

## **PROBATE EXPLAINED**

### **What is probate?**

When an Ohio resident dies owning property in the state, that property needs to be transferred to his or her heirs and beneficiaries. This proceeding is called probate, and it occurs whether the person dies with or without a will. Probate takes place in the probate court of the county where the deceased person resided. If the decedent also owned property in another state, probate proceedings may be necessary in that state.

### **What Property is Subject to the Probate Process?**

When a person dies all property must be transferred to the new owners, but some property is not subject to the probate process. Commonly the deceased will own property with another person as joint tenants with right of survivorship. This property is not subject to probate but the surviving owner will need to take some actions to make the property his or hers alone. For example, if it is real estate that is held as joint tenants with right of survivorship an affidavit will need to be filed with the county recorder's office.

Other forms of property ownership that bypass probate include life insurance and retirement plans which pass to a designated beneficiary, bank accounts payable on death (POD) to a beneficiary, securities and real property designated to be transferred on death (TOD) to a named beneficiary, and assets within a trust. All of these assets will require action to collect, but the probate court will not be involved.

Only property held in the decedent's name will be subject to probate. Be careful. Even though property is not subject to probate it may still be subject to estate taxes.

### **How is Probate started?**

Probating an estate begins with the filing of the will with the probate court. After the will is filed, notices of the probate are sent to the deceased's next of kin (usually the surviving spouse, children and children of any deceased children), and to those beneficiaries named in the will.

Additionally, an application is filed to appoint a person to conduct the administration of the estate. If there is a will, this person is usually named in the will and is called an executor. If there is no will, this person is appointed by the probate court and is called an administrator. The executor or administrator may be an individual, a bank or a trust company. Generally, an executor will be appointed upon the filing of these documents. A hearing may be needed before an administrator is appointed. In some cases the executor or administrator may need to obtain a fiduciary bond.

## **What does the Executor or Administrator Do?**

The executor or administrator takes care of the following tasks:

- Collecting and preserving all property of the decedent;
- Filing an itemized list of all assets and their value at date of death, the estate inventory (due three months after appointment);
- Receiving payments due the estate, including interest, dividends and other income;
- Collecting debts, claims and notes due the decedent;
- Investigating the validity of all claims against the estate and paying all outstanding obligations (claims must be presented within six months of the date of death to be valid);
- Filing federal and state income tax returns;
- Preparing and filing estate tax returns when required (due nine months after date of death). Ohio no longer has an estate tax return; and
- Preparing and filing an accounting of all estate income and distributions.

## **How much does probate cost?**

The costs assessed by the probate court are based on a schedule of filing fees established by law for each type of document filed in the court. For most estates the fee averages \$250.00. Attorney fees charged for handling probate must be approved by the court and are based on the actual services performed by the attorney.

## **How long does probate take?**

A small estate can usually be settled within six months of the appointment of the executor or administrator. However, if the estate includes real estate that must be sold, federal estate tax return is required, or involves other complications, the administration of the estate can last more than a year. Additional time may be required if the will is contested or other litigation is involved.