

Probate: Haunting Your Family From Beyond the Grave

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Questions Our Presentation Will Address

- What is probate?
- When is probate necessary?
- What are the types of probate?
- Who is responsible for the probate of an estate and what are the duties?
- What is the probate process and how long does it take?
- When someone passes away with outstanding debt, what happens?
- How can probate be avoided?

What is Probate?

- Court process by which a person (Personal Representative/Executor) is granted legal authority to access, consolidate, manage, and distribute the assets of a deceased individual
- Personal Representative also pays expenses of deceased (taxes, debt, etc.)
- Probate and Family Court in each county of the Commonwealth of Massachusetts
- Intestate (MUPC) versus Testate



Probate and Non-probate Assets

Probate Assets

- Assets owned in individual name
 - Bank accounts/CDs/money market accounts
 - Investment accounts/stock
 - Saving Bonds
 - Real Estate
 - Tangible Personal Property
 - Vehicle
 - Jewelry
 - Furniture
 - Artwork/collectibles

Non-Probate Assets (Bypass Probate)

- Jointly owned assets (trap for the unwary – couples)
- Assets with designated beneficiaries
 - Retirement accounts (IRAs, 401(k)s)
 - Life insurance
- Assets held in a Trust
- Exceptions: No beneficiary designated or litigation!

Personal Representative's Duties

- Adhere to state and federal laws and the directions in the Last Will and Testament of the deceased
- Administer the estate efficiently
- Administer the estate with prudence and impartiality for the benefit of the estate's devisees/heirs-at-law
- Discover, consolidate and protect the probate assets
- Pay estate expenses and taxes
- Track the income and expenses of the estate
- Distribute the remaining probate assets to the devisees/heirs-at-law



Estate Taxes

- Snapshot of all assets owned by the decedent as of the date of death, including:
 - Probate assets; and
 - Non-probate assets
- Due 9 months after the date of death
 - Due date can be extended by 6 months
- Massachusetts estate tax
 - Filing threshold: \$1 million
 - Not imposed on out-of-state real/tangible property
- Federal estate tax
 - Filing threshold: \$11.7 million (for 2021)
 - Pending legislation may lower threshold to between \$3.5 and \$6.5 million

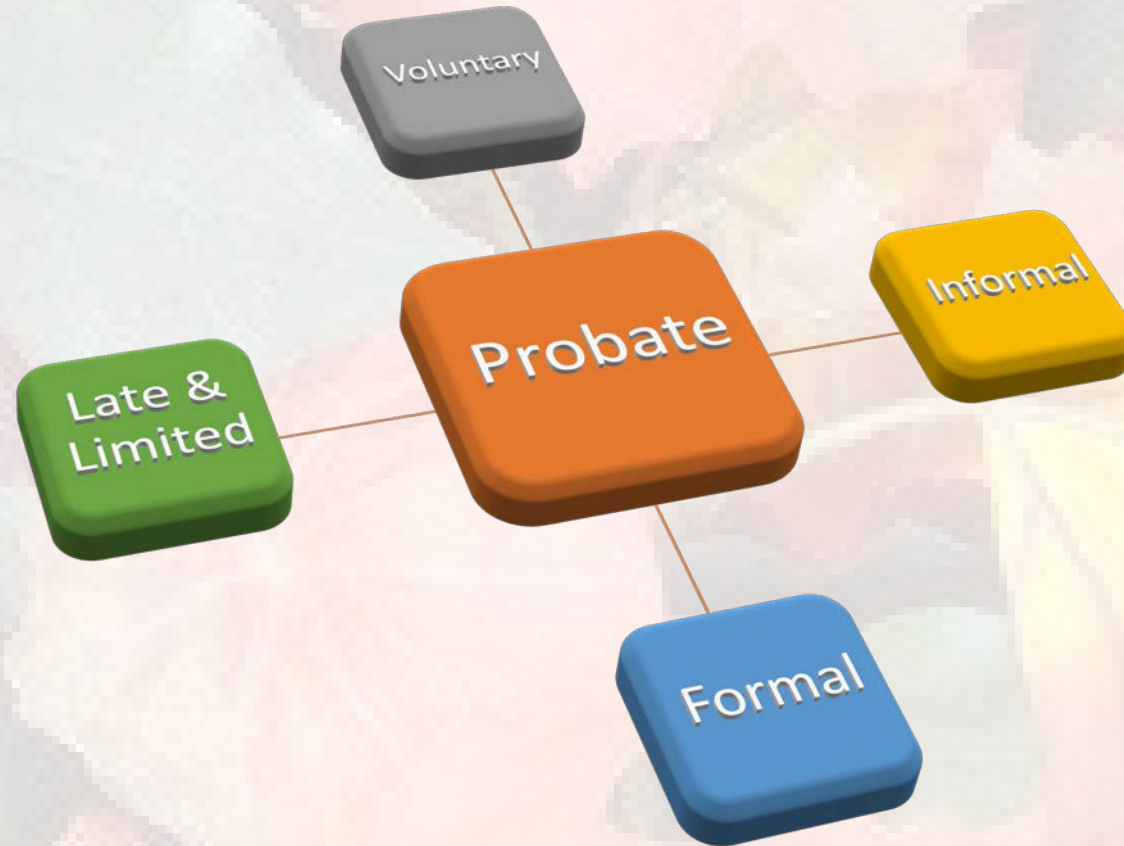
Income Taxes

- Final Personal Income Tax Return
 - Covers income earned between January 1st of the year the decedent died and the decedent's date of death
 - Can be filed jointly with surviving spouse if decedent was married
- Fiduciary Income Tax Return
 - Covers income earned after the decedent's death (e.g., interest, dividends, etc.)
 - May be required for multiple years
 - Tax rates are compressed compared to individual returns
 - Deductions are limited

Creditor Claims

- General Rule:
 - Creditors have 1 year from the date of death to file claims
 - Can generally recover from probate and non-probate assets
- MassHealth Exception:
 - Can recover for:
 - ✓ Long-term care/nursing home benefits paid regardless of age
 - ✓ All benefits paid to individuals 55 and older
 - Required to be given notice of all probate filings
 - Can recover in any probate proceedings filed within 3 years of death*
 - ✓ Generally does not recover against estates worth \$25,000
 - Can only recover from probate assets

4 Types of Probate in Massachusetts



Voluntary Administration

- Quickest, cheapest form of probate available
 - Timeline for authority is typically 4-6 weeks
- Voluntary Personal Representative:
 - Not officially appointed by the Court
 - Authority limited to assets listed on Statement
 - Must be named in Decedent's will or have an interest in the estate
- Most useful where:
 - Heirs-at-law and devisees are known and cooperative
 - Probate assets are limited and known

Voluntary Administration

- Only available where:
 - Decedent died domiciled in Massachusetts
 - Decedent's probate estate:
 - ✓ Contains no real estate; and
 - ✓ Consists of:
 - One vehicle regardless of value; and/or
 - Other assets worth no more than \$25,000
 - Decedent's original will (if Decedent left a will) is available and has no interlineations or deletions

Informal Probate

- Quicker and cheaper than formal proceedings
 - Timeline for appointment is typically 6-8 weeks
- Personal Representative is officially appointed by the Court and has broad authority to act
- Creates a presumption of the identity of the heirs-at-law and the validity of the will (if there is one)
- Most useful where:
 - Heirs-at-law and devisees are known and cooperative; and
 - Probate assets:
 - ✓ Exceed the limits for Voluntary proceedings; and
 - ✓ Do not include real estate

Informal Probate

- Only available where:
 - Decedent died:
 - ✓ Less than 3 years ago*; and
 - ✓ Either:
 - Domiciled in Massachusetts; or
 - Owning real estate/personal property located in Massachusetts
 - Decedent's original will (if Decedent left a will) is available and has no interlineations or deletions
 - None of the Decedent's heirs-at-law or devisees are unknown, minors, or incapacitated

Formal Probate

- Most expensive and time consuming form of probate
 - Timeline for appointment is typically at least 8-12 weeks
- Personal Representative is officially appointed by the Court and has broad authority to act
- Officially determines the identity of the heirs-at-law and the validity of the will (if there is one)
- Most useful where:
 - One or more heirs-at-law or devisees is/are unknown, a minor, or incapacitated; and/or
 - Probate assets include real estate

Formal Probate

- Available in all instances where informal proceedings are available as well as where:
 - Decedent's original will (if Decedent left a will) is:
 - ✓ Unavailable; and/or
 - ✓ Has interlineations and/or deletions
 - One/more of the Decedent's heirs-at-law or devisees is:
 - ✓ Unknown;
 - ✓ A minor; or
 - ✓ Incapacitated

Late and Limited Formal Probate

- Similar in time and expense to regular formal proceedings
 - Timeline for appointment is typically 8-12 weeks
- Personal Representative is officially appointed by the Court, but authority is limited to:
 - Paying expenses related to the administration of the estate; and
 - Confirming that title to assets listed on Petition has vested with the heirs-at-law/devisees
- Officially determines the identity of the heirs-at-law and the validity of the will (if there is one)
- Most useful where:
 - The Decedent died more than 3 years ago but on/after March 31, 2012; and
 - The Decedent's assets exceed the limitations for a Voluntary Administration

Late and Limited Formal Probate

- Only available where:
 - Decedent died:
 - ✓ More than 3 years ago but on or after March 31, 2012; and
 - ✓ Either:
 - Domiciled in Massachusetts; or
 - Owning real estate/personal property located in Massachusetts

Winding Down the Probate

- Inventory
- Accounting
- Distributions to Devisees/Heirs-at-law

Probate Avoidance

- Why avoid probate?
 - Expense
 - Time
- How avoid probate?
 - Trusts
 - Joint Owners
 - Designate Beneficiaries
- That being said, probate can be beneficial depending on the circumstances
 - Consult with your attorney

Samuel, Sayward & Baler LLC Probate Webpage and Questions

- Samuel, Sayward & Baler LLC Probate Webpage:

<https://ssbllc.com/probate/>

➤ Links to articles and charts regarding probate administration

- Questions?

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