

Law Office of
Sativa Boatman-Sloan, LLC
 & **417 ELDER LAW**

NEWSLETTER



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What is Probate and Why Should I Avoid it?

The topic of probate brings up a lot of concerns from people who come to us for estate planning. Many have heard horror stories from families and friends. They know enough to know that they want to avoid probate, but they don't know why or how.

Probate is simply an administrative process supervised by the courts that helps in the orderly distribution of a person's assets after death.

One of the most common misconceptions people have about probate is that having a Last Will and Testament will avoid probate. Not true — Wills go through probate, although the specific process varies by state.

Regardless if a person has a Will in place at the time of death, any assets that do not pass directly to beneficiaries must go through the probate process. The court must also make a determination that the Will is valid. If someone contests the validity of the Will, the court decides the matter.

In order to probate a Will or an estate without a Will, the probate court assigns a representative who will gather and list the deceased's assets; pay any outstanding debts, bills, taxes, and fees; and then distribute assets to the intended beneficiaries according to probate law.



What to expect from the probate process:

- **Cost** — The costs of probate include, among other things, court filing fees, costs for publishing notices in newspapers, and attorney's and executor's fees. If the estate is complex, there may also be fees for an accountant.
- **Time** — Probate is a court process and along with the various proceedings and hearings, simply gathering assets and paying off debts of an estate can take months or even years. If any heirs contest the Will, the process becomes even more time-consuming and expensive.
- **Loss of control** — A judge you have never met and who doesn't know you or your family will ultimately make decisions as to how your assets are distributed.
- **Loss of privacy** — Probate is a public process, which means all proceedings become part of the public record and anyone can go search and find information about the distribution of an estate's assets—including their value and to whom they have been given.

Avoiding probate is the only way to have your assets pass directly to your heirs.

There are several ways to do this, but the easiest way is to create a living Trust. In a Trust, the grantor (person writing the Trust) directs how assets are to be distributed upon death, and retains control over those assets until their death.

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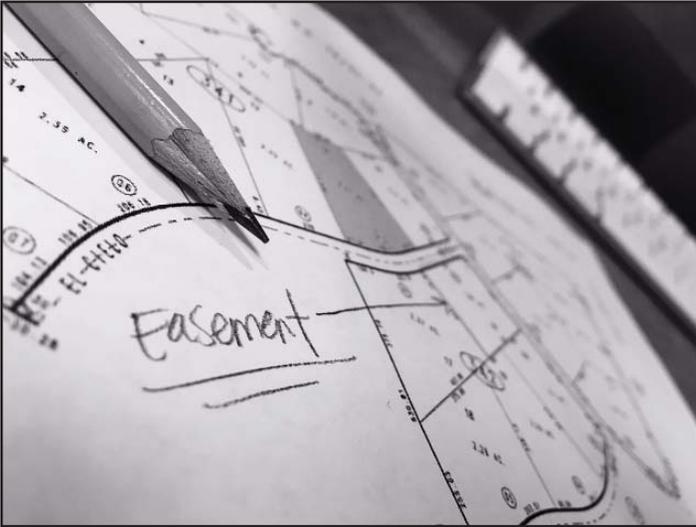
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Don't Let Easements Become a Headache



not research the easement restrictions and unknowingly built their house or business on an easement. Needless to say, this scenario could result in expensive renovation costs, frustration, and even litigation.

When buying property, you may assume that you will own the land around your home or business, i.e., front yard, back yard, driveway, or parking lot without others having the right to use it. But that is not always the case. When you review the real estate records, you may find that someone actually has a right-of-way through your property. In some instances, the previous owner might have been compensated for granting this access. As the new property owner, you will be inheriting the previous owner's responsibility to observe the easement holder's rights and privileges. It is also important to note that as the property owner you would be responsible for paying taxes on the entire parcel of property.

If you are purchasing or leasing property — whether a home, a condominium, a farm or a business — you need to be aware of the legally binding easements that effect the title to the property. Separately recorded easements or easements created by deed will specify any rights that allow someone to use a property that they don't own. Easements are generally considered permanent, and a deed covenant may protect someone's right to continue to use the property even if ownership changes.

Most of the time, there is not a problem with easements, but it is important to check. A real estate attorney or agent will advise you to obtain title insurance along with the purchase, which provides a report that details all issues with the property, including easements, liens, outstanding mortgages, judgments or unpaid taxes.

The most common property easements are held by utilities and the Department of Transportation. These allow the power companies to install and maintain lines and also trim trees (even if you don't want them to). Utility companies may replace and maintain water and sewer lines, and the DOT can expand a road. While erecting a non-permanent fixture, such as a fence on an easement, may be permissible, building a permanent structure, such as a garage, would be problematic. There have been instances when property owners did

If you are handling the purchase on your own or just want to know what easements are currently tied to your property, deeds are a matter of public record and can be obtained from the county recorder or assessor's office. Highway and Public Works Departments would also be a good resource for utility and road easements.

Given the potential headache an easement can become, it is important for your peace of mind that you are fully aware of any restrictions and requirements tied to a property before a sale is finalized.

Probate: Planning Now Can Make a Big Difference

Continued from page 1

The grantor also chooses a successor trustee, who will distribute the trust property according to the grantor's instructions following the grantor's death. Other ways to avoid probate include the following:

- Holding property jointly so that the other owner takes full ownership upon death, i.e. joint tenancy with a right of survivorship.
- Designating beneficiaries, or the person to whom benefits pass directly upon death on life insurance and retirement accounts.
- Designating beneficiaries as pay-on-death (POD) for bank accounts or transfer-on-death (TOD) for investment accounts and on titles for vehicles, boats, motors, and trailers.

Having a basic understanding of probate law is essential to estate planning. Planning ahead can make a big difference for your loved ones in the future. We are here to educate and help you through the process.

Swap Some Sweets

The holiday season is around the corner. It's usually a busy time with family gatherings and holiday parties. And that's not even considering the gifts and goodies.

Why not change up the usual holiday get-together and host a holiday cookie share? It's a perfect way to have a casual gathering of friends, co-workers, or family where you taste test, exchange recipes, and leave with gift bags of delicious cookies.

Here's how you can pull off your own cookie share:

- **INVITE.** Give advance notice because people will be more likely to attend if you plan ahead.
- **COOKIE COUNT.** Decide the number of cookies each guest should bring. A suggestion is to ask everyone to bring six dozen cookies from a single recipe, or approximately two or three batches. In this example, each guest should leave with about six dozen cookies, no matter how many people attend.
- **PLAN.** Ask attendees to bring tins, zip-top bags, or holiday goodie bags to take their cookie selections



home. Remind them to bring copies of their cookie recipe. If you'd like to avoid duplication, keep a running list of what types of cookies your guests plan to bring.

- **SHARE.** Keep attendees enthused by sharing how many are planning to attend and what cookies will be featured. This will keep them in the loop of knowing how many copies of their recipe they should bring.
- **HAVE FUN.** On the day of your cookie share, set up a table to display everyone's goodies. Everyone takes a recipe card to keep. Taste test and converse. Fill gift boxes or bags with the variety of cookies.

Voila! You've had a great gathering of friends, and everyone takes home wonderful gifts to share.

Before Giving, Do Your Research

Giving back to our community and helping others in need is satisfying because your contribution makes a difference. There are many legitimate charities working to help a variety of causes. Unfortunately, whether they pop up during a natural disaster or around the holidays, scammers surface to take advantage of our giving nature.

To verify the legitimacy of a charitable organization, try going to CharityNavigator.org. There, you can search by charity name, keywords, or even the organization's EIN to view the overall score and rating of the charity, plus how much of donated funds go directly to the programs or services it delivers. Other good resources are the Better Business Bureau's Wise Giving Alliance, Charity Watch, and GuideStar.

Do your research before you give and avoid any charity that:

- Uses high-pressure tactics to get you to donate immediately without giving you time to research.



- Asks you to wire money or only accepts cash donations.
- Refuses to give detailed information about its identity and mission.
- Will not provide you proof that your contribution is tax deductible.
- Has a name that closely resembles a better-known and reputable organization.

Unknown charities after a natural disaster may be well-intentioned groups legitimately trying to help. However, they may not have the infrastructure to get the funds to the affected people. If in doubt, you may opt to donate food, clothing, or other non-cash items.

Making an annual donation plan is a good idea. You'll be able to have time to do your research and decide which causes and which charities to support.

Bottom line: you should feel good about the contributions you make. Go with your instincts, and if something doesn't feel right, your research will help guide your way.

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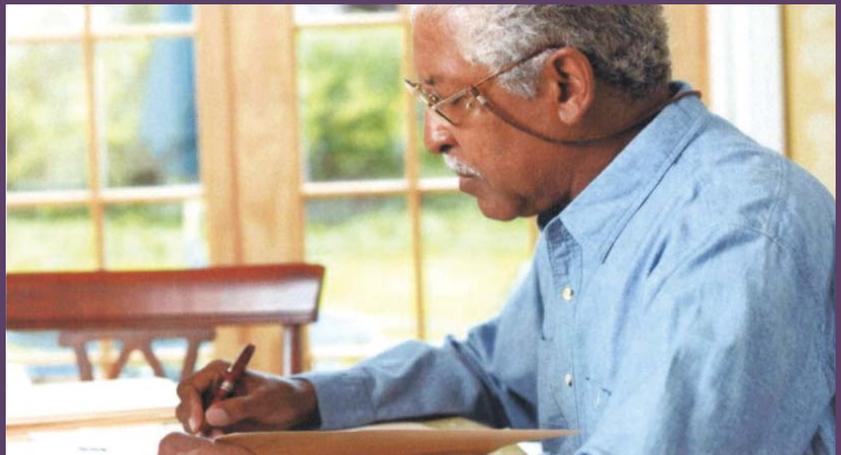
Legal Issues

and Alzheimer's Disease

An education program by the Alzheimer's Association

Tuesday, October 17
3:00 - 4:30 PM

Alzheimer's Association
3645 South Avenue
Springfield, MO 65807



If you or someone you know is affected by Alzheimer's disease or dementia, the time for legal and financial planning is now. Legal Issues and Alzheimer's Disease is a workshop presented by the Alzheimer's Association and The Law Office of Sativa Boatman-Sloan & 417 Elder Law. It is for anyone who would like to know more about what legal and financial issues to consider and how to put plans in place.