

After you begin the estate planning process, you will be exposed to a lot of terms and concepts with which you may have little familiarity. One of these concepts is the idea of probate. Probate is a legal process, one that takes place after a person has died and left behind property in the state of Florida. Getting a better understanding of what probate is, how it works, and what steps you can take to influence it is important if you intend on creating a comprehensive estate plan.

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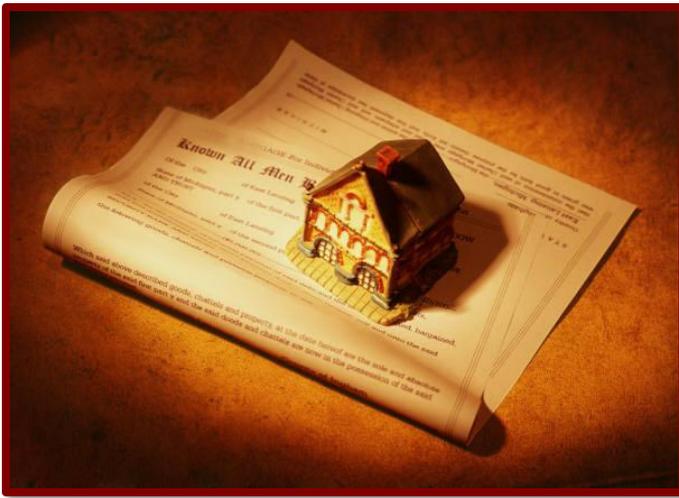
WHAT IS PROBATE?

Probate is a set of rules and procedures. The process takes place in front of a special kind of court, known as a probate court. Probate courts are responsible for hearing any case that arises out of state probate laws, which are sometimes referred to as the probate code. Probate courts hear a variety of cases, but most of the time they hear cases involving someone who has passed away and left behind property.

To get a better understanding of probate, we might look at a typical case. Let's say someone dies in the state of Florida. That person, who we shall call a decedent, left behind some real estate, investments, personal property, as well as several children, grandchildren, and other living relatives.

Now that the decedent has died, several natural questions arise. Who will take over that person's property? Who gets to inherit it? Who will determine what the decedent owned, and whether the decedent left behind any debts that still need to be paid? Who will have to pay those estate debts? Who is responsible for answering all these questions?

In most situations in which this kind of case arises, the court will have



to appoint someone to begin managing all the property and affairs left behind by the decedent. That collection of property and other legal issues left behind is called an estate. The person the court appoints to manage

this estate is known as an estate administrator, personal representative, or an executor.

In types of cases, the probate court serves as a supervisor. The administrator will have the primary responsibility of managing the estate and answering the important estate questions, while the court will be there to make sure that the administrator acts properly. Should any disputes or legal conflicts arise out of the administration of the estate, it is the probate court's responsibility to hear arguments and make a legal ruling.

WHAT IS PROBATING AN ESTATE?

In the example we've been using, the estate administrator is primarily responsible for the probate process. This is often referred to as probating the estate or settling the estate. The estate settlement process involves numerous different steps, each of which has to happen in a particular order.

For example, probate cases begin when someone goes to the probate



court and asks the court to open a new estate. After receiving this petition and opening a new case, the court will then decide who should serve as the estate administrator. In most situations, the person who submits the new petition to the probate court will ask the court to name that person as the administrator. However, this isn't always the case. For example, if the decedent left behind a last will and testament, the decedent will likely have chosen someone who will act as an executor. As long as the will is legally valid, the court will name this person as the executor of the estate.

If there is a disagreement about who the administrator should be, the court will hear arguments and make a decision. Once the court decides, it will give the selected administrator the legal authority to begin settling the estate.

Once the administrator receives the court's authority, that administrator will have to determine exactly what the decedent left behind and will have to allow creditors to file a claim against the estate. After receiving all those claims, the administrator will have to determine which need to be repaid, and in what order.

Needless to say, the probate process and the probate code itself can all be very complicated. This is why estate administrators usually hire probate attorneys. Even if the administrator is not an expert in probate law, the probate attorney will be there to guide the administrator through the probate process and to provide legal advice about what steps the administrator has to take.

WHAT IS LIVING PROBATE?

Not every probate case involves a decedent. While most estates are those left behind by deceased people, you can also have an estate left behind by someone who is incapacitated and still alive. An incapacitated person must also have someone appointed to manage or control the estate. Probate courts are also responsible for hearing these types of cases.

However, because the person at the center of these cases is not deceased,



these are often referred to as “living probate” to differentiate them from the more common probate cases that deal with the estate of a deceased person.

PROBATE CHOICES AND PLANNING

This brief discussion of probate should give you a better idea of this somewhat mysterious area of the law. Though the probate process, probate code, and all the intricacies involved can sound complicated and daunting, the process itself is rather simple when looked at from a pragmatic point of view.

It’s a good idea to maintain this pragmatic point of view when you begin considering what choices you can make in order to begin affecting the probate process that might apply to you. Should you one day become incapacitated or die, there are choices you can make now that will influence the probate process. Knowing what these choices are, and what you can do about it, will be the subject of our next paper. In the meantime, if you have any concerns or questions about probate, feel free to contact our office whenever you like so we can sit down and discuss it.

About the Author



Robert J Kulas

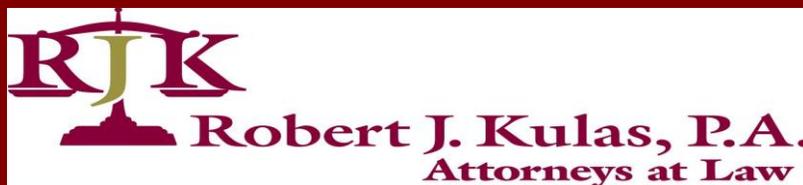
Robert is the founder and principal shareholder in the Port St. Lucie and Vero Beach law offices of Robert J. Kulas, P.A. Because he believes that helping his clients manage their personal affairs wisely is one of the most worthwhile professional activities he can pursue, he has devoted his practice exclusively to estate planning.

Robert has invested considerable time and energy helping to educate others in estate planning and is widely regarded as a dynamic speaker who can make even the most complex estate planning issues easy to grasp. He provides free monthly seminars to inform the public on the importance of proper estate planning. Over the past twenty years, thousands of people have come to hear him speak. "Helping people understand their options for estate planning is very important to me," Robert said. "I like to think that people in our community can look to me for the kind of quality information they need to decide what is best for them and their families."

About Robert J. Kulas, P.A. Attorneys at Law

Robert J. Kulas, P.A. Attorneys at Law is a full service estate planning and wealth preservation law firm servicing Port St. Lucie and Vero Beach, Florida.

The firm is dedicated to providing you with quality estate planning resources, so you can become familiar with all of the existing options. When you visit or call the office, we want you to feel comfortable discussing such an important issue concerning both you and your family. We want to arm you with the information you need to make an informed decision about your family's future.



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