

## **PROBATE EXPLAINED**

### **What is probate?**

Probate is the court process used to transfer property from the deceased person to his or her heirs. Probate may be necessary whether or not a person died with a will.

The probate court makes sure that the deceased's probate property is transferred according to his or her will or according to the law if there was no will. The court also protects the interest of creditors.

### **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.

Property that is not subject to probate includes:

- Property owned jointly with right of survivorship;
- Property with a beneficiary designation such as life insurance or retirement plan.
- Bank accounts that are payable on death;
- Securities or real property that are transfer on death to a named beneficiary; and
- Assets in a trust.

Only property held in the decedent's name alone without a beneficiary designation will be subject to probate.

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

Probating an estate begins with the filing of the will, if any, and an Application to Administer the Estate with the probate court. If there was not a will the person applying to be appointed will need to provide a suitable probate bond to insure that he or she will do their job properly.

### **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);
- Receiving funds 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 for the deceased and the estate;
- Preparing and filing estate tax returns when required (due nine months after date of death); and
- Preparing and filing an accounting of all estate receipts and distributions when the estate is completed.

**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 probate court fee averages \$250.00.

We charge for estate administration on an hourly fee basis and in accordance with the rules in the State of Ohio attorney's fees will be paid at the end of the estate administration after approval by the estate beneficiaries and the court.

**How long does probate take?**

A simple estate can usually be settled within six months of the appointment of the executor or administrator. However, if the estate involves real estate that needs to be sold or a federal estate tax return or personal income tax return is required, 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.

**How are non probate assets transferred:**

Assets that are non probate (assets held jointly, with beneficiary designations or in a trust) are transferred in different manners.

Real estate that joint with right or survivorship or transfer on death, will require an affidavit filed with the county Recorder's Office.

Assets with a beneficiary designation will be transferred according to the financial institutions process. Be advised that some assets may have income tax consequence so you will want to make sure that you consult with an attorney or tax professional before transferring assets such as IRAs or annuities.

Assets held in a trust will be transferred according to the rules of the trust.