

How to Effectively Use a Paralegal in a Probate Matter

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Officially, a probate is a court procedure to (a) determine the validity of a will; or (b) determine legal heirs, if no will. A probate proceeding also names a personal representative to perform fiduciary roles in settling a decedent's estate. Whether or not a court proceeding is necessary, unofficially a "probate matter" in a law office would include such things as:

- * filing the necessary documents with the court
- * assisting the personal representative to inventory all of the probate and non-probate assets
- * paying final expenses and debts of the decedent
- * filing an estate tax return, if necessary
- * filing the necessary income taxes
- * preparing an accounting
- * distributing the remaining assets to the proper beneficiaries

A paralegal can be extremely effective, both in administration of the estate and in cost-effectiveness, in assisting an attorney with the probate process. Because of all of the tax issues, this area of legal practice can be most challenging. Many times the estate is simple. Perhaps the probate client is someone who has just lost his or her spouse and part of the paralegal's duties is to help the client adapt to his or her new situation. On the other hand, it may be a sophisticated estate worth millions of dollars with a variety of assets and tax issues.

Beginning the Probate Process

After the attorney has determined whether or not a probate action in court is necessary, a paralegal's first responsibility may include drafting the documents necessary for a court probate proceeding. Among other things, a paralegal can make sure that the notice to creditors is published, the attorney is aware of all creditor's claims filed, and the numerous timetables to be dealt with in a probate proceeding are met. If an ancillary probate is necessary, a paralegal can communicate with the attorney in the other state regarding the property owned by the decedent in that state and make sure that all necessary transfers of title are accomplished.

A paralegal can also work closely with the personal representative in making sure the personal representative understands his or her responsibilities and in helping the personal representative carry out those duties. Initially, a paralegal can do such things as (a) follow up on all government benefits, such as Social Security and veteran's

benefits; (b) assist the personal representative in opening a bank account for the estate; (c) apply for all life insurance proceeds; and (d) help the personal representative determine the steps necessary to protect the assets of the estate, such as providing proper storage and security of assets, continuing insurance payments, making monthly payments, etc. The duties of a personal representative can be overwhelming for someone who is unfamiliar with the process. Many clients serve in that capacity only once in their lifetime. A paralegal can work closely with the personal representative to make sure that all duties of the personal representative are completed.

Inventory

One of the primary responsibilities of a personal representative is to prepare an inventory of the estate assets, both probate and non-probate assets. (Probate assets consist mainly of solely owned property or property owned as a tenant in common while non-probate assets may consist of property held in joint tenancy, POD (payable on death) accounts, life insurance, pension and profit-sharing plans, annuities, 401(k) plans, KEOGH, employee stock ownership accounts, IRAs, etc.) While a personal representative may not recognize the difference between a probate and a non-probate asset, a paralegal can verify ownership to determine if an asset is probate or non-probate property. Another important responsibility of a personal representative is to determine the value of these assets on the decedent's date of death. A paralegal can be tremendously helpful in fulfilling this task.

United States Estate Tax Return and Utah Inheritance Tax Return

Once a first draft of the inventory has been completed and values at least estimated, a determination can be made whether or not a United States Estate Tax Return must be filed. If it is, a paralegal can be of substantial assistance to the attorney. (One word of advice here, however. It would be wise to send your paralegal to a seminar dealing with the preparation of estate tax returns. These are usually held in major U.S. cities and may last three to five days. But it is well worth the cost and effort.) In preparing an estate tax return, a paralegal must work with the personal representative and gather such information as

- * all property in which the decedent had an interest
- * gifts made within three years of decedent's death
- * transfers with retained life estates
- * transfers taking effect at death
- * revocable transfers
- * annuities
- * joint interests
- * powers of appointment
- * life insurance proceeds

As we are all aware, the IRS has innumerable rules, some of which pertain to the valuation of assets listed in the estate tax return. A paralegal who has learned these rules can proceed with

- * obtaining real estate appraisals,
- * valuing stocks and bonds,
- * getting date of death balances on all bank accounts,
- * ordering statements from life insurance companies (to file with the estate tax return);
- * obtaining appraisals on collections, antiques, etc.

Valuing assets for an estate tax return is a time-consuming and tedious process, one which is best completed by a competent paralegal. One example of how complex it can be might be how the IRS requires that stock traded on an exchange be valued. You must find the mean (average) of the high and low selling prices of the stock on the date of death. You must also locate and include the value of all dividends that were declared prior to the decedent's death but paid after death. The IRS also requires that all stock splits and reversals declared prior to the decedent's death but not issued until after death be included in the estate tax return. There are special rules if the decedent died on a weekend, if the stock didn't trade daily, or if it the stock was held in a closely-held business. Even worthless securities owned by the decedent should be listed and described appropriately. With the advent of the Internet, the time and effort to do this task has been greatly reduced. There are also services which will calculate these values for you. In any event, it is important that all assets in the estate tax return be valued according to the IRS regulations and that someone has the knowledge and the time to do that, all at the least possible expense to the client, while still making money for the firm. Who better to perform this task than a competent paralegal?

After all assets have been identified and valued according to IRS regulations, proper deductions must be identified so that the taxable estate can be calculated. The paralegal can again work with the personal representative in identifying the deductions acceptable to the IRS, including such things as

- * funeral expenses
- * administrative expenses
- * claims against the estate
- * debts and mortgages
- * casualty losses
- * transfers for public, charitable and religious uses
- * bequests to the surviving spouse (marital deduction)

After all the assets and deductions are appropriately identified and valued, a paralegal should work closely with the supervising attorney in making all tax decisions that must be dealt with in an estate tax return. Then the paralegal can complete the recapitulation schedule of the estate tax return and compute the tax. (Of course, there are now several software programs on the market than can assist in preparing the estate tax return and making the final computations. Part of my responsibilities as the paralegal for the probate section of my firm was to review the available software programs and to recommend the one I believed best suited for our firm's needs.)

After the estate tax return is completed, a paralegal can then marshal the attachments necessary for the estate tax return, including the death certificate, will and trust (if appropriate), all appraisals, life insurance forms, disclaimers, state tax return, and all other supporting documentation. A paralegal can also make sure the estate tax return is signed properly and filed timely with the IRS. A paralegal can also prepare the Utah Inheritance Tax Return and make sure that it is signed properly and filed timely with the State Tax Commission.

While obtaining all the necessary information for the estate tax return, the paralegal can prepare "audit files" to be used if the IRS requests an audit of the return and/or additional information or verification of information is requested.

One caveat: It is very important that the supervising attorney review the estate tax return in detail before it is signed by the personal representative and filed with the IRS. The IRS regulations are continuously and rapidly changing, and it is imperative that, no matter how experienced the paralegal and no matter how much the attorney trusts the paralegal, two sets of eyes are better than one. There are many chances in an estate tax return where mistakes can be made, some of which could prove quite costly to the client. While it is important that a supervising attorney review ALL documents prepared by a paralegal, this one is imperative!

Income Tax Returns

A paralegal can work closely with the decedent's accountant in preparing all income tax returns, including (a) preparing of all SS-4 forms to obtain federal identification numbers for the estate and all trusts included in the estate; and (b) helping the personal representative gather all the necessary forms and information for the accountant.

Accounting

An accounting is a summary of income and expenses which shows profits and losses. Although accountings can be waived by the beneficiaries of an estate, it is often required, and quite appropriate so that a personal representative accounts for all the assets for which he or she has been responsible. This protects both the personal

representative and the beneficiaries. A paralegal, working with the personal representative, can usually prepare the accounting by balancing the estate checking account, making sure all capital transactions are reported, all income (dividends, interest, rents, etc.) is accounted for and all expenses and distributions are reported.

Distributions and Transfers of Title

Once the estate tax return has been filed, all expenses paid and the accounting prepared, a paralegal may assist the personal representative in making distributions to the proper beneficiaries. This can be accomplished in several smaller or one final distribution. Distributions may be made in cash or in property. The paralegal can assist the personal representative in transferring the title to these assets to the proper beneficiaries, such as preparation of deeds and affidavits of survivorship for real estate and working with stock transfer agents for the transfer of stock and mutual funds. A paralegal can also help by preparing a settlement agreement among the beneficiaries. And finally, a paralegal can assist the personal representative in obtaining receipt and release forms when the distributions are made.

Conclusion

Each probate is unique and there is much more that may go into the management of an estate, such as elections by surviving spouses, renunciations and disclaimers, will contests, calculations of marital deductions, etc. Although these are decisions an attorney must make, a paralegal can help in obtaining and providing the attorney with the necessary information to make these decisions. A paralegal is paramount, however, in working with the personal representative and the attorney in making sure that all steps in the administration of a probate are completed.

The probate process, especially if an estate tax return is required, is detailed and the work must be meticulous. It is necessary that the paralegal in this area work closely with the supervising attorney to assure that no mistakes are made. As stated above, it would also be best if the paralegal obtain some specific training in the preparation of estate tax returns. The more efficient a paralegal is for the client and supervising attorney, the more efficient the supervising attorney is for the firm. The client saves money and the firm makes money. Who could ask for more?

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