# Dealing with Decedent's Estates

## Executors, Administrators, and Personal Representatives

When a person dies, the assets and obligations existing at the time of death are known as his or her "estate." If the person (known as a "decedent") died with a valid will, the estate is known as a "testate" estate. The will ordinarily identifies a person, or persons, whose task is to settle the debts of the decedent, and to distribute the decedent's assets, in accordance with the terms of the will and the requirements of law. This person may be a relative of the decedent, an attorney or accountant, or any other competent adult. The person with this task is known as an "executor." The person identified in the will does not automatically obtain the rights of an executor as soon as the decedent dies. Rather, after the will is submitted to the court for probate, the person must meet certain requirements (primarily taking an oath and, perhaps, giving a bond) to qualify as executor. The probate court then issues what are known as "letters testamentary," which show that the qualified person has the authority to act as the executor of the decedent's estate.

If the decedent died without a valid will, his or her estate is known as an "intestate" estate. On request, the probate court will appoint a person to settle the debts of the decedent, and to distribute the decedent's assets, in accordance with the law. This person is known as an "administrator." The court issues what are known as "letters of administration," which show that the appointed person has the authority to act as administrator of the estate. Again, the person's power as administrator does not commence automatically upon death of the decedent.

Sometimes, the term "personal representative" may be used when dealing with the estate of a decedent. This is a broader term that can mean either an executor or an administrator.

## Ownership of Estate Property

Once the personal representative (executor or administrator) is qualified, and letters testamentary or letters of administration are issued, the personal representative is entitled to possession of, and holds title to, all estate property. The property is considered to be held for the benefit of the persons who will inherit from the estate. Title to the property does not pass out of the personal representative until he assents to such a transfer. In other words, the fact that a person is designated to inherit a particular property does not mean that the person actually "owns" that property as soon as the decedent dies, or even upon the qualification of the personal representative.

The personal representative's assent to the transfer should be documented in writing. For real property, a deed (usually referred to as a "deed of assent") describing the property should be used. For personal property, an instrument such as a bill of sale describing the property should be used.

## Powers of the Personal Representative

While the personal representative is entitled to possess estate property and manage the estate's affairs, the powers of the personal representative are not unlimited. Lenders should note that the general powers granted to personal representatives only include the ability to obtain loans (and grant estate property as collateral for loans) where the loan is to be used for payment of taxes. The personal representative is not authorized to obtain loans for other purposes, such as repayment of non-tax debts, or for continuation of the estate's business operations. If the personal representative is not authorized to obtain the loan, any promissory note or similar instrument he may give in relation to the loan will not be binding on the estate. The note will just be a personal obligation of the individual that signed it (*i.e.*, the personal representative).

Of course, this does not mean that a personal representative can never effectively obtain a loan for purposes of administering the estate. While the general powers granted by law to a personal representative do not include the power to obtain loans for non-tax purposes, a personal representative can be granted such power by the terms of a valid will or by order of the probate court. There may be specific language granting the personal representative the authority to borrow money, or there may be language granting the personal representative all powers of a trustee under Georgia law (with, perhaps, a statutory reference to O.C.G.A. § 53-12-261). Where the personal representative is granted the powers of a trustee under Georgia law, the personal representative is given authority to renew existing loans, and to obtain additional loans for purposes of paying the debts of the estate.

When refinancing debts of the decedent or making new loans for purposes of the estate, the lender must be sure that the personal representative has authority to take that action. Again, this authority may come from the terms of the will, or from an order or similar document issued by the probate court. If the bank and personal representative are agreeable as to a refinance or new loan, but the representative does not have sufficient authority, the representative must request and obtain authority from the probate court before the loan is made. The authority must be documented, and should be carefully reviewed by the bank. Otherwise, the estate may not be obligated on the new loan.

**Special Statutory Rule for Accounts of Intestate Decedents**

As described above, the general rule is that title to all property of the decedent passes to the personal representative, and not directly to the heirs or beneficiaries of the decedent. However, the Georgia legislature recognized that in many cases where a bank customer dies without a will, the customer's family may not find it cost-efficient to have the court appoint an administrator and conduct a formal administration of the debts and assets of the estate. To help in such a situation, the legislature passed a law – codified at section 7-1-239, Official Code of Georgia Annotated – which permits a bank to pay up to $10,000 of the decedent's account balance directly to certain heirs of the decedent. The rule only applies where the customer dies without a will. If the customer has a will, then the bank should only make payment from the decedent's account at the direction of a properly appointed executor or at the direction of the court.

Where the rule applies, the bank is permitted to pay the account balance of not more than $10,000 to the following persons:

1. to the surviving spouse of the decedent;
2. if no surviving spouse, then to the children of the decedent, pro rata;
3. if no surviving spouse or children, then to the parents of the decedent, pro rata; and
4. if no surviving spouse, children or parents, then to the siblings of the decedent, pro rata.

Before making payment, the bank should require the payee to provide a sworn affidavit describing his relationship to the decedent, and swearing that he is unaware of any other corresponding claimant to the deposit (for example, stating that the decedent has no surviving spouse and the payee is the only child of the decedent). (*See* Appendix A for a sample Affidavit). Where the bank obtains a proper affidavit and makes payment pursuant to O.C.G.A. § 7-1-239 accordingly, it is protected from liability to heirs, distributes, creditors and other persons for the account balance paid out.

Again, this rule only permits the bank to pay up to $10,000 of the account balance. If the balance is greater than that amount, the bank should only pay out $10,000 and, then, await direction from a properly appointed personal representative, or an order of the court, as to the remainder of the balance.

O.C.G.A. § 7-1-239 further provides that when any decedent dies intestate as a Georgia resident and another person is left in possession of monies belonging to the decedent, which monies do not exceed $10,000, the person may deposit the monies into a savings account in the name of the decedent in a financial institution located in the area of decedent's residence, such that the proceeds may be paid out by the institution in accordance with O.C.G.A. § 7-1-239.

Bear in mind that this special rule for accounts of intestate customers continues to recognize the contractual right of setoff a bank or financial institution may have against the contents of a deposit account upon the death of a customer. Additionally, the special rule for accounts of intestate customers is, by law, subject to the legal rules governing joint and payable-on-death accounts. Thus, where by its terms an account is payable to an identified person (other than the customer) upon the customer's death, payment should not be made to the heir of the decedent as stated in the rule for intestate customers. Payment should be made in accordance with the terms of the account. Similarly, where the account is held jointly with rights of survivorship (meaning the surviving accountholder takes ownership of all funds in the account), the bank should not make payment to the decedent's heir as stated in the rule for intestate customers. The surviving accountholder is considered to have superior rights to the funds.

**Safe-Deposit Boxes**

The procedures on death of a safe depositor are set forth in O.C.G.A. § 7-1-356, which provides that upon satisfactory proof of death of a safe depositor, a financial institution shall permit any person named in an order granted by the probate court having jurisdiction of such person's estate (1) to open and examine the contents of any safe-deposit box leased by the decedent or (2) to examine the property left by such person for safekeeping, in the presence of an officer of a financial institution.

In most instances, an order of the probate court will require the financial institution to deliver to the court any writing purporting to be a will of the deceased customer which happens to be located in a safe-deposit box. The order may also require any deed to a burial plot or any writing giving burial instructions to be given to the person named in the order, and require any document purporting to be an insurance policy on the life of the decedent to be given to the beneficiary named in such document. However, O.C.G.A. § 7-1-356 expressly provides that no other contents shall be removed from the safe-deposit box.

Within five (5) banking days after an order of the probate court is presented to the financial institution, the institution shall permit the person named in the order to inventory the contents of the safe-deposit, though, again, in the presence of an officer of a financial institution. Any such inventory shall be signed and the financial institution is to retain a copy of the signed inventory, and the signed inventory may be filed with the probate court. When a financial institution acts in accordance with an order of the probate court concerning a safe depositor, the institution is absolved from liability from actions, claims, and demands by heirs, distributes, creditors, administrators, executors, and any other persons.

Upon presentation to a financial institution of a certified copy of letters testamentary or letters of administration, as the case may be, the institution must grant the personal representative access to the safe-deposit box or property in safekeeping which is in the sole name of the decedent, and permit the representative to remove the property from the safe-deposit box. Again, in acting upon documentation, satisfactory to demonstrate the necessary authority, a financial institution is relieved of liability.