

GETTING YOUR AFFAIRS IN ORDER

Understanding the need to have your personal and financial affairs in order and getting your affairs in order are two very different things. Unless you desire to have the government determine how your assets are distributed after your death, it is important to review your personal and financial assets to ensure their proper distribution. There are several ways to achieve your desired goals. Some more common strategies include preparation of a will, living will, trusts, power of attorney and other instruments.

When properly done, estate planning can in some cases, alleviate the need for probate and facilitate family harmony after your death. As it has been said, and you may have experienced, people often exhibit their worst behaviors during weddings and after funerals. Taking time to get your affairs in order is one of the best gifts that you can give to your family. It is erroneous to believe that estate planning is only for those with great wealth. Even families with modest income can gain enormous benefit from getting their affairs in order. This article provides general information on frequently asked probate related questions.

Q: What is Probate?

A: Probate is a legal process for transferring property when an owner dies. This court-supervised procedure is used to validate a will and determine ownership of a deceased person's ("decedent's") estate.

Q: Does every estate require Probating?

A: For some estates, probate proceedings are not required. The need for probate depends on circumstances and is not determined just by an estate's size. Various factors, including the value and nature of assets and the relationship of the survivors to the deceased, will determine whether probate is appropriate.

Q: What does it mean when a person dies and has a will?

A: When a person dies with a will, that person is said to have died "testate," and distribution of that person's probate estate is made according to the will. The will usually designates a personal representative (sometimes called the "executor") to manage the estate assets.

Q: Can I change my will once I create one?

A: Yes, you can change your will by creating a new one or creating a codicil, which is an addition to a will that already exists.

Q: What should I consider as I'm determining the contents of my will?

A: Initially, the first consideration should be who will serve as the Executor. The Executor's role is to carry out your wishes as outlined in the Will. If you have children who are under the age of majority, you should nominate a Guardian who will be responsible for their nurture and education and in some cases, their finances. Insurance proceeds will not be paid to minors, so there may be a need to establish a trust to receive insurance proceeds. Another consideration may be the desire to include specific bequests of personal property to specific individuals.

Q: What does it mean when a person dies without a will?

A: When a person dies without a will or the will is not valid, that person is said to have died "intestate," and the court will appoint a personal representative, or "administrator."

Q: If a person dies without a will and is married, does the spouse automatically receive all proceeds of the estate?

A: No, depending on the intestacy laws of the state, those proceeds may be divided between the spouse and other heirs at law.

Q: Do all assets in the name of the deceased pass through the estate?

A: No, whether the asset passes through the estate depends on the nature of the asset and whether there was a designated beneficiary.

Q: What is a holographic will?

A: A holographic will is a will that is written entirely in the handwriting of the testator (deceased).

Q: What is dispensed administration?

A: Certain "small estates," as defined by state law, may qualify for a simplified method of transferring property.

Q: What steps are involved in Probate Proceedings?

A: Probate proceedings are intended to provide an orderly transfer of property while protecting those who might have an interest in the property, including beneficiaries, heirs, creditors, and taxing authorities. The process is necessary to:

- Collect, or take possession of, the decedent's property.
- Protect and preserve the decedent's estate.
- Pay all debts, claims and taxes.
- Determine who is entitled to the assets and distribute the property accordingly.

Q: What is Estate Planning

A: If a person wishes to plan his or her estate in order to reduce the assets subject to probate or to completely avoid future probate, a number of steps may be taken. These

include giving away property during one's lifetime, forming joint ownerships, and creating trusts. Property may, for example, be directly transferred to survivors if it is owned in joint tenancy. Under this arrangement, the surviving joint tenant or tenants acquire ownership without undergoing a probate process.

Q: Are there some assets that may be transferred without probate.

A: After a person dies, informal methods may be used in some cases to transfer property without court proceedings. An affidavit procedure, for example, provides swift and informal transfer of certain "small estates." Proceeds of life insurance and retirement benefits may also be paid directly to beneficiaries without a probate proceeding.

It is important that informed decisions be made by individuals who wish to use alternative "non-probate" methods of transferring property. Various factors will determine whether probate is appropriate. Consultation with a lawyer may assist in understanding alternatives and making decisions.

The procedure usually begins with the appointment of an individual as a personal representative to collect, manage and settle a decedent's estate.

This article is not intended to be legal advice, but is informational. To obtain an opinion regarding your specific circumstances, you should consult an attorney. Denise Brown, Attorney at Law can be reached at 502-587-0331. Her office is located at 1608 W Broadway, Suite 200, Louisville, KY 40203, www.4realdirection.com.