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'Money \$ense': What to know about probate

By Marc Hebert
Aug 7, 2021

Sometimes you will read about someone's will needing to go through probate or hear that someone famous has died without a will. What does this really mean?

A will is a legal document that spells out the distribution of your assets and how your children will be cared for at your death. Probate is a process used to prove a decedent's will is valid and to supervise the handling of his or her estate. Probate involves a specialized court skilled in handling these situations. The process will depend on the state in which the process is taking place. Someone petitions the court to start the probate process and submits a will.



As we mentioned, some people die without a will. In this case, there are no legal instructions about the distribution of your assets. Nevertheless, your assets will be distributed. In these cases, the state will step in and dictate where your property will go. In doing so, the state will follow its intestacy laws, which outline predetermined patterns of how property is distributed. Due to the fact each state has its own intestacy laws, the distribution patterns vary. Most states allow for property to go to the spouse and children. However, this may not be the distribution pattern you had in mind.

Probate may cause other things to happen that may not be what you had in mind either. This could include who takes charge and settles your estate and who takes care of your minor children. The state will try to do what's best, but this may not equate to what you would have actually wanted.

All of this leads to the importance of having a will. Depending on the situation, probate can take a few months or even a few years to complete. It can take longer if litigation occurs. It can be time consuming. This means assets may not be distributed to your heirs in a timely manner. Assets can lose value or heirs may suffer due to lack of financial support.

The probate process can also be costly. Costs could involve court fees, legal notices that must be published, executor fees and bond premiums. It could also involve appraisal fees and attorney expenses. These cost be as little as a few hundred dollars or in the thousands of dollars for large or complex estates. Cost could be even more if there is litigation. Who pays this expense? Your estate does, and this is money your heirs do not receive.

One other point to consider is the public nature of probate. Your will is a public document made so by the probate process. Anyone can see it, so your affairs are no longer private.

With these three drawbacks to the probate process — time, money and its public nature — are there any good reasons to undertake such a process?

Surprisingly, there are some instances where it can make sense. One involves multiple wills. Determining which one is the true will can be problematic and probate will decide the answer.

If the will is confusing or complex, probate could provide the clarity needed to distribute the estate.

Sometimes, beneficiaries will disagree on how an estate should be handled. They may actually get in the way of the process. The probate court will deal with these issues.

If the estate has no money and lots of debt, the probate court can sort through the situation for all involved.

Since each circumstance is different, consider speaking with an estate planning attorney to have your will and other estate planning documents drafted and reviewed. Keep in mind that this isn't really a once and done situation either. It is wise to periodically review your estate planning documents to see if they reflect your current wishes.

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