

## FREQUENTLY ASKED QUESTIONS ABOUT ESTATE ADMINISTRATION

### **QUESTION** - What is “Estate Administration”?

**ANSWER** – Estate Administration is a general term used to describe the entire process of administering a deceased person’s estate in accordance with a valid Will or Trust, or where no valid Will or Trust exists, pursuant to the state laws of Intestacy.

### **QUESTION** - What is “Probate”?

**ANSWER** – When a person dies leaving a valid Will, “probate” describes the legal process of “proving” the Will. The probate process will not only verify the existence and validity of the deceased person’s Will, but also provide for the appointment of a *personal representative* (also known as an *executor*) who will then carry out an inventory of the estate and pay any claims and taxes due against the estate. The personal representative is also responsible for the management and distribution of any remaining assets according to the terms of the Will.

While often maligned as a headache, in reality probate offers a solid legal framework with advantages for those who have properly prepared prior to death and who have retained skilled legal counsel. In Georgia, when one dies leaving properly drafted documents, the Probate process can be conducted without court oversight at every step. There are many steps involved in the probate process including appearing in probate court to file the Petition to Probate the Will and being “sworn in” as personal representative, gathering and valuing of the deceased person’s assets, paying valid claims against the estate, filing appropriate tax returns and paying taxes, distributing the assets according to the terms of the Will, and filing a Petition for Discharge that relieves the personal representative of liability after distribution.

At its heart, probate is a process. Like any process, if one steps back, takes an overview of the procedures involved, breaks the whole into manageable parts, and works with qualified legal assistance, then the end can usually be reached efficiently and economically.

### **QUESTION** - What happens when there is a “Revocable Trust” involved?

**ANSWER** – While the probate process involves the court filing and appointment of an *executor*, a Trust already nominates a *trustee* upon the creator’s death. While the process is private and expedited when compared to probate, many of the same activities mentioned, such as filing tax returns and valuing the Trust assets, are still required. One of the common pitfalls facing Trustees is improperly or inadequately funded trusts. Often, the deceased person has failed to place all the intended assets into the Trust prior to death. The result is that these assets remain part of the decedent’s estate, subject to the probate process.

The most common way that this situation can be dealt with during Trust administration is through

## FREQUENTLY ASKED QUESTIONS ABOUT ESTATE ADMINISTRATION

Page 2 of 4

the use of a Will with a “pour-over” provision. This provision directs that any asset not placed into the Trust during the deceased’s lifetime will be put into the Trust at death and distributed according to the terms and conditions of the Trust. However, the estate assets will likely have to go through probate before they are placed in the Trust. Once added to the Trust, the assets will be divided and distributed according to the terms of the Trust instrument.

### **QUESTION** - What is “Intestacy”?

**ANSWER** – When a person dies without creating a valid Will, or no Will can be found at their death, they are known to have died *intestate*. In such circumstances, a qualified person must petition the probate court to become *administrator* of the estate and be responsible for the management and distribution of the estate assets. The administration process is a bit more complicated than the probate process, but includes many of the same steps such as preparing an inventory of the estate, valuing the assets, paying any claims and taxes due against the estate, and managing of the distribution of any remaining assets according to state law. An intestacy can have unexpected results as to the disposition of the deceased’s assets and does not take advantage of any tax planning.

### **QUESTION** - What should you do before the initial meeting and what do you need to bring to the meeting?

**ANSWER** – Prior to the meeting, we ask that you carefully review the Estate and Trust Administration Questionnaire (ETAQ) we have provided for you. While the ETAQ may seem overwhelming, we ask that you attempt to gather and bring to the initial meeting as much of the information as possible. You will find a helpful “Items to Collect” section. Amongst other documents, you need to locate any and all estate planning documents created prior to death. This may entail a frustrating search from basement to attic or even in a bank lock box. If MENDEN, FREIMAN & ZITRON prepared the documents, there is a good chance you will find an organized binder with all applicable documents and personal papers. As the “Items to Collect” list indicates in more detail, you also need to collect all financial information available concerning the assets of the deceased person: deeds, bank statements, paper stock certificates, brokerage statements, tax returns for the three years prior to death, title documents, life insurance policies, evidence of any retirement benefits, and any other records of ownership. **DO NOT CHANGE THE TITLE OF ANY ASSETS OR FILE ANY CLAIM FOR LIFE INSURANCE UNTIL INSTRUCTED TO DO SO AS YOU MAY INADVERTENTLY FORGO CERTAIN TAX BENEFITS!**

### **QUESTION** - How much will legal fees be for Estate Administration?

**ANSWER** - Because the costs for estate administration depend greatly upon circumstance, we feel it is most beneficial to our clients for us to charge for our services on an hourly basis, with a minimum fee of \$2,500. We do not charge a percentage of estate value. If an estate

## FREQUENTLY ASKED QUESTIONS ABOUT ESTATE ADMINISTRATION

Page 3 of 4

administration matter involves few assets and a straightforward probate, it is going to cost significantly less than an estate consisting of large, complicated assets which require much more detailed administration. Discussions during your initial meeting will give you a better understanding and sense for the requirements of your particular situation.

We do charge separately for certain out-of-pocket expenses such as deed or title searches and filing and recording fees associated with real estate transfers, courier fees, overnight or other non-standard shipping costs, long-distance telephone charges, and the like. You will find our fees and billing practices are in line with lawyers who specialize in our practice areas. You can help keep overall costs to a minimum by promptly and accurately completing those tasks for which you assume responsibility.

**QUESTION** - When is payment expected?

**ANSWER** - At the conclusion of the initial meeting, we require payment of our minimum fee and, depending upon the individual circumstances, we may request that you deposit an additional retainer amount into our firm's escrow account. Or, if you decide not to engage us beyond the initial meeting, we will expect full payment for the amount of time we spent with you during this meeting. The amount of any retainer deposit will be agreed upon at the beginning of the engagement. The retainer deposit is neither a fixed fee nor an estimate for the expected fees to be incurred on your matter but rather a deposit against which we will bill our time and expenses as they are incurred beyond the minimum fee amount. If the retainer is depleted, additional time and expenses will be billed and payable within our normal monthly billing procedures, but we retain the right to request that you replenish the retainer deposit from time to time. We will refund to you, of course, any unearned portion of the retainer, less the minimum payment, at the conclusion of the matter. *To begin the estate administration process immediately, we ask that you to bring a check to the initial meeting.*

**QUESTION** – How do I pay expenses related to the Estate of the deceased person?

**ANSWER** – Payment of many expenses can (and should) be deferred until the Estate Administration process is initiated. However, some expenses, such as our minimum fee and, if applicable, a retainer deposit, must be paid before the Estate Administration begins. You should be prepared to advance your personal funds for valid expenses of the Estate and then, once established, the Estate can reimburse you for such expenses.

**QUESTION** - How long will this process take from “start-to-finish”?

FREQUENTLY ASKED QUESTIONS ABOUT ESTATE ADMINISTRATION

Page 4 of 4

**ANSWER** - It is almost impossible to say how long the process will take as it depends on many variables and the circumstances of the estate. For example, a simple probate of an estate can take as little as six months, but a more complicated administration can take years to settle.

**QUESTION** - Who should you call with questions?

**ANSWER** - We WELCOME questions! Call us at (770) 379-1450. Feel free to share your question with any member of our team and we will work collectively to get you an accurate and prompt answer. All members of our team hold your personal information in the strictest confidence. Very often our legal assistants or paralegals are capable of immediately addressing your questions. We know that losing a loved one is always difficult, but our goal is to make the estate administration process as straightforward as possible during this stressful time.

*In accordance with the disclosure rules of Internal Revenue Service Circular 230, the content of this document was not intended or written to be used—and cannot be used—for purposes of avoiding tax penalties, nor for purposes of promoting, marketing, or recommending to another party an arrangement involving any tax-related matters addressed herein.*