



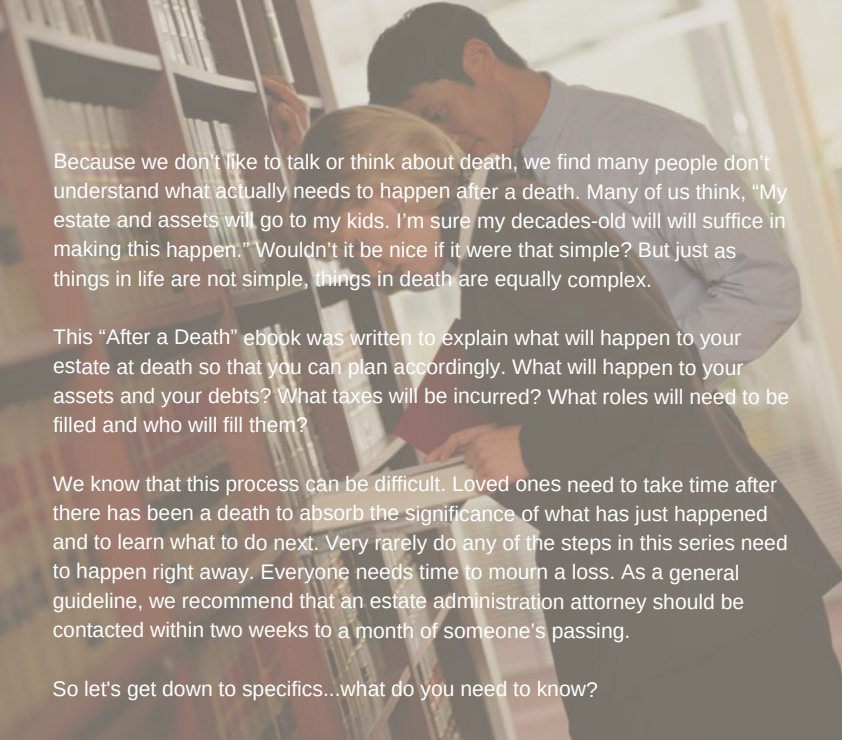
BORCHERS TRUST LAW
Borchers Trust Law Group, P.C.



WHAT TO EXPECT

AFTER A DEATH

ADMINISTERING AN ESTATE

A man and a woman are looking at a book on a library shelf. The man is leaning over the woman, and they both appear to be reading or examining the book. The background is a blurred library with many bookshelves.

Because we don't like to talk or think about death, we find many people don't understand what actually needs to happen after a death. Many of us think, "My estate and assets will go to my kids. I'm sure my decades-old will will suffice in making this happen." Wouldn't it be nice if it were that simple? But just as things in life are not simple, things in death are equally complex.

This "After a Death" ebook was written to explain what will happen to your estate at death so that you can plan accordingly. What will happen to your assets and your debts? What taxes will be incurred? What roles will need to be filled and who will fill them?

We know that this process can be difficult. Loved ones need to take time after there has been a death to absorb the significance of what has just happened and to learn what to do next. Very rarely do any of the steps in this series need to happen right away. Everyone needs time to mourn a loss. As a general guideline, we recommend that an estate administration attorney should be contacted within two weeks to a month of someone's passing.

So let's get down to specifics...what do you need to know?

- 1** What Happens to Your Assets?
- 2** What Happens to Your Debts?
- 3** What Roles Need to be Filled?
- 4** What Taxes Should be Filed?
- 5** After a Death - Glossary



Let's start with the positive side of the balance sheet: your assets.

Will my assets have to go through probate (and what is probate anyway)?

"Probate" is a court process that legally declares your will (if you had one) as valid, determines your heirs or devisees, appoints a Personal Representative, and administers the estate. Probate is only required if you owned assets in your own name that do not pass to someone else automatically.

What happens to my accounts?

Your checking, savings, and investment accounts will pass to the joint owner if there is one. (There are certain exceptions to this rule though.) Or, if you designated a person or trust as a "Transfer on Death" or "Payable on Death" beneficiary, then the account will transfer to that beneficiary. The beneficiary should get in touch with the financial institution. If there is no beneficiary named, it will become probate property and pass according to your will, or, if there is no will, according to the intestacy laws of Massachusetts.

Retirement accounts, or IRAs, often have a beneficiary named who receives the account upon your death. The beneficiary should get in touch with the financial institution. If the named beneficiary is deceased, the institution will have its own rules on what happens to the account.

Life insurance almost always has a named beneficiary. The beneficiary should get in touch with the life insurance company to begin the claims process.

What happens to your personal property?

If you had a will, it will determine who receives your personal property like jewelry, cars, clothes, and furniture. If you did not have one, your personal property will pass to your heirs. Often people choose to donate whatever the family does not want (like clothes and furniture).

What happens to your real estate?

This depends on how you owned your real estate and other terms in your deed. This is often the most complicated question to answer and it has significant legal ramifications. If you owned it individually, it will pass according to your will, or to your heirs if they were intestate. If there is a co-owner, the specific language in the deed will determine whether the co-owner now owns all the real estate, or if a portion of the real estate will pass according to the will or to the heirs. The three most common ways two or more persons may hold title to real estate are: Tenants in Common, Joint Tenants, or as Tenants by the Entirety.



When people think about their estate, they tend to think of the assets they will pass on, like their stamp collection, a home or vacation property, and of course, their money.

However, it's important to consider your whole balance sheet – including your debt – when thinking about what you'll leave behind for your loved ones when you die.

Whether or not your family will be saddled with your debts when you die depends on the type of debt and who else may already be responsible for it.

The most common debt we come across when someone dies is credit card debt. If the credit card belonged to the decedent, and the decedent alone, only their estate is responsible for paying it. If there are assets in the estate to pay it, and the creditor goes through the correct process, then it will be paid from the estate. However, there are statutory protections in place to ensure that any debt won't eat up all of someone's estate, and in some cases it is possible to avoid paying it altogether.

If someone was a co-account holder on a credit card, then the debt no longer belongs to the decedent, but the debt now belongs fully to the surviving co-account holder. An authorized user is different from a co-account holder. Both can use the credit to make purchases, but an authorized user does not take on the debts when someone passes away.

Debts like car loans and mortgages are treated differently because they are "secured" debts. Meaning, if you don't make the payments, the bank has something to come and repossess, e.g., a car or a house. Typically whoever is getting the thing that the debt is secured by will also need to take on the debt attached to that item. If you leave your car to your children, and you still owe money on the loan, then your children will need to enter into a new agreement with the finance company and will have to start making those payments. The same is true with real estate.

A well thought out estate plan considers your debts as well as your assets, and mechanisms can be put in place to make sure your loved ones are left with something, rather than your debt when you die.

**It's important to consider your whole balance sheet
- including your debt - when thinking about what
you'll leave behind.**



There are many roles that need to be filled when settling an estate. Here are the key roles and their responsibilities that need to be filled after a death.

Who is in charge of this process?

The personal representative (formerly known as executor) appointed by probate court will be in charge of all probate assets. This is true whether or not you had a will. They are responsible to account for your assets and they act as personal representative to your heirs or devisees.

If you had a trust, the trustee is in charge of the assets in the trust, as well as the assets the personal representative transfers to the trust via probate. The trustee is also responsible to account to the beneficiaries of the trust. Both a personal representative and trustee are responsible for hiring attorneys and other professionals to advise and assist them on the administration.

What are the roles of beneficiaries, devisees, and/or heirs?

The role of beneficiaries, devisees, and/or heirs is to stay informed on the administration of the estate or trust. The personal representative and trustee may have certain duties to keep the individuals informed as to the status of the administration. They also owe these individuals a high standard of care to manage the estate and trust assets well, in accordance with the law, will and/or trust. Through careful review of accountings, a beneficiary, devisee, or heir can ensure the personal representative and trustee are adhering to their duties.

What is the role of the attorney and other advisors?

Usually the attorney represents the personal representative and/or trustee. Their role is to advise the personal representative and/or trustee on how to adhere to the duties they owe the beneficiaries, devisees, and/or heirs. They will also usually prepare probate court pleadings and other legal documents to keep the administration moving forward. They also typically prepare estate tax returns when required. A CPA usually prepares income tax returns for the decedents, estate, and/or trust. A financial advisor can advise the personal representative and/or trustee on how to hold assets before they are distributed.

How long does it take these key players to settle an estate and how much does it cost?

From the date of death, it typically takes over one year to fully administer an estate. This is because creditors of the decedent have one year from the date of death to file their claims against the decedent. Because creditors have one year to file their claim, we do not recommend that the personal representative fully distribute the assets until the one year has passed. There are ways to avoid paying all of the creditors if the assets cannot cover all of the debts. Otherwise the personal representative may be responsible to pay the creditors themselves. The cost can vary significantly, but in our experience probate can cost anywhere between \$1,000 to upwards of \$100,000. That is a huge range, but once your attorney gets all the information, they should be able to narrow that down. Most cases end up costing between \$8,000-\$15,000.

What
taxes
should be
filed?



We all know Benjamin Franklin's famous quote, "In this world, nothing can be said to be certain, except death and taxes."

This 18th century mantra holds true today. We all face these two certainties in our lifetime. But the reality is, even after your death, taxes endure.

So what taxes need to be filed after a death?

Income Tax Return:

A final income tax return may need to be filed for you, and it may be necessary for your estate and your trust (if you had one) to file their own income tax returns. You (as the decedent) and your estate are separate taxable entities. Whether your estate or trust will need to file income tax returns will depend on the type of assets you owned, what your will or trust says and what your personal representative or trustee does with them after your death. To learn more about whether estate or trust income tax returns are required, visit the IRS page on Deceased Taxpayers: Filing the Income Tax Return.

Massachusetts Estate Tax Return:

An estate tax return may also need to be filed. In 2019, if a Massachusetts decedent's taxable estate exceeds \$1 million, an estate tax return will need to be filed. Keep in mind that even if your assets are below that mark, you may need to file Massachusetts estate tax returns, if you made taxable gifts.

Federal Estate Tax Return:

In 2019, a federal estate tax return will need to be filed if your taxable estate exceeds \$11.4 million, although there are good reasons to file one even if the estate does not exceed this amount.



"In this world, nothing can be said to be certain, except death and taxes."

Benjamin Franklin

One reason is that filing a federal estate tax return would allow your spouse to shield more than \$11.4 million from estate taxes. Another reason for filing is that the \$11.4 million is set to revert back to \$5 million (plus inflation) in 2025. Also, filing even if you are below the \$11.4 million mark could help clear up capital gains issues in the future when and if your heirs sell your assets.



After a Death Glossary

Use this glossary to better understand common terms you will encounter when administering an estate after a death.

Assets: Can describe anything the decedent owns, including cash, bank accounts, cars, real estate, collectibles, etc.

Beneficiary: The persons, trust or entity designated to receive an asset or death beneficiary after the account holder dies.

Claim: What a creditor will file against the estate in order to claim what the decedent owned them.

Court: The probate court located in county the decedent resided.

CPA: Certified Public Account who, among a large variety of roles, usually assists with income tax returns, accounting, and financial organization.

Creditor: Anyone to whom the decedent owed money (e.g., credit cards, accident victim, landlord).

Debt: Anything the decedent owes, like a mortgage, credit card debt, or a court judgment against them.

Decedent: The individual who has died.

Devisee: Someone who has been left something in a decedent's will.

Estate Tax: The tax owed on the decedent's taxable estate.

Federal Estate Tax Return: A snapshot of the decedent's taxable estate on their date of death filed with the IRS due nine months after date of death. A tax is only due if the decedent died with a taxable estate over \$11.4 million (in 2019).

Financial Advisor: Provides financial advice to people based on their financial needs and goals over the course of their life.

Heir: Individuals who inherit property if the decedent did not leave a will. They are defined by statute and interested parties in the estate until a will is admitted to probate.

Income Tax: Tax on income earned by the decedent in the final year of life, or their estate or trust during administration.

Intestate or Intestacy: Dying without a will.

IRA: An Individual Retirement Account that allows individuals to direct income to an account that will defer taxes on the income until it is withdrawn.

Joint Owner: Anyone who co-owns property with the decedent, like an account or real estate.

Joint Tenancy: A way to hold property with a joint owner so that it will automatically pass to the joint owner upon death, and not through probate.

Life Insurance: An agreement that pays a death benefit to the designated beneficiaries when the insured individual dies in exchange for premiums paid during the decedent's life.

Massachusetts Estate Tax Return: A snapshot of the decedent's taxable estate on their date of death filed with the Massachusetts DOR due nine months after date of death. A return is only required to be filed if the decedent's taxable estate (plus lifetime taxable gifts) exceeds \$1 million (in 2019).

Personal Property: The items that belonged to the decedent like silverware, furniture, clothes, collectibles, etc.

Personal Representative: The individual appointed by the probate court to administer the estate of the decedent.

Probate: the court process legally declaring the decedent's will (if any) as valid, determining their heirs or devisees, appointing a personal representative, and administering the estate.

Probate Property: Property which belonged to the decedent and was held in their individual name.

Real Estate: Property like land or a building.

Retirement Account: An account used to set aside savings for retirement like an IRA, 401k, or similar plans.

Taxable Gift: A gift to any one individual (other than a spouse) that exceeds the annual exclusion amount in the year the gift was made (\$15k in 2019).

Taxable Estate: The total value of the decedent's estate less debts, expenses, and deduction.

Tenants in Common: A way to hold property with another where you each own an equal share which can be individually sold or devised in a will or trust. They each have a right to use and occupy the whole property.

Tenants by the Entirety: Only available to married couples, it is a way to co-own property with your spouse so that the decedent's interest will automatically pass to the surviving spouse.

Transfer on Death (TOD) or Payable on Death (POD): Adding a TOD or POD beneficiary to your account ensures it passes to that person upon death.

Trust: A relationship where someone (donor) asks another (trustee) to hold property for a third person (beneficiary). All three roles may be filled by the same person in certain situations.

Will: The document that governs what should be done with a decedent's property that was held in their own individual name and must pass through probate. Is also used to appoint a guardian for minor children and a personal representative.

Need help with this process?

Borchers Trust Law offers a service called TrustCase™, that administers and settles your estate through a collaboration among family, trustees/ executors and lawyers.

For more information visit: BorchersLaw.com/trustcase

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