

Wills, Trusts & Estates: PLAIN & SIMPLE



“What is Probate?”

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When a Last Will and Testament is admitted to “probate”, it simply means that the court is satisfied that the Will is valid and has “decreed” the Will valid to direct the distribution of a Decedent’s assets. The court then provides the Executor with what is called “letters testamentary”, which is merely a document that gives the Executor of the Will the power to collect the Decedent’s assets and “administer” the estate. (Note that a Will can direct what happens only to assets that are in the Decedent’s name alone, i.e., the Will generally does not affect the distribution of IRAs, 401(k)s, pension plans and jointly owned assets.)

The proceeding to have the Will admitted to probate involves filing papers with the court (in New York, the Surrogate’s Courts handle probate proceedings), including the original Will, a certified copy of the death certificate and the probate petition. Assuming the Decedent had close relatives, and the Executor, all beneficiaries named in the Will, and all the Decedent’s “distributees” agree that the Will is valid, the probate proceeding should be relatively short, taking only a few weeks. “Distributees” are the people who would be entitled to share in the Decedent’s estate if he/she had died without a Will; New York law requires them to receive notice of the probate proceeding.

On the other hand, if the Decedent died leaving no close relatives, or if the Decedent’s distributees and/or beneficiaries believe that the Will is not valid and, therefore, object to the Will being admitted to probate, the probate proceeding can be quite long, sometimes lasting for months to years. In that case, the named Executor can file an additional document with the court, requesting that “Preliminary Letters Testamentary” be given to the named Executor. Preliminary Letters Testamentary are generally issued by the court within a couple of weeks; and once the named Executor receives the Preliminary Letters Testamentary, he/she may do everything an Executor who has received Letters Testamentary may do, OTHER THAN distribute the assets of the Estate to the beneficiaries named in the Will. For example, the Preliminary Executor can collect

the Decedent’s bank and brokerage accounts into the Estate account and can invest and reinvest the assets in the account.

“Probate” is just the very beginning of the administration of a Decedent’s estate. In fact, the administration of a Decedent’s assets cannot begin until the Executor or Preliminary Executor has been appointed, as NO ONE is authorized to exercise control over a Decedent’s assets until they have been appointed as such. The great bulk of the administration of a Decedent’s estate happens after the Will has been admitted to probate.



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