

**PROBATE AND TRUST ADMINISTRATION**

**FREQUENTLY ASKED QUESTIONS**

**1. What is Probate?**

Probate is the legal procedure a family must go through when a person passes away with assets in his/her name only.

**2. Why is Probate necessary?**

The main function of probate is to transfer the title of the decedent's property to his or her heirs and/or beneficiaries. If there is no property to transfer, there is usually no need for probate.

Another purpose of probate procedure is to provide for the payment of outstanding debts and taxes of the estate, for setting a deadline for creditors to file claims (thus foreclosing any old or unpaid creditors from haunting heirs or beneficiaries) and for the distribution of the remainder of the estate's property to ones' rightful heirs or beneficiaries.

**3. What assets are subject to probate administration?**

All assets owned by you in your name alone, not in joint tenancy, in trust or with a beneficiary designation, are subject to probate administration when you die.

Real and personal property owned as a joint tenant pass to the surviving joint owners without going through the probate process.

Other types of assets, such as a life insurance policy or annuity payable directly to a named living beneficiary avoid the probate procedure. Money from IRAs, Keoghs, and 401(k) accounts transfer automatically, outside probate, to the persons named as beneficiaries. Bank accounts that are set up as payable-on-death account with a named beneficiary also pass to that beneficiary without probate.

If a Living Trust holds legal title to some of your property, then that also passes to the beneficiaries without probate. (The Trust is a legal entity which survives you after your death.)

**4. Where does probate occur?**

Your will is probated in the Court of the county and state in which you lived at the time of your death. If you own any property in another state, another probate proceeding may be required in that state and county.

**5. What if there is no will?**

If a person dies without a will, he or she will be considered to have died intestate. In this case, the probate court will appoint a personal representative and the assets remaining after any creditors have been paid will be distributed according to the laws of his or her state.

**6. Why avoid Probate?**

Clients who choose to avoid probate to secure their privacy and to reduce the expenses (4% - 10% of the estate) and time delays (6 – 12 months) associated with probate.

**7. Will my family have to pay “Death Taxes”?**

Only if your assets exceed the then in effect Federal Estate Tax Exemption (\$2,000,000.00 in 2007, \$2,000,000.00 in 2008, \$3,500,000 in 2009).

**8. Is it possible to avoid or reduce the “Death Tax”?**

Yes – by making gifts and/or establishing qualifying trusts.

**9. How can the Jordan-Balkema Elder Law Center assist you?**

The attorneys of the Jordan-Balkema Elder Law Center have provided assistance to hundreds of families who have required the legal knowledge necessary to manage the probate procedure maze. We will make the probate process as easy as possible by giving detailed explanations and by promptly addressing any concerns you may have.

**Jordan Balkema Elder Law Center, PLLC**

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