

Pitfalls of Probate

Have you ever wondered what will happen to your estate after you die? How long will it take for your loved ones to receive the estate that you have left them? Will each receive what you would like them to have? If you are like most people, your estate will go through a lengthy probate process.

What Is Probate?

Probate consists of the court proceedings that conclude all your legal and financial matters after your death. The probate court distributes your estate according to your wishes — if you left a valid will — and acts as a neutral forum in which to settle any disputes that may arise over your estate and see that your creditors get paid.

The probate process we have today is based largely on the medieval English legal system. In feudal times, only powerful families owned land. These large estates were normally passed down from father to son. This transfer was naturally a matter of great political consequence, and thus of great interest to the king. So the proceedings were made formal, complicated, and costly.

Over the years, while much of the legal system has been made easier and more accessible, the probate process has remained lengthy and complex. There are a number of problems with the probate process that make it worth avoiding. Each involves something that you lose in probate.

Time

The probate process can take a great deal of time. The settlement time frame for many estates is from nine months to two years. Complex or contested estates can take much longer. With few exceptions, your heirs will have to wait until probate is concluded to receive the bulk of their inheritance.

Cost

Of course, all the probate court's "help" with your affairs comes at a price. Probate can be very expensive. Depending on the state, probate and administrative fees can consume between three and eight percent of your estate. That percentage is calculated before any deductions or liens are taken out.

Lack of Privacy

The proceedings of the probate courts are a matter of public record. Anyone with the time and inclination can go to the chancery clerk's office, usually at the county courthouse, and find out exactly how much you left to each heir and to whom you owed money. This leaves your heirs with little or no privacy.

There Are Answers

Fortunately, there are strategies you can use to avoid the probate process altogether. A living trust may enable you to pass your estate on to your heirs without ever going through probate at all.

Regrettably, some people choose methods that give assets to heirs immediately upon death, but without any protection. Examples are beneficiary designations, "payable on death" assets, and joint tenancy ownership. Each of these can lead to loss of the entire asset to the creditors of the heir. This is readily controlled and avoided with a well written living trust estate plan.

Proper estate planning could enable you to pass your estate to your loved ones privately, without undue delay or expense, and with protection. It is all up to you. Good Legal Advice from a Probate Attorney is essential.