

>>: Hello. Thank you for joining us today. My name is attorney Luke Bean, I'm with the firm of Rico, Murphy, Diamond and Bean in Natick, Massachusetts. And today, I'm going to be taking you through Navigating the Probate and Estate Administration Processes. So we're going to spend an hour on this today, we could spend a lot longer. And in preparing this I thought long and hard about how to try and present this in a way that would be concise and useful for someone who is newer to this practice area, who's trying to take it on for the first time. And so what I've done here is kind of started with an overview, and then really frame this in the context of essentially, a client meeting. An initial estate administration meeting. Preparing for it, answering client questions at the meeting, and explaining to them the various steps of the process. Because I think that's the best way to give you a 10,000 foot view of the areas you need to understand as a practitioner. So, let's begin. What are we talking about here with estate and trust administration? And, you know, the title is Probate and Estate Administration, but I bring up trust because in modern estate planning, trusts are everywhere. And so, in a variety of ways, you will likely, if you venture into this practice in any sort of regularity, come across trust as well. So you'll see I reference them in here along with the States. But really, what are we talking about in this process? Really, the estate trust administration process is the process of taking the assets of a decedent and getting them to the people that are supposed to get them. Right now, it's overlaid by a bunch of different things. It's overlaid by documents that the client has in place, it's overlaid by how a client or decedent owned assets, it's overlaid by what type of assets a decedent owed. It's overlaid by state law, it's overlaid by the structure of a family, there's overlays of taxes - both income taxes, estate taxes, other taxes. Who knows, you know? It is a very - you don't necessarily know what you're going to get when you open the door. And so you've got to be ready to kind of be a jack of all trades in some ways. Meaning, you know, in a state administration process sometimes comes across litigation over contracts or comes across tort litigation, or comes across elder law issues. So, you know, variety of things you've got to be paying attention to. But what I want to take you through is kind of the basics of what you're going to see in typical estate and trust administrations. So really, how do you begin, how do you start? Client calls you, someone you haven't worked with before, says my mother or father, whoever passed away. I need help. Well, the first thing you need is information, right? And it's really important when you're starting the administration to get the facts or as much of the facts as you can, because usually, beneficiaries and heirs are going to quickly start throwing questions at you. About, you know, particularly when is the money coming and how much money is coming, and are there taxes? And you've got to be prepared to answer those questions, but in order to answer them and answer them accurately, you really have to know the framework you're in. And so the first thing I do with any client is give them a checklist, basically an intake form that will be - that is an overview of everything. And if you do a quick Google search, MCLE actually has a few templates for probate-intake checklist. But basically, you want to cover three major areas - you want to cover the assets. You want a list of all the assets that the decedent owned, had an interest in, was a beneficiary of. You want to know how their - how they're owed. You know, that's really, really important as you're going to see as we talk through the process of claiming assets and distributing them. Is the asset owned individually, is it owned jointly with rights of survivorship, is it owned tenant's income? Is it owned in a trust format as trustee? These all have different implications as to how, when the assets are distributed, if they're subject to tax, what kind of tax they're subject to. The other thing that's really important to get is value. Because you're going to see the value in the date of death, that date of death number for these assets plays in for both income taxes, and if the estate is a state-taxable estate tax filings. So getting in on the assets is one big piece.

Second big piece is the players. Who's involved here? Who were the beneficiaries, who are the heirs at law, which we'll talk about this term, but it basically means who are the closest family members that under law, would take assets if the decedent didn't have a will. Who are the persons that are named in the documents as say, an executor, which we now know here in Massachusetts, we call a personal representative. Who's named if there's a trust as a successor trustee? You've got to get the, you've got to get the names, information of these people, contact, you know, contact information. Ultimately, for beneficiaries, you're going to need things like Social Security numbers. So really gathering all of this information for all of the people that are going to be involved in your administration, on the front end is key. And then the third thing you really want to be focusing on in this information gathering phase is what's the plan? What documents are in place? Is there a will? Is there a trust? On assets, the other thing to be looking at we didn't talk about but relates is, are there beneficiary designations? Because beneficiary designations generally override things like a will. So, you've got to understand not only what the assets are, but if beneficiaries are in place on certain assets, that's going to change the disposition as well. So gathering, really those three assets of information is key to getting start. And really, there's a bunch of documents that underlie or that are going to give you clues are going to explain things for you. Obviously, you know, first and foremost, if the decedent had a will and carousels, you want them. And you want the originals, ideally, if they're available. We're going to talk about when we get to the probate process how having or - having originals means we were more flexible, if you don't have originals, you can only probate that will through a formal process. Talk about that a little more, but whatever you have, get copies of the wills and make sure they're originals. Death certificates. You're going to need these, you're going to want - if you're going to probate, you're going to need a death certificate to file with the probate court. I also get at least one death certificate for each real property interest held, for registry purposes for recording. Typically, when a decedent passes away, the funeral home will get the death certificates at first, and they'll typically get 10 or 12, depending on what the client requests, so you typically take 2 or 3 of those, and if you need additional for any reason, they can be ordered from a city or town or, you know, with a quick application and usually a \$10 or \$15 fee. So, this is not something that's terribly hard to get, but getting them on the front end is good. Having the Social Security number, one - I'll give you some traps for the unwary as we go here, make sure the Social Security Number is right. I had a death certificate where I was wrong and the efforts and pains of changing that, not a thought. Other documents you want - trust, if there are any. You want them with their amendments, if trustees have changed, you'll see trustees over time might have been the decedent, and then maybe one of the children stepped in. Maybe successors are named upon death. You need copies of these trusts. This includes revocable trust, or living trust that the decedent might have had. A lot of times you'll see realty or nominee trusts, these are trusts that are just not used as frequently now, they are, they were used in older estate planning because in prior law, in order to deed property to a trust, you had to record the trust document. So people in the past, when they were using revocable trust as part of estate planning, did not want to record their entire revocable trust. So we use Realty Trust as a title holder, which owned the property on record and had, what's called a schedule of beneficiaries. That says who is the real owner of the nominee trust. So I mention that because when you're dealing with these nominee trust, a lot of times those scheduled beneficiaries, they're not recorded, so if even if you have the nominee trusts, you still need that schedule and it's usually separate. And sometimes, it's really hard to find and that could create a problem. So you want to be keying in on that if there are nominee or realty trust. Other trusts you want to be thinking about.

Particularly if the decedent that you're dealing with had a pre-deceased spouse, was there any estate planning done? Was there a trust set up by first spouse for the benefit of now your decedent? If there was, you need that information. Well, another thing to think about is, you know, are there trust that were established for the benefit of your decedent by a parent, by a sibling that can play in for tax purposes? Can also play in for things like potential powers of appointment, as we call them, within trust documents. So you need to also be obtaining any trust like that. As to assets - you really want to be getting a as, a real picture of the assets. And that really, for your typical assets, your financial bank accounts, investment accounts, IRAs. You want to get a statement, physical statement from Fidelity, Charles Schwab. You want a copy of that in its entirety from the period covering the decedent's passing. So if the decedent passed on August 10th, you want the August 1 to August 31 statement, you want to get that for each asset. It's going to be important for ascertaining value for estate tax purposes. The other thing it's going to be important for is income taxes, because most assets, we're going to talk about this as we move forward, but most assets get this thing called a step up in basis, which is a good benefit to the beneficiaries, but you need to know what that value is. And the date of that value is what sets the basis for assets to, in the hands of beneficiaries. So getting this information serves multiple purposes, ultimately. Also getting income tax returns is important, helps you get a handle on what assets the decedent had by looking at where interest in dividend income is generated from. If they had 1099s, things like pensions, annuities, especially in estates where your client may know less about the decedent's financial affairs prior to their passing, which is a challenge. But that's one way to get clues. As our statements, the other thing I'll say is, if a client you're representing says, I don't really know what my decedent had, I don't know where to look. If they can get copies, particularly of checking account statements, follow the money. Look at where debits were going, look at where money was being transferred to. Look at where money was coming in from. And that's, a lot of times, how you can find accounts that you don't otherwise know about. And so, yes, income tax returns are also helpful for that, it's also helpful because you're going to need to make sure that your decedent's income tax compliance is completely taken care of as part of the administration, so you need a copy of the return so you can understand where things are. The other thing you should be aware of that does come up in the case of decedents where with a pre-deceased spouse, is that you want to be looking if there wasn't a state tax return filed either federally or here, in Massachusetts. For that estate, you need it. Because it's going to impact, probably that means your decedent has a taxable state as well, and the estate tax return of that pre-deceased spouse is going to be a factor in the return you ultimately need to prepare or have prepared by someone and filed. So once you've got all this information, you're going to be overwhelmed a little bit, right? If you get it all in advance, you get this checklist of about ten pages and a stack of documents about wee-big. Well, what do I do? Well, you really go through it and you're going to be looking for these key points. And some of them we talked about, but let's kind of just go through one here again, in order of kind of importance in my mind. First is the dispositive provisions. There's a will, there's a trust, you need to go to the clauses and look and see, who are the beneficiaries? Is it the kids equally? Is it the surviving spouse? You need to be careful. You need to look at who are these beneficiaries? Are they minors? It doesn't say, to my children and you know, if my children, then deceased, their heirs, then living. Do we have pre-deceased children of a decedent? Sometimes you don't hear about that, sometimes they don't talk about that stuff. Do we have issues where there is bequests in the estate? It says give 300,000 to this person, and 400,000 to that person. And you think the estate is only worth 500,000. Are we going to have an issue of abatement? Are there issues for

conflict? Right? Are beneficiaries of this estate, decedent's second wife and decedent's children, who hate each other. Or are beneficiaries, you know, two siblings who are - lived together and love each other and, you know, are best friends, right? That's going to impact how you ought to approach the plan, how you're going to approach the formalities of presentation of issues, and ultimately how you're going to advise the client on fulfilling their fiduciary duties. So to that, you know, fiduciary provisions - because really in this role, as as a state attorney, you're representing the trustee or the personal representative. So you've got to look - who are you representing? What is their scope of authority? And, you know, this becomes particularly important when there's more than one person, right? If the decedent names their two children jointly. Well, okay - how's that going to work? What happens if there is a disagreement? Are there provisions as to what controls. Or if there are three fiduciaries are decisions to be made by majority - Or is it to be by unanimous vote? Is there a special provision in the trust or the will, or is it silent? Then you've got to go back and look to your uniform probate code, uniform trust code - default. So that's really important because they're going to ask a lot of questions about what can I do and when can I do it? Asset breakdown. As we were talking about, getting all this information about assets is really important. And for your purposes the first thing you're going to want to do is break them out between what I'll call probate and non-probate assets. We're going to go into what that means in more detail, but essentially probate assets are the ones that you're going to have to go through the court to get, and non-probate assets are the ones that a beneficiary or the beneficiaries are going to be able to claim without your involvement or without fiduciary involvement or you know, with minimal help. So you're going to want to really break that out because it's going to one, kind of dictate the scope of the estate administration. But also, you're going to be, even though you may not be directing the distribution of these non-probate assets, you're going to be advising all of them. How do I claim them, when do I claim them? And particularly, we're going to talk about qualified accounts, retirement accounts, your 401Ks, your IRAs and those come with a host of income tax issues. When I take a distribution, is it taxable? How long do I have to take a distribution? Do I have to take a distribution every year? So these are all questions that even though they're not going to be may not be directly under your jurisdiction of probate, you're going to get asked. So you want to be analyzing what the types of assets are and what the questions or the dominoes that are going to fall are going to be as as the beneficiaries go to claim. Real estate - particularly I want to point this out here. There's real estate you want to pull all the deed work. You need to look at the record and see, you know, they send you a copy of the deed - is that on record? They send you a copy of the trustee certificate - is that on record? And when you're looking at the deed, pay attention to titling. Does it say Tenants in Common? Does it say joint with rights of survivorship? Does it say Tenants by the Entirety? Those all mean very different things. For purposes of your rights, as an heir. Your administration of the asset as the attorney and advising the fiduciary, so you need to look at the deed work and be very clear on how title is held. Said this a little bit already - qualified accounts. These are the ones that if they have them, there's going to be some income tax issues. So you need to be looking at how old was the client when they died? What is the relationship of the beneficiaries? Is it a surviving spouse? Is it children? Is the beneficiary disabled? Is the beneficiary a minor? Those all mean, special things in terms of the timing and amount of distributions that the beneficiaries have to take from those kind of plans. Estate taxes. So here for bigger estates, you need to be having your eye not only on all this other stuff, but whether or not you owe any money to the IRS or the Department of Revenue here in Massachusetts. And that particularly becomes applicable in Massachusetts estates, because under current law, our Massachusetts estate tax

exemption is only \$1 million. And so most folks who own property in greater Boston and have a couple of bucks, have a Massachusetts estate tax issue, meaning you as the estate administration attorney need to be cognizant of it, advising on it, and you may be involved in the preparation of the return. Or you may find someone to do the preparation of the return, but you still need to understand what it means, how it relates to things like selling property - timing, liens, etc. And then federally for those very large estates, if they're over 12 million and change as of this year, you've got a federal estate tax problem. If you've got a federal estate tax problem, you probably ought to call someone in to help you out, because that's going to be a complicated estate. But so you want to be keeping your eyes on those balls and we'll talk a little bit more about those in a few minutes. And finally, income taxes, as I mentioned, you're going to get the Justine's income tax return, why? Well, if decedent dies in June of a year, they had income during that year until their passing. And so, you know, even if they filed their prior year's return and all is said and done, at least up until that point, you still may have the responsibility to file their final income tax return for that final year. The other issue is that, well, gee, now your fiduciary is stepping in as the person controlling these assets and perhaps some of them are income-generating. You know, if it's a stock portfolio, there is interest in dividends. And during the decedent's life that was being reported under their social security number, and they pay the taxes on it, but now that changes. And so your fiduciary becomes responsible for that responsibility of reporting that income and paying those income taxes as well. And so another piece of the puzzle that needs to be thought about and you're going to be advising the client on. So now your head is spinning and you're like oh, my gosh, how are we going to go through all this? Well, that's - if you think your head is spinning, the client's head is usually really spinning. And so, I tried to break down how I approach an initial meeting with a client, but the reality is, a lot of times the initial meeting starts about 5 minutes, you know, 5 minutes of a planned conversation. And then the questions or the diversions to this story or that issue or this concern starts, and so this doesn't typically actually happen in this order of discussion at all. However, these are the topic areas that I try to cover in an initial meeting with a client to orient them to what they can expect during the administration process. And so really, we're talking about this asset breakdown and what we're going to have to do in terms of the probate court. We're talking about getting, ultimately, the appointment of fiduciary being a person represented with the court, via successor trustee. Talking about then claiming these assets, getting the assets transferred from Fidelity, Charles Schwab, bank of America, to, you know, estate trust beneficiary, depending on how it's set up. Dealing with estate taxes - if we have an estate tax file, and gathering that information necessary to file, making sure that you stay on track for the deadline. Income taxes, making sure you're either getting someone to prepare the income taxes or preparing them yourself, getting the 1099, advising the fiduciary on things like income distributions, how whether or not the income tax is going to be paid by the estate or trust, or if it's better, or if it's possible, for the beneficiaries to pay the income tax. Does that make sense? What is the answer? But really, you know, a lot of times what they want to talk about too, is timeline. How long is this all going to take, what am I, you know, what can I expect? What are my deadlines? You know, how long we've been working on this. And when am I gonna get my money? So that's an important kind of overlaying once you've talked about the facets of the administration, kind of setting expectations. And that's really important. I find one of the biggest tools that I get keeps clients - happy is clear communication and clear expectations. Don't tell them something is going to happen in a week, if you know the court is going to take them up, you know? I overpromise and under-promise, whichever way it goes. You know what I mean. I suggest you give broader deadlines and meet them

sooner, and you look like the hero. But that way, you also don't have people, particularly beneficiaries, who are more eager, calling you or saying you are not meeting what my expectations were or you set for me. So. And then we'll talk about miscellaneous things, because every estate, as vanilla as it may look, usually has some sort of weird caveat. So let's talk about the asset, break down a little more detail because I've alluded to a lot of these functions of ownership and looking at title and how important that is. And so when you're breaking down the assets with the client, you want to talk about that really in a few categories. First category is assets that are joint. And I'm going to use the word joint, but what I mean really, technically, is assets that are title joint with rights of survivorship, or tenancy by the entirety. And I want to distinguish that, because we're going to talk about tenancy in common. Which some people will refer to as joint tenancy, but is not, and has a very different result with respect to ownership. So here, joint ownership, be - it breaks a survivorship or tenancy by the entirety. That is an ownership that, by operation of law, transfers property. Meaning, my spouse and I own property as, and tenants by the entirety by the way, is the special expression used for joint ownership as between a married couple. And it provides basically, the same rights as joint ownership, but also provides special rights with respect to protection from creditors and things like that. So extra protections afforded to because of marriage, but relevantly here and most importantly, has that function of ownership jointly, the passing of one person results in the automatic ownership by their surviving owner or owners, if there are more than two joint owners, without the need for probate. Meaning, there is no need to read a will, there is no need to go to a court. If you own property jointly, the will could even say, you know, if I have my property at 123 Main Street and I own it jointly with my spouse and I say, I hereby leave my property at 123 Main Street to my great Aunt Deborah, wouldn't matter. Could say it ten times in the will, the joint ownership clause is what's going to govern the transfer of that property. Now, that doesn't just happen, where realistically you have to, in the case of bank accounts, financial institutions, show up with usually a death certificate and fill out some paperwork. And in the case of real property, you've got to file a death certificate with the Registry of Deeds. But that is about all that's required, meaning no fiduciary involvement, does not matter who is appointed, they don't have to call and authorize on behalf of said joint owner, joint or tenant, by the entirety to gain access. So, simplest form of transfer. Next type of property you're going to come across is property with beneficiary designation. And so most typically this will be life insurance or these retirement accounts, these IRAs, 104ks. But it also sometimes may be after tax accounts that have so-called P.O.D. or TOD or ITF designations. They stand for Payable On Death, Transfer On Death and In Trust For. Those are basically the same as beneficiary designations. And so you got to be careful because sometimes you might see title, says an individual's name, and so at first you'll think, okay, this is a probate asset, but if there is that designation, it's going to override the will and the need for being a probate asset. And so, similar to jointly owned property, beneficiary designated property can be claimed by the beneficiaries without a fiduciary involvement, unless that beneficiary is the estate or trust. In which case, obviously, then the fiduciary is the person to claim the asset. But if it's designated, say, directly to the children, each child could call Fidelity, Charles Schwab, get their own share of the account directly sent to them. Again, similar procedure of needing a death certificate and some claim paperwork. Third, I want to bring up trust-owned assets. And again, as I mentioned at the beginning, I bring this up because this is in a lot of modern estate plans and trusts, oftentimes, are used to avoid what is the last result, which is probate, because what you'll find as a probate practitioner is the probate courts can be tough to deal with, and things do take a lot of time. And clients don't love the cost, time and expense that's involved with the probate courts. And so a lot of

estate planning, the other side of this coin, if you will, is taking assets out of their individual name, putting them into a trust, so that probate is avoided. And so you may see assets that say decedent as trustee of decedent's revocable trust. And if that's the case, that means good news for you, or good news for your fiduciary, it's not a probate asset. What it does mean though, is that you need to look at the trust and figure out who the successor trustee is, and make sure that they are properly appointed and that they know how to claim that asset. We're going to talk about that trust-claim process in a minute. And finally, you're going to have your fourth category of assets, which is those that are individually owned, with no joint owner, no beneficiary. These are the ones that are going to have to go through the will. These are the ones that - these are actually the only ones that are subject to your will, to the I testator, hereby leave to etc., etc.. That's the only assets that actually are governed by the will, and people are often surprised by that. Or people, you know, because, again, many modern or modern estates, a lot of the assets are beneficiary designated if they are IRA or retirement-type assets. And the other primary asset that does tend to be either trust-owned or individually owned is the real estate. So that really is your fourth type of asset, though, is going to be those that have to go through probate. So now we've broken out these assets and we said okay, well, we don't have to really do much or we, you know, we're kind of just going to be the advisors as to the claiming of joint assets, beneficiary designated assets. But, you know, we're we're going to have more involvement in these trust and state assets. And so let's talk about the estate assets, because that's the process, which is really especially if significant assets are probate or requiring estate administration. This is where you're going to be spending a lot of your time. And so, as you're looking at your probate assets, the first thing you want to say to yourself is, okay, do I have a - is this a state, testate, or is it intestate? Testate is in a state where the decedent has a will, that's all that means. Meaning, you know, they did ask you to document saying where their stuff is going. Intestate, basically, it just means the opposite. It means there is no known or no valid last will and testament. And when someone is intestate, the succession of their assets or the succession, at least, of the assets which are subject to probate, is basically set by law. And this is what you're going to be looking at here and what we're going to be talking about in this section is the Massachusetts Probate Code or the Uniform Probate Code, which was adopted back in 2012. Is the governing statute that overlays all of this estate administration stuff we're going to talk about. With that, one of the things I want to mention here is that An excellent resource for all things in the estate administration probate process, is this document called the new. MUPC Procedural Guide. So it's a 200-page PDF, that's basically a rulebook that basically says this is what's section 190, Chapter 3, Section 201 says. And this is what it means as to intestate. And this is a picture of how the heirs are, and these are the forms you're going to need to file. So it's an incredible, incredibly useful resource to be using any time you're working in this probate administration area. And so particularly with intestacy rules, you've got to pay very close attention to the family relationships. And because the the rights between the parties depend, you know, if the decision was married, was it their first marriage or was it a second marriage? Did they have children together? Did either of them have children outside of the marriage? All of these change how much money each of the beneficiaries is going to get, if any. The other thing, again, in in thinking about heirs that might be predeceased. So, you know, client dies, they didn't have a will. Well, you've got to look at if they had three siblings and two of them died and they each had children, who is going to get what? Is, you know, is the distribution what we call per capita or is it per stirpes? And so those are the kinds of issues you've got to look at under the UPC, and the procedural guide is great at kind of helping you pick through that when things are both clear, and somewhat

unclear. And so okay, so now you say, okay, I know I have to do - I have a testate estate, I know who the heirs are or I have an intestate estate, I figured out who the heirs at law are, and what we call the interested parties, meaning those persons who are, who have any beneficial right in the estate. Now we say, okay, well, what type of filing are we going to make to the court in order to get our personal representative appointed, because that's the ultimate goal of the probate process with the court to claim those assets. And so there's three options. The first option for filing is what's called a voluntary administration statement, and I want to carry out this because it's not a true probate. Meaning, there is no determination by the court that the will is actually valid. And that matters more so in estates with real estate, and estates where there might be disputes. But, you know, the other thing, as you'll see here I mention, voluntary administrations are pretty limited because they were only available for estates where the probate assets are not in excess of \$25,000, plus a car. Meaning you're not going to use a voluntary administration unless, you know, the estate was overall very small, or you know, the estate was primarily non-probate either through joint ownership, beneficiary designations or a trust ownership. So that's the other piece that you've got to be thinking about. The car, though, I will say, is excluded. So if the car is worth \$20,000, it's not that you only have five additional thousand dollars of voluntary administration allowance, you have 25,000 plus whatever the value of that car is, just as a caveat. So the two real probates, if you will, first of those is an informal petition or an informal probate. This is a more expedited, less supervised probate proceeding. It allows for fiduciary appointment without what you'll see in the formal probate process, which is notice in the opportunity to object for at least 30-days, required publication in the newspaper regarding the death of the decedent, etc.. And so for a lot of estates that are simpler, that are friendly, where you have an original will, because as I mentioned, one of the issues that comes up is that, you know, if you don't have an original will, the only way you can probate is through a formal process. So, you know, informal processes are great, they are expedited as opposed to a formal probate. However, they don't work all the time. If there's real estate, they don't formally clear title to real estate. So you don't want to use an informal proceeding if you have property passing to heirs through the estate, through the actual will. Also, if you think there's going to be disputes, you do not want to use an informal. If you have a beneficiary that you expect is going to object, ultimately, any objections have to be dealt with through a formal probate process, and an informal probate process provides less protection to a fiduciary in terms of there's basically a longer time period for beneficiaries to come back and object to their actions, and so if there's any real risk of those sorts of disputes coming up, you're going to not want to proceed with an informal. And so that really leaves you with the formula, if you will, the formal probate proceeding, which is filing a petition with the court, going through all the formalities, receiving appointments, having the requirement to account to the court, etc.. And again, using this when you need to clear real estate, when you have irregularities in the estate, when you have expected disputes. So how do you actually file probate? Well, all these forms are available online, with the same - Mass Probate and Family Court website has a plethora of downloadable PDFs that are available. They don't always work super well at first, sometimes get to play with them. But all the forms are available online, along with the procedural guide that says, and you know, these forms are all coded NPC with a number and so each numbered form is counted for formal petitions and you'll see there's much more related to divorce, conservatorships, guardianship, stuff you'll probably not touch, but sift through and you'll find your relevant forms and then the procedural guide will help guide you to, you know, you use NPC 160 and 162. And so, as you're filling out these forms, what I'll say is, ultimately when you go to the court, you know, you have of course, what

the court is looking for is that your beneficiaries, the people who are going to take from this estate, approve of what you're doing or that you're doing what's in their best interest. And so what you're going to find is things go faster, easier. When you have all of the beneficiaries sign what are called a sentence, or basically agreements, to the sign, to the filing of the relevant petition that you're requesting. And you'll see those are also available in part of the documents that you can prepare, download and use for file. So kind of procedurally, you know, these forms, what are they and what do you do with them? In a voluntary administration, it's a one time file. It's a simple form, it's like three pages, but in the names and addresses of the various beneficiaries, joint owners and people who would take under law. You don't have to give anything of the notice, though. You file this voluntary administration form, it's looked at by the registrar and approved, usually without question. Once you receive that with the stamp from the court, that gives you the authority to deal with those assets up to \$25,000. You take it to the bank, the institution, and they'll release accordingly. Informal proceedings. Informal proceedings must be prepared, there is one drawback, as opposed to a formal proceeding, which is - you've got to give notice before filing, but it is only seven days in advance. And basically what you must do is, at least seven days before you file an informal proceeding, you must give the heirs notice of your intent to file it, as well as the Division of Medical Assistance. And you're going to find here the Division of Medical Assistance is an interested party in all the states, at least at the outset, due to MassHealth Lien Issues, because if a decedent needed care during their life and MassHealth paid for it, there are instances where MassHealth has a lien against a decedent's estate, basically for repayment of what MassHealth paid for that decedent's care. And so MassHealth gets notice, both of all probate proceedings, so that they can make their claim if they have one. And so basically, you must give this notice seven days in advance, but once you've then filed, assuming all is approved, all is in good order, you will receive appointment immediately. And then as to your administration at the end, you may or may not actually file an account, you may file a waiver, and you may- so it's a little more flexible in terms of how you'll close it. And frankly, some people never close informal administrations. Contrast - with a formal, you must first file the petition with the court. Once that petition is filed with the court, they send you this document called a citation. It's basically a one page letter that says, thanks, we got this. Now, here are your instructions going forward, and your instructions going forward are going to be, you've got to publish this in the newspaper where the decedent passed away - in the town or city where the decedent passed away. And you've got to send notice to the heirs by usually, by mail, at least 14 days, or I believe it's 30 days in the case of foreign heirs. And sometimes if there is charity involved, you must also give notice to the attorney general. And so you've got these rules or you've got these instructions, and they're to be done - this these instructions, they're to be done usually by 14 days or 20 days or 30 days before a certain date. And that date is called what we call the return date. And that return date is important, because what that return date is, is it's the court saying this is the date that if anyone who is interested has an objection, you got to come forward by then. So if I get my citation and it says publish within 14 days of October 1st, and give notice within 14 days of October 1st to all the heirs, October 1st is the date by which the heirs, if they have an objection, must come forward and say something. If they do so, they then have 30 days to actually say what their objections are, and at that point, you're probably in a state of litigation position, which is a whole separate presentation. However, assuming you file and there are no objections, what you do is once that return date is reached, that October date, you can send the documents to court called a return of service. Which is basically saying, hey, I did what you told me, I published in The Boston Globe on X date, I sent mail to Johnny, Susie on September 10th. When they

receive that and see that there are no objections made, assuming so, they will issue the letters of authority. That is, the formal document is one page, it's got the court seal on the bottom, that is basically your ticket. Now, again with expectations, timelines, you don't want to promise clients from beginning to end any earlier than 60 to 90 days on this. Because once you file it, the period for objections is going to be about - the return date is going to be 30 to 45 days out. After that, when you send in the return to service, it's still going to take a while to get to it. And, you know, as I've alluded to, the court's - a lot of planning is done in Massachusetts to avoid probate because the courts are challenging to deal with. And it's been true, post-covid, particularly. Getting things through, does sometimes take a while. Some counties are better than others. And so, you know, you need to set your client's expectations realistically as to - yes, even though, you know, it seems like the court should turn this around in a week after, you know, more likely is a month. Or six weeks. Now, the other thing I want to say about this, just as we're here. Because of this delay in turnaround in a lot of things, you want to be extremely diligent in the preparation of the probate documents. Because what you're going to find is that if you check a box wrong, if you mess up a name, if you don't transcribe it right from the death certificate, they're going to send it back. And then you're going to have to redo it and resubmit it and you're going to go to the back of the line. And especially when your client is expecting their letters of authority, for example, going back to back of the line for another month is a real delay. So you want to be extremely diligent in preparing the first time around, and if you're unclear, you know, check with the registries. The registries all have walk-in service, some of it's limited post-COVID. But what they all have also now, are virtual registries, which is basically Zoom conference room where you go in, you sit in quote unquote "line" and then they let you in to talk with the registrar on Zoom. And they can address cases, they can look at statuses, they can address questions on the preparation of documents. It's helpful to make a friend or two, especially if there's a particular county you're going to be working in relatively frequently, that will help you get a little more information, especially if things get lost in the bowels of the system. And so, you know the actual documents, I just kind of want to lay them out here for you, that you're going to be filing in every case. You're going to be filing an actual petition, which is the document that says, I'm hereby requesting that I be appointed. Informal is informal, as you're also going to be filing few other forms mandatory. First is the surviving spouse, children, heirs at law form. This is basically identifying those persons who take on the intestate if the decedent did not have a will. So even if the decedent has a will that says, I'm leaving everything to my best friend, you'll still need to know who the decedent's closest heirs are, and get that information if you have to go to through probate. The next form is the devisees form, which identifies those persons who are actually the takers, under a will or trust or rather a will if it exists. You won't have a devisees form if you have an intestate estate because it's the same as the surviving spouse, children, heirs at will. And finally, the other thing you're going to have is a bond. And what is a bond? A bond is basically your fiduciary, your personal representative's assertion or promise that they're going to do what they say they're going to do and they're going to not run away with the money. A bond is required for every estate. Typically, if the will provides for it, that bond is a personal bond, meaning it's me saying that I'm going to do it, it's not anybody else ensuring that I'm going to do it. And it's what we call without sureties. Meaning, I'm not putting a deposit down in basically good faith or as insurance that, you know, you can take this money if I don't do my job. However, in intestate estates, that is not the default unless it is assented to by the heirs, and so you may have estates where there is a need for a bond, either with sureties or a more typically or corporate bond, which means that there is a an insurance policy-issued for the beneficiary of

the fiduciary, that the fiduciary obtains that ensures their fulfillment of their obligations, typically used in disputed estates, most non-disputed estates, you will be filing a bond, a personal bond, without charges. But you do still need to file that in every estate. And on that you need to be stating the approximate value of the real property that is part of the estate, as well as the the non-real property, the investments, the tangible, etc.. You may need some other things. So for example, it's not fully assented to, you may need military affidavits, stating that none of the beneficiaries are in the military. Because if they are, they have certain rights and extended opportunities in terms of objections or presenting themselves to the court. Alternatively, if people are assenting, you're going to want those assent forms to fill in. If you have minor children, you may need to be dealing with things like a guardian ad litem for the minor, or a emotional wave a guardian ad litem. If it's a nuclear family and it would be appropriate for mom or dad to manage funds for children, things like that. So there are other things that may be required depending on the character of the proceeding, but those are your kind of base forms that you're going to see every time. So, what we're really getting out here is getting appointed and for probate assets ultimately, it's that letter from the court and for trust assets, it's really the successor-trustee stepping it. And that's done by way of signing and acceptance of appointment of successor-trustee, where they are now in the role. Now, once, we have these fiduciaries appointed, and in some cases, before we go, let's talk about this claim process. So skip over joint assets, we talked about that, claim those death certificate. Beneficiary designation, same thing. Trust-owned assets and probate estate-owned assets. These, once your fiduciary is appointed, either your successor trustee signs their acceptance or the probate court issues your letters of authority. They're going to be in the position claim accounts and assets. But the reality is, they're going to need a place to put that stuff like a bank account. And in order to do that, the one other thing that's going to be needed for either the trust or the estate is a tax I.D. number, basically, you know, the Social Security number of the estate or trust, so that it's identified separately during the administration from both the decedent and the fiduciary, and can account for income taxes that they may need to pay along the way. And so those tax. I.D. numbers are things that you'll generally help apply for in the estate, in the case of an estate those should be applied for once the probate received, not before. In the case of trust, the appointment or the obligation should be done upon signing of the acceptance. These applications can be done right online via the IRS EIN Assistant, as it's called. And so you need information about the decedent, information about the fiduciary, their Social Security numbers, and you can generate that instantly. Those items, that tax I.D. number and the appointment are the things that are going to be needed to establish estate and trust bank accounts. And ultimately, once those items are obtained, you can establish your, basically, bank account at any institution you like in the name of either the estate or trust. As to larger assets, decedent had a stock portfolio, you might, instead of having that be cash, oftentimes you will have that account. You'll go to the brokerage institution and they will take those assets and retitle them in a new account in the name of the estate with the PR, the Personal Representative listed as the controller. And again, the other piece on either of these, is that that the tax I.D. number is going to be listed because that's where the income taxes are going to be accounted for. And so, let's talk about these income tax considerations. The good news is, from an income tax perspective, most of your assets in your estate get this thing called a step-up in basis. And what that means is this - if my decedent had a share of Apple and they bought it for \$10 in 1990, they die today and it's worth \$100. If during their life they sold it, they would have had to pay tax on the \$90 of gain that they earned on that asset. However, when an asset passes through a person's estate in the hands of the beneficiary, the beneficiary is treated as not having bought

it for the \$10 that the decedent bought it for, but rather the \$100 that it was worth when the decedent passed and they inherited it. And that's important, and you need to be telling your beneficiaries that you need to be making sure that the brokerage institutions know that and reflect that, what's called step-up in basis on the assets as they transfer. Even if they're directly designated, you know, you need to be making sure of that and helping your beneficiaries with that, if it's not being done. As we previously talked a little bit about - qualified assets have special considerations based on the nature of the beneficiaries, based on the age of the decedent. You're going to want to be looking particularly at the rules on that. Natalie Choate does a book that's really great on that, if you want to learn about that, it's a whole area unto itself. But make sure you understand those distribution rules to the beneficiary. Real estate, as we've talked about, real estate is a special asset. In probate, real estate, it is what we call vested in the heirs, subject to divestment, meaning the heirs become the owners by virtue of death. You've got to do the probate to show who the heirs are, but the real estate is basically theirs. However, if it's going to be sold during the period of administration for expenses or during the creditor claim period, you generally need either a power of sale in the will, which is basically a clause in your will that says, hey, you're a fiduciary allowed to sell my real property, or you need to apply for after you've filed probate, what's called a license to sell from the court, which is a separate petition basically saying I have offer on property at X dollars and I want you to permit me to sell it. It is - costs a bit of money to file, usually can be processed fairly quickly, but it can only be done once you have a purchase and sale agreement. So you want to make sure if you are selling, you leave sufficient time in that agreement to obtain that license to sell from the probate court. Real estate taxes, one other thing to talk about, is that you should be aware that real estate taxes are subject to a Massachusetts estate tax lien. We talked about that, you know, decedents are subject to estate tax if it's over \$1,000,000 here. And so, but either way, the lien appears, or the lien is considered to exist as of a decedent's passing automatically. If there was no estate tax due to clear that lien, you prepare and have your fiduciary sign what's called a 63-C affidavit. And that's basically an affidavit under chapter 65-C of Mass General laws that your fiduciary states, under the pains and penalties of perjury, that the estate was under \$1,000,000 and there was no estate tax due. However, if the estate is over the filing threshold, you can file that and say that under the pains, penalties of perjury. And the way to obtain your release of lien, is ultimately by filing an estate tax return with the Massachusetts Department of Revenue, and upon their approval as part of the process, they issue a document called a certificate releasing a state tax lien. And it is literally a one-page document that states the name of the property and says that we have released our lien, which gets recorded with the Registry of Deeds, and reflects that the lien is released. And so, just a quick overview of estate taxes, we've already talked about federal, not an issue for most people. 12 million, \$60,000 before you have to worry about it. The good news is we're getting a step-up a basis on most assets passing through the estate. Massachusetts has the state estate tax million dollar threshold. Rates vary from 6 to 16%. Few things to know about it, and you really want to have a tax professional involved if you have a taxable estate, because you have some traps for the unwary. The mass exemption is a cliff exemption. Meaning, if the estate is over \$1,000,000, like it's 1.5 million, people assume, oh gee, the tax is going to be imposed on 500,000, the excess over a million. That's not true, the tax is imposed on the entirety because the exemption goes away, or goes over a cliff once your assets exceed \$1,000,000. There are some special rules with respect to out-of-state property and residents who are - persons who are non-resident Massachusetts in state property, that you've got to be careful about as well. Estate tax compliance - if you do have it, key things you should be aware of - due nine months after date of death,

can be extended for another six months, but you must still make the payment due, if any, by the nine-month mark. Most of the filings should be, or are preferred to be, done online if you handle it yourself through this website called Mass Tax Connect, which I'll say is actually pretty efficient. And I recommend, there is Mass DOR puts out an estate tax guide on their website, which is pretty helpful in terms of preparing an estate tax return or at least kind of getting the ideas of what you need to be thinking about in the rules of preparation. Now going on to the income tax side, as we said, we are thinking about income taxes as well. And these are really regardless of whether or not the estate is taxable or not. And that really comes in a few forms, final personal income taxes, which is, you know, as I said, if the decedent passes in June of a year, you, the fiduciary, must still account for whatever income they earned through June and pay their taxes, due by April 13th of the following year. So if you're going to claim the refund ultimately, which may be the case, and you keep an eye on that as well, you may need your appointment to do so depending on the value. So another reason you may end up filing for probate, especially if you have a larger estate where the decedent was paying significant income taxes. Again, as I mentioned the other piece, to be advising and thinking about working with clients on is the estate and trust income taxes. Basically, in Massachusetts here, if the estate or trust has over \$100 of taxable income, it needs to be accounting for its own income taxes. And here I recommend, if you're not an expert in income taxes, that you do one of two things with clients - you either work with their existing accountant to have them prepare the income tax returns with your guidance. Or if the clients weren't using an accountant or that accountant isn't familiar with a state income tax, estate trust, income taxes, that you establish a relationship with one who is, and be using them as a partner and resource to prepare those returns so that you know, they're being done and that your fiduciaries are meeting those obligations. And there are a lot of sub-areas in there which I mentioned in a few of the slides here, regarding distribution of income etc.. A lot of that is stuff that, you know, a good tax accountant that covers - that does estates and trusts is going to be able to help guide you through. But you should also get familiar with those rules yourself because your beneficiaries are ultimately going to be asking you those questions about those income tax consequences on the assets as they're coming in. Those tax returns are generally due, and I word it this way 3 months and 15 days after the end of the calendar year or after the end of the tax year, which is April 13th, if you're on a calendar year. But estates can sometimes be on a fiscal year, meaning they're not January to December, they might be June to May. And so it's what, 3 months and 15 days after whatever that last month is. One of the things you should generally be aware of, estates and trusts are subject to a higher income tax rate by virtue of compressed income tax brackets. Meaning the 37% tax rate that you and I pay when we hit like 4, \$600,000 of income is imposed on trust in estates when you get \$13,000 in income. So it's a whole different world and, you know, it can be punitive, so you want to be keeping a close eye on this because it's going to be - the bang on the buck is significant. Now kind of bringing this all to into focus, right? You're advising clients about income taxes, estate taxes, probate, dealing with beneficiaries. Taking a deep breath. What is this going to look like timeline wise? Because this isn't all going to happen in one day, this is going to be a process. And you've got various statutes of limitations, deadlines running, right? Talk about probate, you know, you've got timing for filing timing, return date. One thing we didn't talk about, but also exists is the one-year creditor claim period, which is the right of creditors of the decedent to come in, they basically have one year after the decedent's passing to say, hear me, you owe me money. You've got your estate tax deadline, 9 months or 15 months, depending. You've got your income tax deadlines, it's applicable. You've got certain deadlines on things like distributing specific

requests, generally one year before interest accrues. And so you're going to be working on this periodically and sporadically with your client, for probably 12 to 18 months in the typical estate. You know, and it's not going to be constantly talking every week, right? If there's real property, there's going to be a period where during a sale, you're probably going to be working together more closely, but a period, say, when the estate tax return is filed and you're waiting for a response from the Department of Revenue, you might not talk to your client for weeks. But you should set their expectations. They'll probably be with you for a year to a year and a half, and that, you know, money - and it can be distributed sooner, as you are comfortable with where the estate is, where the creditors of the estate are, what the liabilities are. But don't overpromise on the money, particularly. And so, as I said, you know, these are kind of the typical, most common issues in estate administration. But there are many unique aspects, and usually every state has at least one. And I'm going to list a few of them here, and I could tell you a million stories. But lots of special stuff, things like business interests, if the client owned an operating business or an LLC that owned real property. Do you have things like agreements between the other owners? How do you deal with that? How do you deal with employees compensation? Lost property, I bring that up. Check the Mass - Mass has the lost money division that you can check for decedents, and sometimes there's substantial amounts that people that didn't even know existed. Related to this is refunds due- you know after a decedent's passing, if they pay it into things, if they work in a care facility that has a payback clause. If they have insurance policies. There are going to be things coming in like that you've got to be thinking about. As I said, in other areas of the law. Sometimes your decedents are involved in litigation. Sometimes there is litigation relating to the way they die. Sometimes there are - they have rights to sue, sometimes they're being sued. So you really have to, kind of, become an expert or at least knowledgeable enough in a lot of different areas and a lot of times, about knowing people and having resources in those other areas to tap when you need them. Tangible property issues, right? Where is this stuff? How much is it worth? What do I do with it? How do I get someone to buy it? How do I get rid of all this crap? All those sorts of, kind of questions that are - might be considered minutia, but they come up and they're important and they need to be dealt with. Missing errors, unknown errors, unknown fiduciary documents that you know are there, but are missing. People who are abroad, people who are incarcerated. It goes on. Assets that are titled to previously deceased persons. Is in the name of the mother for the benefit of the son, and now they're both passed away. In the name of husband and wife are both passed, and many more. You know, and it really is - it's an interesting practice area and a fun one, but one that really keeps you on your toes, because you never exactly know what's going to come in the door when you start the administration process. And so, you know, in conclusion, what I would leave you with is, you know, estate administration is a complex area. It's one that can be very interesting and rewarding, but you have to know the traps for the unwary. And as a small practitioner, you know, it's something that can become a very good niche practice if you take the time to really develop the skills and expertise in the area. And so I want to thank you for taking the time today, and if you have anything you'd like to address with me, I'm happy to be available via email, which is in the beginning of my slides. Thank you for taking the time today.