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Probate 101

OVERVIEW

WHAT EVERYONE SHOULD KNOW ABOUT PROBATE

This document is informational only, it is not intended to provide, nor advertised as, legal or financial advice. Please seek professional consultation.

Synopsis

In St. Louis, MO, court filing fees for an affidavit of collection for a small estate can cost \$110.50 to \$116.50. Additionally there is a \$6.50 charge for a certified copy of the legal document.

This is a non-trivial amount of money, but it's only one of the many costs related to a probate proceeding.

Accessing the equity of an estate that goes through probate may take nine to eight-teen months. The larger the estate is, the more complex the probate process becomes, and the longer it will take.

So what exactly does probate even mean, and why should you care?

This paper will give you a high-level understanding of what you need to know about this legal process.

Most Important Terms

The term "probate" pertains to a legal process that occurs when a person with or without a valid will passes away. Missouri (as with other states), refers to this person as the "decedent." A probate proceeding takes place in order to administer specific types of property. These are the assets known as "probate property." This includes all property that only the decedent owned. Probate is to ensure proper payment of all taxes tied to a decedent's property, as well as any other expense or claim made on the property. Additionally the probate process is intended to make sure that the decedent's estate goes through proper distribution. This means that only those entitled to receive it will receive it.

Types of Property That Often Go Through Probate

In Missouri, many bank accounts are common assets that go through probate. Homes and land, as well as investments like stocks, may also undergo this legal process.

Here's a quick overview of how and when such property or assets may end up requiring a probate proceeding.

- Bank Accounts

A decedent whose bank accounts don't have a co-owner may go through probate. The same goes for financial accounts without any designated beneficiary.

- Home or Land

Across the country, 37% of homeowners have finally paid off all their mortgages back in 2017. This means that their properties are clear of liens and liabilities. They now have all the right to do whatever they want from it, such as sell it or give it away. There are no exact details for this in Missouri, but many of these mortgage-free folks are likely in MO. After all, the Show-Me State takes pride in its home ownership rating of 66.8%, which is higher than the US average. However, if a property owner in MO passes away without a will, that home will have to undergo probate. The same goes true for any land that they own individually or those that they co-own.

- Investments and Other Assets

Stocks and bonds without a designated beneficiary also usually undergo probate. This may also happen if the owner doesn't transfer them to another person prior to death.

- Other tangible types of property that can go through probate

- Clothes, jewelry, any vehicle, be it for land, air, or water, may also have to undergo probate. However, this applies only to assets that are solely under the decedent's name.

Not All Situations Require Probate

In Missouri, small estates with a value of \$40,000 or less don't require probate. For estates worth over \$40,000, a probate proceeding is already a legal requirement. It can either be an independent administration or a supervised administration. With the latter, the probate court will handle a considerable portion of the process. Meaning, the court would have to approve almost everything in the process. They would have a say on who runs, sells, or manages the decedent's property and business. They even get to decide when it comes to the deceased person's real estate matters. All that can make a probate process take much longer. This can place unnecessary stress on your loved ones who only want to mourn their loss.

How to Avoid Probate Proceedings

If your estate is worth over \$40,000, it would still undergo some form of a probate proceeding. However, there are several ways to minimize the need for court intervention. One of these is to ensure that you name a beneficiary for all your assets.

Seek Legal Assistance

A probate and estate administration attorney will help you title your property. In doing so, your loved ones may be able to avoid some steps of a probate process when it comes to moving ownership. It will be easier to claim ownership since they bear rights to the property.

Move Your Assets to a Revocable Living Trust

An attorney can also help you move certain assets to a revocable living trust. With this, you will specify what exactly you want to happen with your property after you pass away. You can have the lawyer help you in creating rights of survivorship agreements. With beneficiaries and designated rights, your family may be able to avoid probate.

Name a Beneficiary for Your Bank Accounts

As for your bank accounts, now's the time to designate an account beneficiary. With this, you may only have to open a "payable-on-death" account. You can then have the funds transferred to the named beneficiary in the case of your passing.

Set Up A Power of Attorney

Now's an excellent time to set up a power of attorney too. It's a legal document that assigns another person to act on your behalf if you get incapacitated. With this, you can instruct the "attorney-in-fact" to then handle your finances. Such instructions may include managing your financial affairs, including your bank accounts. The attorney-in-fact may then set up account beneficiaries on your behalf. In doing so, your bank accounts may no longer have to go through probate.

Make It Easier for Your Loved Ones to Heal and Recover

As you can see, probate proceedings can make your passing more difficult for your loved ones. It can get even worse if they can't access the funds they need to pay for funeral costs.

That's why there's no such thing as being too early when it comes to estate planning. The sooner you have an estate plan, the fewer the risks of dealing with costly probate procedures.

If you need assistance with probate-related matters, it is advisable to seek the advice of legal professionals.