

Commencing a Minnesota Probate; A Probate To-do List.

1. Grieving

The first thing to do when a loved one dies, is to take care of personal family matters. Take time to grieve, and provide support to those who are grieving. The probate can wait.

2. Funeral Arrangements

Work with the funeral director to take care of funeral and burial arrangements.

A person can be designated before death to handle funeral arrangements in a document known as either:

- ◆ a health care declaration,
or
- ◆ a health care directive.

Alternatively, funeral arrangements can be made before a decedent's death, or the funeral director can assist the family with funeral arrangements after a decedent's death.

3. Reading of the Will

Contrary to popular belief, there is generally no "reading of the Will" in the attorney's office or anywhere else. Usually, family members know that contents of the Will, if there is one.

However, those persons who do not know the contents of a Will will find out soon enough when it becomes a public document upon filing.

4. Obtain a Death Certificate

The funeral director will obtain the decedent's death certificates, and usually send them out to the person handling the funeral arrangements.

The death certificate will contain certain information that the Probate Attorney will need in order to prepare the documents necessary for the probate proceeding.

5. Schedule an Initial Appointment with the Probate Attorney

After receiving the death certificates - about ten days after the funeral - contact a Probate Attorney, such as **Gary C. Dahle**, at **763-780-8390**, or ***gary@dahelaw.com*** - in order to schedule an appointment to discuss the probate process.

The Probate Attorney will require the following documents and information:

- A. A copy of the **decedent's death certificate**;
- B. The original of the decedent's **Will**, if there is one;
- C. The **names and addresses** of all of the decedent's closest relatives. The Probate Attorney will determine which of the decedent's relatives must be provided with notice of the probate proceeding;
- D. If there is a Will, the names and addresses of all of the persons:
 - ◆ who are nominated as personal representative(s) in the Will,
and
 - ◆ who are scheduled to receive property from the decedent's probate estate pursuant to the Will;
- E. To the extent that information is available regarding the decedent's assets and liabilities, provide such information to the Probate Attorney, including:
 - ◆ the value of the decedent's assets and liabilities,
 - ◆ the identity of the persons or institutions holding the decedent's assets,
and
 - ◆ the identity of the persons or institutions to whom the decedent owed money at the time of death.

6. Schedule a Follow-up Appointment with the Probate Attorney

After the Probate Attorney has obtained the necessary information from the client at the initial appointment, the Probate Attorney will need some time in order to prepare all of the probate documents required in order to commence a probate proceeding.

Thereafter, the client will need to return to the Probate Attorney's office to:

- ◆ sign the documents which require the client's signature,
and

- ◆ provide the Probate Attorney with sufficient funds to start the probate process.

The funds required to start the probate process include the following:

- A. Probate Court Filing Fee.** The fee payable to the probate court in order to commence a probate proceeding may vary from county to county, but currently is more than several hundred dollars.
- B. Cost for publishing notice of the probate proceeding.** Both the federal and Minnesota constitutions provide that no person shall be deprived of property rights without due process of law. Publication of a notice of the commencement of a probate proceeding is part of that due process protection. This fee - payable to the legal publisher of the probate notice - may vary from county to county, but is usually over one-hundred dollars.
- C. Initial legal fees.** The Probate Attorney may require payment of some of his or her legal fees in advance in order to commence the probate proceeding. The amount of the initial legal fees will vary from attorney to attorney, depending on the extent of his or her experience, and the cost structure of his or her office.

Commencing a Minnesota Probate; Types of Probate Procedures.

There are essentially two types of probate commencement procedures in Minnesota:

- 1. Formal proceedings** - a court process which requires the signature of a judge;

and
- 2. Informal proceedings** - a non-court process which only requires the approval of a non-judicial officer known as a probate registrar.

The terms “formal” and “informal” refer to the type of procedure used:

- ◆ to appoint a personal representative to handle the decedent’s affairs,
and
- ◆ to accept a Will for probate.

The filing fee for either procedure is the same.

Formal Appointment

A Formal Appointment procedure is commenced by the Probate Attorney filing a **petition** with the court on behalf of a **petitioner** requesting that a judge :

- ◆ make a determination as to:
 - the heirs of a decedent,
 - and
 - the validity of a Will, if any,
 - and
- ◆ appoint a personal representative.

A Formal appointment procedure usually, but not always, requires an appearance by the petitioner and his or her attorney before a judge in a courtroom. However, county practice in this area varies significantly:

- ◆ Some counties always require an appearance, while
- ◆ other counties do not require an appearance if no one is opposed to the petition.

To the extent that an appearance in court is required by county practice, a Formal appointment procedure will usually cost more money than an Informal appointment procedure because of the time involving in attending the hearing.

However, commencing a probate proceeding pursuant to a Formal appointment procedure provides the petitioner with access to the judge later on if a judge's signature is required on matters subsequent to the appointment of a personal representative.

In some counties, if a probate proceeding is commenced informally, but a judge's signature is required in order to approve a Final Account with respect to the manner in which the personal representative handled the estate:

- ◆ a second filing fee must be paid,
- and
- ◆ a second publication of the notice of commencement of the probate proceeding must be made.

A Formal appointment procedure may be required in certain situations, such as when the estate is likely to be insolvent - which occurs when liabilities of the estate exceed estate assets.

Informal Appointment

An Informal appointment procedure is commenced by the presentation of an **application** prepared by the Probate Attorney on behalf of an **applicant** to a non-judicial officer known as a **probate registrar**, with respect to:

- ◆ the appointment of a personal representative,

and

- ◆ the acceptance of a Will for informal probate, if there is one.

In some counties, the Probate Attorney is required to appear in person before the probate registrar. However, in most counties, the Probate Attorney submits the required probate documents to the probate registrar by either U.S. mail, or courier service, and no personal appearance is required.

Commencing a Minnesota Probate; Notice Requirements

Regardless of which appointment procedure is used, the applicant or the petitioner must give notice of the probate proceeding to all “interested persons”.

There are two forms of notice required:

1. **Published notice** - publication of notice of the commencement of a probate proceeding in a legal newspaper in the county in which the probate proceeding is being handled,

and
2. **Personal notice** - by either:
 - ◆ sending a copy of the notice of the commencement of a probate proceeding to all “interested persons”,

or by
 - ◆ personally delivering such documents to the interested persons.

Both the published notice and all personal notices must be provided within certain legally required time frames.

The legal newspaper publisher will provide an affidavit to the court when publication of the notice has been completed. However, it is up to the Probate Attorney to ensure that the published notice was provided within the legally required time frames.

The Probate Attorney will also provide an affidavit to the court attesting to the completion of delivery of all personal notices.

If all of the legally required notices have not been provided in a timely manner,

- ◆ a judge in a Formal appointment procedure will suspend the hearing, and reschedule it to another day, in order to allow the Probate Attorney sufficient time in which to provide all legally required notices;

and

- ◆ a probate registrar will not issue any “letters of authority” for the applicant to act as personal representative until all of the legally required notices have been provided.

“*Interested persons*” entitled to timely notice of the probate proceeding include:

- ◆ all of the decedent’s “heirs” as determined under Minnesota law,
- ◆ all persons entitled to receive property under the decedent’s Will, if any,
- ◆ all known creditors of the decedent’s estate,

and

- ◆ all persons who have filed a “*demand for notice*”.

Experienced creditors - such as hospitals, collection agencies, and county medical assistance offices - routinely file **Demands for Notice** in probate court because they believe that such demands will better ensure that they will be paid on any claims they may have against the decedent’s estate.

The practical effect of anyone filing a **Demand for Notice** with respect to a decedent’s estate is that the Probate Attorney will be required to provide the demandant with 14 day advance notice of either the applicant’s or the petitioner’s intention to file any document with the probate court.

While the imposition of a 14 day delay in filing documents with the court is not a great hardship in itself, it does add to the paperwork burden, and expense, of administering an estate.

Commencing a Minnesota Probate; Duties of Personal Representatives.

The duties of a personal representative once he or she has been appointed by either a judge, or by a probate registrar, include, but are not limited to:

- ◆ taking inventory of the decedent’s assets and reporting the same to the persons who are legally interested in the estate;
 - ◆ converting into cash the decedent’s assets which are not specifically reserved by a Will for any particular person;
 - ◆ filing all tax returns with respect to the decedent and his or her estate, and paying all required taxes;
 - ◆ paying all of the decedent’s debts, to the extent that there is sufficient assets to do so,
- and
- ◆ distributing any assets remaining after the payment of the decedent’s taxes and debts to the persons entitled to such property, either pursuant to the decedent’s Will or state law.

To the extent that an estate will not be able to pay all of the decedent's debts in full, the personal representative should not pay any of the decedent's debts without a court order addressing how much each of the creditors are entitled to receive.

The payment of unpaid debts is subject to a ranking system, with higher priority debts being entitled to receive payment in full before lower priority debts are entitled to be paid.

Commencing a Minnesota Probate; Affidavit of Collection

Sometimes, the appointment of a personal representative is not required. For example, if the total value of the probate estate does not exceed \$20,000.00, the probate assets can be collected pursuant to an **Affidavit of Collection**, without the appointment of a personal representative.

The requirements for collecting property pursuant to an **Affidavit of Collection** include the following:

Thirty days after the death of a decedent,

(i) any person indebted to the decedent,

or

(ii) any person having possession of tangible personal property or an instrument evidencing a debt, obligation, or stock, belonging to the decedent,

shall make payment of the indebtedness, or deliver the tangible personal property or instrument evidencing a debt, obligation, or stock, to a person claiming to be entitled to such property, upon being presented with:

♦ a **certified death record** of the decedent

and

♦ **an affidavit, prepared in duplicate**, made by or on behalf of the person claiming to be entitled to the property,

stating under oath - among other things - that:

(1) the value of the **entire probate estate**, determined **as of the date of death**, wherever located, less liens and encumbrances, **does not exceed \$20,000**;

- (2) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction;
- and
- (3) the person making the claim is in fact entitled to such payment or delivery of the property.

There is no court filing fee involved in the use of an **Affidavit of Collection**, and no publication or other notice requirements.

Commencing a Minnesota Probate; Summary Administration

In a situation where the decedent's only "probate asset" was his or her homestead, the appointment of a personal representative may also not be required pursuant to a procedure known as a "*Summary Administration*".

The only real requirement in such a situation is that the decedent's homestead pass to the decedent's descendants. If it does, then it is exempt from creditor's claims, and there is no need for the appointment of a personal representative.

In a "Summary Administration", the court will "summarily" decree the homestead to the decedent's descendants. The court's decree:

- ◆ will be filed in the county real estate records,
- and
- ◆ will be effective to transfer title to the homestead from the decedent's estate to the decedent's descendants.

The filing fees and the notice requirements with respect to a Summary Administration are the same as for any other probate proceeding.

Commencing a Minnesota Probate; Decree of Descent

In a situation where the decedent has been dead for more than three years and no personal representative was ever appointed by either a judge or a probate registrar, any interested person (or assignee or successor of an interested person) may petition the court of:

- ◆ the county of the decedent's residence,
- or

- ◆ the county wherein any of the decedent's real or personal property is located,

in order to determine the owner of such property, and to decree title to such property to the persons entitled thereto, pursuant to a procedure known as a "*Decree of Descent*".

Under this procedure, there is no need for the appointment of a personal representative because creditor claims - other than claims for medical assistance benefits - cannot be filed more than three years after the death of the decedent if no personal representative was ever appointed.

The filing fees and the notice requirements with respect to obtaining a Decree of Descent are the same as for any other probate proceeding. However, the petitioner must also provide evidence to the court that there are no outstanding claims for medical assistance benefits.

Copyright 2009 - All Rights Reserved

Gary C. Dahle

Attorney at Law

2704 County Road 10
Mounds View, MN 55112

Phone: 763-780-8390

Fax: 763-780-1735

gary@dahlelaw.com

Legal Disclaimer

Information provided herein is only for general informational and educational purposes. Probate law involves many complex legal issues. **If you have a specific legal problem about which you are seeking advice, either consult with your own attorney or retain an attorney of your choice.**

Gary C. Dahle, Attorney at Law, is licensed to practice law only in the State of Minnesota, in the United States of America. Therefore, only those persons interested in matters governed by the laws of the State of Minnesota should consult with, or provide information to, Gary C. Dahle, Attorney at Law, or take note of information provided herein.

Accessing the web site of Gary C. Dahle, Attorney at Law - <http://www.dahlelaw.com> - may be held to be a request for information. However, the mere act of either providing information to Gary C. Dahle, Attorney at Law, or taking note of information provided on <http://www.dahlelaw.com>, does not constitute legal advice, or establish an attorney/client relationship.

Nothing herein will be deemed to be the practice of law or the provision of legal advice. Clients are accepted by Gary C. Dahle, Attorney at Law, only after preliminary personal communications with him, and subject to mutual agreement on terms of representation.

If you are not a current client of Gary C. Dahle, Attorney at Law, **please do not use the e-mail links or forms to communicate confidential information which you wish to be protected by the attorney-client privilege.**

Please use caution in communicating over the Internet. The Internet is not a secure environment and confidential information sent by e-mail may be at risk.

Gary C. Dahle, Attorney at Law, provides the <http://www.dahlelaw.com> web site and its contents on an "as is" basis, and makes no representations or warranties concerning site content or function, including but not limited to any warranty of accuracy, completeness, or currency.