

## The Pros and Cons of Probate

Many of you have heard advertisements warning you to “avoid the probate trap” when you pass on. Those promoting this idea usually suggest that probate is a very costly and time consuming process and should be avoided at all costs.

Unfortunately this argument can be misleading and can itself lead to unnecessary expense.

The fact is that probate - like any other legal procedure - has its advantages and disadvantages.

On the positive side, at least in Illinois, probate has been simplified greatly by what is called “Independent Administration”. This preferred probate procedure generally assures the Court only gets involved at the very beginning and the end of the proceeding. In between, the executor or administrator acting on behalf of the deceased person can do everything from selling real estate to negotiating settlement of claims without any Court involvement.

In addition, with Probate, if a notified creditor doesn't file a claim within the prescribed claims period (normally, 6 months in Illinois, 4 months in Iowa), the creditor is barred from making a claim. Without probate, no such limited time for claims normally exists and statutes of limitations can allow from one to ten years or more to assert claims.

Likewise, with probate there is an established procedure for wrapping up affairs, with Court approval at the end. This better assures both the person acting on behalf of the decedent **and** the ultimate beneficiaries that the procedure followed is fair and proper.

What's more, initial set up of an Estate Plan involving a Will alone is usually much less expensive and confusing than Estate Planning involving trusts or other devices can be.

On the negative side, probate does involve a court proceeding which requires, at a minimum, going to Court at the beginning and the end of the proceeding. Notice must be published to creditors and the Estate must be kept open for at least the four to six month claims period. In addition, for a Will to be probated, it must be filed with the Court, so the public normally can find out what the deceased person directed in his or her Will – resulting in some loss of privacy. In Iowa, though not in Illinois, an Inventory is also generally required to be filed with the Court, detailing the assets of the deceased person. With a Trust, these steps can normally be avoided.

So probate, like all legal processes, has its pros and cons. Whether it makes sense for you, or whether other alternatives such as Living Trusts would be more to your satisfaction, can best be determined by consulting with a qualified and experienced Estate Planning Attorney.

Schwiebert Law, P.C. would be happy to discuss with you the alternatives that would best suit your own Estate Plan.