

# Probate

## INTRODUCTION

Connecticut is divided into 130 probate districts, each of which is presided over by a Judge of Probate who is elected to office for a four-year term. Sometimes the issues presented to the Probate Courts are complex and difficult. Therefore, it is important that you seek competent professional advice, so that your legal rights are fully protected. Although this pamphlet is not a substitute for such assistance, it has been designed to give you an overview of probate court operations, with specific emphasis on the procedures that are to be followed in probating a will or administering an estate. The probate judge and staff will be happy to answer your procedural questions, but they are not allowed to give you specific legal advice.

## Questions and Answers

### **1. Why Do Probate Courts Become Involved in the Settling of Decedents' Estates?**

When a person who owns property dies, the Probate Court becomes involved to oversee the division of property among those persons legally entitled to it. If the person, referred to as the "decedent," left a will, the division of property will be carried out according to the wishes of the decedent as set forth in the will. (The process of proving that a will is genuine and distributing the property in it is known as "probating" a will.) If the decedent did not leave a will, his or her property will be divided according to Connecticut's laws of "intestacy." (See the answer to question number 15.) In addition to overseeing the distribution of the estate, the Probate Court will insure that any debts of the decedent, funeral expenses, and taxes are paid before distributing the remaining assets of the estate.

### **2. When Is It Necessary to Open an Estate?**

An estate must be opened if a decedent owned properties at the time of her death in her name alone or together with others, but not in survivorship. A court order is required to transfer this type of property to the proper party.

### **3. What Does "In Survivorship" Mean, and Must Survivorship Property Be Reported to the Probate Court?**

The placing of a savings account, shares of corporate stock, bonds or real estate "in survivorship" with another means that each of the named parties has an undivided equal interest in the monies, stocks, bonds, or real estate during their joint lives. This form of ownership grants to the joint owner(s) who survives, ownership of all of the monies, stocks, bonds, or real estate immediately upon the death of the joint owner. Survivorship property must be reported to the Probate Court on the Connecticut Succession Tax Return required to be filed with the Court.

### **4. What Taxes Might Be Due at the Time of Death?**

Taxes payable as a result of death include one to the federal government called the Federal Estate Tax and another to the State of Connecticut known as the Connecticut Succession Tax. There may be a tax exemption and thus no tax due depending on the relationship of the beneficiary to the decedent and the size of the estate. Until January 1, 2005, succession tax returns are to be filed with, and reviewed by, the Probate Court and then forwarded to the Commissioner of Revenue Services of Connecticut. In the event that a dispute arises between the taxpayer and the Commissioner, and a compromise is not reached, the Probate Court will hold a hearing to

determine the matter.

There is also a Connecticut Estate Tax that applies in certain cases where filing of a Federal Estate Tax Return is required. There may also be taxes payable to other states in which the decedent owned property.

There may be income taxes, property taxes, and other taxes due from a decedent if these taxes accrued prior to death. It is the fiduciary's responsibility to ascertain and pay such taxes. Fiduciaries are also responsible for reporting income received during estate administration.

## **5. How Is the Connecticut Succession Tax Determined?**

The Connecticut Succession Tax is currently being phased out and will be totally eliminated by January 1, 2005. The amount of property exempted from the tax varies depending upon the relationship of the decedent to those who will receive the property, as explained below. As of July 1, 1988, the succession tax on amounts passing to spouses (formerly Class AA) was eliminated. Currently there are three classes of inheritors, each with different tax rates:

**Class A** Relationship to decedent: parent, grandparent, adoptive parent, natural or adopted descendant (such as a daughter, son, grandchild, or great-grandchild).

**Class B** Relationship to decedent: full or half brother or sister, natural or adopted descendant of such brother or sister, stepchild, or spouse or unremarried widow(er) of the descendant's natural or adopted child.

**Class C** Relationship to decedent: any other beneficiary not included above. (For example, uncles, aunts, cousins, sister-in-law, brother-in-law, stepbrother, stepsister, unrelated individuals, associations, corporations.)

The exemptions will increase each year according to the following chart:

<b>Exemption amount for property inherited by Class A:</b>	<b>Effective date of exemption increase:</b>
Property under \$250,000	1-1-97
Property under \$500,000	1-1-98
Property under \$800,000	1-1-99
Property under \$2,000,000	1-1-00
Tax on Class A is eliminated	1-1-01
Property under \$200,000	1-1-99
Property under \$400,000	1-1-00
Property under \$600,000	1-1-01
Property under \$1,500,000	1-1-03
Tax on Class A is eliminated	1-1-04
Property under \$200,000	1-1-99
Property under \$400,000	1-1-00
Property under \$600,000	1-1-01
Property under \$1,500,000	1-1-03
Tax on Class A is eliminated	1-1-04

The tax rates will vary from year to year until the phase-out is completed in 2005. Tax Tables may be obtained from the Department of Revenue Services (860-297-5737) or from your local probate court.

## **6. Is the Federal Estate Tax Determined in the Same Manner as the Connecticut Succession Tax?**

No. Furthermore, the Federal Tax Reform Act of 1976 and the Economic Recovery Tax Act of 1981 made major changes in the federal estate tax picture from that previously in effect. Under the new laws, a single schedule of rates applies to determine both gift and estate taxes. The laws are very complex, and it is suggested that a person seek professional assistance for an explanation of the law. In 1997, Congress enacted major changes to these taxes, including phased-in increases to the \$600,000 exemption, which will rise to \$1,000,000 over the next six years. Please consult with your tax advisor for the latest information.

Effective for decedents dying on or after July 1, 1997, those required to file a Connecticut Estate Tax Return must do so by filing one signed original with the Department of Revenue Services, 25 Sigourney Street, Hartford, CT 06106, and by filing a duplicate original with the Probate Court for the district in which the decedent last resided.

## **7. What Is the Effect of Having Savings or Securities "In Trust For" Another Person? How Do Such Bank Accounts Differ from a Custodial Bank Account for a Minor?**

Monies on deposit in a bank account standing in the name of a depositor "in trust for" another become the monies of the named beneficiary immediately upon the death of the depositor.

In 1997, the State Legislature changed the law to permit securities to be similarly owned by one individual "in trust for" another. Like the bank accounts, those securities remain the exclusive property of the owner until death, when they are transferred immediately to the survivor. For persons dying before January 1, 2005, a succession tax return will need to be filed for such assets. An alternative way of providing money in an account for the benefit of a minor child is by opening a custodial account under the Uniform Transfers to Minors Act. The depositor could act as a custodian of such monies. However, the monies in a custodial account belong to the minor at all times and can only be used for the minor's benefit. When the minor attains the age of twenty-one, he or she is entitled to receive those monies and may ask the custodian for an accounting of how they were managed. The death of the custodian prior to the beneficiary's reaching the age of twenty-one may require the probate court to appoint a successor custodian. Whether or not a succession tax is due depends upon the amount of the transfer in relation to the amount of the exemption. (See #5 above.)

## **8. Is There a Simple Method to Probate a Small Estate?**

Yes, if the total assets left by a decedent in his name alone consist of personal property and do not exceed \$20,000. The decedent may own survivorship real estate or other survivorship assets exceeding \$20,000 in value and still qualify for this simple procedure. In such an event, the transfer of both tangible and intangible personal property such as bank accounts, shares of corporate stock, bonds, unpaid wages, death benefits, insurance proceeds, or motor vehicles can be passed simply to the surviving spouse or next of kin.

The only requirement is that the surviving spouse or next of kin or some suitable person file an affidavit in the Probate Court stating that the decedent's funeral expenses and other debts have been paid at least to the value of such assets or that such assets are necessary to pay funeral and physicians' expenses. Thereafter, the Judge will confirm that no other probate proceedings have been started and will authorize by a decree the transfer of the personal property to the surviving spouse, next of kin, some suitable person, the funeral director, or physician to the extent needed to pay such bills. A Succession Tax Return is also required for a small estate, but in most cases a short form can be used.

## **9. Who Can Serve as an Executor or Administrator of an Estate? What Duties Does One Have?**

An executor or administrator can be anyone: a member of the decedent's family, an attorney, a bank, or a beneficiary of a will. An executor is named in the will and chosen by the person making the will. If that person is capable, the Court must appoint that individual as executor. If there is no will, the selection of an administrator is made by the Court. The law requires that a family member or designee of the family member be chosen, unless it appears to the Court that it would not be in the best interests of the parties concerned, in which case the Court will usually appoint an impartial person or a bank.

#### **10. Is It Necessary to Have a Lawyer or Other Professional Help Probate an Estate or File the Required Tax Returns?**

It is often advisable for the fiduciary to obtain professional assistance in connection with the administration of an estate. The Clerk of the Court or the Judge of Probate may provide limited assistance by helping an individual to complete required forms and reports. The Judge will be careful in the type of assistance given, since he or she may be called upon at a later time to adjudicate matters relating to the tax return, an account, or intermediate petitions. It is the fiduciary, however, who is primarily responsible for completing these forms and reports and for taking all of the other steps necessary to settle the estate. A booklet entitled "Guidelines for Administration of Decedents' Estates" is available from the Court of Probate to assist fiduciaries. Responsibilities such as preparation of tax returns and protecting unusual assets frequently require professional help.

#### **11. How Do You Make Application for the Probate of a Decedent's Will?**

Any person in possession of any will must deliver such will to the probate court in the town where the decedent had his or domicile within 30 days after the decedent's death. Ordinarily, at the time the will is brought to the probate court, an application for probate of the will is filed with the court, and after a hearing, an executor is named. However, if the decedent left no assets in his or her name that would pass under the will, the will is simply placed on file and not admitted to probate.

#### **12. How Old Can a Will Be and Still Be Good?**

A will can be legally binding no matter how old it is. However, certain subsequent events may cause a change in the will's formula of distribution. For example, the subsequent birth or adoption of a child, marriage, divorce, or annulment may alter the will's stated disposition. Therefore, it is extremely important for everyone to review the contents of their wills periodically, especially if such a major life event has occurred.

#### **13. What Can Be Done if a Person Dies and Has a Safe Deposit Box and a Will May Be in the Box?**

If a decedent had a safe deposit box and it is suspected that a will or other important documents are in the safe deposit box, it is possible for a Probate Court to immediately issue an order authorizing a family member or other suitable person to gain access to the safe deposit box. The box will be opened in the presence of a bank officer and the contents cataloged. If a will is discovered, it will then have to be filed in the probate court.

A similar situation might involve a decedent who lived alone in a house or apartment, and no relative can be found to take proper action. The Court has the ability to appoint a temporary administrator immediately in order to safeguard the decedent's belongings and to take other action to protect the estate.

#### **14. When A Person Dies, Are His Assets All "Frozen" and Unavailable to the Family?**

In the overwhelming number of cases involving joint and survivorship assets between the decedent and family members, funds are immediately available to the survivors without court approval. However, assets in the name of the decedent alone may not be used until an executor or administrator is appointed, which, in most cases, takes only one to two weeks. (In an emergency, the Court can provide immediate relief.) Thereafter, such assets may be used to pay proper debts and expenses. A family car may be used immediately with permission of the Court. In addition, if all the heirs consent, an estate can be opened in a single day so that the estate's funds can be accessed without delay.

Even though these assets may be available immediately to the family, with or without court action, they still must be properly accounted for so that the claims of creditors and the State Tax Department are properly handled.

### **15. What if a Person Dies Leaving No Will? What Happens to the Property?**

If the decedent left property in his own name, then it is necessary for an appropriate person (usually a family member) to make application to the Probate Court for administration of the decedent's estate. Since there is no will, the property is distributed in accordance with the Connecticut laws of descent and distribution. The estate is called "intestate" because there is no will.

### **16. How Is the Property Distributed When There Is No Will?**

Spouse, and children* of decedent and spouse	Spouse takes first \$100,000, + 1/2 of the remainder. Children* take the other 1/2.
Spouse, and children* of decedent, one or more of whom is not the child of the spouse	Spouse takes 1/2. All the children* share the other 1/2 equally.
Spouse and parent or parents (no children**)	Spouse takes first \$100,000 + 3/4 of the remainder. Parent(s) takes the other 1/4.
Spouse only (no children**, no parents)	Spouse takes all.
Children* only (no spouse)	All goes to the children*.
Parent(s) (no spouse, no children**)	All goes to the parent(s).
Brothers* and sisters* (no spouse, no parents, no children**)	All goes to the brothers* and sisters*.
Next of kin (no spouse, no children**, no parents, no brothers** or sisters**)	All goes to the next of kin

If there is no next of kin, but there is a step-child\*, he or she will be next in line to take. If there is no step-child\*\*, all goes to the State of Connecticut.

\*If this person(s) has died before decedent, his or her descendants may take instead.

\*\*or descendants.

### **17. Does Death Relieve a Family from Making Payment of Monies Owed by a Decedent?**

A creditor has a right to look for payment of any outstanding obligation incurred in the decedent's lifetime from those properties owned by the decedent in her name alone. In most cases, creditors and family members agree on the amount which the decedent owed, and payment is made voluntarily by the executor or administrator. However, a creditor may want to protect himself by filing a written claim of the debt with the executor or administrator and, if he has been given a specific written notice by the executor or administrator inviting such a written claim, the creditor must file that claim within the time limited by that notice. The failure of the creditor to file such a claim as requested may very well bar that creditor's right of recovery.

In many instances, properties in the name of the decedent and another or others in survivorship will not be subject to the claims of all creditors against the decedent. However, there are exceptions to this rule which should be carefully considered. For example, if the decedent's estate is not sufficient to pay funeral expenses, debts due for the last illness of the deceased and expenses for settling the estate, and debts due to the State for aid or care to the deceased, the decedent's proportional share of the monies on deposit in a survivorship joint bank or savings account may be subject to payment of those expenses.

### **18. What Are the Various Costs Involved in Settling a Decedent's Affairs?**

Upon the death of any person, some or all of the following costs may be payable to settle the decedent's affairs: (a) probate fees; (b) fees of an executor or administrator; (c) attorneys' fees; and (d) taxes, state or federal.

Probate fees and taxes due are fixed by law. The fees of an executor or administrator and of an attorney are based upon the work efforts of each and are subject to the approval of the Probate Court. Often, members of the family are willing to serve for little or no compensation.

### **19. What Is the Basis for Computing Probate Charges?**

Charges made by the Probate Courts are strictly regulated by statute. They are based on the size of the estate in the decedent's name alone and on the amount that may have been owned with others, such as survivorship property and other taxable transfers. The following is the section of the statute that is used to compute probate charges for estates in which proceedings commenced prior to April 1, 1998:

Notes: 1) There is a 50% reduction in probate charges for property passing to a spouse. 2) If the basis for costs is less than \$10,000 and a full estate is opened, the minimum cost is \$100.00.

The following is the section that is used to compute probate charges for estates in which proceedings commence on or after April 1, 1998:

Notes: 1) There is a 50% reduction in probate charges for property passing to a spouse. 2) If the basis for costs is less than \$10,000 and a full estate is opened, the minimum cost is \$150.00. 3) In estates where the gross taxable estate is less than \$600,000 in which no succession tax return is required to be filed, a probate fee of .1% shall be charged against non-solely owned real estate, in addition to any other fees.

### **20. How Are Probate Charges Used by the Probate Court?**

Statutory charges paid to the Probate Court are used to pay the salaries of the court staff and certain operational expenses. After payment of such costs, the net sum is retained by the Judge as his or her only compensation, subject to an assessment levied by the State of Connecticut. The statute strictly limits the amount a Judge may retain as compensation, and it now permits a Court

with insufficient income to meet its reasonable and necessary operating expenses by requesting a subsidy from the Probate Court Administrator.

## **21. What Is a Probate Court Hearing?**

A hearing at the probate court is an opportunity for all family members and other parties in interest to appear at the court to ask questions or to make certain that their views are known. The notice of a hearing should not be ignored if there are any questions on, or objections to, matters being heard.

The law presently mandates at least one hearing on all probated estates. That hearing is usually held at the closing or acceptance of the final accounting by the executor or administrator, unless all parties sign and file with the Court a written waiver acknowledging that they have reviewed the final account and have given it their approval.

Unless all interested parties voluntarily sign a waiver, notice of the hearing is required at the time each estate is opened to pass upon the admission of a will to probate or for the appointment of an administrator.

Other hearings may be necessary at intermediary stages of the proceedings, such as upon a request for an allowance for support of the surviving spouse or children or for the settlement of a doubtful or disputed claim or for the sale of real property.

Probate hearings are normally informal proceedings; however, unresolved or contested matters may require the taking of evidence at a hearing so that the Judge can make a proper determination of facts or law.

## **22. Information and Documents You May Need to Provide to the Probate Court:**

Certified copy of Certificate of Death.

Original will and codicil, if any.

- A list of names by which the deceased owned real or personal property that will be reported to the Court, either in the inventory or in the Succession Tax Return (first, middle, last name).
- You will have to indicate whether the decedent or any beneficiary received public assistance or was in a state hospital, including the receipt of benefits under the convalescent care program known as Title 19.
- A list of all names and addresses of the decedent's heirs. (Go on to next letter listing if no relatives in the previous class):

a. Surviving husband or wife and children and, if any, children of a deceased child. (If there is a surviving spouse and no children, the parents of the deceased must be listed);

b. Parents;

c. Brothers and sisters and children of deceased brothers and sisters;

d. Uncles and aunts;

e. First cousins; if none, then second cousins; and so on;

Names and addresses of those who receive anything under the will or codicil, if additional to those mentioned above.

Listing of all assets left by decedent whether or not in survivorship, including:

- a. Checking or savings accounts (name of bank, account number, name or names on book, balance on date of death including interest);
- b. U.S. War or Savings Bonds (name or names on bonds, series number, number on bonds, face value of bonds, value at date of death);
- c. Corporate Stock (name of corporation, certificate number, common or preferred, number of shares, name or names on certificate, value at date of death);
- d. Real estate (copy of deed; assessed value of real estate, which can be found on real estate tax bill; market value at death);
- e. Automobile (copy of title and/or registration; value at date of death);
- f. Name and fair market value of any business that the deceased owned either totally or in part;
- g. Valuable personal property (such as coin or stamp collections; jewelry, antiques, or art collections);
- h. Policies of insurance not payable to a named beneficiary or any pension or profit-sharing plan for which a death benefit is payable;
- i. Social Security or veterans' benefits to which the deceased was entitled.

List of outstanding bills or debts of deceased, such as:

- a. Medical or hospital expenses and other monies owing for last illness.
- b. Mortgages due (lender's name, location of property, date of mortgage, amount due at date of death);
- c. Loans due (name of lender, amount owed at death);
- d. Unpaid taxes; income, personal property, or real estate;
- e. General obligations (name of creditor, amount due at date of death).
- f. Funeral charges and monument expense.

### **23. Does a Probate Court Handle Matters Other Than Matters Associated with Decedents' Estates?**

Although a Probate Court is commonly thought of as dealing with the distribution of a person's property after death, there are many functions of the Court that assist the living. The Court may be called upon to terminate parental rights when parents are not carrying out parental responsibilities and, in a related matter, hear claims of paternity of unwed fathers. The Court also considers and approves adoptions.

In other cases, a child may need a guardian of his or her estate or person. The guardian of an estate of a minor is appointed by the Judge to oversee monies or properties belonging to a child, while a guardian of the person is appointed to approve the proper care of a child. The appointment of guardians for persons with mental retardation, as well as sterilizations and placements of mentally retarded persons, are also within the jurisdiction of the Courts.

The Court also aids mentally and/or physically incapable persons who are unable to manage or

administer their own affairs. In such cases, the Court, after a hearing, appoints a conservator to act on behalf of the incapable person. In addition, the Court is empowered to commit a person suffering from severe mental illness to an appropriate hospital.

The Court also receives and passes on various fiduciaries' accounts, including accounts of conservators, guardians, testamentary trustees, and in some cases, trustees under an inter vivos trust.

Another responsibility of a Probate Judge is to approve or disapprove the marriage of a youth under the age of sixteen years. The Court is also empowered to waive the blood tests required for the issuance of a marriage license and has jurisdiction to grant a change of name. As a courtesy to the public, a large number of Courts will assist persons in obtaining passports.

## **Glossary**

<b>PROBATE</b>	Broadly, a characterization of the functions of the Probate Court, whether it be the probate of a will, the approval of the accounts of an administrator of a decedent's estate, or any other judicial act within the province of the Court, including guardianships, conservatorships, and the like.
<b>WILL</b>	A written declaration of a person's wishes concerning the distribution of property standing in his or her name after death, executed in accordance with specific legal procedures.
<b>CODICIL</b>	An amendment or addition to a will.
<b>TESTATE</b>	Referring to the estate of a deceased person who leaves a will at death.
<b>INTESTATE</b>	Referring to the estate of a deceased person who dies without leaving a will.
<b>FIDUCIARY</b>	One who holds property in a position of trust for another, such as an executor, administrator, trustee, guardian, or conservator.
<b>EXECUTOR</b>	A person named in a will to manage and settle an estate and to carry out the directions and mandates of the decedent
<b>ADMINISTRATOR</b>	A person who has been named by the Probate Court to administer and settle the estate of a decedent who dies without leaving a will. The estate will be settled in accordance with the laws of descent and distribution, which are also known as the laws of intestacy.
<b>TRUST</b>	Property, real or personal, held by one party for the benefit of another.
<b>GUARDIAN</b>	A person given the power and duty by a Probate Court to manage the property or provide for the care of the person of a minor child or mentally retarded person.

- CONSERVATOR** A person named by the Probate Court to supervise the affairs of another person who is incapable or who needs assistance in managing his or her affairs or caring for himself or herself.
- PROBATE BOND** A promise by a fiduciary, usually guaranteed by a third party known as a surety, to replace any funds up to the amount of the bond to fulfill the faithful performance of his or her duties. Often, the surety is an insurance company.
- REAL PROPERTY** Real estate such as a home, land, or farm, including the ownership of a condominium unit.
- PERSONAL PROPERTY** Property not classified as real property, such as bank accounts, shares of corporate stock, bonds, automobiles, household furnishings and personal effects.

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