

What's Probate and Should I Care?

"Probate" is one of those words that we all have heard, yet few of us really know what it means. We know it has something to do with dying, but that's about it. When an individual dies owning assets, there is a process to change the title from the (now deceased) owner, to the new owner. This process is called "probate." The new owner to whom the assets are passed might be a creditor, a beneficiary under a Will, or (if the decedent dies without a Will) a beneficiary from a slate of "intestate heirs" set forth under the laws of the state in which the decedent lived at the time of his or her death. Many people think that a Will avoids probate. Unfortunately, this is not the case. A Will simply avoids the assets going to the slate of intestate heirs selected by your state and instead passes to the beneficiaries that you designate.

The complexity, cost, and time for probate varies substantially from state to state. Unfortunately, anywhere you own real property you must have a probate. So, even if your state's probate process is simpler than others, you may have assets in a different state that has a more difficult probate process. In a national survey conducted by the American Academy of Estate Planning Attorneys, probate fees were estimated to average between 1% and 2% of assets. The probate process typically takes about a year, sometimes more, sometimes less. In some instances, a probate can remain open for years due to unforeseen circumstances. For example, in *Kravitz v. Levy*, the probate remained open for almost 40 years because the executor did not have the probate court close the estate. There was some issue as to whether final distributions had actually been made. In other cases, litigation can keep a probate estate open.

The good news is that the probate process is voluntary. That is to say, if you want to avoid probate, you can simply not own assets in your name at death. That doesn't mean you have to be penniless! You can put your assets into a legal entity called a Revocable Living Trust. Since the assets are not in your name individually, they do not have to go through the probate process.

More advanced types of Living Trusts offer more than just probate avoidance. They offer a holistic approach to estate planning, called Legacy Wealth Planning. Legacy Wealth Planning focuses not just on the wealth to be left behind, but also on the continuity of your family's values, and protecting both those assets and values from the outside world.

If you are interested in scheduling an appointment to meet with Mr. Deason, please call Mary at 783-4575.

Deason Law Firm
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Member of NAELA:
National Association of
Elder Law Attorneys



Caregiver Contracts and the Caretaker Child Exemption

Millions of Americans are currently caring for an elderly family member at home, without receiving compensation. Depending on the circumstances, however, it may be beneficial for both parties to enter into a care contract, wherein the caregiver accepts payment for the care they are providing, and formally assumes responsibility for that care.

For example, if your loved one reaches the point where nursing home placement is the only option, a large portion of their money will be considered available to pay for their care, and they will not be eligible for Medicaid assistance until most of their assets have been depleted. Certainly, the care you provided while they remained at home was just as valuable to them as the care that will be provided at the nursing home. With a care contract in place, they can pay their caregiver, and every penny spent will count towards the "Medicaid spend-down" should they apply for benefits.

Having a care contract in place also ensures Medicaid will not impose penalties on the money received by the caregiver. Sometimes an elderly person will randomly give sums of money to their caregiver, but without a contract in place, Medicaid will assume the money transferred is a "gift," and will impose penalties resulting in a period of ineligibility.

Call our office at 783-4575 to schedule a free 15-minute Medicaid consultation with Robert Michael Way, Esq.

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- Get information about when a loved one passes away;
- Find out about business planning (formation of business entities);
- Get Elder Law & Medicaid Information; and much, much more...



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This information is for general purposes only and does not constitute legal advice.

Correction: From our October newsletter

AHCCCS must be named as the beneficiary of the annuity and receive only an amount equal to the amount ALTCS paid toward long-term care. The children would inherit the remaining expected payouts. If married, a spouse can be the beneficiary but AHCCCS must be named as the contingent beneficiary.

At the Deason Law Firm, you'll find a staff that is experienced in the areas of probate, elder and trust law. Their mission is to assist people who are concerned about protecting their families from the devastating legal and financial impacts of disability and death. Estate Planning... It's What We Do!

Attend this FREE seminar and learn:

- What is Living Probate?
- What is Death Probate?
- What are Death Taxes?
- Is a Will enough?
- What can proper estate planning do for you?

Upcoming Seminar:

Thursday, December 6th
9:30am or 6:30pm

*Yuma Civic & Convention Center (East Wing)
1440 Desert Hills Drive*

Reservations Requested

Please reserve your seats with Mary at: 783-4575.

This is a complimentary newsletter. If you are **NOT** interested in receiving this information in the future, please contact Mary at 783-4575.

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Estate Planning News: elderlawtoday

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