

Five Things To Do When a Loved One Passes Away

1. **Grieve** More than anything else, remember your loved one and all the wonderful things he or she did. And forgive any wrongs that were done.
2. **Protect the Assets.** Unfortunately there are people who will take advantage of your loss. If necessary, change locks on doors and do whatever may be necessary to secure the assets.
3. **Work Closely With Your Funeral Director.** Funeral Directors and their staff are very experienced in the many things that need to be done when someone passes away. And they are glad to be able to help you during this time.
4. **Contact a Probate Attorney.** There are always legal aspects involved with a death in the family, and a Probate attorney can compassionately guide you through the legal proceedings which are necessary.
5. **Apply for a Tax Identification Number for the Estate.** The Tax ID number for the estate is used like you use your Social Security Number. Anytime you deal with a bank or the government or almost anyone else, you will need to have the estate's Tax ID number .

FREE CONSULTATION

We offer you a free, no-obligation consultation when you meet with us the first time. This allows you the opportunity to get to know us, the way we work, and to see if we are able to help you with your situation.

At the end of the free consultation, we will let you know whether we can help you and what your costs will be.

William J. Cutchin

Attorney and Counselor at
Law

Please visit our web site at
www.cutchinlaw.com
for additional information.



Cutchin Law Firm

1051-B Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464

Phone: 843.216.0809

Fax: 843.216.0828

Probating an

Estate



Cutchin Law Firm



*Simple Wills and Complex Estate Planning
Probate | Corporation and LLC Formation*

What you should know about Probate.

You have just lost a loved one and there are millions of details to consider. You keep hearing the word, “Probate.” What does it mean? And how does it affect you? The answers to these questions and others are in this brochure.

1. What is Probate?

Probate is the legal process required by South Carolina law to distribute the assets of an estate, except for assets not subject to Probate (See Question 8).

2. If my loved one had a Will (or did not have a Will), must I still go through Probate?

Yes. Estates must go through the Probate process to distribute the assets as devised through the Will or under a similar procedure for those without a Will.

3. What happens if I do not Probate my loved one’s Estate?

One of the main downfalls of not going through Probate is that you may face the inability to sell or mortgage the real estate (house) owned by your loved one. Through the Probate process, the Courts approve a Deed of Distribution for the property, before it is retitled according to the Will or legal statute. If you do not Probate an estate that has real estate, and you wish to sell the property, you will not be able to until you have opened the estate and proceeded through Probate.

4. How long does the Probate process take?

For estates with total assets valued at \$10,000 or less, the Probate process may take just a few months. For those estates worth more than \$10,000, most estates usually close within 12 months of the time the initial

forms are filed with the court in order for any outstanding creditors to file a claim for payment.

5. What happens if a creditor files a claim?

Claims filed by creditors must be paid before the estate can be closed. The claims are paid through an estate account set up and maintained by the Personal Representative. Claims are paid in the order as found under South Carolina law. For example, medical bills have priority over credit cards.

6. Where do I have to file for Probate?

An application form (Form 300) to Probate the estate must be filed in the Probate Court for the County in which your loved one either was domiciled, had the intent of being domiciled, or owned real estate.

7. What if my loved one owned real estate in other states?

A separate Probate will be required in those states where your loved one owed real estate *IN ADDITION TO* the Probate process in South Carolina. This is known as ancillary Probate and is required to properly distribute the property.

8. What assets are not subject to Probate?

Assets in a Revocable Living Trust; property titled as “Joint Tenants with Rights of Survivorship;” IRAs and 401(k) plans; life insurance proceeds; POD (payable on death) bank accounts; joint checking and savings accounts; and any other similar assets avoid the Probate process. Please remember to consult an attorney to advise you of exactly which assets your loved one owned that may or may not be subject to Probate.

9. Do I have to get an attorney to represent me?

No, there is no legal requirement that you have an attorney represent you. You do need to be aware

that although the staff at the Probate Court are very friendly and helpful, they cannot and will refuse to give you any legal advice.

10. Then what is the benefit of retaining an attorney to Probate the estate?

South Carolina is one of the leading states for ease of Probate. Even so, for the most part, Probate is a form-driven legal process which requires adherence to deadlines and for the forms to be completed properly.

Upon the death of a loved one most people are emotionally upset and do not want the responsibility of handling the Probate procedures. Also, being a Personal Representative is usually a once-in-a-lifetime event and most people do not know what is required of the Personal Representative.

Similar to do-it-yourself surgery, you may go through Probate without the assistance of an attorney. But you need to ask yourself if you feel confident enough to do it, and if you are willing to be responsible for the mistakes you may make.

The Probate process is often a confusing and detailed task that Probate attorneys deal with on a daily basis. With the advice and guidance of an attorney to assist you during Probate, you can be assured that your loved one’s estate will be properly handled during a difficult time.

Cutchin Law Firm and Probate

At Cutchin Law Firm we handle all areas of Probate, including going to trial for the estate if necessary. We are very experienced in handling all sizes of estates. But more importantly, we handle Probate cases with the greatest respect for the deceased and with the greatest of understanding for the family and loved-ones who remain and who must undergo the Probate experience.

This information is general in nature and is not legal advice. Please see an attorney for your personal situation.