



# Will Power

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## PROBATE IS A PUBLIC PROCESS

When I explain to new clients that the probate process is public, they usually express surprise. “You mean that anyone can march down to the court house and take a look at my will?” The answer to this question is, “yes”.

The probate process, remember, is different than estate taxes and tax returns. Often the two are confused. Probate is the process under which your will is administered when you die. Before distributions are made to your beneficiaries, a court determines that the will submitted to the court is the true and correct last will.

Your personal representative (executor) is appointed and burdened with the responsibility to ensure that all of your creditors have been paid, and that your tax returns are properly filed. An inventory of your assets is filed, including the current fair market values. An accounting is filed with the court, along with a schedule of distribution. Parties have the ability to object. Upon meeting all of the legal requirements, distribution is finally made.

Because this is a court process, most of the filings and steps can be looked at by any person who walks in off the street. While your inventory and other sensitive matters are only supposed to be viewed by those parties who would have an “interest”, the class of individuals who might have access may be broader than you care for.

Assume that you have a child whom you have written out of your will. They may have access to your will and to the inventory of your assets. Another example of a party that you don’t want to have access to your documents would be a divorcing spouse of one of your beneficiaries. They may be able to have access to

your probate file if they can prove that such access is material to their case.

I’ve had newspaper reporters call me about a client’s private probate matters with knowledge that could have been copied from their probate file.

If your will, for example, contains clauses or restrictions on a beneficiary because he or she has special needs, or has had drug or alcohol problems that you don’t want to enhance by leaving significant amounts of money, these facts might become public record upon your death in a probate file.

This public process is one main reason why revocable trusts are preferred to wills by most clients. While the trustee of your trust has many of the same responsibilities imposed upon the personal representative when clearing your estate, the trust is not filed with a court, and therefore is not a public document. When you have a revocable living trust you usually still have a will. These wills are referred to as “pour over wills.” They usually do not contain very much information on who is entitled to what, when, where and how. The pour over will simply states that if there are any probate assets, those assets are to be distributed to the trustee of your trust for administration and distribution. This retains the privacy of your estate plan.

If you still are relying primarily on a will as the legal document to manage your estate, you may want to consider updating to a revocable living trust – for privacy reasons alone.

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