

A Maryland Judiciary Production
My Laws, My Courts, My Maryland
Series: Estate Administration for Personal Representatives
Title: Part 1: The Personal Representative as Fiduciary

Chapter Headings:

What is Probate?

The Role of the Personal Representative in the Probate Process

What is a Fiduciary?

Welcome. This video series is for personal representatives administering an estate. In this video, we will cover what probate is and your role as a fiduciary. I'll explain in a minute what a fiduciary is.

Please keep in mind, I am here to help provide basic information about estate administration. But, if you are handling a complex estate, you may need legal advice.

Please contact a lawyer for legal assistance.

Serving as a personal representative may be difficult when grieving the loss of a loved one. I understand this process can be overwhelming. The purpose of this series is to help you understand the process of administering an estate, and help you navigate that process step by step.

In each of the videos in this seven-part series, I will guide you through the basic steps you need to take.

Just a note. As you go through the process of administering an estate, the Office of the Register of Wills can help you with forms and resources. The Register of Wills serves as the clerk for the Orphans' Court. The Orphans' Court is the probate court and can

decide on legal issues related to estate administration, such as disagreements about the contents of the Will. In some counties, the circuit court serves as the Orphans' Court and will make these decisions.

You submitted your petition for administration with the Register of Wills and you can continue to file your estate administration documents to the Register. In these videos, we will talk about what you need to file and when. Visit the Register of Wills webpage, registers.maryland.gov, or talk to a lawyer for more information.

Before we begin, let's talk about some of the words we will use. First, we use the word decedent to refer to the person who passed away. Second, when we refer to property, typically the decedent's property, we mean both personal property, such as a car or furniture, and real estate or real property.

Now, let's get started.

When you filed the Petition for Administration of an Estate, you started the probate process.

What is probate?

Chapter Heading: What is Probate?

Probate is a process after someone passes away to establish an estate and distribute their property, also called assets. It involves:

- Management of their assets
- Gathering their assets
- Paying expenses
- Settling debts, and

- Distributing their assets.

Distribution of assets is done according to the Will, or if there is not a Will, according to Maryland law.

Some of the decedent's property may not have to go through the probate process. This is called non-probate property and is not part of the probate estate. Non-probate property includes property:

- That names a beneficiary
- Is a payable-on-death account, or
- Is owned jointly with a right of survivorship.

Right of survivorship means that when one joint owner passes away, their property rights pass to the other joint owner.

As the personal representative, you do not have control over non-probate property. It passes automatically to the joint owner or the person named as a beneficiary. For example, non-probate property may include life insurance policies with a beneficiary, or a jointly-owned house that passes to the other owner. For more on probate and non-probate property, view parts 2 and 3 of this series.

Let's talk about the role of the personal representative in the probate process.

Chapter Heading: The Role of the Personal Representative in the Probate Process

As the personal representative, you have the legal authority to administer the decedent's estate, which includes all probate property owned by the decedent.

What does it mean to administer an estate? It means:

- Gathering assets,

- Paying debts and taxes, and
- Distributing the assets to the legatees named in the Will.

If there is no Will, you will distribute the property to the heirs according to Maryland law.

Let's pause here to review what we mean by legatees and heirs. A legatee is someone named in the Will to inherit property. An heir is someone named in Maryland law to inherit if there is no Will. Both heirs and legatees should have been named in your List of Interested Persons with your Petition for Estate Administration.

As the personal representative, you are what is called the fiduciary. You may be wondering, what is a fiduciary?

Chapter Heading: What is a Fiduciary?

A fiduciary is a person who acts for another and is entrusted with the property of another. As a fiduciary, you are acting on behalf of the estate. All actions you perform are for the benefit of the estate and the heirs or legatees. That is your fiduciary duty. As the fiduciary, you are in charge, but that does not mean that the assets belong to you. They belong to the estate. You cannot use the assets for yourself or allow someone else to access them. Keep these rules in mind:

- You cannot use the decedent's credit cards for yourself or someone else.
- You cannot write checks from the estate checking account for yourself.
- You should not drive the decedent's vehicles, or allow anyone else to do so.
- And, You cannot deposit any money belonging to the estate into your own account. It must be deposited into the estate account.

It is important that during the administration process, you are transparent and maintain communication with the heirs or legatees. Remember, as a fiduciary, you are entrusted to care for the property of the estate. Any action you take must be for the benefit of the estate and the heirs or legatees. They are the ones who will receive the property when the administration of the estate is complete.

Please remember that you do not have to do all of this work alone. Ask for help if you need it. Lean on your family and friends for emotional support. Seek the services of a lawyer who specializes in estates and trusts to help navigate the legal process. You may also wish to contact an accountant.

Watch part 2 of this series to learn about filing requirements for small estates or part 3 for regular estates.

Thank you for watching. I hope this information has been helpful.