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EXPLANATION OF FORMAL ADMINISTRATION PROBATE PROCEDURES

If someone dies owning assets in his or her name alone ("probatable assets"), there must be a probate court proceeding to determine who is to receive the assets. In other words, the Will is given effect through the probate court proceedings.

Probate means "prove." One must prove to the probate court that the Will is valid, that the maker was competent and not forced to make the Will, that the heirs and representatives are proper, that all creditors have been paid, and that all persons are getting their just due. Only after the proofs are made may an heir receive his or her inheritance.

The most common probate proceeding is called the FORMAL ADMINISTRATION proceeding. The following must be done to start and prosecute the proceeding:

STEP ONE: You need to furnish your attorney with the following information and documents:

1. Original copy of Will;
2. Certified copy of Death Certificate;
3. A general description of the kind and value of probatable assets.
4. Names and addresses of all persons named in Will. If any are under the age 18, state so and give names and addresses of their parents or guardians.
5. Names and addresses of all of the decedent's following relatives who are named in the Will (if any are under the age of 18, state so and give names and addresses of their parents or guardians).
 - a. Decedent's parents
 - b. Decedent's spouse
 - c. Decedent's children
 - d. Children of deceased children
 - e. If none of the above exist, then:
 - i. Brothers and sisters of decedent

- ii. Children of deceased brothers and sisters
 - 6. Names and addresses of person(s) nominated as personal representatives (executors) in the Will.
 - 7. Retainer for fees and costs
- TIME FRAME FOR STEP ONE: 30 days

STEP TWO: Once that information is furnished to the attorney she can commence the work:

1. Prepares petition for nominated Personal Representative to sign, listing the same information as noted above. Obtain signatures.
2. Prepares oath of office and designation of agent for service of process for signature of nominated Personal Representative. Obtain signature.
3. Prepares proposed order for court to sign.
4. Files original Will, certified copy of death certificate, petition, oath of office and designation of agent for service of process, and proposed orders with Court. Pays court fees.
5. Prepares waivers for heirs and other interested persons to sign.
6. Sends copies of Will, petition, and waivers to each heir and interested party by certified mail, return receipt requested. Recipients have 20 days after receipt of those papers to file objections to the proceedings, to the Will, or to the appointment of the nominated Personal Representative. If addresses are unknown, attorney will have a newspaper publish notices of the proceeding to notify heirs and interested parties.

Assuming there are no objections filed, the Court will grant two (2) orders: one, admitting the Will for probate and, two, giving Letters of Administration (certificate of appointment) to Personal Representative. If there are objections filed, then hearings will be held.

TIME FRAME FOR STEP TWO: 40 to 60 days

STEP THREE: The attorney will pay for and obtain certified copies of the orders and then commences to do the following work:

1. Causes a notice to be published for two weeks in a newspaper in the county wherein proceedings are held. Creditors have ninety (90) days after publication to file claims.
2. Asks Personal Representative to provide the following information:

- a. Names and addresses of known creditors.
 - b. Detail listing of probatable assets and values thereof.
 3. Sends notice to known creditors who then have thirty (30) days to file claims after their receipt of notice.
 4. Prepares an inventory of assets and values for signature.
 5. Sends inventory copy to all heirs and interested persons and files same with court.
 6. Aids Personal Representative in obtaining assets with use of Letters of Administration and to sell real estate and obtain bank accounts, etc. Note that if attorney handles real estate sale an additional fee will be due over and above that incurred for probate proceedings.
 7. If decedent owned real estate, a tax return must be filed with the State to remove any estate tax lien thereon. There will be no estate taxes to be paid if the estate is under \$13.61 million in value. If estate is over \$13.61 million in value, an accountant must be hired to do federal and state estate tax returns.
 8. All cash proceeds and cash assets to be held by Personal Representative in bank accounts created in estate name.
 9. Personal Representative commences to pay all bills and can make partial distributions to heirs, saving some funds to cover unknown creditors. Attorney obtains receipts from heirs and files same with the court.
- TIME FRAME FOR STEP THREE: 100 Days (or 9 months if federal estate tax return necessary).

STEP FOUR: Final Procedures

1. Personal Representative furnishes attorney with detailed information as to the following:
 - a. Value and nature of estate originally held as per Inventory filed earlier.
 - b. Additions or deletions therefrom.
 - c. Expenses paid
 - d. Amounts remaining
 - e. Distributions made
2. Attorney prepares Final Accounting for Court, obtaining Personal Representative signature.
3. Attorney prepares petition for discharge for Court. Obtains Personal Representative signature.
4. Attorney prepares proposed court order for distribution and discharge.
5. Attorney files Final Accounting, petition, and proposed order with court and sends

same to heirs and interested parties. They have 20 days after receipt of same to file objections.

6. Attorney obtains certified copy of discharge order from court after objection period ends.

TIME FRAME FOR STEP FOUR: 40 days

*Note that all time frames are estimates. Much depends on how quick and accurate information and signatures are forthcoming from the Personal Representatives, heirs, and other interested persons. Much time will be spent, additional to that noted above, if objections or creditors claims are involved.

Thus, about 185 days (6 months or so) are usually necessary to process a FORMAL ADMINISTRATION probate proceeding.