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Probate in Georgia: Take it or Leave it?

Probate is the process by which an individual's Last Will and Testament is "proved" to be valid, the creditors are paid, and the assets are distributed to the beneficiaries as designated in the Will.

To be valid, the Will must be properly drafted and must have been voluntarily signed by a competent individual. The personal representative (or executor) who was appointed in the Will collects the assets, sells property if necessary, pays the bills, and then distributes the remaining assets to the individuals designated in the Will. If the court requirements have been fulfilled and all of the estate business has been completed, an estate in Georgia can be closed six months after it was opened. Unlike probate in some states, the probate process in Georgia is not necessarily expensive, time consuming, or complicated.

A similar procedure, called "administration," takes place when an individual dies owning assets but without a valid Will. However, the administration of an estate can be more expensive and time consuming than probate, and the individual's assets will be distributed to the individual's heirs as provided under Georgia law — which may not be what that person wanted or expected.

But not all assets must go through probate or administration. For example, real estate or bank or stock accounts that are held with another individual as "joint tenants with right of survivorship" are not subject to probate, but rather become the property of the surviving joint tenant. Similarly, when an individual is named as beneficiary of a life insurance policy or IRA, the proceeds go directly to that person and do not pass through probate.

Beware though that holding assets as joint tenants is not ideal for everyone. First, this allows for probate to be avoided only upon the death of the first owner; upon the death of the survivor the assets will go through probate. In addition, there are a number of problems associated with joint ownership (such as claims by creditors and tax issues) which are beyond the scope of this article.

There is another way to circumvent the probate process. A tactic that is gaining popularity is the revocable living trust. This is a trust that an individual establishes and into which he transfers his assets while he is alive (hence the term “living” trust). The individual then acts as the trustee and maintains complete control over the assets during his lifetime. At his death, the successor trustee takes over and manages or distributes the assets in accordance with the direction of the document that created the trust, thus avoiding the need for probate.

Many individuals try to avoid probate entirely. They cite experiences of family and friends who tell disturbing stories of excessive costs, fees, paperwork, publicity, delays and other frustrations. How about you? Should you seek to avoid probate? The answer is a definite maybe. Some points to consider when making that decision include the following:

- The size and complexity of your estate.
- Whether you own real estate in more than one state.
- Whether there are prior marriages, or children from prior marriages.
- Your desire for privacy.
- The state of organization of your affairs.
- The skills of your potential personal representative.
- The needs and abilities of your designated beneficiaries.

No one strategy is right for every individual. A plan that is tailored to meet your objectives and goals is best designed jointly by you and your trusted legal advisor. Our best advise? Start planning now!

