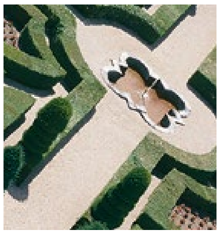
WHEN DEATH COMES TO VISIT: NAVIGATING FINANCIAL DECISIONS WHILE COPING WITH GRIEF

A guide to estate settlement for grieving spouses



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I lost my husband of almost 32 years, Chris, to brain cancer in February 2008. When confronted with this great loss, I found the impact to be emotional, financial, physical and spiritual. As a "survivor," you face the stark realities of financial decision-making in the midst of the great emotion, uncertainty and sometimes fear that come after a loved one has passed away.

Although I have been an estate-planning attorney for more than 30 years, when faced with the death of my husband, all the knowledge and experience I had gathered over decades of advising clients seemed insufficient to meet the challenges of grieving and the decision-making that come with wrapping up a loved one's affairs. Yet that is what I had to do – make financial decisions while grieving. My journey has made it clear to me that regardless of our level of knowledge or experience, we all become novices during such an emotional time. For this reason, good planning before death is critical to alleviate some of the incredible stress that naturally emerges after someone dies.

There are things that we don't want to happen but have to accept, things we don't want to know but have to learn, and people we can't live without but have to let go.
– Author Unknown

NEAR-TERM CONSIDERATIONS

When someone you love dies, your brain shuts down and puts out a sign, "I can't think right now, come back later!" Unfortunately, you don't have the luxury of putting things off; you need to address the many tasks that arise in the wake of someone's death. Don't be afraid to rely on family and friends to assist in the days following the death of your spouse. They want to help; they really need to help – they feel helpless in the face of their own emotions and in the knowledge that you are in such distress and need of aid. This is a gift to you and your willingness to let them help is a gift to them. So take the hand they extend and allow others to do the work for you in this difficult time.

The Days Immediately Following Death

The practical considerations that follow someone's death have a definite timeline. Some things need to be addressed immediately, perhaps even before the import of what has happened registers. Others may arise a year or more after your loved one's passing.

Six important steps you may want to take in the days just following your spouse's death:

- Contact family and friends to let them know of the death. I was so thankful for e-mail – it is one of the speediest ways to get the word out when you need to reach a large group of people. You may also want to contact your place of worship, if you have one. They may be able to notify other members very quickly on your behalf.
- Ask a close friend or family member to answer the phone and take messages for you. If possible, have someone who knows you well handle this task so that he or she can sort out which calls you may want or need to take. Having someone there who could answer the phone and take messages was very helpful to me.

The Social Security Administration website (www.ssa.gov) has a lot of information about what to do when a family member dies – it's a great resource.

- Have someone receive and record any meals or flowers you receive at home. One way people express their condolences is to bring you food. If possible, have someone set up a meal schedule so that you don't have multiple meals coming the same day. Likewise, having someone carefully record who sent food and flowers (as well as labeling food containers so they find their way back to their rightful owners) makes it much easier to send thank-you notes (and food containers) later on.
- Locate any documents that detail funeral arrangements. Many people think they can find funeral arrangements in the will. I never had my clients place such information in the will or revocable living trust because it sometimes is weeks before the family members locate these documents. A better arrangement is to prepare a separate document with guidance on funeral arrangements and then tell someone where that document is located.
- Contact the mortuary and make funeral arrangements. Within a day of Chris's death, I went to the funeral home with one of my sisters to "make arrangements." I am glad my sister was with me because she could think more rationally than I could at that moment. I failed to plan ahead and regret that I did not follow my own advice to make these decisions when I was not in emotional distress. You will need to provide the funeral home with information for the death certificate, including birthdate, Social Security number, parents' names, place of birth, etc. The death certificate typically takes a week to 10 days to receive. Be sure to have the funeral home order at least 5 to 10 copies; you will need them when making claims, closing accounts and transferring assets. The funeral home also can help you prepare a death notice (obituary) that will run in local newspapers.
- Notify your spouse's employer and the Social Security Administration. If your spouse was receiving a salary, it's important to notify the employer's human resources department of his or her death. The funeral home generally will notify the Social Security Administration, but I wouldn't leave it to chance. If a benefit check comes or a direct deposit is made to your spouse's bank account in the month immediately following his or her death, return the check or repay the money.

When Your Loved One Dies at Home

When someone dies in the hospital, the doctors typically handle the paperwork and contact the funeral home. But Chris was in hospice care at home, so I needed to understand what the protocol was when someone dies at home. Who should I call to take care of his body when the moment of death arrived? I had had the presence of mind to get those details in advance so that when Chris left this reality, the family members who were with me could call the mortuary for assistance.

Because Chris was under hospice care, the hospice nurse could fill out the necessary forms to allow the funeral home to pick up his body and transport him to the mortuary. In the case of a sudden or unexpected death, calling the family's doctor and emergency personnel is typically the right decision. Whether you need to call a coroner or the body is released to the funeral home depends on the circumstances surrounding the death.

THE FIRST YEAR AFTER DEATH

The funeral service is over. The flurry of activity has subsided and suddenly everyone (or almost everyone) is gone and you feel alone. The fog that you felt during the initial shock is receding and the stark reality that someone you loved is no longer physically present starts to set in. The numbness that helped you cope initially is wearing off and now you are faced with new challenges. This can be a time of real confusion. Especially when confronted with the myriad tasks that come with settling your spouse's estate.

The best approach is to take one step at a time. Make a list of tasks and then, as you are able, work through them. Don't be surprised if you can only accomplish a few tasks before you need to take a break. Grieving is exhausting. Fortunately, the timetable for most tasks is flexible and can be accomplished at your pace.

Step 1: Finding the important documents

To begin the estate settlement process, you'll need to gather many documents. Hopefully you and your spouse discussed where to keep the papers. If not, you may have to spend some time searching.

Typically, you should be looking for:

- Last Will and testament
- Revocable living trust
- Insurance policies
- Pre- or ante-nuptial agreements
- Birth and death certificates, marriage license and divorce documents
- Trust agreements (revocable or irrevocable)
- Business and partnership agreements
- Financial statements
- Bank statements
- Investment statements
- Retirement plan information
- Tax returns

If the documents aren't in a safe deposit box, look for them in your home safe, filing cabinets or desks. You also may find copies with relatives or at your spouse's office. You can also contact your spouse's attorney to see if the original estate planning documents are being held there in safekeeping. Many lawyers retain the original documents for their clients. Your spouse's accountant or financial planner may also know where the original documents are kept.

After you find the Will or revocable living trust documents, it is a good idea to meet with an attorney who specializes in estate planning and probate to help you through the next steps. While some people may argue that it is more expensive to hire a specialist, you may pay a lot more in the long run if you don't. At best, the nonspecialist may spend more time (and money) due to inexperience; at worst, he or she may make mistakes that could be costly.

A Will sets forth a person's wishes about the distribution of assets at death. Probate is the process through which the Will is proved valid or invalid.

WILLS AND PROBATE – WHAT ARE THEY?

A Will is a document that sets forth the wishes of the decedent in terms of who will receive his or her assets at death and how those assets will be distributed (outright, in trust, etc.). A Will has no life until someone dies. It is activated by the death of its signer and then only after a court verifies that the Will actually represents the decedent's last wishes. This happens through a court proceeding where the court "admits the Will to probate" after determining that it was validly executed and witnessed.[1]

A Will only disposes of "probate" assets (assets that are not otherwise disposed of by contract, title or beneficiary designation). Assets such as life insurance, retirement plans, joint and survivor bank accounts and pay-on-death bank accounts all have their own beneficiary designations and therefore wouldn't be disposed of through a Will. For example, if a life insurance policy beneficiary designation says that the insurance proceeds are payable at the insured's death to Aunt Sally and the Will says that such policy proceeds are payable to Uncle Paul, the beneficiary designation governs, not the Will – Uncle Paul gets nothing. The "Will" for the insurance policy proceeds is the beneficiary designation form signed by the insured at the time the policy was purchased, not the Will.

1 Not every Will has to be witnessed. If the Will is handwritten in the deceased's handwriting, and dated and signed, there is no witness requirement. Such Wills are called "holographic wills." Although they are valid, the individuals proffering the holographic Will must have witnesses verify that the handwriting is indeed the decedent's. Each state has different requirements.

The Benefits of Using Revocable Trusts

Most people believe the Will determines who gets someone's assets when they die. Certainly a Will is the most common type of estate document, but it is not the only document. Many people today use a revocable trust instead of a formal Will. Why? A Will is subject to probate, and there is nothing private about probate proceedings. And while some states have very simple probate procedures, this is not the case universally. To maintain their privacy or to avoid additional complications, some people choose to avoid it by placing their assets in trust prior to death. This way the trust agreement provisions determine who gets what – and when and how – at the beneficiary's death. The trust is a "Will substitute." If all the assets not otherwise distributed by beneficiary designation or other contract are properly retitled in the revocable trust's name, a Will is unnecessary and there is no need to go through probate.

Using a revocable trust also offers benefits during your lifetime. A revocable trust is activated when the trust is signed and assets are placed in the trust. As such, it can be helpful to someone who becomes incapacitated or incompetent. Because the trust holds the assets, a beneficiary's incapacity will not usually require the appointment of a conservator to manage his or her financial affairs under court supervision. Instead, the trustee continues to manage (or a successor trustee steps in if the incapacitated beneficiary was also the trustee) the trust's assets without the need for court intervention.

Funding the Trust Is Crucial

A revocable trust does not actually become active until it has been funded. Any assets you own but have not transferred to the trust remain "probate" assets that must be disposed of according to a Will.[2] Unfortunately, many people create a trust, sign the document and don't follow through and actually place their assets in the trust. In that case, the trust is worthless because it has never been activated. All your assets remain subject to the probate process – the very thing you established the revocable trust to avoid! That is a lot of expense without the intended benefit.

Usually people who use revocable trusts also create a Will when they establish the trust – typically a fairly simple document that "pours-over" the assets to the revocable trust. (People refer to these as pour-over Wills.) The pour-over Will is used only if you haven't retitled your assets or if you forget an asset and don't get it properly placed in the trust. You may not need to use the Will, but it is good to have one, just in case.

DYING WITHOUT A WILL

Unfortunately, many people never get around to drafting and signing a Will.[3] If you die without a Will, you are deemed to have died "intestate," and state law governs how your assets will be distributed. In effect, the state writes your Will for you. Unfortunately, this happens without regard to what you would have wished. Most states mandate that the probate assets pass partially to the surviving spouse and partially to the decedent's children, if any. If there is no surviving spouse, the assets will likely pass to the children or, if there are no children, to the decedent's "heirs" as defined by state law.

The problem with this process is that it doesn't take into account whom you might have wanted to receive (or not receive) an inheritance, nor does the state's disposition consider the individual needs of the inheritors. Some inheritors are better served by receiving assets in trust (rather than outright) and administered for their benefit because they may suffer from addictions, mental illness, unwise spending habits or have poor money management skills.

If you want to have control over the disposition of your assets and lessen the cost of administering your estate, you need to take the time to prepare a Will or use a revocable living trust to avoid having the state do it for you.

Step 2: Beginning the Estate Administration Process

All estates require administration, whether they were settled through a Will and have gone through probate or through a revocable trust agreement.[4] In both instances, the executor or trustee will need to take inventory of your spouse's assets. Even if your spouse had established a trust that already has an inventory of assets attached to the trust agreement, the trustee will need to take an inventory because:

- Assets may not have been properly placed in trust;
- The process of funding the trust may not have been completed;
- Your spouse may have acquired new assets and not placed them in the trust; or
- The new assets may have been placed in the trust but the inventory attached to the trust was not updated.

As a result, you will need to do some digging to create a complete and accurate listing of assets and liabilities.

2 Probate assets also do not include assets that are distributed at death by beneficiary designation, title or contract.

3 In a New Era of Estate Planning Rocket Lawyer™ Survey shows that only half of adults have a will, March 28, 2012.

4 Although we still use the name "revocable trust," generally, these trusts become irrevocable at the death of one of the grantors (the person setting up and funding the trust), but for simplicity, we will continue to use the term "revocable trust" to describe the trust both pre- and post- death.

Because I had to take over managing our financial affairs when Chris got sick, I had a good handle on all of our assets and liabilities, but that is not always the case. If you don't find a list of assets, you may have to do some detective work. Check the mail for monthly and quarterly brokerage statements, bank statements, bills, etc. In today's paperless world, your spouse's computer may also offer clues. Without computer usernames and passwords, it will be hard to access the information, but the browser's history and bookmarks may provide a list of companies to contact. Your spouse's accountant also can be a valuable resource for finding financial information.

Income tax returns are also a good place to find financial information. If you can't find paper copies, your accountant may be able to provide you with copies. If your spouse filed his or her own tax returns and you can't find copies, you can contact the Internal Revenue Service and the state tax authority to obtain copies of returns.

Step 3: Filing the Final Income Tax Return

The executor/personal representative appointed by the probate court or the trustee of the revocable trust is legally required to file a tax return for your spouse. If no one has been appointed as a representative, then you, as the surviving spouse, are required to file the return.

Even if you have always filed your own taxes, I highly recommend talking to an accountant about filing this tax return. They are well versed in what to do and when to do it and even though I knew I could "figure it out," it was a relief to call my accountant and ask for his assistance. You only need to report income received prior to your spouse's death on the individual tax return. Any reportable income received after the date of death will be reported on the estate's (or trust's) tax return.

If you have notified your banks and other financial institutions of your spouse's death, you should receive Form 1099s that break out the income before and after death. If the forms don't break out the income this way, you'll need to ask the bank right away for corrected 1099s. Don't wait until March like I did to remember this little rule and then scramble to get the correct forms!

Distributions from retirement plans and individual retirement accounts (IRAs) are subject to hard and fast rules. You need to pay attention to these matters to avoid penalties.

Step 4: Dealing With Retirement Benefits

If your spouse had a retirement plan, you will need to notify the plan administrator of your spouse's death and obtain a copy of the beneficiary designation form and plan documents. You have a variety of options for how and when to receive distributions from your spouse's plan. Your choices will depend on:

- Who is the named beneficiary; and
- Whether the plan participant was required to take required minimum distributions.

You should carefully consider your distribution options before making any decisions about your spouse's retirement plan. If your spouse was older than 70½ at the time of his or her death and already required to take a distribution each year, you could face significant penalties for failure to make the distributions in a timely manner.[5] Likewise, making a hasty decision could lead you to overlook some favorable opportunities.

Distributions from retirement plans and individual retirement accounts (IRAs) are subject to hard and fast rules. You need to pay timely attention to these matters to avoid penalties or miss some planning opportunities. Since the options are varied and subject to the plan's terms, it is a good idea to talk to your attorney and accountant soon after your spouse's death.

5 Each plan has its own design, and rights and privileges, which may be more restrictive than the law, so it is important to review the plan documents to determine who can be a designated beneficiary and how and when the plan benefits must be distributed.

Defined Benefit Versus Defined Contribution Plans

Retirement plans fall into two main categories: defined benefit and defined contribution plans. Defined benefit plans (sometimes called pensions) are designed to provide a specified monthly benefit to the employee in retirement. In a defined contribution plan, the employee (and sometimes the employer) will contribute to the employee's individual account through which the funds are invested on the employee's behalf. The employee can withdraw whatever money is in the account during his or her retirement. Examples of defined contribution plans[6] are 401(k), 403(b) and individual retirement accounts (IRAs).[7]

Step 5: Filing Estate Taxes

In addition to income taxes, your spouse's estate may also be subject to federal and state transfer taxes – estate taxes, generation-skipping transfer taxes, and inheritance taxes. Current tax laws permit each individual to transfer up to $5 million (adjusted annually for inflation) without incurring federal estate taxes. This amount, commonly known as the exemption amount or "tax-free amount," allows an individual who dies in 2016 to transfer $5.45 million of assets without incurring federal estate taxes. For simplicity, we'll focus on federal and state estate taxes here. Under current laws, the tax-free amount can be used for transfers during lifetime and at death. If you and your spouse made significant gifts during your lifetime to noncharitable beneficiaries (exceeding the current annual exclusion amount of $14,000 per recipient), you may have used some or all of the tax-free amount, reducing or eliminating the amount available at death.

It's important to work closely with your attorney and accountant to determine whether your spouse's estate will be subject to either federal or state estate taxes. And remember: Avoiding probate does not mean that you avoid taxes.

Even assets transferred outside the probate process, such as life insurance proceeds and retirement benefits controlled by a beneficiary designation, are potentially subject to estate taxes – avoiding probate does not mean that you avoid taxes. The federal estate tax is imposed on assets owned at death regardless of how they are distributed at death (whether through probate or a trust or by beneficiary designation).

It's important to work closely with your attorney and accountant to determine whether your spouse's estate will be subject to either federal or state estate taxes. If the total value of your spouse's estate (before subtracting debts and administration expenses) exceeds the tax-free amount, you must file a federal estate tax return even if you owe no federal taxes. And even if you don't owe federal estate taxes, you still might owe state taxes.

There is good news for married couples, however. If your spouse's estate exceeds the tax-free amount, you may be able to take advantage of the unlimited "marital deduction" to at least postpone paying estate taxes until your death. The marital deduction allows someone to pass assets exceeding the tax-free amount (whether $1 or billions) to his or her spouse[8] and pay no taxes until the surviving spouse's death. Whether you will benefit from the marital deduction depends on how the property is left to you – outright or in a special marital trust for your benefit that meets IRS requirements.

The federal estate tax return is due nine months after the date of your spouse's death. It often takes many months to gather information, value assets and prepare the return, which may make it difficult to file a return by the end of that nine-month deadline. As with income taxes, if you are filing an extension (to allow more time to gather the information for the return), you still will need to pay the estimated estate tax due to avoid any penalties.

6 This is not an exhaustive list. Simplified Employee Benefit (SEP) plans, Keogh plans, Roth IRAs and Roth 401(k) plans are more examples of defined contribution plans.

7 Roth IRAs are a little different because they are funded with after-tax dollars. They allow tax-free withdrawals provided the retiree is at least 59½ years old at the time of withdrawal and the account is at least five years old.

8 Only U. S. citizens spouses can use the marital deduction. You should contact your advisor for more information regarding the rules that apply to non-U.S. citizen spouses.

Determining Basis for Tax Purposes

You will need to determine the official value of all estate assets, including stocks, bonds, personal property and real estate. For assets such as closely held businesses, partnerships or real estate (assets that have no readily ascertainable value), you will need a valuation report (an appraisal that meets IRS requirements) indicating the property's value on the valuation date (generally your spouse's date of death). Even if you don't have to file an estate tax return, verifying and substantiating the value of the estate's assets is important. These assets will receive a step-up (or step-down) in basis to the property's fair market value on the date of death. This will affect capital gains taxes you may owe when you sell the assets in the future. You also should consult with your tax and investment advisors to determine if this basis change creates any tax opportunities.

Step 6: Distributing the Assets

The final step in the administration process is to distribute the assets in accordance with the terms of your spouse's Will or revocable trust. If property is payable to you directly, here are some basics:

- **Bank and Investment Accounts.** To change the name on any bank or investment accounts in your spouse's name, you will need to provide each company with a copy of the death certificate. You also will need to provide a copy of the death certificate to remove your spouse's name from any joint accounts you shared.
- **Retirement Accounts and Insurance Policies.** Distributing assets with beneficiary designations usually is straightforward: you need to provide a copy of the death certificate. The retirement plan administrator also may need a copy of your marriage license.
- **Real Estate.** For property titled as "joint tenants with rights of survivorship," you typically must file a notice of death of the deceased joint tenant in the real estate records, after which you, as the surviving joint tenant, will hold the title. If your spouse's name is on the title without a reference to "rights of survivorship" you likely will need the executor, personal representative or administrator to create a deed passing title from your spouse's estate to the beneficiary named in the Will (or pursuant to state law if your spouse did not have a Will). Filing these deeds with the recorder for the county where the property is located confirms the chain of title to avoid confusion if the beneficiary later decides to sell the property.
- **Other Assets.** You will need to change any car titles, as well as your homeowner's and car insurance policies, to reflect you as the owner. You also will need to have any joint credit cards reissued in your name. When you do this, you may discover your credit limit is lowered, especially if the previous limit was based on your spouse's credit worthiness, not yours.
- **Assets Held in Trust.** For assets held in trust, the trustee will need to distribute cash and retitle other assets in the beneficiary's name according to the terms of the trust agreement. Documentation – an assignment (for assets other than real property) or a Trustee Deed (for real property) – may be required for the "distribution" of the assets.

Although it's difficult today to see beyond the sorrow, May looking back in memory help comfort you tomorrow.

– Author Unknown

FACING THE FUTURE

If there were a road map for this journey through grief, it would be easier to pinpoint milestones along the way to show that you have moved forward. You have probably been in motion and just haven't realized it yet. That is what I have found: I am moving forward with my life – facing the future – even if I am not sure where I am going.

After Chris's death, I remembered the advice I gave my clients who lost a spouse, "Please don't make any major decisions that first year following your spouse's death!" So many people make rash decisions during that first year: they sell their home and move away, change careers or jobs, or make major life decisions that they come to regret. Let's face it – we're not that rational that first year, and to think that we can make good judgement calls on major issues is usually naïve. Start planning? Yes. Decide? No. Wait and let the grieving process take its course before implementing major decisions.

You'll also have to learn how to accomplish things on your own – including the things your spouse used to handle.

Getting Help

Couples generally divide tasks informally – each partner gravitates to tasks and chores that he or she has some knowledge about (or willingness to handle). It can be a struggle to manage these new responsibilities after your spouse dies. On the surface, getting help seems to be a simple thing to do. However, getting help can be emotional as you adjust to new circumstances during the grieving process. I had always thought of myself as a fairly independent woman until I realized just how much Chris supported me and our household. Independence is a fine trait to have, but it is also not realistic if you are struggling to keep up. If you are struggling to get things done, hire the help you need, or seek help from friends and family – they offered to be there for you so take them up on their offer of assistance. Recognize that there are limits to what you can handle.

FINAL THOUGHTS

Losing someone you love is hard – emotionally, financially, physically and spiritually. No one can escape death, and we all will experience the loss of someone close to us. The emotional, physical and spiritual impact will be tough enough. My hope is that having a clear course of action to follow related to the financial, legal and practical aspects of handling your spouse's financial affairs may alleviate some of the fear and confusion. None of us likes to think about death. But think about it we must. Being prepared for the inevitable will make a difference for those left behind. I promise because I know.

If you have any questions about estate settlement, or about creating a plan now that will make the process easier for your heirs after your death, please contact your relationship manager or the Northern Trust location nearest you.