



RESPONSIBILITIES OF PERSONAL REPRESENTATIVE

Now that you have been appointed personal representative, or are considering or anticipating serving in this capacity, you need to be informed of the major areas of responsibility that apply to you as Personal Representative.

MAINTAIN THE LOYALTY OF A FIDUCIARY. As personal representative you have taken or will take an oath issued by the probate judge by which you swear or affirm that you “will perform your duties as personal representative of the estate to the best of your ability and according to law.” **This means that you will follow the law closely and that you will not allow personal prejudice, bias, personal interests, or divided loyalties to interfere with the proper performance of your duties as personal representative.** If you sense that a conflict of interest might arise if you were to serve as personal representative, you must bring this matter to the attention of the lawyer who is assisting you. In summary, you must maintain a very high degree of faithfulness to the estate and conduct yourself with the **utmost degree of integrity and impartiality.**

PROTECT ALL ESTATE PROPERTY DURING ADMINISTRATION. You are responsible to protect and preserve all estate assets after the decedent’s death and throughout the administration until the estate assets are finally distributed to the beneficiaries who are entitled to them. This may require renting secure storage facilities, safe deposit boxes, and maintaining insurance on real or personal property. It could even include employing security guards, maintenance personnel, or tenants in order to protect property. Sometimes the cost of protecting or maintaining a particular asset may be of greater cost than the asset is worth, and thus consideration must be given to the wisdom of selling or disposing of the asset.

CONTRACTS AND RELATED TRANSACTIONS

It is very important that you as the Personal Representative NOT enter into any written or oral contracts to buy or sell property pending review by your attorney and possible approval by the probate court. In addition, under the statutes of the State of Oklahoma, the Personal Representative is prohibited from purchasing any property of the Estate, directly or indirectly. This absolute bar means that you should not purchase any property sold by you through any proceedings, whether such property is tangible personal property or real estate.

INVENTORY THE ESTATE. In this regard, you are responsible to determine exactly what assets belong to the estate, e.g., what property, real estate, personal property, etc., belonged to the decedent at the time of his or her death. Some assets pass to another person outside of the probate procedure and are not under the control of the personal representative. Joint tenancy with right of survivorship and life insurance death benefits are just two common examples of assets that may pass free of the claim of the personal representative. Under Oklahoma law, there is a procedure to waive the requirement of filing a formal inventory in the Court Clerk's office. However, if a creditor or heir/beneficiary of the estate makes demand for an inventory, it may be necessary to prepare a formal inventory and secure appraisers to view the property and provide bona fide valuations. Occasionally, you may be called on to prosecute or defend a civil lawsuit if the decedent was involved in litigation prior to his or her death, or his or her death arose as a result of such decedent's alleged negligence or the alleged negligence of another person.

DETERMINE CREDITORS AND DEBTS. Once appointed, it is required by law that creditors promptly be notified by publication, as well as by mail, of the existence of the probate proceedings which gives them an opportunity to file a formal claim with the personal representative. It is your duty to determine if the claim is valid. There is a statutory order of priority of payment of all valid claims of an estate, which must be followed, particularly if the estate is of insufficient size to pay all of the debts. Your attorney will assist you in carrying out this procedure.

PREPARE ALL REQUIRED TAX RETURNS. You step into the shoes of the deceased person and may be required to file final income tax returns. Sometimes this is done solely by the surviving spouse, even if he or she is not the personal representative. Additionally, it may be necessary to file an Oklahoma inheritance tax return if any property passes to a person or entity other than a spouse. If the estate is of sufficient size, you may be required to file a federal estate tax return. Finally, if during the administration period, the estate has sufficient income of its own, you may be required to file a fiduciary income tax return. It may be necessary to file form SS-4 with the IRS and obtain an identification number ("E.I.N.") for the estate in order to open bank accounts in the name of the estate. It is important to keep in mind that the probate estate and the taxable estate are different. The

probate estate only includes assets which properly are subject to the Last Will of the decedent or law of intestate distribution (no Will) but, as mentioned above, does not include assets, which pass outside the probate estate. However, the inheritance tax laws include everything as taxable assets, that is, all assets owned by the decedent regardless of how those assets passed to other persons after death, i.e., life insurance proceeds (if the decedent/ insured was the owner), and joint tenancy property, etc.

MAINTAIN ACCURATE ACCOUNTING RECORDS. During administration and at the final closing of the estate, it will be required (normally) that you prepare and file with the Court an annual and/or final accounting which records in considerable detail all receipts and all disbursements made by you as personal representative since your appointment. Thus, it is important that you keep accurate records of all transactions affecting the estate and that you keep all estate financial matters separate from you own personal financial records. It is usually wise to establish a separate estate checking account to handle receipts and disbursements.

FINALIZE THE ESTATE. Upon completion of all duties imposed upon you as personal representative, you will then normally be requested to prepare with your lawyer's assistance, an annual or final accounting which describes and lists your receipts and disbursements of funds made by you as the personal representative. The documentation will also display all remaining assets of the estate and will set forth to whom the remaining property is distributable, i.e., pursuant to law or pursuant to the terms of the Last Will. A final hearing is conducted before the probate judge, and you will normally be required to appear and testify briefly regarding the performance of your duties since your appointment. You will verify that all taxes have been paid, as well as all other debts of the estate, that the estate is ready to close and that you are ready to make final distribution to the beneficiaries. After the hearing, you will complete the transfer of all remaining property to the proper beneficiaries and file receipts evidencing that you have completed the distribution process. Thereafter, you will be entitled to receive a discharge signed by the judge. At this point, your duties have ceased and the estate is fully administered and closed.

COMPENSATION. Unless the Will provides otherwise, the personal representative is entitled to be compensated for services rendered. In addition, you may be entitled to be reimbursed for all out-of-pocket expenses. Basically, the fees payable to you as the personal representative are based on the size of the probate estate. The rates are as follows: 5% of the first \$1,000; 4% of the next \$4,000; and 2.5% of the balance. If extraordinary services are performed, it is possible to receive additional fees but, in any event, all fees must be approved by the Court. You, of course, are not required to accept any compensation as the personal representative and, in the event you accept compensation, it will be ordinary income to you and is subject to income taxation as such. Attorney fees are not set by statute but are determined by the agreement between the personal representative and the attorney.

THE ROLE OF YOUR ATTORNEY. Your attorney, as a professional, will assist you in carrying out your duties as the personal representative. It is extremely important that you maintain close contact with the attorney for the estate so that he may be able to advise you properly regarding the needs and problems that may arise as the estate administration process is carried out. As the old saying goes, “It is easier to get oneself into a mess than to get out of one.” Some actions, once taken, cannot be undone and, therefore, seeking advice and assistance from your attorney will help avoid problems. It is absolutely critically important that you consult with your attorney before employing other professionals such as accountants, real estate appraisers or brokers, business brokers, or property managers, to avoid duplication of effort and expenses, as well as to secure proper Court approval if necessary before entering into agreements to employ such professionals.

Curtis J. Shacklett, OBA #8101
Barber & Bartz
525 South Main Street, Suite 800
Tulsa, Oklahoma 74103-4511
Telephone: (918) 599-7755
Facsimile: (918) 599-7756
E-mail: cshacklett@barberbartz.com
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