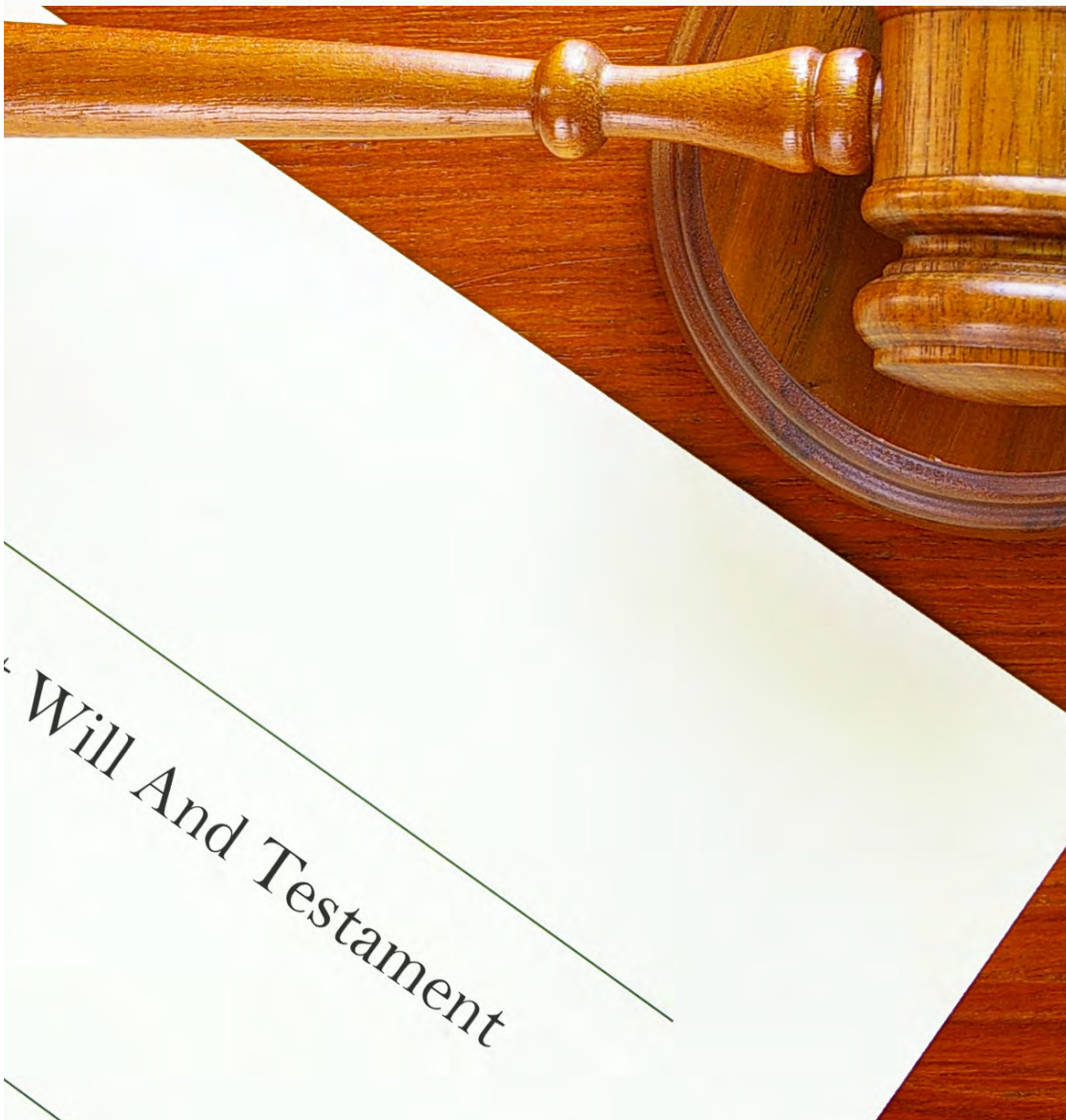


PLANNING AHEAD, DIFFICULT DECISIONS

# A Walk Through Probate



Aaron J. Lyttle

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**A**lbert is a resident of Grand Junction, Colorado. His mother, Catherine, an unmarried woman, died while a permanent resident of Sheridan, Wyoming. She appears to have left behind an estate largely consisting of a large house, the items in the home, a car, and a checking account holding some cash. She also appears to have some credit cards with an outstanding balance.

After the funeral is over, Albert and his siblings discover that their mother signed a will before she died naming Albert as personal representative of her estate. What will Albert likely go through to ensure that Catherine's estate is properly managed and transferred to its intended recipients?

## What is Probate?

"Probate" generally refers to the court-supervised process of legally transferring property from a dead person to a living person. Probate proceedings typically involve several features:

- Proving the authenticity of the deceased's will,
- Appointing someone to administer the deceased's affairs,
- Identifying and inventorying the deceased's property,
- Adjudicating payment of debts and taxes,
- Identifying heirs, and
- Distributing the deceased's property according to the terms of the deceased's will or, if no will exists, state law.<sup>1</sup>

Property held in a person's sole name will generally be transferred to his or her heirs according to the Wyoming Probate Code, which can be found in Title 2 of the Wyoming Statutes Annotated. However, the estate must first satisfy the individual's final debts, expenses, and tax liabilities. Certain interests fall outside the probate process, such as jointly titled assets, which are discussed below.

## Some Basic Terms

**Bequest and Devise.** The act of giving property to someone by will. Technically, a bequest refers to a gift of personal property, while a devise is a gift of real property. However, this distinction is often disregarded. "Bequeath" is a verb referring to the act of making a bequest.

**Competency.** A person who has the requisite legal capacity to do something, such as execute a will or act as personal representative, because he or she is of legal age and sound mind.

**Creditor.** A person or company to whom the estate has outstanding debts.

**Decedent.** A person who has died.

**Elective Share.** The portion of a deceased spouse's probate estate that a surviving spouse is entitled to claim according to Wyoming law.

**Estate.** All personal and real property owned by the decedent at the time of death.

**Fiduciary.** A person who must act for the benefit of another. Many roles can be considered "fiduciary," ranging from the personal representative of an estate to the director of a corporation, the general commonality being that the relationship is marked by a number of duties, including good faith, trust, confidence, and candor.

**Heir, Distributee, and Beneficiary.** A person or entity entitled to receive portions of a decedent's estate. Technically, an "heir" is a person, other than the surviving spouse, who would receive a portion of an intestate estate if the decedent had died without a will; a "distributee" is a person entitled to receive property under the terms of a will; a "beneficiary" is a person entitled to receive the benefit of property held by a trust. The terms, however, are often used interchangeably.

**Joint, Common, and Entireties Property.** Property can be owned by multiple persons in three forms:

- **Tenancy in Common.** Ownership by two or more persons with no right of survivorship. In other words, if one owner (called a "tenant in common") dies, his or her share of the property does not immediately pass to the other tenants in common.
- **Joint Tenancy with Right of Survivorship.** Ownership by two or more persons with a right of survivorship. When one joint tenant dies, the other joint tenants automatically receive the deceased owner's share of the property.
- **Tenancy by the Entirety.** A special form of tenancy that provides, among other features, a right of survivorship and applies only between married persons.

- **Life Estate.** An interest in property measured by the length of a person's life.

**Letters Testamentary.** Documents issued by the probate court giving the personal representative authority to act on behalf of a decedent's estate.

**Personal Representative.** The person tasked with administering a decedent's estate. Personal representatives include those appointed by the terms of a decedent's will (also known as "executors") and those appointed by a court to administer the estate of an intestate decedent (also known as "administrators"). At times, people may use these words interchangeably.

**Personal Property.** Property other than real property (see "Real Property" and "Tangible Personal Property").

**Petition for Letters of Administration.** A document filed by an applicant requesting letters testamentary regarding the estate of a person who died without a will (see "Testacy").

**Petition for Probate.** A document filed with the probate court by an estate's prospective personal representative requesting that a will be admitted to probate.

**Probate Estate.** Property owned by a decedent at death that is transferred by will or intestacy statutes through the probate court.<sup>2</sup> The probate estate does not include certain types of property that do not change ownership through a will (see "Will"), including property held by a revocable trust, joint tenancy property, life insurance death benefits, etc.

**Real Property.** An interest in land (also known as "real estate"), as well as certain interests closely associated with land, such as fixtures, growing crops, and minerals that have not yet been extracted from the earth.<sup>3</sup>

**Self-Proving Will.** A will that meets requirements of Wyo. Stat. Ann. § 2-6-114 and does not require additional proof to be admitted to probate because it includes a notarized affidavit signed by two witnesses.

**Tangible Personal Property.** Personal property that has physical form and can be seen, weighed, measured, felt, or touched, such as furniture, silverware, and books.<sup>4</sup>

**Transfer on Death Deed.** A deed that automatically transfers real property upon the death of its owner in accordance with Wyoming law.

**Surviving Spouse.** The decedent's surviving husband or wife.

**Testacy.** A decedent who dies with a valid will is considered to have died "testate." A decedent who dies without a will is considered to have died "intestate." A person who creates (or "executes") a will is called a "testator."<sup>1\*</sup>

**Will.** A legal document that a competent adult may create before his or her death indicating how his or her estate should be divided, as well as other matters.

## How Does Probate Work?

### Filing the Will

After learning of the death of Albert's mother, who ever had custody of the will (i.e., Catherine's estate planning attorney or live-in boyfriend) has 10 days to deliver the will to either (1) the clerk of district court in the county where she lived (in this case, the Sheridan County Clerk of District Court) or (2) the named personal representative, Albert.<sup>5</sup> After receiving the will, the clerk of court will notify the person named as personal representative, as well as the distributees named in the will who can be readily located.<sup>6</sup>

Albert has 30 days after learning his mother died and that he has been named personal representative to bring a petition to probate the will. Otherwise, the court may find that he has renounced his rights and appoint a different person as personal representative unless Albert shows good cause for his delay.<sup>7</sup>

### To Probate or Not?

Initially, Albert and his siblings may need to decide whether their mother's will should be probated. A Wyoming probate will likely be necessary to transfer Catherine's estate to her heirs if Catherine owned assets that were:

- located in Wyoming,

<sup>1\*</sup> Some documents may refer to a testator who is a woman as a "testatrix." This term (along with its "-ix" suffixed cousins, "executrix" and "administratrix") has fallen out of popularity.



- worth more than \$200,000 (not counting mortgages and other encumbrances),
- held in Catherine's sole name, rather than in a trust or joint tenancy, and
- did not pass through a non-probate transfer, such as a beneficiary designation on a 401(k) plan, IRA, life insurance contract, etc.<sup>8</sup>

If Catherine had Wyoming property worth \$200,000 or less, the intended recipients of her property could use the alternative summary procedure to distribute her property rather than using probate. The summary procedure is discussed in more detail later in this bulletin.

Albert discovers that all of his mother's property was held in her sole name and that her property (particularly, as is often the case, her house) definitely exceeded the \$200,000 threshold. He will, therefore, need to use the probate process to administer his mother's estate.

### **Appointing the Personal Representative**

The person who will be appointed personal representative depends on whether Catherine's will effectively named someone to act as personal representative.

Like most decedents who die testate, Catherine's will nominated someone to act as the estate's personal representative. As the person named in his mother's will, Albert has first preference to be named personal representative of the estate if he is found to be competent.<sup>8</sup> If no one named by the will is available to serve, the court can appoint a different person in the following order:

- A beneficiary named in the will or a person nominated by the beneficiaries,
- A creditor of the decedent or someone nominated by a creditor, or
- A different person found to be qualified by the court.

If Catherine had not executed a will, then Wyoming law requires the court to appoint someone to act as personal representative. A court-appointed personal representative will typically be a relative of the decedent, such as a spouse, child, or parent. However, if a spouse, child, or parent is not available, the court will utilize the Wyoming Probate Code to determine an appropriate representative. The process for appointing a personal representative of an intestate decedent is

often initiated by the decedent's surviving relatives who are entitled to receive part of the estate, although Wyoming law allows a number of individuals to request authority to act as personal representative in the following order:

- A surviving spouse or other competent person nominated by the decedent,
- A child,
- A parent,
- A sibling,
- A grandchild,
- A next of kin entitled to part of the estate,
- A creditor, or
- Any legally competent person.<sup>9</sup>

### ***Deciding Whether to Accept the Appointment***

Before accepting his nomination as personal representative, Albert should ensure that he has the necessary skills and resources to properly administer the estate according to the terms of his mother's will and Wyoming law. If Albert accepts the appointment, he will have a number of powers and responsibilities with serious potential legal consequences.

Stated simply, the personal representative's primary duty is to administer a decedent's estate during the probate process. Specific duties may include paying the estate's final expenses, filing tax returns, making tax elections, and ensuring that property is transferred to the proper recipients. A personal representative must act with care and prudence when administering the estate. A person interested in receiving a portion of the estate, including creditors and distributees, may contest inappropriate or bad-faith actions of the personal representative. In some cases, the responsibilities of a personal representative can be relatively small, but in other cases the duties may be quite complex and rigorous. The personal representative is, therefore, entitled to reasonable compensation for his or her services based on the size of the estate. As a fiduciary, the personal representative is required to act in a way that is beneficial to and not against the interests of the decedent and the distributees or heirs receiving portions of the estate. Thus, the personal representative must follow the wishes of the testator and adhere to the provisions in the will, unless otherwise directed by the court. For example, unless the will provides otherwise, Albert will not be allowed to

favor one sister over another if each is entitled to an equal share of the estate, regardless of his personal feelings about his sisters. During the probate process, the personal representative will be required to file certain reports and accountings with the court, as well as notices to creditors of the estate. The process has a number of deadlines, which requires diligence on Albert's part. Due to the complex nature of the probate process, it is often beneficial for a personal representative to retain representation from a licensed attorney. This is especially true if the estate has a sizeable value. Given Catherine's assets and creditors, it is probably advisable for Albert to hire an attorney to assist in guiding him through the process. If Albert is unfamiliar with local probate attorneys, he can seek a referral from the Wyoming State Bar's Lawyer Referral Service at [https://www.wyomingbar.org/directory/need\\_lawyer.html](https://www.wyomingbar.org/directory/need_lawyer.html). Attorneys participating in the Lawyer Referral Service have selected the practice areas in which they would like to receive referrals. They have not been certified by the Wyoming State Bar as specialists or experts in any area of law.

### *Does It Matter that Albert isn't a Wyoming Resident?*

Albert may serve as personal representative despite not being a Wyoming resident. Wyoming law allows Catherine to name any person who is a resident or citizen of the United States or any bank or trust company organized in the United States and doing business in Wyoming to act as the personal representative of her estate.<sup>10</sup> However, Albert, as a non-Wyoming resident, must designate a Wyoming resident, bank, or trust company to act as his agent or designate an attorney licensed to practice law in Wyoming to receive orders, notices, and other documents issued by Wyoming courts. Failure to designate a Wyoming agent or attorney will cause revocation of his authority to act.

Albert could also be appointed personal representative if his mother had not left a will, although it would be necessary for the court to appoint a co-representative who is a Wyoming resident.<sup>11</sup>

### **The Petition for Probate**

If a testator having a valid will dies, the will must be admitted to the probate court. The will must be submitted to the court along with other required

documentation by way of an official legal form. This is called a "petition for probate" and may require additional notices and evidentiary support. The petition must be signed and include information required by Wyoming law.<sup>12</sup>

Unless the will is a self-proving will, it must be "proven" or verified by the court.<sup>13</sup> A will that is not self-proving must be sworn to by the witnesses to the will, or other evidence must be produced to prove its authenticity. In contrast, a "self-proving" will does not require further proof to begin the probate process, but it still must be submitted to the court.<sup>14</sup> A will is "self-proving" if it uses the proper language, is signed before a public notary, and is witnessed by at least two people.

Albert looks to the end of his mother's will and sees a clause that matches the self-proving will clause provided by Wyo. Stat. Ann. § 2-6-114. It is, therefore, unlikely that he will need to prove the will's validity to the probate court.

Before the probate process begins, the personal representative must file an "oath" regarding the personal representative's duties with the probate court. The court will then grant "letters testamentary" to the personal representative and admit the will to probate. The order admitting the will to probate triggers a number of deadlines. The letters testamentary constitute a legal document that gives the personal representative authority to administer the decedent's estate. For example, Albert could use the letters to help prove to his mother's bank that he is entitled to administer the estate.

Albert may be required to submit a "bond" to the court to serve as personal representative. This bond is a monetary deposit that serves as a promise to act according to the direction of the court. Many decedents' wills waive the bond requirement.

After Catherine's will has been admitted to probate, any interested person may contest the will or its validity by filing a petition within the required time asking the court to revoke the probate.<sup>15</sup> This often occurs when there are multiple wills or it is unclear whether the testator was competent or was subjected to undue influence in executing a will. For example, if Catherine's will appears to conflict with a second will that disinherits her children and leaves everything to her boyfriend, the boyfriend may be interested in contesting the will filed by Albert.

## ***The Process***

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As personal representative, Albert will have a certain amount of time after his appointment to collect all of his mother's property and file an inventory of the property with the court. He then has a certain amount of time to file an appraisal of property listed in the inventory with the court. Items listed in Albert's inventory should include his mother's house, checking accounts, vehicle, and other property. If new estate property is later discovered, he will need to file additional appraisals.

While legal title to Catherine's property is considered to have passed at the moment of her death, the estate's assets are subject to possession by Albert, as personal representative, and control by the court during the probate process. The personal representative holds the assets subject to payment of the estate's administration fees, funeral expenses, debts, and tax liabilities.

During probate, the decedent's surviving spouse and minor children will be entitled to certain property rights, known as "allowances." Since Catherine's children are adults and she was unmarried, this is not relevant to Albert's administration.

The personal representative may be authorized or required to convey, sell, or otherwise dispose of the estate's property during probate, depending on terms of the will and a range of provisions in the Wyoming Probate Code. For example, if the estate has insufficient cash assets to pay its bills, it may be prudent under the circumstances for Albert to sell his mother's car.

The personal representative will be required to provide a number of notices to different people, including the estate's heirs and creditors. These notices trigger deadlines within which creditors must file claims against the estate.

## ***Estate Expenses, Claims, and Taxes***

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During probate, the estate will be subject to a number of administrative expenses. These include filing fees, personal representative fees, attorney fees, travel fees, the costs of selling and managing property, etc. The fees Albert is entitled to claim as personal representative, as well as those of his probate attorneys, are typically based on a fee schedule fixed by Wyoming

law based on the size of his mother's probate estate (often \$350 plus 2 percent of the value of the probate estate), although additional fees may be requested for "extraordinary expenses or services" provided to the estate. Albert must request court approval before paying extraordinary fees. The estate will also generally be liable for the decedent's other final expenses, such as the costs of the funeral.

As personal representative, Albert may be required to obtain taxpayer identification numbers, file his mother's final individual income tax return, file an income tax return for the estate, and file an estate tax return. If the estate owes debts or taxes, these obligations typically need to be satisfied before the distributees or heirs can receive any portions of the estate. Thus, some property may need to be sold or otherwise disposed of before distributions can be made.

The estate's creditors have a certain amount of time to file claims against the estate. Albert can decide to accept or deny the claims. Denial will generally give a creditor an opportunity to file an action against the estate. Late claims may be forever barred. Wyoming law provides for a priority list for determining which creditor claims, taxes, and estate administration expenses will be paid first from an estate that has insufficient assets to pay all claims and expenses. If Albert accepts the claim of his mother's credit card company, that claim must be satisfied before final distribution of Catherine's property to her named distributees.

## ***Final Report, Accounting, Distributions, and Discharge***

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After funeral expenses, administration expenses, timely creditor claims, and taxes have been paid, Albert will be able to file his final report and accounting with the probate court. The estate's remaining assets can then be distributed to the estate's heirs and distributees.

The final report should contain a recitation of all of the probate steps completed up to that time, a detailed accounting of estate assets and the disposition thereof (if not waived by all distributees and the surviving spouse), and the proposed distribution of the estate assets. The court will hold a hearing regarding the final report and will address timely objections filed by interested parties. After the court is satisfied that all of the required steps of the probate have been



taken, that the proposed distribution of estate assets is valid, and that any objections have been resolved, it will issue an order approving the final report and authorize distribution of the assets as proposed in the final report. After the court has approved the final report, Albert can distribute the remaining assets of his mother's estate according to the distribution approved by the court.

The probate process can take up a large part of a year, although Wyoming law requires that probate be completed within one year of the personal representative's appointment unless there is good cause for delay. The process can take even longer if there are disputes between the estate's personal representative, heirs, distributees, creditors, or other interested persons. If the estate is not ready for final distribution within one year, a verified interim report and accounting may be filed requesting the court allow continuance of administration for another year for good cause shown.

Since Catherine died with a valid will, final distributions will generally be directed according to the terms of that will. If Catherine had married her boyfriend and deprived him of more than the share of her estate to which he was entitled under Wyoming law (called the "elective share"), he has the right to claim his minimum portion of her estate (see *Disinheritance* Bulletin 1250.7). If Catherine had used a trust as the primary means of administering her estate, it is likely that her will would have simply provided for all of her remaining property to be transferred to the trustee of her trust. The terms of the trust would then determine the final distributions or ongoing management of her property.

If Catherine had died intestate, the court would order distribution of her estate to her heirs according to the default rules provided by Wyoming law. Typically, the spouse and children will receive a majority of an intestate estate, but other relatives may be selected as heirs by the court depending on the situation.

If no heirs exist, the state may acquire the estate through a rare process called "escheat."

Once Albert has paid all administrative expenses and distributed the assets of the estate to the distributees, he signs a petition for final discharge with the probate court. The petition would have receipt forms signed by the distributees (or other type of proof of

distribution) attached to it. The court would then discharge Albert as personal representative if proper proof had been given regarding distribution to the distributees. Once the court has entered the order of final discharge and it has been filed with the court, the probate is closed.

Wyoming law provides special provisions for the administration of estates involving foreign wills, missing persons, simultaneous deaths, wrongful deaths, missing beneficiaries, and estates that need to be reopened.

## Probate Disadvantages

The Wyoming Probate Code is somewhat old and has not been thoroughly updated to take advantage of many of the innovations introduced by the Uniform Probate Code. Possible disadvantages of a formal probate in a state like Wyoming include:

- **Large expenses:** In addition to filing fees, the Wyoming Probate Code provides a fee schedule, entitling personal representatives and attorneys to fees based on the size of the estate.
- **No privacy:** Unless a court seals filings for good cause, probate proceedings are public records, potentially subjecting a family's private dealings to public scrutiny.
- **Delays and interference:** The probate process can take considerably longer than simpler forms of post-death administration and can be slowed by the process of mandatory court supervision. While the Wyoming Probate Code allows for temporary administration and allowances for the decedent's surviving spouse and minor children, trust administration is generally faster than a probate.

Some people mistakenly believe that a will is sufficient to avoid probate. While a will can give testators a great deal of control over how their estate is administered and distributed after death, it does nothing to avoid probate. Devices for avoiding a full probate are discussed in the next section.

## Probate Alternatives

### Summary Procedures.

Wyoming law offers an informal distribution procedure for certain small estates, known as the "summary



procedure.” This procedure is available for probate estates worth \$200,000 or less.

In the summary procedure, a person who claims to be a distributee of the descendant files an application in the district court of the county where property is located at least 30 days after the decedent’s death. The application is accompanied by a sworn affidavit that states certain facts, including that the decedent’s estate did not have a value greater than \$200,000. After mandatory notices have been provided, the court can enter a decree distributing the property. This process is much faster and less expensive than a formal probate.

### ***Property Forms Transferrable Outside Probate.***

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Often, the small estate process is available because a testator simply owns property worth \$200,000 or less. But many individuals have more than \$200,000 in assets, often due to real estate. These individuals can still take advantage of the summary procedure or avoid probate altogether by using a variety of methods for reducing the size of their “probate” estates. While probate is the formal process for transferring many types of property after someone’s death, many types of property can pass without going through probate. Not all property in which a decedent has an interest is included in the decedent’s “probate” estate. If property is excluded from a decedent’s probate estate in some fashion, that property’s value is not included in the decedent’s probate estate. Such types of property are often referred to as “non-probate assets.” If enough property is transferred according to one of these methods, a formal probate (or any probate at all) may be unnecessary.

### ***Property Forms: Joint Tenancy***

Two or more people who own property through a joint tenancy have what is called a “right of survivorship.” This means that when one owner dies, the surviving owner (also known as a “joint tenant”) obtains the decedent’s entire interest. Such an interest does not pass according to the decedent’s will and does not go through probate. Joint tenancies can provide a convenient means of passing property—often real estate—to one’s surviving spouse or children, although their utility is somewhat limited by the fact that probate may be necessary when the surviving

joint tenants die.

While joint tenancy is often used to transfer real property outside the probate process, personal property can also be owned as a joint tenancy. For example, the certificate of title to a motor vehicle or boat may indicate that two or more people own the property as “Joint Tenants with a Right of Survivorship.” If Albert’s mother had owned her home or car as joint tenants with her boyfriend, that property would not pass according to terms of her will. The boyfriend would be entitled to receive her entire interest in the property after her death. Albert or his attorneys would need to examine the deed conveying the home to his mother and her boyfriend or the car’s certificate of title to determine whether the property was held as a joint tenancy.

### ***Property Forms: Tenancy by the Entirety.***

Unlike many states, Wyoming continues to recognize the concept of “tenancy by the entirety,” which is an old way for a legally married husband and wife to own property with a right of survivorship. A tenancy by the entirety is similar to a joint tenancy in many ways, except that entirety property cannot be sold without the consent of both spouses and may entitle the spouses to protection from each individual spouse’s creditors.

### ***Property Forms: Life Estates.***

A life estate (also known as an “estate for life” or “life tenancy”) is a form of ownership in which a person owns property for the duration of his or her life.<sup>16</sup> The owner of the life estate (the life tenant) has the right to enjoy the property (subject to certain restrictions, such as against causing permanent harm to the property) as long as he or she lives. When the life tenant dies, the property is usually transferred to a specified person (called a “remainderman”) without going through probate.

### ***Property Forms: Transfer on Death Deeds***

Governor Matt Mead signed the Nontestamentary Transfer of Real Property on Death Act during the Wyoming Legislature’s 2013 general session. Effective July 1, 2013, the act permits individuals to sign deeds that automatically transfer an interest in real property upon death.<sup>17</sup> This statute has the potential

to greatly simplify non-probate transfers of Wyoming property without the use of revocable trusts.

### *Property Forms: Other.*

Not all property owned by multiple people carries a right of survivorship. If property is owned by the entirety or as a joint tenancy, that fact should be indicated on the deed passing the property. Sometimes, the designation will be indicated with an acronym, such as “JTWROS,” short for “Joint Tenancy With Right of Survivorship.” If there is no designation, then it is possible that the property is owned as “tenancy in common,” which does not avoid probate.

### *Property Forms: Transferring Joint Tenancy, Entireties, and Life Estate Property*

Since property owned in these forms does not need to go through probate, the surviving joint, entirety, or life tenant need to undertake different procedures to properly reflect their ownership of the property. The surviving tenant must file a petition in the district court of the county in which the property is located and publish notice in a newspaper of general circulation in the county. If the court determines that the surviving tenant is entitled to receive the interest, it will enter an order to that effect. A certified copy of the decree would then need to be recorded with the county clerk.<sup>18</sup>

If Catherine had owned her home or vehicle jointly with her boyfriend, he would likely need to be the person to file the petition, not Albert. Whoever had survivorship rights regarding her car would likely be required to provide the county clerk with a certified copy of the death certificate and the original title to obtain a new certificate of title reflecting that person's interest in the car.

## **Trusts**

Revocable trusts have become one of the most popular ways of avoiding probate in the United States. Some assets can be put in what is called a “trust” before the deceased person dies. A “trust” is typically a legal agreement in which a person, called a “settlor,” appoints a “trustee” to manage the property in the trust for the benefit of the settlor or a third party, either of which is also called a “beneficiary.” Any property held by the trust does not need to be probated. Often, the settlor will transfer most, if not all, of his

or her property to the trust during life. The settlor will typically execute what is called a “pour-over will,” which acts as a safety net to “catch” any property not transferred to the trust and place it in the trust at the time of death. Property held in trust is not subject to the probate process. It can thus be distributed free of mandatory court supervision and public scrutiny if no one institutes a will contest or litigation that requires court intervention.

For example, if Catherine had executed a revocable trust during her life, property held by the trust (possibly all of her property) would not require probate or judicial supervision to be passed to the beneficiaries named by the trust. If she had signed a pour-over will, Albert's primary task as personal representative would simply be to distribute whatever property had not yet been transferred to the trust to whomever the trust named as successor trustee.

Trusts have other benefits. They can provide a useful tool for flexibly managing property while the settlor is alive. If the settlor becomes incompetent, trusts can provide a more private alternative to a guardianship or conservatorship (see *Introduction to Estate Planning Bulletin* 1250.1).

The major downside of using revocable trusts to avoid probate is that trusts generally take more time and cost to create. A family may benefit from consulting an attorney regarding whether trusts are justified by the family's amount of wealth.

## **POD and TOD Accounts**

“TOD” (Transfer-on-Death) or “POD” (Payable-on-Death) designations allow owners of savings and checking accounts to designate who will receive assets held in such accounts when the owner dies. The designated person receives cash upon the owner's death without going through probate. Different banks have different forms and procedures for using such designations, but they are a low-cost way of distributing property outside the probate process. Joint accounts held by the testator and another person may be eligible to avoid probate. The Wyoming Legislature has adopted a statute called the Uniform TOD Security Registration Act, which authorizes similar designations for securities, such as stocks and bonds.

Albert should confer with his mother's bank to determine whether her checking account had such

a designation. If it did, then the cash held by the account may pass to the named beneficiary without going through probate.

### **Other Assets with Beneficiary Designations**

Certain contracts, accounts, and policies may pass from a deceased person to another person without the need of probate if the documents and accounts have an appropriate beneficiary designation. This is often the case with life insurance, pension plans, 401(k)s, IRAs, and annuities, the proceeds or ownership of which often pass directly to the designated beneficiary without going through probate.

## **Conclusions**

Probate is usually necessary in Wyoming to transfer assets held by a decedent in his or her sole name at death worth more than \$200,000. If a full probate is needed, the person designated as personal representative (or who may be appointed personal representative in the absence of a designation), may expect to go through the following steps:

1. Filing the will with the court and notifying the named personal representative and readily ascertainable distributees.
2. Petitioning the probate court for appointment as personal representative.
3. Filing Petition for Probate with certified copy of death certificate and required information.
  - a. Proving validity of will if necessary.
  - b. Litigating items in will that are contested, if necessary.
4. Filing oath of personal representative.
5. Receiving Letters Testamentary from the court clerk.
6. Mailing and publishing required notices.
7. Accepting or rejecting creditor claims.
8. Filing inventory and appraisal with probate court.
9. Making required tax filings.
10. Filing Interim Reports and Accountings if necessary.
11. Filing Final Report, Accounting, and Petition for Distribution.
12. Filing Petition for Final Discharge.

Probate can be a difficult and complex process but is often necessary to effectively transfer title to a deceased person's Wyoming property. Probate includes a variety of mandatory deadlines, notices, reports, and requirements, which can confuse someone like Albert who is not familiar with Wyoming's century-old probate code. It may, therefore, be a good idea to consult with a qualified Wyoming attorney to ensure that his mother's property is transferred to its intended recipients while complying with other laws regarding the rights of Catherine's heirs, the estate's creditors, and applicable taxing authorities.

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<sup>1</sup> Adapted from Nolo's Plain-English Law Dictionary, Probate, <http://www.nolo.com/dictionary/probate-term.html>.

<sup>2</sup> *In re Ogburn's Estate*, 406 P.2d 655, 660 (Wyo. 1965).

<sup>3</sup> Restatement of the Law of Property § 8 (1936).

<sup>4</sup> Black's Law Dictionary, "Tangible Personal Property," 2009, 9th edition.

<sup>5</sup> Wyo. Stat. Ann. § 2-6-119(a).

<sup>6</sup> Wyo. Stat. Ann. § 2-6-120.

<sup>7</sup> Wyo. Stat. Ann. § 2-6-202.

<sup>8</sup> Wyo. Stat. Ann. § 2-6-208.

<sup>9</sup> Wyo. Stat. Ann. § 2-4-201(a).

<sup>10</sup> Wyo. Stat. Ann. § 2-11-301.

<sup>11</sup> Wyo. Stat. Ann. § 2-4-201(c).

<sup>12</sup> Wyo. Stat. Ann. § 2-4-205.

<sup>13</sup> Wyo. Stat. Ann. § 2-6-205(a).

<sup>14</sup> Wyo. Stat. Ann. § 2-6-204.

<sup>15</sup> Wyo. Stat. Ann. § 2-4-206.

<sup>16</sup> This brochure does not address the unusual situation of someone who owns a life estate measured by the life of another person.

<sup>17</sup> H.B. 201, 62nd Leg., Gen. Sess. (Wyo. 2013) (to be codified at Wyo. Stat. Ann. § 2-18-101 to -106)).

<sup>18</sup> Wyo. Stat. Ann. § 2-9-101.

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This brochure is for information purposes only. It does not constitute legal advice. You should not act or rely on this brochure without seeking the advice of an attorney.

# Example of Statutory Self-Proving Will Clause

## WILL OF (testator)

[*Substance of will*]

I, \_\_\_\_\_, the testator, sign my name to this instrument this \_\_\_\_\_ day of \_\_\_\_\_, (year), and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am an adult person, of sound mind, and under no constraint or undue influence.

\_\_\_\_\_  
Testator

We, \_\_\_\_\_, \_\_\_\_\_ the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as his last will and that he signs it willingly (or willingly directs another to sign for him), and that he executes it as his free and voluntary act for the purposes therein expressed, and that each of us, in the presence and hearing of the testator, hereby signs this will as witnesses to the testator's signature and that to the best of our knowledge the testator is an adult person, of sound mind, and under no constraint or undue influence.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

STATE OF WYOMING )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

Subscribed, sworn to and acknowledged before me by \_\_\_\_\_, the testator, and subscribed and sworn to before me by \_\_\_\_\_ and \_\_\_\_\_, witnesses, this \_\_\_\_\_ day of \_\_\_\_\_.

(Signed) \_\_\_\_\_  
(SEAL)

(Official Capacity of Officer)