

## PROBATE - THE NUTS AND BOLTS

By Kathleen Kienitz, Esq.

Probate is the process by which the property of a decedent passes to that person's heirs. This, however, is not always necessary. Property held in joint tenancy like real estate and many bank accounts automatically passes to the surviving joint tenant. This is the most common form of ownership between married couples, and for that reason, probate is often not necessary for a couple upon the death of the first spouse. Probate is also not necessary for assets that have a beneficiary or payable on death designation. Life insurance and IRA accounts typically have beneficiary designations and will be paid to the beneficiary upon completion of a claim by the beneficiary and proof of death. Such assets are referred to as non-probate assets.

One's last will and testament is used to guide the probate process by stating to whom the probate assets are to pass and naming a personal representative to carry out this task. Often confusing is the fact that the will only directs the disposition of the probate assets. It will have no bearing on the disposition of non-probate assets. If there is no will, then one must look to Maine's Probate Code which lists who the legal heirs are and who has priority to be appointed personal representative. In both cases, there is some logic and common sense involved. The legal heirs are determined by class, with the spouse and children being first in line, and if none, then parents, then siblings, etc. down the blood line. Priority for appointment of personal representative is similar.

Contrary to advice of some popular nationally known experts in financial planning, probate is not the quagmire to be avoided at all costs that some might have one believe. Each state has its own probate laws which in some states are much more convoluted than in Maine. Maine adopted the Uniform Probate Code many years ago, which greatly streamlined and simplified the process. Unless an estate is contested, once the will and some requisite forms are filed, the court will issue Letters of Authority to the personal representative without their having ever had to set foot in the court. It is possible for a personal representative to get authority from the probate court to proceed with accessing the estate within weeks of death and to close the estate within months.

Still, there are people who for various reasons do not want their loved ones to have to deal with the probate process. In addition to joint accounts and beneficiary designations, living trusts are another means of avoiding probate. This, however, requires the setting up of a trust while living and also taking the step of transferring one's assets into the trust, a process which is considerably more complex and expensive than making a will.

*Kathleen Kienitz is a certified elder law attorney who practices elder law in Lewiston, Maine. Article last updated June, 2019. Laws and regulations are subject to change. The information presented here is for general use and does not constitute legal advice. If you have legal issues, you are encouraged to consult an attorney to obtain legal advice that is relevant to your specific situation.*

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