

**A Maryland Judiciary Production**  
***My Laws, My Courts, My Maryland***  
**Series: Estate Administration for Personal Representatives**  
**Title: Part 7 Closing the Estate and Making Distribution**

**Chapter Heading:**

**Inheritance Taxes**  
**Estate Tax**  
**Personal Representative's Commissions**  
**Attorney's Fees**  
**Final Account**  
**Distributions**

Welcome back. This video series is for personal representatives administering an estate. If you are preparing your Final Account and are ready to distribute the assets of the estate, this video is for you. We will discuss regular estates and cover the following topics:

- Inheritance tax
- Estate tax
- The personal representative's commissions
- Attorney's fees, and
- Distribution.

The Office of the Register of Wills can help with forms and resources. When you were appointed as personal representative, the Register shared a packet of information and sample forms with you. Refer to that packet for filing dates and deadlines. If you have questions, visit the Register of Wills website at [registers.maryland.gov](http://registers.maryland.gov), or talk to a lawyer.

Just a quick note. We will refer to the person who passed away as the decedent.

Let's get started with a discussion about inheritance taxes.

## **Chapter Heading: Inheritance Taxes**

As the personal representative, you are responsible for making sure inheritance taxes are paid on probate property. Please note that inheritance tax does not apply to small estates. For regular estates, there is no inheritance tax on property that passes to:

- A spouse,
- Registered domestic partner,
- Child or another direct descendant,
- The spouse of a child, parent, grandparent, stepchild, or stepparent, or
- A corporation with only those persons I just mentioned as stockholders.

There is a 10% inheritance tax on most property passing to any person not mentioned on this list. To learn more about the exceptions to inheritance tax, visit the Register of Wills website at [registers.maryland.gov/main/taxes.html](http://registers.maryland.gov/main/taxes.html).

You must account for inheritance tax on the Interim or Final Account when distribution is made. Submit the tax payments when you file your Account, and, on the Account, show distributions that have been made. You may request a certificate confirming payment of the inheritance tax.

The Will may allow for inheritance tax to be paid from the estate or it may not. We will talk about how it gets paid in both situations.

If the Will does not allow for inheritance tax to come from the estate, deduct a 10% inheritance tax from the property to be distributed. For example, if the decedent left

10,000 dollars to his niece, her inheritance tax is 10% or 1,000 dollars. Therefore, the niece will receive 9,000 dollars, and the 1,000 dollars will be paid as inheritance tax.

If the decedent's Will states that inheritance tax is to be paid from the estate, each person who is in line to inherit may receive property without first subtracting inheritance tax from that property's value. Instead, payment of the inheritance tax may be paid directly from the estate funds held in the estate account, before distribution. Keep in mind when taxes are paid from the estate, the tax rate may change. Check with the Register of Wills to find out more about different tax rates depending on who pays the tax.

Inheritance tax is paid on both probate and non-probate property. So far, we have only discussed inheritance tax as it applies to probate property. If taxable, the Register of Wills collects the tax on non-probate property. Remember, you reported non-probate property on the Information Report. Non-probate property passes from the decedent to someone else without going through the probate process. For instance, this includes jointly owned property with right of survivorship. Right of survivorship means when one owner dies, the other owner receives the decedent's share of the property.

The Register of Wills determines the amount of inheritance tax due on non-probate property, based on the Information Report you provided. The Register of Wills will provide the personal representative or the person who received the property with an invoice showing the tax due. Remember the tax rate may change when paid from the estate.

Next, let's discuss estate tax.

## **Chapter Heading: Estate Tax**

Both Maryland and the federal government impose a special tax, called an “estate tax”, on very large estates. The Register of Wills can provide more information about whether this tax applies to the decedent’s estate. If the estate is large enough to incur Maryland or federal estate taxes, consider hiring a lawyer or accountant.

You may be paid for your work as the personal representative. The payment is called the personal representative’s commissions.

## **Chapter Heading: Personal Representative’s Commissions**

The Personal Representative’s commissions are not allowed in a small estate. There are two methods to request Personal Representative Commissions in regular estates. If all interested persons agree, they can consent to providing compensation. File the Consent to Compensation for Personal Representative and/or Attorney. Use form RW 1138. The Consent must be signed by all interested persons.

If you cannot get all interested persons to sign, then you must file a Petition for Commissions with the Orphans’ Court. Provide details on what you did on behalf of the estate. You must attach a Certificate of Service to the Petition, notifying all interested persons. This gives them the opportunity to object. If they file an objection, then the court will have a hearing to determine whether the amount requested needs to be adjusted.

Maryland law caps the amount of commissions you can take. That amount is determined by a formula applied to the value of the estate. The court may allow

commissions it finds appropriate. However, the court cannot allow commissions that exceed the cap. Talk to a lawyer for more information.

Let's discuss attorney's fees.

### **Chapter Heading: Attorney's Fees**

If you hired a lawyer to help with estate administration, their fees – referred to as attorney's fees – may be included in the Consent for Compensation. That lawyer may be paid from the estate. If the attorney's fees are not included in the Consent, the lawyer may file a Petition for Fees with the Orphans' Court. All interested persons are sent a copy of the petition. This gives them the opportunity to object. If an interested person files an objection, the court will hold a hearing and determine whether the attorney's fees requested should be adjusted. The court may allow attorney's fees that are fair and reasonable under the circumstances.

Now, let's discuss the Final Account.

### **Chapter Heading: Final Account**

We covered the Account in Part 5 of this series. Make sure to watch that video for more information on preparing and filing an Account.

In your Final Account, begin with the amount left in the estate listed in the last approved account. Add any final income and subtract any final deductions to determine the final total value of the estate. Unless already reported on a prior account, your Final Account should document that:

- All funeral expenses have been paid.
- The probate fees, costs, and administration expenses have been paid

- All necessary payments, such as spousal allowance and family allowance, have been paid.
- All claims, if any, have been paid.
- All inheritance taxes have been paid.
- All requests for commissions and fees, even if not yet paid. And,
- All distributions of the remaining estate.

The Office of the Register of Wills will audit your Account. After the audit, the Orphans' Court will then review the Account and any outstanding Petition for Commissions and Attorney's Fees.

If the court does not have questions or does not need additional information about the Account or Petitions, the court will issue orders approving the Account, granting the Commissions, and granting the attorney's fees.

Allow twenty days to pass so that interested persons may file exceptions to the orders if they disagree with the Account, the commissions, or attorney's fees. Wait until all exceptions are resolved before making distributions. If no exceptions are filed, you may make distributions.

Let's talk about this last step: Distributions.

### **Chapter Heading: Distributions**

Making distributions means transferring property to those in line to inherit, as reported on the Account. If there is a Will, follow the instructions in the Will. If the interested parties agree to divide the property differently than what the Will says, file a written agreement with the court, along with the Final Account.

If there is no Will, then distribute the property to the heirs according to Maryland law and according to the distributions shown in the Final Account.

Once all distributions are made, the estate will close.

At that time, your service as the personal representative is complete. You may ask the court to end your appointment when you file the Final Account OR after you have made all distributions.

Being a personal representative is a big job. I hope that this video and the others in the series were helpful. Thanks for watching.