

## WHAT IS PROBATE?

A Last Will and Testament is a written direction controlling the disposition of your property at death. In order for a Will to be legally valid in Iowa, it must be (1) in writing, (2) signed by the person making the Will, (3) declared by the person making the Will to be his or her Will, and (4) witnessed by two competent witnesses who must sign in the presence of the person making the Will. These formal requirements must be strictly followed or Iowa Courts will not recognize it as valid.

Your Last Will and Testament controls what persons or organizations will receive your property, such as your real estate, stocks, bonds, mutual funds, bank accounts, automobiles, recreational equipment, clothing, jewelry and ornaments. You can leave particular things to particular people or organizations in your Will.

Your Will can also state who you prefer to be Guardian of your minor children and the Trustee to manage their inheritance. The same person can serve as both Guardian and Trustee, or you may choose different persons for those roles.

Under current law, there is no federal estate tax if your estate does not exceed \$3.5 million. Under current law, the federal estate tax is repealed on January 1, 2010. The federal estate tax is reinstated on January 1, 2011, with a \$1 million exemption.

Under Iowa law, there is no inheritance tax for any amounts that pass to spouses, parents, grandparents, great grandparents, children, step-children, grandchildren, great grandchildren, and other lineal ascendants and descendants. There is an inheritance tax on bequests to brothers, sisters, sons-in-law, daughters-in-law, uncles, aunts, nieces, nephews, cousins and all other individual persons. Charitable bequests are also totally exempt from Iowa inheritance tax.

A properly drafted Will as part of a good estate plan can minimize tax consequences. Therefore, it is important, for the sake of your heirs, to plan carefully and put your plans in writing.

In your Will, you can also choose the Executor to wind up your affairs. After your death, the Executor gathers your property, pays your debts and any taxes due, and delivers the balance of your Estate to the people or organizations that you have designated.

You can leave your property to anyone you choose. However, a married person cannot completely exclude a spouse without the spouse's consent. A surviving spouse may exercise an option to take any elective share in lieu of a provision made in a Last Will and Testament.

If you die without a Will, the Court may appoint an Administrator to gather your property, pay your debts and taxes, and deliver the balance to your heirs at law. Without a Will, Iowa law determines who gets your property.

A common misconception is that if a person dies without a Will, all of his or her assets go to the State. This is only true if a person dies without any living relatives and there is no Last Will and Testament.

Probate is a Court-supervised procedure for recognizing your Last Will and Testament after you die and for transferring ownership to the appropriate beneficiaries. Probate laws are designed to protect the rights of heirs and creditors to make sure that the assets of the decedent are properly applied to pay-

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ment of debts and taxes, and the transfer of property to the rightful beneficiaries and heirs. If you die with an ownership interest in any real estate or other investments, your Estate generally must be probated whether you have a Will or not.

The Probate process also involves the payment of certain fees. The value of the Estate and the complexity of the services involved will determine the attorney fees. We encourage you to visit with us about our fee so we can give you an estimate of the total fees before we proceed with Probate. In addition, the Executor or Administrator has the right to a reasonable fee for such services, plus reimbursement of expenses, incurred in managing and settling the Estate. Iowa law provides a maximum which may be charged by an attorney or Executor for their services.

The time needed for probate depends on many factors, such as the Estate size, type of assets owned, form or ownership, tax issues, complexity of family relationships, creditors' claims, and whether a farm or business is involved. Generally, an Estate will be open for 6 months to 1 year.

In many Estates, beneficiaries may receive a part of their inheritance before the Estate is closed. The Executor will decide if it is appropriate to make a partial distribution based upon the cash needs of the Estate and any pending issues that might be unresolved.

There are many Probate avoidance schemes available, some of which are appropriate for certain clients. However, in many situations, efforts to avoid Probate only result in additional expense, confusion and frustration. You should consult with our firm before you undertake any Probate avoidance plans.

Some assets are not included in your Probate Estate, such as life insurance and retirement funds which have named beneficiaries. Your Last Will and Testament does not control life insurance and retirement funds which have named beneficiaries.

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