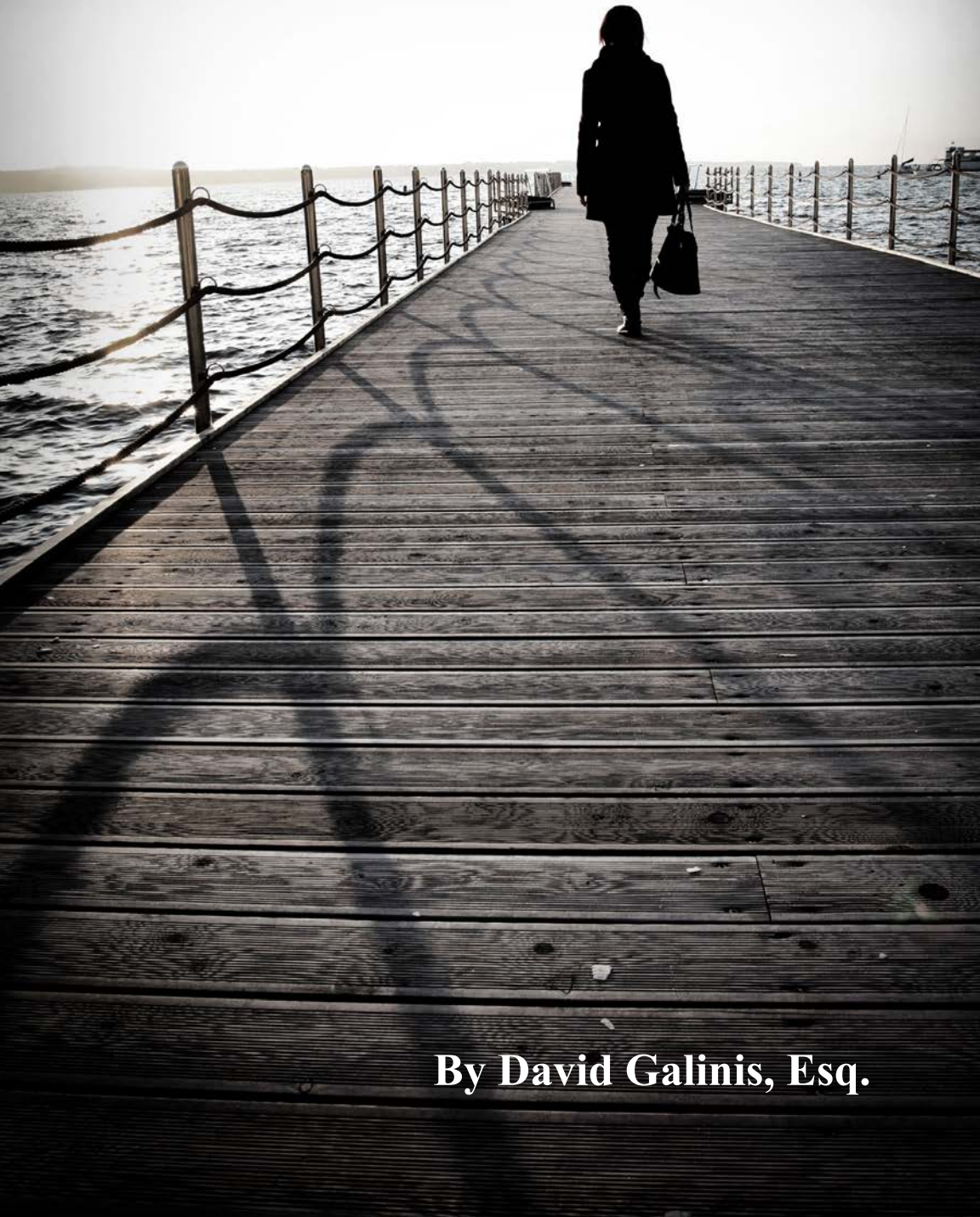


# Death of a Loved One

*A Guide to Help You Through This Difficult Time*



**By David Galinis, Esq.**

## Introduction

The death of a loved one is the most difficult thing we ever have to face. Unfortunately, along with the emotional burden comes an endless supply of things to do and decisions to be made. This booklet's primary purpose is to make the reader aware of the various issues surrounding the death of a loved one. A secondary purpose is to provide a simple checklist that the reader can refer to during this trying time.

The first section beginning on the following page details seven practical recommendations in preparation of a loved one's death. The second section beginning on page four explains what to do after the death of a loved one.

Please also refer to our vibrant blogs at **[willblog.bsgfdlaw.com](http://willblog.bsgfdlaw.com)** where you will find detailed information on various estate topics.

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# ***Preparing For the Death of a Loved One: 7 Practical Recommendations***

This is not an easy time and, emotionally, there is not much that your lawyer can do to help. What we can do is to assist you in understanding some of the practical issues involved. Below we describe seven recommendations of things to do *before* your loved one passes. At a minimum, this list will provide some guidance during this trying time and, at best, it might free up some extra time to spend with your loved one.

## **Notify Family & Friends**

Your loved one's family and friends will want to know what is happening. If possible discuss notification with your loved one. If you feel comfortable, consider preparing an email list. You can use the list to keep family and friends notified of changes in condition. The list can be used after death as well as a means to provide information about funeral services. This may not be the most personal, but it is the most efficient method to keep a larger number of people informed.

## **Locate Legal Documents**

Speak with your loved one about the physical location of their legal documents. If your loved one does not have a Will, Advance Directive or Power of Attorney and they still have the capacity to execute these documents, consult with an attorney about having the documents drafted.

Will. After your loved one's death you will need the original Will. Copies are not accepted by the Register of Wills. Thus, it is of paramount importance to know its location and have access to the original Will. If it's in a safe, you need the combination. If it's in a safe deposit box, you will need to be a joint owner of the safe deposit box to have access to it after death.

Advance Directive. The Advance Directive appoints a health care agent to make health care decisions. This document also provides instructions regarding your loved one's wishes regarding end-of-life medical care. If your loved one loses consciousness (or the legal capacity to make decisions), this document will allow you to consult with your loved one's physicians and make decisions. The document will indicate your loved one's wishes regarding what decisions to make in end of life situations. For instance, should your loved one receive artificial respiration when death is imminent?

Power of Attorney. The Power of Attorney allows your loved one's agent to handle financial affairs if they become incapacitated. You may need this document to access your loved one's bank accounts, pay for medical care, maintain the mortgage, and keep the utilities on in the house.

## **Be Certain Everyone Understands Your Loved One's Wishes**

You need to speak with your loved one about their wishes. Once you understand their wishes, it is your job to make sure everyone involved also understands.

Pre-Death Wishes. Discuss with your loved one what their wishes are concerning end of life medical decisions. Hopefully this information is included in an Advance Directive. Once understood, the decisions need to be communicated to the medical providers. In Maryland, to make sure that your loved one's wishes are honored, you need your loved one's doctor to complete a Medical Orders for Life-Sustaining Treatment (MOLST) form. The completed MOLST form should remain with your loved one or his or her agent and a copy should be on file with the medical facility where your loved one resides. This is an important step as an Advance Directive alone will not stop emergency personnel from attempting to resuscitate.

Post-Death Wishes. Make sure you understand what your loved one's wishes are upon death. Do they want their organs donated? Do they want to be cremated or buried? What type of funeral service do they want? Do they want a headstone? Do they want their ashes scattered somewhere?

## Obtain Identifying Information

Before it is too late, obtain information that may be lost when your loved one passes. Where is the money? Make sure to find out the names of all financial institutions including account numbers. You need to know if they have life insurance and the locations of the policies. In the digital age, user names and passwords are also very important. There are a variety of reasons you may need to access their email, Facebook, or other online services after their death. You may need to use their email or online services to notify family and friends about their death and/or funeral services. Or you may want to be able to collect pictures or videos posted on sites such as Facebook to use in a memorial service.

## Make Funeral Arrangements

Start by contacting a reputable funeral home or crematorium. They should be able to assist you in all of the details. Planning ahead may seem morbid but many of the questions to be decided will be much easier with your loved one's input. Some of the decisions to be made are:

- location of final resting place
- determining how the body will be transported
- whether jewelry will remain or be removed from the body
- selection of a casket or urn
- selecting a grave marker and inscription
- selecting the deceased's clothing
- selecting items to be placed in casket
- location and type of service
- types of flowers for the service
- identities of pall bearers
- identity of charity or organizations for donations
- selecting a photograph for display at the service
- music selection for the service
- selecting scripture or literature for the service
- selecting a person to deliver the eulogy.

## Contact Professionals

Contact your loved one's professionals: accountants, financial planners and lawyers. They may have valuable advice both before and after the death of your loved one.

## Start Preparing Obituary

Although it may sound grim, start preparing an obituary. If you wait until your loved one passes, you may discover that you do not have the necessary information to write an obituary. Planning the obituary ahead of time can be cathartic and you may even learn something you didn't know.

# *What to Do After the Death of a Loved One*

It may be difficult to focus and think clearly after the death of a loved one. Despite this there are a disturbing number of tasks that need to be attended to immediately following the death of a loved one. Hopefully, the following checklist will provide some guidance and structure in this difficult time.

## Call Appropriate Authority

If your loved one dies in the hospital, notify a nurse or doctor immediately. If your loved one was in a hospice or under the care of a hospice at home, notify the hospice staff. If the death occurs outside of a medical facility (e.g. home, work), call 911. If the death was expected, make sure to inform the operator of this fact.

## Donate Organs

If your loved one wanted organ donation and died someplace other than a medical facility, call 911 and report the death and that the person is a potential organ donor. If your loved one had consented to be an anatomical gift, follow the instructions of the donee organization.

The authority for organ donation comes first from an appropriate legal document executed by the decedent (e.g., Will or Advance Directive). If there is no such writing, Maryland law describes who has the authority to make such a decision. The list starts with a spouse or domestic partner, then to a child, and so forth.

## **Notify Funeral Home or Crematorium**

Notify the funeral home or the crematorium of the death. The funeral home or crematorium will typically arrange for the transportation of the body. The decedent's written wishes as to the final disposition of the body are given first priority. If there are none, Maryland statute lists the individuals and their priority to make these decisions. Arrangements will also have to be made for payment of the funeral or cremation. If there was life insurance for that purpose, many funeral homes will accept an assignment of those benefits.

## **Contact Family & Friends**

Inform family and friends of the death. In this day and age of email, it should be a relatively simple process to notify extended family and friends. Email is an effective tool for notifying them not only of the death but also of the funeral service details. If this is too difficult, don't be afraid to ask for help as the notification process can be particularly emotional.

## **Notify Guardian/Agent**

If your loved one had a power of attorney or guardian appointed by the court, notify these agents of the death. As a matter of law, their power ceases at death.

## **Immediate Care for Pets**

If your loved one had pets, take the necessary steps to ensure their immediate well being.



## **Care for Property**

Houses need to be secured. A vacant house is a target for criminals. Arrangements need to be made for the continuation of necessary utilities for the house. You don't want the pipes to burst because the gas was cut off and the house had no heat. It is also important to notify the insurance company of your loved one's death and make sure that the house is still insured. Similar care should be taken for any automobiles owned by the decedent. The appropriate insurances, taxes, and inspections need to be kept current.

## **Schedule Service**

Work with the funeral home or crematorium to schedule the appropriate funeral service.

## **Notify Newspaper**

Write an obituary and contact the local newspaper to have it published.

## **Obtain Death Certificates**

The funeral home or crematorium should be able to assist you in obtaining original death certificates. Obtain 10 to 15 original death certificates as copies in most instances will not suffice. Life insurance policies and retirement benefits will require original death certificates before making any payments to beneficiaries.

## **Open Safe Deposit Box**

You need to find out whether your loved one had a safe deposit box. If so, you need to open the box. It may contain important legal documents like the Will. It might also contain valuable property. If your name was put on the safe deposit box as an owner prior to your loved one's death, you will be able to accomplish this task easily. If your name is not on the box, the bank will not honor a power of attorney after the death of the agent. The only way to access the box in Maryland is by the duly appointed personal



representative or, if needed to find the Will, an Order from court specifically authorizing the opening of the safe deposit box to find an original Will.

## **Deliver Will to the Court**

You need to locate your loved one's original Will and deliver it to the Court. In Maryland and the District of Columbia you deliver the Will to the Register of Wills in the County in Maryland that your loved one was domiciled at the time of death or in the District of Columbia. Copies of the Will (albeit extraordinary circumstances) cannot be admitted to probate - you must find the original. The Will is most often found in a secure location like a safe or fireproof box in the house or in a safe deposit box. In Maryland, the Register of Wills may also be holding your loved one's Will. You can contact the Register of Wills in the county in which your loved one was living to see if they are holding the original Will for safekeeping. The Will may also be in another county (or state) if your loved one was living someplace else at the time they executed the Will. If all that fails, contact the lawyer who drafted the Will. The lawyer may be holding the original Will or have information as to its location.

## **Contact Employer**

Notify your loved one's employer of his or her death. You may need to request their last paycheck or a payout of unused leave. In addition make sure to inquire as to whether there are any death benefits through the employer.

## **Contact Life Insurance**

Find your loved one's life insurance policies. If you are unsure if they had insurance, look through bank account statements for annual or semi-annual payments that might have been insurance premiums. Once identified, provide them with the death certificates so that the life insurance company can send checks to the designated beneficiaries.

## **Contact Social Security Administration**

If your loved one was receiving monthly Social Security benefits you must notify the Social Security Administration (SSA) so that they can stop the monthly direct deposit. You may also be entitled to lump sum or monthly benefits. These benefits are not automatic; you must complete an application with the SSA.

## **Contact Veterans Administration**

Just like with the SSA, the Veteran's Administration (VA) must be notified if your loved one was receiving monthly benefits. The VA may also offer funeral or burial benefits.

## **Contact Decedent's Professionals**

Make contact with your loved one's lawyer, accountant, and financial planner. These trusted advisors may be able to assist you in locating important documents and identifying assets.

## **Notify Credit Card Companies**

You need to notify all of your loved one's credit card companies of his or her death. The immediate reason is to prevent any unauthorized use. You will also want to terminate all automatic payments. If there are outstanding balances, you need to inquire as to whether there was any credit life insurance in place that would pay off the balances.

## **Notify Banks**

Call all the financial institutions where the decedent had accounts and inform them of the death. Like credit cards, it is important that automatic payments be discontinued. If you owned the bank account jointly with your loved one, those accounts are now legally yours and can be used without limitation. For any accounts in your loved one's sole name, contact the banks about whether any of the accounts were pay-on-death (POD) accounts. If so,

proof of death with a death certificate should be all that is needed to transfer the funds to the beneficiary.

## **Review Mortgage Situation**

The immediate instinct to notify mortgage lenders of the death of your loved one needs to be considered carefully. First, so long as the mortgage is kept up to date after death, the mortgage lender will typically be content to receive the monthly amount due. All that the mortgage lender ultimately cares about is that the payments continue. Second, most mortgages contain language which provides that if the homeowner dies they can accelerate the loan. In other words, they can demand payment in full. Ultimately whether or not you decide to notify the mortgage lender probably depends upon whether you intend to keep the property, sell the property, or let the property proceed to foreclosure. Note that there is an exception for spouses such that the mortgage cannot be accelerated against the surviving spouse. Finally, there may be another reason to contact the mortgage lender, to learn whether there was any mortgage life insurance that would pay off the mortgage balance.

## **Collect Mail**

You need to start collecting the decedent's mail. Important information regarding assets and debts will be missed otherwise. Additionally, in order to ensure that property is preserved in the short term, it will be necessary to see any notices concerning utility bills, taxes, etc. Finally, it is important that mail does not just pile up in the mailbox. This is a clear sign to criminals that the house is vacant. Unfortunately, you probably will not be able to officially forward mail until and unless someone is appointed the personal representative of the estate.

## **Notify Digital Providers**

Each individual internet service provider has a different policy about who has access to the information following a subscriber's death. So if you

do not have the user identification and password, you may or may not be able to access this information. If you do have access, it may be helpful to create a rule forwarding your loved one's email to your email address. This is particularly important as so many bills and financial transactions occur via email now. Again, assuming you have user identifications and passwords, you might also attempt to access sites that your loved one used (e.g. Facebook) and retrieve personal information, stories, pictures, and videos. With regards to Facebook, once Facebook learns of the user's death, the account is placed in a "memorial" status. At this point no one can log in and the information cannot be altered or removed. Friends can still view the pages and post comments. The personal representative can also ask that the memorialized pages be removed.

### **Check Recent Tax Return for Assets**

Locate the last couple years of the decedent's tax returns. This is especially helpful if you are having a difficult time identifying all of the decedent's assets. Any income will have been reported and should be identified in the appropriate W2s and 1099s attached to the tax return.

### **Gather Bills From Creditors**

By monitoring the decedent's mail and email after death you should be able to create a detailed list of all the creditors of your loved one. Please note that you (or anyone else for that matter) are not responsible to pay your loved one's debts unless you had co-signed on the obligation. The creditors may have a legal claim on the assets of the estate but only if they file a proper claim. It is important to know this information if and when you open up an estate.

### **Determine Whether Probate Needed**

At some point in this process, you need to determine whether "probate" is needed. Simply put, "probate" is the legal system used to transfer property owned by your loved one to living persons or entities. The collection of the decedent's property is the "estate." To determine whether probate is needed,

make a list of all assets your loved one owned at the time of death. If there are assets like a house, vehicle or bank account titled in their sole name with no pay-on-death (POD) beneficiary, you must go through probate. This is the only mechanism to change the name on the deed, title, or account. If, however, all of the assets were owned jointly or had a beneficiary, then there may be no reason to go through probate. These assets are called “nonprobate assets.”

*Nonprobate assets.* As a matter of law, jointly owned property becomes owned by the surviving joint owner immediately at death. No official legal action must be taken to accomplish this. Property with a beneficiary (e. g. life insurance, 401k) or pay-on-death designation passes directly to the named beneficiary simply upon proof of death.

*Joint accounts.* Although not necessary, it is advisable to notify financial institutions of the death of the joint owner so that they can change the name on the account and make sure that income is no longer reported to the deceased’s social security number.

*Jointly owned vehicles.* There is no need to make an immediate trip to the Department of Motor Vehicles until the registration needs to be renewed. At that time, you will need to use the death certificate to change the legal ownership of the vehicle.

*Jointly owned houses.* In most cases, the deed to the jointly owned house does not need to be changed. Most property is owned as joint tenants and, as such, passes to the surviving co-owner. Upon the sale of the house, the surviving owner will just need to produce an original death certificate to the title company at closing. An exception to this general rule occurs if the property was titled as “tenants in common.” With this type of property, the deceased owner’s share of the property passes to his or her heirs. In that scenario, probate would be needed.

*Personal property.* Items such as wearing apparel (other than jewelry or furs) and provisions for family consumption are also nonprobate assets.

Exceptions. In few circumstances probate is still needed even though all of the assets are nonprobate assets because there is need for a “personal representative.” After petitioning for probate, the court will appoint a personal representative. The personal representative is the legal agent of the deceased and the only one who has the power to act on behalf of the estate. A personal representative is required to obtain copies of the decedent’s medical records and to file a lawsuit.

## **Evaluate Potential Tax Liability**

As a final matter, you need to consider whether any tax returns need to be filed. For instance, if the total value of the estate, both probate and nonprobate property, exceed one million dollars an estate tax return is required in the State of Maryland. This is true even if no Maryland estate tax is actually due. Also, if individuals further removed in relationship than a sibling are receiving probate or non probate assets, Maryland inheritance tax may be due. For example, inheritance tax may be due if the decedent jointly owned a house with a friend or had designated a niece as a life insurance beneficiary. In both of these circumstances, an Application to Fix Inheritance Tax will need to be filed in Maryland.

## **Need For Counsel**

If you have determined that probate is needed or taxes due (or simply don’t know), it is advisable to seek professional guidance. In small estates in Maryland (probate assets less than \$50,000 for a single person or \$100,000 for a married person), an attorney is often not necessary. Otherwise, proper legal counsel can be an invaluable tool. At Berman, Sobin, Gross, Feldman, & Darby LLP, we can assist with all of these services from the filing of a simple small estate to complicated estates requiring Maryland and Federal estate tax returns.



### **David Galinis**

David is the managing partner of the Estates and Social Security practice at Berman, Sobin, Gross, Feldman and Darby LLP and a member of the National Academy of Elder Law Attorneys. David graduated cum laude from Duke University with a degree in economics in 1992. He received his Juris Doctorate from George Washington University Law School in Washington, DC in 1997. He is licensed to practice law in three states, Maryland, Virginia and the District of Columbia, and in the United States District Courts in both Maryland and Virginia. David is a member of the National Organization of Social Security Claimants' Representatives (NOSSCR) and the Estates and Elder Law sections of both Maryland and Montgomery County Bar Associations. His tenure with the firm has been unique in that he has had a hand in almost every one of the firm's practice areas. He has been an advocate for the disabled in workers' compensation hearings, disability retirement proceedings and personal injury matters. He considers it one of his greatest privileges to have worked so closely with labor organizations representing local and municipal government employees.



### **Phyllis Dobin**

Phyllis is Of Counsel to Berman, Sobin, Gross, Feldman & Darby LLP. She received her college degree from Washington University and graduated from the University of Strasbourg School of Law and the University of Maryland with honors. She is licensed to practice law in the District of Columbia and Maryland. She is the Chair of the Bar Association of the District of Columbia – Elder Law Committee. She has over thirty years of experience helping people meet their legal, financial, medical and personal needs as well as those of their loved ones. She practices in the areas such as Elder law, Medicaid and Medicaid Planning, Estate Planning, Probate law, Estate and Gift Taxation, and Estates and Trusts. Phyllis has lectured before many groups concerning her practice areas and speaks French.





Your loved one has just passed. It is the worst time in your life. What you need is peace, but instead family members are asking whether you have set up the estate yet. Friends are telling you that you must go to probate court. You are pondering the difference between estate and probate when your neighbor chimes in that you need to pay inheritance taxes. Every day you receive a threatening notice from a credit card company demanding payment of your loved one's debt. And you are wondering what to do about the fact that your loved one's name is still on the title to the car and the deed to the house.

Now is the time to let us help. We emphasize understanding first and foremost. The legal terms and logistics following someone's death are widely misunderstood. The use of "legalese" does not make it any easier. We take the time to explain, in a straightforward way, the legal process involved after death. Once the process is fully understood, we will identify the simplest and most cost effective way to get you through it. The route chosen may involve our firm handling all the details or simply providing timely guidance. Either way, we hope to relieve your burden at a time when additional burden is the last thing you need.

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