

Overview of Estate Administration Steps

Probating a Will and Administering an Estate



The Need for Probate

- Probating a will
 - Proving or establishing before the probate court that the document being offered for official recognition as the will of the decedent is in fact genuine
- Administering an estate
 - Settling and distributing the estate of a deceased person



The Need for Probate

- Protection of decedent
 - First determine if there is a will
 - If there is a will, turn over to probate court in the county in which decedent was domiciled
 - Specific time limit, usually 30 days
 - Failure to give will to probate court may be criminal offense



The Need for Probate

- Protection of heirs
 - Heirs: all persons who inherit property from decedent's estate, whether testate or intestate
 - Heirs at Law: persons entitled to inherit from someone under the law of intestate succession
- Protection of property
 - File inventory of estate with court
- Establishing title



First Meeting with Client

- First meeting
 - If there is a will, determine whether personal representative is named in will
 - If there is no will, determine who should be personal representative
 - Make list of all living and deceased heirs, including full legal names and addresses
 - Make plan for keeping family informed



First Meeting with Client

- First meeting
 - Attorney explains probate process to family
 - Determine if any assets require immediate attention
 - Paralegal records pertinent information gathered from family



First Meeting with Client

- Decedent information gathered from family
 - Bank accounts
 - Real estate
 - Stocks and bonds
 - Insurance policies
 - Income tax returns
 - Gift tax returns



First Meeting with Client

- Decedent information gathered from family
 - Debts
 - Pension and profit sharing plans
 - Estate or trust
 - Any additional information regarding financial matters of decedent



Formal Probate Proceedings

- Formal proceedings
 - Also known as probate in solemn form
 - Conducted before judge with notice to interested persons



Formal Probate Proceedings

- Steps involved in formal probate proceedings
 - File petition with court
 - Give notice to interested parties
 - In testate estate, prove the will
 - Personal representative gives bond, unless waived
 - Court issues letters
 - File inventory



Formal Probate Proceedings

- Steps involved in formal probate proceedings
 - Give creditors notice and deadline for making claims
 - Pay debts, taxes, expenses
 - Make distribution to beneficiaries
 - File account with court



Formal Probate Proceedings

- Supervised administration
 - Under continued surveillance of court
- Unsupervised administration
 - Begins formally but becomes less supervised by court once personal representative is appointed



Formal Probate Proceedings

- Petition for probate or administration
 - Petition for probate: testate cases
 - Petition for administration: intestate cases
- Petition for administration with the will annexed
 - File if someone other than the person nominated as personal representative is the petitioner seeking the appointment



Formal Probate Proceedings

- Petition to open safe-deposit box
 - Two occasions when court may be petitioned to open safe-deposit box
 - Will cannot be located and it is suspected it might be in safe-deposit box
 - Decedent shared box with another person, and that person needs something from box



Formal Probate Proceedings

- Contesting a will
 - Appearance
 - File affidavit of objection or caveat, depending on state law
 - Grounds:
 - Will not properly executed
 - Testator not of sound mind
 - Fraud



Formal Probate Proceedings

- Priority of decedent's debts
 - Administration expenses
 - Funeral expenses
 - Debts and taxes with preference under federal law
 - Medical expenses from last illness of decedent
 - Debts and taxes with preference under state law
 - All other claims



Formal Probate Proceedings

- Sale of real property
 - Title to real property owned by decedent vests in heirs immediately upon death
 - Title to personal property vests in the personal representative, who then distributes the property



Informal Probate Proceedings

- Informal proceedings
 - Also known as independent probate
 - May be followed in most states when someone dies owning assets below a specific value or when there is no reason to have the court supervise all aspects of the estate's settlement



Ancillary Administration

- Administration of an estate in a state other than where the decedent was domiciled but where the decedent owns property