

**CVLS PRESENTATION – November 29, 2017**

**THE PROBATE PROCESS**

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## I. Introduction

## II. Preliminary Issues

- A. Purpose of Probate Court
  - 1. Provide process for Orderly distribution of assets owned by decedent
  - 2. Provide forum for Claims, Contests, and Beneficiary Disputes
- B. Do You Need a Probate Estate?
  - 1. What Assets pass at Decedent's Death
  - 2. Assets Subject to Probate
    - a. Assets Owned in Decedent's name
      - (i) Sole Ownership
      - (ii) Tenancy in Common
    - b. Beneficiary Designation – Decedent's Estate is Beneficiary
      - (i) Planned
      - (ii) Unplanned – Default to Decedent's Estate
  - 3. Assets not Subject to Probate
    - a. J TWROS
    - b. Tenancy by Entirety
    - c. Beneficiary Designations
      - (i) Life Insurance
      - (ii) Retirement Accounts
    - d. TOD and POD accounts/Deeds
    - e. Land Trust interest
    - f. Living Trust
  - 4. Alternatives to Probate (A/B)
    - a. Small Estate Affidavit
      - (i) No real estate
      - (ii) Total Assets less than \$100,000
    - b. Bond in Lieu of Probate (C)
      - (i) Real Estate
      - (ii) Need signature of all heirs

## III. Probate Process

- A. Initial Issues
  - 1. Death Certificate
  - 2. Determine Legal Heirs
  - 3. Determine if there is a Will
  - 4. Determine Executor/Administrator

- B. Opening Estate
  - 1. Probate – Will
    - a. File Will – Clerk’s Office
    - b. Review Terms of Will
      - (i) Signature and Attestation Clause **(D)**
      - (ii) Identity of Executor
      - (iii) Waiver of Executor Bond
      - (iv) Determine all Legatees
    - c. Documents to Open Probate Estate
      - (i) Probate Division Cover Sheet **(E)**
      - (ii) Petition for Probate of Will and For Letters Testamentary **(F)**
      - (iii) Copy of Will **(G)**
      - (iv) Oath and Bond of Representative – Surety or No Surety **(H)**
      - (v) Affidavit of Heirship **(I)**
      - (vi) Order Declaring Heirship **(J)**
      - (vii) Order Admitting Will and Appointment Representative **(K)**
    - d. Immediate Actions After Opening Estate
      - (i) Law Bulleting Publication Form **(L)**
      - (ii) Mailed Notices/Waiver of Notices - Notices must be sent to all Heirs and Legatees who did not waive notice within 14 days of opening estate **(M/N)**
      - (iii) Notice to Known Creditors
      - (iv) Order Letters of Office
  - 2. Probate – No Will – Intestacy
    - a. Determine who will act as administrator and determine all heirs
    - b. Documents to Open Probate Estate
      - (i) Probate Division Cover Sheet
      - (ii) Petition For Letters of Administration **(O)**
      - (iii) Consent of Heirs/Notice of Hearing **(P/Q)**
      - (iv) Oath and Bond of Representative – Surety **(R)**
      - (v) Affidavit of Heirship
      - (vi) Order Declaring Heirship
      - (vii) Order Appointing Representative of Decedent’s Estate - Intestate **(S)**
    - c. Immediate Action After Opening Estate
      - (i) Law Bulletin Publication Form
      - (ii) Notice – Independent Administration
      - (iii) Send Notice to Known Creditors
      - (iv) Order Letters of Office
  - 3. Pro Bono Forms
    - a. Petition/Order Waiving Filing Fees **(T/U/V)**
    - b. Petition/Order For Publication Costs **(W)**
  - 4. Independent vs. Supervised Administration

- C. Estate Administration
  - 1. Inventory Assets
  - 2. Collect Assets
  - 3. Pay/Resolve Final Bills/Claims/Taxes
  - 4. Resolve any Distribution Issues – Will/Trust Contests
  - 5. Provide Accounting to Beneficiary
  - 6. Distribute Assets to Beneficiaries
    - a. Timing
    - b. Receipts
    - c. Real Estate – Deed or Release of Estate Interest (**X**)
- D. Closing Estate
  - 1. Court Papers
    - a. Final Report of Representative (**Y**)
    - b. Receipt and Approval on Closing Decedent's Estate (**Z**)
    - c. Receipt by Specific Legatee
    - d. Proof of Mailing and Publication (**AA**)
    - e. Order of Discharge (**BB**)
    - f. Statement Relating to Trust Beneficiaries (**CC**)
    - g. Approval by Beneficiary of Trust (**DD**)