

Settling an Estate: What Do I Need To Know?

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This MontGuide is designed to help survivors start the process of settling an estate and ease the burden following the death of a loved one. It discusses tasks in the order they are commonly completed. The order presented is not necessarily the correct order for every estate because each estate is different.



MontGuide

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John, a single father of three, had a heart attack and died at the age of 68. His children were shocked by John's passing. A couple of days after John's death the funeral director made a comment to John's daughter about seeing John riding his horse each morning. John's daughter quickly realized with all the tasks that had consumed her time she hadn't checked on John's horse in days. She immediately went to the pasture and was dismayed to see that the tank was out of water. The horse survived but John's daughter felt terrible and wondered if she was forgetting other important tasks.

MOST OF US ARE NOT EXPERTS AT WHAT NEEDS

to be done after a loved one passes away. However, at some point in our lives many of us will find ourselves faced with settling an estate for a family member or friend. Many people think that if the decedent left a will or a trust then the process for settling their estate will be simple and easy. But often overlooked in legal documents are the many decisions that need to be made in the first few days after a death and also many of the minor tasks (such as canceling magazine subscriptions and forwarding mail) that may need to be completed.

This MontGuide is designed to help survivors start the process of settling an estate and ease the burden following the death of a loved one. Some tasks are time sensitive, such as ensuring that a pet is cared for in the days following a pet owner's death. Other tasks, such as distributing the decedent's IRA, are less urgent. This MontGuide discusses tasks in the order they are commonly completed. The order presented is not necessarily the correct order for every estate because each estate is different.

The First Few Days

The first few days after the death of a loved one should be devoted to tasks that are time sensitive. The first task is to arrange for the care of the survivor's children, spouse, pets and livestock. These arrangements do not have to be permanent but temporary care may be needed immediately.

After the survivors' immediate needs have been met, then someone will need to search for any final instructions left by the decedent. Did he or she leave a letter of last instructions, a will, a funeral or burial contract, funeral or memorial instructions? For further information read MSU Extension MontGuide *Letter of Last Instructions* ([MT198904HR](#)).

These documents are commonly stored in a safe deposit box, in a 'special' place in the home or with a friend or relative. The attorney or funeral director that helped draft these documents may also have copies. Although these documents often contain information about many issues, only the information relevant to the memorial service, funeral arrangements, and other immediate concerns are important during the first few days.

If final instructions cannot be found, surviving family members are faced with making arrangements for the memorial service or funeral and burial based on their best judgment of what the decedent would have wanted.

Below is a list of tasks that may need to be completed in the first days following the death of family members.

Children: Are there children that need to be cared for?

Spouse: Is there an incapacitated spouse (Alzheimer's, dementia, etc.) that needs care?

Other Dependants: Are there other dependants who now need immediate care?

Pets and Livestock: Was the decedent responsible for caring for any animals?

Final Instructions: Did the decedent leave a will, trust, funeral or burial contract, letter of last instruction? If yes, where are these documents located?

Memorial Service and Burial Plans: Did the decedent leave any memorial service plans, a funeral trust or a funeral insurance contract?

Death Notification: Are there out-of-town friends or relatives that should be notified so they can attend services? What newspapers should print the obituary?

DEFINITIONS

Beneficiary: A person (or legal entity) who is entitled to the benefit of a trust, proceeds of retirement funds, insurance policy, payable on death account or transfer on death registration upon the owner's death.

Decedent: A deceased person.

Devisee: A person or entity designated in the decedent's will to receive property passing under the decedent's will.

Estate: A term used to describe all of a person's possessions. An estate includes both probate and non-probate assets (real estate, personal property, financial accounts, etc.) and debts (credit cards, loans, phone bill, etc.) owed to others.

Estate Administration: The process, including probate, of the personal representative gathering all the property of someone who died, paying all just debts and taxes, and distributing the balance to the devisees designated in the will or the heirs as prescribed by the legislature where there is no will or if the will is declared invalid by the district court.

Personal Representative: A person nominated in a will and then appointed by the district court to administer the estate of a decedent. Personal representatives were formerly referred to as executors or administrators.

Probate: A judicial proceeding to determine if the decedent had a valid legal will, to appoint a personal representative to administer the estate, and to determine the creditors, devisees, or heirs who are entitled to the decedent's property.

After the Funeral

The process of settling the decedent's estate can proceed after the immediate needs of the survivors have been met and after the funeral. State and federal laws play an important role in what needs to be done to legally settle an estate. These rules and regulations not only determine the steps and paperwork required, but also who is responsible for the variety of tasks that need to be accomplished.

Who is responsible for settling an estate?

When an individual dies, with or without a will, Montana law provides legal procedures for settling his or her estate. If probate is required, the process takes place under jurisdiction of the district court in the county where the decedent was considered as a resident.

A probate may not be required, however, if all of the decedent's property was owned as a joint tenant with right of survivorship with another person, in a revocable living trust, or designated to pass to survivors according to some non-probate transfer mechanism such as a payable-on-death designation, a transfer on death registration, a beneficiary deed, or a life insurance beneficiary designation. For more information refer to the MSU Extension MontGuide, *Probate in Montana* ([MT199006HR](#)).

If probate is required, the personal representative is responsible for most estate settlement tasks. The personal representative is often a family member or friend but can be an employee of a bank or other corporate entity. Typically, a personal representative is nominated in a will and appointed by the district court. If no personal representative was nominated in a will or if a person died without a valid will, then the district court will appoint one based on the priority list provided by Montana law. For more information refer to the MSU Extension MontGuide *What is a Personal Representative?* ([MT199008HR](#)).

After the Second Week and Beyond

After one or two weeks have passed the personal representative should arrange for the decedent's mail to be forwarded and start gathering information and notifying people (and companies) that did business with the decedent of the death. A decedent who planned ahead and communicated information to family members makes the process much easier for the survivors. Important papers should be located, such as:

- Birth Certificate (for the decedent and any minor children)
- Marriage Certificate (if applicable)
- Divorce Decrees (if applicable)
- Death Certificate(s) (multiple copies should be obtained 6 or more is common)
- Social Security Card (or number)
- Military Discharge Papers
- Union or Professional Membership Information
- Will or Trust Document
- Copy of Recent State and Federal Income Tax Returns
- List of Business Contacts:
 - Certified Public Accountant
 - Attorney
 - Investment Advisor
 - Current and Past Employers
- List of Accounts and Assets (and contact information for each):
 - Checking and Savings Accounts
 - Credit Card Accounts
 - Investment Accounts
 - Loan Accounts
 - Retirement Accounts
 - Insurance Policies (Auto, Home, Health, Disability and Life)
 - Stock or Bond Certificates

- Certificates of Deposit
- U.S. Savings Bonds
- Cooperatives that pay dividends (rural electric, phone, etc.)
- Real Estate
- Vehicles
- Personal Assets (art, coins, major household items, jewelry)
- Other Important Items:
 - Utility Company Accounts (phone, cable, power, gas, water, sewer, garbage, internet)
 - Periodical Subscriptions (magazines, newspapers)
 - Safe Deposit Box (location and contents)

Estate Overview

Compiling this information creates an overview of the estate's assets and liabilities, size and complexity. The personal representative can then identify tasks that he or she is capable of handling and those that will require professional assistance (a certified public accountant, attorney or others).

After the various tasks have been assigned, appropriate financial institutions should be notified of the death. In many cases they can provide information about the necessary steps to freeze, transfer, re-title or close the decedent's accounts including whether a probate will be necessary to transfer the property.

Additional information about this process can be found in the MSU Extension MontGuide *Accessing a Deceased Person's Financial Accounts* (MT200301HR). Insurance companies can provide information about the process of claiming benefits that beneficiaries are entitled to receive.

Employers, professional organizations and business partners should be informed of the decedent's passing. The decedent may be entitled to a final paycheck, payment for unused sick leave and vacation time or insurance benefits provided by the employer, union or other professional organization.

Current and past employers may also be able to provide information about survivor plan benefits that may be due to the decedent's survivors. Business partners (who may not be aware) should be informed of the death.

The Social Security Administration (SSA) should be notified because payments to the deceased recipient will need to be stopped and a determination of what benefits survivors are entitled to receive must be completed. For more information about the Social Security benefits visit www.ssa.gov.

The personal representative will need to determine the tax status of the estate (this may involve an attorney or certified public accountant) during the settlement process. There is no Montana state inheritance or estate tax. No federal estate taxes are due if the estate's value is less than the applicable threshold (unlimited in 2010, \$1 million in 2011). For more information on estate taxes refer to MSU Extension MontGuide *Federal Estate Tax* (MT199104HR).

The personal representative also needs to distribute the estate's assets to the beneficiaries named in the will, POD or TOD. If no beneficiaries are named, then Montana law determines who receives the decedent's assets. For more information refer to the MSU Extension MontGuide *Dying Without a Will in Montana: Who Receives Your Property* (MT198908HR). An interactive Web site illustrating how a deceased person's estate is distributed when a Montanan passes away without a will is at www.montana.edu/dyingwithoutawill.

Summary

The process of settling an estate can be a time consuming and complex process. Planning and communication by the decedent before his or her death can simplify the process

Checklist of estate settlement tasks

Completed	First Week
	Have temporary arrangements been made for children and other dependents?
	Have temporary arrangements been made for pets and livestock?
	Have the final instructions (will, burial plan, etc.) been located?
	Have funeral plans been taken care of?
After the First Week	
	Is a probate proceeding necessary?
	Has a personal representative been appointed?
	Have important papers been gathered? (see list on page 2)
	Has mail been forwarded to the Personal Representative?
	Has a list of assets and accounts been completed? (see list on page 2)
	Has a list of business relations been completed? (see list on page 2)
	Have employers, business relations, utility companies, credit card companies, and others been notified?
	Have accounts been closed, retitled, or frozen?
	Have final checks and other benefits been collected?
	Have insurance policies been claimed and or cancelled?
	Does a final income tax return need to be filed for the person or estate?
	Are federal estate taxes due?
	Have assets been distributed as indicated in contractual arrangements, the will, or Montana laws?

for the survivors, but even if little or no planning has taken place someone must take action to assure that the decedent's assets are distributed appropriately. Some estates will take relatively little work to settle while others will require considerable time and effort.

Listed below are other resources that may be useful during the process of settling an estate or creating an estate plan. A checklist of estate settlement tasks is also provided on page 3.

Resources

- Social Security Administration, www.ssa.gov
- Veterans Administration, www.vba.va.gov/VBA
- Pohl, Amelia (2008), *Guiding Those Left Behind*, Eagle Publishing Company of Boca.

MSU Extension Publications

The following publications are available at the Montana State University-Extension Estate Planning Web site, www.montana.edu/estateplanning.

Accessing a Deceased Person's Financial Accounts, [MT200301HR](#)

Annuities, [MT199213HR](#)

Beneficiary Deeds in Montana, [MT200707HR](#)

Cremation, [MT200201HR](#)

Custodial Accounts for Kids Under Age 21, [MT199910HR](#)

Designating Beneficiaries through Contractual Arrangements, [MT199901HR](#)

Dying Without a Will in Montana: Who Receives Your Property, [MT198908HR](#)

Estate Planning for Families with Minor and/or Special Needs Children, [MT199117HR](#)

Estate Planning in Montana: Getting Started, [MT199508HR](#)

Federal Estate Tax, [MT199104HR](#)

Giftng: A Property Transfer Tool of Estate Planning, [MT199105HR](#)

Glossary of Estate Planning Terms, [MT200202HR](#)

Inheriting an IRA: Planning Techniques for Successor Beneficiaries, [MT200311HR](#)

Letter of Last Instructions, [MT198904HR](#)

Life Estate: A Useful Estate Planning Tool, [MT200510HR](#)

Life Insurance: An Estate Planning Tool, [MT199211HR](#)

Medicaid & Long-Term Care Costs, [MT199511HR](#)

Montana's End-of-Life Registry, [MT200602HR](#)

Montana Rights of Terminally Ill Act, [MT199202HR](#)

Nonprobate Transfers, [MT199509HR](#)

Power of Attorney, [MT199001HR](#)

Probate in Montana, [MT199006HR](#)

Property Ownership, [MT198907HR](#)

Revocable Living Trusts, [MT199612HR](#)

Selecting an Organizational Structure for Your Business, [MT199708HR](#)

Transferring Your Farm or Ranch to Next Generation Through QTIP Trust, [MT200508HR](#)

Transferring Your Farm or Ranch to the Next Generation: How to Combine Social, Legal, & Economic Aspects, [EB0149](#)

Using a Bypass Trust to Provide for Children from a Prior Marriage, [MT200509HR](#)

What are your Rights Over Your Remains, [MT200918HR](#)

What is a Personal Representative?, [MT199008HR](#)

Who Gets Grandma's Yellow Pie Plate? Transferring Non-titled Property, [MT199701HR](#)

Wills, [MT198906HR](#)



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