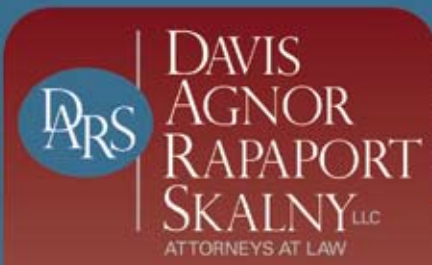


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## LEGAL BRIEFS

### Probate: Not Always Good to Avoid

Probate. Anyone who reads “self-help” magazine articles or books knows that probate is an evil requirement imposed upon us to make sure that attorneys earn a nice living. It is seen as a cumbersome process, full of unnecessary costs and delays. Everyone seems to have a war story about probate. However, few people have any idea about what probate really is.

When I first started my estate planning process over 20 years ago, probate was pretty much a fact of life. Nobody was trying to avoid it. Since then, estate values have increased, as has the complex nature of the estates of the deceased. The increased complexity and the increased costs associated with probate have provided incentives to avoid the probate process whenever possible.

Perception is not always reality. Before addressing these perceptions, perhaps a short probate primer would be appropriate. Probate is the process by which a person’s affairs can be wound up in an orderly manner. It insures that the creditors of the decedent are paid, and it provides for the distribution of a decedent’s estate.

The process itself involves identifying and valuing all of the assets of the deceased, whether those assets are tangible, such as homes, motor vehicles, collections, furniture, or jewelry, or intangible, such as bank and investment accounts. Note, however, that it only includes those assets that are titled solely in the name of the deceased. It does not include life insurance, retirement accounts, property held in trust, jointly-owned property (such as by spouses), or property held in a life estate. All of these types of property may need to be included in the deceased’s taxable estate, but they are not in the probate estate.

All of the deceased’s debts must also be identified and valued. Debts would include credit card debt, mortgage

debt, promissory notes, routine bills, funeral expenses, and medical expenses. These debts also include any taxes that may be payable, such as federal and state income taxes, inheritance taxes, estate taxes, and transfer taxes. There are also some minor costs associated with administering the probate estate, such as a bond fee, probate fee, and advertising fee.

The personal representative is charged with marshalling the assets of the deceased, notifying creditors of the death of the deceased, paying legitimate debts, and reporting everything to the Orphan’s Court and Register of Wills. In addition, the personal representative is charged with following the decedent’s directions regarding the distribution of his estate contained in the decedent’s will or, if there is no will, with directions provided by law.

All of these processes require time and expense, it is true, but most of these steps need to be taken regardless of whether probate is required. However, the probate process is useful for resolving conflicts among beneficiaries, interpreting provisions of a decedent’s will, limiting claims of creditors, and providing order during a time of emotional and fiscal turmoil.

When evaluating whether probate should be avoided, remember that there are some benefits to probate and that most of the time and costs associated with probate will be incurred regardless. Each family has different needs and different circumstances, and in some cases, using the probate process can actually help in winding up the affairs of a loved one in that family.