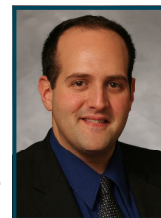




The Costly & Time Consuming Probate Process: A Myth in New Jersey

By: Adam P. Dubeck, Esq.



Lately you may have heard advertisements on radio, television and elsewhere, advising you to establish a trust and thereby avoid the alleged costly and time consuming probate process.

The ads claim that the probate process is expensive, time consuming and an invasion of your posthumous financial privacy. Frankly, these statements are misleading. So much so that the New Jersey Supreme Court Committee on Attorney Advertising condemned the use of such language in any type of attorney advertisements, flyers, and mailings.

Unfortunately these ads continue to be run, and so, the myth of the difficult New Jersey probate process continues to endure.

New Jersey is a “self-proving will state,” which means, so long as

your will adheres to the state’s requirements, there are laws that streamline the probate process. Generally, to make your will self-proving, all you need is to sign the document in the presence of two witnesses along with a notary public.

Of course there is some additional qualifying language that must be included in the document, but for the most part those four signatures: you, two witnesses and the notary public are all that is required for the will to be admitted to probate.

At least ten days after death, the executor named in the will may make an appointment at the county (in which the subject of the will was a resident) Surrogate’s Court to probate the will. Under typical circumstances, this appointment should last approximately one-half hour with applicable fees for probate usually

costing about \$150.00. From that point on, the executor’s administration of the estate is not supervised by the courts; absent a dispute or if the executor seeks instruction. Clearly, this process is neither unduly, time consuming nor costly.

What the proponents of probate avoidance would have you do is to establish and fund a revocable trust which, upon your death, would automatically transfer its assets to the named beneficiaries, much like a “payable on death” bank account.

However, this scenario has a great number of hidden fees and pitfalls. First off is the establishment of the trust itself, a document lengthier, often more complicated and usually more costly than a simple will.

Additionally, after the trust is created, title to your assets must be

transferred into it thereby necessitating several calls and letters to the various banking and investment institutions where your assets are currently held and, probably, other, more involved, efforts – even including the preparation and filing of deeds for your real estate. Prudence further requires that a will still be drafted (and probated) to ensure that if any assets you own at the time of your death were not titled to the trust (which is probably inevitable), they will nevertheless be transferred to the trust to be handled as provided in the trust agreement.

Further, when the trust is created it becomes a legal entity bringing with it many additional responsibilities and expenses not necessitated in probating a will. And, finally, the tax planning that is often contained in the trust

document can just as easily be included in a will.

There may be instances when a living trust is an appropriate vehicle in one's estate plan. For example, if you own property in more than one state, having those assets titled in trust may avoid the need for ancillary probate in multiple jurisdictions. Or, if privacy is an overriding concern, such a trust may be desired as it does not become a filed document that is available for the media

to see. Such a trust may also slightly simplify the executor's early administration of the estate by possibly reducing the need to obtain tax waivers from the State to move around estate assets. Tax waivers are essentially the receipt the State of New Jersey issues once all death taxes for a particular estate have been paid. The waivers are forwarded to the financial institutions that hold the assets (or filed with the county clerk in

the case of real estate) who may then release any partial holds or freezes on the decedent's accounts.

Still, absent particular and not so common circumstances, the time, effort and cost involved in establishing a revocable trust is not usually worth while. Especially, when one has a better understanding of the myth that is the costly and time consuming probate process in New Jersey.

Adam P. Dubeck focuses on matters related to Elder Law, Wills, Estates & Trusts, and Estate Planning. He is a former Associate Counsel of the Office of the Public Guardian for Elderly Adults of New Jersey and carries a CSA designation from the Society of Certified Senior Advisors as well as a graduate certification in Estate, Gift and Trust Taxation. He can be reached at the number below or by e-mail: adubeck@steinlegal.com.