
ESTATES AND ELDER LAW REPORTER

Probate Explained

Probate is a mysterious subject for most people. Just the mention of the term might trigger thoughts of a costly and time consuming process that is best avoided altogether. However, while it is most often preferable to avoid this court process, probate is required in many instances.

But what exactly is probate and what type of impact does it have on post-death distribution? The technical, dictionary definition for probate is "the legal process by which a court oversees the distribution of property left by a will (or in an intestate estate)." Some of the required duties of the executor or administrator are:

- Filing the deceased person's will or opening an intestate estate with a local court;
- Identifying and inventorying the deceased person's property;
- Having that property appraised;
- Having the will proved valid in court;
- Filing notices and paying claims against the estate; and
- Eventually distributing what's left as the will or state law directs.

Not every estate has to go through probate. However, in Illinois, if your estate exceeds \$50,000 of includable assets, it must go through the probate process, which may take anywhere from six months to a year to complete.

Due to its lengthy settlement time and substantial costs, many people

wish to avoid probate entirely. Listed below are a few ways that this process can be avoided:

1) Living Trust

- Complete control over property while alive;
- Allows for property management in case of incapacity; and
- Acts much like a will while avoiding probate.

2) Joint Tenancy

- Simplest probate avoidance device to create;
- One joint tenant dies, his or her share of property is transferred to surviving joint tenant without need for probate.

3) Tenancy by the Entirety

- Similar to Joint Tenancy but for married couples only.

4) P.O.D. (Pay On Death) Account or Beneficiary Designations

- When you die, the property goes directly to the named beneficiary, avoiding probate altogether.
- Includes bank and retirement accounts, life insurance, and annuities.

While generally best avoided, there may be situations in which probate can be advantageous. For example, if the deceased owned a business and creditors are challenging the estate, probate provides procedures for resolving creditors claims faster than by normal lawsuit. Also, one of the most beneficial aspects of this process is that, if creditors fail to file their claims within six months after notices have been published, the claims are barred. This

can be particularly beneficial for professionals whose estates' may be subject to malpractice claims.

Therefore, while probate is best avoided under most circumstances, its creditor claim resolution and limitation aspects can be beneficial in some instances. When someone in your family dies, it is always best to consult with an experienced attorney to determine what is necessary and in the best interests of heirs and the estate.

Important Considerations for Health Care Powers of Attorney

Throughout our lives we make many important decisions, but none may be as important as choosing an agent to make critical choices for us in the event of incapacity. Great care should be taken when choosing an agent and how you go about choosing this person can be equally as important.

In many instances, people purchase a Health Care Power of Attorney form at a local book store or receive one from someone they know. They then complete it without appropriate guidance or counseling on many important issues that should be considered before making the necessary decisions. These issues include, but are certainly not limited to the following:

- Selecting an appropriate Health Care Agent;
- Organ and tissue donation;
- Burial arrangements;
- Personal priorities and spiritual values;
- Life support situations; and
- What to do after signing your Health Care Power of Attorney.

Obviously the concerns listed are only a fraction of the topics that we must deal with before passing on. In order to

ensure that all issues are dealt with properly, one should visit an attorney with the necessary experience in order to receive the highest quality consultation on these important matters.

Upon your visit to an attorney, you should make your needs and wants perfectly clear. While discussing organ and tissue donation, one should specify exactly which parts of the body are to be donated, and which parts you may wish to leave. Keep in mind, the body of an organ donor can still be shown and buried after death. Burial arrangements and preferences, such as cremation or conventional burial techniques, should also be discussed.

While there are many important "post-death" situations that require consultation, events prior to death such as life support options and personal priorities and spiritual values must be covered during your visit. Be very clear as to what you want done in the event that you are placed on life support and the odds of survival are minimal and any types of treatments that you absolutely would not want performed.

Personal planning and family preparation can make difficult times more bearable. Consult an attorney on these many important issues. After all, you want to leave fond memories, not frustration and loose ends.

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