



Best Practices for Estate Fiduciaries

Presented by: Nolan T. James Jr., Esq.



Roadmap

- Discussion of the Role of the Executor throughout the Probate and/ or Trust Administration Process.
- The Ten Commandments of Best Practices for Executors and Executrixes.
- The Role of Attorneys and Other Advisors in Probate and Trust Administration.
- Fees associated with Probate and Trust Administration.
- Factors impacting timing in settling estates.
- Taxes

Fiduciary Responsibility



Best Practices for Executors



First Commandment: Thou Shalt Not Rush Administration of the Estate



Second Commandment: Thou Shalt Not Mishandle Real Estate



Third Commandment: Thou Shalt Not Mishandle Estate Assets



Mishandle Estate Assets Example



Fourth Commandment: Thou Shalt Not “Borrow” From the Estate



Example of “Borrowing” from the Estate



Fifth Commandment: Thou Shalt Not Treat All Creditors Equally



Priority of Creditors

- Taxes are entitled to be paid before all other debts.
- All other “**properly presented**” claims follow.





Proper Presentment of Claims in Ohio

Ohio law requires that all creditors having claims against an estate must present their claims:

1. After the Appointment of an Executor or Administrator and,
2. Within **Six Months** of the decedent's death.

Ohio courts have applied the “six month bar” even when an Executor or Administrator was not appointed within the six month period.



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Proper Presentment of Claims in Florida

In Florida, creditors have a two year statute of limitations period to file claims against the estate or trust of a decedent.

The Executor can take the following actions to shorten this claim window:

1. Serve all *reasonably ascertainable creditors* with **Formal Notice** and the creditor will then have only 30 days to file a claim.
2. Shorten the claim period window to 90 days by publishing a **Notice to Creditors**.



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Sixth Commandment: Thou Shall Understand the Will of the Decedent



Practice Tip...

Conduct a Formal Reading of the Will



Seventh Commandment: Thou Shall Model Transparency



Eighth Commandment: Thou Shall Surround Thyself with Competent Professionals



Building your Dream Team



Building Your Dream Team

Attorneys

Accountants

Financial Advisors

Real Estate Agents



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Ninth Commandment: Thou Shall Be Organized





Tips and Tricks for Staying Organized

1. Set Aside Space for Estate Documents
2. Obtain several copies of the Death Certificate
3. Obtain several copies of the Letters of Authority
4. Notify Creditors of the death.
5. Determine whether an Estate Income Tax return will need to be filed.
6. Consider utilizing Estate Organizational Software.

Tenth Commandment: Thou Shall Have Endurance





Tips and Tricks for Being Proactive

1. Meet with the Estate Planning Attorney who is preparing the documents for your loved one.
2. Participate in the planning process (Ask Questions).
3. Consider making **Interim Distributions** to beneficiaries if possible.



The Role of Attorneys in Estate Administration

1. Initiating the Probate Process.
2. Determining and Maintaining Important Dates and Deadlines.
3. Dealing with Beneficiaries and Creditors.
4. Providing Legal Advice to the Fiduciary as the process progresses.
5. Filing the deceased person's income tax return.



Limited Scope Representation (Unbundled Services)

Many attorneys no longer insist on taking responsibility for all of the work of a probate case.

Because of advances in the probate process, many Executors take on tasks that have traditionally been performed by attorneys (such as preparing probate court filings).

Make sure your clients have read and understand the attorney engagement letter.



Determining the *Reasonableness* of a legal fee

1. The time and labor required, and the skill requisite to perform the legal service properly.
2. The likelihood, that the acceptance of the particular matter will preclude the attorney from taking on other matters.
3. Compare the fee customarily charged in a particular locality for similar legal services.
4. Weigh the time limitations imposed by the client or by the circumstances.
5. The experience, reputation, and ability of the lawyer or lawyers performing the services.



Who is the “Client” In Estate Administration?

In Ohio, as in other states, attorneys who assist a personal representative in the administration of an estate are entitled to have their “*reasonable fees*” paid out of the estate. Attorney fees in estate administration are some of the most strictly regulated.

Although attorney fees are paid out of the estate, Ohio case law has established that it is the **personal representative**, rather than the estate itself, who is the attorney’s client.

Time Estimate for Estate Administration





Factors Impacting Time in Estate Administration

1. Small Simple Estate can take months to settle.
2. The more complicated the estate is in terms of assets and beneficiaries, the longer it is likely to take to settle.
3. Tax issues impact timing for settling estates.
4. If the decedent owned assets in other states and countries.

Taxes

“In this world nothing can be said to be certain, except death and taxes”

- Benjamin Franklin





Estate Taxes vs. Income Taxes

Estate Tax: A tax on the transfer of the estate of a deceased person. The tax applies to property that is transferred via a will or according to the laws of intestacy.

2019 Estate Tax Exemption is \$11.4 million per individual, up from \$11.18 million in 2018.

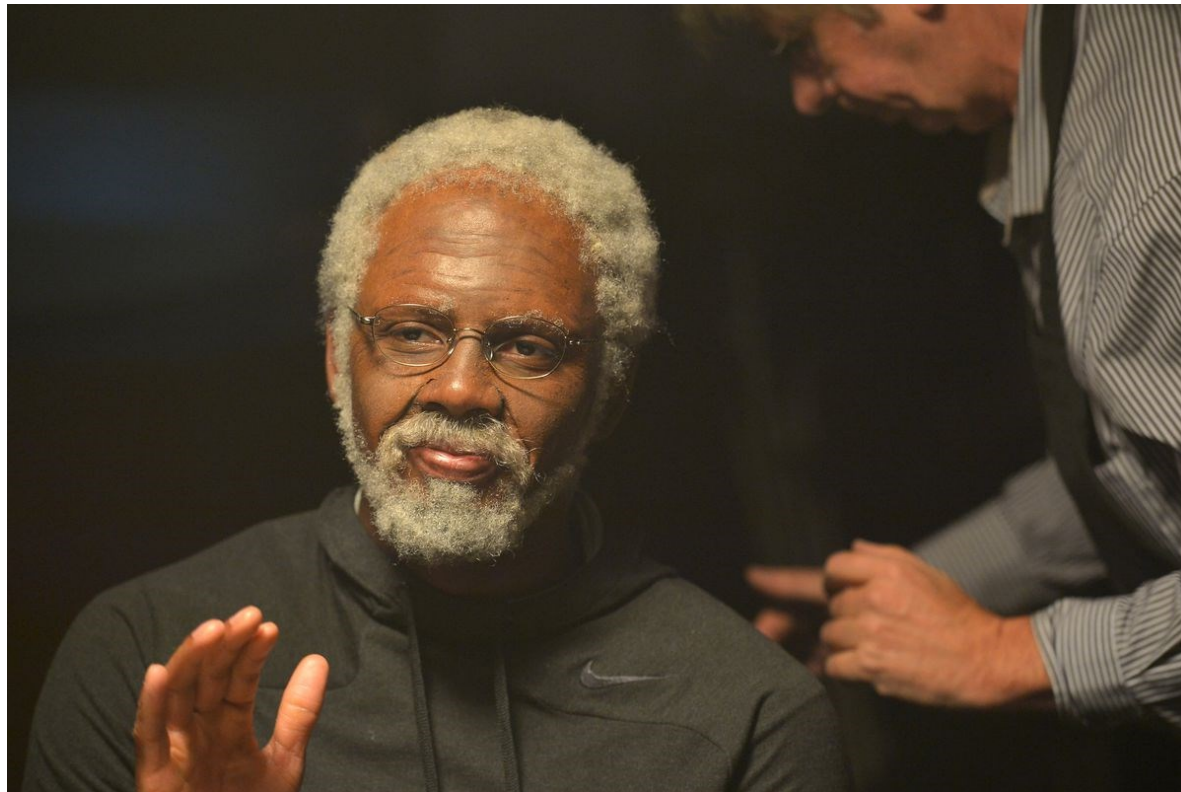


Estate Taxes vs. Income Taxes

Estate Income Tax: A tax imposed on Estates that varies with respect to income or profits. This tax is generally computed as the product of the tax rate times the taxable income.

Many Estates will need to file an income tax return.

Example: Meet Uncle Drew



Assume Uncle Drew died on June 5, 2018

In this example Uncle Drew would likely have income from his Nike endorsement deal which would require his Executor to file an income tax return for him for the tax year 2018.

Assume further that Uncle Drew owned rental property when he died. The income from the rental property after his death would belong to the estate. The Executor would have to file an income tax return for the estate for every tax year in which the estate was open and that property continued to produce income.

Fiscal Year vs. Calendar Year

As Executor, this person may choose whether to use a fiscal year or a calendar year for the estate's accounting period. If the Executor chooses a fiscal year, the estate tax year begins on the date of the decedent's death or June 5, 2018 in our Uncle Drew example.

Conversely, if the Executor chooses a calendar year, the end of the tax year would be the last day of the year in which Uncle Drew died, or December 31, 2018.

When is an Estate Income Tax Required?

An Executor would have to file a Form 1041, **Income Tax Return for Estates and Trusts**, if the estate had:

1. Gross Income of \$600.00 or more for the tax year, or
2. One or more beneficiaries is a **nonresident alien**.



Dealing with Digital Assets

The Average person has over 90 online accounts (social media, online banking, cell phone applications).

Executors during the inventory process must gather all assets (including digital).

The laws are just starting to catch up in order to grant fiduciaries access to digital accounts.

Helpful Resources

ESTATEEXEC | Estates - Executor's Guide - Support - About | Logout - Account

"Ease the burden of being an executor of an estate"
The New York Times

Automated guidance
Automated accounting
Peace of mind

Create Estate for FREE! | Learn More

EstateExec Makes Executor Duties EASY!

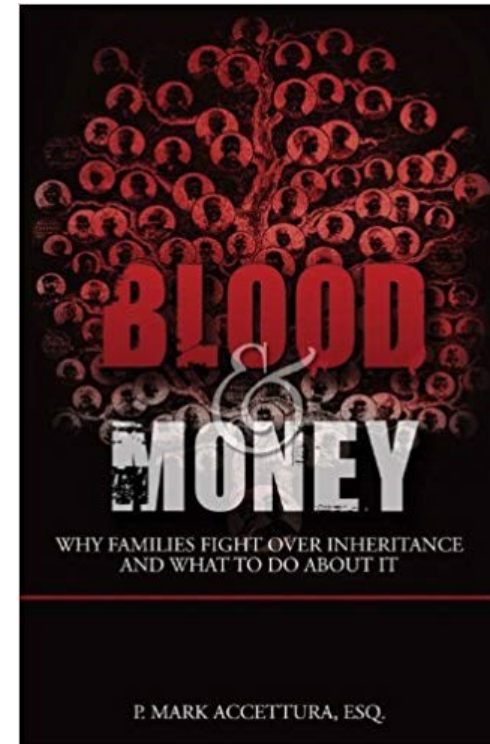
Whether it's your first time serving as an executor, or you're a professional estate attorney, EstateExec online software will make the process easier and simpler.



- Saves time and money
- Handles the complexity for you
- Work by yourself or with others
- Try the online software for FREE

Explore Sample | Read Guide

"Great in supporting our execution of my Mom's estate" — Bruce R.



CAVITCH
FAMILIO & DURKIN

Questions

Nolan T. James, Jr., Esq.

Associate Attorney

Cavitch, Familo & Durkin

E-mail: njames@Cavitch.com

Office: (216) 621-7860

Mobile: (440) 320-9422

* Licensed to practice in Ohio
and Florida



CAVITCH
FAMILLO & DURKIN