

Estate & Probate Process – What Every Tax Professional Should Know

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Overview

- Terminology
- Requirements of a Will
- Probate Process
- Tax Implications
- Conclusion
- Questions



Terminology



Words to Know:

- Will
- Trust
- Estate
- Decedent/Heir
- Testate/Intestate
- Bond
- Inventory
- Executor/Administrator
- Letters Testamentary/Letters of Administration
- Distribution
- Issue



What's Required for a Valid Will in Alabama



Basic Requirements

- Capacity
- In Writing
- Signature
- Witness
- Notarized



Who can Author a Will

- 18 years old
- Sound mind and body
- No undue influence



Changing a Will

- A will can be altered or replaced as needed in the form of a codicil or completely new instrument
- Changes must meet same criteria including witnesses



Duration of a Will

- A will has no expiration date
- A later will replaces the earlier will
- Consider reviewing a will periodically (generally every 3-5 years) to take advantage of new tax incentives/family changes



Probate Process



Petition for Probate

- Name of petitioner
- Decedent's date and place of death
- County of residence
- The last known will
- List of surviving spouse and next of kin
- Names of witnesses and notary

Logistical Considerations

- Generally, petition must be filed in county of residence unless the decedent's assets are concentrated elsewhere
- Must be filed within five years of death
- A will may be filed for probate by the custodian of the will, a person named in will, or a person with a financial interest in the will

Letters

- Depending upon whether the decedent died with or without a will, the Probate Judge will grant Letters Testamentary or Letters of Administration
- If an executor is not named in a will, is unfit to serve, or fails to apply for letters within 30 days, then the principal legatee may be granted letters of administration



Timeline for Filing Letters

- Wills **must** be filed for probate **within five years** from the date of death
- A will is not effective until its probated
- A valid will probated within five years will replace valid letters of administration already granted (intestate process) *Gross v. Slye*, 360 So. 2d 333 (Ala. 1978).

Actual & Publication Notice to Creditors

- The Personal Representative must give **actual notice** to known creditors as soon as practicable
- The Personal Representative must also publish notice once a week for three successive weeks in a newspaper in the county

Claims Period for Creditors

- Claims against the estate must be made **within six months** of the grant of letters **or within five months** from the date of the first publication notice, whichever is later*

*Provided that known creditors receive actual notice

Closing the Estate

- The Personal Representative may settle the estate anytime after six months from the grant of letters if debts are paid
- In order to settle the estate, the personal representative may have to file an accounting with Probate, if not waived
- The estate can often be settled by consent without notice when debts have been discharged, distribution has occurred and distributees acknowledge receipt

Statutory Fees for Executor

- Probate Court may allow commission for the Executor up to 2.5% on all receipts and disbursements
- Court may also allow reimbursement for expenses
- For “special or extraordinary services, such compensation as is just”
- Can have adverse tax consequences

Intestate Process

- If you die without a will, you die intestate
- Issue – the decedent's descendants
 - Both natural and adopted
- Distribution schemes differ by state



Order of Grant of Administration

Ala. Code § 43-2-42

- Widow/Widower
- Next of Kin
- Largest creditor residing in Alabama
- Another person appointed by the Probate Judge

AL Distribution Scheme (When There is a Surviving Spouse)

- Surviving Spouse's share of the estate:
 - When no surviving issue or parents – Entire Estate
 - No surviving issue but surviving parents – First \$100,000 plus 50% of remaining estate
 - Surviving Issue who are also issue of surviving spouse -
- First \$50,000 plus 50% of remaining estate
 - Surviving issue who aren't issue of surviving spouse –
50% of estate

AL Distribution Scheme (When There is No Surviving Spouse)

1. Surviving Issue; then to
2. Parents; then to
3. Siblings; then to
4. Grandparents; then to
5. Aunts & Uncles; then to
6. Cousins; then to

Administration of Intestate Estate

- Personal Representative must obtain a bond
- He or she then files a petition with the Probate Court
- Notice given to heirs
- Petition for Letters of Administration
- Grant of Letters of Administration from Probate Court
- Conduct an inventory of estate
- Notice must be given to known creditors
- Notice to file claims against the estate must be published
- Claims against the estate must be filed within six months
- Personal Representative closes the estate

Tax Considerations



Federal Estate Tax

- Federal estate tax threshold in 2015 is **\$5,430,000**
- Combined gross assets and prior taxable gifts
- Gross Estate
- Taxable Estate

State Death Tax

- Good news! Alabama currently does not impose an estate or inheritance tax
- Tennessee currently imposes an estate tax with a \$2,000,000 threshold, but will phase out this tax by January 1, 2016

Gross Estate

- Total of the fair market value of all assets at time of death
- Includes securities, real and personal property, business and other interests, cash, trusts, annuities, etc.



Taxable Estate

- Gross estate less deductions
- Deductions may include mortgages, debts, estate-related expenses, charities, surviving spouse property



Surviving Spouse's Tax Return

- Decedent's spouse can file jointly in the year of the decedent's death
- Special tax rates as a widow/widower
- A qualifying Decedent can be claimed as a dependent for the year of death

Qualifying Widow/Widower may qualify to use Married Filing Jointly Rate

- If spouse died within the last two tax years, surviving spouse may qualify to use the married filing jointly rate, if:
 - Surviving Spouse was entitled to married filing jointly the year of death
 - Surviving Spouse did not remarry
 - Qualifying dependent child, stepchild or foster child
 - Surviving spouse provides over half the cost of maintaining the home that the child lives in

Conclusion



Questions?

