NOW WHAT?

WHAT TO DO, AND WHAT NOT TO DO, WHEN SOMEONE DIES

There is a lot of confusion as to what needs to be done, what doesn't need, or even what shouldn't be done.

Almost like a built-in, reflex response, people create a "to do" list of things that they believe have to be done immediately.

The reality is that there **is very little that has to be done in the days**, if not weeks, after a person passes. In some cases, it is because clear authority or a path has not been established. Additionally, how property is presently held may not be known. Clarity of property ownership needs time before it can be known.

This guide walks through what actually needs your attention after a death, and what can wait. It applies to almost any situation. Some estates go through Probate. Many do not. We will get to that difference. For now, the early steps are the same either way.

One thing to mention at the beginning of this information: there is a process for everything. Some processes are easier than others. Some things require other things happen first. These things all take time, some longer than others. There is very little that needs to be done immediate.

That's where we start.

THE FIRST DAYS

These first steps apply no matter what comes later. Regardless of whether the estate ends up in probate or not, this is where everyone starts.

1. DO VERY LITTLE

This is the first instruction, and it is a real one: In the days immediately after someone dies, do very little. **Take a breath. Stay in the moment.** You do not need to take on everything right away.

The one thing that that needs to be dealt with is the funeral. Take the time to honor and celebrate the person who passed and work through the funeral process is enough. Beyond that, most things can wait. The estate process will still be there.

2. DON'T ASSUME YOU HAVE AUTHORITY

After a person's death, who has the authority to do what is unknown.

At death, authority granted by a Power of Attorney no longer has legal authority to take action on banking, property, or other assets. A person nominated as an Executor in a Last Will does not have actual authority until a Court validates (probates) the Will and issues proper documents to show the Executor has that authority.

One thing people want to do, and can do, with limitations, is contact credit card companies. Keep the conversation short and on point. Provide the date of death. If a death certificate is required, ask where to email a copy. Don't offer to send an original. They are expensive, and most credit card companies don't need an original.

Let them know that no probate is pending nor executor appointed. Do not give them your contact information, name, or offer to pay off a balance. They may offer a discounted pay-off "if you pay today." Don't get trapped. If they are going to get paid in the future, they are a lower priority payee. They may never get paid. They know that. That's why they make an offer to get paid sooner.

If you pay out of pocket, you may not get paid back.

3. DON'T PAY BILLS OR CREDITORS OUT OF YOUR OWN POCKET

This one is easy to get wrong, because paying bills feels like something that must be done.

However, here are some things to understand:

- Not everything may need to be paid.
- If Probate is required, there is a specific priority to make payments to parties.
- If money runs out paying higher priority claims, liens, or other required payments, there may not be money to pay you back.

As mentioned in #2, you may think you are doing a good thing by paying at a discount to save money. However, if no Probate Estate is opened there may not be a place for claims to be filed. Based on property ownership and non-probate transfers, there may be no funds to pay claims.

Under Probate Administration, if money is paid to a lower priority claimant and there are not enough funds to cover a higher priority claimant, the Personal Representative may be responsible for the shortfall.

If there are bills or claims to be paid, it is better to wait until the picture is clearer.

4. TALK TO AN ATTORNEY, AND ASK ABOUT COST EARLY

This is the step where things start to take shape. An attorney helps to determine the process or options to settle the estate.

Here is something most people don't know, and it is worth knowing before you spend any money. Most married couples in Indiana do not go through probate at all. Because of how their assets are owned, property simply stays with or transfers to the surviving spouse. No court involved. There is some cleanup later, like updating a bank account or a car title, but that is not the same as probate.

There are several processes that are used to administer a decedent's assets:

- Probate Administration.
- Trust Administration.
- Small Estate Administration.

An estate may need more than one Administration type. It all depends on how the decedent's property is held after the decedent's death. An Attorney identifies what process will be required to transfer property and to whom.

Each process has specific applications, steps, and timelines/waiting periods to follow. Be sure that the attorney explains each administration's application to your situation and process. When possible, include the other heirs or family members in this conversation so that everyone is on the same page of the process, timelines, and related expenses to complete the property transfers, i.e. closing the estate.

Speaking of expenses, one key thing to understand about working with an attorney: There is no standard fee. There is not even a standard way to determine or calculate the administration fee.

There are three basic ways attorneys set their administration fee:

- Estate Value-based fee.
- Flat Fee.
- Hourly-based fee.

WHY THIS MATTERS

The formula an attorney uses makes a substantial difference in the fee you pay. For example, attorneys' fees for a probate administration with a decedent's property valued of $500,000 may run between $4,000 to $16,000 or more even though the actually work performed is basically the same. Some attorneys include assets that are not part of the decedent's estate property in their value calculations. For example, an IRA or life insurance policy that transfers by beneficiary designation isn't part of the decedent's probate estate. However, some attorneys include it to inflate the estate value to boost the fee calculation. (in **this video** we compare fee structures).

If you call an attorney's office and ask what they charge for administration, many, if not most, will not disclose their fee. The secondary question might be "How do you calculate fees: hourly, flat, value-based?"

For more information about the details of Probate, visit our **probate site**.

As mentioned, not every estate needs Probate Administration. it. Until you know if it is needed or not, it is better to assume it might. If you assume it doesn't need Probate and later does, it is very hard to undo what happened, i.e. have people return property or get money back from bills you paid out of order (Spoiler Alert: you won't that money back.)

5. DON'T DISTRIBUTE OR PAY ANYTHING OUT YET

It is natural to want to start giving things to the people. Hold off. Until everything in the estate has been inventoried and valued, there is no way to know what the distribution should actually look like.

There is also a personal risk here for whoever is managing the estate. A personal representative - the person the court puts in charge - can be held personally responsible if they pay one party and leave a higher-priority party unpaid. Order matters. Waiting until the full picture is clear is what keeps you protected.

6. DON'T LET ANYONE TAKE OR USE PROPERTY

This is often the hardest step, because it can mean saying no to family. But no one has the authority to take, use, or remove property from the estate before the process allows it.

There will be plenty of “good reasons” for someone to take property:

- “He said I could have this when he passed.” “He said” doesn’t hold up to something written or nothing written, and still doesn’t jump ahead in the process.
- “This was mine. I let him borrow it.” Sticky, but proof of ownership or circumstances might be able to “return” it. Lacking that, it has to wait for the process.
- “My car is broken and his is just sitting there.” That seems logical. However, after someone dies, there is a very high chance a vehicle cannot be insured to drive, by anyone. Once again, it is necessary to wait for the process to play out.
- “I have a friend who is an attorney…” (equally) “I Googled it and I can take this because I am going to get it anyway.” That’s not how it works.

The reason is practical. The Estate, the Personal Representative, and the person who took or used the property can all be held responsible if that property is lost, damaged, harmed, or if someone else harmed using it. Until the process to transfer is known, it is determined there are assets in the estate to cover expenses, and the proper process is followed, it is necessary to delay distributing assets. Protecting what belongs to the estate, even when it is uncomfortable, is necessary.

7. DETERMINE THE PROCESS, THEN MOVE FORWARD

Once you have talked to an attorney, the next job is to confirm which process or processes the estate actually needs. There may be more than one.

This matters because everything after it depends on it. Once the process is settled, the required steps and the time frames become clear. Until then, it is hard to plan. After that point, it gets a lot more straightforward.

8. UNDERSTAND WHAT IS IN THE ESTATE, AND WHAT IS NOT

Here is a point that surprises many people. Even when an estate does go through probate, not everything is part of it.

Some property transfers on its own, outside of probate and outside of whatever the Last Will says. A life insurance policy or IRAs, for example, usually passes to the named beneficiary directly. That doesn't mean there is nothing to do. The beneficiary still has paperwork to file. But it is not court-involved, and that is the real distinction. Knowing which assets are in the estate and which are not tells you how much of this process actually applies.

Some other property passes by joint ownership or, in Indiana, by Payable on Death or Transfer on Death provisions. Those things are not obvious.

It takes some time and research to determine what makes up the decedent’s estate.

9. STAY ON SCHEDULE, AND KEEP EVERYONE INFORMED

Some parts of settling an estate take months. That is normal. It also means staying diligent matters, because deadlines are real and missing them creates delay.

Communication carries a lot of weight here. Let everyone involved know what the process is, what needs to happen, and where things stand, including the delays. People handle a slow process much better when they understand it.

10. FINISH STRONG

Settling an estate is a process with an end. Staying on schedule and seeing it through, all the way, is what brings it to a clean close.

It is also the practical thing to do. Finishing efficiently is the best way to keep costs down and to preserve whatever inheritance there is for the people meant to receive it.

ONE MORE THING WORTH KNOWING

If you are a surviving spouse and you have been told there is nothing you have to do right now, that is often true. The law has already moved the property to you. You are not in a rush.

But nothing is not quite the same as nothing at all. At a time of your choosing, there are a few things to take care of. A form filed with the county to update the property record. The other person's name removed from a bank account. A vehicle title updated to show you as the only owner. None of it is urgent, and none of it has to happen this month. It just helps to know it is there, so it isn't a surprise later. This is the kind of thing you may want a little support to navigate, and that is normal.

Also, you may want to update your planning documents to reflect changes in your life, family circumstances, or new ideas.

If you're not sure where you stand

If someone close to you has died and you are not sure which of these steps apply to your situation, that is a good reason to talk it through. We can help you understand what the process looks like for you, and what it doesn't include. There is no charge for that first conversation.

Call us at (219) 230-3600 or visit ccsklaw.com

CCSK Law serves clients across Northwest Indiana from offices in Valparaiso and West Lafayette.

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