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12

Secrets in Probate

MEET
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12

Secrets in Probate

ABOUT THIS BOOKLET

This Booklet is provided to you as information about developments in Probate Law. The information is deemed accurate but is not guaranteed. It is not to be considered as a legal consultation or as legal advice. Probate is a complicated field of law and is highly dependent on the particular facts of the client's circumstances and family. For legal advice you should contact our office or another probate attorney of your choice. Our office creates an attorney-client relationship only by the signing of a retainer agreement by client and attorney.

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INTRODUCTION

When a Loved One dies, the shock and grief of the loss can cause the surviving family members to postpone dealing with the deceased person's property. To help you protect yourself and your family at this stressful time, here are TWELVE SECRETS IN PROBATE TO PROTECT YOUR INHERITANCE (AND YOUR SANITY). We call them "SECRETS" because many people are not aware of how the probate process works and what you can do to safeguard your family. When you take action on these Secrets, you get the benefits of Financial Protection for your family and Peace of Mind for you. Let's look at them:

SECRET #1:

SAFEGUARD THE ESTATE ASSETS PROMPTLY AFTER DEATH

Sadly the death of a person seems to attract predators.

Remember the dream in Dickens' Christmas Carol when Ebenezer has died and his maid is stealing his bed linens? Unfortunately things like that can occur in real life.

Some burglars read the obituaries and break into the decedent's home during the funeral. Sometimes neighbors or relatives help themselves to household items shortly after the death or even when the person is in his or her final illness. Sometimes a family member who has a power of attorney will deplete the decedent's bank account shortly before or even after the death.

In our experience, the Loved One's family is most vulnerable to these thefts in the ten days after the death while everyone is still in shock and denial. This is why it is so important for the family to take preventive action to secure the decedent's estate.

Arrangements should be made for a home-watcher at least during the funeral. Banks and creditors should be notified of the death. Often it's a good idea to change the locks at the home since often many people may have had access to the home while the decedent lived there. An inventory should be taken soon after the death to avoid disappearance of items. (If not in writing, even a videotape of the interior of the home can document what things were there at the time of death.)

Occasionally some family members may consider these precautionary measures to be insensitive. However, later when the missing items or other assets cannot be accounted for, the family will wish that it took preventive steps at the time of the death of the loved one.



SECRET #2:

A WILL DOES NOT AVOID PROBATE

Sometimes the person nominated in the Will to be "Personal Representative" tries to take charge of the deceased person's assets and begins distributing them before a Personal Representative or Executor (it's the same thing) is appointed by the Probate Court. This can lead to family fights and sometimes legal liability for the nominated Personal Representative.

Many people think that if the decedent had a Will then his or her estate will not have to go to Probate Court. That is not true. A Will does not automatically distribute the decedent's assets. A Will sets forth the intentions of the Will-

Maker. The Probate Court receives the Will, examines it to see if it was properly executed and if it conforms to the requirements of law. The Court will inquire whether the person nominated as Personal Representative is suitable. This all takes time and requires attention to detail. It can also be aggravating and expensive if some family members decide to challenge the Will or how it is administered. (It should be noted that not having a Will does not avoid probate either. The Probate Court will still be called upon to divide the decedent's assets and put title in the name of a living person or other legal entity.)

"The most compassionate thing that can be done for the memory of the decedent and the family is to promptly begin the probate process."

The shock of losing a Loved One usually leaves the family survivors stunned. It can lead them to postpone wrapping up the affairs of the decedent. They may be in denial that the death really happened or they may not want to think about dividing up Mom's or Dad's possessions. In the meantime, the mortgage needs to be paid, property and accounts need to be maintained, creditors may be calling, insurance must be renewed, and possessions may be disappearing (as discussed in Secret #1). The family homestead or vehicle may be used by

a family member which can reduce its value to the heirs. If left too long, assets may have to be sold for less than their fair value because of creditor pressure. In these hectic circumstances, tempers can flare and unfortunate family squabbles can erupt. The most compassionate thing that can be done for the memory of the decedent and the sanity of the family is to promptly begin the Probate process within a month after the death. If it has already been longer than that, the sooner the Probate process is begun, the better for the family.

SECRET #3:

DELAY OF
PROBATE
USUALLY
INCREASES
THE
EXPENSES,
ANXIETY AND
LOSSES FOR
THE HEIRS



SECRET #4:

HEIRS ARE NOT LIABLE FOR THE DEBTS OF THE DECEDENT

In Ancient times, if the father had a debt and died before it was paid, the son was responsible to pay it. That is no longer the law although some people are still concerned about their personal liability after a parent dies.

As long as the Personal Representative handles the estate according to the Probate Code, he or she and the heirs will not be liable to any creditors.

In the Probate proceeding, costs of the Probate administration, funeral expenses, taxes and medical expenses of the last illness, are paid before other debts. Furthermore, the surviving spouse or

dependent children may be entitled to monthly support payments for up to a year and a half.

Life insurance proceeds generally do not have to be spent on estate expenses.

What's more, even if there are real estate, a vehicle, and \$15,000 of other property, these may pass free of debt (other than security interests) to the surviving spouse or children.

If there is a Medical Assistance claim under state law, the county or the state may be entitled to reimbursement under certain circumstances.

If there are not enough probate assets to pay these debts, general creditors need not be paid. Of course, if a family member has cosigned or personally guaranteed a debt in writing, he or she may still be liable on that debt.

In short, handled properly, the decedent's estate typically can provide certain cash benefits to the heirs which they can receive without risking personal liability. However, it is also clear that Probate proceedings are complicated processes for which the family should obtain the services of an experienced Probate attorney.

SECRET #5:

THE ESTATE ASSETS, EXPENSES, NAMES OF HEIRS AND INHERITANCES ARE NOT "SECRETS" TO THE PUBLIC



Some personal representatives and heirs in estates are surprised when they are contacted by strangers who know a lot of information about the family's probate proceeding. The simple (and sometimes distressing) truth is that the records in

probate court are public records. What this means is that anyone can go to probate court and discover the name, birthdate and last address of the decedent. The stranger can find out how much the estate is worth, who are the beneficiaries and what their

inheritances will be. Sometimes the caller will want to buy the home or other assets of the estate. The contact from the outsider may sometimes be helpful to sell the assets but often the family members will find such phone calls or visits to be annoying.

SECRET #6:

A PERSONAL REPRESENTATIVE IS A "FIDUCIARY" WHO MUST USE GREAT CARE IN HANDLING THE ESTATE ASSETS

Some Personal Representatives unfortunately think that the administration of estate matters is their personal business. What these Personal Representatives do not always realize is that they are "fiduciaries" for the other heirs and the creditors. In other words, they are trustees of the assets of the estate. The Personal Representative, must preserve the assets, manage them wisely, account to the beneficiaries and not engage in any "self-dealing" with the assets. Secretiveness by the Personal Representative can heighten anxiety and

suspicion among other family members. If there is serious distrust between family members, one or more of them can demand formal proceedings so that detailed financial records may be required by the Probate Court. An heir or creditor may ask that the personal representative be required to provide a "bond" which is a kind of insurance policy to assure that the Personal Representative will do his or her job properly.

All of these steps are expensive and can often be unnecessary if the Personal

Representative is trusted by the heirs and creditors. This can best be accomplished by the personal representative openly sharing information about assets, expenses and distributions with the heirs and creditors. We recommend "transparency" of the estate information. Data on the estate can be ultimately be obtained by the heirs and creditors. It's another instance of whether the personal representative wants to have the probate process accomplished in the hard way or the easy way.

SECRET #7:

FAMILY FEUDS INCREASE COST AND DELAY OF PROBATE

“Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often the real loser - in fees, expenses, and waste of time. As a peacemaker the lawyer has a superior opportunity of becoming a good man. There will always be enough business. Never stir up litigation.” - Abraham Lincoln

Not long ago we dealt with a Probate for a family of adult children that got together after the death of a parent and began to argue about what some brothers and sisters had done or said to each other when they were teenagers.

Revival of family feuds during the Probate process is unfortunate but all too common.

These unresolved family problems can complicate the handling of the Probate process and drive up the cost of administering the estate.

These lingering frictions and suspicions can bring about distrust in Probate so that every step to collect the assets, pay

the bills, and distribute the inheritances is painful, time-consuming and costly. Indeed every heir could retain his or her own attorney and challenge in court every decision the personal representative may make.

As Abraham Lincoln once advised lawyers: ““Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often the real loser - in fees, expenses, and waste of time. As a peacemaker the lawyer has a superior opportunity of becoming a good man. There will always be enough business. Never stir up litigation.” That’s good advice.

The key for the family is to meet and agree on an open procedure for the Probate administration and sharing of information. This is best done not long after the death but before old resentments are remembered and tempers rise.

This family meeting is admittedly more difficult in the “blended family” situation when the decedent has a spouse by a second marriage but children from a previous marriage. However, it is vital if the cost, delay and expense of a long drawn-out family battle are to be avoided.

SECRET #8:

PROBATE EXEMPTIONS CAN PROTECT YOUR FAMILY HOME AND AUTOMOBILE

Not long ago a young man came into our office. He was sad because his father just died. He lived with his father and his Dad had run up a lot of debt with credit card companies and other creditors. He was afraid he would have to move out of the family homestead so that it would be sold to pay off his Dad's credit card debt. We

were happy to inform the young man that the homestead was exempt from most credit obligations including the credit card companies. We also told him that a number of other assets that his father had including his automobile and a number of other personal possessions could not be seized by his Dad's creditors. The young

man was delighted and walked out of our office with renewed hope that he wouldn't be faced with the loss of his family home on top of the loss of his Dad. Exemptions can be tricky and do not apply in all cases. For that reason, you need to consult with an experienced probate attorney.

SECRET #9:

END-OF-LIFE GIFTS BY LOVED ONE MAY CAUSE REDUCTION OF THE ESTATE

When a Loved One is suffering from a disease or when death appears imminent, the dying person or his family may try to take care of his immediate needs or to avoid the probate process. Sometimes this involves adding family members' names on bank accounts, changing beneficiaries on assets, signing a deed to real estate to one or more family members. These forms of "deathbed planning" property frequently create more problems than they solve and should only be done with competent professional assistance. In one case, a mother cashed out her 401K plan without our advice and caused an enormous (and needless) tax liability for her estate. In another case, a man signed a quitclaim deed to one son for his home that defeated his own Will that intended to give the house to all his children. These unfortunate and impulsive acts were contrary to the dying person's intentions but they reduced the inheritances the Loved Ones wished to leave to their children. Beware of these dangers before the transfers of assets become final.

SECRET #10:

SPOUSES AND DEPENDENTS CAN GET PAID FOR THEIR MONTHLY EXPENSES WHILE THE PROBATE IS UNDERWAY

The Minnesota Probate Code recognizes when a Loved One dies, there is often an immediate financial hardship for the surviving spouse and the children of the Loved One who may have depended on the deceased person for their support may be entitled to up to \$2300 per month for up

to 18 months while the probate process is taking place. This is called "maintenance" and can usually be paid in front of most other debts and claims on the estate. The surviving spouse is also entitled to one motor vehicle regardless of its value. These are strong reasons to have qualified

professionals involved soon after the death of the Loved One so that the monthly expenses of the surviving wife or husband are paid promptly and with as little financial hardship to the family as possible.

SECRET #11:

COSTS OF PROBATE ARE PAID OR REPAID OUT OF THE ESTATE BEFORE OTHER CLAIMS

Often when a Loved One dies, the family may not know what the assets are and what debts or other claims may be brought against the estate. The good news is that as a rule the legal fees, court costs, compensation to the executor (personal representative) and other expenses are paid (or repaid) to the person incurring those expenses. Thus the nominated executor or interested family member who puts out money to get the probate proceeding begun or who takes action to bring assets back into the estate in most cases will be paid or repaid. What's more, these expenses are payable before creditor claims, inheritances, nursing home claims, state and federal taxes and other claims. The law requires that the expenses must be reasonable and made in good faith which the court will usually approve.

SECRET #12:

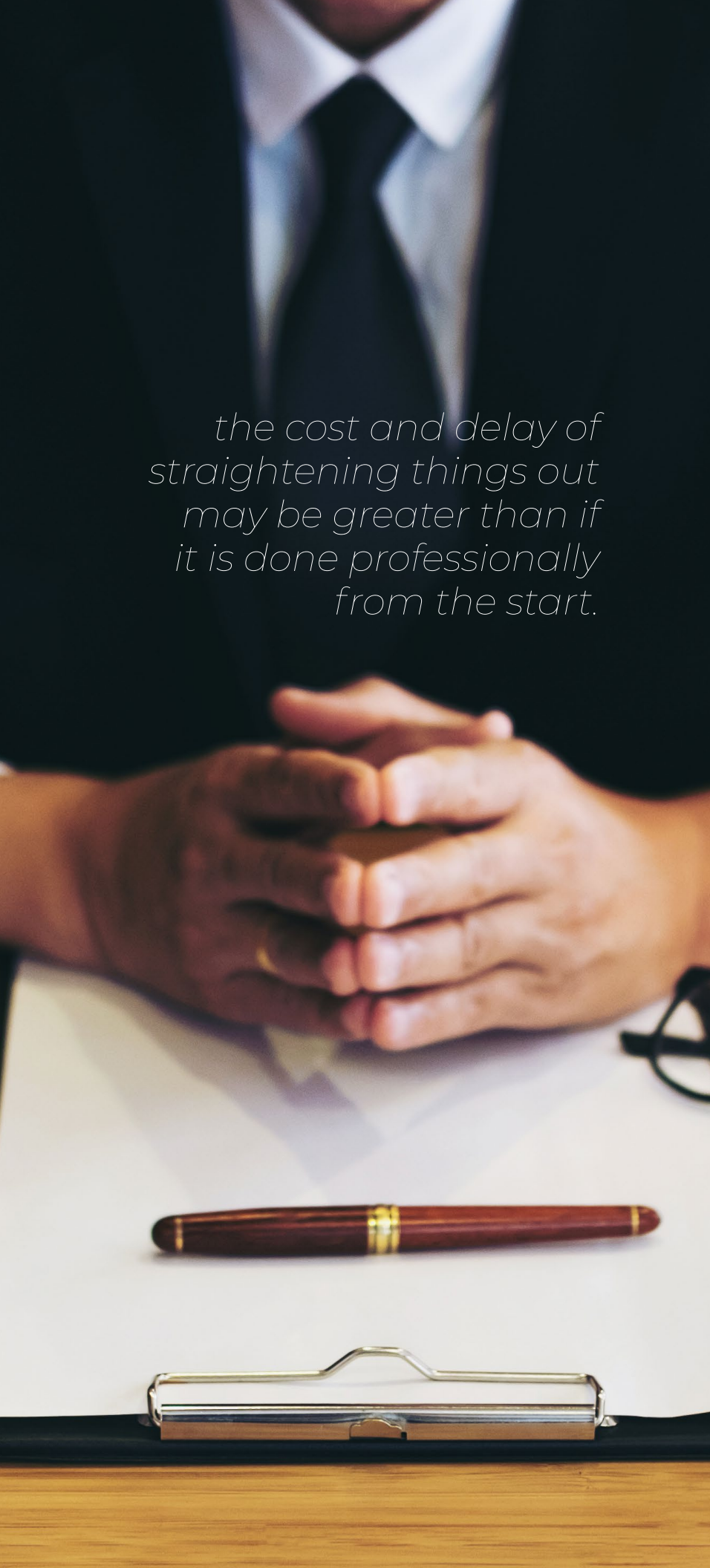
GET PROFESSIONALS TO HANDLE THE PROBATE FOR YOU

Probate is not a “do-it-yourself” operation. You may have seen the TV commercial where the surgery patient is talking to his physician about how the patient should insert the scalpel into himself. The patient says: “Shouldn’t you be doing this?” The same thing applies to Probate.

A typical Probate proceeding may require the services of a Probate attorney to manage the legal proceedings, an accountant to handle the bookkeeping and tax returns, and an appraiser to evaluate the assets. It is true that the services of these professionals will be expenses for the estate. However, a properly handled estate will usually yield more proceeds to the heirs and be done faster than when done by someone inexperienced in the process.

On the other hand, if the estate is done partially before calling in an expert, the cost and delay of straightening things out may be greater than if it is done professionally from the start. You can imagine that if the TV patient spoken about a moment ago was half way through his self-administered surgery then had to go to the emergency room, his medical bill would be quite a bit higher.

Get your Probate Proceeding done right from the start.

A photograph of a person in a dark suit, white shirt, and dark tie. Their hands are clasped together on a white surface, likely a desk. In the foreground, a dark wooden pen with gold accents lies horizontally. Below the pen, a silver metal clip is visible. To the right, a pair of black-rimmed glasses is partially visible. The background is a light-colored wall.

*the cost and delay of
straightening things out
may be greater than if
it is done professionally
from the start.*



CONCLUSION

There you have TWELVE SECRETS IN PROBATE TO PROTECT YOUR INHERITANCE (AND YOUR SANITY).

The administration of a decedent's estate can be a complex and time-consuming undertaking. No one should be named as or assume the responsibility of a Personal Representative unless that person has the capability and commitment to fully discharge the many tasks involved in carrying out the responsibilities of his or her appointment.

Peterson Law Office, LLC. is pleased to present this Report to give insight into what is involved in Probate proceedings and estate administration. The Report is not a "do-it-yourself" guide and should not be used as a substitute for attorneys, accountants, trust officers and other professional advisors necessary for proper estate administration. This Report is informational only and does not constitute legal advice. For that you should consult our office or other Probate counsel.

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