



Information About Probate

Before a person dies, that person has the three jobs of managing assets, paying creditors and filing tax returns. These are jobs we all have while alive. Those jobs do not end at death. Who does those jobs changes from the person who died to somebody else, but the jobs remain.

After death, someone must collect, inventory and have those assets appraised. Someone must pay the debts. And, someone must file the tax returns. These are the same jobs the decedent had to do when he was alive. Those jobs must still be done. After death, however, there is more to do.

An income tax return for the time between January 1 and the date of death must be filed. If there is any income after the date of death, an additional tax return must be filed for the period (or periods) between the date of death and the final distribution of the assets.

If the value of the assets the decedent owned at the time of death was more than the amount of the federal estate tax personal exemption, an estate tax return must be filed with the IRS. Some states also have an estate tax, Arizona does not.

Some states have an inheritance tax. This is a tax on the right to receive assets. If a beneficiary of the estate lives in a state that has an inheritance tax, that person must file an inheritance tax return with that state and pay the tax. Arizona does not have an inheritance tax.

Is Probate Necessary In This Case?

Not all estates must go through probate. The first question to ask is whether probate

this estate requires probate. This question is not simply answered.

All assets the decedent held in a Living Trust avoid probate. If the decedent held some assets in a Living Trust, and some assets not in a Living Trust, the assets in the Living Trust avoid probate, but the assets not in the Living Trust do not. We must subject the assets not in the Living Trust to the same analysis as if there was no Irving Trust.

If the total value of the entire estate not in a Living Trust is less than the Small Estate Exemption (in Arizona the amount is \$50,000), the answer is no probate.

If the total value of the entire estate is more than the Small Estate Exemption, there may or may not be a probate. The answer depends upon the nature of the assets the decedent owned and how he held title to those assets.

For example, a person may hold bank accounts, Certificates of Deposit, and similar accounts, in a variety of ways. The account could be in the individual name of the decedent with no provisions about what should happen upon death. This account will go through probate. The account could be in the individual name of the decedent, payable on death (POD) to a named individual. This account will not go through probate.

The decedent can hold title to the same type of asset, such as a bank account, in many ways. Therefore, we must assemble not only a list of what the assets are, but exactly how the decedent held title to each asset.

A life insurance company, for example, normally pays the proceeds of the policy to the named beneficiary directly. No probate. However, depending upon the circumstances, the IRS may consider the proceeds part of the Taxable estate on which estate taxes must be paid. If the life insurance policy does not name a living beneficiary, often the proceeds end up in the probate estate of the decedent.

From this, you can see that some estates may avoid probate completely. Other estates may require probate, but not all assets held by the decedent will go through the probate process. Still, other estates may require all assets to go through the probate process.

The process, after a person dies, is to collect the assets, pay the debts and taxes, file the tax returns, and transfer the title to the assets from the person who died to his beneficiaries. The goal is to do this as quickly, and inexpensively, as possible.

To make the decision process as easy as possible, we have a form for the Personal Representative to complete. When we know if probate is necessary, we can take the next step.

If the law requires probate, we next must determine which assets must be probated. Then we prepare the court papers for the Personal Representative to sign.

Arizona, and about one-third of the other states, has a simplified process for probate. We call this simplified process Informal Probate. Unfortunately, Informal Probate is not available always. There are circumstances when Formal Probate must be completed.

The difference between Informal and Formal Probate centers around the process itself. Informal, as the name implies, involves much less work to complete. The result is that Informal Probate is both faster and less expensive than Formal Probate.

The goal, remember, is to do this as quickly, and inexpensively, as possible. Because Informal Probate is faster and less expensive than Formal Probate, we want to use this method if it fits the circumstances.

Probate Estate Not Legal Entity. A probate estate is not a legal entity. It does get a federal tax identification number, but that does not make it a legal entity. When a person dies, title to his property passes directly to his beneficiaries. The word *estate* merely describes all the property of the decedent that passes to the beneficiaries. Assets of the decedent are “in” the estate, for administration purposes, until the Personal Representative delivers them to the new owners (the beneficiaries).

Where To Probate? The county in which the decedent was a permanent resident is the county in which the Primary Probate will take place. Therefore, we must establish exactly where that is. By law, a person has only one domicile. Many people think they have no one place as their domicile, but the law does not see it that way. Some county is the county of permanent residence. That is the county in which we file the Probate.

If the decedent owned assets, particularly real estate, in another state, yet we must start another Probate. We call the probate in that other state an Ancillary Probate.

Suppose, for example, the decedent's permanent residence was in Phoenix, Arizona and he owned real estate in Arizona and San Diego, California. The Primary Probate would be in Maricopa County, Arizona, and the Ancillary Probate would be in San Diego County, California.

Will Does Not Avoid Probate. Actually, no one dies without a Will. Either you write one yourself or the state of your permanent residence writes one for you. If you die with a Will, the law says that you died “testate.” If die without a Will, the law says that you died “Intestate.”

If you die with a Will, you tell the Probate Judge to whom you want your assets to go. If you die without a Will, the law tells the Probate Judge to whom your assets will go. Both require probate.