

PROBATE & LACK OF PROBATE IN WA

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What is “Probate”?

Probate is a court procedure to validate the will

For our discussion today,
Probate will pertain only to insuring a decedent’s estate and not addressing guardianships

PURPOSE OF PROBATE

To identify devisees or successors

To identify and protect assets

Deal with debts of the deceased

i.e. estate taxes, expenses of last illness and funeral & administration fees

Common Probate Terms

Testate: Person dies with a will

Intestate: Person dies without a will

Will: Written document of decedent specifying distribution of assets

PR: Executor, administrator or special representative

Common Probate Terms cont'd

Letters testamentary: Court evidencing that the will has been proved and admitted to probate and that the PR is authorized to act

Testamentary trust: A trust created by a will and does not require a separate trust document

Common Probate Terms cont'd

Community Property: Property owned by a husband and wife or domestic partnership presumed for property acquired after marriage or domestic partnership unless acquired by gift or inheritance.

Common Probate Terms, cont'd

Estate tax: Tax levied on the estate of the decedent and paid by the estate

Inheritance tax: Tax levied on those who inherit and is paid by those who inherit

Washington replaced its inheritance tax
with the estate tax in 1981

TYPES OF PROBATES

There are two main types of probates in
WA

(1) With court intervention:

Large estates or estates that are contested

To insure:

Title would need either court order;

OR

The court approved will must specifically
direct the PR to transfer to the grantee

TYPES OF PROBATES, CONT'D

(2) Without Court Intervention:

Still come court involvement:

Petition for non-intervention filed

By named PR if there is a will

Or

By Heir/spouse if no will

TYPES OF PROBATES, CONT'D

PR must show estate is solvent:

Court's approval of PR, via issuance of letters testamentary, means solvency has been established and PR is authorized to act

Once letters issued, PR has broad powers to transfer property of the estate

Probates

The above two examples of probates in Washington are in their simple basic form

If letters testamentary and order granting nonintervention powers have been issued, we can rely upon that as proof all requirements have been met

PROBATES

- As with other fiduciaries, PR's cannot delegate authority. We cannot accept a POA
- This is not to say there are not problems arising out of probates!

PROBATES

Let's say you have a "foreign" probate. Probate Courts outside of Washington have no jurisdiction in our state.

In order to insure, we might require "*ancillary probate*" in a county Superior Court in Washington.

FOREIGN PROBATES

- *Ancillary probate* is an abbreviated judicial proceeding to manage estate assets in this state when a full probate is conducted in another state.
- With this information & depending on the transaction at hand-we **MAY** be able to rely on “lack of probate” procedures – with the presumption that the will probated in another state may meet WA statutory requirements

LACK OF PROBATE/FOREIGN PROBATE

An example: The decedent owned property in Spokane and the executrix of the will lived Coeur d'Alene, Idaho

- The estate was probated in Idaho;
- The property was the only asset of the estate;
- The executrix was also the sole heir;
- Value of the estate was under \$200,000.00;
- This was all verified through the Idaho Probate

VESTING TITLE DURING PROBATE

- The vesting on the commitment will never be in “the estate” of the deceased or in the “personal representative”
- Probate allows title to vest in either an “heir-at-law” or a “devisee” named in a will
- Remember-a will must be probated to be effective and to identify the beneficiary
- With or without a will-the estate is subject to probate administration

VESTING

During a pending probate fee simple vesting on the commitment SHOULD show:

“Heirs and/or devisees of “Mary Sunshine, deceased”

A deed from the personal representative would be necessary to transfer title-grantor clause would read:

“Cloudie Sunshine, PR of the estate of Mary Sunshine, deceased”

VESTING IN CLOSED PROBATE

If the probate is closed without a sale of the property, title may be vested directly in the *specific devisee* or *residuary beneficiary* named in the will or an *heir* identified in an “intestate” probate

If the identity of the above is not clear
– contact your underwriter –

VESTING IN A CLOSED PROBATE

The names of any such heir or devisee or residuary beneficiary must be run in the GI index

Federal tax lien or judgment should be shown in any commitment, policy or guarantee, even during the pending probate as such liens attach at death of the decedent

Names should also be run for capacity

NO PROBATE



PROBATE VS. NO PROBATE

	PROBATE	NO PROBATE
COST	SOME \$\$\$\$	NO \$\$ (BUT TITLE SURCHARGE)
TIME	FEW MONTHS	NO TIME
CERTAINTY		
<p>Is there a will? Is the will valid? If no valid will, who are the heirs? Which creditors are entitled to payment?</p>	<p>COURT DECIDES COURT DECIDES COURT DECIDES</p> <p>COURT DECIDES</p>	<p>WE DECIDE WE DECIDE WE DECIDE</p> <p>WE DECIDE</p>

PROBATE VS. NO PROBATE

Food for thought when considering
“NO PROBATE” (Lack of Probate)

- **Wills: Non-probated will is “just a piece of paper” - you need to make the decision**
- **CPA: Is there one?**

PROBATE VS. NO PROBATE

Conflict?

- You've provided a will along with the Lack of Probate Affidavit and death certificate revealing conflicting information
- you need to decide how to handle.
- Require probate?

PROBATE VS. NO PROBATE

Creditors Claims: How long since death? Any evidence of long illness? Proof that creditors were paid? Any recorded liens?

DSHS liens: Statute provides the state a “secret” lien on decedent's property in order to collect for medical care given.

PROBATE VS. NO PROBATE

Rule out DSHS lien if any of the following apply:

- No medical or services provided by state (get clearance letter from DSHS)
- Surviving spouse lived on property at time of death
- Decedent was under 55 at time of death
- Several years have passed since death (4+)

PROBATE VS. NO PROBATE

At the examining level set up an exception such as:

“Possible lien against the Estate of Mary Sunshine, deceased, in favor of the State of Washington, Department of Social and Health Services for recovery of costs, if any, of medical assistance pursuant to RCW 43.20B.080.”

PROBATE VS. NO PROBATE

Estate taxes: For estates valued near or in excess of 1 million dollars assume an estate tax is due. (this is a rare occurrence-should be directed to counsel or underwriting for requirements)

Review the lack of probate affidavit carefully-checking approximate value at death

PROBATE VS. NO PROBATE

- How do we determine who gets the property?
- Who are the heirs?
- In what order do we take them in?
- Does the list (as shown on the LOP Affidavit) make sense?
- Have you used other sources to verify?

PROBATE VS. NO PROBATE

Determining who gets the property:

If “community property”, property acquired after 1974 as husband and wife/domestic partners, the first spouse/domestic partner dies property transfers to surviving spouse or domestic partner – no CPA required

PROBATE VS. NO PROBATE

- **PRIOR TO 1974 CPA**
required to vest fee simple in surviving spouse.
- Vesting would be 50% in surviving spouse - 50% in heirs of the deceased

PROBATE VS. NO PROBATE

INTESTATE
SUCCESSION
PURSUANT TO
STATUTE

RCW 11.04.015

Community property but no surviving spouse

Decedent's surviving parents: If no surviving parents-then to:

Decedent's surviving siblings (children of decedent's parents). If no surviving siblings-then to:

Decedent's surviving grandparents. If no surviving grandparents, then to:

Decedent's aunts, uncles and other "issues of grandparents

IF SEPARATE PROPERTY: SURVIVING SPOUSE GETS:

100% IF DECEDENT LEAVES NO SURVIVING CHILDREN, PARENTS OR SIBLINGS

75% IF DECEDENT LEAVES NO SURVIVING CHILDREN, BUT THERE ARE SURVIVING PARENTS AND SIBLINGS

50% IF DECEDENT LEAVES SURVIVING CHILDREN

THE PORTION OF THE SEPARATE PROPERTY NOT TAKEN BY THE SURVIVING SPOUSE (OR IF THERE IS NO SURVIVING SPOUSE, ALL THE SEPARATE PROPERTY) FOLLOWS THE SAME SUCCESSION AS COMMUNITY PROPERTY

IN BOTH CASES IF NO HEIRS, THE STATE OF WASHINGTON IS THE LAST STOP!

PROBATE VS. NO PROBATE TRANSFERRING TITLE – HOW MANY DEEDS?

- Deed from all the heirs listed in the LOP affidavit
- Will you need to require spouses of heirs to sign?

PROBATE VS. NO PROBATE

Grantor clause: Without a will:

**Cloudie Sunshine and
Rainbow Sunshine, heirs of
Mary Sunshine, deceased**

PROBATE VS. NO PROBATE

Grantor clause: With a will:

Cloudie Sunshine and Rainbow Sunshine, devisees under the will of Mary Sunshine, Deceased

This serves as a clear transfer of the last record title holder

PROBATE VS. NO PROBATE

If we have been provided a copy of the will:

Would the will be recognized by a court as valid and final?

Questions to ask yourself about validity:

>Is it signed by the decedent?

>Are there two witnesses?

PROBATE VS. NO PROBATE

Validity questions continued:

Is there evidence of incompetence?

Evidence of undue influence or coercion?

- > Property given to a non-relative
- > Witnesses were friends of the devisee

PROBATE VS. NO PROBATE

Validity questions continued:

Is this the final will?

- > How old is the will?
- > Any life changes that suggest a new will would have been done?

PROBATE VS. NO PROBATE

- Confirm creditors claims have been paid
- Confirm no DSHS liens has been filed
- Confirm no estate tax due
- Same requirements as with “no will”

PROBATE VS. NO PROBATE

REMEMBER:

Unless the will is filed-it's a piece of paper that does have information we could use to assist in our determination to insure and not require probate

PROBATE VS. NO PROBATE

Premium Surcharge

Why should we charge extra?

- > Additional underwriting risk
- > Surcharge less than cost of probate

Check your underwriter's filed rate schedule
for appropriate surcharges

It could be up to 100% from 0-6 years

PROBATE VS. NO PROBATE

TRUE CONFESSIONS!

My personal “run in” with lack of probate claim!

Transaction: Refinance

Facts: An unmarried couple acquired property as two single people in 2004;

PROBATE VS. NO PROBATE

We received request to open a refi commitment in May 2006 (middle of the refi madness!);

Commitment went out Joe Smith and Mary Chan, each as their separate estate;

Informed that Chan was deceased;

PROBATE VS. NO PROBATE

Received (brought in by the sales rep-her “best customer”!) a death certificate and LOP affidavit;

Reviewed the information provided and prepared a supplemental amending vesting;

PROBATE VS. NO PROBATE

Next day we received the recording package-on hold until the 3 day rescission period was up;

We recorded-issued policy - all good, right?

In my haste, I did not give all documentation a **THOROUGH REVIEW!**

PROBATE VS. NO PROBATE

The LOP affidavit stated Chan has no heirs – however the death cert (on second review sitting next to our claims counsel!) disagreed with that statement

The “informant” on the death certificate was her brother.

PROBATE VS. NO PROBATE

Not only did she have a sibling, but she also left a daughter that the brother was in the process of adopting.

The “ugh factor” hit!

Fortunately, the borrower co-operated (after being reminded that the affidavit is a legal, binding document = fraud!)

PROBATE VS. NO PROBATE

...and the proceeds were negotiated through claims counsel and the deceased brother received half in exchange for a quit claim deed.

**NO MATTER HOW MUCH PRESSURE
MAY BE BEING APPLIED AT ANY
GIVEN MOMENT**

REVIEW, REVIEW, REVIEW!

PROBATE VS. NO PROBATE

Our preference is always for filed probate allowing the courts to make the determination;

Being practical and realistic-this will not always happen;

Title officers and examiners need to be prudent and cautious in their review

When in doubt – consult counsel or your favorite underwriter for guidance

PROBATE VS. NO PROBATE

QUESTIONS?