

Women and the Law

What does probate mean, anyway?

Ok, we're back to legal issues in a real sort of way. "Probate." What does it mean when someone says they are "probating" a will? That's the question of the month.

According to Wills and Administration in Georgia, the purpose of probate is to establish the will as the instrument intended to be the deceased person's last will and testament. If there is no will, the probate process will establish who will receive property from the person who is deceased (usually spouse and children.) If there is a will, the probate process establishes the validity of the will. Why is probate important? Because it must be established by an official body that the will is valid and that it can be relied upon and is not in any way fraudulent. In the case of there being no will, the probate process establishes with certainty who are the rightful heirs which determines who should be included in the distribution of the deceased person's property. The probate process is critical in both cases.

Literally, the process of probate is to file a petition naming who will be in charge of administering the estate. The petition notifies the heirs that this particular will is the one asserted to be "the one." If someone believes that the will attempted to be probated is not valid, they can then contest the probate. If no one contests the will, it becomes the official will to be followed by the personal representative named in the will.

Anyone who is in possession of the will of a deceased person is required to file the will with the probate court. This does not mean that every will must be "probated," only that it must be filed with the probate court. If there are assets, particularly real estate, the will should be probated. There are only two circumstances that come to my mind where real estate is owned and a will would not necessarily have to be probated.

In an prior article I have discussed one of these ways: owning property with "right of survivorship." Although this may avoid probate, as I mentioned in the earlier article, it does not solve all problems and may actually create problems. The second way to avoid probate is the filing of a "year's support." This is only available to a surviving spouse or minor children. We may discuss this at greater length in an article to come. (Don't you just love getting so educated on death and dying....I hope so.)

Now for the real-life story. Just this week a family came into the real estate law office where I office-share: Morris and Schneider. The surviving spouse was ready to sell the home he and his deceased wife had owned

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for many years. The closing was set; however, the property had never gone through the probate process so the "chain of title" could show who owned the deceased wife's share. Because no will could be found, the

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property will ultimately be titled in the name of the two children and the father, in equal shares. Probably, the wife intended to leave every-

thing to her husband. She could have done a will. Certainly, she would not have wanted this closing delayed by a month and the possibility the buyer could walk away from the purchase. (A will can usually be probated very quickly in Georgia.)

As I have said before in this article (but for those of you who only read this article in Dr.'s offices and have been healthy for several months - come to think of it, you could subscribe to Fayette Woman and get your copy delivered to you every month!) probate is not to be feared in Georgia. Being without a will, is.

Remember, I am still taking questions on "death and dying" issues or on other issues you want to discuss. If I don't know the answer, I will find someone who does. Write to me: Mary Lynn Kirby, 120 Howard Lane, Fayetteville, GA 30215.

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