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## Probate Questions & Answers

### *Wisconsin Law*

When a person dies owning property located in Wisconsin which is held in that person's sole name, state law requires a legal proceeding to settle the estate. This legal proceeding is known as "probate". The following description was developed to address some questions which arise in the context of a probate proceeding.

#### ***What is the purpose of a probate proceeding?***

The probate proceeding protects the rights of beneficiaries, and of debtors and creditors of the estate. The process is available so that the assets of the decedent are transferred to the legal heirs or beneficiaries, taxes are paid, and proper creditor's claims are paid. The purpose of this process is to ensure that once property is transferred to the heirs or beneficiaries, the property is free from any claims of creditors or liens for estate or income taxes.

#### ***Where is the probate proceeding commenced?***

A probate proceeding is commenced in probate court for the county in which the decedent lived at the time of death. In the case of a person who lived out of state and owned real estate in Wisconsin, a proceeding is commenced in probate court for the county in which the decedent owned real estate. The Wisconsin proceeding for an out-of-state resident is generally ancillary, or secondary, to the probate proceeding which should have been commenced in the decedent's state of residence.

#### ***Who may commence a probate proceeding?***

A probate proceeding may be commenced by the person named as personal representative under the decedent's will, the persons named as beneficiaries under the decedent's will, or the decedent's heirs. Generally, the person named as personal representative will commence the probate proceeding.

#### ***What happens if the decedent dies without a will?***

If a person dies without properly executing a will, the person is said to have died "intestate". This means that the person's assets will be distributed according to the provisions of Wisconsin law. Any of the decedent's heirs may be appointed by the court to act as personal representative.

#### ***What are the responsibilities of the personal representative?***

The personal representative's duties are to identify and collect the decedent's assets, manage the assets during the administration of the estate, pay expenses of administration, pay debts and claims allowed by the court, prepare and file an inventory for the estate, prepare and file tax returns for the decedent and the estate, pay any taxes due, and distribute the remaining assets to the decedent's heirs or beneficiaries.

***When does the personal representative have the authority to act?***

After the probate proceeding has been commenced, the probate court will issue "domiciliary letters" to the personal representative. The domiciliary letters are evidence of the personal representative's authority to act on behalf of the estate. As soon as the domiciliary letters are issued, the personal representative may commence carrying out his or her responsibilities.

***Does a personal representative get paid for the services provided?***

A personal representative is entitled to be reimbursed for all reasonable and necessary expenses incurred while acting as a personal representative of the estate. In addition, the personal representative is entitled to receive a fee as payment for services subject to court approval. Generally, the fee is 2% of the value of the estate. The amount of the personal representative's fee may be greater than 2% if all of the beneficiaries agree to payment at a different rate. If taken, the personal representative's fee is taxable income in the year received.

***What is involved in the preparation of the inventory?***

An inventory must be filed with the court within six months after the date on which the personal representative is appointed. The inventory lists all of the assets in which the decedent held an ownership interest. The property must be classified as the decedent's individual property, marital property, or jointly owned property, and valued as the decedent's date of death. An inventory filing fee equal to two tenths of one percent of the value of the probate estate must be paid when the inventory is filed.

***Is all of the decedent's property subject to probate?***

Property held in living trust, or titled as joint tenancy with right of survivorship or as survivorship marital property, is not subject to the probate process. In addition, assets with a named beneficiary other than the estate, such as life insurance, deferred employment benefits and individual retirement accounts, are not subject to the probate process.

***What tax returns must be filed for an estate?***

If an estate is valued at more than \$675,000.00, then a Wisconsin estate tax return must be filed. Larger estates may also be required to file a federal estate tax return. No matter what the size of the estate, the estate must file federal and Wisconsin fiduciary income tax returns reporting the income earned by the estate after the decedent's death. In addition, the personal representative is responsible for filing the decedent's final income tax returns reporting income earned by the decedent in the year of death.

***How long does it take to administer a probate estate?***

In Waukesha County, an estate may be open for twelve months. In Milwaukee County, an estate may be open for eighteen months. If an estate cannot be closed within these time frames, the court may grant a six month extension for the estate to be closed. Additional extensions may be granted as needed. The actual time required to probate an estate depends upon the size and complexity of the estate.