

WHAT ARE NORTH DAKOTA DRAWBACKS OF PROBATE?



RAYMOND J. GERMAN

NORTH DAKOTA AND MINNESOTA ESTATE PLANNING ATTORNEY



You may imagine family members sitting around the table after a funeral for the “reading of the will.” The impression is that the executor of the estate reads the will at this meeting, and inheritances are distributed shortly thereafter.

This may be the way that it works when you watch old movies, but in reality, the executor cannot distribute assets right away. When a will is used as a vehicle of asset transfer, it must be admitted to probate. The heirs cannot receive their inheritances until the estate is probated and closed by the court.

Probate is in place to provide supervision when an estate is being administered, but there are some drawbacks that go along with this process. We will look at a few of them in this paper.

PUBLIC PROCEEDING



As you are going through life conducting your business, you probably do not want everyone in town to know how you are managing your money.

When you maintain personal possession of your property and facilitate its distribution through the terms of a last will, your privacy is lost, because probate is a public proceeding. Anyone who has an interest can access probate records, because they are publicly available.

Generally speaking, the loss of privacy can be disconcerting. More specifically, there could be certain family members or close associates who may feel slighted when they find out the details. This can cause hard feelings among family members and friends, and in extreme cases, there can be estate challenges.

ESTATE CHALLENGES



The ability to challenge the estate is another drawback that comes into play when you use a last will that must be admitted to probate. There is a proving of the will during the probate process. The court is charged with the responsibility of determining the validity of the will. This provides an open window of opportunity for anyone who may want to challenge the terms of the will.

REDUCED INHERITANCES

During probate, there are various different expenses that will typically pile up, and these expenditures ultimately reduce the amount of the inheritances that will



be received by the heirs.

Right off the bat there will be a filing fee with the court, and the executor will be putting in a lot of time and effort, so he or she is entitled to remuneration. Since probate is a legal process, a probate attorney will often be retained, and this is another expense.

Final debts must be paid during the probate process, and this would include final taxes. The executor may bring in an accountant to assist, and there can also be appraisal and liquidation fees as the property is prepared for distribution to the heirs.

When you add in the miscellaneous expenses that will arise during the probate process, you can see that a relatively significant sum of the money can be consumed.

THE TIME FACTOR

The last probate drawback that we will look at in this paper is the consumption of time. You probably want your heirs to receive their inheritances shortly after your passing if it is at all possible. This will not happen when probate enters the picture.



In most areas, a case that is not particularly complicated will pass through probate in perhaps nine months to a year. Complex cases can take considerably longer, and the heirs do not receive their inheritances during probate, so this time lag is a considerable pitfall.

SUMMARY

Probate is a legal process that comes into play if you pass away while you are in direct personal possession of property. If you state your final wishes in a last



will, it would be admitted to probate after you die, and the probate court would supervise the administration of your estate.

There are some significant pitfalls that go along with the probate process. It is a public proceeding, so

probate records can be accessed by any interested party. The process provides a forum for disgruntled individuals who may want to challenge the will, and it can be expensive.

Probate can also consume a considerable amount of time, and the surviving family members have to wait out the process. Inheritances cannot be distributed until the court closes the estate, and this can take close to a year, even if there are no complications.

If these drawbacks are a cause for concern, there are steps that you can take to facilitate asset transfers outside of probate. To explore your options, get in touch with a licensed estate planning attorney to set up a consultation.

REFERENCES

Nolo

<http://www.nolo.com/legal-encyclopedia/free-books/avoid-probate-book/chapter0-4.html>

Legal Dictionary

<http://legal-dictionary.thefreedictionary.com/probate>

About the Author

Raymond J. German



As an attorney in Minnesota and North Dakota, Raymond J. German provides a wide range of estate planning services to his clients, with a primary focus on helping them provide for the security of their loved ones, reduce estate taxes and avoid or at least minimize the costs and delays of probate, all with a well-crafted estate plan. Mr. German defines the mission statement for German Law Group, PC, as "Helping one family at a time pass on values, beliefs and finances, which can be shared for generations to come." Mr. German is well aware of the growing importance of estate planning and dedicates himself to informing the public of the need for careful attention to their specific situations. He is a frequent speaker on a variety of estate planning topics, regularly presenting educational seminars for the public as well as private groups.

Raymond J. German approaches each challenge with not just solid expertise, but also remarkable enthusiasm and vigor. By constantly seeking simpler, better, and more effective ways of doing things, he continues to make a real difference in the lives of families and on the way estate planning is practiced by attorneys around the country.

German Law Group, PC
www.GermanLawGroup.com

GRAND FORKS
2650 32nd Avenue South, Suite O
Grand Forks, ND 58201
Phone: (701) 738-0060
Toll Free: (800) 774-7576
Fax: (701) 738-0064