

PROBATE 101:
LEFT BEHIND
by Deirdre W. Edmonds
Horry County Judge of Probate

Although death brings with it a finality to one's life here on earth, it also commences another chapter sometimes harshly referred to as "post-death" matters. Post-death matters are all those things that must be handled and dealt with after a person dies to tie up the loose ends and close out their mortal chapter of what they left behind here on earth.

Some post-death matters must be dealt with immediately after a person dies. These include notification of family and friends of the person's death, planning the funeral, burial arrangements or possibly cremation for such person, and writing their obituary. Very soon after these immediate "post-death" matters are taken care of, the family usually begins to think about what must be done with the property and assets that the deceased person left behind. Whether it's real estate, stocks and bonds, personal effects such as jewelry or an automobile, or life insurance or an IRA, the deceased person's property and assets, like their own bodily remains, must be properly disposed of after their death.

Often people will leave written instructions concerning how they want their property and assets to be disposed of after their death. These written instructions are often set forth in a Last Will and Testament. A person may also, however, leave written instructions directing the disposition of his property and assets other than by a Last Will and Testament. These instructions may be in the form of a written contract designating someone as the beneficiary of their life insurance proceeds, annuity contract or IRA. Other written instructions may be on file with a bank, financial institution or brokerage firm designating an account as a right of survivorship account with another person or possibly as a "payable on death" account so that the account balance will be payable to another person at the account holder's death.

In most cases, the post-death instructions left behind by a person other than by way of their Last Will and Testament can be followed and given effect without outside interference other than by the person designated by the deceased person to receive the property. That is to say, the person designated as the beneficiary of the life insurance policy, annuity contract or IRA merely completes the necessary paperwork and provides the necessary documentation to the insurance or annuity company or financial institution, and he or she can generally receive the insurance proceeds, annuity payments or IRA.

The same is usually true for jointly titled accounts and property. The surviving joint account holder on the checking or savings account can obtain the funds remaining in the account at the time of the death of the other joint account holder by merely presenting a death certificate and proper identification to the bank or financial institution. Or, an automobile, mobile home, or camper titled jointly in two (or more) persons names with rights of survivorship can be simply retitled into the surviving owner's name by the surviving joint owner through the local office of the Department of Motor Vehicles (or with the Department of Natural Resources for a boat).

In most cases, no other third party or family member need be involved to effectuate the transfer of these assets and property left behind by a person after his or her death. These types of property and assets that pass to another upon the deceased person's death by way other than a Last Will and Testament are usually referred to as "non-probate" assets and property. They do not have to be "probated" through the Probate Court in order for the person entitled to them to obtain them and they are generally not subject to probate administration.

The same cannot be said, however, when a person leaves written instructions disposing of his property by way of a Last Will and Testament. In order for a person's instructions set forth in their Last Will and Testament to be given effect and carried out, the Last Will and Testament it must be "probated" by the Probate Court and the property and assets must go through that so often dreaded post-death process known as probate administration. Probate administration can be simple or complicated, formal or informal, quick or lengthy, and it is often dependent upon the type or amount of property that a deceased person left behind.

(The information provided in this article is for informational purposes only and is of a general nature. The information should not be construed as legal advice. If you have any questions about the subject matter of this article or related matters, you should consult with a professional advisor for advice.)

The Horry County Probate Court is located in the Horry County Government and Judicial Center, 1301 2nd Avenue, Conway, South Carolina. The telephone number for Judge Edmonds and the Court is (843) 915-5370. Office Hours are 8:00 A.M. to 5:00 P.M. The Horry County Probate Court also has a satellite office located in Little River at the Ralph Ellis Building, 107 Highway 57 North, Little River, South Carolina 29566. The telephone number is (843) 399-5533. Hours are 8:00 A.M. to 12:30, 1:30 P.M. to 5:00 P.M., Monday until 4:00 P.M.)