What is Estate Administration?

By: Jeremy C. Johnson, Esq.

What is estate administration? I feel as if I should be holding a skull and staring intently into its eye sockets on some grand Shakespearian stage while I boom out this quandary. Instead, this article will explore and define a practical answer to this question as opposed to an answer of a more philosophical slant. The first step is to determine what one means by the term "estate." In broad brush strokes, estate administration is the act of someone dealing with the financial affairs of an incapacitated or deceased person. However, there are many different kinds of "estates" (e.g. gross estate, trust estate, probate estate, and non-probate estate) and therefore there can be confusion about the meaning of the term. Let's examine this issue in the same manner that I approach an initial estate administration appointment at JGB after someone dies. In these initial meetings I frame our overall discussion through the use of a construct I call the Four Columns of Assets. When someone passes, their assets will all be classified and dealt with within this construct.

Column One – Assets owned by or made payable to the decedent's trust:

Assets that are owned by or made payable to the decedent's trust will be subject to and administered by the terms of that trust. These assets will avoid probate and will ultimately be distributed to the beneficiaries directed in the trust instrument. As such, this will be effected via a process called 'trust administration.' Within the trust, a person or entity designated as the trustee will have the responsibility to marshal and value the trust assets, pay final expenses, taxes and obligations that are legally enforceable against the trust, and then ultimately distribute the remainder to the designated beneficiaries. This process proceeds without court oversight (unless the trust instrument specifically requires the court's involvement or there is a fiduciary litigation event). Trust administrations can be as brief as a few months, or as long as many years. The timeframe of a trust administration will be directly proportional to the complexity of the trust, complexity of the assets, complexity of the beneficiaries and the impact of fiduciary litigation events.

Column Two – Assets owned by the decedent in joint ownership with right of survivorship with someone else:

Assets in this Column Two fall within a non-probate estate administration; provided, the surviving owner is 1) alive, 2) not incapacitated, and 3) not minor. Generally speaking, these assets fall outside of both trust and probate estate administration processes. However, I would be disingenuous if I failed to mention that jointly owned accounts with right of survivorship are required to be reported on the Virginia Probate Inventory for a Decedent's Estate (Form CC-1670) if a probate is otherwise opened due to other probate related assets. It is also important to point out that although assets in this Column Two may avoid probate, they would still fall into the definition of

gross estate as defined by the Internal Revenue Code and used for the purposes of determining if a federal estate tax obligation is owed by the decedent. Further, this can create a problem if a federal estate tax obligation is owed AND the decedent's trustee or executor does not have dominion or control over the asset or assets that fall in Column Two for the purposes of paying said obligation. This is an illustration of where a disconnect between the types of estates can create larger administrative concerns and issues.

Column Three – Assets owned by the decedent, but payable by beneficiary designation to someone else:

Just like in Column Two; assets in this Column Three fall within a non-probate estate administration; provided, the surviving owner is 1) alive, 2) not incapacitated, and 3) not minor. Also, just like in Column Two, we have the same potential disconnect issue between those who are responsible for administering the decedent's estate and the ability to marshal the estate assets to meet administrative obligations. In many cases, this disconnect could otherwise be remedied if the decedent had a trust and said trust was the beneficiary of the assets in Column Three. Assets that are typically found in Column Three are things like life insurance, retirement accounts, bank accounts subject to a 'pay on death' designation, investment accounts/stocks and real estate deeds subject to a 'transfer on death' designation.

Column Four – Assets owned by the decedent in their name alone:

If the decedent has any assets titled solely in their own name (not subject to joint ownership with right of survivorship, or a beneficiary designation), then those assets fall within Column Four and are generally speaking 'probate assets' subject to some form of probate estate administration. If the assets in Column Four equal or exceed $75,000 in aggregate value, then they will be subject to a full probate estate administration. If they value less than $75,000 in aggregate, then they may be dealt with using a Virginia Small Estate Act Affidavit.

Full probate estate administration:

So, what is a full probate estate administration? First, one must determine if the probate estate is either testate (there is a last will and testament) or intestate (there is no last will and testament). If it is testate, then the person or entity nominated in the last will and testament has the first priority to go to the appropriate Circuit Court with jurisdiction over the matter to 'qualify' as the personal representative (executor/executrix). This begins the administrative clock on a number of probate filing deadlines to include (but not limited to): notice to heirs, affidavit of notice, inventory, accounting, debts and demands proceedings, etc. It should be noted that the state/local process of a probate administration operates separately from the federal taxation process/filings and the personal representative is responsible for managing and affecting both processes in tandem. If it is an intestate probate estate administration, some of the descriptive terms are slightly different for certain things (a personal representative is an 'administrator' versus an 'executor'); however, the process is generally the same with one glaring difference. In an intestate probate estate administration, the personal representative does not have the benefit of a guiding document (the last will and testament) to guide their actions; but rather must use the laws of intestacy as their surrogate form of guidance and instructions. In any case, a probate estate administration can be long and complicated; and if it is not executed properly, it can result in personal liability to attach to the personal representative. It generally should not be attempted cavalierly, without the aid and guidance of competent legal counsel.

Conclusion:

There are many forms of 'estate administration.' It is imperative that before you attempt to conduct an estate administration of any type, you are able to identify the nature of the administration you are facing and if you feel that you are not equipped to handle it on your own that you acquire the appropriate professional assistance to help you correctly execute your duties and obligations of whatever that particular estate administration requires. The attorneys and staff of JGB have the experience and know-how to help you get this done. Contact us today if you require estate administration experience and assistance.

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ABOUT THE AUTHOR



Jeremy C. Johnson is a Partner with Johnson, Gasink & Baxter, LLP. As a trust, estate and business attorney, he is a proven problem solver who has helped thousands of individual and business clients over his 20+ years of practice, taking pride in ensuring that his work for clients is reliable, correct and on time.

Jeremy earned his bachelor (English) degree from the University of Massachusetts at Amherst, MA; his Juris Doctor from Western New England University School of Law in Springfield, MA; and his LL.M. in Taxation from Boston University School of Law in Boston, MA. He maintains licenses to practice law in both Virginia and Massachusetts.

Having relocated to Virginia in 2004, Jeremy is active in the Williamsburg community. He has served on multiple boards over the years, and he is a returning instructor for SCORE programs sponsored by the Chamber. He has five children and enjoys living, working and playing in Williamsburg with his wife, Sarah Kuehl Johnson.

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