Understanding Probate: Do I Need It?

<u>By: Brandon C. Walecka, Esq.</u>

Walecka Law, P.C.

774-203-9003

Brandon@WaleckaLaw.com

Losing a loved one is incredibly tough. Once the initial grief begins to fade, you're left with the complicated and time-consuming task of figuring out if probate is necessary for their estate. But what exactly is probate, and can you avoid it to speed up the distribution of assets to heirs?

Probate is the legal process that happens after someone passes away. In Massachusetts, the probate court first needs to verify the authenticity of the person's Last Will and Testament. Once that's done, the court gives the Personal Representative (previously called Executor or Executrix) named in the Will the authority to act on behalf of the deceased. With this authority, the Personal Representative can gather the person's assets, settle any estate expenses, and distribute what's left to the beneficiaries named in the Will. If the person didn't leave a Will (known as dying "intestate"), the probate court decides how to distribute the assets based on Massachusetts intestate laws.

Probate can be time consuming and expensive, and by law, the estate must stay open for one year to allow creditors to make claims. Depending on the complexity of the estate and family dynamics, probate can take anywhere from one to several years, causing a delay in distributing the full inheritance.

So, how do you determine if probate is necessary? The first step is to classify the assets owned by the deceased as either “probate assets” or “non-probate assets.”

Probate assets are those solely owned by the deceased without any designated beneficiaries. Examples include personal belongings like furniture and artwork (unless held in a trust), real estate or cars solely in the deceased person’s name (except for a surviving spouse’s vehicle transfer), and accounts without listed beneficiaries.

Non-probate assets, on the other hand, bypass probate and go directly to the designated recipients. These assets are usually jointly owned or have named beneficiaries. Examples include bank accounts with payable-on-death or transfer-on-death designations, life insurance policies with named beneficiaries, jointly owned assets like a home with a surviving co-owner, retirement or 401(k) savings with named beneficiaries, and assets held in a revocable living trust.

Assets held in a trust typically avoid probate in almost all cases. One commonly used trust is the Revocable Living Trust. To understand how to handle these assets, it’s crucial to carefully read and comprehend the trust document, which provides instructions on administration.

To avoid probate entirely, it’s advisable to plan ahead and work with an experienced estate planning attorney. They can help you find the best strategies to bypass probate and ensure your assets go where you want .

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.