



Attorney Allison Poirier

Probating a Loved One's Estate: Why It Needs to Be Done

There is no denying it. Probate has a bad reputation. Chances are that if you have heard anything about probate, it is that probate is something to be avoided at all costs. And while minimizing interaction with the probate court can be accomplished (with an appropriate estate planning strategy), it is unlikely that the probate court can be avoided altogether.

I. Passing Title of Assets

When mom and dad pass away and their Wills leave everything to you, you can just take control of the assets and do as you please with them, right? Unfortunately, no. Before mom and dad's assets can legally pass to you, their estates need to be probated.

Probate is the court-supervised administration of an estate and involves several steps: appointment of an executor, confirmation of what assets the decedent owned, payment of creditors, and distribution of assets to the proper beneficiaries. It is only once all these steps are completed that you obtain legal title to the assets you have inherited.

But do I really need to go to court to obtain legal title to mom and dad's couch? For smaller assets (such as furniture and other smaller household items, for example), passing of legal title may not seem like a huge concern. But what if you're inheriting a bank account or an investment account? Financial institutions will require that you provide proper documentation from the probate court evidencing that you are legally entitled to these accounts. The same is also true if you're inheriting a motor vehicle. You will need documentation from the probate court showing you are now the rightful owner of the car before you can register it and obtain insurance for it.

Obtaining legal title is even more important if you are inheriting real estate. When a person dies owning real estate, the State will automatically place a lien on the property for any estate taxes and probate fees that the decedent's estate may owe. Assuming no estate taxes are owed (which is the case for the majority of people) and the probate fees are paid, this lien will never be enforced. However, before you can sell the real estate to anyone else, this lien needs to be released by the probate court. This is true regardless of whether the decedent owned the property individually or jointly with you and/or anyone else.

II. But I thought that not all assets need to pass through probate?

This is true. Some types of assets are not required to pass through probate ("non-probate assets"). Property that was owned jointly, held in a revocable trust (a.k.a. "living trust"), or anything with a beneficiary designation such as life insurance and retirement accounts, are prime examples of non-probate assets. This means that the joint owners and/or named beneficiaries of these assets have immediate access to them and do not need probate court approval to take control of them. Generally, the only assets that pass through probate are those that were owned by the decedent solely in his or her own name. However, regardless of how the decedent owned title to their assets, there is one thing that is true for all estates: an estate tax return must be filed.

At present, there is both a state and federal estate tax. As of January 1, 2021, the State of Connecticut only charges an estate tax if you owned more than \$7,100,000 in assets, and the federal government only charges an estate tax if you owned more than \$11,700,000. But even if you are below these limits, your executor is still required to file an estate tax return with the probate court setting forth the total value of your estate, which includes all probate *and* non-probate assets. This means that even if you only owned non-probate assets when you died, your executor still needs to account for all these assets on an estate tax return and file the return with the probate court.

III. Settling Intestate Estates

Involvement with the probate court becomes even more crucial in the event that someone dies without having a Will (i.e. dies "intestate"). Many people think that if you die intestate, that your property goes to the State. Fortunately, this is not the case. If you die intestate in Connecticut, the State has enacted laws which dictate where your assets will pass known as the laws of intestacy. If you are married and have children, your spouse and children will inherit your estate. If you die without having a spouse or children, then your assets pass to your parents. If your parents have predeceased you, then your assets pass to your siblings. The laws continue to move through your family tree until it finds someone who can inherit your assets. But what if that relative is your third cousin, twice removed who lives in Timbuktu? How will he know he's inheriting your assets? That's where the probate court comes in. The probate court will appoint an individual to settle your estate, determine who is entitled to inherit your assets according to the laws of intestacy, and ensure that all your assets pass to those people. Without involvement from the probate court, your assets will hang in "legal limbo" and technically won't pass to anyone.

IV. Moral of the Story

No matter what you own or how you own it, whether you have a Will or die intestate, interaction with the probate court **is required**. Failure to properly administer a loved one's estate has the potential to cause all kinds of problems for those inheriting the decedent's assets.

If you have had the misfortune of having a loved one pass away and have yet to notify the probate court of their passing, we would be happy to assist you in commencing the probate process and answering any questions you may have in regard to what probating the estate will entail.

[Attorney Allison Poirier](#) is an associate in the Estate Planning and Probate department at [Kahan Kerensky Capossela](#). If you would like to contact Attorney Poirier to discuss your estate plan or a probate matter, you may reach her at 860-812-0433 or email her at apoirier@kkc-law.com.