

PROBATE QUESTIONS – UNDERSTANDING THE PROBATE PROCESS AND HOW IT AFFECTS YOU

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By Larry Parman

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The specter of the probate process can be a daunting one. A lot of people in Kansas, Missouri, and Oklahoma think that probate is a bureaucratic nightmare full of endless paperwork, courts, and legal minutia sufficient to guarantee months, or years, of headaches and worry.

Fortunately, the common understanding of probate is often far from the reality. The modern probate process is typically far more streamlined and easy-to-manage than most people assume. While there are specific requirements involved, and steps you must go through, managing probate does not have to be as difficult as many believe. To clarify why this is the case, today we start a two-part discussion of common probate questions.

WHAT, EXACTLY, IS PROBATE?

Probate, or the probate process, is the legal process surrounding death, incapacitation, and situations involving people who are unable to make their own decisions. Probate is also a type of court, one that is specifically, and sometimes exclusively, set up to hear cases involving issues of probate law.

Probate law is often unlike other kinds of law because at least one of the people involved in the case is either dead or otherwise unable to represent herself or himself. Because of this, probate courts have slightly different rules and requirements than other kinds of courts, and probate laws are often applied

differently than most other civil or criminal laws. This is why probate lawyers often specialize in this area of the law, and often do so exclusively.

WHAT'S THE DIFFERENCE BETWEEN PROBATE AND ESTATE SETTLEMENT?

While the probate process is generally about the laws and legal requirements that apply after someone has died or become incapacitated, the estate settlement process typically only applies after someone has passed away. Once someone dies, that person will leave behind a variety of assets, obligations, and unanswered questions. All of these are lumped together into something the law calls an estate. The estate settlement process, therefore, is simply the legal process designed to answer all of these unanswered questions left behind after a person dies.



Everyone will leave behind an estate after they die – no matter how much or how little. The estate settlement process is designed to address all of the questions that are left behind by a deceased person, and do so in a relatively uniform way.

For example, one part of the estate settlement process includes the identification of estate creditors, and the use of estate assets to repay any unpaid claims the decedent left behind. Then, once the creditors have been paid, the remaining estate property will be distributed to inheritors as inheritances.

WHAT IS THE UNIFORM PROBATE CODE?

The Uniform Probate Code, often referred to as the UPC, is a collection of



proposed laws drafted by legal experts in the probate field. The proposed laws were designed to give legislatures around the country the ability to adopt a uniform set of laws that would apply to any probate situation regardless of the state in which people lived. The idea behind the UPC was to provide universal

probate laws throughout the nation.

While many states have adopted the UPC, or parts of the UPC, not all of them have. Further, some states that have adopted the UPC have made changes that

make their state probate law slightly different from other states that may have also adopted the proposed code.

What this means to you is that while many probate laws throughout the country are similar, you can never be certain of what laws apply to you in your particular circumstances because there are significant differences that exist between the states, and even between states that may have adopted the UPC. In short, it means that talking to a probate attorney will always be your best option whenever you have a probate law issue.



HOW DO I PREPARE FOR PROBATE?

Probate issues can affect almost anyone at any time. If, for example, you have an elderly parent who suddenly loses capacity, you may have to go before a probate court and ask the court to appoint someone to make decisions on your parent's behalf. On the other hand, if you're creating an estate plan you will want to know what is likely to happen after you die so you can use tools to minimize how much of a role probate plays in the administration of your estate, or so you can create a plan to allow your representatives to easily manage any probate issue that might arise.

So, preparing for probate can mean different things to different people. Regardless of your needs and goals, we can help you get ready for whatever probate has in store for you. If you want to be prepared, you should contact us at your earliest opportunity.



About the Author

Larry Parman



After helping his own family deal with a lengthy probate and a battle with the IRS following his father's death in a farm accident, Larry made a decision to help families create effective estate plans designed to reduce taxes, and minimize legal interference with the transfer of assets to one's heirs, and protect his clients' assets from predators and creditors. Following a dozen years in the investment banking and financial services business, in the mid-1980s Mr. Parman formed a law firm that gives families the peace of mind that comes from having created a premier estate and financial plan.

After forming his law firm in 1984, he offered a series of public and private seminars to inform the public about using a Living Trust as the foundation of a family's estate plan. Today, Parman&Easterday is one of the leading business and estate planning law firms in the Midwest. The firm's primary focus is on business and estate planning, elder law, asset protection, and providing effective estate planning solutions for clients. Today, the firm's premier estate plan design is referred to as a Legacy Wealth Plan.

Mr. Parman is a frequent guest on the radio and can be seen on television talk shows explaining the importance of proper estate planning. Prosperity Productions selected Mr. Parman as a featured speaker in a nationally-recognized educational video on Living Trusts. He is the author of numerous published articles on financial and estate planning matters and the co-author of two books, *Estate Planning Basics: A Crash Course in Safeguarding Your Legacy* and *Guiding Those Left Behind in Oklahoma: Settling the Affairs of Your Loved Ones*.

Mr. Parman is a member and Fellow of the American Academy of Estate Planning Attorneys. He is also a member of the Oklahoma and Missouri Bar Associations, the American Bar Association, and the Oklahoma City Estate Planning Council.



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