Harmony Wealth Strategies
Bill McAllister, Jr., CLU®
22 Morgan Farms Drive, Suite 4
South Windsor, CT 06074
860-836-9314
Bill@HarmonyWealthStrategies.com
www.HarmonyWealthStrategies.com

Harmony Wealth Strategies
BUILDING AND SAFEGUARDING YOUR FINANCIAL WORLD

Loss of a Spouse

You'll need to find competent advice to help you through this difficult time.

Loss of a Spouse/Family Member

When your spouse or a family member dies, you'll need to handle numerous financial and legal matters. Even if you've always handled your family's finances, you may be overwhelmed by the number of matters you have to settle in the weeks and months following your loved one's death. While you can put off some of these tasks, others require immediate attention. After planning the funeral, you'll need to get organized, determine what procedures to follow to settle the estate and claim survivor's and death benefits, and find competent advice to help you through this difficult time.

Planning a funeral

A funeral allows the family and friends of the deceased to both celebrate that person's life and mourn their death. Funerals often take into account religious and social traditions. According to Christian tradition, funerals often include a visitation of the body (also called a viewing or a wake) and a ceremony performed by a clergy member, family member, or friend. There may be readings, music, and words spoken about the deceased person's life. However, they are personal--not legal--events and should reflect your own preferences, as well as those of the deceased and other family members. Although you aren't required to do so, you may wish to hire a funeral director to help you, particularly if you are planning a funeral on short notice. He or she can help you coordinate the details and help you apply for death certificates and certain survivor's benefits.

Getting organized

To settle your loved one's estate or apply for insurance proceeds or survivor's benefits, you'll need to have a number of documents. Locating these documents (and applying for certified copies of some of them) should be your first step in getting your finances organized. You'll also need to set up files to keep track of important documents and paperwork, keep a phone and mail list to record important calls and correspondence, and evaluate your short-term and long-term finances.

Settling an estate

Your spouse or family member may have named you executor of his or her estate. If so, you'll need to find out what procedures to follow. Settling an estate means following legal and administrative procedures to make sure that all debts of the estate are paid and that all assets are distributed to the rightful persons. If you are named executor in a will or if you are appointed as the personal representative or administrator of an estate, you will be responsible for carrying out the terms of the will and settling the estate directly or with the help of an attorney.

Paying income and estate taxes

You may have to file city, state, and federal tax returns, including Form 1040 (U.S. Individual Tax Return), Form 1041 (Fiduciary Income Tax Return), and, if the gross estate is large enough, Form 706 (U.S. Estate Tax Return). In addition, your state may impose a state death tax or an inheritance tax.

Filing a claim for insurance and/or survivor's and death benefits

Life insurance benefits are not automatic; you have to file a claim for them. Ask your insurance agent to begin filing a life insurance claim. If you don't have an agent, contact the company directly. Although most claims take only a few days to process, contacting an insurance agent should be one of the first things you do if you are the beneficiary of your spouse's or family member's policy. You should also contact your spouse or ex-spouse's employer as well as the Social Security Administration (SSA) to see if you are eligible to file a claim for survivor's or death benefits.

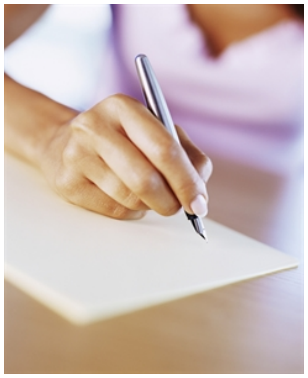
Tip: *If your spouse was a federal, state, or local employee, then you are likely eligible for government-sponsored survivor's benefits. In addition, children under age 18 or parents who are dependent upon their children for financial support are sometimes eligible for Social Security survivor's benefits.*

Tip: *Dependent children or dependent parents are sometimes eligible for benefits from employer-sponsored plans or Social Security.*

Finding competent advice

Getting expert advice is essential if you want to make good financial decisions. After all, you are probably doing many things for the first time, such as filing a life insurance claim or settling an estate. In fact, an attorney is one of the first people you might contact after your spouse or family member dies because this

person can help you go over the will and start estate settlement procedures. Your funeral director can also be an excellent source of information and may help you get death certificate copies and apply for Social Security and veterans benefits, among other things. You may also wish to contact a financial professional, accountant, or tax advisor for help with your finances. And don't overlook the help of other widows and widowers; having been through it before, they may be able to provide you with valuable information and support.



Organizing Your Finances When Your Spouse Has Died

Losing a spouse is a stressful transition. And the added pressure of having to settle the estate and organize finances can be overwhelming. Fortunately, there are steps you can take to make dealing with these matters less difficult.

Notify others

When your spouse dies, your first step should be to contact anyone who is close to you and your spouse, and anyone who may help you with funeral preparations. Next, you should contact your attorney and other financial professionals. You'll also want to contact life insurance companies, government agencies, and your spouse's employer for information on how you can file for benefits.

Get advice

Getting expert advice when you need it is essential. An attorney can help you go over your spouse's will and start estate settlement procedures. Your funeral director can also be an excellent source of information and may help you obtain copies of the death certificate and applications for Social Security and veterans benefits. Your life insurance agent can assist you with the claims process, or you can contact the company's policyholder service department directly. You may also wish to consult with a financial professional, accountant, or tax advisor to help you organize your finances.

Locate important documents and financial records

Before you can begin to settle your spouse's estate or apply for insurance proceeds or government benefits, you'll need to locate important documents and financial records (e.g., birth certificates, marriage certificates, life insurance policies). Keep in mind that you may need to obtain certified copies of certain documents. For example, you'll need a certified copy of your spouse's death certificate to apply for life insurance proceeds. And to apply for Social Security benefits, you'll need to provide birth, marriage, and death certificates.

Set up a filing system

If you've ever felt frustrated because you couldn't find an important document, you already know the importance of setting up a filing system. Start by reviewing all important documents and organizing them by topic area. Next, set up a file for each topic area. For example, you may want to set up separate files for estate records, insurance, government benefits, tax information, and so on. Finally, be sure to store your files in a safe but readily accessible place. That way, you'll be able to locate the information when you need it.

Set up a phone and mail system

During this stressful time, you probably have a lot on your mind. To help you keep track of certain tasks and details, set up a phone and mail system to record incoming and outgoing calls and mail. For phone calls, keep a sheet of paper or notebook by the phone and write down the date of the call, the caller's name, and a description of what you talked about. For mail, write down whom the mail came from, the date you received it, and, if you sent a response, the date it was sent.

Also, if you don't already have one, make a list of the names and phone numbers of organizations and people you might need to contact, and post it near your phone. For example, the list may include the phone numbers of your attorney, insurance agent, financial professionals, and friends--all of whom you can contact for advice.

Evaluate short-term income and expenses

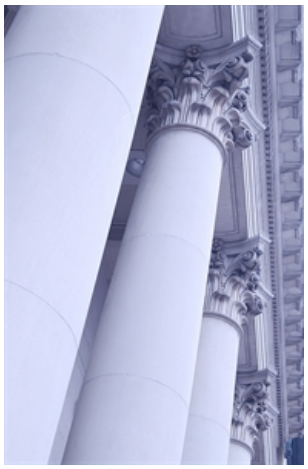
When your spouse dies, you may have some immediate expenses to take care of, such as funeral costs and any outstanding debts that your spouse may have incurred (e.g., credit cards, car loan).

Even if you are expecting money from an insurance or estate settlement, you may lack the funds to pay for those expenses right away. If that is the case, don't panic--you have several options. If your spouse had a life insurance policy that named you as the beneficiary, you may be able to get the life insurance proceeds within a few days after you file. And you can always ask the insurance company if they'll give you an advance. In the meantime, you can use credit cards for certain expenses.

Or, if you need the cash, you can take out a cash advance against a credit card. Also, you can try to negotiate with creditors to allow you to postpone payment of certain debts for 30 days or more, if necessary.

Avoid hasty decisions

- Don't think about moving from your current home until you can make a decision based on reason rather than emotion.
- Don't spend money impulsively. When you're grieving, you may be especially vulnerable to pressure from salespeople.
- Don't cave in to pressure to sell or give away your spouse's possessions. Wait until you can make clear-headed decisions.
- Don't give or loan money to others without reviewing your finances first, taking into account your present and future needs and obligations.



Typically, the executor is a spouse or a close family member, but you may want to name a professional executor, such as a bank or attorney.

Understanding Probate

When you die, you leave behind your estate. Your estate consists of your assets--all of your money, real estate, and worldly belongings. Your estate also includes your debts, expenses, and unpaid taxes. After you die, somebody must take charge of your estate and settle your affairs. This person will take your estate through probate, a court-supervised process that winds up your financial affairs after your death. The proceedings take place in the state where you were living at the time of your death. Owning property in more than one state can result in multiple probate proceedings. This is known as ancillary probate.

How does probate start?

If your estate is subject to probate, someone (usually a family member) begins the process by filing an application for the probate of your will. The application is known as a petition. The petitioner brings it to the probate court along with your will. Usually, the petitioner will file an application for the appointment of an executor at the same time. The court first rules on the validity of the will. Assuming that the will meets all of your state's legal requirements, the court will then rule on the application for an executor. If the executor meets your state's requirements and is otherwise fit to serve, the court generally approves the application.

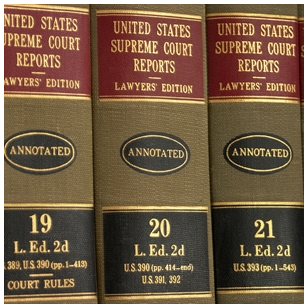
What's an executor?

The executor is the person whom you choose to handle the settlement of your estate. Typically, the executor is a spouse or a close family member, but you may want to name a professional executor, such as a bank or attorney. You'll want to choose someone whom you trust will be able to carry out your wishes as stated in the will. The executor has a fiduciary duty--that is, a heightened responsibility to be honest, impartial, and financially responsible. Now, this doesn't mean that your executor has to be an attorney or tax wizard, but merely has the common sense to know when to ask for specialized advice.

Your executor's duties may include:

- Finding and collecting your assets, including outstanding debts owed to you
- Inventorying and appraising your assets
- Giving notice to your creditors (e.g., credit card companies, banks, retail stores)
- Filing an estate tax return and paying estate taxes, if any
- Paying any debts or other taxes
- Distributing your assets according to your will and the law
- Providing a detailed report of how the estate was settled to the court and all interested parties

The probate court supervises and oversees the entire process. Some states allow a less formal process if the estate is small and there are no complicated issues to resolve. In those states allowing informal probate, the court may be involved only indirectly. This may speed up the probate process, which can take years.



What if you don't name an executor?

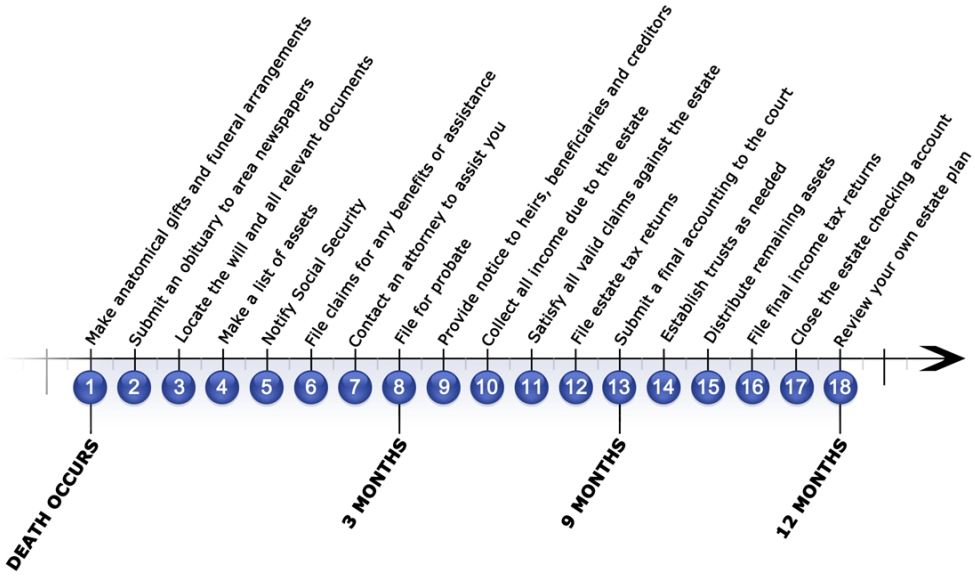
If you don't name an executor in your will, or if the executor can't serve for some reason, the court will appoint an administrator to settle your estate according to the terms of your will. If you die without a will, the court will also appoint an administrator to settle your estate. This administrator will follow a special set of laws, known as intestacy laws, that are made for such situations.

Is all of your property subject to probate?

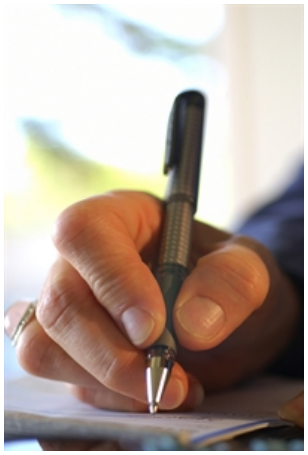
Although most assets in your estate may pass through the probate process, other assets may not. It often depends on the type of asset or how an asset is titled. For example, many married couples own their residence jointly with rights of survivorship. Property owned in this manner bypasses probate entirely and passes by "operation of law." That is, at death, the property passes directly to the joint owner regardless of the terms of the will and without going through probate. Other assets that may bypass probate include:

- Investments and bank accounts set up to pass automatically to a named person at death (payable on death)
- Life insurance policies with a named beneficiary (someone other than the estate)
- Retirement plans with a named beneficiary
- Other property owned jointly with rights of survivorship

The Probate Process



1. In the event the decedent made no provision for anatomical gifts, many states allow you to make that decision. In most jurisdictions, the funeral director can obtain certified copies of the death certificate for you (you will need several copies).
2. Word of mouth may not travel in time for the funeral.
3. Locate the will, birth certificate, marriage certificate, Social Security card, and any other relevant documents.
4. Note the location and value (you may need to retain an appraiser) of all real estate, insurance policies, jewelry, and other assets. Make sure assets are adequately insured.
5. Inform the Social Security Administration to stop payments that were being made to the decedent. Inquire about survivor's benefits.
6. Investigate the existence of any veteran's benefits, private pensions, or life insurance and make claims at this time.
7. Contact an attorney to assist you. He or she can help you determine whether probate is needed.
8. Petition the appropriate court for probate.
9. Place a legal notice in the paper to notify unidentified heirs and creditors. Contact named beneficiaries and known creditors directly.
10. For example, if the decedant owned investment property, rents will need to be collected.
11. This includes expenses, debts, and bequests (paid out in that order). Court permission may be required before writing checks through the estate account--keep meticulous records.
12. The federal estate tax return is due nine months after the date of death. State filing deadlines vary, so check with the appropriate state agency.
13. This is necessary to close the probate proceedings and relinquish the executor's duties.
14. Set up any trusts as outlined in the will.
15. Distribute remaining assets to all beneficiaries.
16. The federal income tax return is due on tax day (typically April 15) of the year following death. State filing deadlines vary, so check with your local tax office.
17. Notify the bank to close the estate checking account.
18. Review and update your own estate plan.



The elective share (sometimes called the widow's election, forced election, or "taking against the will") is a statutory right of a surviving spouse to receive a specified share of the decedent's estate instead of accepting the provisions made for the spouse in the decedent's will.

A family settlement is a legally binding agreement (or contract) made among your heirs and/or beneficiaries regarding the distribution of your estate.

Surviving Spouse's Elective Share

Definition

The elective share (sometimes called the widow's election, forced election, or "taking against the will") is a statutory right of a surviving spouse to receive a specified share of the decedent's estate instead of accepting the provisions made for the spouse in the decedent's will. The surviving spouse may either claim or waive the elective share. If waived, the surviving spouse can keep whatever he or she received under the will or other arrangements. The rationale behind the elective share is that it is in the public's best interest to protect surviving spouses. The elective share is determined under state law and varies from state to state.

Key strengths

- Protects a spouse from becoming impoverished by an inadequate inheritance
- May reduce estate or income taxes

Key tradeoffs

- Receipt or waiver of the elective share may make an institutionalized spouse ineligible for Medicaid

How to do it

- Election must be made in a timely fashion (varies from state to state)
- The surviving spouse must initiate legal proceedings
- The election is made in writing (or by petition), filed with the appropriate court, and served on the estate's personal representative
- After notice and hearing, the court orders the beneficiaries and/or the estate's personal representative to contribute a pro rata share of the estate's assets to satisfy the surviving spouse's elective share

Tax consequences

- In separate property states, amounts received by the surviving spouse pursuant to a spousal election qualify for the unlimited marital deduction
- In community property states (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin) and Puerto Rico (Alaska has an optional system), the surviving spouse generally has no right to an elective share because the surviving spouse already owns half of all community property

Family Settlements: Estate Planning

What is a family settlement?

Legally binding agreement

A family settlement is a legally binding agreement (or contract) made among your heirs and/or beneficiaries regarding the distribution of your estate.

Since they are legal documents, family settlement agreements are subject to several restrictions. For example, they are generally not enforceable against a party if that party does not have the legal capacity to contract. If the family settlement affects the rights of minors or incompetent persons, a legal guardian generally must be appointed to represent the interests of such persons. It may be necessary to appoint a guardian to represent the interests of unborn or unascertained beneficiaries as well. In addition, these agreements bind only the contractual parties (e.g., the parties whose signatures appear on the settlement agreement). An heir or beneficiary who does not enter into the agreement may challenge any subsequent distribution unless the settlement is made for his or her express benefit. Finally, family settlements are usually subject to the Statute of Frauds. This means that the agreement must be in writing, or it will not be enforceable.

Example: *You die leaving all of your property to your three children in equal shares under your will. Your property includes income-producing property. Your children are in different income tax brackets. Your children present your will to probate along with a written settlement agreement that redistributes the property in unequal shares in order to take advantage of the lower income tax bracket of one of your children.*

Caution: *Settlement agreements (as with all contracts) are governed by state law. Rules relating to family settlements vary from state to state. Be sure to check whether such settlements are valid and how they should be*

executed in your state.

Resolution of will disputes

A family settlement is one way of resolving a dispute over the provisions of your will. The probate court has the power to reject the settlement, but the court probably will accept it if all parties have agreed to the settlement and there is no evidence of coercion. Courts usually give great deference to family members' attempts to resolve disputes among themselves.

May help avoid probate

A family settlement can actually be used to avoid probate (the court-supervised process of administering your estate). In this case, the family distributes property pursuant to the agreement without probating the estate.

Caution: *Using a family settlement to avoid probate is probably not advisable, or even possible, when real estate is involved. In addition, when minor or incompetent beneficiaries are involved, family settlement may not be available.*

What is a post-mortem election?

A post-mortem ("after death") election is an estate planning technique that can help minimize federal transfer tax or income tax liabilities. Post-mortem elections are usually made by an estate's personal representative. Each election must be timely made in the required fashion.

Types of Post-Mortem Elections

Transfer-tax-related elections

Disclaimers*

A disclaimer is a refusal to accept a gift, bequest, or other form of property transfer. This allows the beneficiaries to redistribute estate property without incurring transfer taxes on the redistribution.

The alternative valuation date

Assets in an estate are generally valued on the date of death. By electing the alternative valuation date, the assets in an estate that qualifies are valued either (1) six months after the date of death or (2) as of the date the asset is disposed of. This is advantageous if assets depreciate after death.

QTIP election

With a QTIP election, all or a portion of the assets that qualify for treatment as qualified terminable interest property (QTIP) pass free from estate tax under the unlimited marital deduction.

Income-tax-related election

Selection of fiscal year

The election of the tax year (either fiscal or calendar) for an estate allows the personal representative to divide income into as many taxable years as possible, prevent bunching of income in the first taxable year, or otherwise adopt the taxable year that results in minimizing the tax costs as much as possible.

Note: *Business owners have additional post-mortem elections available to them.*

*Though not technically an election, disclaimers are an important post-mortem planning tool.

Types of Post-Mortem Elections for Business Owners

Business owners have these techniques available to them, in addition to other available post-mortem elections.

Transfer-tax-related elections

Special use valuation

The special use valuation election values real property (e.g., real estate) used for farming, or in a closely held or family-owned business, based on its actual use rather than its highest and best use (i.e., fair market value).

Deferring payment of estate taxes

This election postpones the payment of estate taxes due on a closely held business owner's estate. Only payments of interest are made for 4 years, and then payments of interest and principal are made over a period of up to 10 years.

Valuation discounts for interest in closely held businesses

If the decedent was an owner of a closely held business interest at the time of death, the estate's personal representative may elect to use certain valuation discounts (e.g., minority interest discount, lack of marketability discount) if the business interest qualifies.

Income-tax-related elections

Section 303 stock redemption

If the decedent owned stock in a C corporation at the time of death, a Section 303 stock redemption election treats certain redemptions as capital transactions instead of as dividends (as they would normally be treated) as long as the redemptions are used to pay estate taxes, funeral expenses, or certain administrative expenses.

Partnership asset basis election

This election can be made after the death of one business partner to step up the income tax basis of the deceased partner's share of the partnership assets from adjusted basis value to fair market value (or estate tax value).

IMPORTANT DISCLOSURES

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Harmony Wealth Strategies
Bill McAllister, Jr., CLU®
22 Morgan Farms Drive, Suite 4
South Windsor, CT 06074
860-836-9314
Bill@HarmonyWealthStrategies.com
www.HarmonyWealthStrategies.com

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