

LEGAL GUIDES

by Middle Alabama Area Agency on Aging



ASSISTING
ALL AGES AT
ALL STAGES



AUTHORITY ISSUES
FOR CAREGIVERS



DESIGNING A LONG-TERM
CARE PLAN



DEMENTIA FRIENDLY
PROFESSIONALS
AND CAREGIVERS



WHAT TO DO WHEN A LOVED ONE DIES

This book was created in partnership with the

Jan Neal Law Firm

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Where To Start

When a loved one dies it is amazing how much there is to do besides grieve the loss. Many jobs surface that simply must be handled when the family may feel least able to conduct business. This is why as much preparation as possible in the planning phase is wise because being familiar with what to do eases the burden considerably.



This publication is offered to help individuals organize their business so that family members are not overwhelmed when they pass and to help those responsible when someone dies to know the essential steps to take. While every person's situation is unique, making cookie cutter advice unadvisable, there are some basic steps that apply to most people who are responsible for closing the business affairs of a person who dies.

What is true for everyone is that when someone dies, those closest to that person have essentially three jobs. They must dispose of the body, close out business of the deceased, and protect the financial interests of persons left behind in doing so.

For those planning for death, more than a will is needed. A person needs to have a list of all assets he or she owns, to include all bank and investment accounts, all deeds to property, car titles, all insurance policies, and all debts (mortgages, credit cards, etc.). The items listed below that will be needed by the person closing down business affairs of the deceased would best be gathered by the individual in anticipation of death.

Something critically important but often overlooked is the need for a person to create a list of bills and how each is paid. This has become more important now that bills are frequently paid online and through automatic account deductions. It is also important for the family to know the recurring charges that are assigned to each credit card so that services they want to retain are not eliminated by cancelling credit cards. An example might be a Netflix account used by the whole family that is paid on the credit card of the person who died. Those charges would need to be transferred before closing the credit card.



Funeral Arrangements

Making final arrangement for the body is governed by legal instructions left behind, burial arrangements made by the deceased prior to death or the wishes of the next of kin and their ability to pay.

Immediately following death arrange for organ donation if the deceased memorialized a desired do so or if the next of kin wish to do so. If the deceased dies in a hospital the facility will check to see if a donor designation has been signed. People may have signed up online or in person at their local motor vehicle department, and hospitals have access to centralized databases for organ donations. More information about organ donation can be located at <https://organdonor.gov/register.html>.

To make funeral arrangements, the responsible party should look for documents addressing the wishes of the deceased. In particular, look to the will where the decedent may have included wishes, or look for an affidavit prepared pursuant to Alabama Code § 34-13-11 appointing a person as the authorized agent who can control the location and manner of disposition.

The affidavit will control unless a person dies while on active duty in any branch of the United States Armed Forces, United States Reserve Forces, or National Guard, whereupon the person listed on the emergency data for the Department of Defense will have authority to control the disposition of remains.

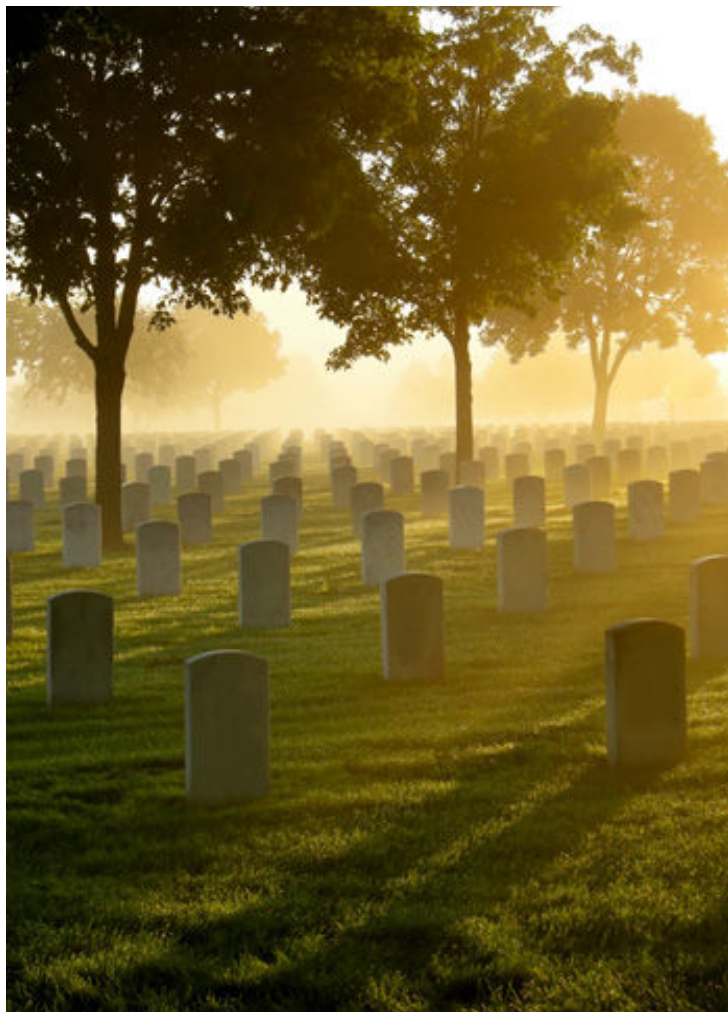


It is particularly important to recognize that if a person wishes to be cremated, the will or affidavit needs to specifically state as much. Otherwise, funeral homes are reluctant to cremate without the specific permission of next of kin, even if the next of kin should be estranged or otherwise not involved in the plans for disposition.

Normally that does not present a problem, but it may become a problem if a friend or unmarried partner should be making arrangements. So, if the deceased wanted to be cremated, it may be more work involved to accomplish that if non-family members are making final arrangements and the deceased did not record his or her wishes concerning cremation.

If a preneed plan has been purchased, disposal will need to be performed according to the plan purchased by the deceased. If no plan has been purchased, the next of kin or responsible party will decide on disposal and be responsible to pay the bill. While all bills of the deceased are important to pay, the cost of final arrangements is at the top of the list of expenses that can be reimbursed from the estate. If there are funds in the estate to reimburse the cost of the funeral or cremation, that bill will be a priority expense of the estate.

The funeral home where arrangements are made will apply for the death certificate and will provide the number of copies requested. To be safe, request multiple certified copies because often a certified death certificate is required when dealing with business affairs of the deceased.



Practical Matters to Deal With And Information Needed to Close Out Business Affairs



The jobs identified in this guide will convince you that making estate plans prior to death is of vital importance. The more loved ones can know about the business of the deceased, the better. The overwhelming feelings associated with closing out a person's business affairs are directly related to the lack of planning on the part of the deceased person plus the amount of property that person owned at death. When a snapshot of a deceased person's business has been organized and provided to those handling his or her business, it makes a world of difference to the survivors.

It is important to immediately secure the property of the deceased and make arrangements for any necessary plant and pet care. Make sure the property is safely locked and managed as you would manage your own property. If it is winter, take all the precautions you would yourself such as precautions to assure that pipes do not freeze. Keep utilities on to protect the property and make it easier to list for sale. If the house will be vacant, notify the police to keep an eye on the property.

Keep the property insured and taxes paid until the estate can be settled. If the property is mortgaged, you will need to keep making mortgage payments and speak with a probate attorney to determine how and when to notify the lender.

Lock and park any vehicle in a safe place, and keep it tagged, insured and serviced as needed.



You will need to either forward mail to your address with proof you have legal authority to act for the estate (you have been appointed personal representative of the will and have Letters Testamentary) or collect the mail on a regular basis until you have legal authority. You want to do this to keep the mail from accumulating and to identify creditors from the bills received.

As you can imagine, there are a number of potential expenses that need to be handled immediately, and the estate may not be completely transferred for over six months. This is why it is always a good idea to have a bank account jointly titled to the person who will handle the estate with a sum of money that person can access to pay any immediate expenses that need to be paid. If no such arrangements were made, the person closing the estate often has to pay the expenses, keep receipts and be reimbursed when the estate is finally closed.

If the deceased did not share his or her will with you, you will need to search through his or her papers to locate. Check with relatives or with the attorney for the deceased. You will need an original will, and some attorneys have clients sign two – one to take and another original to keep in the file.

Look for the decedent's sources of income. You need to notify pension plans, Veterans Affairs, Social Security, etc., to ask about applicable survivor and burial benefits.

When a person dies before the end of the month - even the last day of the month at 11:00 p.m. - Social Security paid during that month must be reimbursed to the Social Security Administration, and Social Security can directly have those funds withdrawn from the bank account into which the funds were directly deposited. If the deceased drew Supplemental Security Income (SSI), the estate retains money sent prior to death, but any payments sent after the month of death, or any checks not cashed or deposited before death are due to be returned to Social Security.

Notify health insurance companies to discontinue health insurance.

Locate where the deceased had bank accounts, safe deposit boxes, investment accounts, retirement plans, and insurance policies.



Gather the following documents/information:

- Death Certificate (multiple copies)
- Social Security and Medicare Cards
- Marriage Certificate
- Birth Certificate
- Veteran discharge papers and/or VA claim number
- Insurance Policies (ask for claim forms)
- Deeds to real estate
- Automobile titles (if paid off), registration papers, tag receipt, and proof of insurance
- Stock certificates
- Bank account/Investment account statements
- List of all creditors, their addresses, and amounts of debt owed to each
- Will/Trust
- The names and addresses for all next of kin and any person named in the will
- Determine whether the decedent ever drew Medicaid, when and the type of Medicaid benefits that were paid.



Get Professional Advice

After immediately securing property and gathering important papers it is time to get the professional advice you will need.

Meet with a probate attorney to determine whether the will needs to be probated or what to do if there is no will. If there is a will, you have five years to have the document probated (filed with the court), so there is no rush, but an attorney can provide you with direction on accessing all assets and determining what does need to be done. If the will needs to be probated it will take six months, and all creditors will need to be notified and the debts satisfied before property can be distributed.

The will may or may not need to be probated depending on how the decedent's property is titled. For couples who own their property as joint tenants with right of survivorship (designated in the deed), the real estate will pass outside of the probate estate to the survivor of the two.

Accounts jointly owned or set up as a payable on death account will also pass outside of probate, and accounts with a named beneficiary also pass outside of probate. Remember that the only reason a will needs to be probated is to access and pass property to persons named as beneficiaries in the will after debts are satisfied. If everything passes outside the will, there is really no reason for the next of kin to probate the will.

Any deceased person who ever drew Medicaid benefits after the age of 55 (other than Medicare Savings Programs known as QMB, SLMB and QI-1) will potentially owe money to The Alabama Medicaid Agency. The agency will have a lien against the estate and needs to be put on notice that the estate is being settled. You may receive a letter from Medicaid, but you need to contact the agency if do not get a letter but know benefits were drawn.

Medicaid is like any other estate creditor who needs to be notified that an estate is being settled. If you fail to do this and serve as the personal representative (executor) of the estate, you can incur personal liability for failing to notify Medicaid. Realize that Medicaid's lien can be delayed (for instance, until the death of the spouse) or waived in certain circumstances.





Sometimes the only property not jointly titled is a vehicle. To solve that problem and to keep from having to have a formal estate administration, if the vehicle is paid off, the next of kin may file an Affidavit for Assignment of Title for a Vehicle from a Deceased Owner Whose Estate Does Not Require Probate (Alabama Department of Revenue MVT 5-6). Title can be transferred by filing the affidavit at the tag and title office of the local probate court. If the vehicle is not paid off it will likely need to be refinanced, and the lender needs to be put on notice of the death.

If an estate consists of no more than \$28,417 and no real property, a procedure known as Summary Distribution is available pursuant to the Alabama Small Estates Act. This process is quicker and less expensive than regular probate and permits the passing of personal property 45 days after the petition is filed and 21 days after publication of a notice in the paper to allow creditors to make claims against the estate.

If there is no will, but the decedent did own property titled only to himself or herself, the estate will need to be administered, and the law provides for how property is due to be distributed.

Meet with an accountant or tax preparer to determine final taxes that need to be paid.

Most estates pay no federal estate tax on the transfer of assets from the decedent to the beneficiaries because the federal estate tax only applies to estates with property and lifetime gifting that exceed \$5,490,000 in 2017. If applicable, Form 706 must be filed 9 months following death (and gift tax returns should have been filed each April 15 following the year in which the gift was made). Professional advice is needed in these circumstances.



The decedent's estate will need to file the final income tax return for the decedent to report money earned while the decedent was living and to pay any tax liability. That return is due at the same time taxes would be paid if the decedent had not died. Form 1040 (or 1040-A or 1040-EZ) would be due on the next April 15 following death.

If assets in the estate earn money (\$600 in annual gross income) after the decedent dies and before those assets are distributed to the beneficiaries, then the estate will owe estate income tax. An estate tax ID called an "employer identification number" (EIN) will need to be obtained.

For calendar year estates and trusts, Form 1041 and Schedules K-1 are due on or before April 15 of the following year. For fiscal year estates and trusts, Form 1041 is due by the 15th day of the 4th month following the close of the tax year. While many estates do not generate income, advice by a tax professional is needed if the estate does generate income.

You will need to meet with insurance agents who insured the deceased or his or her property for multiple reasons. The company insuring property needs to know if the property is now vacant, and the car insurance company needs to know who, if anyone, will be driving any vehicles left by the decedent. Insurance companies who insured the life of the deceased will need to be contacted to ask for claim forms.

You will need to meet with financial advisers who worked with the deceased on IRAs and other investments accounts to determine who was named as beneficiary on any accounts and what your options are related to those investments.



Digital Assets



Today many people have online accounts and are routinely encouraged by companies to pay their bills digitally. “Going green” or paperless means that bank statements may be delivered online and never come through the mail system. The deceased may have assets such as photographs, videos, family history files, home repair records, etc., stored online, and there are multiple social media platforms that also may house important family photographs and memories. This can present a major problem to those handling the business of the deceased.

As a practical matter, it can be impossible to find and access all of the online accounts if the deceased did not leave you information about the existence of such accounts and the passwords. This is the reason why digital estate planning is becoming a valid concern.

Unless the deceased made plans for digital assets, the person handling his or her business will have to go through credit card statements and bank statements to determine what the decedent was paying for and whether important assets may be held there. Services will drop off as credit cards are cancelled or charges are not paid, but so will the assets that go with the accounts.

There are online services that provide for a fee storage of all of your business information, including information about digital accounts, and those services will give access to that information to persons you designate who will handle your business during disability or after death. Otherwise you will need to organize these yourself.

Earlier this year Alabama passed the Revised Uniform Fiduciary Access to Digital Assets Act that will be effective January 1, 2018. This law will allow a fiduciary acting under a will, power of attorney or trust to compel disclosure of a digital asset from a custodian who stores the digital asset of a user, but it only applies to custodians and users who reside in the state of Alabama.

The act requires the presentation of a will, power of attorney or trust that gives authority to the fiduciary to access electronic communication. While this is a step in the right direction, it is limited in scope, and digital planning remains the job of the digital user.

It is important to understand that the Fiduciary Access to Digital Assets Act does not change or expand rights that are established by agreements entered into by the deceased and the online service provider. For instance, when an Apple icloud account is closed, all assets in the account are no longer available for use, so if you report the death of the person, their assets will not be available.

To access a Dropbox account the company will work with you, but a court order will be required to establish that the deceased intended you to access their files. If a will granting power to the personal representative (making him or her the digital executor), files would most likely be available for access. Each online provider has its own rules, and you will have to determine what those rules are to access assets.



Other Miscellaneous Considerations

Other accounts to close include email accounts, newspapers, magazine subscriptions, telephone service, television, credit cards, driver's license, memberships in organizations, election board registration and credit agencies to avoid post-mortem identity theft. After real property is transferred or sold you will need to turn utilities off.

Keep good notes as you go about conducting business, and keep everything organized in folders because the paperwork can become overwhelming quickly.

If you have not yet organized your business affairs, consider that doing so now could be one of the greatest gifts you can ever provide to your loved ones.



