

McChesney Law Firm Newsletter

PROBATE – WHAT IT MEANS AND HOW TO AVOID IT!

HAPPY APRIL

Greetings from McChesney Law Firm! Hopefully you are all enjoying Springtime in Florida. St. Augustine is beautiful any time of year, but especially in the Spring. This month we wanted to give you a brief overview of a very exciting subject.....Probate. OK, not exactly exciting, but we'll make it very brief! It's a term we all hear, but people often don't really know what it means. They just know they want to avoid it. This newsletter will explain what Probate is and how it can be avoided.

What is Probate in a nutshell?

Probate is a court-supervised process for identifying and gathering the assets of a deceased person, paying his/her debts and distributing the assets to the beneficiaries. In general, the assets are used first to pay the cost of the probate proceeding, then to pay the outstanding debts, and the remainder is distributed to the beneficiaries. If you have a will, the will must be admitted to probate in order to pass your assets to your beneficiaries. If you have no will, probate is necessary to pass ownership of your assets to those persons who will receive them under Florida Law.

HOW TO AVOID PROBATE

In a nutshell, assets that are in your name alone or are in your name and one or more co-owners but lack a provision for automatic succession of ownership at death, will have to pass through probate. The following assets can avoid probate:

BANK ACCOUNTS:

A bank account or investment account owned by you with a payable on death provision or transferable on death to another, or held jointly with rights of survivorship with another, is not a probate asset. This account will pass automatically to the joint owner or person you designate without having to go through probate. For example, let's say Lucy and Ricky have a joint checking account. If Ricky dies, his name is taken off the account and Lucy automatically owns the account (and all the money in it). No Probate is required!

LIFE INSURANCE, ANNUITIES AND IRA'S:

A life insurance policy, annuity contract or individual retirement account that is payable to a specific beneficiary is not a probate asset. Just like the bank accounts mentioned above, upon the owner's death, these accounts don't go through probate. Instead, they either pay out to the named beneficiary automatically, or the beneficiary has the option to roll over the account into their own account. Either way, the beneficiary gets access to and control over the account without probate.

REVOCABLE TRUSTS:

Assets within a revocable trust will be distributed by the trustee of the trust to the named beneficiaries as stated within the trust document. The assets in the revocable trust will not be probate assets.

Probate is a very complex concept and this is just a very brief overview of when Probate is required and when it is not. We are here to assist with any of the information outlined in this newsletter!

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