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(BY APPOINTMENT ONLY)

Estate Administration and the Duties of a Personal Representative

This memorandum describes the process of administration of a decedent's estate. The court supervised process of estate administration is commonly referred to as *probate*. Generally, the process involves collecting and valuing the decedent's assets, paying the decedent's valid debts, estate administration expenses and taxes, and then distributing the remaining assets to the persons or organizations described in the decedent's Will (the *devisees*) or if the decedent did not have a Will, to the persons entitled to the estate under state law (the *heirs*). The person responsible for estate administration is the *personal representative*, who may also be referred to as the *executor* (if a Will) or the *administrator* (if no Will). Please contact me with any questions which you may have about the probate process or the obligations of the personal representative.

Opening the Estate

The first step in the probate process is notifying the District or Probate Court (in the County where the decedent resided) of the death of the decedent and requesting the appointment of a personal representative. If a Will is found, a determination is also made as to whether the Will appears to be valid. If these matters are uncontested, then Colorado law generally permits informal proceedings to begin probate. Informal proceedings do not involve a court hearing or advance notice of the proceedings, and matters are approved by a court registrar rather than a judge. Consequently, informal proceedings are typically quicker and cheaper than formal proceedings. However, if matters are disputed (or may be disputed), then a formal process may be required.

Letters of Office

Once the personal representative is appointed, the court issues a certificate called *letters of office*, which is evidence of authority to act on behalf of the estate. The certificate is presented to financial institutions and others as proof of authority to gather estate assets. Once letters of office are issued, a taxpayer identification number for the estate must be obtained from the Internal Revenue Service, and an estate checking account should be opened (the bank will need letters of office and the IRS notification of issuance of the taxpayer identification number).

Collect Assets and Determine Debts and Liabilities

Once letters of office are issued, and throughout the probate process, the personal representative is obligated to take all reasonable actions to collect all assets of the decedent and to the extent of available assets, pay all debts and liabilities of the decedent. This obligation includes resolving any contested ownership or right to assets, and resolving any disputed debts or other liabilities. This obligation also includes safeguarding estate assets from theft, and insuring estate assets against fire and other casualties and risks of loss. Real estate owned by the decedent in another state will require ancillary probate proceedings in that state to transfer title.

Inventory, Accounting and Financial Records

Within 90 days of issuance of letters of office, an inventory of all assets owned by the decedent must be prepared and either filed with the court or made available to interested parties, including the value for each asset. The personal representative must maintain

complete records of all receipts of estate assets, including cash. Each sale or other transfer of estate assets must be documented. Estate funds must be held and invested in a prudent manner. A record must be maintained of all disbursements of estate assets, including payment of debts and administrative expenses. Interested parties are entitled to an accounting of receipts and disbursements. All receipts of estate funds should be deposited into the estate checking account or an estate investment account, and all disbursements of estate funds should be made through the estate accounts. All receipts and disbursements should be accurately described in the account registers or checkbook (which may be used to prepare the accounting of receipts and disbursements, and used in the preparation of income tax returns). Estate assets should not be commingled with any other assets. Assets passing by "operation of law" such as assets held in joint tenancy, "transfer on death" accounts, life insurance, annuities and retirement plans payable other than to the estate, are not estate assets and are not includible in the inventory or accounting (because these assets pass directly to a surviving joint tenant or named beneficiary).

Information of Appointment

Within 30 days after issuance of letters of office, notice of probate proceedings and the appointment of the personal representative, known as *information of appointment*, must be sent to each person named in the Will (if any), to each person who would inherit absent a Will and must be filed with the court.

Claims of Creditors, Family Allowances and Administrative Costs

Notice to unknown creditors must be published in a newspaper to limit the time in which claims may be made. The notice is typically given by the attorney for the estate. Claims of unknown creditors are generally barred if not presented within four months after the first publication of notice to creditors, however known claimants may have a longer claim period, which can be shortened by service of notice. Please contact me if you need more information about claim notices.

The personal representative is obligated to pay all uncontested claims, to the extent of available estate assets, and claims may accrue interest if not timely paid. Colorado law provides for the priority in which claims are to be paid if estate assets are insufficient to pay all claims. Claims may be made by filing with the court or by delivery to the personal representative. An invoice, credit card statement or other statement for goods or services may be sufficient to present a claim. If the personal representative disagrees with a claim, he or she has 60 days to dispute the claim. Please contact me as soon as possible if you wish to dispute a claim. Claims are disputed by sending a notice to the claimant and the court, and the claimant then has 60 days in which to begin court proceedings for allowance of the claim, otherwise the claim is barred.

Family allowances and administrative costs are payable from the estate before claims are paid. Administrative costs may include a fee to the personal representative. If the personal representative decides to collect a fee, accurate time records must be kept and a reasonable fee determined. A fee will be taxable income and will be deductible by the estate. Claims paid may be deductible for estate tax or income tax purposes, or in rare occasions, both. So the nature of the claim paid should be recorded with the payment of the claim, for tax purposes.

Estate Tax and Disclaimers

If the value of all property owned or controlled by the decedent (including both probate and

nonprobate assets) exceeds approximately \$11.4 million, then a federal estate tax return must be filed within nine months after the date of death. Colorado does not have a state estate tax. If the decedent owned any real property in states other than Colorado, state estate tax and returns may be required in those states.

A person entitled to a distribution from an estate may (renounce) disclaim the distribution before accepting any benefit, if disclaimer is made within 9 months of the death of the decedent. Upon a qualified disclaimer, the disclaimed property passes as if the disclaiming party did not survive the decedent. A disclaimer may be beneficial for both tax and nontax reasons, and should be discussed as early in the process as possible.

Income Tax

Final individual state and federal income tax returns are due from January 1 to the date of death, and fiduciary (estate) income tax returns are due from the date death through the end of the fiscal year. If the decedent's estate plan includes a trust which does not continue beyond administration of the estate, an election may be made to combine tax returns for the estate and trust. Otherwise the trust and estate will file separate tax returns. An estate may elect to use a fiscal year other than a calendar year (for example, a decedent dying in April may have an estate with a fiscal year ending March 31st). Trusts are generally required to report on a calendar year basis. Trusts and estates must file tax returns by the 15th day of the 4th month following year end (April 15th for calendar year entities). After the initial tax year, estimated tax payments may be required in some situations.

Closing the Estate

After all assets have been collected, administrative costs paid, debts paid and claims resolved, tax returns filed or provisions made for filing, and the final accounting made, then the remaining assets are distributed and the estate may be closed. The estate is closed informally by filing a statement with the court, and if no matters are raised within a year, then appointment as personal representative will terminate and the estate will be closed. Formal closing requires several steps: final accounting is filed with the court; petition to terminate probate filed with the court; notice of hearing given; hearing on the petition and accounting is held; court order approving distributions entered; report confirming distribution made; and an order discharging the personal representative and closing the estate is entered.

Trust Administration

If the decedent created a trust during his or her lifetime or under the terms of a Will following his or her death, then trust administration will be required in addition to, or instead of estate administration, depending upon whether the trust was funded during the life of the decedent. A trust must be registered with the probate court following the death of the trust creator. The trustee has a fiduciary obligation to the trust beneficiaries to follow the terms of the trust agreement and to account for trust receipts and disbursements. But unlike an estate, trust administration is not usually supervised by the court. However the collection of assets, inventory and accounting requirements, payment of expenses and claims, distributions to beneficiaries, are all substantially the same. Please contact me to discuss trust administration issues, as applicable.