

Five Things Personal Representatives Should Never Do

1. **NEVER** distribute estate assets until there has been a full assessment of potential claims against the estate.

Minnesota statutes require that probates remain open for at least four months. This gives creditors adequate time to notify the personal representative of potential claims. Distributing assets before the expiration of this four-month creditors' claims period opens the personal representative to liability if there is not enough money to pay the claims.

2. **NEVER** use the estate's funds as a personal bank.

The personal representative has a duty to act in the best interests of the estate. "Borrowing" the estate's funds or misappropriating the funds is the same as stealing someone else's money.

3. **NEVER** neglect tax issues.

Ordinarily it is the responsibility of the personal representative to file the estate's tax returns. Failure to do so could cause penalties and expose the personal representative to liability. Moreover failure to file the appropriate tax returns and pay taxes could result in criminal prosecution.

4. **NEVER** ignore a court order.

As a condition to being appointed, the personal representative agrees to submit to the jurisdiction of the court. Submitting to the court's jurisdiction means obeying court orders and local rules and following Minnesota probate statutes. Disobeying the court could result in personal liability against the personal representative, or worse, the court ordering the personal representative to appear before it to explain why the personal representative has disobeyed the court. It is within the court's power to throw the personal representative in jail for disobeying a court order.

5. **NEVER** proceed without counsel.

Minnesota's probate statutes are complex even for seasoned attorneys. There are many traps for the unaware. Making mistakes can be costly to the estate and can even cause the personal representative to become personally liable for the mistakes. Even before a probate proceeding is commenced, there are many issues that need to be dealt with the

correct way, including how to handle creditor claims, deciding on the right venue for the probate, choosing the appropriate type of probate proceeding, and interpreting the decedent's Will correctly in light of Minnesota law. Probates need to be done right. Because of the risks involved, probate is not the kind of legal proceeding that should be orchestrated by amateurs or done "on the cheap." There have been many personal representatives that went at it alone and learned what it means to be "penny wise but dollar foolish." Always obtain and follow the advice of an experienced probate attorney.

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