Fidelity National Title

Understanding Probate

EVERYONE HAS A WILL OR PLAN, WHETHER CREATED OR BY DEFAULT. EVEN IF YOU HAVE NOT MADE OUT A WILL OR A TRUST, YOU STILL HAVE A PLAN – A PLAN DICTATED BY THE LAWS OF THE STATE WHERE YOU RESIDE UPON YOUR DEATH. MAKING A WILL IS NOT A WAY TO AVOID "PROBATE", THE COURT PROCEDURE THAT CHANGES THE LEGAL OWNERSHIP OF YOUR PROPERTY AFTER YOUR DEATH. PROBATE MAKES SURE IT IS YOUR LAST VALID WILL, APPOINTS THE EXECUTOR NAMED IN YOUR WILL AND SUPERVISES THE EXECUTOR'S WORK. YOU CAN DO SEVERAL THINGS NOW THAT CAN HELP YOUR EXECUTOR AND FAMILY LATER, HOPEFULLY MUCH LATER ON.

I AM IN POSSESSION OF A WILL THAT DISTRIBUTES THE DECEDENT'S ESTATE TO ME, ISN'T THIS ALL I NEED?

No. The will must be admitted to probate and the estate of the decedent must be "probated."

WHAT DOES "PROBATE" ACTUALLY MEAN?

Generally, probate is a court proceeding that administers the estate of an individual.

WHAT IS THE PURPOSE OF "ESTATE ADMINISTRATION"?

1. Generally, there are five purposes, many of which have subsets to them:
2. To determine that the decedent is in fact dead,
3. To establish the validity of the will,
4. To identify the heirs and devisees of the decedent,
5. To settle any claims that creditors may have against the estate of the decedent, and
6. To distribute the property.

WHO IS THE PUBLIC ADMINISTRATOR?

Generally speaking, a public administrator is a person or entity appointed by the State to act when there is no will or relatives.

WHAT IS THE DIFFERENCE BETWEEN "TESTATE" AND "INTESTATE"?

When one is said to have died "Testate," it means he or she died leaving a will. If one is said to have died "Intestate," it means he or she died without leaving a will.

WHAT IS THE DIFFERENCE BETWEEN AN EXECUTOR AND AN ADMINISTRATOR?

An "executor" carries out the directions and requests set forth in the decedent's will. An "administrator" is appointed by the court to manage the estate of a decedent who dies intestate.

WHILE REAL PROPERTY IS "IN PROBATE" CAN IT BE SOLD?

Yes. Without getting into too much detail it can be sold either at private sale in which the executor of the estate negotiates a transaction with a buyer or at public sale in which the property is sold at public auction.

IF THERE IS NO WILL, HOW IS THE PROPERTY OF THE ESTATE DISTRIBUTED?

Sections 6400 through 6414 of the California Probate Code addresses intestate succession and the distributions. The method and manner of intestate distributions is quite complex and therefore one should specifically discuss intestate distributions with his or her legal advisor.

WHAT ARE THE STEPS TO A NORMAL UNCONTESTED PROBATE?

Very generally speaking they are as follows:

1. Death of the decedent.
2. The will is delivered to the executor or Court Clerk.
3. A petition is filed for the Probate of Will or Letters of Administration.
4. A hearing is held on the petition.
5. Letters of Administration are issued by the Court.
6. Notice to creditors is given.
7. Inventory and appraisement of the estate is made by an independent probate appraiser.
8. File Federal estate tax return. Return states "No Tax Due" or specifies an amount due.
9. Final accounting and petition for distribution.
10. Final decree of distribution.
11. Discharge of personal representative.

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