

Probating Newly Discovered Assets after the Close of Probate

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When an individual dies owning property solely in his or her name, then a formal procedure (known as "Probate") is usually needed to determine to whom the property should pass. If there is a valid Will, the property will pass according to its terms. If there is no Will, the property will pass to the individual's heirs at law. The intestacy laws of Massachusetts will determine who the individual's heirs are and what they receive. It may not be whom you would expect. The Probate process is lengthy, costly, public, and fraught with complexities.

Even the most detail-oriented Personal Representative (formerly known as Executor/trix) can miss an asset in their search to find any property owned by the deceased. In fact, the situation happens more often than you might think. An asset may be listed in the name of the deceased, but no one is aware it exists. Perhaps the deceased had a retirement asset from a former employer or a sliver of land is discovered to have been owned by the deceased.

The first step is to determine if the estate has been closed. You may need to contact the court where the probate was handled, which is usually in the county where the deceased person lived. If the estate was not closed, you can proceed as

normal. However, if the estate was closed, your next steps may be a bit more complicated. You can review the final distribution from the court. In some cases, it may include a provision which allows for distribution of the new asset without a court order.

Depending on how long it has been since the estate was closed, the bank account for the estate may still be open. If it is open and the asset is in the form of money, it can be deposited into the account. If the account is closed, you can find out if the bank will reopen it without an order from the court.

If the estate is already closed, MA law allows a person to file forms with the probate court to have the estate reopened. If a loved one has passed and you discover a new asset, seek advice from a qualified probate attorney who can help.

The information contained in this article is not intended to make you an expert on estate planning nor is this article intended to replace the need for the advice of a professional. Rather, this article is simply intended to provide a basic understanding of why estate planning is important for everybody and a basic understanding of some of the more common estate planning tools. This article does not constitute legal advice.