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What is Probate?

“Listen, my Mom/Dad died and the bank told me that I cannot get access to her/his money without opening Probate. What is Probate?”

I think it is about time someone answered your question in plain English before you have to deal with this situation yourself. If you are currently dealing with this situation and want help, please feel free to contact me. Probate refers to the court process where the wealth of Dad, someone who has died, is passed to the beneficiaries by a Will or by statute after expenses and taxes are paid. The beneficiaries, for example, are those family members, friends, charities, etc. that are entitled to receive a benefit from the estate. The estate refers to all the stuff Dad acquires during his life.

“Yeah, that’s all great, but I have a Will...a WILL! Can I avoid Probate”

Just having a Will alone may not be enough to avoid Probate.

“What?!”

That comes as a shock to most clients, and not in a good way.

“But Dad always said he took care of his Estate Planning. Why can’t I just show his Will to the Bank?”

There are several issues: First the law in Illinois requires that you file a Will within 30 days of the death of someone. Second, you should really only file an Original Will. Third, someone needs to be appointed to determine what stuff Dad has and what he owes in taxes, debts and expenses. The court also needs to determine if the Will is valid and complies with the law, and has the authority to appoint an Executor/Administrator.

“Are there any situations where I don’t need to open Probate?”

Yes, there are some assets that do NOT require probate: 1.) Small estates (involving a personal estate of \$100,000 or less, with no real property ownership); 2.) certain Joint Tenancy Assets (where there is a surviving joint tenant, title immediately transfers to the survivor); 3.) Assets not held in Dad’s name or designated to a beneficiary; 4.) assets that are titled in the name of a Trust or that name a Trust as a beneficiary, and 5.) Life Insurance Policies (only insurance policies payable to Dad’s Estate require probate).

“Well, can I open Probate on my own?”

Most courts do not allow someone to proceed through Probate without being represented by an Attorney. The process will either be supervised by the court or independently administered. Supervised administration involves the court at all phases of Probate and is generally requested when something is contested in the case. Independent administration allows

the appointed Executor/Administrator to handle the estate with little court intervention, usually requiring that the representative appear in court only to open and close the estate. The Will in most circumstances must be followed.

End of life planning is not an easy topic, nor does it come without cost, but the benefits far outweigh the cost. Probate is time consuming and stressful, even the most basic of cases. Having a properly prepared Estate Plan, which may include a Will, Trust, and Powers of Attorney, will prevent many issues from later developing.

Please let me know whether I can be of assistance in helping you or a family member go through Probate or in regards to creating your Estate Plan. If you have any questions, please feel free to contact me using the following information.

Sincerely,

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