



An Overview of the Probate and Non-Probate Process

Estate and Trust Administration Process

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The Probate and Non-Probate Process

► What is the Probate Process?

- Will vs no Will (i.e. Testate vs. Intestate)
- Formal vs. Informal
- Supervised vs. Non-Supervised
- Creditor Period
- Inventory and Collection of Assets
- Claims
- Taxes
- Distribution
- Closing the Estate

► What is the Non-Probate Process

- Joint Ownership, Beneficiary designations, Trusts
- Collection of Asset
- Creditor Period
- Claims
- Taxes
- Distribution
- Closing the Trust




How do we get to Probate?

- ▶ Any asset owned solely by the decedent without any beneficiary designations. Those assets could be:
 - ▶ Real Estate
 - ▶ Life Insurance
 - ▶ Business Interests
 - ▶ Single member LLCs
 - ▶ Investment accounts
 - ▶ Retirement Accounts
 - ▶ Vehicles
 - ▶ Artwork
 - ▶ Tangible Personal Property



What governs Probate Assets?

- ▶ Last Will and Testament will control the probate assets and who is in charge of collecting and distributing the assets.
 - ▶ If there is no Last Will and Testament, then the State of Indiana has default takers. IC 29-1-2-1
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Intestate Statute

- 29-1-2-1. Estate distribution(a) The estate of a person dying intestate shall descend and be distributed as provided in this section.(b) Except as otherwise provided in subsection (c), the surviving spouse shall receive the following share:(1) One-half (1/2) of the net estate if the intestate is survived by at least one (1) child or by the issue of at least one (1) deceased child.(2) Three-fourths (3/4) of the net estate, if there is no surviving issue, but the intestate is survived by one (1) or both of the intestate's parents.(3) All of the net estate, if there is no surviving issue or parent.(c) If the surviving spouse is a second or other subsequent spouse who did not at any time have children by the decedent, and the decedent left surviving the decedent a child or children or the descendants of a child or children by a previous spouse, the surviving second or subsequent childless spouse shall take only an amount equal to twenty-five percent (25%) of the remainder of:(1) the fair market value as of the date of death of the real property of the deceased spouse; minus(2) the value of the liens and encumbrances on the real property of the deceased spouse.The fee shall, at the decedent's death, vest at once in the decedent's surviving child or children, or the descendants of the decedent's child or children who may be dead. A second or subsequent childless spouse described in this subsection shall, however, receive the same share of the personal property of the decedent as is provided in subsection (b) with respect to surviving spouses generally.(d) The share of the net estate not distributable to the surviving spouse, or the entire net estate if there is no surviving spouse, shall descend and be distributed as follows:(1) To the issue of the intestate, if they are all of the same degree of kinship to the intestate, they shall take equally, or if of unequal degree, then those of more remote degrees shall take by representation.(2) Except as provided in subsection (e), if there is a surviving spouse but no surviving issue of the intestate, then to the surviving parents of the intestate.(3) Except as provided in subsection (e), if there is no surviving spouse or issue of the intestate, then to the surviving parents, brothers, and sisters, and the issue of deceased brothers and sisters of the intestate. Each living parent of the intestate shall be treated as of the same degree as a brother or sister and shall be entitled to the same share as a brother or sister. However, the share of each parent shall be not less than one-fourth (1/4) of the decedent's net estate. Issue of deceased brothers and sisters shall take by representation.(4) If there is no surviving parent or brother or sister of the intestate, then to the issue of brothers and sisters. If the distributees described in this subdivision are all in the same degree of kinship to the intestate, they shall take equally or, if of unequal degree, then those of more remote degrees shall take by representation.(5) If there is no surviving issue or parent of the intestate or issue of a parent, then to the surviving grandparents of the intestate equally.(6) If there is no surviving issue or parent or issue of a parent, or grandparent of the intestate, then the estate of the decedent shall be divided into that number of shares equal to the sum of:(A) the number of brothers and sisters of the decedent's parents surviving the decedent; plus(B) the number of deceased brothers and sisters of the decedent's parents leaving issue surviving both them and the decedent;and one (1) of the shares shall pass to each of the brothers and sisters of the decedent's parents or their respective issue per stirpes.(7) If interests in real estate go to a husband and wife under this subsection, the aggregate interests so descending shall be owned by them as tenants by the entireties. Interests in personal property so descending shall be owned as tenants in common.(8) If there is no person mentioned in subdivisions (1) through (7), then to the state.(e) A parent may not receive an intestate share of the estate of the parent's minor or adult child if the parent was convicted of causing the death of the child's other parent by:(1) murder (IC 35-42-1-1) ;(2) voluntary manslaughter (IC 35-42-1-3) ; or(3) another criminal act, if the death does not result from the operation of a vehicle.If a parent is disqualified from receiving an intestate share under this subsection, the estate of the deceased child shall be distributed as though the parent had predeceased the child.Ind. Code 29-1-2-1 Estate distribution (Indiana Code (2022 Edition))



Informal vs. Formal Administration

- ▶ Small Estate – I.C. 29-1-8-1
 - ▶ Death prior to July 1, 2022
 - ▶ Value of estate minus liens and encumbrances \$50,000
 - ▶ Death after July 1, 2022
 - ▶ Value of estate minus liens and encumbrances \$100,000
- ▶ Must wait 45 days to utilities process
- ▶ Creditors can utilize process as well



Informal vs. Formal

- ▶ Probate and the Grant of Administration IC 29-1-7
 - ▶ Estates with value over \$100,000 must open an estate
 - ▶ Testate Administration – Personal Representative files the Petition to Open
 - ▶ Letters of Testamentary Issued by Court
 - ▶ Intestate Administration – First person with standing to file Petition to Open
 - ▶ Can be a race to the courthouse
 - ▶ Who has standing
 - ▶ Letters of Administration Issued by Court
 - ▶ Notice of Administration Issued by Court
 - ▶ Personal Representative publishes Notice of Administration to start clock for unknown creditor claim period



Creditor Period

- ▶ Known Creditors
 - ▶ 9 months post date of death
 - ▶ Can be shorted to 90 days if specific notice is given
- ▶ Unknown Creditor
 - ▶ 9 months post date of death
 - ▶ Can be shorted to 90 days when Notice of Administration is Published
- ▶ Reasonably Ascertainable Creditor
 - ▶ Tolley Notice




Collection of Assets and Inventory

- ▶ Follow Instructions as Provided by Court
- ▶ Determine if assets are probate or non-probate
- ▶ Look through bank statements, mail, and past tax returns of decedent
- ▶ Collect, protect, maintain assets, including procuring/maintaining insurance for real estate and vehicles – beware of vacant homes
 - ▶ Fiduciary duty
 - ▶ At this point there is a duty to creditors as well as beneficiaries
- ▶ A Personal Representative's Inventory is due to beneficiaries and/or the Court within 60 days of opening the estate



Claims

- ▶ Limitations of filing claims
 - ▶ Barrable claims
 - ▶ Tort Claims
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Claims

- Priority of Claims
 - IC 29-1-14-9
 - 1. Cost of Administration
 - 2. Funeral and Burial Expenses
 - Also includes Title IV-D claims
 - 3. Surviving Spousal Allowance or Dependents Allowance
 - 4. Debts to the US governments
 - 5. Medical Expenses of Last Illness
 - 6. Debts to the State of Indiana
 - 7. All other claims



Taxes

- ▶ Final personal income taxes – IRS form 1040
 - ▶ Due April 15th
- ▶ Tax return for the estate – IRS form 1041
 - ▶ Runs on a fiscal year, starting at the decedent's death
 - ▶ Gross receipts over \$600 require form to be filed even if no tax is due



Distribution

- ▶ Inventory must show:
 - ▶ all assets the estate had at date of death
 - ▶ All expenses paid by estate
 - ▶ Distributive share for each beneficiary
 - ▶ Must have bank statements and check images
- ▶ Who is entitled to Inventory
 - ▶ Residuary beneficiaries not specific bequest beneficiaries
- ▶ Consents and Receipts of Inventory for beneficiaries



Closing the Estate with the Court

- ▶ The Court expects that Estate Administrations will be closed at one year after opened.
 - ▶ Motion for Extension can be filed
- ▶ All assets must be collected, all expenses paid, and all residuary assets must be distributed.
 - ▶ Recommend filing consents with closing statement
- ▶ Court will issue Order Closing Estate within 1-3 months after filing Closing Statement



Non-Probate Process

- ▶ Jointly held assets
 - ▶ Transfer to surviving owner at the time of death
 - ▶ Real estate will need a survivorship affidavit filed with the County Recorder's Office.
- ▶ Jointly held liabilities
 - ▶ Transfer to surviving owner at time of death
- ▶ Assets with Beneficiary designations
- ▶ Trusts



Trust Administration

- Collection of Assets
 - Certification of Trust to show authority of Successor Trustee
- Inventory for Trust
- Notice of Trust Administration
 - Must provide copy of the trust
 - 90 days to contest validity of trust
- Creditor Time Frame
 - 120 days from date of Notice of Trust Administration
- Taxes – file 1041



Trust Administration

- ▶ Distribution
 - ▶ Can occur after 120 days
 - ▶ Must provide an accounting
 - ▶ Recommend sending a consent of account and receipt of distribution



Hypo 1

- ▶ Husband and Wife have:
 - ▶ a home, titled as joint with rights of survivorship
 - ▶ A joint bank account
 - ▶ Each has a retirement account naming spouse as the primary beneficiary
 - ▶ Two cars, titled jointly

- ▶ Husband dies. What assets are in his estate?



Hypo 2

- ▶ Husband and Wife – Second marriage for each
 - ▶ Home – Titled in husband's name
 - ▶ Life Insurance owned by husband, has ex-spouse named as bene
 - ▶ Retirement account, list children of 1st marriage as beneficiaries
 - ▶ Husband and wife – each have one car, titled in individual name
- ▶ Husband dies. Has old Will leaving everything to first spouse?
- ▶ What is in the estate?
- ▶ How does an out-of-date Will work?



Hypo 3

- Husband and Wife, 1st marriage with 3 children
 - House transferred into joint rev trust
- Bank accounts held as joint
- Life Insurance; each policy has spouse as primary bene, rev trust as secondary
- Investment Accounts, held individually, lists spouse as primary bene, rev trust as secondary
- Retirement Accounts, held individually, lists spouse as primary bene, rev trust as secondary
- Lake House, titled as husband and wife



Hypo 3

- Death of Husband
 - Estate assets?
 - Step up in basis?
 - Trust Admin
 - Depends on the Trust terms
- Death of Wife
 - Estate assets?
 - Step up in basis?
 - Trust Admin?




Hypo 4

- ▶ Non-married couple, Party One has 1 child, Party Two has 2 children, neither has a Will
 - ▶ own home, deed lists both names but nothing else
 - ▶ Party One has
 - ▶ home equity line of credit in their sole name
 - ▶ Bank account in their sole name, with child listed as TOD bene
 - ▶ Life Insurance, no bene
 - ▶ Retirement account, no bene
 - ▶ Party Two has
 - ▶ \$20,000 in credit card debt
 - ▶ \$50,000 student debt
 - ▶ \$250,000 life insurance policy, naming 2 children equally



Hypo 4

- ▶ What happens when Party One dies?
 - ▶ What happens when Party Two dies?
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Hypo 4

- ▶ Party One

- ▶ ½ interest in the home goes to estate

- ▶ Default title is tenants in common

- ▶ Home equity line of credit (liability) goes to estate

- ▶ Bank account is a non-probate asset going to child

- ▶ Life insurance goes to estate

- ▶ Retirement Account goes to estate

- ▶ Estate own half of the house with a co-owner. See if party two wants to buy remaining interest, if not go to Court with a partition action. Home equity line of credit must be paid off at the time of sale if not paid for from other assets in estate.

- ▶ Is the Estate entitled to rent? No.



Hypo 4

- ▶ Party Two
 - ▶ ½ interest goes to estate
 - ▶ \$20,000 credit card debt is now a known creditor of the estate
 - ▶ \$50,000 student debt forgiven at death.
 - ▶ Forgiven debt is taxable
 - ▶ \$250,000 life insurance is a non-probate asset



Hypo 5

- ▶ Client wants to disinherit a child.
 - ▶ Should a Will or Trust be utilized?



Questions?

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