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DO YOU NEED TO AVOID PROBATE?

The facts ...

What is probate? It is the legal process of presenting your Will to the Court, after your death to authenticate it, and appoint your Executor. Your Executor must be appointed by the Court in order to collect and distribute your assets as stated in your Will. However, because it is a legal process, there are many steps that must be followed before your Executor can be appointed.

- The attorneys must obtain signatures from your heirs signifying they agree the Will is yours, and they will not contest it. Your heirs are your spouse and children and all must agree not to contest your Will before your Executor can be appointed. If you don't have a spouse or child, probate becomes even more complicated. Even if your heir is not a beneficiary, his waiver is still required. This can be very different in second-marriage situations, if you have minor children or if you have a child you lost contact with. If a child dies before you, then, all of your deceased child's children will have to agree not to contest your Will, but if they are under 18, the Court will need to appoint a separate attorney to represent them. The same is true if any of your heirs are legally incapacitated, such as a retarded child or spouse with Alzheimers.
- The Executor will have to submit a family tree, filing fees, a petition, a death certificate and affidavits from the individuals who witnessed your Will. Upon receipt of all of the appropriate information (if no heirs contest it), the Court will appoint the Executor.
- After your Executor is appointed, estate administration begins. It is a period of time the law permits the Executor to accumulate the assets and report to the Court how he/she intends to distribute them. This period is a minimum of seven months after the Executor is appointed. However, in most cases, it takes a year or more. If you die without a will, the process is similar, but the State decides who gets your assets, not you.

Unfortunately, probate is unpredictable. That's why many people chose to avoid it, but if all of your heirs agree and your assets are centralized, it can go smoothly.

For more info: www.houstonelderlawyer.com or 713.961.1099