



Upcoming Seminars

Please attend our upcoming seminars –
Better still, invite a friend!

Tue, May 18, 2:00pm and 6:30pm
Virginia Beach

Thu, May 20, 3:00pm
Williamsburg

Thu, May 20, 6:30pm
Chesapeake

Tue, June 1, 3:00pm
Williamsburg

Thu, June 17, 3:00pm
Williamsburg

To register, please see:
[http://www.jgblp.com/workshop-
registration.htm](http://www.jgblp.com/workshop-registration.htm)

Probate in Virginia

By Spencer M. Baxter

Most everyone has heard of Probate, but few understand what is involved with Probate in Virginia. The word “Probate” comes from the Latin word *probatum* which means “to prove.” Probate is the court regulated process for distributing a decedent’s assets to the beneficiaries, after all debts, expenses, taxes, and claims have been settled. A Last Will and Testament **must** be Probated to be effective. If there is no valid Will the circuit court distributes according to the default intestate succession laws through the Probate process.

Where will the Probate occur?

The formal Probate process takes place in the Circuit Court Clerk’s office in the county or city where the decedent has a house or known place of residence. For patients in a nursing home or convalescent home at the time of passing, their residence before entering the nursing home will likely determine the venue of Probate. When a decedent owns multiple properties in different states, each property must be Probated in its own jurisdiction.

Qualification

A Will is not effective until a court of valid jurisdiction approves it. The requirements for a valid Will, outlined in the Virginia Code, must be followed exactly. Typically, the executor of the decedent’s estate submits the Will for Probate. An executor (called an administrator when there is no Will) must meet specific requirements to qualify with the court. Virginia places stricter requirements



JOHNSON, GASINK & BAXTER, LLP

1138 Professional Drive, Suite A
Williamsburg, Virginia 23185
757.220.9800 office • 877.790.4555 toll free
www.JGBLLP.com © 2010 Johnson, Gasink & Baxter, LLP

on out-of-state executors than for residents. Qualification for the position of executor or administrator of an estate is a very serious matter. Executors must have the responsibility and organization to conform to the deadlines of the Probate process.

Administration

Once the individual has qualified as an executor of a decedent's estate, they must to fulfill the wishes of the Testator (creator of the Will) within the powers granted to them as a fiduciary. The administration may include collecting assets, settling debts, safeguarding property, obtaining a taxpayer identification number, as well as handling the decedent's mail. Administration may also include creating testamentary trusts for the benefit of individuals, outright distributions of cash, transfer of property titles, etc. Documents that will likely need to be submitted to the Probate court include the Proof of Death, Probate Information Form, Memorandum of Facts, Lists of Heirs, and the Probate Tax Return. Executors must file detailed accountings of estate property with the Commissioner of Accounts.

Negatives of Probate

As with all court processes, the Probate process can be slow, expensive and public. The duration of a Probate depends upon the complexity of the case. The typical Virginia Probate takes between 9 months and 2 years. The administration fees for Probate typically vary between 3-5 percent of the assets passing through Probate. Probate is a public process. The executor of the estate must send notice to the beneficiaries of the Will and also to people who would inherit under the intestate succession laws if the Will were thrown out. The Probate process gives intentionally

Incapacity Planning Note:

Free confidential memory screenings. A variety of factors can cause memory problems. A qualified healthcare professional will take you through a series of tasks that can indicate whether you require additional medical follow up

May 18, 2010
from 9:00am-5:00pm

The Center for Excellence in
Aging & Geriatric Health,
3901 Treyburn Drive, Suite
100, Williamsburg, VA
23185

Please call **757-220-4751** to
register.

For more information, their
website is:
www.excellenceinaging.org

JOHNSON, GASINK & BAXTER, LLP

1138 Professional Drive, Suite A
Williamsburg, Virginia 23185
757.220.9800 office • 877.790.4555 toll free
www.JGBLLP.com © 2010 Johnson, Gasink & Baxter, LLP

disinherited heirs formal notice and an opportunity to contest the Will. Challenges to the validity, distributions, and debts of an estate increase the cost and time associated with the Probate.

Virginia Small Estate Act

A 'small estate' (which does not exceed \$50,000 in the aggregate) does not require a full Probate. To qualify under the Virginia Small Estate Act, the executor must Probate the Will and file a list of the decedent's heirs with the clerk of the circuit court. The executor then has an attorney prepare an affidavit which allows for the transfer or delivery of the property pursuant to the Will.

The Winning Move Is Not To Play

The Probate process can be a nasty surprise for families who do not realize that Probate is simply the end result of all Will based plans. Executors may find Probate nerve-racking, but even the most difficult estates are eventually settled. Those who wish to avoid the Probate process should investigate Will alternatives such as the Revocable Living Trust. Because Probate can be a tedious and intimidating affair, a person who finds himself named as executor should consult with a trusted lawyer for support and guidance throughout the Probate process.

*To add another e-mail address,
or to unsubscribe,
please e-mail Lauren at lkn@JGBLLP.com*

Although the administration of an Estate does not require an attorney, it is a good idea to have a counselor available to assist and coach you through the process.

The Attorneys at Johnson, Gasink & Baxter, LLP assist families with Probate work as much or as little as each situation warrants.

JOHNSON, GASINK & BAXTER, LLP

1138 Professional Drive, Suite A
Williamsburg, Virginia 23185
757.220.9800 office • 877.790.4555 toll free
www.JGBLLP.com © 2010 Johnson, Gasink & Baxter, LLP