

THE OFTEN MISUNDERSTOOD AND MISREPRESENTED PENNSYLVANIA PROBATE PROCESS

Written by Jan L. Brown, Esquire

So many people have a negative impression of probate in this state. Much of that is due to the misunderstanding of the reasons for probate, the mismanagement of estates and the misrepresentation of Pennsylvania probate by unethical or uninformed people who spread misstatements as gospel.

Many people believe probate or estate administration is something that ought to be avoided at all costs which simply isn't true. Probate is the process used to ensure someone's assets are passed on, upon their death, according to the terms of their Last Will and Testament. Sometimes, in order to avoid probate, a person will use a Living Trust in place of a Last Will and Testament. What is commonly not understood is that a Living Trust requires a probate-like process called *trust administration*. Trust administration is very similar to probate with many of the same procedural requirements or steps, with exactly the same tax liabilities and requirements, and the costs to settle the trust are normally the same as the costs to settle an estate with a Will.

Simply stated, when an individual dies, if they have assets in their name alone and they have a Will, their estate will go through *probate* to carry out the terms of their Will. When an individual dies who has a Living Trust and they have assets in the Living Trust, their estate will go through *trust administration* to carry out the terms of their Trust.

Often, people do not understand the reasons for having a Will and/or a Living Trust or for going through the probate process or trust administration. The probate process or trust administration ensures the distribution is as the decedent wished (not as the person in control of the estate or trustee wishes), and it also meets the statutory requirements of settling an estate, including the ever important requirement of filing inheritance taxes and paying the appropriate tax(es) due. The purpose of probate and/or trust administration is to make certain that people inherit the correct asset(s) or amount according to the terms of the Will or Trust, and that the estate issues, of which there can be many, are resolved. Once that is done, the assets can be distributed and the estate closed. Without proper administration, whether probate or trust administration, the estate is vulnerable to errors, increases in tax liabilities, court involvement or intervention and claims which can result in causing beneficiaries problems.

Luckily in Pennsylvania, we have a probate process that is much simpler than some states, i.e. California. In Pennsylvania, many estates can be settled within three to six months. The fees associated with settling an estate vary depending upon the work that is required and the size of the estate.

Following is a brief explanation of the probate/trust administration process.

Probate/trust administration is the legal process to administer an estate when someone dies and has assets in his or her name alone or in a Trust. The individual's assets or Trust's assets are collected, final debts are settled, any necessary taxes are paid, property is passed from the estate or Trust to their heirs or beneficiaries, and the estate is settled. The process can take anywhere from three (3) months to a year or beyond depending upon the complexity of the estate and if proper planning was in place prior to the passing of the decedent.

The first step in the process is to determine whether or not the decedent left a Last Will and Testament. If there is a Will, the Executor will present the Will to the Register of Wills with a Petition for Probate and an Estate Information Sheet. If a Trust exists, it is important to determine if all the assets are titled in the Trust or the individual's name, to determine if a Pour Over Will (a Will that accompanies a Trust and directs any assets not titled in the Trust to be "poured over" to the Trust) should be filed with the Register of Wills.

If the Will or Pour Over Will was not self-proving (which means the signatures of the person who signed the Will – the Testator and the witnesses were not notarized), the Executor will also have to file sworn statements by the persons who acted as witnesses to the Will. If your Will is not self proving, you may want to consider having a new Will prepared to save your Executor from the problem of trying to locate the original witnesses or delaying the opening of the estate.

Normally, the Executor named in the Will or the Successor Trustee named in the Trust is the spouse or a child. If the Executor/Successor Trustee named in the Will or Trust is not available or is unwilling to act, and there is no available successor named in the Will or Trust, an interested party will need to step forward and petition the Court to be appointed Administrator of the estate.

Once the estate is opened, then the actual probate or trust administration can begin. Creditors are put on notice, beneficiaries or individuals with an interest in the estate must receive notice of their interest, and certification of the notices must be filed with the Court. All of the assets of the decedent are identified, located and collected by the Executor or Successor Trustee to begin the preparation of the Pennsylvania Inheritance tax filing and so to distribute the assets at the closing of the estate.

A prepayment of Pennsylvania inheritance taxes can be made at three (3) months. By making this estimated payment, the estate receives a discount equal to five (5) percent of the amount paid within three (3) months of death. The final inheritance tax return is due nine (9) months from the date of death. If the inheritance tax is not paid, penalties and interest will begin to accrue.

Other issues which must be handled by the Executor, the Administrator or the Successor Trustee, may include the selling of real and personal property, liquidating and/or transferring stocks and other assets, resolving disputes with creditors, resolving any disputes among the heirs or beneficiaries, paying debts of the estate, establishing and maintaining an estate account, preparing and filing of the required tax returns (inheritance, income, and fiduciary returns) and of course the final settling of the estate.

When all outstanding matters have been resolved, the estate can be finalized by preparing an accounting of the estate administration and making final distribution of remaining assets in accordance with the Will or Trust, or if there is no Will or Trust, in accordance with the laws of Pennsylvania which prescribe how assets are to be distributed. Final settlement of the estate can be done informally through a family settlement agreement if all parties are in agreement. If there are any discrepancies or disagreements among family members and/or beneficiaries of the estate or creditors, a formal accounting to the Court may be required. Ninety-nine percent (99%) of our client's estates are settled without a formal accounting or Court hearing.

Settling an estate either through probate or trust administration can be a simple process or an involved process depending upon the circumstances. As attorneys, our job is to help our clients through this process and make it as stress and worry free for our clients as possible.