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What Are the Pitfalls of Probate?

Have you ever wondered what will happen to your estate after you die? How long will it take for your loved ones to receive the estate you've left them? Will each receive what you'd like them to have?

If you're like most people, your estate will go through a lengthy probate process.

Probate consists of the court proceedings that conclude all your legal and financial matters after your death. The probate court distributes your estate according to your wishes — if you left a valid will — and acts as a neutral forum in which to settle any disputes that may arise over your estate.

The probate process we have today is based largely on the medieval English legal system. In feudal times, only powerful families owned land. These large estates were normally passed down from father to son. This transfer was naturally a matter of great political consequence, and thus of great interest to the king. So the proceedings were made formal, complicated, and costly.

Over the years, while much of the legal system has been made easier and more accessible, the probate process has remained lengthy and complex.

There are a number of problems with the probate process that make it worth avoiding.

The probate process can take a great deal of time. It often takes a few months to a year or more. Complex or contested estates can take much longer. With few exceptions, your heirs will have to wait until probate is concluded to receive the bulk of their inheritance.

Probate costs vary depending on the state in which probate is carried out. Though all states require the payment of court fees (which may only be a few hundred dollars), attorney fees could add significantly to the total cost. Typically, attorney fees are based on what is reasonable for the required tasks.

These fees can rise significantly if the will is contested or when other extraordinary issues arise.

Of course, all the probate court's "help" with your affairs comes at a price. Probate can be very expensive.

Depending on the state, probate and administrative fees can consume around 10 percent of your estate.¹ That percentage is calculated before any deductions or liens are taken out.

The proceedings of the probate courts are a matter of public record. Anyone with the time and inclination can go to the county courthouse and find out exactly how much you left to each heir and to whom you owed money. This leaves your heirs with little or no privacy.

Fortunately, there are strategies you can use to help avoid the probate process altogether. A trust may enable you to pass your estate on to your heirs without ever going through probate at all. While trusts offer numerous advantages, they incur upfront costs and ongoing administrative fees. The use of trusts involves a complex web of tax rules and regulations. You should consider the counsel of an experienced estate planning professional and your legal and tax professionals before implementing such strategies.

Proper estate planning could enable you to pass your estate to your loved ones privately, without undue delay or expense.

Source: 1) LegalZoom.com

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