

Estate Planning Part 9:

How to Settle an Estate

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There are three basic steps to settling an estate after the death of a loved one, however working on each step requires time and patience.

To settle and estate, you must:

1. File a petition to probate the will and appoint the executor or fiduciary.
2. File an inventory of the estate.
3. Submit a final accounting of the estate's affairs.

In Kentucky, an estate must remain open for at least six months to allow time for creditors to submit their bills to the estate. Thus, a simple estate can be settled in as short a time as six months. All estates are settled within two years unless extenuating circumstances create a need to petition the court for an extension of time.

A settlement can go more quickly and smoothly if the deceased person practiced good record keeping and record organization before their death. Without good records or if the information is not easily found, the estate settlement can take much longer and cost the estate money.

Although an attorney is helpful in settling an estate, simple estates can be settled without using an attorney. In Kentucky, about half of the estates use an attorney, while the other half do not. An estate or family law attorney is up-to-date on Kentucky estate laws and can provide helpful advice and information. By law, an attorney cannot collect more than 5% of the value of the estate for fees associated with settling an estate. In many estate settlements, the attorney agrees to payment of an hourly fee for the time taken with the estate. This is done when the executor does most of the work and uses the attorney only when needed.

Step 1. File a Petition to Probate the Will and Appoint an Executor or Fiduciary

In Kentucky, the Probate Division falls under the County District Court. The Office of Circuit Court Clerk in your county can provide you with the legal forms necessary to file a probate case. The clerks in most probate offices are willing to answer questions and help a person through the process of settling an estate. Remember, however, circuit court clerks are not attorneys and cannot offer you legal advice.

To begin, locate the deceased person's original and/or most recent will. From there, you will file a petition (using form AOC-805). This form asks for the deceased person's name, Social Security number, birth date, death date, last address, and whether the deceased left a will. The petition includes both the *petition for probate of the will* and *appointment of the executor for the estate*. Legal forms to settle an estate can be located on the Kentucky Court of Justice website at www.courts.ky.gov or at your Circuit Court Clerk Office in your county.



Keep detailed records of all debts paid. Most estates use a voucher system to record the name of the creditor, the amount paid, and for what debt. The court will need this information for the final settlement of the estate.

In addition, the form asks for the names of the surviving spouse, heirs-at-law, and the next of kin of the deceased. This information includes the name and address of each of these persons, their relationship to the deceased, and their age. If the names and addresses of the heirs are not known, the executor must advertise to find the heirs.

If the deceased had a will, it must be proven in court unless the will is a *self-proved will*. A self-proved will is one that was signed by the deceased along with two witnesses, all signatures were notarized, and it includes certain language required by statute KRS 394.225. If the deceased had a *holographic will*, which is one written entirely in the decedent's handwriting, proof of the deceased's handwriting is required as testimony.

Next, the petition asks for the estimated market value of real estate and personal property owned by the deceased.

Lastly, the petitioner supplies the name and address of the person to be appointed executor as well as the name and address of the petitioner. The petitioner's signature is notarized. A portion of the form has a place for an attorney's signature if the petition is prepared by an attorney. However, it is not necessary for an attorney to complete this form.

At the bottom of the form is a space for the surviving spouse and next of kin to waive notice of the hearing of the petition and request the court to appoint the executor.

This form must be completed in duplicate. When this form is filed, there is a court fee to be paid. This fee should be the same statewide and is subject to change by the Kentucky Supreme Court, which determines the fees. Be prepared. Some courts only accept cash.

Most wills include a *waiver of surety*. This means that the executor does not have to post a bond as the executor of the estate. If the will does not have this waiver, the judge sets the amount of the bond, and the executor must contact an insurance company to secure bond in that amount. The purpose of the bond is to protect the estate from the executor taking money from the estate for personal purposes.

The executor is responsible for the care in the management of the estate and must manage the estate for the benefit of the beneficiaries of the estate.

After the petition is filed, a court date will be set. At the court hearing, the judge will sign an order probating the will and appointing the executor for the estate. The original of the order is filed with the court along with a certified copy of the will. Copies of the order are given to the executor and the Inheritance Tax Section of the Kentucky Revenue Cabinet. A certified copy of the order is filed with the county clerk along with the original of the will. The petitioner is responsible for the recording fee.

At this time, there is a small fee for recording both the will and bond. There is also a creditor advertising fee.

Step 2. File an Inventory of the Estate

The inventory must be filed within 60 days of appointment as executor. Now the work begins for the executor.

Itemize the Assets

The executor must collect all assets of the deceased person. This includes making an itemized list of assets that are *only in the name of the deceased* including bank accounts, certificates of deposit, stock certificates, bonds, mutual funds, frequent flyer miles, automobiles, retirement accounts, IRAs, life insurance policies owned by the deceased, and household items. Property that the deceased person held jointly with right of survivorship passes immediately to the survivor and does not pass through the probated estate. The same is true of retirement accounts and death benefits from life insurance policies that have a named beneficiary. These monies go directly to the named beneficiary and do not pass through probate.

Check with your local probate court clerk, as real estate is not always included on the inventory. The court supplies the executor with an inventory and appraisal of estate form (AOC-841) for listing a description of each asset and an estimated value. The estimated value should be the current market value of the item at the time of the deceased person's death.

A copy of the *Wall Street Journal* for the date of death can provide the value of shares of stock on that date. Real estate appraisers can provide an accurate value of real estate. The executor might research the sale price of similar real estate in the area within three to six months of the date of the deceased person's death and arrive at his or her own estimated value. Bank accounts have a balance on the date of death. Bonds and certificates of deposit have a face value.

The value of household items can be estimated, or you can request an appraisal by a local person who is up-to-date on the value of used household items. If the estate includes a collection of antiques, jewelry, artwork, or other collectibles, an appropriate person can give an appraisal for their value. Remember that appraisers will charge a fee for making an appraisal.

Pay All Debts

The executor is also responsible for paying the debts of the deceased person from the estate. The court suggests that the executor deposit bank accounts into an estate bank account. The estate bank account can be used to pay the debts.

Keep detailed records of all debts paid. Most estates use a voucher system to record the name of the creditor, the amount paid, and for what debt. The court will need this information for the final settlement of the estate.

File and Pay All Taxes

The taxes paid depend on the size of the final estate. Here is a list of the tax returns you may need to file, available at www.irs.gov and <https://revenue.ky.gov>:

- Federal income tax return (Form 1040)
- Kentucky income tax return (Form 740)
- Federal Fiduciary income tax return (Form 1041)
- Kentucky Fiduciary income tax return (Form 741)
- Federal Estate tax return (Form 706)
- Kentucky Inheritance tax return (Form 92A200)

The Kentucky Revenue Cabinet typically mails the inheritance tax forms and instructions to either the fiduciaries or their attorney within two months after appointment. If you need further information and tax forms, contact your local IRS office or the Kentucky Revenue Cabinet concerning Kentucky Inheritance Taxes. The Cabinet provides a table indicating the amount of inheritance tax to pay.

- Kentucky Department of Revenue
- Inheritance & Estate Tax Section, Station 61
- 501 High Street
- Frankfort, KY 40601-2103
- (502) 564-4810

In Kentucky, the following beneficiaries are exempt from paying inheritance tax:

- Surviving spouse
- Parent
- Child
- Grandchild
- Brother/sister, half-brother/half-sister

If no inheritance taxes are due and a Federal Estate and Gift Tax return is not required, the executor can file an “affidavit of exemption” for the estate.

Distribute the Assets

Distribute the assets as required by law or by the terms of the will. Once all the debts and taxes have been paid, the executor can proceed with the distribution of the remaining assets in the estate. The assets are distributed according to the terms of the will if there is one, or according to the intestate plan for Kentucky if there is no will.

Distribution of the assets includes having the titles transferred for titled property such as automobiles and real estate and in some cases farm equipment. The ownership of stock certificates and bonds can also be transferred unless they are cashed. Sometimes the assets of an estate are converted to cash, and the cash is distributed to the heirs. Assets of like value can be transferred and re-titled in the new owner's name. The costs of these title transfers are usually paid by the estate.

Step 3. Submit a Final Accounting of the Estate's Affairs

The court provides a form (AOC-850) for an informal final settlement and affidavit of waiver of formal settlement form (AOC-851).

The formal settlement form (AOC-846) is also available from the court. The formal settlement form includes a description of all transactions made by the executor on behalf of the estate for both receipts and disbursements.

The final settlement with the probate clerk may be filed any time after six months following the date of appointment as executor and must be filed at least two years following appointment.

There is a fee for partial settlements and formal settlements as well as a proposed settlement fee.

Other Helpful Information

In settling an estate, you will need several certified copies of the death certificate. The funeral home can help you obtain these copies when the funeral arrangements are made. A minimum of eight to 10 certificates is usually needed. You will need to supply a copy of the death certificate for each bank account, stock account, insurance policy, real estate deed, etc., that is transferred or cashed.

Social Security Death Benefit

The deceased's spouse or entitled family member may be eligible for a lump-sum, one-time death benefit of \$255.00. This benefit is paid in the following order of priority:

- Surviving spouse living in the same house at the time of death
- Surviving spouse not living in the same house at the time of death
- Child (minor, attending college, receiving Social Security benefits)

The Social Security death benefit will not be paid to the following:

- Surviving children (adults)
- Funeral director or funeral home
- Any other person

The Social Security Administration will need to be notified by either the family or the executor. For additional information, visit <https://www.ssa.gov/benefits/survivors/>.

Veterans Administration Reimbursement of Burial Expenses

The Veterans Administration (VA) will pay a burial allowance up to \$2,000 if the veteran's death is service-connected. The agency also will pay the cost of transporting the remains of a service-disabled veteran to the national cemetery nearest the home of the deceased that has available gravesites. In such cases, the person who bore the veteran's burial expenses may claim reimbursement from the VA. The VA will pay for nonservice-related death expenses, reimbursed up to \$978, pending fulfillment of eligibility requirements. For more information on veteran burial benefits, visit <https://www.benefits.va.gov/compensation/claims-special-burial.asp>.

Reference

Kentucky Administrative Office of the Courts (2015). *Guide to Basic Kentucky Probate Procedures* (P-88). www.courts.ky.gov.

The Estate Planning Series

This publication is part of a ten-part series on estate planning. The publications in this series are:

- Part 1: *Getting Started*
(FCS5-420)
- Part 2: *Your Records and Personal Information*
(FCS5-422)
- Part 3: *Selecting Your Team*
(FCS5-423)
- Part 4: *Financial Planners*
(FCS5-424)
- Part 5: *Wills and Probate in Kentucky*
(FCS5-425)
- Part 6: *Trusts*
(FCS5-426)
- Part 7: *Federal and State Estate Taxes*
(FCS5-427)
- Part 8: *Planning Your Digital Estate*
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- Part 9: *How to Settle an Estate*
(FCS5-436)
- Part 10: *A Glossary of Terms*
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