

## **PROBATE PLANNING**

### CHAPTER TWELVE:

*The meaning, process and cost of probate is the subject of this chapter.*

# PROBATE PLANNING

## What is Probate?

Probate is the legal process wherein the individually owned assets of a deceased are identified and appraised, debts, expenses and taxes owed by the deceased or his estate are paid, and property is distributed to named beneficiaries according to the terms of a Will (if one exists) or to heirs according to state law (if there is no Will). Appendix Q diagrams who is entitled to property when there is no Will, under the state law of Maryland and in those other sixteen states which have adopted the Uniform Probate Code; states vary in this regard. Where there is no Will, the law of the state where the deceased permanently resides at his death controls disposition of all property except real property located in another state or jurisdiction. As to real property, its disposition in the absence of a Will, is controlled by the state law where the real property is located. The court and office primarily responsible for overseeing this process is variously called the Orphan's Court, Register of Wills Office, Surrogate Court or Probate Court.

The illustration found at Appendix R shows examples of property (i.e. category D) in which the deceased has an interest which can only be transferred to the deceased's beneficiaries after passing through the probate process. Other categories of property in which the deceased has an interest may pass to surviving beneficiaries without becoming a part of the "Probate Estate". Only property included in the "Probate Estate" is subject to the terms of a Will (if one exists) or if there is no Will, subject to the appropriate state's descent and distribution law (example, Appendix Q).

Property subject to taxation by federal and state governments will include not only the property included in the "Probate Estate" but may also include many other types of property depending on the law involved. Chapter Nine discusses this.

Keep in mind too that where property is located in more than one state or legal jurisdiction you may likely have to deal with probate laws and tax laws of each jurisdiction. These vary widely.

## What is the cost?

### Fees, Expenses, Commission

Typically the cost of probating an estate will be on the order of 3% to 6% of the value of the probate property. Costs routinely include: court costs, bond premiums, fees for appraisers, accountants, executors and attorneys. See Appendix M for some additional thoughts on this.

## Why try to avoid it?

Through careful planning one can reduce or avoid totally the cost of probating and the months of delay in transferring property which normally occur between the deceased's death and the time when property is finally distributed to beneficiaries.

If you own real property in more than one state, you can avoid probating in both through careful advance planning.

Avoiding the probate process does not necessarily save death taxes - although it may. Tax avoidance and probate avoidance are two separate but related concepts.