

# **BAKER & STALZER**

Attorneys at Law

## **Probate**

### **What is Probate?**

Technically, probate is the official Court proceeding that determines the validity and authenticity of a deceased person's Will, and the official appointment of the Executor in charge of settling the estate. The term "probate" is also used to refer to the general process of gathering the assets of a deceased person, paying outstanding debts and distributing the remaining property to the appropriate beneficiaries.

### **Why Does a Court Have To Be Involved in Probate?**

The law requires a legal, Court process in order to ensure that the property of the deceased (real estate, furniture and furnishings, automobiles, stocks, bonds, cash and other property) passes to the proper persons according to the law.

### **Is Probate Required Even if I Have a Will?**

Yes. Having a Will does not avoid probate.

### **What If I Die Without a Will?**

Your estate still must be probated, and the Court will appoint an Administrator to settle your estate. Your property will pass according to a formula set by Georgia law, which may not match your personal choices.

### **Is There Any Way to Avoid Probate?**

Yes. If you have a very simple estate and are not subject to federal estate tax, then you may be able to avoid probate if all of your property is held jointly with another person, as joint tenants with right of survivorship. However, this approach does not work well for larger, more complex estates.

For estates that may be subject to estate tax, for situations where you want to leave money in trust for someone, or if you do not want to leave all of your property directly to the other person on your joint accounts, a better option would be to set up a Living Trust.

### **Should I Be Afraid of Probate?**

That depends. If you have a well-written Will and there are no disputes among the family or heirs, then the Court process in Georgia may not be a problem, and the time and expense involved is lower than in many other states. Still, it generally takes at least a year to complete the probate of an estate.

The probate process is likely to be costly and to take substantially longer if the deceased died without a Will, if the terms of the Will are unclear, or if there are any disputes among the family or heirs, which may lead to a Will contest or lawsuit. These situations can be quite expensive, and can cause lengthy delays in the probate settlement process. To avoid these problems, you may want to consider placing your assets in a Living Trust.

### **What Is a Living Trust?**

It's a Revocable Trust that you set up while you are alive. Living Trusts are not necessary for everyone, but we recommend them to clients – who own real estate outside Georgia (to avoid probate in multiple states) – who have a situation where someone may contest or object to the terms of the Will – who are concerned about becoming incapacitated and want to be sure that someone can manage their affairs - or who value privacy and want to avoid public Court filings. There is also generally a net cost savings, since you should be able to avoid the legal fees and court costs associated with probate. Many of our clients are choosing Living Trusts, to make settling their estates easier and simpler for their families.

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