

## What is Probate and Estate Administration?

Probate and estate administration are how an estate's assets are transferred after someone's death. When an individual has not planned prior to death to avoid probating his/her estate, then the state where the deceased was a resident or owned assets will require a probate court proceeding. A probate court proceeding can be supervised or unsupervised. In an unsupervised proceeding, an appointed estate administrator manages assets, pays any debts, files required tax returns and various court documents, and distributes the estate's assets. However, the court can at any time require the process to be supervised, which occurs primarily when someone raises a concern about how the estate is being administered. In a supervised proceeding, the court must approve every detail of the estate administration. If you are involved in a probate proceeding or anticipate you may be, contact our firm to discuss how we can best represent your interests.

## Are There Ways to Avoid Probate?

Because probate can be a lengthy, costly and public process, many people choose to avoid it. There are a number of legal strategies one can implement before death that allow you to pass property to another person after death, without going through probate. Below are a few:

- **Joint Tenancy & Tenancy by the Entirety.** Adding another person to your assets as a joint owner or "joint tenant with rights of survivorship" will allow your property to pass to them upon your death without going through probate. There are drawbacks to this strategy, however, which include subjecting those assets to any claims, like a lawsuit against the co-owner and making them available to the co-owner's creditors. This can happen even while you are alive and planning on using the assets yourself.
- **Beneficiary Designations.** Beneficiary designations are preferable to joint tenancy because they allow you to transfer property only upon your death without giving away current ownership. One of the drawbacks of this strategy is that it can be difficult to obtain an equitable distribution of property among your heirs. Additionally, understand that if you have beneficiaries listed on your assets, those assets will be distributed upon your death to the listed beneficiaries, even if your last will and testament states otherwise.
- **Revocable Living Trust.** A Revocable Living Trust is a legal document that allows you to establish a separate entity (the trust) to "hold" legal title to your assets while you are alive, and to name trustees to manage those assets according to the trust terms. Typically, you serve as the trustee while you are alive, managing your assets for your own benefit. Upon your disability or death, the trust terms appoint your successor trustee who then continues to manage, or distribute, the assets held in trust. A properly

drafted trust can accomplish many goals, including guardianship and probate avoidance for your estate and bloodline, as well as marital and creditor protection for your children.

### **How Can I Learn Which Strategy is Best For Me?**

If you are interested in avoiding the need to probate your estate, you should act now and contact us to thoroughly review what options you have. Please view our confidential *Estate Planning Analysis* form. Simply print and complete the form and send it back to us. Once we review the provided information, one of our attorneys will contact you to begin the estate planning process.