



## DESCHENE: One thing to know about probate - avoid it

Sometimes-necessary experience about as fun as a tax audit, root canal

Story Comments

Print Font Size:

Recommend 9 Tweet 0 g+1 0

Posted: Sunday, April 20, 2014 12:00 am

BY ROBERT DESCHENE | 0 comments

"I've made a will, so my family won't need to go through probate when I die" - this is among the most common myths about probate I hear.

In reality, your family is going to put your will through probate.

Most people know that, like a root canal or a tax audit, probate is something painful to be avoided if possible. Simply put, probate is the court process following your death which transfers ownership of some - but not all - of your property from you to your family.

For example, say you owned a house jointly with someone, as well as a life insurance policy and an IRA for which you had filed designation-of-beneficiary forms. Your family would never need to go through probate when you die. Upon your death, your house would pass automatically under the deed to the joint owner, and the insurance and IRA proceeds would be paid out directly to the beneficiaries you designated. Your will becomes moot.

Now, assume you didn't own that house jointly, but in your name only, and you wanted your sister to get it when you died. If you die without a will, your family will be forced to go to probate court to get your name off the deed and someone else's name put on it. But the probate court has no legal proof of who you wanted to get the house, so a state "intestacy" statute will determine who gets it, based on how closely family members are related to you. If you have children, even if estranged, they will get your house, not your sister.

If you had a will, your family will need to file your will with the probate court to get your house transferred from your name into someone else's name. The only difference between this and intestate probate: the probate court knows who you want to get the house because your will states that you want your sister to have it, not your children.

So what actually happens in probate? If you don't have a will, one (or more) of your family members will apply to the probate court to be appointed as personal representative, or a PR, to handle your estate. This PR role used to be called executor. Since no one knows which family member you wanted to be your PR, intestate probates can trigger ugly family squabbles.

Once appointed, the PR is responsible for preparing an inventory of your property, paying off your creditors and distributing what's left to your heirs-at-law, as determined under the intestacy statute.

If you had a will, it nominates a specific person to act as your PR. Your nominee applies to the probate court to be appointed PR, files your original will with the court, and provides notice to your heirs of the pending probate case. Your will becomes a public court document, open for anyone to review.

The word "probate" derives from the Latin "probare," or to prove. If your will disinherits a family member, or someone claims you named them as a beneficiary in a later will, the court will hold a hearing to determine whether the will on file is valid. Common reasons for challenging a will are improper execution (e.g., you didn't sign it before two witnesses), incapacity (you weren't "of sound mind"), or "undue influence" (someone coerced you into making the will).

Once your will is finally proved, the PR can start the long process of wrapping up your estate. He or she must create a complete inventory of your property, pay your debts and taxes, sell your property if necessary, distribute


the property to the beneficiaries named in your will, and prepare a final accounting showing exactly how he managed your estate. Although PRs can sometimes navigate probate on their own, they normally will need the assistance of an attorney.

So many myths surround probate, but the one truth is that, if possible, you should avoid it.

On average, it takes a year to 18 months for your family to get through probate, during which your property is in limbo.

The good news is that there are ways to avoid probate, including using a living trust instead of a will, that eliminates the costs, delays and invasions of privacy that are involved in any probate case.

Robert Deschene is an estate and elder law planning attorney at Deschene Law Office in North Attleboro, and a member of WealthCounsel and the National Academy of Elder Law Attorneys. Contact him at 508-316-3853, by email at [rmd@deschenelaw.com](mailto:rmd@deschenelaw.com), or online at [deschenelaw.com](http://deschenelaw.com).

Recommend 9 Tweet 0  1  0

Discuss 0 Print

Posted in Stories on *Sunday, April 20, 2014 12:00 am*. | Tags: Sun Chronicle Ma, Attleboro Sun, Sun Chronicle Local News, The Sun Chronicle, Thesunchronicle, Sun Chronicle, Sunchronicle, Sun Chronicle Sports, Attleboro Newspaper, Sun Chronicle Features

- ### More From This Site
- [Attleboro seeks cash for crashes](#)
  - [Longtime nursing home in Norton to close](#)
  - [Naming of Mansfield underpass for officer killed in line of duty passes in House](#)
  - [Seekonk town meeting voters to decide charter change](#)
  - [Blaze damages South Attleboro home](#)

- ### From Around The Web
- [Bear Attack Victim Left Horrifying iPhone Message for Husband](#) (Good Morning America)
  - [Tom Brady And Gisele Let Us Inside Their New Manhattan Apartment](#) (Lonny Magazine)
  - ['Full House' Star Confesses to Getting Wasted & 'Sleeping With' John Stamos](#) (Stirring Daily)
  - [These Beautiful Bracelets Were Made From Guns Taken From City Streets](#) (Co.Exist)
  - [Woman Who Killed Baby After Giving Birth in a Bar Gets Perfect Sentence](#) (Stirring Daily)

Recommended by

## Rules of Conduct

- 1 Keep it Clean.**  
Please avoid obscene, vulgar, lewd, racist or sexually-oriented language.
- 2 Don't Threaten or Abuse.**  
Threats of harming another person will not be tolerated. AND PLEASE TURN OFF CAPS LOCK.
- 3 Be Truthful.**  
Don't knowingly lie about anyone or anything.
- 4 Be Nice.**  
No racism, sexism or any sort of -ism that is degrading to another person.
- 5 Be Proactive.**  
Use the 'Report' link on each comment to let us know of abusive posts.
- 6 Share with Us.**  
We'd love to hear eyewitness accounts, the history behind an article.

Watch this discussion



Begin typing here...

Share on Twitter

Share on Facebook

Post Comment

Print comments

Search