

WHAT ARE THE DRAWBACKS OF PROBATE IN NEW YORK?

“Sometimes there are mechanisms in place that are positive for some interested parties, and not necessarily positive for others. It could be said that probate would fit into this category.”



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Probate is an estate administration process. If you pass away while you are in direct personal possession of property, the distribution of the property would be subject to the probate process.

This would be true if you had a last will, or if you had no estate planning documents at all.

A caveat to the above statement would be that there is a simplified probate process that could be utilized if the assets that comprise the estate do not exceed \$20,000 in value. If the assets do in fact exceed this amount, the full probate process would be necessary.



As we stated above, property that was in your direct personal possession at the time of your passing would be looked upon as probate property. There are some types of asset transfers that

would not be subject to the probate process.

One of them is the receipt of life insurance proceeds. If you have a life insurance policy, the beneficiary would be paid by the company after your passing. The probate process would not be a factor.

Banks and brokerage offer payable on death accounts. These accounts are alternately referred to as transfer on death accounts. With this type of account, you name a beneficiary or multiple beneficiaries. After your passing, the beneficiary would assume ownership of whatever is remaining in the account, and the transfer would not be subject to the probate process.

Property that is held in joint tenancy would be transferred to the surviving joint tenant or tenants outside of probate. Joint tenancy as the condition of co-ownership of property.

It is also possible to proactively implement strategies that would facilitate probate avoidance. Revocable living trusts can be used to this end, but there are other options.

PROBATE DRAWBACKS

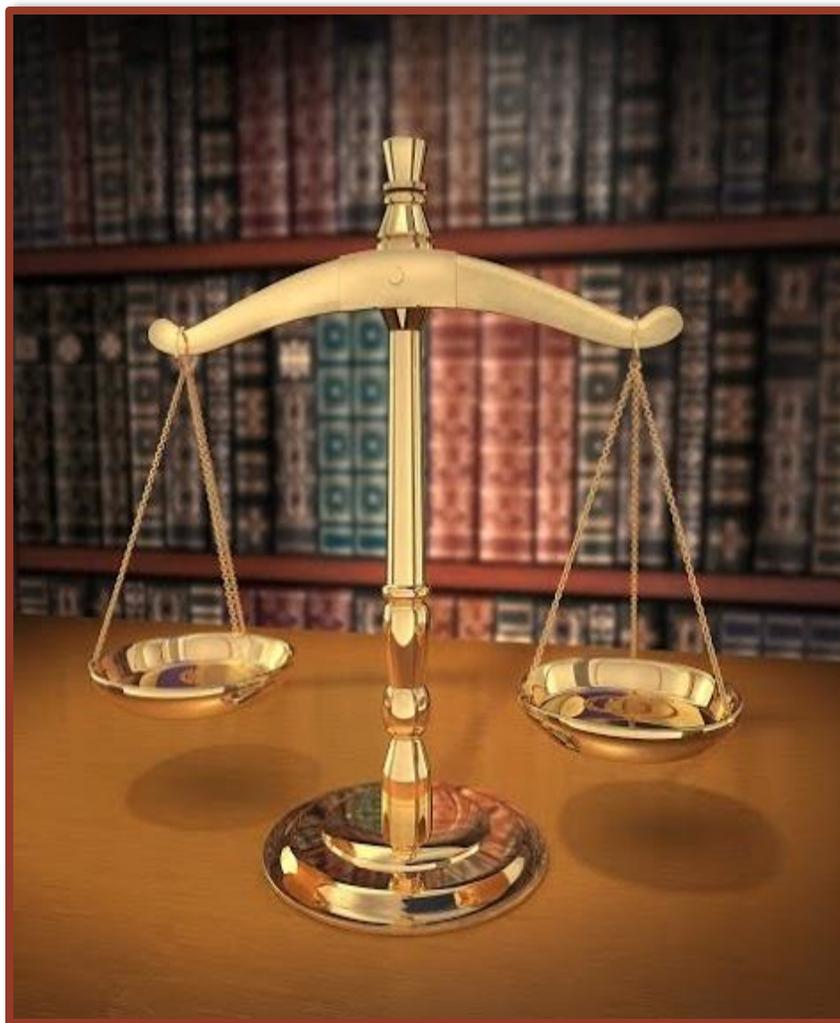
Now that we have provided some background information about the probate process in general, we can look at the drawbacks.

One of them is the matter of time. You probably want your heirs to receive their inheritances as quickly as possible, but probate will prevent truly timely asset transfers. The exact duration of the process will vary depending on the circumstances, but a simple case will typically take anywhere from nine months to a year.



Inheritance erosion is another pitfall. There are numerous different expenses that can present themselves during the probate process. The executor, who is the estate administrator, is entitled to payment for his or her time and effort, and there is a filing fee that the court will charge.

Since probate is a legal process, an attorney will often be retained, and there can be accounting expenses, because final taxes must be paid during probate.



Property appraisals and liquidation may enter the picture, and these expenses will be added to the debit ledger.

There is also the matter of privacy. Because probate is a public proceeding, anyone who has an interest can access probate records. As a result, your final affairs are an open book

when your estate passes through probate.

Generally speaking, a loss of privacy is never a good thing. More specifically, the way that you divided your resources is your own business. If certain interested

parties knew everything, there could be hard feelings, and this could create difficulties within your family and extended circle of associates.

Lastly, the probate process opens a window of opportunity for anyone who may want to issue an estate challenge.



SUMMARY

The legal process of probate can enter the picture after you pass away if you own property directly. Though the process is in place to provide protections, there are some drawbacks that go along with it.

If you are interested in facilitating asset transfers outside of probate, there are



strategies that can be implemented. The best way to proceed will depend on the nature of the situation.

To learn more about probate and the probate avoidance strategies that exist, schedule a

consultation with a licensed estate planning attorney. Your lawyer will evaluate your situation, answer your questions, become apprised of your goals, and explain your options to you.

REFERENCES

New York Code

<http://codes.lp.findlaw.com/nycode/SCP>

Legal Dictionary

<http://legal-dictionary.thefreedictionary.com/probate>

About the Author



Mark S. Eghrari

Mark S. Eghrari is an attorney in private practice in Smithtown, New York. He has been in practice since 1988. Mark S. Eghrari provides extensive estate and tax planning services to individuals and businesses. Mr. Eghrari's primary focus is helping clients avoid probate, minimize or eliminate Federal and State Estate taxes and protect their assets from the high cost of nursing care, if they become ill. Mr. Eghrari's expertise is in providing unique and innovative estate planning solutions that create a secure future for his clients and their loved ones. Mr. Eghrari is a member of the American Bar Association and New York State Bar Association as well as the National Academy of Elder Law Attorneys and the American Academy of Estate Planning Attorneys.

Mr. Eghrari completed his undergraduate work at Lafayette College in Easton, Pennsylvania and received his MBA in banking and finance from Hofstra University on Long Island. He earned his Juris Doctorate from the Hofstra University School of Law, where he was a member of the Law Review. While in law school, Mr. Eghrari gained practical experience in the corporate tax department of Citicorp in New York city.

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