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## Probate



Probate is the name for the court supervised process of settling the estate of someone who has passed away. Basically, expenses and debts are paid, and property is distributed. A probate proceeding can feel unfamiliar, which can be exacerbated by the fact that a loved one has just passed away. In this article I want to highlight some useful information about the Probate process.

Properly Transferring Real Estate: Often a surviving spouse will fail to properly transfer title to real estate. Example, Mary and Tom are married and own their home together. Tom dies and Mary goes on living in their home. Years later Mary wants to sell the home but the title insurance company wants to know what happened to Tom's interest in the home. Mary never transferred title from 'Mary and Tom' to just 'Mary.' One way this transfer would happen is through Probate. The Personal Representative makes out a deed to the surviving spouse, which is recorded so everyone knows 'Mary' alone owns the real estate.

Will (Testate) or No Will (Intestate): In Probate, estate assets may be distributed according to a Will. Ideally, a Will makes distributing property clear to everyone involved. If there is no Will, estate property is distributed according to Statute - the surviving spouse receives all of the Community Property and one-half of the Separate Property if there are children. The children receive the other half of Separate Property. The character of the property can be difficult to distinguish but generally Community Property is any property gained during marriage, except Inheritances, which are presumed separate property.

Small Estate Affidavit: Washington State has created a simple probate where if there is no real estate and estate assets are less than \$100,000 Probate can be completed by Affidavit. At the time of this writing a helpful website for handling this type of probate is located at: <http://wa-probate.com/>.

Insolvent Estates: An estate that has more debt than assets is called an insolvent estate. An insolvent estate probate is more work because court approval is required for every action taken regarding the estate. One option is to not go through Probate. For a surviving spouse, however, to Probate an insolvent estate can serve to resolve significant debt. The following tools may help resolve this debt:

- Notice to Creditors: Properly publishing and mailing notice to creditors creates a bar to claims not filed within four months. For a variety of reasons, creditors sometimes do not file creditor claims. I have seen up to half the estate debt eliminated because the creditors have not filed a claim.
- Rejecting Claims: Sometimes there is a basis to reject a claim. The creditor then has 30 days to file suit or be barred. Some debt can be eliminated this way.
- Homestead/Spousal Award: The court can award a surviving spouse exempt from creditors up to the first \$125,000 value in estate real estate. This award is exempt from the creditors. If surviving spouse's assets are entirely community property and the Surviving Spouse has not made themselves separately liable for the debts, then when the estate is closed the Surviving Spouse has a fresh start with no debt (and with this award, up to \$125,000).

Avoiding Probate: Probate is one way to transfer property when some passes away. Other ways include:

- Community Property Agreement;
- Trusts;
- 'Pay on Death' beneficiary designations;
- Ownership as Joint Tenants with Right of Survivorship.

Checking in with an attorney experienced in Probate can save you a lot of time and money.