

BASIC ESTATE QUESTIONS WILL PROBATE BE REQUIRED?

MUST A FEDERAL ESTATE TAX RETURN BE FILED? MUST A NEW YORK ESTATE TAX RETURN BE FILED?

Reviewing the assets and values of the decedent with this chart in mind will help you determine the likely answers to the most commonly asked questions about dealing with an estate, although issues specific to your case should get legal review.

PROBATE is the process of getting the assets of a decedent who died with a will to the people and charities named in that will. Generally, only the assets in #4 will certainly be subject to probate because many (or even all) assets will pass by other means. If there is no will, these assets will pass according to the laws set out by New York State in a court proceeding called an “administration”. If the total value subject to probate or administration is less than \$30,000, a special simplified procedure may be followed. Note that you could have a probate proceeding, but no estate tax issues.

FEDERAL ESTATE TAX RETURN, a form 706, must be filed if the total date of death value of the assets exceeds a certain amount. For individuals who died in 2009, if the estate is worth over \$3,500,000, a return must be filed. For individuals dying in 2010, right now there is no estate tax, regardless of the value of the estate. However, Congress may change this rule. We will know more in the coming months. In the meantime, it is best to have all of the necessary information prepared, in case Congress does change the law. Note that it may be necessary to file an estate tax return even if there is no probate required, as taxation and probate are two separate issues.

NEW YORK STATE ESTATE TAX RETURN, a form ET-706, must be filed if the total date of death value exceeds a certain amount. For people dying in 2010, that amount is \$1,000,000. Note that for people dying in 2010, it may be necessary to file a New State estate tax return, but not a federal return.

The chart asks you to list all of the assets of the decedent, estimating the value and segregating by the title on the asset and how it passes at death. It is common for assets to be discovered even months after a person has died, but it is useful to begin organizing information even before it is complete. At the beginning of each section you will see suggestions of the types of assets the category is likely to contain.

In all cases, “Value” means fair market value at date of death.

3. ASSETS IN THE NAME OF THE DECEDENT MARKED AS “IN TRUST FOR” (“ITF”) OR “PAYABLE ON DEATH” (“POD”) TO A SPECIFIC INDIVIDUAL: No probate is required on these assets if the other person named is living. Examples: real estate; stocks& bonds; mortgages & notes (owed to decedent), cash, bank accounts, valuable tangible personal property, etc.

ASSET INFORMATION	APPROXIMATE VALUE	CONFIRMED D/O/D VALUE	PAYEE/BENEFICIARY

4. ASSETS IN THE NAME OF THE DECEDENT ALONE: Probate is required, or “administration” if no will. Examples: real estate; stocks& bonds; mortgages & notes (owed to decedent), cash, bank accounts, valuable tangible personal property, etc.

ASSET INFORMATION	APPROXIMATE VALUE	CONFIRMED D/O/D VALUE

5. ASSET PAYABLE TO NAMED INDIVIDUAL OR CHARITY BY BENEFICIARY DESIGNATION: no probate is required on these assets if the designated beneficiary is living or is an existing charity. However, special issues if beneficiary is a minor. Examples: annuity, life insurance, IRA or retirement account, employment death benefit, etc.

ASSET INFORMATION	APPROXIMATE VALUE	CONFIRMED D/O/D VALUE	BENEFICIARY

6. ASSET PAYABLE TO “MY ESTATE” BY BENEFICIARY DESIGNATION, NO BENEFICIARY NAMED, OR NO LIVING (EXISTING) BENEFICIARY: probate or administration is required on these assets if it goes to “my estate” or the designated beneficiary is not living (existing). Examples: annuity, life insurance, IRA or retirement account, employment death benefit, etc.

ASSET INFORMATION	APPROXIMATE VALUE	CONFIRMED D/O/D VALUE

GRAND TOTAL (GROSS ESTATE)	
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