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How Estates Are Settled

John C. O'Byrne  
Iowa State University

John F. Timmons  
Iowa State University

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This is the first of a series of articles about the procedures necessary or available in settling an estate, in transferring property before or after death and about the different purposes and needs for these procedures.

by John C. O'Byrne and John F. Timmons

THE LEGAL PROCEDURES for settling an estate are similar whether there is or isn't a will. This article deals with these basic procedures. But how property in the estate will be distributed, as we'll show in other articles in this series, depends a lot on the arrangements a person makes—or doesn't make—during life.

At a person's death, he leaves an estate—all of his property, debts owed to him and debts and obligations due others. This is using "estate" in a broad sense to include the sum total of assets and liabilities. The person who manages and settles the estate is the "personal representative."

If there is a will, the personal representative is called the executor or executrix, if a woman. If there is no will, the personal representative is called the administrator or administratrix.

When a person dies, his personal property passes to the personal representative to be used to pay debts and expenses. His real property passes to his spouse and heirs or to the beneficiaries under a will. But the real property can be reclaimed by the personal representative if needed to pay debts.

The estate is probated in the district court of the county in which the deceased person was a resident. Probate comes from the Latin word meaning "proof." Originally probate referred only to wills, but now it has come to mean the process of settling an estate. When the district court handles these matters, it's called the probate court. The function of the court is to determine that the person is dead, to establish the will if there is one, to see that debts and taxes are paid and to distribute the remaining property of the estate to the beneficiaries.

It's important that the rights of these people be established once and for all—so that no later questions arise concerning their claims to the property. The court proceeding is designed to fix these rights and to settle claims, not only among the heirs or takers under a will, but generally against everybody. The procedure provides opportunity for persons having claims against the decedent "to come forward and be paid." The procedure determines the just debts and taxes that are due and finally establishes how much is left for distribution.

If there is a will, the court determines if the will was properly made and executed. Potential beneficiaries have opportunity to object to the will if it's thought to be invalid. If the court finds the will valid, the words of the will determine who receives the decedent's property. If there is no will, the court will distribute the property in accordance with the provisions of the Iowa law of descent and distribution.

Why Probate a Will?

The beneficiaries cannot establish their rights without probate. The will itself is established only in the probate proceedings. A probated will can be shown in any court as the basis of rights to property. An unprobated will has no legal standing. A person who is to receive personal property cannot assert his right until after probate. Title doesn't pass to him except under a probated will.

JOHN C. O'BYRNE is professor of law and director of the Agricultural Law Center, State University of Iowa, Iowa City. JOHN F. TIMMONS is professor of agricultural economics at Iowa State.
Even in the case of exempt property, which is set aside for the spouse, the proceeding provides the necessary inventory and appraisement. Likewise, one entitled to real property under a will cannot prove his right to the land except by probating the will. Until a will is probated, the title to real property technically is considered to be in the heirs-at-law of the decedent, not in the persons named in the will.

In the absence of a will, probate or some form of administration of the estate still is desirable and generally necessary. In a few instances, administration can be avoided. The law establishes the administration procedure to ensure the rights of creditors and proper distribution to spouse and heirs. If a decedent leaves no will, his personal property passes to a court-appointed administrator who pays debts and taxes and distributes the remaining property to the proper persons. Real property passes to the spouse and heirs directly. But it can be claimed by the administrator, if necessary, to pay the decedent's debts.

Sometimes, if it's clear who the spouse and heirs are, if the property left is money or tangible personal property and if there are no creditors, an informal distribution can be made. Ordinarily, it's necessary to have a formal record showing that these persons are the known spouse and heirs entitled to share in the estate, that claims of creditors have been paid, and that no taxes are owed. Otherwise, a buyer of the property couldn't be sure that the title was clear. Further, a person who owes money to the decedent usually is unwilling to pay the heirs without administration because he runs the risk of a creditor of the decedent opening the estate and compelling him to pay again. Failure to administer an estate seriously affects the title to real property, at least for several years, and a careful buyer will regard the title as unmarketable.

Sometimes a joint tenancy is used in an effort to avoid probate or administration. Whether this can be accomplished depends on the nature and size of the estate involved. Where real property is involved, for example, a prospective buyer from the surviving joint tenant will demand, among other things, proof of death of the other tenant and assurance that no inheritance tax is due to Iowa or estate tax due to the United States. These are the things that probate reveals anyhow. Subterfuges such as the "secret box" and the "hidden deed" are unsound. They frequently lead to lawsuits and fail to accomplish their purpose.

Procedure . . .

Now let's look at the actual procedures involved in settling an estate in Iowa: If there is a will, someone must start the proceedings by offering the will for probate. Usually this will be the executor named in the will to take charge of the estate, but any other interested person may start the proceedings. This is done by filing a written petition in the court. The person who has custody of the will is responsible for filing it with the clerk of the court after the death of the decedent, and there are penalties for failure to file.

The court sets a day at which time the will is to be "proved." A notice is published so that all may know that the proving of the will is to take place. Since wills are witnessed by at least two persons, the usual way of proving a will is to call in the witnesses. If the witnesses are dead or absent, however, there are other ways to prove a will. Objections to the validity of the will may be made at this time, and a trial may be held to determine if the will is valid. After the will is proved, it's recorded in the clerk's office, and an official copy is given to the executor.

The executor is officially appointed when the will is admitted to probate. The decedent nominates the executor in the will, and the court usually appoints him. If no one is nominated in the will or if the person named refuses the job or isn't qualified, the court will appoint a person. This person is called an "administrator with the will annexed." Almost anyone can be chosen as executor so long as he or she is of sound mind and at least 18 years of age.

The executor files a bond to guarantee the faithful performance of his duties in handling the estate and takes an oath to faithfully carry out his duties. By saying so in his will, the testator can relieve the executor of the duty of filing a bond. After the executor is sworn and bonded, he receives a document called "letters testamentary" from the court authorizing him to act for the estate.

Often a person will nominate a bank or trust company as executor. These institutions handle many estates and become skilled executors. They're frequently called "corporate executors."

If there is no will, the decedent is said to die intestate, but the procedure still is quite similar. The surviving spouse, the next-of-kin, creditors or certain other persons may apply to the court for the appointment of an administrator to take charge of the decedent's property. Like the executor, the administrator must take an oath and give a bond for the faithful performance of his duty as the personal representative or custodian of the estate. He receives "letters of administration" from the court authorizing him to act for the estate.

Settling the Estate . . .

After the appointment of the executor or administrator, the procedure is about the same whether there is a will or no will. A notice of appointment is published to inform all persons interested that there is an administrator or ex-
The executor or administrator collects and takes possession of all personal property owned by or belonging to the decedent at the time of his death, and he may sue to recover money or property due the estate.

**Inventory:** The first important job is to file with the court a complete and detailed inventory of all property owned by the decedent at his death and a report naming the surviving spouse, heirs and any beneficiaries under a will. The inventory includes all of the decedent's real estate, all of his personal property which might be used to pay his creditors and all of his personal property which cannot be reached by creditors (exempt property). The personal property includes notes, mortgages, stocks, bonds, accounts receivable, machinery, livestock, jewelry, household goods and everything else that the decedent owned other than land. An appraisal is made to establish a dollar value for each item of property. Should the court think that there is someone who has additional property of the decedent, such a person can be called into court and questioned under oath.

Though some property can't be used to pay debts, it's included in the inventory. This includes property exempt from execution under the law, certain insurance proceeds and, in some cases, damages received in connection with the decedent's death. Property held in joint tenancy and certain property transferred before death also are included in the inventory for inheritance tax purposes.

**Estate Manager:** The executor or administrator is the manager of the estate until it's settled. He "stands in the shoes" of the decedent. But he also represents the creditors of the decedent and the persons who will receive the decedent's property, and he has certain responsibilities to them. His job is to pay off all debts and taxes and to preserve as much of the property as is possible for the spouse and heirs or beneficiaries. If the court believes it advisable and advantageous, it can authorize the executor or administrator to operate the decedent's business or farm for awhile to wind up affairs with greater advantage.

**Debts, Expenses, Taxes:** The primary job of the executor or administrator is to collect and preserve all of the personal property of the decedent. After setting apart exempt property to the widow, he pays the expenses of the last illness, funeral expenses, taxes and any allowance made by the court to the widow and minor children during the settlement of the estate. Then he's ready to pay off the general debts of the decedent.

One of the reasons for the notice and publicity of probate is to inform all creditors to come and present their claims. These are presented to the clerk of the court, and the executor or administrator has opportunity to allow the claim or to object to it. If there's a dispute, a court hearing is held to settle it, or it can be submitted to a jury. If claims aren't filed within 6 months after the notice is given, they may be barred and not be collectible.

The executor or administrator pays these obligations first from money collected and then from money obtained by selling personal property. If the personal property isn't sufficient, the court will order real property sold to pay debts under a special statutory procedure.

**Distribution of the Estate:** When all debts, claims and taxes have been paid, the executor or administrator may then distribute the property to the spouse and heirs or beneficiaries. Earlier distributions may be made if the creditors of the estate are protected.

If there is no will, the administrator distributes the remaining property in accordance with the provisions of the law. If there is a will, the executor distributes the property to the persons named in the will. Generally the actual property is distributed if this is possible; otherwise, it is sold, and the money received is distributed.

**Final Report and Discharge:** The executor or administrator makes regular reports to the court on the progress of settling the estate. The first report is due within 7 months after his appointment. When ready for the final distribution, the executor or administrator makes a final report to the court. The report shows what property came into his hands and what he did with it, including payments of debts and taxes. Any interested person may object to the final settlement of his accounts at this time. If the report is approved, distribution is made, the estate is closed, and the executor or administrator is released from his responsibilities.

**Problems . . .**

This outline of the probate law illustrates the general procedure that must be followed in settling an estate. It's much more complicated in actual practice because the precise details of the law must be carefully observed. Serious problems regularly arise in connection with finding all of the property, in valuing the property, in determining the titles to property, in interpreting provisions in wills, in locating the heirs, in handling tax returns, in keeping correct accounts, etc. Anyone who has served as an executor or administrator or who has worked closely with an estate knows firsthand that the job of the personal representative can be difficult and time consuming.

The duty of the executor or administrator is vitally important to the estate, and he undertakes great responsibility. Since he really acts for the decedent, great care should be taken in his selection and in the selection of the attorney with whom he must work.