

Common Probate Mistakes  
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This article examines 3 common probate mistakes, misconceptions and myths.

Myth: Probate can be totally avoided by placing assets in survivorship or a living trust.

This myth is often promoted by purveyors of “one size fits all” living trust packages. When a Connecticut resident dies, even if all their assets are in survivorship or a revocable living trust, probate proceedings are still necessary for Connecticut estate tax and probate fee clearance. If probate proceedings don’t take place, there will be a problem when the real estate in which the deceased person had an interest is sold. Property in a living trust or survivorship allows for transfer of ownership independent of the probate court; the probate court has no role determining the legal owner of that property (one element of “avoiding probate”.) However, the Connecticut Department of Revenue Services treats property in a trust or survivorship includible for calculating Connecticut estate taxes and probate fees. The property is clear of Connecticut estate tax and probate fee liens only after the probate court issues a release of lien upon payment of the probate fee and any outstanding Connecticut estate tax.

Misconception: Probate fees and taxes can cost 33% or more of an estate’s value.

Three fees and taxes that may be assessed on a deceased person’s assets are federal estate tax, Connecticut estate tax, and Connecticut probate fees. For anyone dying with less than \$2 million in assets in 2016, there will be no federal or Connecticut estate tax liability. Connecticut probate fees are progressive and based on the value of the deceased person’s estate: the greater the value of the estate, the higher the probate fee. In Connecticut, probate fees are established by law, not by probate judges and courts. The courts must strictly adhere to the established fee schedules. Probate fees range from one third of one percent to one half of one percent. For example, if a Connecticut resident dies owning assets valued at \$600,000, the Connecticut probate fee will be approximately \$2,100. A change in the way probate fees were calculated in 2015 removed the \$12,500 “cap” on probate fees and increased the marginal rate for estates valued in excess of \$2 million to one half of one percent – a significant increase in probate fees for high value (multi million dollar) estates. However, Connecticut probate fees are far lower than the 33% or more that some people believe.

Mistake: Relying on the advice of a well-meaning bank teller, friend, nurse, social worker or contractor for probate and estate planning advice.

Even after fourteen years as a probate judge, I am still amazed by the people who feel they can dispense advice on probate matters! It’s a highly specialized area of the

law, and even very few attorneys are well versed in probate law. Attorneys with substantial probate experience are most qualified to give reliable advice.

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