

Utah Spirit

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Elder Law: Probate: When, How Long, & At What Cost?

In the October 1999 edition, this column discussed some of the pros and cons of trusts and wills. About a month ago, I received an anonymous "letter" from a reader criticizing my column on trusts. Actually, the letter was a copy of the column with extensive hand written comments. Why the reader and writer was unwilling to identify himself or herself is a mystery to me for it denies us the opportunity to have a constructive and meaningful dialogue.

Nonetheless, the writer's criticism centered on the issues of probate and my assertion in that column that probate could be accomplished in 2-3 weeks for a cost of about \$1,200 plus a court filing fee of \$120. The writer did not believe my statements about probate. He or she had probably been brainwashed by the "probate fear mongers," those individuals who promote expensive trusts even though such trusts are not necessary nor do they possess any meaningful benefit. Hence, this column.

For most estates, the will, if there is a will, is uncontested. The person named as the Personal Representative is usually nearby and available to serve. Those individuals named in the will and who are to receive the deceased's estate are most often the children of the deceased. They typically do not contest the will.

For estates in excess of \$25,000 or where real estate is involved, the will must be probated. The named Personal Representative usually applies for informal probate of the will. The children who are taking under the will are permitted to sign a waiver so that the statutory ten-day waiting period is waived.

The Application for Informal Probate is then submitted to the Clerk of the Probate Court, along with the required fee of \$120, original will, the necessary statutory language, waivers, and acceptance by the Personal Representative. Upon receipt of the completed Application and fee, the Clerk then issues Letters Testamentary to the Personal Representative. This usually takes place in a matter of a few minutes.

With the Letters Testamentary in hand, the Personal Representative is then empowered with all the necessary authority and power for the administration of the estate of the deceased. The Personal Representative can then marshal all assets of the deceased and distribute them in accordance with the instructions contained in the will.

If those persons to receive the deceased's estate are all not readily available to sign a waiver, the named Personal Representative can still file an Application for Informal Probate. However, instead of being issued at the time of filing the Application the Letters Testamentary, the Application must await an informal hearing of the Probate Court. The hearing usually takes place

within 2-3 weeks from the date the Application is filed. During this period of time, the Probate Court sends a notice to each person named to receive a part of the deceased's estate. The notice informs the person that an application for informal probate has been filed, by whom, and the date, time, and place for the hearing.

The hearing in the Probate Court is brief and only to determine whether any oppositions exists to the Application. If no opposition is present at the hearing, then Letters Testamentary are issued that same day to the Personal Representative. If there is opposition to the Application, then the matter is referred to a trial court to probate the will.

It is important to understand that once the Probate Court issues Letters Testamentary, the Probate Court is no longer involved or watching over the shoulder of the Personal Representative. Further, no additional fees beyond the \$120 are taken by the Probate Court. Unless there is challenge to the will or to the actions of the Personal Representative, the affairs and administration of the estate of the deceased are conducted entirely outside the Probate Court. The Probate Court does not oversee nor receive reports concerning the administration of the estate.

There should be no fear of the Probate. It is quick, simple and reasonably inexpensive. In deciding what is best for you, you should consult your Elder Law Attorney.