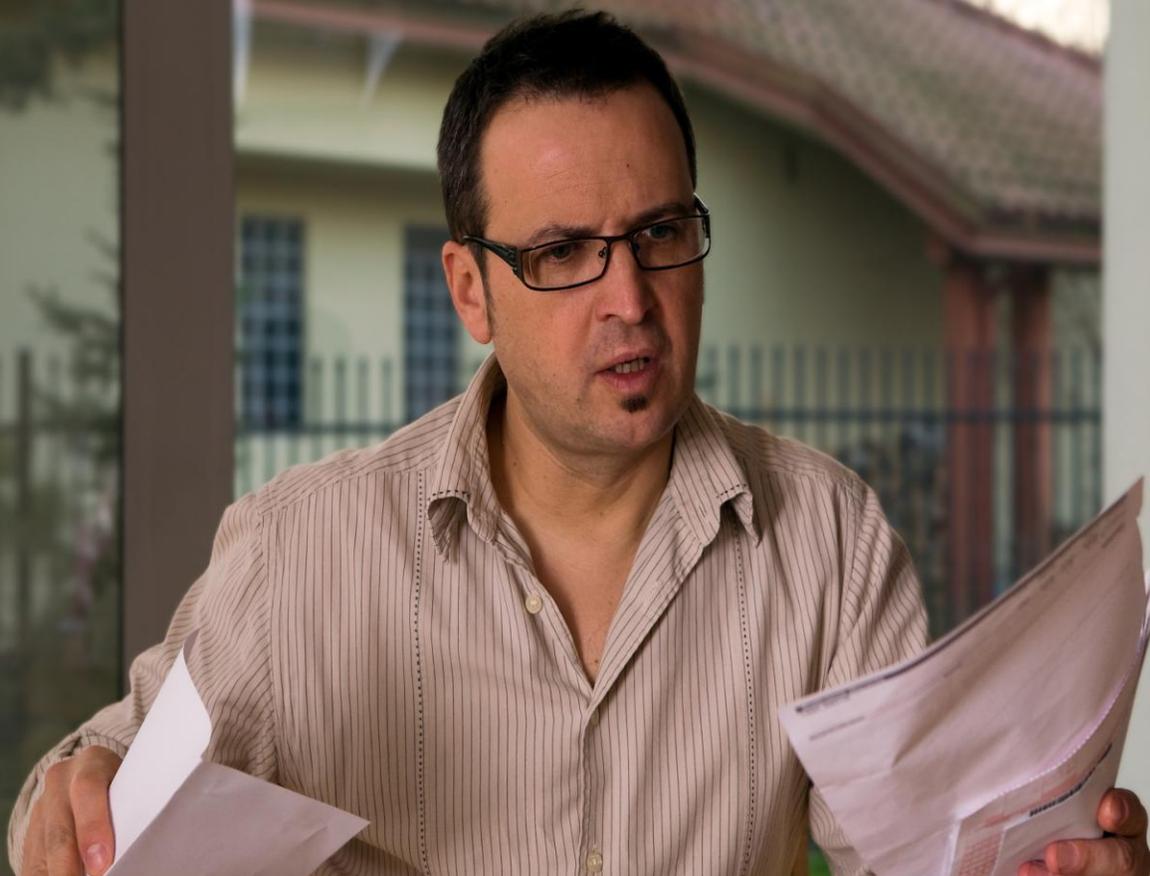


WHAT ARE THE DRAWBACKS OF PROBATE?

“There are some drawbacks that go along with the probate process. We will look at some of them in this paper.”



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You should have a basic understanding of probate when you are engaged in your estate planning efforts. This is a legal process that comes into play if you do not take steps to facilitate asset transfers outside of probate.

If you pass away while in direct and sole personal possession of property, the property becomes probate property at first. This would be the situation if you were to use a last will to state your wishes regarding the distribution of your personal property.

When you create a last will, you nominate an executor. This is the estate administrator.

The executor must admit the will to probate unless the estate is very modest. The court will determine the validity of the will and supervise the administration of the estate.

There are some drawbacks that go along with the probate process. We will look at some of them in this paper.

PUBLIC ACCESS

A probate case is a matter of public record, so probate records are available to the general public. This means that anyone and everyone can find out how you planned your estate. Larger counties even allow access via computers.

Estate planning matters can be sensitive, so this loss of privacy is disconcerting to many people.

EXPENSES

You probably want your family to get as much as possible after you pass away. Unfortunately, inheritances are reduced when probate enters the picture, because innumerable costs can accumulate during the process.

The executor and probate attorney are entitled to payment for their time and effort. There are also filing fees that the court will charge, and there can be appraisal and liquidation expenses.



Because probate is a legal process, the executor will often bring in a probate attorney to assist. Final taxes and other debts must be paid during probate, so an accountant may be retained as well.

When you factor in miscellaneous expenses, significant assets of the estate can be consumed during probate.

THE WAITING GAME

The process of probate does not run its course overnight. There are variables that factor into the equation, but a simple and straightforward case will take close to a year in most California counties.

If the case is especially complicated, the probate process can take multiple years.

Without a special court order, the executor cannot distribute inheritances to the heirs while the process is underway. This time lag can be an inconvenience at best, and at worst, it can cost hardships for people who were depending on the decedent for support.

AVOIDING PROBATE

If you want to avoid these drawbacks, it is possible to arrange for asset transfers outside of the process of



probate. There are a number of different ways that you can go about this, and the optimal course of action will vary depending on the circumstances. One very commonly utilized probate avoidance tool is the revocable living trust. When you properly create and maintain a revocable living trust, you don't have to worry about losing control of the assets while you are living. You can act as the trustee and the beneficiary at first, and you can actually revoke the trust entirely if you choose to do so.

When you create the trust agreement, you name a successor trustee and successor beneficiaries to take over these roles when the time is appropriate. After you pass away, the successor trustee will follow your instructions and distribute assets to the successor beneficiaries outside of probate.

There are other types of trusts that would facilitate probate avoidance while simultaneously providing other benefits. Your objectives would dictate the appropriate choice.

SUMMARY

Probate is the legal process of estate administration. During probate the court makes sure that the will is valid, and the administration of the estate takes place under court supervision.

This process provides certain protections, but it also comes with significant drawbacks. Probate can be time-consuming and expensive. It is a public proceeding, and it allows the general public to find out how you distributed your assets.

You can avoid probate if you take the right steps. Revocable living trusts are popular among people who would like to avoid probate, but there are other options.

If you would like to learn more about probate and probate avoidance, schedule a consultation with an experienced and qualified estate planning attorney.

REFERENCES

Forbes

<http://www.forbes.com/sites/janetnovack/2012/10/14/the-forbes-guide-to-estate-planning/>

Nolo

<http://www.nolo.com/legal-encyclopedia/free-books/avoid-probate-book/chapter0-4.html>

About the Author



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Timothy P. Murphy is an estate planning and elder law attorney whose practice emphasizes helping people to build, preserve and pass on their wealth. He works with his clients to accomplish their goals while avoiding unnecessary court proceedings and minimizing or eliminating exposure to death taxes. Mr. Murphy also assists families facing the myriad of problems associated with dealing with a loved one's declining health and rising needs for care. He has practiced law in the Sacramento area for 29 years, first with a large firm, and then with his own firm since 1987.

Tim has written a regular column on legal issues for Senior Magazine. He also was a regular featured guest on the Money Experts radio program heard locally on KFBK (AM 1530). Tim has been featured in the Sacramento Bee, Sacramento Business Journal, Sacramento Magazine, Comstock's Magazine and other publications on estate planning and related topics. He also assisted local Channel 3 (KCRA) in an investigative report on the trust mill problem in the Sacramento area and was featured on Channel 10 (KXTV) in its series on personal financial planning.

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