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WHAT TO DO WHEN A LOVED ONE DIES

- **Prepare for the funeral or memorial service.** Check whether your loved one pre-planned or pre-paid his or her funeral, burial, or cremation. Ideally you should be made aware of any pre-planning prior to your loved one's passing, or at least know which funeral home he or she preferred. This information is usually not provided in a Will or a Trust, but in a separate writing left with the loved one's estate planning documents (if he or she has documents). The "legal stuff" can wait.
- **Gather Asset and Liability Information.** After the funeral or memorial service, if any, and after death certificates have been received (the funeral home assists with this service) you may wish to contact an attorney who practices in post death matters such as probate or trust administration, or with the attorney who drafted your loved one's estate planning documents, or an attorney with whom you have an existing relationship if their legal practice includes post-death administration. Take the following to the initial office appointment:
 - (1) Original Will and/or Trust (Despite what many people believe, it is rare that an individual's original Last Will and Testament is filed with the Court **prior** to death.)
 - (2) Copy of Deed to the home or Satisfaction of Mortgage document
 - (3) One or more (original) certified death certificates
 - (4) A list of your loved one's assets owned at the time of death (bank or investment statements, life insurance contracts, stocks and/or bonds, etc.)
 - (5) Copy of the property tax bill for the year **prior** to the loved one's death
 - (6) Vehicle titles (boats, cars, motorcycles, trailers, etc.)
 - (7) Credit card information (unless you are the surviving spouse) and outstanding creditors
 - (8) A list of questions for the attorney

NOTE: If you were the agent for your loved one acting under a Power of Attorney (POA), that authority ends at the death of your loved one.
- **Determine Whether a Probate Proceeding Will Be Required.** A probate proceeding is the court-supervised procedure for transferring assets from the deceased ("Decedent") person's name to the beneficiaries or heirs and is required if the decedent owned more than \$50,000.00 in value in one or more assets in his or her sole name at the time of his/her death, (**regardless of whether the Decedent signed or did not sign a Will**) **UNLESS** (a separate memo on this Website provides additional information on points discussed below):
 - (1) All assets **contain a beneficiary designation** ("POD" payable on death or "TOD" transferrable on death). Your loved one's bank and financial/investment advisor or company can advise whether these POD or TOD designations are on the assets. For real estate, if you cannot find a Transfer on Death Deed to your loved one's property or any other Deed conveying title to you or someone else, the Register of Deeds office at the

County where the property is located can advise if a TOD or other Deed exists as a recorded document in their office. **NOTE:** if you are a surviving spouse or TOD beneficiary on real estate, appropriate forms must be completed and filed [see below at (2)] with the Register of Deeds office (Termination of Decedent's Interest). Because an online Wisconsin Transfer Return must be prepared, people often seek the assistance of an attorney. Be aware that the Register of Deeds cannot provide legal advice but can assist with the documents required to remove your loved one's name from the title. They will not, however, prepare the required transfer return. **PRACTICAL ADVICE:** Banks are typically reluctant to provide **any information** because they are trained to request "Domiciliary Letters" or "Court Letters". If the assets are valued at less than \$50,000.00, there is no probate requirement, and thus no Personal Representative or Executor is appointed and no "Domiciliary Letters." You will need to be assertive or seek the advice of legal counsel.

- (2) All assets not otherwise designating a beneficiary (POD or TOD) are **owned jointly** with another person, whether a surviving spouse, significant other or domestic partner, or adult child or children. If the property is real estate, a "Termination of Decedent's Interest" must be completed and recorded with the Register of Deeds office as noted above. For cash and Investment accounts, the decedent's name can be removed from the account. Vehicles can be re-titled in the surviving joint owner's name at the DMV (regardless of whether title is held between spouses as "AND" or "OR).
- (3) If your loved one died owning **less** than \$50,000.00 in assets, an Affidavit of Transfer Under \$50,000.00 can be used for the transfer of real estate or other assets to the surviving spouse or designated beneficiaries. While this form is available online, it is wise to seek legal assistance so that the property in question is properly transferred to you. As an example and for purposes of illustration only, this type of Affidavit can be used if your loved one owned the following assets in his or her sole name at the time of death:
 - a) Vehicle (Value: \$10,200.00).
 - b) Bank Account(s) (Total Value: \$25,000.00).
 - c) Boat (Value: \$5,500.00).
 - d) The Affidavit would be provided to DMV (for the vehicle), the DNR (for the boat) and the bank(s). The Affidavit can be used because the total property left in the decedent's name in the above example was valued at \$40,700.00, which is below the \$50,000.00 probate threshold.
- (4) All assets of the decedent are titled in ("owned by") the name of their Revocable or Irrevocable Trust at the time of death, or contain beneficiary designations of "POD" (for cash assets) and "TOD" (real estate and investment accounts) naming the Trust as beneficiary. You will know whether assets are titled in the name of the Trust by reviewing bank and investment statements and property tax bills for real estate.

PRACTICAL ADVICE: If you don't know what the Decedent owned at the time of death, once mail is forwarded to you watch for bank and investment account statements, life insurance policy premium payments in the Decedent's check register, or check last year's personal income tax return.

- **Filing the Original Will.** Even if no probate is required, surviving spouses or family members are required to file the **original** Will (if any) with the Register in Probate office in the county where the decedent resided for at least six months prior to his or her death. You should make a photocopy of the document prior to filing the original with the Probate office. An “Affidavit of No Probate” typically accompanies this filing. The Register in Probate office in the county of death may assist you with this if you are not seeking the advice of an attorney.
- **Legal Counsel.** If a probate proceeding is required, it is wise to seek the advice of legal counsel because there are numerous forms requiring completion and a procedural timeline which can be complicated. In addition, if you do not retain an attorney to assist you, a CPA should be consulted because if there is a probate estate administration or trust administration, there are income tax filing requirements after the person dies. Not all CPAs prepare 1041 income tax returns (that is, tax returns for a trust or an estate).
- **Income, Death and Inheritance Tax.** An individual income tax return (Form 1040) must be prepared for the year of death of your loved one presuming he or she meets the filing requirements. You can consult with a CPA or income tax return preparer. There is no inheritance tax in the State of Wisconsin, and currently no State death tax. If your estate is valued at less than \$5.25 million dollars (double that for spouses), no federal death tax exists.
- **Bank and Investment Accounts.** Assuming there are no beneficiary designations on cash and investment account assets of the Decedent, accounts are “frozen” because no one has legal authority to issue checks or make deposits or withdrawals from these accounts until a Personal Representative is appointed by the Court. If a probate proceeding is required, this can only be accomplished after submitting the appropriate forms to initiate probate.
- **Notify Creditors.** It is wise to contact the decedent’s creditors to let them know that if there is a probate proceeding required, no one has legal authority to pay outstanding bills until formally appointed by a Court. If there is no probate proceeding required, you might still want to contact the creditor to advise that you are in the process of managing the decedent’s post-death matters and will attend to payment as soon as you have the ability to do so.
- **Probate: Informal or Formal.** Most of the time, informal probate can be used to administer an estate. Informal means there are no Judges or court appearances required, and the probate is managed through the Register in Probate office. There are certain instances when informal probate cannot be used, and in that event, formal proceedings require judicial involvement.
- **Forwarding Mail; Utility and Cable Company Notifications.** If a probate proceeding is required, you do not have legal authority to forward mail to a different address until you are formally appointed as P.R. by the Court or Probate Registrar’s Office. Most of the time, however, you can notify the utility and related companies to change the account into a different name (ex: the surviving spouse’s sole name, if married) or to forward bills to a new address, or discontinue service.
- **Maintain Accurate Records.** Whether or not a probate proceeding is required, it is wise to keep accurate information about all post-death issues immediately following the decedent’s death,

including specific details about deposits or withdrawals, copies of receipts, bank, investment, and creditor statements, and the like.

- **Medical Assistance.** If the Decedent received Medical Assistance (“Medicaid” or “Title 19”) at or prior to his or her death, Department of Health Services (DHS) has the legal right to recover **all** money remaining in the Decedent’s name at the time of death. Thus, beneficiaries should retain the money in the Decedent’s existing bank account, presuming the bank will allow it if there is no activity on the account, or use an Affidavit of Transfer Under \$50,000.00 to release the funds. Before the bank will release the funds in that situation, the Affidavit of Transfer requires you to send a copy of it via certified mail return receipt requested to DHS in Madison, which puts them on notice that they are entitled to receive whatever money is available after payment of funeral expenses. The DHS estate recovery laws are **very aggressive** and DHS will require detailed verification of the Decedent’s assets at date of death, plus any additions since date of death (ex: insurance refunds) and all expenses paid after date of death. Funeral, burial, or cremation expenses are acceptable, as are payment of attorney fees if you consult with one, but the State of Wisconsin DHS maintains that they are a priority creditor ahead of all others. In short, loved ones should **NOT** spend any of the Decedent’s money because DHS may request that it be paid to them.