

Client Newsletter

Dibble & Miller, P.C.

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D&M^{P.C.}

From the
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Property Transfers Upon Death

In estate planning or when dealing with the death of a loved one or family member, it is important to understand the various ways by which property can transfer upon death. In some instances, the transfer is simple and can be done without legal intervention. In others, assets can be transferred only under the supervision of the local Surrogate Court.

Jointly Held Assets

The simplest method by which assets may be transferred out of the decedent's name is through the operation of law. If an asset is held jointly with a right of survivorship (frequently the case with bank accounts or real property), upon the death of one owner, title to such asset shall pass to the surviving joint tenant. If all of a decedent's assets are titled in joint names, it may not be necessary to take any court action to complete the transfer of assets. It is very important, however, to ensure that title to real and personal property is held properly, so that upon the death of one named owner, the property automatically transfers to the survivor. Dibble & Miller, P.C. can assist you with any questions in this regard.

Beneficiary Designations

Property with beneficiary designations (e.g. retirement assets, CD's, and insurance policies) will transfer to the named beneficiary upon completion of a claim form and submission of a certified death certificate. Before completing any claim form, it is important to understand all tax consequences that may arise from the transfer of the asset. You may be able to reduce or eliminate those tax consequences. Once the claim form is completed and the asset distributed, it is too late to consider these issues.

Individually Held Property With No Beneficiary Designation

If a decedent held property individually with no beneficiary designation, it is necessary to seek court intervention to effect a transfer of that property. The Surrogate Court is the proper venue for estate administration, and the proper proceeding is determined by the size and circumstances of the estate.

Voluntary Administration – Small Estate

Regardless of whether the decedent had a will, if there is no real estate involved and the total value of the estate is less than Thirty Thousand Dollars it may be possible to do a voluntary administration or small estate proceeding. This is the quickest and most cost effective method to settle a decedent's estate and transfer assets when court intervention is necessary. There are many variables which will determine whether or not a voluntary administration is available, but if an estate qualifies, voluntary administration is a beneficial tool.

Intestate Distribution (Administration) – No Will

If an individual dies without a will, property owned individually with no joint tenant and no beneficiary designation becomes part of the decedent's estate. Upon the application of a family member, or other qualified person, the Surrogate will appoint an administrator to marshal the estate assets and distribute them according to law. Funeral, administration expenses, and debts of the decedent must be paid first, after which the administrator will distribute the balance of the assets to the heirs of the decedent. New York law specifies to whom, and in what proportions, the property of a person who dies without a will shall be distributed.

Probate

If the decedent died with a last will and testament, it is necessary to "probate" that will in the Surrogate's Court. Probate is a legal process meaning to "prove" that the will is valid which requires a determination that the will was properly signed, the decedent was lucid and competent and there was no "undue influence" or coercion upon the decedent.

A properly drafted will not only directs how and to whom the decedent's property is to be distributed, but also names a person or entity to be the executor of the estate. Once appointed by the Surrogate, the executor performs the same duties as an administrator. Because the executor's authority is created by the will, it does not take effect until the will has been probated. Before probate, the nominated executor has no authority, and should take no action regarding the assets, except to protect the assets from loss or destruction.

Contesting A Will

New York law provides that any person who has an interest in the estate of a decedent, which would be adversely affected by the admission of the will to probate, has the right to "contest" or challenge the will. A challenge may be made to determine the authenticity of signatures on the will, the competency of the decedent, or whether the testator may have been under any undue influence at the time the will was signed. To make a valid will, a testator must have testamentary capacity which means the ability to identify the "natural objects of his or her bounty" as well as have knowledge as to the value and extent of his or her assets.

How Do I Contest a Will

If you are the legal heir of a decedent's estate, or were named as a beneficiary in a prior will of the decedent, you have legal right to challenge a will based upon any of the following grounds:

- Improper execution;
- Lack of Testamentary Capacity;
- Undue Influence; and
- Fraud.

Estate and Fiduciary Taxes

Although a discussion of estate or fiduciary taxes is beyond the scope of this newsletter, you need to be aware that as a beneficiary of a decedent, you may become responsible for either estate or fiduciary taxes. If you have questions in this regard, please seek legal advice.

Dibble & Miller, P.C. is a full service law firm familiar with the issues involved in estate planning and administration and would be pleased to advise and consult with you about any type of estate matter, including estate planning, management, administration, will contests or other disputed matters involving estates and decedent's property.

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WE THANK YOU FOR USING OUR FIRM.

PLEASE REMEMBER THAT WE HAVE AN EXTENSIVE PRACTICE TO SERVE YOU:

- **Business Agreements** — *All Types, including Non-Compete, Buy-Sell, Non-Disclosure, Employment, Shareholder and Partnership Agreements*
- **Business Formations** — *Start-Up Businesses and Partnerships, Business Purchase and Sale Agreements, and Formation of Corporations and LLC*
- **Criminal Law** — *Arrests, Felonies, Misdemeanors, Traffic Tickets, White Collar Crimes, DWIs, Plea Bargains, Trials, and Appeals (State and Federal)*
- **Debtor Rights** — *Debt Resolution and Bankruptcy — We Are A Debt Relief Agency — We Help People File for Bankruptcy Under the Bankruptcy Code*
- **Estate Planning** — *Preparation of Wills, Trusts, Health Care Proxies, and Powers of Attorney and Estate Planning and Administration*
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- **Real Estate** — *Residential and Commercial Purchases, Sales, Closings, Mortgages, Land Contracts, Foreclosures and Real Estate Leases*
- **Tax Defense** — *Defense of IRS & NYS Tax Compliance Enforcement:*
 - *Defense against Civil and Criminal Tax, Workers Compensation and Unemployment Audits, Investigations, Protests and Litigation*
 - *Defense against Collection of Income, Payroll, Sales and Corporate Taxes*
 - *Resolution of Tax Levies, Liens and Income Executions*
 - *Responsible Person and TFRP Defense for Trust Funds, Sales, Use and Withholding Taxes Assessments and Collections*
 - *Preparation, Filing and Negotiation of Offers in Compromise*
 - *Negotiation of Tax Installment Agreements and Tax Payment Plans*
 - *Innocent & Injured Spouse Defense*

***** IF YOU NEED LEGAL ADVICE, PLEASE CONTACT US FOR A FREE CONSULTATION *****

We Are A Full Service Law Firm – Free Initial Consultation – Attorney Advertising