



# THE NEW YORK PROBATE & ESTATE GUIDE

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2020  
EDITION

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# INTRODUCTION

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This is an easy guide to a hard topic.

Whether you have recently experienced the loss of a loved one or are simply preparing for the future, administering an estate is a challenging topic. *The New York Probate and Estate Guide* walks you through key steps of the legal process that begins when a loved one passes away in New York State. In clear, simple language, learn about how the law settles estates when there is a Will or when there is no Will... how long the process takes... what taxes you might have to pay... whether you will need a lawyer... and much more.

Whether you are a beneficiary of an estate or will be serving as the Court-appointed representative of an estate, this guide will answer most of your questions about what to expect and what others (including the government) will expect from you. But just a word of caution: while this guide makes estate and inheritance issues a bit simpler, they remain quite complex. Accordingly, legal and related tax issues should be handled by a competent attorney who is thoroughly experienced with estate administration. This guide is not intended to serve as a how-to or self-help manual.

This Guide does not cover (except with passing reference) litigation matters brought by or against an estate nor does it cover estate planning that is needed for the surviving spouse when the first spouse passes away. These subjects are beyond the scope of this Guide.

# SECTION 1

## ASSETS AND THE LAW

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Property left behind by the individual who has died (whom the law calls the “decedent”) falls into one of two general categories: assets that *require* court intervention, and those that do not. Since those that do not are simpler, we will start with those.

### A. Assets That Do Not Require Court Intervention

Three categories of assets can generally be liquidated without any court intervention: assets that were held jointly, assets that name a specific beneficiary and assets held by a Trust. Assets held jointly by the decedent and another individual generally can be liquidated with just proof of death. These assets may be titled as “**joint tenants**” or “**joint tenants with right of survivorship.**” In general, liquidation of these assets does not require Court approval.

However, New York law recognizes that joint *control* does not always mean joint *ownership*. For example, the decedent may not have intended to create a joint account with another individual; perhaps the joint control was only intended to create a “convenience account” (i. e., to allow the other person to sign checks or make withdrawals - but **not** to make them a co-owner).

The assets of a “convenience account” are distributed according to the terms of the decedent’s Will (see the **Probate** section starting on page 8); if the decedent left no Will, those assets would pass according to New York State’s laws of intestacy (see the **Intestacy** section starting on page 5). Either the co-owner may acknowledge or the Court may determine that assets are not in actuality jointly owned assets.

Assets naming a specific beneficiary may be liquidated with only proof of death. Such assets may have been left “**in trust for**” or “**payable on death**” to a designated beneficiary and commonly include bank accounts, Individual Retirement Accounts and insurance policies. In exceptional cases - for example, if somebody disputes who was designated or whether the designated individual is really entitled to the asset - Court intervention may be necessary.

Additionally if the decedent created a Trust (sometimes referred to as a “Living” or

“Revocable” Trust) and assets were retitled in the name of the Trust (i.e. the Trust was “funded”) during the decedent’s lifetime, those assets will pass in accordance with the terms of the Trust without Court intervention.

Certain assets, such as cars and jewelry are, subject to certain dollar value limitations, deemed the property of the spouse or children of the decedent. They pass automatically to those individuals in the absence of a provision to the contrary in the decedent’s Last Will and Testament.

Although no Court proceeding is typically required in any of the above situations, most of these assets will be subject to New York State and, if applicable, Federal estate taxes subject to the exemption amounts for those taxes (see Section 6B below entitled “Estate Taxes” beginning on page 17).

## **B. Assets That Require Court Intervention**

Assets held in the sole name of the decedent may not be liquidated, redeemed or transferred without the appointment of a legal representative (an Executor or Administrator) by the Surrogate’s Court. This is so even if the decedent left a Will. The Will must also be approved by the Surrogate’s Court in the context of a probate proceeding (discussed in Section 3 below starting on page 8). If the decedent died without leaving a Will, an Administrator for the estate must be appointed by the Surrogate’s Court in the context of an Administration proceeding (discussed in Section 2 below starting on page 5).

## **C. Small Estate Proceeding**

If the decedent’s solely-owned personal property (such as bank and brokerage accounts) have a total value of \$50,000 or less (other than certain exempt property referred to above that passes to the surviving spouse or to the children pursuant to EPTL § 5-3.1), a simplified “small estate” proceeding can be utilized to settle the estate. In this situation, the Surrogate’s Court (in the County where the decedent resided) appoints a Voluntary Administrator. This simplified proceeding can typically be handled without an attorney and can be used whether or not the decedent left a Will.

A small estate proceeding is not available if the decedent owned real property in the decedent’s sole name even though the real property is valued at \$50,000 or less. However the small estate proceeding is available if the decedent jointly owned real property with someone else and the total value of the decedent’s solely owned personal property is \$50,000 or less.

# SECTION 2

## INTESTACY: WHEN A PERSON DIES WITHOUT A WILL

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### A. Application for Administrator

When a person dies without a Will, the person is deemed to have died “**intestate.**” If assets in his or her *sole* name are valued at more than \$50,000, the estate requires a court-appointed administrator. This is done through an application (petition) for “**Letters of Administration**” to the Surrogate’s Court (typically in the county where the decedent resided). The Court’s Letters of Administration names the person to be appointed to serve as the Administrator (e.g. the representative) of the estate. In general, the petition for Letters of Administration is prepared by an attorney on behalf of one or more of the “**heirs**”--the decedent’s closest adult relatives.

Although an individual may be survived by a number of relatives, the individual’s “heirs” for purposes of inheritance are the closest relatives as defined by New York law. Heirs are entitled to be appointed Administrator in the following order of priority:

- (1) Spouse
- (2) Adult Child
- (3) Parent
- (4) Sibling
- (5) Niece or Nephew
- (6) Any other eligible heir

For example, when the decedent is survived by one or more children, the decedent’s brothers and sisters are not his heirs for inheritance purposes or eligible to be appointed as Administrator. Conversely, if the decedent is only survived by one or more siblings, then they are his sole heirs for purposes of inheritance and would be eligible to be appointed as Administrator. Laws do not take into account the emotional or physical closeness that may have existed between the decedent and an individual; only blood relationship is relevant (including half-blood).

If necessary, the Court may appoint two or more “Co-Administrators.” However, this creates the possibility of disputes, because any decisions by two Administrators would have to be unanimous.

Prior to applying for Letters of Administration, the applicant must attempt to determine if the decedent left a Will. For example, if the decedent had a safe deposit box, an application must be made to the Surrogate’s Court to search the box for a Will.

## B. Heirs and Their Rights

The law recognizes that estate administration can be a source of dispute, and has a number of measures in place to help ensure that the process of appointing an Administrator is fair:

- **The applicant for Letters of Administration must try diligently to identify all of the decedent’s heirs and their whereabouts.** In the event of a delay in identifying (or locating) the heirs, the Surrogate’s Court may appoint a Temporary Administrator to administer the estate on an interim basis.
- **When any heir applies for Letters of Administration, all other heirs must receive notice.** The Surrogate’s Court issues a Citation (similar to a court summons) to the other heirs. The non-applying heirs then have the right to submit a cross-petition for Letters of Administration.
- **Alternatively, a person entitled to Letters of Administration can sign a “Waiver, Renunciation and Consent.”** In doing so, he or she waives the right to be served with a Citation, renounces the right to be appointed as Administrator and consents to the appointment of another eligible person as Administrator.
- **The Court will typically require the Administrator to file a “surety bond.”** This is an assurance through an insurance company that the Administrator will not abscond with the assets of the estate. The Court may opt to reduce or waive the bond if all of the heirs agree in writing and the Court is satisfied that the creditors of the estate are protected.

## C. The Role Of The Estate Administrator

Once the Court has appointed an Administrator the process of managing the decedent's assets begins.

After being appointed by the Court, the Administrator collects the assets held in the sole name of the decedent. The Administrator uses those assets (and any income from them) to pay the decedent's debts, taxes and administration expenses. The Administrator will also be responsible to complete the administration and settlement of the estate which will include many of the items set forth in the Section 4 entitled "Duties of the Executor and Administrator" starting on page 11 below.

## D. Distributions to The Heirs Under New York Law

Once the assets are collected and the debts, taxes and administration expenses are paid, the remaining assets and income held by the Administrator are distributed among the heirs. Each family situation is different, but here are basic guidelines governing distribution of the assets according to who survived the decedent:

- (1) Spouse, but no children: spouse receives the entire estate;
- (2) Spouse and children: spouse receives \$50,000 plus one-half of the balance of the estate; child or children share the remaining balance. If any children passed away before the decedent, their children (the decedent's grandchildren) count as heirs among the decedent's other children;
- (3) Children, but no spouse: children share the entire estate;
- (4) Parents, but neither spouse nor children: parents receive the entire estate;
- (5) Brothers and sisters, but no spouse, children, or parents: brothers and sisters (including the children of brothers and sisters who have already passed away) share the entire estate;
- (6) First cousins (grandchildren of maternal and/or paternal grandparents): maternal first cousins share one-half of the estate; paternal first cousins share the remaining one-half of the estate.

When the heirs consist of individuals from different generations, the formula for distribution becomes increasingly complex.

# SECTION 3

## PROBATE: WHEN A PERSON DIES WITH A WILL

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A Will left by the decedent is not automatically valid. The Surrogate's Court has to make a determination that the Will is valid. That Court process is called "probate."

### A. The "Probate" Process

A Will typically names an Executor (and a substitute Executor) to administer and distribute the decedent's assets. The named Executor must apply to the Surrogate's Court (usually in the county where the decedent resided) to have the validity of the Will established to the satisfaction of the Court. The named Executor's attorney does this by preparing and filing a "Petition for Probate" and other appropriate documentation. The Court will then determine if the Will was properly signed and witnessed and must also be satisfied that: (1) the decedent possessed sufficient mental capacity to make a Will; and (2) that the Will was the voluntary act of the decedent. If the Will passes these tests, the Court "admits the Will to probate" and issues "Letters Testamentary" to the Executor named in the Will unless that person is not eligible to serve (i.e. is incapacitated, is a felon etc.). The Letters Testamentary is the document issued by the Surrogate's Court which empowers the Executor to perform all of the functions to administer and settle the New York estate of the decedent (see Section 4 below starting on page 11).

If the decedent has real property outside New York State an "Ancillary" probate proceeding would have to be commenced in that state after the Will is admitted to probate in New York.

### B. Substitute Executors

If the individual (or bank or trust company) named in the Will is unable (or unwilling) to serve as Executor, the responsibility falls to the substitute Executor named in the Will. If the Will does not name a **substitute Executor**, the Court will appoint a representative for the estate called an "**Administrator c.t.a.**" (Administrator with the Will annexed). The Court will typically appoint as "**Administrator c.t.a.**" the beneficiary entitled to the largest portion of the estate under the Will.

## C. Notifying the Beneficiaries and Heirs

Beneficiaries under the Will who are not heirs of the decedent are entitled to receive notice that the Will leaves them property of the decedent. This is accomplished by mailing each such beneficiary a “Notice of Probate” which lists the property left to the beneficiary by the decedent.

The named Executor or his or her attorney must make diligent efforts to identify and locate the whereabouts of each of the decedent’s heirs regardless of whether that heir is left any property under the Will. Each heir (defined in Section 2 above on page 7) has the right to object (i.e. contest) to the Will being offered to probate and for this purpose each heir also has the right to examine (1) the witnesses to the Will; and (2) the attorney who drafted the Will before deciding whether to contest the Will.

Each heir can also expressly consent to the Will being admitted to probate. If the heir consents, he or she will sign a “**Waiver and Consent**” agreeing to the Will’s admission to probate and to the choice of Executor. If not, the heir will be served with a Citation of the Court and a copy of the Will and will have to appear in Court on the date stated in the Citation. If the heir neither signs a waiver nor appears in court, the heir will thereafter usually be foreclosed from objecting to the Will being admitted to probate.

When there is a contest to the Will or when other matters delay the probate process (such as when heirs cannot be located or there are minors who are heirs) the Court can still appoint the nominated Executor under the Will to serve on an interim basis. The interim executor can administer the assets of the estate, but may not *distribute* any of the assets to any of the beneficiaries set forth in the Will until the obstacle or delay is resolved and the Will is admitted to probate.

## D. Special Rights of The Surviving Spouse

If the surviving spouse is omitted from the Will entirely (or receives less than a certain percentage/sum of money from the estate) the surviving spouse has the right to “**elect against the Will.**” This entitles the surviving spouse to receive what is known as his or her “elective share”—i.e. the greater of one-third (1/3) of the estate or \$50,000. (The computation of one-third of the estate can include assets passing outside the administered estate.) There are strict time limitations for the surviving spouse to make this election.

## E. If The Will Cannot Be Located

If the Will cannot be located in the decedent's home (typically in a lock box or similar place where valuable papers are maintained) and the family members do not know where the Will is being kept, a search must be undertaken to locate it. For example, if the decedent had a safe deposit box, one of the heirs must apply to the Surrogate's Court for an order to search the safe deposit box.

The Will might also be on file with the office of the attorney who prepared it. The Executor named in the Will is entitled to obtain the original Will without charge or obligation and may choose to be represented by any law firm he or she desires, regardless of who drafted the Will.

# SECTION 4

## DUTIES OF THE EXECUTOR AND ADMINISTRATOR

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The Executor and the Administrator perform essentially similar functions. These duties (many of which are performed with the assistance and guidance from the estate's attorney) include these:

### A. Locating and Collecting Assets:

- **Identifying and locating all of the decedent's assets.** These may include bank accounts, stocks, bonds, mutual funds, real estate, pensions, IRA accounts, profit sharing accounts, insurance policies, motor vehicles, jewelry, art and other valuable tangible personal property;
- **Arranging for estate assets to be retitled into the name of the estate, liquidated into cash or transferred directly to one or more beneficiaries.** Any assets maintained by the Executor in the name of the estate need to be properly invested;
- **Securing the decedent's residence** and other real property holdings. This might include, for example, changing locks, continuing utilities, making repairs and keeping insurance in force.

### B. Managing The Assets During The Estate Settlement Process:

- **Determining and paying the decedent's debts.** These may include mortgages, credit cards, medical bills, leases, utility bills, real estate taxes and funeral expenses;
- **Arranging for insurance policies to be kept in force** on the decedent's automobiles, real estate, and other property. (Note: the premiums on those policies may be adjusted once the insurance company is notified of the decedent's death);

- **Filing life, health and property insurance claims**, as applicable;
- **Applying for social security death benefits and veteran's death benefits**, as applicable;
- **Having the decedent's real estate and personal property professionally appraised.**
- **Paying administration expenses such as court filing fees, accounting fees, legal fees, and appraisal fees.**

### **C. Filing Tax Returns and Paying Taxes:**

- **Paying all taxes** (Federal and state individual income, estate and fiduciary income taxes) owed by the decedent (or the estate), and arranging for the preparation and filing of all relevant tax returns;
- **Determining whether the decedent made taxable gifts prior to death** and, if so, arranging for the preparation and filing of gift tax returns.

### **D. Closure Of The Estate Process:**

- **Preparing interim and final reports** ("accountings") detailing the estate's activities for the estate's beneficiaries/heirs or, if necessary, a Court order approving the accounting;
- **Distributing the estate's assets or net proceeds** (as applicable), to the individuals entitled to them (be it according to the Will or under the laws of intestacy) subject to the consent of the heirs, or Court order, if necessary.

## E. Litigation:

In some circumstances, it is appropriate for the Executor or Administrator to initiate litigation on behalf of the estate. Here are some common examples:

- If the decedent died because of another individual's negligence (e.g. car accident, medical malpractice, etc.);
- If an individual who had control over the decedent's assets (pursuant to a Power of Attorney or as a joint account holder) misappropriated or wrongfully transferred the decedent's assets;
- If the decedent's assets are held by another individual who refuses to turn them over to the Executor or Administrator;
- If real property partially owned by the decedent must be "partitioned" from the ownership of the other co-owners so that it can be sold or distributed;
- If a debt is owed to the decedent the debt must be collected.

# SECTION 5

## COMPENSATION OF THE EXECUTOR AND ADMINISTRATOR

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As compensation for performing duties on behalf of the estate, the Executor/Administrator of the estate is entitled to “commissions” established by law. The commissions are based on the value of the assets of, and the income earned, by the estate:

- 5% of the first \$100,000;
- 4% of the next \$200,000 (i.e., from \$100,001 to \$300,000);
- 3% on the next \$700,000 (i.e., from \$300,001 to \$1,000,000);
- 2 ½% on the next \$4,000,000 (i.e., from \$1,000,001 to \$5,000,000);
- 2% on any amounts over \$5,000,000.

Generally specific assets gifted (“bequeathed”) to a particular individual under a provision of a Will are not subject to commissions. The same applies to real estate which is specifically designated to a beneficiary (“devised”) under the terms of a Will.

Real estate usually passes by operation of law to the heirs of a decedent who dies without a Will. If the real estate is not sold by the Administrator of the estate it is generally not subject to commissions.

An Executor/Administrator is entitled to 5% of the gross rents collected on real estate in addition to the commissions set forth above.

Unless the Last Will and Testament of the decedent provides otherwise no more than two commissions are allowed when multiple Executors serve.

In addition if an estate is valued at less than \$100,000 and has more than one Executor or Administrator, only one full commission is shared among them.

If the estate is valued at at least \$100,000 but less than \$300,000 each Executor/Administrator is entitled to a full commission but no more than two full commissions are payable. If there are more than two Executors/Administrators serving for the estate two full commissions are apportioned among the multiple individuals serving.

If the estate is valued at \$300,000 or more, each Executor/Administrator is entitled to a full commission but no more than three full commissions are to be paid. Accordingly if there are more than three Executors or Administrators serving simultaneously, the three commissions are apportioned among the individuals serving. Additionally, as stated above, the commissions are limited unless there is a provision in the decedent's Last Will and Testament permitting the multiple commissions.

# SECTION 6

## TAXES

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As Benjamin Franklin said, the only things that are certain are death and taxes. The heirs are not the only ones with an interest in the decedent's estate; Federal and New York State taxes may chip away at the assets and income of the decedent and the estate. These include final (**individual**) tax filings for the decedent through the decedent's date of death, one-time (**estate**) taxes on the value of the decedent's assets and ongoing (**fiduciary**) income taxes from the decedent's date of death through the settlement of the estate.

### A. Individual Income Taxes

Final Federal and New York State income tax returns are due for the year the decedent died. On the decedent's final income tax returns, the full amount of the standard deductions and exemptions can be claimed regardless of the date of death.

Some assets that were not subject to income taxes during the decedent's lifetime—such as IRA's, 401-K plans, interest income on life insurance and annuities—will be subject to both income tax (payable by the individual beneficiaries or the estate, as applicable) *and* estate taxes upon the decedent's death.

The beneficiary of an IRA may elect to defer payment of the proceeds from the IRA, thereby deferring the income taxes as well. There is a short window for making such an election based on (1) the date of decedent's death; (2) whether the decedent was already taking distributions; and (3) the relationship between the decedent and the beneficiary of the IRA. The Secure Act passed in December, 2019 changed the timeframe within which a non-spouse beneficiary must take distributions.

## B. Estate Taxes

For decedents dying in 2019 a Federal estate tax return is required for an individual who leaves a gross estate of \$11,400,000 or more. For decedents dying in 2020 a Federal estate tax return is required for an individual who leaves a gross estate of \$11,580,000 or more. The Federal estate tax is adjusted each year for inflation.

For decedents dying in 2019 a New York State estate tax return is required if the gross value of the estate of the decedent exceeds \$5,740,000. For decedents dying in 2020 a New York State estate tax return is required if the gross value of the estate of the decedent exceeds \$5,850,000.

A non-resident of New York who dies owning real property or tangible personal property in New York and whose gross taxable estate (including property outside New York) is in excess of \$5,740,000 for decedents dying in 2019 or is in excess of \$5,850,000 for decedents dying in 2020 also needs to file a New York State estate tax return.

Federal estate taxes are due if the net taxable estate (i.e. gross value of assets less deductible debts of the decedent and administration expenses of the estate) exceeds \$11,400,000 in 2019 and exceeds \$11,580,000 in 2020. New York State estate taxes are due if the net taxable estate exceeds \$5,740,000 for decedents dying in 2019 and exceeds \$5,850,000 for decedents dying in 2020.

For decedents dying in 2019 once the **net** taxable estate equals or exceeds \$6,027,000 (i.e. 105% of the 2019 basic exclusion amount of \$5,740,000) there is no credit against the New York State estate taxes. Accordingly on a **net** taxable estate of \$6,027,000 the New York State estate taxes total \$514,040.

For decedents dying in 2020 once the net taxable estate equals or exceeds \$6,142,500 (i.e. 105% of the 2020 basic exclusion amount of \$5,850,000) there is no credit against the New York State estate taxes. Accordingly on a net taxable estate of \$6,142,500 the New York State estate taxes total \$528,240.

The taxable estate of a decedent under Federal law includes the taxable gifts made by the decedent **at any time** during his or her lifetime. Under New York law the taxable estate of a decedent for individuals dying between January 1, 2019 and December 31, 2020 includes gifts made on or after April 1, 2014 provided the gifts are made within 3 years of the date of death.

All assets owned by the decedent (including assets that do not require Court intervention such as insurance policies) are subject to estate taxes. The full value of non-spousal joint bank accounts and other jointly held property are also subject to estate taxes unless it can be proven that the surviving joint tenant contributed to the acquisition of the asset. Estate taxes are also due on assets placed by the decedent in a revocable “living trust.”

No estate taxes are due on the assets received by either the surviving spouse or by a charitable entity as a beneficiary of the estate or by operation of law. The charity must, however, be a qualified tax exempt organization in order for the estate tax charitable deduction to be claimed.

The use of the “portability” election allows a savings of future estate taxes by permitting the future use by the surviving spouse of the balance, if any, of the unused portion of the decedent’s Federal estate tax exemption (\$11,580,000 in 2020). In order to preserve the portability exemption the estate of the first spouse to die must file a Federal estate tax return even if the estate is not otherwise required to file the estate tax return. Portability is not currently available in connection with New York State estate taxes.

The Will may specify which beneficiaries bear the estate tax obligations of the estate. If not (or if there is no Will), each beneficiary or class of beneficiaries pays his or her own portion of the estate tax; the Executor or Administrator pays the appropriate taxing authorities and then deducts the proportional amount from each beneficiary’s share of the estate. The Executor or Administrator must also collect any estate taxes due on assets that pass on to a joint tenant or specifically named beneficiary from assets that pass by operation of law such as joint bank accounts, IRA accounts, and insurance policies. These estate taxes are collected from the designated beneficiary or joint account holder.

Sometimes estate taxes are due well before the estate can liquidate certain types of assets. This is particularly true when the decedent held an interest in commercial real estate which can be difficult (or financially disadvantageous) to liquidate in time to pay estate taxes. It might also occur with a closely held business the value of which could drop precipitously if sold quickly in order to satisfy an impending tax obligation. Thus, when a certain percentage of an estate consists of closely held business assets or interests, preferential estate tax treatment (such as the right to make installment payments) is available.

Federal and state estate tax returns must be filed within nine months after death. Likewise, any estate taxes due must be paid within that nine-month period. Six-month extensions to file the Federal and New York State estate tax returns are available if applied for prior to the expiration of the nine month period. When sufficient cause is demonstrated, a six-month extension to pay the Federal and New York State estate taxes is also available through separate timely applications to each taxing authority. The estate may be approved for an extension by one taxing authority and be denied by the other.

Interest and penalties on unpaid estate taxes accrue from nine months after the date of decedent's death until payment.

## THE FEDERAL ESTATE TAX RATES FOR DECEDENTS DYING BETWEEN JANUARY 1, 2019 AND DECEMBER 31, 2019

<u>NET TAXABLE ESTATE</u>	<u>NET ESTATE TAX</u>
\$ 11,400,000	\$ 0
\$ 12,500,000	\$ 440,000
\$ 15,000,000	\$ 1,440,000
\$ 17,500,000	\$ 2,440,000
\$ 20,000,000	\$ 3,440,000

The unified Federal estate tax credit for 2019 is \$4,505,800 which is the tax due on a net taxable estate of \$11,400,000 resulting in no net estate tax on that amount.

## THE FEDERAL ESTATE TAX RATES FOR DECEDENTS DYING BETWEEN JANUARY 1, 2020 AND DECEMBER 31, 2020

<u>NET TAXABLE ESTATE</u>	<u>NET ESTATE TAX</u>
\$ 11,580,000	\$ 0
\$ 12,500,000	\$ 368,000
\$ 15,000,000	\$ 1,368,000
\$ 17,500,000	\$ 2,368,000
\$ 20,000,000	\$ 3,368,000

The unified Federal estate tax credit for 2020 is \$4,577,800 which is the tax due on a net taxable estate of \$11,580,000 resulting in no net estate tax on that amount.

For both 2019 and 2020:

- The maximum Federal estate tax rate is 40%.
- A portion of the New York State estate taxes actually paid are deductible on the Federal estate tax return. That deduction is not computed in the above “net estate tax” figures.
- There is a separate Federal Generation Skipping Tax for bequests by a decedent directly to grandchildren, great grandchildren and other “skip” relatives.

## THE NEW YORK ESTATE TAX RATES FOR DECEDENTS DYING BETWEEN JANUARY 1, 2019 AND DECEMBER 31, 2019

<u>NET TAXABLE ESTATE</u>	<u>NET ESTATE TAX</u>
\$ 5,740,000	\$ 0
\$ 7,500,000	\$ 705,200
\$ 10,000,000	\$ 1,067,600
\$ 12,500,000	\$ 1,466,000
\$ 15,000,000	\$ 1,866,000

Once the net taxable estate exceeds \$6,027,000 there is no credit available against the estate tax. See discussion on page 17.

## THE NEW YORK ESTATE TAX RATES FOR DECEDENTS DYING BETWEEN JANUARY 1, 2020 AND DECEMBER 31, 2020

<u>NET TAXABLE ESTATE</u>	<u>NET ESTATE TAX</u>
\$ 5,850,000	\$ 0
\$ 7,500,000	\$ 705,200
\$ 10,000,000	\$ 1,067,600
\$ 12,500,000	\$ 1,466,000
\$ 15,000,000	\$ 1,866,000

Once the net taxable estate exceeds \$6,142,500 there is no credit available against the estate tax. See discussion on page 17.

On and after April 1, 2014:

- Other than decedents dying between January 1, 2019 and January 15, 2019 gifts made in the 3 years prior to the date of death of the decedent must be added back to determine the gross taxable estate.
- On net taxable estates exceeding \$10,040,000, the maximum New York State estate tax rate is 16%.
- There is no New York State Generation Skipping Tax for bequests by a decedent to grandchildren, great-grandchildren and other “skip” relatives.

### C. Fiduciary Income Taxes

Federal and New York State Fiduciary income tax returns must be filed by the Executor or Administrator of the estate in each year the estate earns \$600 or more of gross income even if no tax is due.

Executor or Administrator commissions, attorney fees, accountant fees, and distributions of income to the estate's beneficiaries may be deducted from gross fiduciary income. Commissions, legal fees, accounting fees and other administration expenses can be deducted on either the fiduciary income tax returns or the estate tax returns.

## THE 2019 FEDERAL FIDUCIARY INCOME TAXES RATES

<u>NET INCOME LESS THAN</u>	<u>TAX</u>
\$2,600	10% of such amount
\$9,300	\$260 + 24% of the amount over \$2,600
\$12,750	\$1,868.00 + 35% of the amount over \$9,300
<u>NET INCOME MORE THAN</u>	<u>TAX</u>
\$12,750	\$3,075.00 + 37% of the amount over \$12,750

## THE 2020 FEDERAL FIDUCIARY INCOME TAXES RATES

<u>NET INCOME LESS THAN</u>	<u>TAX</u>
\$2,600	10% of such amount
\$9,450	\$260.00 + 24% of the amount over \$2,600
\$12,950	\$1,904.00 + 35% of the amount over \$9,450
<u>NET INCOME MORE THAN</u>	<u>TAX</u>
\$12,950	\$3,129.00 + 37% of the amount over \$12,950

## THE 2019 AND 2020 NEW YORK FIDUCIARY INCOME TAX RATES

<u>NET INCOME LESS THAN</u>	<u>TAX</u>
\$8,500	4% of such amount
\$11,700	\$340 + 4.5% of the amount over \$8,500
\$13,900	\$484 + 5.25% of the amount over \$11,700
\$21,400	\$600 + 5.9% of the amount over \$13,900
\$80,650	\$1,042 + 6.21% of the amount over \$21,400
\$215,400	\$4,721 + 6.49% of the amount over \$80,650
\$1,077,550	\$13,467 + 6.85% of the amount over \$215,400
<u>NET INCOME MORE THAN</u>	<u>TAX</u>
\$1,077,550	\$72,524 + 8.82% of the amount over \$1,077,550

Estates of decedents who resided in either New York City or the City of Yonkers are subject to additional fiduciary income taxes.

## D. Income Taxes to Beneficiaries

Generally, a beneficiary who receives property under a Will (or an heir in an estate when there is no Will), does not pay income taxes on their inheritance. However, the beneficiary may owe taxes in any year they receive income from the estate (most commonly in the year the estate is concluded). This income is reported to the beneficiary (and to the taxing authorities) on a Schedule K-1 when the fiduciary income tax returns reflecting that income are filed.

If the estate incurs a loss in the final year of the estate (for example, if the allowable expenses of the estate exceed its income), each eligible beneficiary will receive a Schedule K-1 reflecting his or her deductible share, if any, of that loss. The loss may be deducted by the beneficiary as an itemized deduction on his or her individual income tax returns subject to certain income and time limitations.

# SECTION 7

## FINAL DISTRIBUTION OF THE ESTATE

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The final distribution of the estate's property requires the consent of all the heirs of an estate when the decedent did not leave a Will and the consent of the residual beneficiaries of an estate when the decedent left a Will. This begins with a summary report (the "Informal Accounting") submitted by or on behalf of the Executor/Administrator to the beneficiaries/heirs and ends when those individuals approve the proposed distributions contained in the Informal Accounting.

After the Executor or Administrator has sold or liquidated all of the decedent's assets and paid all of the decedent's debts, administration expenses and taxes, the attorney for the Executor/Administrator typically prepares the Informal Accounting detailing all of the estate's activities from the date of death until the conclusion of the estate. The Informal Accounting includes the Executor's/Administrator's calculation of the proposed distributions of the estate's net proceeds to each beneficiary/heir. Each residual beneficiary/heir receives a copy of the Informal Accounting, along with a "**Receipt and Release.**" When all the Receipts and Releases are signed, the assets and income of the estate can be distributed.

Depending on the complexity of the estate, as much as two years may elapse from the death of the decedent before it is completed. An estate which is not required to file estate tax returns can typically be completed within 8-12 months; an estate which is required to file estate tax returns can typically be completed within 18-24 months.

These guidelines assume there is no major disagreement with how the Executor/Administrator handled the estate. At times, however, serious disputes can arise. In the event that a beneficiary/heir disputes actions taken by the Executor or Administrator or when the beneficiaries are minors or are otherwise under a legal disability the estate settlement must be overseen by the Court. In such a case the Executor/Administrator will be required to file a formal Judicial Accounting with the Surrogate's Court. Each residual beneficiary/heir will then have the opportunity to object to the Judicial Accounting. The Surrogate's Court will ultimately determine if the Executor/Administrator properly fulfilled his or her obligations to the estate and its beneficiaries.

# SECTION 8

## THE ROLE OF THE ATTORNEY FOR THE ESTATE

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The Attorney's role is key to the smooth settlement of the estate and frequently the Executor/Administrator must rely on the attorney to insure that the estate is administered efficiently and accurately. Of course each estate is different, but here are some of the ways attorneys most commonly assist the Executor/Administrator.

### PREPARING THE ESTATE FOR DISTRIBUTION:

- **Preparing legal documentation.** Preparing the petition and all related documents needed to probate the Will of the decedent with the Surrogate's Court and to obtain Letters Testamentary for the nominated Executor (or obtain Letters of Administration for the Administrator, as applicable). This includes filing these documents and any involvement with the Surrogate's Court required for the application;
- **Reviewing the decedent's financial and personal records.** This includes locating the decedent's property and contacting third parties to identify the decedent's property;
- **Examining the contents of decedent's safe deposit boxes.** This includes any applications to the Surrogate's Court and other legal documentation required by the bank to access the safe deposit boxes;

### MANAGING THE ASSETS DURING THE ESTATE SETTLEMENT PROCESS:

- **Obtaining an employer identification number for the estate** from the Internal Revenue Service;
- **Communicating with the representatives of each financial institution**

where the decedent maintained an account to liquidate or transfer the decedent's assets including preparing the paperwork required by the financial institution;

- **Communicating with creditors such as credit card companies and health care providers.** This may include negotiating a compromise for outstanding debts;
- **Determining the date-of-death values of each of the decedent's assets and arranging for appraisals of the real property and tangible personal property** in which decedent had an interest and reviewing the appraisals to confirm that they accurately reflect the date-of-death values of those assets;
- **Completing the documents and submitting the proofs** necessary to process the life insurance policies insuring the decedent;
- **Determining whether the decedent's estate or family members have a viable lawsuit** for the manner in which decedent died or for any injury or loss suffered by the decedent prior to death;

#### ASSURING COMPLIANCE WITH TAX REGULATIONS:

- **Applying for releases of estate tax lien on the decedent's real property** from Federal and New York State taxing authorities;
- **Handling all tax-related matters pertaining to the estate.** These include preparing the Federal and New York State estate tax returns, the decedent's final income tax returns, and the estate's Federal and New York State fiduciary income tax returns. Preparation of those returns should include how to value assets for estate tax reporting and capital gains and losses reporting purposes as well as an analysis of how to synchronize the receipt of income and the payment of expenses and distributions in order to produce maximum income tax savings;
- **Preparing, if required, an estate tax plan** for one or more of the beneficiaries. This may include preparing legal documentation on behalf of the spouse or other beneficiaries of the estate such as Disclaimers and Renunciations;

**CLOSURE OF THE ESTATE PROCESS:**

- **Preparing an informal accounting of the estate's activities from the date of decedent's death to its conclusion;**
- **Preparing receipts and releases on behalf of the Executor/Administrator certifying that each of the beneficiaries of the estate has received the share to which he or she is entitled and acknowledging that the Executor/Administrator has performed his or her duties in a proper manner.**

Additional legal services would be required in some cases, such as if the Will is challenged by an heir; if assets or debts become the subject of litigation; or if a judicial accounting proceeding is required.

## ABOUT THE AUTHOR

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Howard Garfinkel is the managing member of the law firm of Lauterbach Garfinkel Damast & Hollander, LLP. Howard Garfinkel concentrates his practice in the areas of estate administration and planning and represents Executors and Administrators in estates of all sizes and levels of complexity. He has practiced in the areas of estate administration and estate planning for more than 35 years and has helped families settle hundreds of New York estates.

The firm, with offices in Rockland, Westchester and Manhattan, was originally established in 1916 by Edward Lauterbach.

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