

TWO THINGS CERTAIN®

July, 2012

THE PROBATE PROCESS

By Jeremy C. Johnson

'Probate' is a powerful word; often evoking disdain, contempt, anger, or just sheer apathy when it is used in general conversation. However; the word is misused routinely to describe an entire system or process when its pure definition is much simpler. The root of the contemporary use of the word comes from the Latin word probāre, which means 'to test and find good.' Technically, the current, correct use of term 'Probate' has not strayed far from its Latin root. In fact, the legal definition of 'Probate' simply describes the process of presenting a Last Will and Testament to the Court for authentication. In popular culture, the term 'Probate' has incorrectly become used to describe the entire process of administering a decedent's estate. In an effort to avoid fighting this battle in vain; I have become assimilated into the incorrect use of the term in my practice.

The Probate Process begins when someone dies and a family, friend, or creditor decides that the individual's affairs must be settled. The decedent's Last Will and Testament is brought before the court to be 'proven' as a valid will instrument. If the will is accepted by the court, then the clerk will record the original and retain the same for the court records. If the will nominates a Personal Representative (Executor), then that person will must petition the court for appointment as the same. If the court approves the nomination of Personal Representative, then the clerk will issue 'Letters of Qualification' (also referred to as 'Letter Testamentary') to certify that individual's ability to act as the Personal Representative. The person who qualifies as the Personal Representative will be required to post a bond, regardless of what the will instrument says on this issue. However; it is possible for certain Personal Representatives to avoid 'Surety' on said bond if certain requirements have been met.

Next, there are a number of filings that must be made by the Personal Representative (with strictly enforced deadlines) which may include: Notice of Probate and the corresponding Affidavit of Notice, Inventory, Accounting (sometimes multiple Accountings depending on the term of years involved), Petitions for Debts and Demands, and finally petition to close the

estate and be released as Personal Representative. It should be noted, that the filings I have mentioned here are ONLY state required filings by the court and DO NOT include the state and federal tax filings.

Probate is often expensive, time consuming and public. However; the Probate Process can be easily avoided with proper trust-based estate planning. If you find yourself dealing with a probate situation, the attorneys of JGB can help. If you would like to avoid the Probate Process for your own estate, then the attorneys of JGB can construct an effective trust-based estate plan to avoid this legal and administrative quagmire.

TRUSTGUARD™...IT'S COMING!

Be on the lookout this fall for the launch of TrustGuard™.

TEAM JGB- RED WHITE & BLUE 5K

JGB is once again sponsoring a running team for the Red, White & Blue 5K scheduled for September 15 at Naval Weapons Station Yorktown. Team slots will be filled on a 'first come' basis. If you would like to be a runner for Team JGB, please contact our office to receive your registration form and race information.



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About the Author:

Jeremy Johnson is an experienced problem solver who helps individuals and businesses achieve and protect their goals of prosperity, stability and growth through appropriate planning. Jeremy takes great pride in making sure that his work for clients is always reliable, correct, and on time.

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