

ESTATE SETTLEMENT

What is Settling an Estate?

In either a probate or a trust, the person in charge called a "personal representative" if in a probate or a "successor trustee" in a trust must:

1st - make an inventory of the dead person's property; plus

2nd - give a notice to known creditors that the person has died; plus then

3rd - make an accounting of what there was at death + what has come in + what has been paid such as to creditors or utilities or lenders + what is left + propose HOW to divide it up according the dead person's trust or will;

- property doesn't go the state government (escheat) without a will as the statutes of the place where the person was domiciled (actually lives + intends to remain indefinitely) at death determine who gets what. But a will can determine who gets what rather than the legal statutes);

- asset protection and estate planning can rearrange a person's estate so such estate isn't subject to probate attorney fees of approximately 3 1/3% or federal estate death tax of 45%+ or eventual Calif. capital gains tax currently more than 30%!!! or even creditors of those who built up this estate.

- property of a dead person can be administered and distributed WITHOUT a probate if less than \$150,000 and doesn't include real property worth more than 50K in California and different smallnesses in other states, through various procedures thereby saving said 3 1/3rd% (approx).

What is probate?

An old Latin word meaning a court proceeding (called an "action") "for the body" that is the physical body left by the dead person as well as their physical possessions which means their personal property plus real (dirt) property.

It starts by filing a "petition" to the judge usually on a court form claiming that someone died, when and where and a general description of what they had. The court's clerk (that is the judge's secretary) sets a date for a court appearance (hearing) and written notice must be given to every creditor and heir known

to the petitioner (that's who files the petition) plus an expensive newspaper notice in an obscure newspaper no one would ever see. On the date of hearing if no one shows up and objects, a "personal representative" (usually the petitioner) of the dead person is appointed as either an executor (executrix if a female) or an administrator (administratrix if female) who must get an insurance company to file with the court a bond saying they won't steal the assets and will follow the law and any court orders. Then after filing proof of such bond, such person must make an inventory of those assets and have a court-appointed appraiser, appraise them and file that appraisal with the court. Meanwhile, such "personal representative" collects all the assets and makes an account of what the dead person had + what has come in + what has gone out and why and to who + what's left + makes a proposal based on any will of how to distribute what's left. That's what "probate" is about. It costs for attorney fees about 3 1/3% of the total estate though the exact amount is based on a formula.

Bright sunny states have drastically reduced probate costs, while gloomy northern states usually charge higher for probate. Probate has gotten a "bad rap" but has good advantages in Calif. since it:

- + acts like a mini bankruptcy since a dead person's creditors can't collect if they don't file a claim with the court within 4 months of publicizing the notice of death;

- + realtors can only get about 5% rather than 6% for selling dead person's real property (home) & that's thousands;

- + assures that ALL of the dead person's property is inventoried and split up like the dead person wanted OR how the law provides IF there was no will.

- + assures the family that all was divided according to law since a judge is reviewing everything.

- + no pre-death costs are involved. However, there are frustrations after death such as:

- takes at least 6 months and often a year;

- there are more costs than creating a trust such as the \$435 filing fee and the newspaper publication and probate appraiser fees in addition to the attorney fees;

- all is in the public record forever.

If you need help settling an estate in CA give me a call at 949-581-0951.

Examples of cases:

Brother-Sister actions

Fraud will written to carry out what "Dad would have wanted". But the conspiring witnesses "botched" the scheme subjecting the daughter who cooked up the idea to penalty payments and loss of what she thought she would get plus years of worry with the fake will;

Obtaining inheritance

Effectively convincing judges of the proper interpretation of ambiguous wills as where the deceased wrote "I give \$10,000 to my brother," and then set up a joint account for him. Did that mean \$10,000 or \$20,000 to brother?

Forcing A Sibling In Control Of Assets to Do What They Should Do

is expensive but sometimes the only way to carry out what the parents wanted to happen. Emotional history of the relationship often explains their actions and feelings - BUT it was only the parents' property and right to decided how to divided the parents' property. When accountings are not fully and properly provided, our law and the courts flat out demand them! Failure to include ALL the parents' assets can be proven by subpoenas and if necessary trials. Courts can even order the secretive trustee to pay the attorney fees of the child "on the outside".