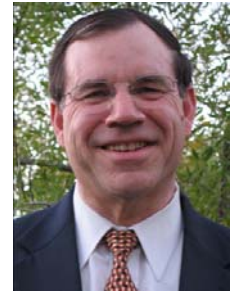


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By Frederick A. Thompson, CPA

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UNDERSTANDING PROBATE AND LIVING TRUSTS

What happens to property when someone dies?

When someone dies (this person is known as the “Decedent”) they either owned property in their individual name or their property was owned by a trust, most commonly a living trust. **It is important to keep in mind that property must have an owner.** If a person dies owning property in their name, there is a void in ownership because the owner is no longer around. In this case there is a set of legal principals used to determine who gets the property. These legal principals and the process of distributing the property of the decedent are called “Probate.” A court called the Probate Court steps in to decide who gets the decedent’s property. On the other hand, if the property is owned by a trust, there is no void in ownership because the trust continues in existence despite the death of the person who put the property in the trust. There is no need for a probate proceeding if the decedent’s property was in a trust.

As I mentioned above, **when a person dies owning property there is a void in the ownership of the property because the owner is no longer around.** The property is transferred to what is called a probate estate and the probate process begins. The probate estate exists until the property is transferred to new owners. **Here is a summary of the probate process.**

1. An attorney for the deceased’s estate files a petition in Probate Court to distribute the deceased’s assets. If a will is found, the assets are distributed according to the terms of the will. If there is no will, the assets are distributed to relatives of the deceased according to state law. If there are no relatives, the property goes to the state.
2. The Probate Court judge appoints someone (either an executor or an administrator depending on whether or not there was someone named in a will) to collect and distribute the estate assets and pay creditors.
3. The estate executor or administrator must inventory the deceased’s assets and debts.
4. The Probate Court supervises the sale of property if needed.
5. State and Federal income tax returns are filed—for the decedent’s last tax year; for the probate estate; and for the estate tax if the value of the estate is above the exemption amount.
6. After the probate process is complete, the Probate Court judge orders the distribution of the probate assets and the probate proceeding ends.

If the decedent left all of their property in a trust the property is distributed according to the terms of the trust agreement. First let me explain a little bit about trusts. A trust is an entity created by law. A trust is created when someone creates a trust document and someone (called the “Trustor or Grantor”) transfers their property to the trust to be managed by someone (called a “Trustee”) for the benefit of someone (called the “Beneficiary” or the “Beneficiaries”) of the trust. A trust can be either revocable or

irrevocable. A revocable trust is one which can be revoked—that is, the property can be taken back. An irrevocable trust, as the name implies, is one which cannot be revoked. That is, the property cannot be taken back. **You should also know that the same person can be the Trustor/Grantor (the giver of the property), the Trustee, and the Beneficiary. Trusts which are revocable with the same person in all three roles are frequently used to avoid probate and also for various reasons in estate planning. They are known as “Living Trusts” or “Grantor Trusts.”**

A living trust gets its name because it is only in existence during the grantor’s life. The Living Trust, or the Grantor Trust, is ignored for tax purposes. The trust document provides that when the grantor dies a successor trustee takes over and the trust becomes irrevocable. The successor trustee oversees the management and distribution of the trust property according to the terms of the trust document. Many times the trust property is transferred to one or more other trusts for estate planning purposes.

If property is in a irrevocable trust, and the Trustor/Grantor dies the property in the irrevocable trust continues to be managed according to the terms of the trust document.

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Telephone (650) 343-5965; Facsimile (650) 343-4842;
Website: fthompsoncpa.com; E-mail: fred@fthompsoncpa.com

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