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## **PROBATE IN ALASKA**

**WHAT IS PROBATE?** When a person dies owning assets only in his or her name [not as joint tenants, etc.], a probate must be started to administer the decedent's affairs [gathering assets, paying debts, distributing assets, etc.]. Practically speaking, someone must be appointed to stand in the decedent's shoes to transfer away his assets as directed. This process of administering the decedent's estate is called "probate," and the person appointed to represent the decedent is called the "personal representative" or "administrator." The personal representative can be either an individual or corporation (such as a bank or trust company).

**HOW DOES THE PROBATE PROCESS BEGIN?** Probate begins by an interested person [most often the designated personal representative] filing in court the decedent's Will, the death certificate and documents requesting that the person (applicant) be appointed as the decedent's personal representative.

**WHAT HAPPENS AFTER AN ESTATE IS STARTED?** The personal representative is required to wind up the decedent's affairs by notifying beneficiaries, gathering assets, paying debts and taxes [income, estate], accounting for all probate estate transactions and properly distributing the estate to the beneficiaries. The personal representative is the only one legally authorized to deal with the assets of the probate estate and handle matters of estate administration.

**WHY IS THERE A PROBATE PROCESS?** Probate is required so that someone is legally appointed to deal with the assets owned by the decedent. Probate will also deal with creditors and the beneficiaries of a probate estate. Because probate is a court action, the court retains authority over the personal representative and the estate. The probate process in Alaska is an efficient way to protect beneficiaries and creditors and to assure proper distribution of estate assets.

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**HOW MUCH WILL PROBATE COST?** In some states, attorney fees are based on a percentage [4% to 8%] of the value of probate assets. In Alaska, attorneys often only charge by the hour for probate work, and the total fees will depend on the complexity of the estate. The attorney or the CPA will also need to prepare various death and income tax returns.

The costs of probate will include attorney and accounting fees, court filing fees (\$150), newspaper publication of notice (\$200), filing an inventory of probate assets and other papers needed to complete the administration process. The personal representative may also charge a "reasonable" fee for administering the estate.

**HOW LONG DOES PROBATE TAKE?** In Alaska, the probate process is relatively simple given that the personal representative is granted broad powers to accomplish the administration of the estate. Because the court is often not involved in many simple probates, the estate can be settled quickly. Although a probate must remain open for at least six months, the actual time will depend on the nature of the assets, claims against the estate, beneficiaries, etc. Normally, the process takes about one year.

**WILL ALL OF A DECEDENT'S ASSETS GO THROUGH PROBATE?** No. Only those assets that are owned in the decedent's individual name pass through probate. Thus, assets that are owned jointly with rights of survivorship pass automatically to the survivor and are not subject to probate. Also, assets with designated beneficiaries such as life insurance policies, annuities, IRAs and various retirement plans pass to named beneficiaries and are usually not subject to probate. Finally, assets held in a trust are governed by the terms of the trust rather than the decedent's Will and pass outside the probate process. It is important to note that assets which are not part of the probate, but which are controlled by the decedent at death, may still be subject to income and transfer taxes.

**WHEN DOES THE PROBATE PROCESS END?** The probate process ends after all the assets are distributed, all valid claims are paid, and the personal representative files a sworn statement with the court representing that the probate is completed.

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**CAN THERE BE MORE THAN ONE PROBATE?** Yes. If the decedent owned real property in more than one state, then a probate may need to be started in each state where the property is located. A secondary probate is often referred to as an "ancillary probate," and in many states, it is very abbreviated.

**WILL THERE BE ANY TAXES?** The answer will depend on a number of different factors. An income tax return [Form 1040] will be due for the year of the decedent's death. The probate estate may also need to file an income tax return [Form 1041] if it generates income. In addition, if the decedent's "gross estate" is greater than a certain amount, an estate tax return [Form 706] will need to be filed within nine months from the date of the decedent's death. Note: the "gross estate" and "probate estate" are not the same and are not always equal.

**CAN PROBATE BE AVOIDED?** Yes. If a person owns no assets on the date of death, then no probate is required. Thus, no probate is required if all assets are either:

- (i) given away before death;
- (ii) jointly owned with rights of survivorship;
- (iii) pass by designation of beneficiary; or,
- (iv) held in a revocable "living" trust.

**WHAT IS A REVOCABLE "LIVING" TRUST?** A revocable trust is a written agreement between you (the "settlor") and the trustee to manage the assets placed into the trust for your benefit during your life, and on your death, for the successor beneficiaries. You will often serve as the initial trustee of the trust during your life. To avoid probate, all of your assets must be transferred into the revocable trust prior to your death, this includes bank accounts, investments, real property, vehicles, etc.

**WHAT WILL HAPPEN IF NOT ALL THE ASSETS ARE IN THE REVOCABLE TRUST ON THE DATE OF DEATH?** Those assets that are not held in the name of the revocable trust and which are owned by the decedent on the date of death, must then pass through probate.

**WILL A REVOCABLE TRUST PROTECT ASSETS FROM CREDITORS?** No. Because the trust is revocable by the settlor of the trust, it will not protect the assets from creditors.

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**WILL A REVOCABLE TRUST SAVE TAXES?** No. Just like a simple will, a simple revocable trust will not save income, estate or other types of taxes. However, just like a Will, a revocable trust can be drafted to help reduce transfer taxes. But to accomplish transfer tax savings, special provisions need to be added to the revocable trust.

**DO I NEED A REVOCABLE LIVING TRUST?** The answer depends on your unique family situation, assets, financial position and goals. In Alaska, the benefit of creating a revocable trust for the sole purpose of avoiding probate is debatable --- often the cost of avoiding probate is more expensive than probate itself. This is because probate in Alaska is relatively simple, and the costs incurred in administration are not "costs of probate" but rather costs that would have to be incurred whether there is a probate or a revocable trust.

**ARE THERE DISADVANTAGES TO LIVING TRUSTS?** Yes. If not all assets are in the trust, those omitted assets cannot be managed by the trustee and must ultimately pass through probate. Further, creditors can bring claims against the trust for a longer period of time; in probate, a creditor must present his claim within four months from the date notice is given.

**WHAT DO I NEED?** The only way to be certain of your specific needs and desires are to meet with a qualified estate planning attorney. Your financial and estate planning situation is unique and should be accorded the proper time, attention and expertise which only a properly trained and experienced attorney can provide.

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The firm practices in the areas of business, estate and transactional income and estate tax planning, probate and trust administration, preparing buy-sell agreements, non-qualified deferred compensation planning, probate and trust litigation and the formation and structuring of corporations, limited liability companies and other entities. The goal of MANLEY & BRAUTIGAM, P.C. is to continue to provide the highest level of professional legal services to our clients.

Both **Bob Manley** and **Peter Brautigam** were born and raised in Anchorage. Both have a Master of Laws (LL.M.) in Taxation, and are members of the AMERICAN COLLEGE OF TRUST & ESTATE COUNSEL ([www.actec.org](http://www.actec.org)), a select group of attorneys who are nationally recognized in the practice of estate planning, probate and trust law. Peter is the current ACTEC state chair and Bob is the past state chair. Both are also current members and past chairmans of the Alaska Bar Association's Tax Law and the Probate & Estate Planning Law sections and have assisted in revising Alaska's Uniform Probate Code (AS 13.12) and the drafting and passage of Alaska's Limited Liability Company statute (AS 10.50). Both have served as expert witnesses in trust and tax matters, and lecture on tax related topics for the ALASKA BAR ASSOCIATION, the ALASKA SOCIETY OF CPA'S, the ANCHORAGE ESTATE PLANNING COUNCIL and the AMERICAN LAW INSTITUTE OF THE AMERICAN BAR ASSOCIATION (ALI-ABA).

The firm is recognized as one of Alaska's leading tax planning and transactional law firms. Both Mr. Manley and Mr. Brautigam have earned the "av" rating (excellent/superior) by fellow lawyers in Alaska (Martindale Hubbell®).

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