



Idaho Estate Planning

IDAHO PROBATE BASICS

WHAT IS PROBATE?



HISTORY OF PROBATE

Conflicts relating to death, property transfer, and estates have existed since the dawn of time. It shows up multiple times in early religious books. One of the most famous ones in the Bible is probably that of the Prodigal Son.

Wills have existed since the Romans and is how we get the word Probate, it comes from the Latin *probare* which means “to prove”

We got probate courts in 1066 from the Normans

Colonial America continued Orphans’ Courts from English Common Law



HISTORY OF PROBATE

America split from solely following English Common Law after the Revolution. This paved the way for spouses and daughters to inherit.

Current Probate Law includes influences from both English Common Law and Spanish Community Property Law. Our modern Uniform Probate Code was established in the 1960's.



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WHO NEEDS PROBATE?

WHO NEEDS PROBATE?



Probate is usually needed for assets solely in the decedent's name without beneficiary or joint ownership designations.



Over \$100,000 in assets



Or owns real property/land



If we need a court to determine heirs

PROBATE

According to Idaho Statute, the process must take at least 6 months.

There are two main types of probates, Testate and Intestate

There are two different types of proceedings, informal and formal

Judge reviews the will and appoints a personal representative

Personal Representative is given power to sign on the decedent's behalf.

PROBATE

PR needs to publish a notice to creditors in the paper

PR must wait 4 months from publication for creditors to come forward

PR must facilitate the Estate's payment of all valid debts

PR must make sure last tax filings are submitted to the IRS

PR is then permitted to distribute the remaining assets according to the will.

WHAT IF YOUR CLIENTS DON'T HAVE A WILL?

No worries, the state has one for them.

Idaho Probate Code has a “One Size Fits All” will for you

Based off the nuclear family

Treats everyone equally

Can disenfranchise biological children in favor of a second spouse

Can even cut biological children out in favor of stepchildren.

The background is a teal-colored field filled with numerous speech bubbles of various colors including red, yellow, purple, and grey. Each bubble contains a dark blue question mark. The bubbles are scattered across the entire frame, creating a pattern of inquiry.

HOW TO HELP YOUR CLIENTS

1

ENCOURAGE THEM TO DO
THEIR ESTATE PLANNING
BEFORE THEY BECOME
INCAPACITATED OR DIE.

MISCONCEPTIONS ABOUT ESTATE PLANNING:

Writing your will does not jinx you or cause you to die.

You don't need to be rich for a trust to be an effective planning tool.

Sometimes Estate Planning is as simple as making sure you have beneficiary designations for accounts.

Unfortunately, there is no "will reading" unless you want to orchestrate that.

I don't judge you or your children and how much or how little you want to give them.

2

DON'T PLAY A LAWYER ON
TV...OR IN REAL LIFE

DON'T PLAY A LAWYER ON TV

Don't download something off the internet or copy and paste from a form power of attorney. Even providing these documents as part of your business is UPL.



(Idaho State Bar v. Meservy, 335 P.2d 62 (Idaho 1959),
State v. Wees, 58 P.3d 103 (Idaho Ct. App. 2002))

“The practice of law as generally understood, is the doing or performing services in a court of justice, in any matter depending therein, throughout its various stages, and in conformity with the adopted rules of procedure. But in a larger sense, it includes legal advice and counsel, and the preparation of instruments and contracts by which legal rights are secured, although such matter may or may not be pending in a court.”

(In Re Matthews, 62 P.2d 578 (Idaho 1936))

DON'T PLAY A LAWYER ON TV

Avoid Unauthorized Practice of Law.

- up to a \$500 fine or 6 months or both
- Idaho Code §3-420

Liability

Unintended Tax issues

Improperly drafted documents and faulty financial analysis will disqualify clients from the very programs they are trying to qualify for or unintentionally disinherit someone.

LEGAL RESOURCES TO KEEP ON HAND

Legal Aid

- Predatory Lending, Housing, Powers of Attorney and Advanced Directives, Guardianship and Conservatorship of an Adult

Faces of Hope

- can help with DV and Elder Abuse

Nampa Family Justice Center

- DV and Elder Abuse

Idaho Volunteer Lawyers Program and the Idaho State Bar Association

- Low/No Cost Legal Assistance





QUESTIONS??