

WHAT ARE THE DRAWBACKS OF PROBATE?

*There Are Some Drawbacks that Come Along
with the Probate Process; Let's Look At a Few of Them*



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People sometimes harbor misconceptions about last wills. It can seem as though a last will is the simplest way to arrange for the transfer of your assets to your loved ones after you pass away. The executor that you choose follows the instructions in the will, and your resources are distributed among your heirs in a quick and hassle-free manner.



In fact, things don't work that way in real life. Your executor must admit the will to probate. The heirs to the estate will not receive their inheritances until after the estate has been probated and closed by the probate court.

There are some drawbacks that come along with the probate process. In this paper we will look at a few of them.

CONSUMPTION OF TIME

You probably would like your loved ones to receive their inheritances in a timely manner. When the probate process is in the way, there is going to be a significant time lag. Depending on the jurisdiction and the complexity of the case in question, probate can take anywhere from perhaps nine months to a year at minimum. Cases that are particularly complicated can take multiple years.

During probate the executor must conduct the business of the estate, and interested parties are given an opportunity to come forward to make claims against the estate. Property must be inventoried and liquidated, and all of this can take a good bit of time.

Some people are simply inconvenienced by the wait, but there are cases when inheritors may suffer hardships because of the lack of immediate liquidity.

EXPENSES



During the probate process some considerable expenses can accumulate. The executor is entitled to remuneration for his or her time and effort, and the probate court is going to charge a filing fee.

As we touched upon in the previous section, the executor must liquidate property. Because of this, an appraiser or appraisers and liquidation companies may be involved. These entities charge for their services.

The executor will generally retain the services of a probate attorney, and final taxes must be paid. As a result, there will be legal and accounting fees in many cases. Along the way the executor may incur other ad hoc expenses. All told, probate expenses can wind up consuming a noticeable portion of the estate in question.

LOSS OF PRIVACY

Another one of the drawbacks of probate is the loss of privacy. Probate records are available to the general public. Anyone who is interested could access these records to find out exactly what went on during the probate process.

While you are living you certainly do not make the details of all of your financial transactions public. It is unlikely that you want the general public to have access to the details surrounding your final financial decisions.

PROBATE AVOIDANCE

After you hear about these drawbacks, you may wonder if it is possible to facilitate the transfer of your financial resources outside of the process of probate. The answer is yes, probate can be avoided in a number of different ways.

One very popular probate avoidance tool is the revocable living trust. With this type of trust you do not surrender control of the assets while you are still alive and of sound mind. You can act as the trustee and the beneficiary while you are still living. As such, you control the actions of the trust, and you can take distributions out of the trust as you see fit.

Because the trust is revocable, you can even revoke or rescind the trust entirely. You could then go forward with the resources once again in your personal possession.

You may act as the trustee and beneficiary initially, but you name successors to assume these roles after you pass away. The trustee that you choose distributes monetary resources to the beneficiary or beneficiaries after you die according to your wishes as stated in the trust agreement.

These distributions are not subject to the process of probate, so they are made in a timely manner.

Revocable living trusts are ideal for many individuals, but there are other ways to avoid probate. The

optimal course of action will depend on the circumstances in question.

CONCLUSION

When you use a will to record your final wishes, the executor must admit the will to probate. The probate process comes with some pitfalls.

Probate can be quite time-consuming, and there are considerable expenses that typically pile up during the probate process. Probate is also a public proceeding, and it strips your family of privacy.

You do not have to use a will to facilitate the transfer of your resources. There are other vehicles of asset transfer that can be utilized that would facilitate probate avoidance. To explore your options in this regard, schedule a consultation with a licensed estate planning attorney.

REFERENCES

Nolo

<http://www.nolo.com/legal-encyclopedia/free-books/avoid-probate-book/chapter0-4.html>

Legal Dictionary

<http://legal-dictionary.thefreedictionary.com/probate>

About the Author

Barry D. Horowitz

Barry D. Horowitz is a founding partner in the law firm of Nirenstein, Horowitz & Associates, P.C. He received his diploma from the Loomis Chaffee School and his Bachelor of Arts from Bennington College, where he dual majored in philosophy and music.



Mr. Horowitz was awarded his Juris Doctor degree with honors from the University of Connecticut School of Law. While attending law school, Mr. Horowitz received the American Jurisprudence Award in Legal Ethics and the Nathan Burkan Award.

After graduation from law school, Mr. Horowitz continued his legal education at New York University School of Law where he received a Post Doctorate Law Degree in Taxation. He has also recently received a national achievement award.

Mr. Horowitz is admitted to practice before all the state courts in the State of Connecticut and the United States District Court. He is a member of the Hartford County Bar Association, a charter member of the American Academy of Estate Planning Attorneys, and has recently received the American Academy Award. Mr. Horowitz is also an active member of the Connecticut Bar Association where he is a member of the Elder Law Section, the Estate Planning and Probate Section, and the Professional Ethics Committee. Mr. Horowitz practices exclusively in the area of Estate Planning where he has earned a reputation as a dynamic and entertaining speaker. He also has recently published a book entitled "Guiding Those Left Behind in Connecticut."

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