

GOLDEN BULLETS

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THOUGHT YOU'D LIKE TO SEE THIS!

PROBATE: THINGS YOU SHOULD KNOW!

Probate, in its most restrictive sense is the process of “proving” that a decedent’s will is valid and that it is the last will that person wrote. Viewed in a broader scope, “probate” refers to the entire process of the court administration of an estate, from the initial probate of the will to the distribution of estate assets, and the official discharge of your personal representative.

Here are a few of the many things you should know:

Q. How Long is the Process of Probate?

A. Where the estate is relatively small and uncomplicated, the probate of a will at the local courthouse may take 15 or 20 minutes. If the estate is large and/or there are complicating issues, the probate of a will can require a lawyer, advance notice to heirs, court hearing(s), and perhaps months (and in extreme cases years) to complete the process.

Q. In a Nutshell, what is the Role of an Estate’s Personal Representative?

A. When a person dies, property owned in the decedent’s name must be assembled. Next, debts, taxes, and expenses of the decedent must be paid. Whatever is left must then be distributed to the individuals or charities entitled to that property according to the decedent’s will. If there is no valid will, the distribution of any remaining property is determined by state intestacy (without a will, descent and distribution) laws. The estate’s personal representative (sometimes referred to as an executor) is legally responsible—and legally authorized—to collect the decedent’s assets, pay appropriate death taxes, debts, and expenses, and distribute any assets remaining.

Q. What is the legal significance of the term “domicile?”

A. One of the first decisions that must be made when a person dies is, “Where was that person’s domicile?” The answer is of great importance since state laws, and taxes, can vary widely. Generally, a person’s domicile is the state and county where his permanent and principal home is. Some courts have defined domicile as “the place to which a person always intends to return.” Domicile is often confused with residence. The distinction is this: A person’s residence is where he happens to have lived at the time of his death. Domicile implies not only a person’s presence, but more importantly, the person’s intention to make a given location his permanent home.

Q. What is Meant by “Letters of Authority” or “Letters Testamentary?”

A. When a person dies, his will is recorded in the Probate Court or office of the local register of wills of the county in which he/she was domiciled. The register of wills (or the appropriate court of jurisdiction) will issue to the named personal representative either “letters of authority”, “letters testamentary” or “letters of administration”. These “letters” are proof of the legal authority of the personal representative to collect and deal with the assets of the decedent’s estate.

And as always, please feel free to call to discuss financial matters of importance to you and yours!

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“Golden Bullets” is provided as a source of general information about current developments in the practice of estate planning and related topics. If you have questions regarding this issue or estate planning in general, please contact me prior to taking action.

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