives monthly statements and other account notifications electronically, and accesses the account on a digital platform, the account itself is not a digital asset as defined by RUFADAA. The fiduciary who will need to collect and secure that account following the owner's death will simply need to

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[88] "Fiduciary Access to Digital Assets Act, Revised." Fiduciary Access to Digital Assets Act, Revised - Uniform Law Commission, Uniform Law Commission, 21 Mar. 2021, www.uniformlaws.org/committees/community-home?CommunityKey=f7237fc4-74c2-4728-81c6-b39a91ecdf22.
[89] *Id*.
[90] *Ibid.*
[91] RUFADAA § 2(10).

know that the account exists and that it belongs to the estate or trust. When underlying assets were excluded from the statutory definition of a "digital asset," the drafters of RUFADAA acknowledged that the overwhelming majority of digital assets, as defined by RUFADAA, have little or no economic value, and that the statute itself is strictly limited to providing access to digitally stored information about underlying assets, but not necessarily to the underlying assets themselves.

As fiduciaries are ultimately responsible for collecting and securing all of the underlying assets in the estates and trusts that they administer, the growing absence of paper statements and documents is making access to much needed electronic records a much more critical component of post-death administration. Put differently, RUFADAA is designed to provide fiduciaries with access to the electronic paper trail that will hopefully lead the fiduciary to underlying estate and trust assets that have value, and that need to be collected, secured, valued, and ultimately, sold or distributed in accordance with the terms of the estate plan.

D. How RUFADAA Provides Access for Fiduciaries

The language of RUFADAA provides for a three-tier system under which decedents may authorize access to their online accounts.[92]

1. First Tier – Online Tool

The first (and most effective) tier is via an online tool agreement that the user executes (or clicks through) directly with the Internet Service Provider (ISP). Such tools are separate and apart from the Click-through Terms of Service (TOS) agreements that govern the creation and use of the account and the use of the online tool agreement will effectively override any contrary direction by the user in a will, trust or other governing

[92] *Ibid.*

document.[93] Google, for example, allows its users to designate an individual to serve as an "Inactive Account Manager" who can access a deceased user's Gmail account for limited purposes and for a limited period of time following a user's death.[94] The Inactive Account Manager can be a family member, a close friend or a trusted advisor. It does not have to be the fiduciary responsible for post-death administration.

2. Second Tier – Enabling Language

The second tier for fiduciary access requires the user to include enabling language in their will or trust that specifically authorizes (or prohibits) the disclosure to the fiduciary of digital asset information stored on the server of an ISP.

3. Third Tier – The Click-Through Online Terms of Service Agreement

In the absence of an online tool or enabling language in the deceased user's will or trust, the third tier for fiduciary access is effectively the provisions of the TOS agreement itself. In most cases, this will mean no access.

4. Limitations on RUFADAA and Planning Considerations

While RUFADAA is a step in the right direction, it is important to be aware of its limitations. It is also important for fiduciaries to understand the risks associated with acting as a fiduciary for individuals who have fully embraced the use of digital platforms to store critical information about their assets and liabilities. To work around and within the limitations of RUFADAA, planners may wish to consider the following suggestions:

a. Advise clients to keep and maintain a secure list of all digital accounts (especially email accounts), how to access them and passwords for all

[93] *Ibid.*
[94] "About Inactive Account Manager." Google Account Help - About Inactive Account Manager, Google, https://support.google.com/accounts/answer/3036546?hl=en.

digital storage devices (computers, tablets, smartphones, etc.). Clients should store the list in a place where the fiduciary, a trusted advisor or a family member can locate it post-death and should update it regularly.

b. Help clients set up and use the online tool agreements (like Google's "Inactive Account Manager") offered by most commercial ISPs and social media sites to provide post-death access to digital accounts for the fiduciary, a trusted advisor or a family member.

c. Individuals should not use a work email account for access to personal digital content of any kind. Most companies would not allow a fiduciary to access a deceased employee's email account, which will likely contain confidential information that is solely the property of the deceased user's employer.

d. Clients should consider creating and maintaining a separate, dedicated email account with a reputable commercial ISP for access to all personal digital account information and online content.

e. Update estate plan documents to include language that specifically authorizes fiduciary access to digital asset information as prescribed by RUFADAA.

f. For clients who have chosen to go "paperless" with their asset and liability information, arrange for the receipt of comprehensive paper statements to be mailed out once a year along with paper copies of annual income tax reporting documents.

5. RUFADAA, Cryptocurrency and NFT's

RUFADAA does little or nothing to address the growing need for fiduciaries to obtain access to the digital wallets and crypto keys needed to collect, secure and value cryptocurrency, non-fungible tokens (NFT's) and other truly digital assets that are held and traded directly on the digital blockchain. By most accounts, the first NFT was minted in May of 2014.[95] However, it was not until 2017, two years *after* the promulgation of RUFADAA, that the minting and sales of NFT's really began to take off.[96]

VIII. Important Dates in Death-Related Administration

Almost as important as the various checklists that are necessary for the efficient administration of decedents' estates and trusts is the timeline for completion of the settlement process. While anxious beneficiaries have been known to approach attorneys and fiduciaries about distributions at wakes, funerals and shiva houses, the reality is that estate and trust distributions do not typically occur until several months and sometimes more than a year after the date of death. While the phenomenon of anxious beneficiaries is well known to most fiduciaries and their attorneys, a good timeline or checklist of important dates and milestones in the administration process, many of which are determined by statute, can be a very useful tool to manage the unrealistic expectations of such beneficiaries.

The Checklist at Exhibit J provides just such a timeline for Illinois decedents, and it is critical for fiduciaries and their attorneys to know the important dates or at least have easy access to them. Most of these dates have already been discussed elsewhere in these

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[95] Ludel, Wallace. "Sotheby's and Artist Kevin McCoy Sued Over Sale of Early NFT" http://www.theartnewspaper.com/2022/02/04/sothebys-kevin-mccoy-lawsuit-quantum-nft, The Art Newspaper, 4 February 2022.

[96] Portion Blog, "The History of NFT's & How They Got Started." http://blog.portion.io/the-history-of-nfts-how-they-got-started/

materials, particularly around the probate process, notice requirements and transfer tax deadlines, but having the important dates docketed and accessible for each estate or trust that a fiduciary or attorney has in active administration can be very helpful to ensure that important deadlines are not missed and that the expectations of beneficiaries are properly managed.

IX. Conclusion – Checklists are Great, But They are Not a Panacea

In "The Checklist Manifesto," Atul Gwande insists that while checklists can be extremely valuable and useful tools for managing the volume and complexity of the knowledge that is necessary to do a difficult job in a consistent, correct and safe manner, they are not a panacea. He also stresses that checklists are no substitute for the intense amount of training and education necessary to succeed in an increasingly complex and technologically advanced world. Most importantly, however, he notes that the mere existence of a checklist is not enough. Bad checklists will often create more problems than they solve and checklists that work for one person or organization may not work for everyone. We therefore invite you to use any or all of the checklists attached to these materials to help create your own checklists or sets of checklists that work best for you in your individual practices.

In return, we have one request. If you use the checklists included in these materials or you use them to create and update your own checklists, and you develop better or more effective checklists, please share them with your colleagues so that as a professional practice, we can all work together to improve the collective quality and efficiency of the services that we all provide to anyone in need of our assistance following the death of a loved one.

EXHIBIT A
Initial Post-Death Meeting Checklist

1. Certified death certificates
2. Original Will and Revocable Trust, including all codicils and amendments
3. Copies of any and all trust agreements for trusts created by the decedent during their lifetime
4. Copies of any and all trust agreements for trusts created for the benefit of the decedent
5. Name and complete contact information for attorney(s) who drafted estate plan documents
6. Canceled checks and copies of statements for all checking accounts owned or controlled at death
7. Copies of Federal and State 1040 tax returns for at least the three years immediately prior to the death
8. Copies of ALL federal gift tax returns
9. Partnership or corporate tax returns/minute books/buy-sell agreements/financial statements and other pertinent documents related to any interest in a closely held business entity (S-Corp; C-Corp; LLC; Partnership, etc.) owned at death
10. Copies of Federal Estate tax returns for any estates that benefitted the decedent
11. Copies of statements from all brokerage and investment management accounts owned at death
12. All Original Promissory Notes held at death
13. Any Original Stock Certificates for all certificated shares of publicly traded companies and closely held corporations held at death
14. All uncashed interest or dividend checks received before or after the death
15. Copies all savings account statements, passbooks and certificates of deposit owned at death
16. Copies of the most recent statement(s) for all annuity, pension, 401k and IRA accounts and associated beneficiary designations for each separate account
17. Originals, copies and/or statements for all life insurance policies on the decedent's life and associated beneficiary designations for each policy
18. Name and complete contact information for decedent's personal accountant or tax preparer
19. Health insurance policy numbers and insurance company contact information
20. House or apartment keys
21. Mailbox key (if any)
22. Copies of real estate papers for each parcel of real estate owned at death:
    a. deed(s)
    b. mortgage(s)
    c. lease(s)
    d. title insurance policy(ies)
    e. plat(s) of survey and/or architectural renderings, drawings or plans
    f. property and casualty insurance policy(ies) (including any personal property schedules)
    g. real estate tax bill(s)

h. condominium and/or co-op documents and management company contact information

23. Copies of leases for any properties in which the decedent was the tenant
24. Renter's Insurance Policy(ies) (including any personal property schedules)
25. Storage Locker keys and location information (if any)
26. Keys and location information for all vehicles owned at death
27. Vehicle titles for all vehicles owned at death
28. Copies of all vehicle insurance policies
29. Credit/debit cards and copies of most recent statements for all credit or debit cards held at death
30. All unpaid bills and invoices
31. Copies of paid bills to be reimbursed from the estate or trust assets (including funeral bills)
32. Veteran's discharge papers
33. All safe deposit information, physical location(s) and key(s)
34. Jewelry, coins and other valuable tangible personal property to be inventoried, secured and appraised
35. All evidence of any other liabilities outstanding at death (bills; invoices; contracts; notes; pledge agreements; etc.)
36. Evidence of Intellectual Property Rights (patents; trademarks; copyrights; royalty and residual contracts; assignments; agreements; related income tax documents; checks; etc.) owned or controlled at death
37. Names, dates-of-birth and complete contact information for all estate and trust beneficiaries
38. Social Security numbers or Tax ID numbers for all estate and trust beneficiaries
39. IRS Form W-9s to be completed and signed by each beneficiary
40. Birth certificates of beneficiaries where applicable
41. Certified copies death certificates for all deceased beneficiaries
42. All of decedent's email account usernames and passwords
43. List of crypto currency and NFT holdings and access information for all digital wallets, including, but not limited to crypto keys, accounts, identities of blockchain(s) on which the assets are held and security codes necessary for access to any and all crypto, NFT and other blockchain based holdings

EXHIBIT B

Checklist to Determine the Need for a Formal Probate Proceeding

1. Does the value of the assets titled in the name of the decedent alone at death and not payable on death by operation of law to a named beneficiary (other than to the decedent's estate) exceed $100,000?

2. Is their disharmony among the heirs, legatees or other interested parties that could potentially lead to a will contest or other litigation against the estate?

3. Was the decedent in a risky profession (i.e. law, medicine, etc.) or did the decedent have an ownership interest (either individually or through a trust or other entity) in risky assets (i.e. commercial or residential real estate) that may result in claims from unknown creditors that are not immediately identifiable or ascertainable?

4. Has the decedent disinherited any heirs pursuant to the terms of the will and/or a revocable trust to which the residue of the probate estate is payable?

5. Are their insufficient assets in the estate such that legitimate claims of creditors may need to be disallowed or reduced or such that specific legacies may need to be eliminated or partially abated?

6. Are there debts owed to the decedent or assets owned by the decedent that may necessitate the opening of a probate estate in order to pursue litigation or a citation action in order to collect them?

7. Is there a need to initiate or continue litigation on behalf of the decedent for a personal injury, wrongful death or some other cause of action to which the decedent may have been a party?

8. Did the decedent possess a testamentary power of appointment that may require probate in order to affect the exercise or non-exercise of said power?

9. Are there any other reasons why the executor may need to shorten the period for claims against the estate from two years (from the date of death) to six months (from the date of publication of notice to unknown creditors)?

EXHIBIT C
Probate Opening Checklist (Testate)

1. Locate and secure the decedent's original last will, original codicils and any other original wills (e.g. prior revoked wills that have not been destroyed);
2. Determine the State and County in which the decedent was domiciled as of the date of death;
3. File all original wills and codicils with the probate court in the county in which the decedent was domiciled at death;
4. Obtain the necessary forms for the probate court in the county in which the decedent was domiciled;
5. Make a complete list of the legatees and fiduciaries named in the most recent will and applicable codicils;
6. Ascertain the names, contact information, and relationship to the decedent for all of the decedent's heirs-at-law, even those who are not legatees under the will;
7. Estimate the total value of the decedent's probate assets as of the date of death;
8. Estimate the total amount of the decedent's liabilities as of the date of death;
9. Prepare the necessary probate court pleadings (Testate) for signature by the appropriate parties:

    a. Petition for Probate of Will and Letters Testamentary
    b. Oath and Bond of Representative – No Surety (If will waives surety or if corporate fiduciary is acting)
    c. Acceptance of Office (for corporate fiduciaries)
    d. Designation of Resident Agent to accept service of process, notice, or demand (for out-of-state executors);
    e. Affidavit of Heirship (and/or Notice to State's Attorney if Unknown Heirs);
    f. Waiver of Notice (for heirs and legatees who are willing to waive notice of admission or denial of admission of the will);
    g. Affidavit of Attesting Witnesses (if will itself is not properly attested)
    h. Affidavit – Copy of Will (that an attached facsimile of will, and all codicils, is a copy of the will and all codicils to be admitted) (not required in all counties in Illinois)
    i. Order Declaring Heirship
    j. Order Admitting Will to Probate and Appointing Personal Representative
    k. Notice to Heirs and Legatees – Will Admitted

10. Obtain a court date to formally open the probate estate;
11. Obtain Certified Letters of Office;
12. Publish Notice to Creditors and Unknown Heirs (if any);
13. Prepare and send "Notice to Heirs and Legatees – Will Admitted" to all known heirs and legatees within 14 days after the will has been admitted to probate.
14. Obtain a Federal Tax Identification Number (IRS Form SS-4) for the estate.

EXHIBIT D

Probate Opening Checklist (Intestate)

1. Ascertain the names, contact information, and relationship to the decedent, of all of the decedent's heirs-at-law;
2. Identify the individual or individuals entitled to the highest preference in nominating an administrator and obtaining letters of administration;
3. Determine the State and County in which the decedent was domiciled as of the date of death;
4. Obtain the necessary forms for the probate court in the county in which the decedent was domiciled;
5. Estimate the total value of the decedent's probate assets as of the date of death;
6. Estimate the total amount of the decedent's liabilities as of the date of death;
7. Prepare the necessary probate court pleadings (intestate) for signature by the appropriate parties:

    a. Notice to Heirs - Petition for Letters of Administration;
    b. Petition for Letters of Administration;
    c. Oath and Bond of Representative – Surety (Surety requirement can be waived if corporate fiduciary is appointed)
    d. Acceptance of Office (for corporate fiduciaries)
    e. Designation of Resident Agent to accept service of process, notice, or demand (for out-of-state administrators);
    f. Affidavit of Heirship (and/or Notice to State's Attorney if Unknown Heirs);
    g. Waiver of Notice (for heirs who are willing to waive notice of issuance or denial of issuance of letters and for person with equal or higher nominating preference who are willing to waive notice);
    h. Order Declaring Heirship
    i. Order Appointing Representative of Decedent's Estate - Intestate

8. Obtain a court date to formally open the probate estate;
9. Send Notice to Heirs (or obtain signed waivers) to all persons with equal or greater nominating preference at least 30 days prior to the court date to open the estate;
10. Obtain Certified Letters of Office;
11. Publish Notice to Creditors and Unknown Heirs (if any);
12. Prepare and send Notice to Heirs, Petition for Letters of Administration and Order Appointing Representative to all known heirs and legatees within 14 days after Order Appointing Representative has been entered and Letter of Office have been issued.
13. Obtain a Federal Tax Identification Number (IRS Form SS-4) for the estate.

EXHIBIT E
Asset Collection Document Checklist

Ownership	Required Documentation to Release/Close Account	Required Waiting Period	Payable To . . .
Individual w/ administration	❖ Death Certificate* ❖ Letters of Office	Receipt of documentation	Estate
Individual w/out administration (net value of estate does not exceed $100,000)	❖ Death Certificate* ❖ Small Estate Affidavit	Receipt of documentation	Claimant(s)
Individual w/POD or Totten Trust *(informal trust)*	❖ Death Certificate*	Receipt of documentation	Beneficiary (ies)
Joint	❖ Death Certificate*	Receipt of documentation	Surviving owner(s)
Joint w/POD or Totten Trust *(informal trust)*	❖ Death Certificate*	Receipt of documentation	Surviving owner(s) OR Beneficiary (ies) after all joint owners are deceased
Life Insurance Policies	❖ Death Certificate* ❖ Claim form completed by named beneficiary or beneficiaries	Receipt of documentation	Beneficiary or Beneficiaries.
IRA/Qualified Retirement Plan Assets Payable to an Individual or Individuals	❖ Death Certificate* ❖ Claim form provided by IRA custodian and completed by named beneficiary or beneficiaries ❖ NOTE: Significant Income Tax Consequences can result from the improper collection of IRA or qualified plan assets so it is important for the beneficiaries to speak with their tax advisor before collecting the assets.	Receipt of documentation	Named Beneficiary or Beneficiaries.

IRA/Qualified Retirement Plan Assets Payable to an Estate or Trust	❖ Death Certificate* ❖ Certified Letters of Office or Certified Copy the Trust ❖ Claim form provided by IRA custodian and completed by named Executor or Trustee ❖ NOTE: Significant Income Tax Consequences can result from the collection of IRA or qualified plan assets by an Estate or Trust so before the Executor or Trustee collects the assets, be sure look at all available options for deferral of income.	Receipt of documentation	Successor guardian(s) in fiduciary capacity
Safe Deposit Bank	❖ Death Certificate* ❖ Letters of Office or Small Estate Affidavit depending upon the size of the estate. ❖ Proper ID for the Executor	Receipt of documentation	Estate

*Original or certified copy required

EXHIBIT F

Closely Held Asset/Real Estate Document Checklist

Closely Held Assets

1. Physical Record of Decedent's Ownership (Subscription Agreements, Stock Certificates, etc.);
2. Financial statements for each of the three years immediately preceding the decedent's death;
3. Federal and state income tax returns for each of the three years immediately preceding the decedent's death;
4. Copies of deeds and leases on any real estate owned by the entity;
5. Articles of Incorporation and Good Standing Certificate from state of incorporation (for corporations);
6. Articles of Organization and Good Standing Certificate from state of organization (for partnerships and LLC's);
7. Operating Agreement or Partnership Agreement (for partnerships and/or LLC's);
8. Corporate By-Laws (for corporations);
9. Shareholders' agreement (for corporations), if any;
10. Buy/Sell documents, if any;
11. Detailed description of any pending litigation and/or environmental issues, if any;
12. Complete contact information for the principal(s), officers, managers, managing member and/or managing partner of each entity; and
13. Name, address, phone number of entity's agent for service of process.

Real Estate

1. Copy of Deed;
2. Title Insurance Policy;
3. Plat of survey;
4. Copy of Insurance policy (property/casualty);
5. Copies of most recent real estate tax bills;
6. Copies of all leases on the property;
7. Mortgage information (if any);
8. Complete contact information for other owners or co-owners (if any);
9. Owners Association Information (if applicable); and
10. Management Company Contact Information (if applicable).

EXHIBIT G
Probate Closing Checklist

1. Prepare the Final Accounting;
2. Prepare Final Report of Independent Representative;
3. Prepare Receipt and Approval of Closing of Decedent's Estate in Independent Administration for all Beneficiaries and Claimants who are entitled to an accounting;
4. Prepare Receipts for Beneficiaries and Claimants who are not entitled to an accounting;
5. Prepare receipts and/or waivers for trust beneficiaries in accordance with local rules in jurisdictions which require notice for estates with pour-over wills to revocable trusts (In Cook County, Norris Rule).
6. Mail Copies of Final Accounting, Final Report and Receipts to all beneficiaries and claimants who are entitled to receive them;
7. Prepare receipts and/or waivers for trust beneficiaries in accordance with local rules in jurisdictions which require notice for estates with pour-over wills to revocable trusts (In Cook County, *see* Norris Rule);
8. Prepare Order of Discharge – Independent Administration
9. Upon the return of all signed Receipts, schedule a court date to close the probate estate and enter the Order of Discharge;
10. If Receipts are missing or cannot be obtained from all parties, take the following additional steps:

    a. Prepare Notice of Final Report – Independent Administration;
    b. File Notice of Final Report with Probate Court and obtain a court date at least 42 days out to close the estate;
    c. Within 14 days after the filing of the Notice of Final Report, mail the Notice to each creditor or legatee who has not signed a receipt and/or publish Notice for those creditors or legatees whose addresses are not known; and
    d. If no objections are filed within 42 days, appear on court date to close the probate estate and enter the Order of Discharge.

11. Make final payment or distributions (may involve retitling if assets other than cash) to unpaid creditors and specific legatees;
12. Make final distributions (may involve retitling if assets other than cash) to residuary legatees; and
13. Close estate deposit and brokerage accounts.

EXHIBIT H
Communication Checklist for Death-Related Administration

1. Identify every party who is an "Interested Person" pursuant to Article I of the Illinois Probate Act or "Qualified Beneficiary" of the trust pursuant to Section 103 of the Illinois Trust Code. These parties may include, but are not limited to the following:

    a. Executor, Trustee, Representative or any other individual or entity entitled to act or currently acting in a fiduciary capacity;
    b. Known heirs, legatees and trust beneficiaries whose interests have not yet been fully satisfied and/or whose shares will be impacted by debts, fiduciary and legal fees, other administrative expenses and taxes;
    c. Known or identifiable creditors whose claims have not yet been fully satisfied;
    d. Unknown heirs and/or heirs who can be identified, but not located;
    e. Unknown creditors and/or creditors who can be identified, but not located;
    f. Illinois Attorney General (for charitable bequests and trust distributions); and
    g. Appropriate state or local government entity on behalf of unknown heirs.

2. Determine the type and breadth of communication to which each interested party is entitled:

    a. Full accounting and complete transparency in the administration process;
    b. Actual written notice by U.S. Mail or other direct form of written communication;
    c. Notice by publication; and/or
    d. Elimination of economic interest by payment of claim or satisfaction of specific legacy or beneficial interest.

3. For parties entitled to complete transparency:

    a. Send a detailed letter describing their interest in the estate or trust;
    b. Provide them with a complete set of copies of all of the governing documents; and
    c. Set them up to receive monthly or quarterly account statements from the estate and/or trust bank and brokerage accounts.

4. For parties entitled to actual written notice, but <u>not</u> complete transparency:

    a. Send them a letter describing their interest in the estate or trust;
    b. For creditors of solvent estates or trusts, confirm their identity and the amount of their claim and include payment in satisfaction of their claim or indicate that payment will be forthcoming;
    c. For beneficiaries of solvent estates or trusts, confirm the identity of the beneficiary and include payment in satisfaction of their beneficial interest or an indication as to how and when the payment or distribution will be forthcoming.
    d. For creditors of estates that are insolvent, confirm the identity of the creditor, invite them to file a claim in the Probate Court, and be prepared to account to them if their claim is disallowed or cannot be fully satisfied;

e. For beneficiaries of estates or trusts that are insolvent, confirm the identity of the beneficiary, inform them of the possible need to abate or eliminate their interest and be prepared to account to them if their legacy or beneficial interest cannot be fully satisfied.

5. For unknown heirs, unknown creditors, known heirs and creditors who cannot be located, and any other potential claimants, publish notice pursuant to the appropriate provisions of the Illinois Probate Act.

EXHIBIT I

Checklist for Dealing with Charitable Beneficiaries

1. Obtain name, address and contact information for individual representative of the charity (for larger charities, start with the planned giving office or development director);
2. Comply with all actual or written notice requirements as you would for individual beneficiaries, using the contact information from Step 1, above;
3. If the charity is a residuary taker, be prepared to fully account to them;
4. Confirm the organization's status as a qualified charitable organization (Search online at www.irs.gov or www.guidestar.org);
5. Obtain the organization's Tax Identification Number;
6. Obtain a copy of the IRS Determination of Exempt Status Letter for the charity;
7. Obtain a current Corporate Resolution or Secretary's Certificate that details names of individuals authorized to act on the charity's behalf; and
8. Notify the State Attorney General (for Illinois estates and trusts).

EXHIBIT J

Checklist of Important Dates for Illinois Decedents

1. **Within 30 days of death** - File original will with the Clerk of the Appropriate Court**;**

2. **Within 30 days after learning of executor appointment -** Present the will for probate, decline to act or show cause as to why formal probate is unnecessary;

3. **Within 14 Days after admission of will to probate –** Send out 14-day notices to all interested parties and publish notice;

4. **3-month Claims Period** – Limitations period on claims by known creditors who have received actual notice of the admission of the will;

5. **6 months from date of death** – For taxable estates, alternate valuation date or date upon which estate assets can be revalued if a lower estate tax will result;

6. **6-month probate claims Period** – Limitations period on claims by unknown creditors from the date upon which the representative first publishes notice to unknown creditors, heirs and other potential claimants (This is a critical date to explain to beneficiaries because no distributions can be made to beneficiaries from a probate estate until the 6-month statutory claims period has run and it does not start running until the estate is open and the first notice is published.)

7. **6-month Will Contest Period** – Limitations period on contests to the admission of the will to probate from the date upon which the will is admitted. Applies regardless of how soon after death the will is admitted.

8. **April 15 of year following the year of death** – Due date for filing the decedent's final income tax return (Form 1040).

9. **9 months from date of death** – For years in which there is a federal or state estate tax return due, this is the date upon which the return must be filed and the estate tax paid. Because taxable estates often have illiquid assets, it may not be advisable not to make any cash distributions prior to the filing of the federal and state estate tax returns.

10. **15 months from date of death** – Final extension date for filing of federal and state estate tax returns (if applicable);

11. **2 years from date of death** - Absolute bar on claims of creditors where no notice or publication has occurred and no probate estate was opened (Note: for individuals with standing to contest the will, the will can be admitted to probate after this date, and 6-month contest period will begin when the will is admitted even though all other claims are effectively barred.)