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Answers to Common Probate and Trust Administration Questions

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When does a probate estate need to be opened?

Any time a person dies and has assets in his or her name. If the deceased person properly executed a last will and testament, the property will be distributed pursuant to the instructions in the will. If the person did not have a will, a probate estate is still opened. However, the default laws of the State of Michigan will determine how the property is distributed.

Who should start the probate process?

The personal representative (formerly referred to as the "executor") of a probate estate is given the legal authority to commence probate, write checks, pay bills, and manage the assets of the deceased individual. The last will and testament will nominate who the deceased person wanted to act as the personal representative. If the deceased person does not have a last will and testament, then the court will appoint a relative of the deceased person to act as the personal representative.

What if the deceased person had a trust? Can the trustee simply distribute the assets to those named in the trust?

No. Michigan law requires that the trustee take certain actions and for the trust to stay open a certain length of time. If not administered properly, the trustee can be personally liable. Once the trust is properly administered and all debts and expenses paid, the assets in the trust can be distributed to those listed in the trust.

Who should start the trust administration process?

The trust document will name one or more individuals or a professional fiduciary to act as the trustee when the person setting up a living trust becomes incompetent or dies. That person will be the person to administer, manage, and distribute the trust assets pursuant to the trust document. The trust document will detail the actions necessary for the named trustee to write checks, pay bills, and manage the assets for the beneficiaries.

What are the first steps to start the probate process or to administer a trust?

The person to act as personal representative or the person named as the trustee should contact an attorney specializing in estate planning and/or probate administration to schedule a conference. An attorney is an integral part of properly and efficiently administering the trust. The attorney will inform the personal representative or trustee of his or her duties, walk him or her through the process, prepare the required documents, serve those documents on the people and/or entities who are required to receive them, and in general make the administration easy for the personal representative or trustee. Unless there is a specific reason that necessitates meeting sooner, it is usually best to schedule that conference to occur a week or two after the death of the deceased person. If the person setting up a living trust becomes unable to handle his or her own business affairs, the named trustee should contact an attorney at that time to determine his or her duties and for assistance in meeting the Michigan Trust Code requirements.