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What Probate is All About

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Probate book in the Court at Winchester (Photo credit: lovestruck.)

The word “probate” is derived from a Latin word meaning to test or to prove. The purpose of the probate system is to insure that the property owned by a deceased person goes to the people he intended it to go to. The procedures of probate insure that the document submitted as the decedent’s will is valid, and was signed when the decedent understood what he was doing when he was under no coercion, or duress.

If there is no will, the decedent’s property passes by the laws of descent and distribution of the state of residence. This means that the property will go to the nearest relatives.

The first purpose of the probate system is to insure that the persons entitled to receive the decedent’s property are identified and that the property is protected. A second purpose is to see that creditor’s of the decedent are given the opportunity to prove their claims and be paid.

When a person dies owning assets in his sole name, some action must be taken to show who is entitled to receive the assets and how the assets are transferred. This involves filing a petition requesting appointment of a personal representative for the purpose of identifying and protecting the assets and determining who is entitled to them. When a personal representative is appointed by the probate court, his first step will be to publish a Notice of Administration and a Notice to Creditors. These notices advise creditors and interested parties that a person has died, and that if any claim is being made against the person’s estate it must be filed with the probate court within three months from the date of first publication of the notice. Any claims not filed within the three month period, regardless of validity will be thereafter barred and not paid.

When the three month “creditors” period has passed, the personal representative will pay the claims that have been properly filed and proved. The personal representative has the responsibility to file an inventory of the assets he is accountable for with the probate court within 60 days after the date of his appointment. After filing the inventory and paying the bills, the personal representative is ready to distribute the estate.

A principal factor causing the delay in completing settlement of an estate is the requirement to file a federal estate tax



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return. In 2012 filing a Federal Estate Tax return is required where the property in which the decedent had an interest exceeds \$5,000,000 in value.

In order to close an estate where a federal estate tax return is required, the personal representative must prepare and file the return and pay any tax which may be due and thereafter obtain a release from the Internal Revenue Service.

Reviewing the time requirements, the relevant probate time periods are:

1. *Creditors period: 3 months after date of death.*
2. *File Federal Estate Tax Return, 9 months after date of death.*
3. *Obtain tax clearance, 6 months after date of filing estate tax return.*
4. *Total time to settle [taxable estate], 18 months or more after date of death.*
5. *Total time to settle non-taxable estate, 3-4 months after date of death.*
6. *Discharge when bills are paid, taxes filed and paid and assets distributed.*
7. *Total time to settle (taxable estate) 18 – 24 months after date of death.*
8. *Total time to settle non-taxable estate 4 – 6 months after date of death, if no problems.*

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