

## **10 Things to Know about Probate**

### **1. What does Probate mean?**

The term “probate” means the act of proving a will. This term has lost a lot of that traditional meaning. It now generally applies to reference the court and the process that is used to administer the estate of a decedent.

### **2. What are some of the terms used in the probate process?**

The probate process is full of uncommon terms. Here are just a few with simple definitions:

- a. Decedent: The person who has passed away.
- b. Testate Estate: A person has passed away with a valid will.
- c. Intestate Estate: A person has passed away without a will.
- d. Executor/Executrix: The person appointed by the court in a testate estate to be the agent for the estate. This person is responsible for carrying out the terms of the will.
- e. Administrator/Administratrix: The person appointed by the court in an intestate estate to be the agent for the estate. This person is responsible for administering the estate according to the intestate laws for the state.
- f. Personal Representative: A catch-all designation for both executors and administrators. It is a more general term to identify the person responsible for administering the estate either under the terms of the will or the laws of intestacy.

### **3. Probate is public.**

If a person's estate is required to go through the probate process, then the court filings associated with that case are public records. This scares many people because they think of the family's dirty laundry will be aired out in public. In most cases, this isn't the case, because there isn't controversy within the family. Further, it is not uncommon for the requirements to file an inventory of assets to be waived by the court based upon the terms of the will or the agreement of the parties involved.

#### **4. Debts and taxes don't die.**

The debts and the taxes of the decedent don't die. All of the assets owned by the decedent at the time of his or her death are eligible to be used towards payment of valid debts and taxes. It is the requirement of the personal representative to use the estate assets to pay all valid debts and taxes before estate funds are distributed.

#### **5. When do you need to do an inventory of assets?**

The personal representative will either be required to file an inventory of estate assets or this will be waived by the court. Even if the court waives such a requirement, the personal representative will still be required to make an inventory for the benefit of all interested parties (beneficiaries, creditors, taxing authorities, etc.).

#### **6. Which assets are probate assets?**

One of the more confusing points about the probate process deals with identifying those assets that are actually under the control of the personal representative. An easy way to remember what assets are "probate assets" is to identify the assets that were solely in the name of the decedent or were jointly titled without rights of survivorship. Those assets are considered "probate assets" because they did not automatically pass to someone else under the law when the decedent died. Assets that were jointly owned with rights of survivorship, or assets that had beneficiary designations (life insurance, retirement accounts, bank accounts with payable on death designations, etc.) are considered "non-probate" assets and are outside the control of the personal representative. Real

estate is a bit of an oddball because it can be both a probate asset and a non-probate asset, depending upon the facts of the case.

### **7. What fees are involved?**

Attorney fees and personal representative fees are eligible to be paid from the estate if the court approves payment from the estate. If the court does not approve the payment of attorney fees from the estate, then they will not be paid from the estate. The only other option is for all of the beneficiaries to agree that a fee is appropriately paid from the estate, and even in this scenario, there are some situations when this would not be appropriate.

### **8. How long does it take?**

The estate administration process takes several months. It is very hard to administer an estate in less than 4 months. This is because there are some waiting periods, such as the window of time allowed to permit creditors to file claims. After you factor in the processes for identifying all of the assets, dealing with creditor issues, tax issues, and more, most estates are resolved in around 6 months, with some very complicated ones being open for years.

### **9. How much is the court involved?**

The court is involved with the estate from an oversight position. The court is there to make sure that everything is done appropriately. It is as though the personal representative is an agent for the court. The personal representative is out there doing the legwork and bringing results back to the court for approval or guidance. If the court recognizes that something was done wrong, or in an incomplete fashion, then the court will actively intervene to ensure that it is done correctly.

### **10. What happens at closing?**

When it is time to close out an estate, it is important to remember to button up all the edges. All final waivers have to be obtained from the



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beneficiaries, creditors, and taxing authorities before final distributions are made. The personal representative needs to make sure that all of the decedent's remaining matters are fully and finally resolved. When this is done, the court will permit the estate to be closed and the personal representative will be released from any further or future responsibility.