

# INTRODUCTION

Our hope and prayer is that the general rules set forth in this booklet will give a person faced with the chore of settling an estate a good overview of the probate and tax aspects of estate settlement. The details will only make sense if you can see where you are going and why.

The difficult decision at each turn is how much detail to include. We have tried to include enough specific information to be of genuine assistance and yet we have tried to urge caution and to identify the need for specific legal advice in those areas where it is necessary.

Over several years of estate planning and probate practice, one thing has become crystal clear to us--people are absolutely unique. Their estates reflect the uniqueness of the people who accumulated those estates. That God-intended uniqueness and the attempt to apply this very complex body of probate laws to solve people's problems is what has made the practice of law both challenging and rewarding. These unique problems require solutions that make broad general advice of little help in solving real-world problems. However, it is virtually impossible to successfully deal with the many frustrating details of estate settlement without seeing the big picture clearly.

Nothing in this booklet should be interpreted as my attempt to give legal advice that the reader should rely upon to solve a specific legal problem without getting the opinion of a qualified lawyer.

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This publication is intended to provide accurate and authoritative general information in regard to the subject matter covered. By providing this brochure, we are not undertaking to render legal or tax advice. If legal or tax advice is required, the services of a competent attorney should be sought.

## Helpful Contacts:

### **Lawyers Referral Service**

1-800-868-2284 (Statewide Toll Free)  
803-799-7100 (Richland & Lexington Counties)

### **Law Line - Taped Explanations of various legal issues**

1-800-521-9788  
803-771-0011 (Richland & Lexington Counties)  
[www.sctbar.org/public.asp](http://www.sctbar.org/public.asp)

### **Social Security**

803-929-7635  
800-772-1213  
[www.ssa.gov](http://www.ssa.gov)

### **Veterans Affairs Regional Office**

803-255-4255

### **S.C. Department of Revenue**

803-898-5000  
[www.dor.state.sc.us](http://www.dor.state.sc.us)

For a list of attorneys who are certified as specialists (currently 49 of them) in South Carolina, contact the Commission on Continuing Legal Education in Columbia at 803-799-5578 or [www.commcle.org](http://www.commcle.org).

The following may prove to be helpful websites.

[www.richlandonline.com/probate.htm](http://www.richlandonline.com/probate.htm)  
[www.greenvillecounty.org/probate/](http://www.greenvillecounty.org/probate/)  
[www.horrycounty.org/depts/legalserv/probate.html](http://www.horrycounty.org/depts/legalserv/probate.html)  
[www.sccounties.org/assoc\\_groups/probatejudge/probate-home.htm](http://www.sccounties.org/assoc_groups/probatejudge/probate-home.htm)

# PROBATE HANDBOOK

## A NON-LAWYER'S OVERVIEW OF ESTATE SETTLEMENT IN SOUTH CAROLINA

In 1986, the South Carolina legislature passed a new body of law known as the South Carolina Probate Code. This new Probate Code is found in a new volume that was added to the South Carolina Code of Laws and is called "Title 62." This Code became effective on July 1, 1987, and is the current law that governs the settlement of estates.

The settlement of an estate can be generally summarized as four steps:

1. Probate the will or determine that the decedent died without a will and appoint a Personal Representative to administer the estate.
2. Determine what assets were owned by the decedent at death and appraise them.
3. Determine the decedent's debts and pay them; pay the income and estate taxes and other expenses of administration according to the proper priority of payment.
4. Distribute the remaining assets to the rightful heirs or beneficiaries.

The Personal Representative's job is to:

A. Collect the Assets:

1. Real Estate
2. Stocks & Bonds
3. Cash, Accounts Receivable
4. Life Insurance
5. Jointly Owned Property
6. Personal & Household Effects, Vehicles, Boats
7. Property Over Which a Power Is Held
8. Annuities

B. Pay:

1. Funeral Costs
2. Personal Representative's fee (up to 5%)
3. Estate Attorney

4. Accountant, Appraiser, etc.
5. Probate Court Fees
6. Medical Expenses
7. Estate Taxes
8. Income Taxes
9. Proper Debts

C. Distribute:

All remaining assets as Will provides or by the laws of intestacy. For example:

1. Personal Effects - wife
2. \$5,000 - St. John's church
3. Residence - wife
4. \$500 - each grandchild
5. \$5,000 - each child
6. Balance of all assets - wife

## I. PROBATE COURT AND TAX OBLIGATIONS

In settling an estate, the Personal Representative has obligations and duties that fall into two broad categories:

1. **Probate Court Duties.** The Probate Court has jurisdiction over the settlement of all estates in South Carolina. Probate judges exist for each county and are elected officials who hire a staff to assist them with their duties. The Probate Court is usually located in the courthouse in each county. Our new Probate Code provides for an informal method of estate settlement. This is designed to insure only minimal involvement of the Probate Court in situations where the beneficiaries and Personal Representative are in agreement concerning the settlement of the estate. A more formally supervised estate settlement procedure is available for those situations where the beneficiaries and Personal Representative do not agree on matters related to the estate or the beneficiaries simply want the Probate Court to closely supervise the settlement.
2. **Tax Obligations.** These duties are required by the Internal Revenue Service and the S. C. Department of Revenue. The Personal Representative will have obligations to file income and estate tax returns depending upon the amount of income and the value of the assets of the estate, respectively. **It is not the Probate Court's duty to inform the Personal Representative of the extent or nature of their obligations to the tax authorities.** It is important for the Personal Representative to seek

qualified tax assistance in dealing with these tax obligations. (See Paragraph 8 under Section IV Procedure Overview.)

## II. HOW TO DETERMINE IF YOU NEED THE ASSISTANCE OF A LAWYER

Under South Carolina law, the Probate Court personnel are not allowed to give legal advice. In order to protect the public, South Carolina law allows only lawyers to give legal advice and to represent people before state courts. The following list may help you determine those situations in which it is wise to obtain legal advice.

1. **General Estate Settlement Supervision.** A lawyer's assistance can be very helpful in selecting and understanding the proper estate settlement process. With qualified legal advice, it is possible to avoid unnecessary delays and bewilderment trying to understand this complex body of law.
2. **Tax Obligations.** An attorney's assistance is helpful in making certain that income tax returns and state and federal estate tax returns are filed in a timely manner. Failure to properly file these returns can result in personal liability for the Personal Representative as well as penalties and interest.
3. **Interpretation of Laws or Provisions of the Will.** An attorney's assistance is often needed to determine what a Will says. For example, there are situations in which lifetime gifts will take the place of gifts under the Will. In addition, there may be questions concerning which beneficiaries must pay the estate taxes or administration expenses. It is also not unusual for a question to arise concerning who takes a bequest intended for a beneficiary who predeceased the Testator.
4. **General Estate Planning.** A qualified attorney can assist the beneficiaries in determining whether the Personal Representative is properly administering the estate and how the provisions in the Will, which have been made for them, will affect their own planning. For example, a wealthy beneficiary may want to consider a disclaimer, which is a refusal to inherit property. In addition, a Will that establishes a trust may give the beneficiary a right to designate to whom the property will pass at their death.
5. **Before Qualifying, As an Advisor to the Personal Representative.** The most important decision a named Personal Representative may have to