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Understanding Probate and Estate Planning in Wisconsin

What is Probate, and When is It Required?

Probate is the **court-supervised process** of administering a deceased person's estate, beginning with proving the validity of the will (if one exists), identifying and inventorying assets, paying debts and taxes, and distributing the remaining assets to heirs or beneficiaries.

Solely owned assets without beneficiary designations are generally counted as part of a decedent's estate. In **Wisconsin**, probate is usually required when the total value of the decedent's estate is **more than \$50,000**. Smaller estates may qualify for simplified procedures.

How Long Does the Probate Process Typically Take?

The probate timeline varies; a fast probate is six months. In this part of Wisconsin, most cases take **12 to 18 months**, depending on the complexity of the estate. Larger or contested estates can take even longer. Delays often stem from:

- Difficulty locating heirs.
- Disputes among beneficiaries.
- Complex asset valuation or sale.
- Tax issues.

What is the Role of a Personal Representative?

The **personal representative** (in other states and on television called an executor) stands in the shoes of the decedent and is responsible for administration of the estate. In Wisconsin, personal representatives must follow the will and state statutes, and may need court approval for major actions.

Having a single personal representative (or trustee if you prefer to avoid probate) can be particularly helpful when there are multiple heirs, as it ensures consistent decision-making and reduces the potential for conflict. In contrast, a transfer-on-death (TOD) designation on real estate to multiple heirs results in co-ownership as tenants-in-common, which can lead to

disagreements over property use, maintenance, or sale. Naming a personal representative allows for a centralized and orderly process.

What Are the Costs Associated with Probate?

Costs vary based on estate size and complexity. Typical expenses include:

- **Court filing fees** (0.2% of the value of the estate with a \$20 minimum).
- **Attorney's fees** (often hourly and paid as an expense of the estate).
- **personal representative or trustee fees** (usually 2% of the value of the estate).
- **Appraisal and accounting fees.**
- **Publication costs** for legal notices.

What Happens if Someone Dies Without a Will?

When someone dies **intestate** (without a will), Wisconsin's **intestacy laws** dictate how probate assets are distributed. These laws generally identify the closest living relatives as heirs. This can result in unintended consequences, particularly if the deceased was estranged from family members or had no close relatives. In rare cases where no heirs can be located, the estate may ultimately pass to the State of Wisconsin.

The court will also appoint a personal representative, often a close family member, to manage the estate by collecting and valuing assets, paying off debts and taxes, and distributing the remaining property to the rightful heirs according to the law.

How Can Families Avoid Probate Altogether?

Families can avoid probate through proper **estate planning**, including:

- **Living trusts** (might be revocable or irrevocable).
- **Payable-on-death (POD), transfer-on-death (TOD), or beneficiary designations.**
- **Joint ownership with right of survivorship.**
- **Certain marital property agreements in Wisconsin.**

These tools vary in the level of control they provide. Revocable living trusts offer the most comprehensive control and flexibility, allowing the creator to manage and modify the trust during their lifetime and address a variety of situations, such as providing for minors or individuals with disabilities. Joint ownership, POD/TOD designations, and beneficiary designations all offer a similar level of control. They are simple and efficient tools for transferring assets outside of probate, but they do not allow for the imposition of conditions or long-term oversight.

Common Mistakes People Make in Estate Planning

1. **Not having a plan (or not having a legally enforceable plan).**
2. **Adding people to accounts without understanding what it means.**
3. **Failing to update or misusing TODs/PODs/beneficiary designations.**
4. **Not funding their trust properly.**
5. **Omitting incapacity planning (e.g., POAs).**

One example of an improper beneficiary designation is assuming that naming one trusted person as the sole beneficiary of an account will lead to fair distribution. For example, someone may name a single child as the beneficiary of a bank account with the verbal instruction to use the funds to pay bills and share the rest with siblings. However, the law treats that beneficiary designation as binding: the named person becomes the legal owner of the account at death, with no obligation to follow the decedent's informal wishes. The same problem can arise with adding someone to your account. This can lead to disputes, unequal distributions, and even legal challenges.

How Do Powers of Attorney and Healthcare Directives Come Into Play?

These documents are crucial **during life**, and become void upon death:

- **Financial Power of Attorney (POA):** Allows someone to manage your financial affairs.
- **Health Care Power of Attorney:** Appoints someone to make medical decisions on your behalf. In Wisconsin, most HCPOAs incorporate advance directives, which state your wishes regarding life-sustaining treatment and more.

Without these, family members may need to petition the court for guardianship.

How Often Should Someone Update Their Estate Plan?

Review your plan **every 2-3 years** on your own. Visit with your attorney when:

- You move to another state.
- You marry, divorce, or have children.
- A beneficiary or executor dies or becomes incapacitated.
- Tax laws change.
- Your financial situation changes significantly.
- It has been more than ten years since you last reviewed with your attorney.

Keeping your plan current ensures your wishes are honored and reduces stress for your family.

This handout is for general informational purposes and not legal advice. Consult with a Wisconsin estate planning attorney for guidance tailored to your circumstances.