



Real Estate & Probate

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Region 22 Probate District

Bethlehem • Oakville • Oxford • Roxbury

Southbury • Washington • Watertown

Woodbury

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Seminars

- Living Trusts
- Real Estate & Probate
- Probate & Unclaimed Property
- Wills in Connecticut
- Probate Reform
- Conservatorships
- Legal Incapacity, Conservatorships & the Probate Court
- Estate Taxes in Connecticut
- Guardianships

Disclaimer



The purpose of this presentation is to provide an overview of Connecticut real property and probate. It is intended for informational purposes only and should not be relied upon as legal advice. Please consult a competent attorney for information as to your specific situation.

Agenda



- The role of the Probate Court
- Solely owned real estate
- Survivorship
- Divided interest
- Trusts
- Connecticut Estate and Succession Tax
Liens
- The probate process

Connecticut Real Property

The information in this presentation pertains only to Connecticut real property. Real property located in other states is subject to the jurisdiction and laws of the state in which the property is located.

Role of the Probate Court



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Role of the Probate Court



- Protect interests:

- Heirs
- Beneficiaries
- Creditors

- General Powers

- Conn Gen Stat §45a-98(a)(3)

- “Determine Title or rights to possession and use in and to any real []property that constitutes or may constitute all or part of any trust, any decedent’s estate...”

Role of the Probate Court

- Collect Connecticut Estate Tax and Succession Tax

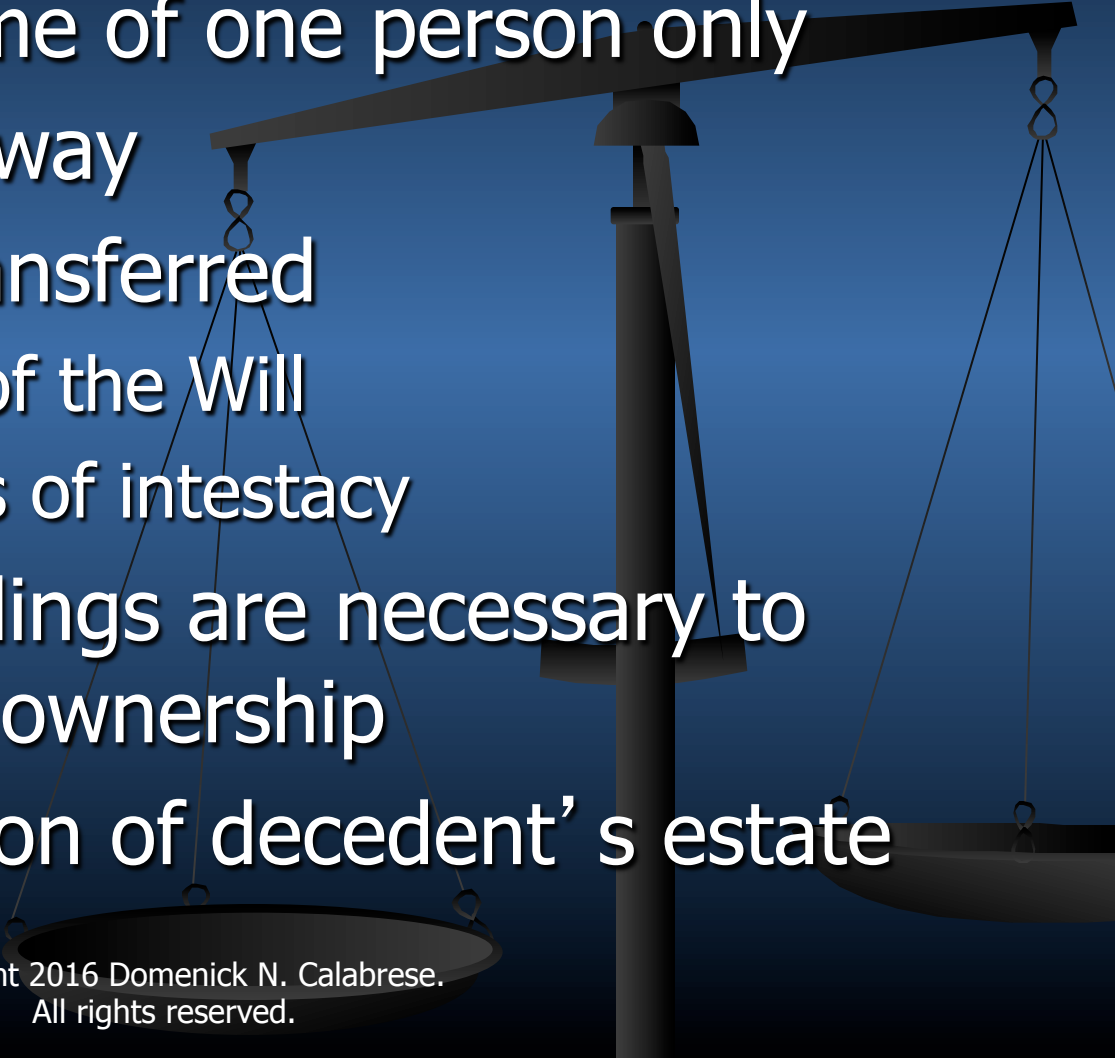


Solely Owned Real Estate



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Solely Owned Real Estate

- Titled in the name of one person only
 - Owner passes away
 - Ownership is transferred
 - Will: via terms of the Will
 - No will: via laws of intestacy
 - Probate proceedings are necessary to determine legal ownership
 - Full administration of decedent's estate
- 

Solely Owned Real Estate

- After determination of legal ownership: Certificate of Devise is approved by the Probate Court
- Certificate of Devise is recorded on the land records
- Evidence of ownership
- Transfer itself takes place upon the death of the owner

Survivorship Property



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Survivorship Property

- Two or more owners of record
- Upon the death of one owner, the decedent's ownership interest passes automatically to the remaining owners of record
- No probate proceedings are required for this transfer to occur

Survivorship Property (cont' d)

- Survivorship is conveyed by the language in the real estate deed for the property

Divided Interest Property



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Divided Interest



- AKA “Tenants in Common”
- Interest of each owner passes via the terms of that owner’s will, or, in the absence of a will, by the laws of intestacy
- Determination of legal ownership must be via probate proceedings
- Full administration of decedent’s estate

Trusts



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Trusts

- Trust= form of ownership
- Many different types of Trusts
- Some Types of Trusts:
 - Revocable Trusts
 - Irrevocable Trusts
 - Inter vivos trusts
 - Testamentary Trusts



Trusts



- Control of Trust property, including real estate, is governed by the terms of the trust
- Probate proceedings generally do not have an impact on Trust property, unless the Trust is subject to the jurisdiction of the probate court

Trusts



- Real estate titled in a revocable inter vivos trust (more commonly known as “living trust”) is not subject to probate proceedings regarding the ownership of the real estate
- However, the value of the decedent’s interest in the trust property will be used in the calculation of the probate fee
- Exception: irrevocable trusts

Connecticut Estate Tax Liens



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Connecticut Estate Tax Liens



- Estate Tax replaced the Succession Tax in Connecticut as of 1/1/2005
- A lien upon real property in favor of the State of Connecticut, from the due date of the estate tax until the estate tax is fully paid.
- Lien is for Connecticut Estate or Succession taxes

Connecticut Estate Tax Liens

- This lien applies to real property in which the decedent retained an interest
 - Solely Owned
 - Survivorship
 - Divided Interest
 - Living Trust (revocable inter vivos trust)

Connecticut Estate Tax Liens

- This tax lien is released by a Certificate of Release of Lien
 - Probate Court
 - Connecticut Commissioner of Revenue Services
- Subsequent to the review of the estate or succession tax return by the Probate Court or Connecticut DRS

Connecticut Estate Tax Liens



- If the Probate Court determines there is no tax due, it will issue:
 - Opinion of no Connecticut Estate Tax
 - Release of Lien for Connecticut Succession tax
- These documents should be recorded on the land records by the fiduciary of the decedent's estate
- This will clear the title of the property for the tax

Examples



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Example 1: The Ticking Time Bomb



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Example 1: The “Trap” of Avoiding Probate

- 1998 John Smith passes away.
- Survived by his wife, Mildred
- At the time of his death, all John’s assets were in survivorship with Mildred, including his home
- Because of this, Mildred erroneously believed that she did not need to go to the probate court

Example 1: The “Trap” of Avoiding Probate

- 2005: Mildred sells the house
- 1 week before the closing, Mildred’s attorney is informed that there is no Certificate of Release of Succession Tax Lien on the property recorded in the land records
- The buyer is unwilling to go through with the purchase without knowing that the Succession Tax Lien has been released

Example 1: The “Trap” of Avoiding Probate

- Now, Mildred must make an application to the Probate Court
- Probate Court must review application and Succession Tax return
- After the review, the Probate Court may issue a Certificate of Release of Lien for Connecticut Succession Taxes

Example 1: The “Trap” of Avoiding Probate

- Application process and court review will be necessary before issuing release of succession tax lien

Example 1: The “Trap” of Survivorship

- Lesson: whenever a Connecticut resident passes away owning assets, a tax return and application must be filed with the Probate Court.
- Even if all the decedent’s assets were in survivorship, this process still must be followed.

Example 2: Solely Owned

- In 2006, Mary Cunningham passes away.
- Mary owned her house in Watertown in her name only
- Mary is survived by her daughter, Jennifer, who lived with her, and her son, Douglas, who lives in Virginia
- Jennifer and/or Douglas may file an application with the Probate Court to open a decedent's estate for their mother

Example 2: Solely Owned

- The Probate Court will:
 - Determine the legal owner of the house
 - Ensure that Mary's creditors are paid
 - Issue an Opinion of No Estate Tax due, if appropriate
 - Determine the legal owner(s) of any of Mary's other solely-owned assets

Solely-Owned

- Upon the approval of the final account and distribution, the court will approve a certificate of devise
- The certificate of devise will be recorded on the land records and serves as a proof of ownership