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Where There's A Will, There's Probate

Want the intimate details of Jacqueline Kennedy Onassis' life? You don't have to read the tabloids or the latest unauthorized biography. You can peruse the details of her finances and last wishes for her loved ones in the public records of the state of New York. And thousands have.

Can you imagine anything more ironic? The most private public figure of the 20th century, Mrs. Onassis went to great lengths to avoid the paparazzi's camera. And in the end, for what? Because she used a will to dispose of her assets, she ensured that details of her \$200 million estate and the terms of her final wishes would be made public.

WHY YOU DON'T WANT TO BE CAUGHT DEAD WITH A WILL

Even if celebrity status hasn't thrust you into the public eye, you can still learn from Mrs. Onassis' mistakes.

Throughout the centuries, property holders have used wills to convey their worldly goods to their loved ones, and a legal process called "probate" has developed to administer property disposed of by will. It's often a long, drawn-out process that seems to serve the needs of everyone. . . but your loved ones.

HOW PROBATE WORKS

Many Americans think that passing on their worldly goods should be a simple proposition: they write out their final wishes, and when they die, someone ensures that their wishes are carried out. Unfortunately, wills require probate, usually a complicated, bureaucratic process that can drown your heirs in a sea of red tape.

The process begins with the filing of your will and an application to the courts to begin probate. The court will either approve your choice of executor (the person who will oversee the disposition of your estate) that you may have named in your will, or will appoint someone else to act as your personal representative.

Your executor will then present your will to the court, publish notification of your death, and contact your creditors so that they make claims against your estate.

Someone will have to inventory your valuables, and appraisers may have to be hired to establish the values.

There is another troublesome aspect of probate. Your executor must adhere to rules that limit the executor's ability to buy, sell or take other action to preserve the value of your fluctuating investments, such as stocks, bonds and real estate.

At best, your heirs may be inconvenienced by their lack of access to and control over your assets during probate; at worst, they may endure financial hardship.

Before your heirs receive their inheritance from your estate, your creditors and estate taxes will be paid, your executor and attorney will receive their fees, and all court fees will have to be settled. Only after these expenses have been paid will your heirs divvy up what's left, often considerably less after probate than before.

At best, probate is a bureaucratic hassle. At worst, it exposes your heirs to the following problems:

THE PUBLIC EYE

We've already seen how probate can thrust your personal life into the unwelcome limelight. But invasion of privacy is a minor inconvenience compared to the more serious threat this publicity engenders.

Your probate proceedings will usually be published in a general circulation newspaper in your community. Con artists, creditors and those eager to exploit any financial weaknesses in an estate routinely review probate records. They pose a threat from which you'll want to shelter your loved ones. And you can't do that if your estate goes through the public probate process.

THE WAITING GAME

Probate takes time--months, or even years, during which your family may have precious little access to your assets.

PAYING THE PIPER AND THE REST OF THE BAND

A process this bureaucratic and time-consuming, with such a large cast of characters, exacts a considerable price. Everyone gets paid--the attorney, your executor, the appraisers, the courts, the taxing authorities and your creditors.

How much of your estate will remain for your heirs varies considerably. If yours is a complex estate, the expense of probate can seriously erode what's left for your loved ones. But having a simple estate and a well-drafted will doesn't protect you from probate's expenses.

Whether they get paid a flat fee or a fee based upon the value of your estate, the services of the attorney, executor and appraisers will reduce the assets your loved ones inherit.

Add in court costs, and your estate's value could be reduced by as much as 10 to 15 percent, or more. If you are married, you can expect your estate to go through probate twice, once after the death of each spouse, doubling the impact of all probate's expenses on the value of your estate.

DEATH, TAXES AND DEATH TAXES

Ben Franklin said it: nothing is certain but death and taxes. Estate taxes begin at 45 percent for the first dollar over \$2,000,000 and rise to a maximum of 55 percent for \$3 million estates and greater. In 2011, the exemption decreases to \$1,000,000.

The good news is that two tax breaks take some of the sting out of "death taxes." The unlimited marital deduction allows a married taxpayer to transfer his or her entire estate on to the surviving spouse, free of federal gift or estate taxes. However, this credit does not necessarily apply to state inheritance taxes.

The second tax break is the unified credit. The federal government provides a credit equal to the estate taxes due on the first \$2,000,000 of a taxpayer's estate. In effect, you can bequeath \$2,000,000 of your assets estate tax free if you are single. Married couples can bequeath a combined \$4,000,000 of assets estate tax free. This tax break is scheduled to decrease to \$1,000,000 per person in 2011. Only those who do their estate planning properly can take maximum advantage of estate tax breaks, and that requires more than a will.

Using simple wills, or dying without a will, exposes your estate to the greatest degree of taxation. But an estate plan that uses wise tax planning can save your heirs a considerable sum.

AVOIDING PROBATE

Is it any wonder that the only fans of probate are probate lawyers? Most Americans who know what probate entails try to avoid it at all costs.

By the way, if you're thinking you can spare your heirs the hassles of probate by dying intestate (without a will), forget it. Probate becomes more complicated, not less so, when you die intestate.

So, if you've decided that probate is the last thing you want to bequeath your loved ones, how do you avoid it?

THE SOLUTION: THE REVOCABLE LIVING TRUST

For many reasons, the revocable living trust is widely considered the most effective and versatile estate planning tool.

That's because a living trust avoids probate and the attendant publicity, delays and expenses.

With a living trust, you safeguard your privacy, dramatically expedite the disposition of

your estate, significantly reduce costs, and greatly diminish opportunities for spoilers to upset your plans. Living trusts also provide these additional benefits:

- ✓ You can use a living trust to take care of your physical and financial needs should you become disabled.
- ✓ A living trust, with tax planning, can help you eliminate or reduce estate taxes.
- ✓ A living trust gives you maximum control over the disposition of your assets.
- ✓ A living trust dramatically reduces the threat of "spoilers." As long as your living trust owns your assets, it protects them from your heirs' creditors, ex-spouses and predators.

A living trust will allow you to control your assets long after you're gone. That's especially important if you've left behind minor children or young adults who may need time to grow into their financial responsibilities.

HOW A LIVING TRUST WORKS

With a living trust, you retain complete control of your assets. You receive the income from your trust, sell assets, acquire new assets and do anything you need to with the property in your trust. You can also amend or revoke your trust at any time. In every practical sense, having a living trust is almost identical to owning all your property directly.

The difference occurs if you become incapacitated or when you die. Rather than being subjected to a conservatorship or guardianship, or languishing in probate, your property is quickly distributed according to the precise instructions written into your trust. Your successor trustee carries out your instructions. There's no need to obtain the approval of a court; there are no additional expenses; and no details of your living trust are made public.

These advantages are so important they bear repeating: with a living trust, your estate completely avoids the publicity, expense, delay and other disadvantages of probate.

YOUR FIRST STEP IN DESIGNING YOUR LIVING TRUST

Creating a living trust tailored to your unique needs, that reflects the laws in your state and delivers the greatest benefit to you and your family, requires expert help from an attorney who concentrates his or her practice on estate planning.

However, if you consult with an attorney who has built a practice around probate, don't be surprised if what you get is a will. Instead, look for an attorney who emphasizes living trust planning.

How well the attorney listens is an indication of how well he or she will be able to work with your family. It will be a comfort to them to rely upon a professional who was not only familiar with your wishes, but who also has the expertise and people skills to help them through what may be an emotionally difficult time.

Choose an attorney with whom you can feel comfortable sharing your hopes, dreams, and fears. Creating a living trust is an intensely personal experience. Your attorney should have the professionalism, tact and humanity to help you explore all these issues, and resolve them in a way that leaves you lasting peace of mind.

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About Morris, Hall & Kinghorn, P.L.L.C.

Attorneys Dan Morris, Tim Hall, Kevin Kinghorn, Lora Johnson, T.S. Rusty Rollins, Daniel R. Klein, Juan Pablo Zaragoza, John Yohe and Traci Smith are noted speakers on living trusts and estate planning. Their law practice is devoted exclusively to preserving wealth, and they are members of the American Academy of Estate Planning Attorneys. Their seminars on estate planning are said to be “informative, entertaining & easy to understand.”

If you would like a current schedule of seminars in your area or would like a consultation with an attorney, please call Morris, Hall & Kinghorn, P.L.L.C., Toll Free at 1-888-222-1328.

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The American Academy of Estate Planning Attorneys is a member organization serving the needs of attorneys committed to providing their clients with the best in estate planning. Through the Academy's comprehensive training and educational programs, it fosters excellence in estate planning among its members and helps them deliver the highest possible service to their clients.