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Probate Assets vs. Non-Probate Assets - What is the Difference?

Probate is the legal process that takes place after a person's death. The process may include collecting assets, identifying which property is to be distributed by the Will, obtaining appraisals of estate property and paying off debts, taxes or other liabilities of the deceased individual. The final phase is to distribute the remaining property according to the terms of the Will or in accordance with New York State intestacy law, if there is no Will.

Typically, probate involves filing a Petition with the Surrogate's Court within the County where the decedent was domiciled (where the decedent resided). This Petition is called a Probate Petition (if there is a Will) or an Administration Petition (if there is no Will). If the decedent has a Will, the original must be offered to the Surrogate's Court when the Petition is filed. Costs associated with the probate process, such as court filing fees and legal fees, are typically paid from the estate of the deceased. Additionally, any funeral expenses may be paid out of the decedent's estate. In many cases, the probate process is routine and straightforward. However, if the Will is contested, or parties do not cooperate, then the process can become lengthy and more complicated. While it is important to have a Will to ensure your assets are distributed according to your wishes, it is vital to note that Wills and the probate process generally only apply to probate assets.

Which leads to answer your next question ... what are probate assets? Probate assets are assets owned in an individual's name that do not pass via beneficiary designation or by operation of law. Examples include individually-held bank accounts and other financial assets. Furthermore, other probate assets include personal property like jewelry, artwork, furniture, cars, antiques, as well as property only in the decedent's name such as real property (i.e. residence or cottage), business interests and/or certain types of property interests. Jointly-held assets—such as a residence or joint financial account—are generally not subject to probate when the first joint owner passes away. However, there are many instances when these types of assets are held only by one individual and then become a probate asset.

Typically, non-probate assets include those involving joint ownership (with right of survivorship) or those that are governed by a contract, which includes assets payable by designating a beneficiary. These include assets like jointly-owned real estate, life insurance policies and retirement accounts. For instance, when you obtain an insurance policy you designate a beneficiary and, in some cases, a secondary beneficiary. Since beneficiary designations are part of the contractual relationship established with the company, these designations will pass outside of distributions made within your Will.

Therefore, it is important to have a Will so you can ensure your probate assets are distributed to the individuals of your choosing. Furthermore, if a non-probate asset designates (or defaults to) "The Estate" as the beneficiary, those assets will also be distributed according to the terms of the Will.

If you have any questions about this Legal Briefing, please contact any attorney of our Firm at 585-730-4773.

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