

Morelli Legal Counsel, P.C.

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Estate Planning and Probate Law

The death of a loved one can be a traumatic event, and as a result, the process of dividing their remaining assets and property can be an emotional one. In the interest of propagating as smooth a process as possible, it's crucial to set clearly defined expectations for how the process will unfold.

Probate court is a necessary step in that process. The purpose of probate is three-fold: to identify the property, to appraise the property, and to pay taxes and any creditors with the assets derived from that property. There are two different ways in which the process is handled, depending upon the presence (or absence) of a will:

- If there **is** a will, an executor will oversee the process.
- If there is **not** a will, a court-appointed representative will oversee the process.



In the case of an executor, that person will administer the estate in accordance with the instructions of the will. In the case of a court-appointed representative, the state will ultimately determine how the estate is administered.

However, just because a will is involved, that does **not** mean probate is not necessary. The determining factor is whether or not the property or asset is listed in the deceased's name alone. If that is the case, then such property must first pass through probate in order for their heirs to assume ownership. But jointly owned property and the proceeds derived from such property are another matter. In that instance, the surviving joint owner may assume full ownership of all assets without the involvement of probate.

By clearly defining the process and setting expectations for the outcome, you can more easily manage the situation, increase expediency, and even help to bring about closure.

If you have any questions about this topic, feel free to contact me at [email address here].

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What is a conditional will?

A conditional will can be an attested will, a holographic will or a nuncupative will. Any of these become a conditional will when the gifts in the will are conditioned on some event occurring or on whether some fact is true or not. For example, my will would be conditional if it said “if I die of cancer, this is my will and I want half of my estate to go to charities for research and the other half of my estate to go to my spouse.” This will would only be effective if I did, in fact, die of cancer. If I died by any other means, and did not have any other wills, intestacy would apply.

What is tenancy in common?

“Tenancy in common” is one of the ways that people may own property together. For example, in most states, if you give away your property to two other people, unless you specify otherwise, they will own that property by tenancy in common. This form of ownership means that each so-called tenant-in-common has full rights to use and enjoy the property while they are alive. When one of the owners dies, their share in the property goes through their estate, via a will or state intestacy statutes. This differs from some other forms of joint ownership of property where there is something called survivorship, which means that the other owners get the dead owner’s interest. The impact of this point is that simply owning a property by tenancy in common does not remove the property from your probate - instead, you have to make an inter vivos transfer or give away the future interest.



This same distinction does not generally apply to property owned by joint tenancy or tenancy by the entirety, where there are survivorship rights which remove the property from the deceased’s probate estate.

Inter vivos transfer

An inter vivos transfer is a transfer of property made between living people. For example, where you give someone a flat-out gift of property, that is an inter vivos transfer and that property would not be part of your probate estate when you die because, obviously, you no longer own it. More specifically, a gift of property will count as an inter vivos gift if:

- (1) you intended to give the gift, voluntarily, to another person;
- (2) your giving of the gift was gratuitous, meaning you received nothing in return for it;
- (3) you actually gave the property to another person; and
- (4) that other person accepted the gift.

When people are planning their estates, drafting their wills, etc., they will often give inter vivos gifts of some of their property because it lets the other person enjoy it immediately, it gets the property out of the estate making the whole process easier, and it may have advantageous tax implications. However, there are certain disadvantages to an inter vivos transfer, mainly that these transfers are not revocable, so you can’t ever get the property back and you lose all control over it. When you want to retain some control over the property, you might be better off putting it into an inter vivos trust.



What is a quitclaim deed?

A quitclaim deed transfers or "releases" to the transferee whatever present right or interest the grantor has in the described property. Unlike a grant deed, a quitclaim deed carries with it no express or implied covenants. Thus, if the grantor holds no interest in the property, a quitclaim deed conveys nothing.

Typical restrictions imposed by law on owning real property.

There are many federal, state, county, and local laws which may restrict what you can do with the property that you own. Enforcement of these laws typically resides with agencies which are responsible for keeping you in compliance with these laws. The three most common restrictions imposed by government are:

(1) zoning - restriction on the use of the property as to residential, industrial, agricultural, or commercial purposes are very common. The size and height of improvements attached to the property are likewise subject to restriction.

(2) environmental hazards - what materials can be stored on the real property as well as who is responsible for removing environmental hazards from real property (such as asbestos, lead paint, petro-chemicals, radon and toxic wastes) are government regulated.

(3) public easement and right of way - a portion of the real property may have to be left open for others to use. Easements and right of way are used to allow access to other property, to provide for roads and sidewalks, and to enable electric/gas/telephone/sewer lines to be installed. A broader discussion of easements appears below.

Violation of government law can result in fines, penalties, injunctions and even criminal prosecution resulting in you being sent to prison.

Recipe Of The Month

Homemade Irish Cream (Bailey's)

3 eggs

1-15 oz. can Sweetened Condensed Milk

1-cup Heavy cream

3- Tbspn. Chocolate Syrup

1- Tsp. Instant Coffee granules

13 oz. Irish Whiskey (Jamison or your favorite brand)

Blend together in blender, refrigerate, and serve.

Enjoy!



ONE MINUTE IDEAS

Belief

Belief is the knowledge that we can do something. It's the inner feeling that what we undertake, we can accomplish. For the most part, all of us have the ability to look at something and know whether or not we can do it. So, in belief there is power: our eyes are opened; our opportunities become plain; our visions become realities.

"In the moment that you carry this conviction... in that moment your dream will become a reality"

Robert Collier

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A publication of Morrelli, Stieper and Gorecki, P.C. Attorneys At Law

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