

GOLDEN BULLETS

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THOUGHT YOU'D LIKE TO SEE THIS!

PROBATE — WHAT THE PAPERS DON'T TELL YOU!

You hear a lot about “avoiding probate”. But rarely do you hear what probate really is, why there is such a procedure, or the positive side of probate. Well here it is:

PROBATE DEFINED

In the narrowest sense, “probate” is merely the process of “proving” that a will is valid and that it is the last will and testament of a decedent. But in the broader scope, “probate” refers to the entire process of the court administration of an estate, from the initial probate of the will to the distribution of estate assets, and the official discharge of your personal representative.

WHY PROBATE?

In spite of what the general public has been led to believe by those who pander to “probate phobia” in order to sell their probate-avoidance books, or to market their products and services, (e.g., “trust in a box”), the probate process as it exists today is neither a state-designed device of punishment, a means of enriching lawyers, nor a form of indirect tax. The probate process is relatively simple and mostly involves paperwork. In Michigan, we generally do informal probate, which does not require court hearings.

ADVANTAGES

Some of the legitimate and positive reasons for the probate process are:

1. To make sure that individuals or entities that are holding your assets, or owe you money at the time of your death are notified to whom to deliver those assets or payments.

2. To consolidate the process of settling your estate so that conflicting claims can be sorted out and resolved in an orderly manner.
3. To serve as an advocate for your beneficiaries and to guide and supervise the personal representative in winding up your affairs. The probate court is meant to serve as an objective, disinterested party that oversees and safeguards beneficiaries' interests.
4. To protect your personal representative from the claims of beneficiaries.
5. To act on behalf of minor beneficiaries.
6. To provide a time limit for creditors: A “statute of limitations” cuts off the rights of your creditors after a stated period (usually four months following the public notification of the probate process). Once that period has run, your beneficiaries no longer have to worry that a creditor can reach the assets they have received.

NEXT MONTH

Our following commentary will cover what is really saved by using a revocable trust to avoid probate, costs of creating and maintaining a revocable living trust, and tools or techniques other than trusts to avoid probate (and their advantages and disadvantages).

AS ALWAYS, PLEASE FEEL FREE TO CALL OR E-MAIL TO DISCUSS THESE OR OTHER FINANCIAL ISSUES OF CONCERN!

IF YOU PREFER TO RECEIVE “GOLDEN BULLETS” BY EMAIL, PLEASE SEND A NOTE TO ME AT: rwilson@fraserlawfirm.com. Thanks.

“Golden Bullets” is provided as a source of general information about current developments in the practice of estate planning and related topics. If you have questions regarding this issue or estate planning in general, please contact me prior to taking action.