Practical Probate:
Probate Myths, Misconceptions and Mistakes Part 2

Domenick N. Calabrese, Judge
Region 22 Probate District

This article examines 3 common probate mistakes, misconceptions and myths.

Myth: If all of someone's assets are in trust, survivorship, POD/TOD or have a beneficiary designation, there's no need to go to the probate court when they pass away.

When a Connecticut resident or an out of state resident dies owning any interest in Connecticut real property, probate proceedings are still necessary in order to get clearance of Connecticut estate tax, succession tax and probate fee liens on the real property. This is true even if none of the deceased person's assets are probate assets. Probate assets are assets that were solely in the deceased person's name at the time of death with no beneficiary, survivorship, TOD/POD designation, or trust.

This is a common source of confusion, and can sometimes result in problems when the real property in which the deceased person had an ownership interest needs to be sold and there is no release of lien from the probate court.

Myth: A living trust is a substitute for a will.

Living trusts are a will substitute only for assets that were transferred into the trust during the trust creator's lifetime. In that regard, a trust is a will substitute. However, many people with living trusts fail to transfer assets into their living trusts during their lifetime. In those cases, where an asset was solely in the decedent's name, probate proceedings will be required to determine the legal owner of the asset.

In 15 years on the bench, I've frequently seen family members come to the court with their deceased loved one's living trust, only to find that the person who died never transferred anything into the living trust.

Mistake: Writing your own will.

Connecticut does not recognize handwritten wills that fail to satisfy the legal requirements of what the law recognizes as a potentially valid will.

I strongly recommend having an experienced estate planning attorney work with anyone who would like to have a will. Mistakes in "do it yourself" legal documents – including wills – can have disastrous consequences. I've seen more than my share of them as a probate judge.

When it comes to something as important as your wishes for your family and your assets, cutting corners by doing it yourself or using an online form or vendor is foolhardy. It will likely end up costing your family

orders of magnitude more than might have been "saved" by using an experienced estate planning attorney in the first place.

Misconception: Without a will, all that I own will go to my spouse when I die.

This is usually not the case, particularly if you have children and/or surviving parents. Surviving spouses will only receive all of the deceased spouse's assets if there are no children, grandchildren and parents of the deceased spouse.

Misconception: You need to include funeral and burial arrangements in your will.

A will is only effective after it has been admitted to the probate court. Even a will that is submitted to the probate court immediately after someone passes away will take several weeks to be admitted. It's only after the will is admitted that it has any legal authority.

A better approach is to either make your final arrangements while you are still alive, or discuss your preferences with loved ones (spouse and children) so at least they will know what you want.

THIS ARTICLE IS FOR INFORMATIONAL PURPOSES ONLY. IT IS NOT INTENDED TO BE, NOR SHOULD IT BE RELIED UPON AS LEGAL ADVICE. CONSULT A QUALIFIED ATTORNEY FOR ADVICE REGARDING YOUR SITUTATION.

About the author

Dom Calabrese has been a Connecticut Probate Judge since 2002. He's currently the judge in the Region 22 Probate District in Southbury, Connecticut and is a judge in the Waterbury Regional Children's Court.

Dom also practices law with locations in Stamford and Watertown, Connecticut. His areas of practice include probate, estate planning, trusts, wills, planning for incapacity, asset protection, commercial transactions, contracts and agreements, and business counsel.

For more of Dom's articles and presentations, please visit:

Website

https://DCalLaw.com

Blog

ConnecticutEstatePlanningSite.com