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**WHAT PROBATE IS ALL ABOUT**

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 to whom it was intended. The procedures of probate insure that the document submitted as the decedent’s Will is valid, and was signed under no coercion, or duress. If these facts are supported, then distribution in accord with the terms of the Will takes place.

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 blood 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 assets are 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 persons die owning assets in their sole name, some action must be taken to show who is entitled to receive the assets. This involves filing a Petition by some interested person 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, the first step is to send a Notice of Administration to all named parties. Next, a Notice to Creditors is published. These procedures advise creditors and interested parties that the person has died and that if any claim is being made against the 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 thereafter be barred and not paid.

When the three-month “creditors” period has passed, the Personal Representative will pay the claims that have been properly filed. The Personal Representative has the responsibility to file an inventory of the assets for which he is accountable with the probate court within 60 days after the date of his appointment. After filing the inventory, allowing the creditor period to run 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 return. This is required where the property in which the decedent had an interest exceeds \$2 million 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. This is usually not issued by the IRS until some 12 months or more after the estate tax return is filed. This problem of obtaining a tax release is not related to the probate of the estate, and may be required where all property is joint or consists of life insurance or pension distributions where there is no probate.

Reviewing the time requirements, the relevant time periods are :

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| 1. Letters of Administration               | issued upon filing Petition for Administration and other required papers |
| 2. Inventory                               | 60 days after Letters of Administration are issued                       |
| 3. Creditors period                        | 90 days after first Notice to Creditors published                        |
| 4. File Federal Estate Tax Return Form 706 | 9 months after date of death   |
| 5. Obtain Tax Clearance                    | 12 months after date of filing Federal Estate Tax Return Form 706        |
| 6. Discharge                               | when bills are paid, taxes filed and paid and assets distributed         |
| 8. Total time to settle (taxable estate)   | 18 - 24 months after date of death                                       |
| 9. Total time to settle non-taxable estate | 4 - 6 months after date of death, if no problems                         |