

Probate: *What is it? Good or Bad?*

What is “probate”?

Probate is the legal process by which certain assets owned by someone at the time of death are administered and distributed with the assistance and oversight of the court.

Why would we have to probate an estate?

Probate is necessary only when someone passes away and:

- owned assets in his or her name alone;
- owned real estate as a tenant in common; and/or
- had assets which are payable to his or her estate (such as insurance).

What assets do not have to go through probate?

Probate is not necessary if the decedent’s only assets were:

- jointly owned with someone else;
- pass to someone else through a beneficiary designation; and/or
- owned by a trust

Are there different kinds of probate?

In Massachusetts, the type of probate proceeding required depends on the size of the estate, and the amount of supervision and formality required or desired. Under the new Massachusetts Uniform Probate Code, most estates can be administered “informally.”

How does a Will factor in?

The way assets are owned is the only thing that determines whether or not an estate has to be probated. If there are any assets in the three categories described above, we *have* to go to probate court in order to get ownership of those assets passed on to someone else. If the decedent had a Will, his property will ultimately be distributed as he instructed in the Will. If he did not have a Will, then he died “intestate” and his property will be distributed as dictated by the state legislature.

Why so much talk about “probate avoidance”?

Probate can take a year or more, involves court costs and legal fees, is a public proceeding, and exposes the decedent’s wishes to challenge. If possible, many people choose to seek other planning options so their assets pass to others outside of probate. But in some cases (especially in the long term care planning context), having to go through the probate process can be a useful planning tool and is in fact a desirable result. Working with counsel can help you determine what is the right approach for your particular family situation.
