

**“Probate Law”** is the legal process of transferring of property upon a person’s death. People formalize their intentions as to the transfer of their property at the time of their death (typically in a will), their property is collected, certain debts are paid from the estate, and the property is distributed.

Probate Court has exclusive legal and equitable jurisdiction over matters relating to the settlement of a deceased person's estate, whether they died testate (i.e., with a will) or intestate (i.e., without a will), if the person at the time of death was domiciled in the county or died owning assets within the county to be administered. It includes (but is not limited to) the following proceedings: **MCL 700.1302 (a)**

- a. Internal affairs of an estate.
- b. Estate administration, settlement, and distribution.
- c. Declaration of rights involving estates, devises, heirs and fiduciaries.
- d. Construction of a will.
- e. Determination of heirs.

Note: If a person dies who is not a resident of Michigan and owns property in two or more counties, an estate can be opened in either county and its administration shall extend to all assets in Michigan, not just those in the county where probate proceedings were commenced. **MCL 700.3201 (1) (b)**

Probate Court has exclusive jurisdiction and equitable jurisdiction of:

- a. Matters relating to settlement of deceased individual's estate , who at the time of death was domiciled in the county or at the time of death was domiciled out of state leaving an estate within the county;
- b. Proceeding that concerns the validity, internal affairs or settlement of a trust, including reformation, modification, termination, etc;
- c. Generally, proceedings concerning guardianship, conservatorship or protective proceeding (excepted from this jurisdiction are proceedings within the jurisdiction of the family division of the circuit court);
- d. Proceedings regarding accounts of fiduciaries and instructions or directions to fiduciaries concerning estates within the court's jurisdiction.

Jurisdiction is limited specifically to probate proceedings that involve the estates of Michigan's residents. All proceedings must be commenced in the probate court of the county where the decedent was domiciled at the time of his or her death. If the decedent lived outside Michigan at the time of his or her death, jurisdiction is in the county where the decedent left property to be administered.

### **Territorial Application of Probate Court**

Estate and Protected Individual's Code applies generally to:

- a. Affairs and Estate of decedent, missing individual or protected individual domiciled in Michigan;
- b. Nonresident's property that is located in Michigan or property coming into control of fiduciary subject to Michigan law;
- c. Incapacitated individual or minor in Michigan;
- d. Trust subject to administration in Michigan.

### **Ascertaining Heirs-At-Law**

Regardless of whether a decedent dies testate or intestate, you must determine the heirs-at-law. The heirs-at-law are the interested parties who must receive notice of the commencement of probate proceedings for supervised administration and independent probate proceedings. The Code does not require a formal determination of heirs as was the practice in many counties in the past. When there is doubt or disagreement as to who may be an heir-at-law, there is a procedure for obtaining a court order that formally determines the heirs of the deceased. In most cases, this formal proceeding is not necessary.

A decedent's heirs-at-law are determined by applying the rules of intestate succession. (MCLA 700.104-.113). Of course, if the decedent died intestate, these rules determine who will ultimately receive the residue of the decedent's estate.

### **Shortcuts to Formal Probate Proceedings**

Before beginning a regular probate proceeding, whether supervised or independent, consider the applicability of five "small estate" shortcuts proceedings available in the probate court and under Michigan law. Any of the proceedings discussed below may be employed in substantial estates where most of the decedent's property passes outside of the probate procedure, through, for example, a revocable living trust, insurance, or joint property. It may even be possible to consider using more than just one of these small estate proceedings in cases where the chief goal is to retitle certain assets without the expense and delay of formal probate proceedings. **Goodwin, Gillis & Heck, PLC** can help to consider each of the shortcuts proceedings before preparing papers to commence formal court proceedings.

### **Wills**

A will is simply a formal way of setting forth your wishes regarding how you would like your property distributed upon your death. You should consider a will whether you are single, married, have minor children, or own even a small amount of personal assets or property. In fact, every adult should have a will or other means to control the disposition of their assets. If you have not formalized your intentions, your estate may meet with unnecessary and costly litigation, adding to the grief experienced by your survivors. Avoid the financial and emotional turmoil of will contests and other legal wrangling by choosing an experienced estate planning attorney.

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