



Mesmer & Deleault, PLLC
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Seasons Greetings



“Tip of the Month”

The Probate Process

In estate planning, there often arises this question: whether to try to avoid probate. Probate can be avoided by using the revocable living trust. But what is it that people are trying to avoid?

Probate starts with a Petition for Administration that is filed with the Probate Court. The Petition is accompanied by a will or a statement that there is no will. The Petition also requests appointment of an executor (will) or an administrator (no will). It also makes a preliminary guestimate of the value of the estate and names an appraiser for the property. The heirs and next of kin are identified.

The Probate Court will notify the proposed executor or administrator (the fiduciary) of the required bond. The bond is a form of insurance to secure faithful performance of the fiduciary. The bond amount is usually equal to the estimated value of the estate, and usually costs a couple hundred dollars. After the fiduciary provides proof of the bond, the Probate Court will issue Letters of Appointment. Only then is the fiduciary fully authorized to manage the property of the deceased. The Court will publish a notice in the newspaper of opening the probate estate.

As a next step, the fiduciary must quickly file an Inventory of the estate assets. The Inventory lists all real estate and personal property, including bank accounts and stocks or other investments. The Inventory usually does not include assets that are transferred by contract, such as life insurance with named beneficiaries.

The opening of the probate estate starts the clock running for all claimants and creditors to come forward, including unhappy heirs. The estate will stay open for a minimum of six months. The fiduciary uses the estate assets to pay the bills of the estate. Sometimes it is necessary to liquidate estate assets, for example, by selling the house or auctioning its contents. In many cases, it is necessary to get specialty appraisers for more precise valuation of collections, antiques, art, or other valuables. It is often necessary to get permission of the Probate Court to sell estate assets.

The fiduciary keeps track of all expenditures. To close the estate, the fiduciary must make a full accounting. This includes providing signed Receipts from estate beneficiaries for distributions made to them from the probate estate. If litigation is pending or closing the estate is otherwise delayed more than 12 months, the fiduciary must make an accounting and renew the probate bond every year.

Some people think probate is unduly cumbersome, public and expensive. They want private control over estate administration by way of the living trust. On the other hand, probate can be an effective vehicle for monitoring and protecting the appropriate disposition of estate assets. The Probate Court has been working hard to streamline the process to make it more user-friendly, though most fiduciaries still need legal help.

If you have any questions or if you would like help with probate administration or estate or trust planning, call us at 668-1971 or contact us through the Internet at *Meslaw @ aol.com*.

Happy Holidays!

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