



# PROBATE & LACK OF PROBATE IN WA

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## PROBATE COURT

- Types of proceedings in probate court  
Case numbers 00-4-0000000
  - Action to administrate estate upon death
  - Guardianship
  - Conservatorship

## PROBATE COURT

- For our discussion today, Probate will pertain only to insuring a decedent's estate and not addressing guardianships or conservatorships

## 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

***Personal Representative:***

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 married couple presumed for property acquired after marriage.**

## **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**



## **RCW 83.100.040**

### ***Estate tax***

- Washington has an estate tax that is imposed on the value of an individual's estate which is greater than an exclusion amount set by RCW 83.100. For 2022, this exclusion amount is **\$2.193 million**. This exclusion amount has been the same since 2018.

## Benefit of Probate

- For our purposes a probate is beneficial as it is a legal process to establish rightful ownership of the decedents property
- Addresses debts of the estate and ensure creditors are given the opportunity to make a claim against the estate
- The estate is solvent if able to pay all claims made against the estate

## Benefit of Probate. The subdivision of land (Plats, subdivisions and dedications)

- **RCW 58.17.040**
- (3) Divisions made by testamentary provisions, or the laws of descent;
- Allows the personal representative to subdivide property in order to distribute the assets equally to the heirs.

## Personal Representative

- PR is established after the will is admitted to probate by letters testamentary
- If no will the PR is established by letters of administration
- Within 20 days after appointment-PR must give written notice of the proceedings and their appointment to the heirs and devisees

## PR, continued

- Service can be by mail or personally
- PR cannot delegate authority by POA or any other means.

# **Types of Probate**

**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 Probate**

**(2) Without Court Intervention:  
Manage and settle the estate  
without supervision of the court**

**The court will issue an order  
granting non intervention powers**

# Types of Probate

**PR must show estate is solvent**

**Order of solvency no longer required**

**Once letters issued, PR has broad powers to transfer, mortgage or lease the property of the estate without court order**



## Probate

**The Estate can also purchase property The vestee should read as, The estate of \*\*\* under \*\*\* county, Washington probate case No. \*\*\*.**

**Do not vest in the PR, they come and go at the will of the court. The case must remain open and be checked as to the current status.**

# Foreign Probate

Probate Courts outside of Washington have no jurisdiction in our state.

In order to insure, we will require an “***ancillary probate***” in the Superior Court of any county in Washington.

## Foreign Probate

*Ancillary probate* is an abbreviated judicial proceeding to manage estate assets in this state when a full probate has been conducted in another state. Once filed in Washington we can accept the terms of the foreign probate.

## 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:**

**“Claudia Sunshine, Personal Representative of the estate of Mary Sunshine, deceased”**

## Lack of probate

### **WAC 458-61A-202** effective 1/29/15

Nonprobated will or operation of law. If the property is transferred to one or more heirs by operation of law, or transferred under a will that has not been probated. A certified copy of the death certificate and a signed lack of probate affidavit affirming that the affiant or affiants are the sole and rightful heirs to the property are required.

## Lack of probate

Lack of probate affidavit" means a signed and notarized document (by any heir) declaring that the affiant or affiants are the rightful heir or heirs to the property and containing the following information:

- (i) The names of the affiant or affiants;
- (ii) The relationship of the affiant or affiants to the decedent;
- (iii) The names of all other heirs of the decedent living at the time of the decedent's death;
- (iv) A description of the real property;
- (v) Whether the decedent left a will that includes a devise of real property; and
- (vi) Any other information the department may require.

## Lack of 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? Will, Obituary, death certificate.

## Lack of probate

Determining who gets the property:

If "community property", and property was acquired after 1975 as a married couple--upon the death on one -- property transfers to surviving spouse-- no CPA required. What is required is that a certified copy of the death certificate and a signed lack of probate affidavit (affidavit of surviving spouse) affirming the declarant is the surviving spouse of the deceased be recorded.



## Lack of probate

**PRIOR TO 1975 the community property agreement (CPA) is required to vest fee simple in surviving spouse.**

**No CPA--vesting would be 50% in surviving spouse - 50% in heirs of the deceased**

**Lack of probate**

**Laws of Descent**

**Spouse**

**Children**

**Parents**

**Siblings**

**Grandparents**

**Confirm creditors claims have been paid**

**Confirm no DSHS liens has been filed**

**Confirm no estate tax due**

## Lack of probate exception example

It is our understanding that \_\_\_\_ is now deceased, however we find no evidence of record in \_\_\_\_ County of a probate for the estate of said decedent.

1. This Company will require the following: A complete signed and acknowledge Lack of Probate Affidavit.
2. A copy of the Community Property Agreement, if such exists, if not, it should be noted in the Lack of Probate Affidavit.
3. A Certified copy of the Death Certificate A copy of the decedent's will. If decedent did not leave a will, this should be so noted on the Lack of Probate Affidavit.
4. The surviving spouse/registered domestic partner or heir must complete an Excise Tax Affidavit per the \_\_\_\_ County Treasurer's Office.

## Lack of probate review note

This company's review of the lack of probate affidavit for \* has determined that the grantors clause on the forthcoming Deed should be executed as follows,

\* and \*, being the sole surviving heirs of \*, deceased

It is required that our recordable lack of probate affidavit with a certified copy of the death certificate for \*, be recorded at the time of closing.

# In Closing

Questions ?

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