

The **5 most** important probate must-knows

When a loved one passes away it can be very overwhelming and there is a lot of misinformation that is floating around. At Bellomo and Associates, we pride ourselves in education first and foremost. Being educated before a crisis happens is the key to getting through it in the best possible way. We offer a probate workshop to educate, hopefully ahead of time, but if not ahead of time then before you get in too deep and get overwhelmed. This workshop is presented virtually and in-person at scheduled times as well as via an on demand link that you can watch in the comfort of your home.

We have found that there are five essential must-knows about probate that you should know before you start the process:

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What is probate?

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Who needs probate?

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How to avoid probate

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1. What is probate?

Probate is the state's rulebook that tells us what we need to do and how we need to do it in order to be able to administer a person's estate for assets that they own in their name alone at the time of their death. This also means not only that the asset is in their name alone, but also that there are no beneficiary designations on the account. Probate is governed by the state and county of residence at the time of death as determined by the permanent address of the decedent. Probate is not good or bad; it is just simply the legal process, or the rule book, that we must follow for a deceased person who owns assets in their name alone.

The state provides that there are certain notices to creditors as well as notices to heirs that must be completed. The rules also prescribe that an inheritance tax return must be filed within nine months of the date of death and you then must file a notice to the local court telling them that everything was complete and that the inheritance tax was accepted by the Department of Revenue and the money was distributed. This is by no means a checklist of everything that must be done, but simply an overview of what must be done if someone dies owning assets in their sole name.

2. Who needs probate?

Probate is required for a person who dies in the Commonwealth of Pennsylvania who owns assets in their name alone. Their wishes on the distribution of their assets will be done pursuant to their Last Will and Testament or, if they did not have one, the Pennsylvania statute of intestate succession.

Probate is not necessary for anybody who owned a joint account or an account in their name alone that had a beneficiary designation on it. For example, probate will not be required if the only assets are assets that have beneficiary designations on them such as life insurance, annuities, transfer-on-death accounts, payable-on-death accounts, in-trust-for accounts, or any other beneficiary designated asset. Furthermore, assets that are jointly owned will also not be required to go through probate. Please remember the assets that are subject to probate are different than the assets that are subject to inheritance tax.

3. How to avoid probate?

A person can avoid probate by simply making their accounts joint or putting a beneficiary designation on the account prior to their incapacity and prior to their death. Pennsylvania is a very easy state to navigate and the costs are very minimal compared to other states. In Pennsylvania, an estate can be settled through a family agreement or simply a release without Court involvement. While many other states in the country have burdensome rules and cumbersome requirements, Pennsylvania is not one of them. Many people do not believe that there is even an incentive to avoid probate in the Commonwealth of Pennsylvania, but, regardless of whether there is or not, you can avoid it by taking other steps.

However, it is important to understand that by making an account joint, there are potential legal implications as well as tax implications to the family. For example, whoever the joint owner is owns the account and it is theirs at the death of the decedent. There is no legal requirement that that person split the assets with other family members, even if the Will provides that everything was to be split multiple ways. Also, if the joint owner, usually a child, dies before the parent, the parent would then have to pay inheritance tax on money that was originally theirs because they added a joint owner. There are many other potential implications of this, but for the purpose of this discussion, we simply want to bring attention to the fact that just because making a joint account for the purpose of avoiding probate, there could be other implications beyond whether a probate is necessary. It is imperative that you seek legal advice to ensure that the steps that you are taking to avoid probate will not have any other potential implications or long-term effects.



4. Commonly asked questions

Probably the most common question that we receive is whether it is necessary to hire a lawyer to go through the probate process. The short answer is no, it is not a legal requirement and a person can go through the process on their own as the executor or executrix of an estate. However, our firm, and many others, will not take a case if it was started originally by someone on their own. It is very easy to open an estate and to fill out a probate petition and go to the courthouse and receive Letters Testamentary/ Short Certificates in order to begin the process. However, this is merely the first step and, once that occurs, now the government is aware of the estate and it now triggers all of the legal processes and requirements that there are in the Commonwealth. In Pennsylvania, there are notices to heirs as well as notices to creditors, advertising and an inheritance tax return and potentially a fiduciary income tax return that must be filed. The fun only begins once the Letters are granted and understanding how to do it and making sure that you are meeting all of the legal requirements is essential because there is potential personal liability to an executor. An executor can be held personally liable to the beneficiaries, to the government, and to any charities that are listed in the documents or who are entitled to distributions under the intestate law. It is the responsibility of the executor to make sure that all beneficiaries get the amounts that they are entitled to and also to the government to make sure that they get their taxes, if applicable, as well as, if any charities are involved to notify the Attorney General's office. To the extent that any of those do not receive 100% of what they are supposed to, there is personal liability on behalf of the personal representative of the estate. In my personal opinion, it is not worth the risk or the hassle to a person to try to go through this process on their own.

Jeff, if we avoid probate, that means that there is no tax, right? No, this is not correct. Probate is merely the legal process that we use to carry out your wishes. It has absolutely nothing to do with whether or not inheritance tax is owed. Inheritance taxes are assessed in the Commonwealth of Pennsylvania based upon the relationship of the person receiving the money to the decedent. Whether or not it automatically transfers to the person through a non-probate process has no effect on whether or not taxes are owed. In Pennsylvania the major asset, basically the only asset that is not subject to Pennsylvania inheritance tax is life insurance on the life of the decedent.

For the most part, every other asset is subject to inheritance tax whether or not it is jointly owned, has a designated beneficiary or goes through the probate process or not. This is important to note because many people who receive an asset outright, because it was joint or because they were listed as the beneficiary, often assume that because they already have the money and they don't have to notify the government and there won't be any inheritance tax owed. You will receive a letter from the Department of Revenue even if there is no probate estate if an asset had a joint owner or designated beneficiary. The inheritance taxes must still be paid. If not paid the Department of Revenue will certainly go after the beneficiary or the executor for any monies owed to them.

The current Pennsylvania inheritance tax structure is as follows:



0% to a spouse



4.5%

to a lineal descendent which includes children and grandchildren as well as parents and grandparents



12% to siblings



15%

to anyone else in the world including those lovely nieces and nephews

Jeff, do we have to probate for accounts that are under \$10,000 in the bank? No. There is a statute in the Commonwealth of Pennsylvania that allows us to show a funeral bill and avoid the formal requirements of the probate process as long as the account is under \$10,000.

Can I transfer a car to a family member if it is the only asset without having to go through probate? Yes. There is a form through the Department of Motor Vehicles in the state of Pennsylvania that is MV-39 that will allow you to not have to go through the probate process and transfer a motor vehicle to a surviving spouse, the estate or another individual so long as all heirs sign off on the transfer.

5. Biggest misconceptions

The biggest misconception is that a power of attorney can continue to pay a decedent's bills after they die. This is not correct. A power of attorney ceases at the moment of death and the individual named as the power of attorney no longer has any authority on behalf of the person who passed away. If the person happens to be the executor of the estate, then they can get appointed through the probate process and then they will have legal authority, but prior to that moment they have no authority as the power of attorney after the moment of death.

If property was transferred before death, it will avoid inheritance tax. This is not the case. If the property was transferred within one year of the date of death the value of the transferred property falls back into the estate for inheritance tax purposes. Any transfers made longer than one year prior to the date of death will not be subject to the Pennsylvania inheritance tax.

So a transfer does not automatically avoid inheritance tax.

Property outside of probate or property that is transferred through the non-probate process is not subject to inheritance tax. False. This is not correct and is often a major issue that people run into and don't even know it. Assets that are non-probate do not avoid tax and, as stated above, for the most part the only asset that avoids inheritance tax is life insurance in the Commonwealth of Pennsylvania.

We hope that this e-book was informative and that you learned what you need to learn about the five most common mistakes and must-knows in probate.

If you would like further information, please contact our office at 717-845-5390 or on the web at www.BellomoAssociates.com

