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PROBATE

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Probate is one of the least understood, but most discussed and cursed aspects of the estate settlement process. As a general rule, the probating of most estates in Missouri is not as expensive, complicated, and timing consuming as many people believe it to be. Additionally, many people really don't understand the probate process. However, there are still reasons why you may desire to avoid having your estate subject to probate.

To begin the review of probate, consider its functions. The steps will be very similar whether the decedent died testate (with a will) or intestate (without a will). First, probate provides for the orderly transfer of a decedent's property to his or her heirs according to the will or the intestate laws of Missouri. Second, probate determines the legitimacy of claims against the estate and insures the payment of proper claims. Third, probate clears the title of the decedent's property for the heirs.

The probate court is a division of the Circuit Court and application for the probate of an estate should be made in the Probate Division of the Circuit Court in the county where the decedent last lived. Anyone may apply to have an estate opened. The person having custody of the decedent's will must surrender it to the Probate Division when the decedent dies.

Not all of the assets in the decedent's estate are subject to probate and fees of the probate process. This is one of the most frequent misunderstandings regarding probate. For example, any property held by joint tenancy or tenancy by the entireties does not pass through probate. Life insurance proceeds payable directly to a named beneficiary, other than the executor for the estate, are not probated. Additionally, in 1989, Missouri passed the Missouri Non-probate Transfer on Death provisions which allows for the deeding of assets with a beneficiary such that the beneficiary only has rights to the assets upon the death of the owner. The major feature of these non-probate "pay on death" or "transfer on death" laws is to discourage the use of joint ownership by offering another reasonable non-probate alternative that permits owners full control over their property during their lifetime.

Additionally, certain small estates may avoid lengthy probate. Full probate is not required if the decedent leaves a surviving spouse and the value of the probate estate does not exceed the exempt property and the family allowance. Exempt property available to a surviving spouse or unmarried minor children includes: the family Bible and other books; all wearing apparel of the decedent; all household electrical

appliances; all household musical and other instruments; and all household and kitchen furniture, appliances, and utensils.

The family allowance is defined in terms of a support allowance for the surviving spouse and the unmarried minor children for one year following the death of the decedent. The amount of the allowance is based on the family's previous standard of living and the condition of the decedent's estate.

Three of the most common reasons given for wanting to avoid the probate process are: 1) public record, 2) expense, and 3) length of time assets are tied up in the probate process. While it is true that probated estates become public record, the expense of probating most estates is frequently over estimated. The expenses of probate encountered in the average estate fall into four main categories.

- 1st Bond Premiums - personal representatives of the estate may be required to provide the court with an indemnity bond to guarantee the performance of his or her duties.
- 2nd Cost of Publication - probate generally requires two notices be published during the administration of each estate. One notice announcing the estate has been opened and a second notice when the estate is about to be closed.
- 3rd Court Costs - probate court costs vary by region, however, one central Missouri probate court charges a maximum of \$365 and that is on a sliding scale.
- 4th Personal Representative and Attorney Fees - The fees for these services are based upon the amount of work performed. Missouri law provides for a minimum fee schedule which is followed for most estates. The schedule percentages range from 5% on the first \$5000 to 2% on all sums over \$1,000,000. However, the percentages are applied only to the personal property in probate and the proceeds of real property sold during probate.

Generally, the probate process is not the nightmare maze many people have been led to believe. However, there are numerous estate planning tools and strategies which can minimize probate costs or even eliminate the probate process. The more complicated your estate, if you own property in more than one state, the more likely your estate settlement will be contested, or if you have a family business - then the more reasons you have to investigate estate planning tools and strategies which avoid the probate process. The most important point to remember is that while numerous estate planning tools and strategies are available to accomplish your various estate planning goals and objectives, they must be implemented to be effective.



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