

PROBATE 101:
WHEN MUST I PROBATE?
by Deirdre W. Edmonds
Horry County Judge of Probate

Probate administration, in its simplest terms, is the process whereby a deceased person's heirs or other legal representatives (i) collect the property that the deceased person owned at his or her death, (ii) pays any outstanding bills or creditors of the deceased person, and (iii) then transfers the remaining property to those legally entitled to it. There are, of course, other reasons for commencing a probate administration, which I will address later. But for purposes of this discussion and explaining what this "after-death" thing called probate is all about, that is its simplest definition: taking property that was owned by a person at his or her death and getting that property out of their name to those legally entitled to it.

Whether it is a house, a bank account, stocks, bonds, certificates of deposit, cars or boats, an interest in a business, an annuity, life insurance, or an IRA; whatever a person owned when they died must be transferred and retitled into someone else's name. While we are alive and well, we can all transfer whatever we own to whomever we choose. We have the legal authority to transfer, retitle, convey and give away our property. We can simply execute a deed to transfer our real estate. We can sign the back of our car title and sell our car. We can go down to the bank and withdraw funds or add someone else's name to our account. We can designate someone as the beneficiary of our life insurance or annuity.

When we die, however, we are no longer alive to make these transfers or sign the legal documents necessary to complete these transfers. And, in many situations, no one else has the "legal" authority to transfer our property or sign the legal documents necessary for such transfers. And, that in a nutshell, is what probate administration is all about: giving someone the legal authority to transfer and retitle your property out of your name after you have passed away because you are no longer here to do it yourself.

I've previously discussed how a person's assets and property can be retitled automatically at a person's death by written instructions other than by a Last Will and Testament and other than through probate administration. This can be accomplished by joint ownership of property with rights of survivorship, by beneficiary designations on life insurance policies, IRAs and annuities, with payable or transferable on death designations for bank accounts and brokerage accounts, and through other methods.

But oftentimes a person dies without having made these types of designations for their property and the property remains in their name at their death with no one having the legal authority to transfer or retitle the property, and that's where probate administration enters the picture. By commencing a probate administration in our Probate Court, a personal representative (someone we used to refer to as an executor) is appointed and given the "legal" authority by the Court to act for the deceased person and transfer the deceased person's property to those legally entitled to it. The personal representative can execute a deed to the home, sign the car title to transfer the car, close out the bank accounts, cash in the CDs, and do whatever else is necessary to properly dispose of the deceased person's property after they have passed away. And this process of transferring the deceased person's property out of their name after their death is, in its simplest terms, what probate administration is all about.

(The information provided in this article is for informational purposes only and is of a general nature. The information should not be construed as legal advice. If you have any questions about the subject matter of this article or related matters, you should consult with a professional advisor for advice. The Horry County Probate Court is located in the Horry County Government and Judicial Center, 1301 2nd Avenue, Conway, South Carolina. The telephone number for Judge Edmonds and the Court is (843) 915-5370. Office Hours are 8:00 A.M. to 5:00 P.M. The Horry County Probate Court also has a satellite office located in Little River at the Ralph Ellis Building, 107 Highway 57 North, Little River, South Carolina 29566. The telephone number is (843) 399-5533. Hours are 8:00 A.M. to 12:30, 1:30 P.M. to 5:00 P.M., Monday until 4:00 P.M.)