

“PROBATE - AN OVERVIEW”

As a general rule, the way title to property is held on the date of a person's death determines the procedure that must be used to change the title from the deceased person's name into that of his or her heirs. If the property has been placed in a living trust, generally the successor trustee named in the living trust can transfer ownership by simply filing transfer documents with the county recorder or the financial institution holding the property. Similarly, if the property is jointly owned with another person, the surviving joint owner can simply transfer the property by filing transfer documents with the county order or the financial institution holding the property. On the other hand, if the property stands in the name of the deceased person solely, upon death that property comes under the jurisdiction of the court system. With some limited exceptions, if the property is worth more than \$100,000, a court order is necessary to transfer the property out of the deceased person's name to that of his or her heirs. Probate is the process used to obtain that court order.

Probate is a court proceeding supervised by a judge. The first step in initiating a probate is the filing of a petition by the person seeking to be appointed as the representative of the estate. If there is a will, that person is generally the executor appointed in the will. If there is no will, that person can be any “interested” person. In the law, “interested” has the specific meaning of someone who has a stake in the outcome. As a practical matter, if there is no will, the person filing the petition is usually a person who will ultimately receive a share of the estate.

Once the petition is filed, notice of the petition must be published in a local newspaper. Maybe you have seen, at the back section of a newspaper, a “Notice of Petition to Administer Estate.” The notice gives the name of the petitioner, the contents of the petition, and the date and time of hearing on the petition. The notice gives creditors and other persons that may be interested in the estate the opportunity to participate in or contest the action.

Once an estate representative has been appointed by the court, that person is required to inventory all of the assets of the estate and determine the value. For non-cash items, an independent appraiser must be hired to determine the value of the property on the date of death. A report is made to the court concerning the assets.

One of the major purposes of probate is to allow creditors to make a claim against the estate and receive payment for just debts. Sometimes estate property must be sold as part of the probate proceeding to pay the creditor's claims. After all creditors' claims have been dealt with and if no adverse claims have been made, the estate representative may seek distribution of the estate assets to the rightful heirs. These may be the persons designated in the will. If no will exists, distribution will be made under state laws that determine who is entitled to receive the property (the laws of intestate succession).

If everyone works diligently and everything goes smoothly, an uncontested probate can usually be completed within a year. Given the complexities of probate law, however, many people seek to avoid the probate process altogether. That is one reason why the living trust is so popular -- a simple document or two can accomplish what usually takes a probate proceeding a minimum of a year to accomplish.