

# WYTYCHAK ELDER LAW NEWS

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March 2011 — Issue 8

## Happy St. Patricks Day

Wytychak Elder Law wishes you a safe and happy start to Spring!

### News:

- The Alzheimer's Association will host "The Role of Palliative Care in Advanced Illness," a presentation by Dr. James Shaw, on **Thursday, March 3, 2011** from 6:30 to 8:30 pm at Heritage Place, 702 W. Walnut. Avenue, Coeur d' Alene. This event is FREE!

### What is Probate? By Kate Monroe Coyle

We hear the questions quite a bit in this office: "What is probate?" "Will my estate need to be probated?" There are several methods of transferring property after someone passes away in Idaho. The "Probate" process is only one of them. What follows is a quick guide to the different ways of transferring property in the State of Idaho:



Community Property Agreement: If a married couple executes a "Community Property Agreement" and it legally describes their real estate and is recorded in the county in which they live, property will pass automatically upon the filing of a death certificate with the county recorder's office. There should be specific "devolution" language in the agreement in order for property to pass.



Rights of Survivorship: Certain property, such as bank accounts, when co-owned, can be titled as "Joint Tenancy with Right of Survivorship." When a piece of property is titled this way, upon the passing of one of the joint owners, the ownership of the property will automatically vest in the surviving joint owner upon the presentation of a death certificate.



Probate and Wills: If a person passes away with any real estate (home, acreage, lake house, or farm, etc...) in their name at the time of their death, probate is necessary. Also, any estate that totals over \$100,000 in probate assets must go through the probate process in order to transfer to heirs. Although the word "Probate" sounds scary, it gets a bad reputation from other states in which the process is much more time consuming and expensive than it is in Idaho. The probate process is a court case which appoints a "Personal Representative" or "Executor" to be in charge of the estate, provides for payment to creditors of the estate, and eventually provides for the distribution of estate assets to the heirs or devisees of the decedent. If a person has a will, the "Personal Representative" or "Executor" is bound by the terms of the will unless all of the heirs

agree to change the terms. If someone passes away without a will, the Idaho Statutes dictate who can be in charge of the estate, and who receives the property of the decedent.



Small Estate Affidavit: If a person passes away with no real estate and less than \$100,000 in assets, Probate may not be necessary. The estate can be administered by a document entitled a "Small Estate Affidavit" which, when presented to banks and other financial institutions, allows for property to be transferred to the presenter of the Affidavit.



Trusts: Trusts are separate legal entities which own property in the name of the Trust, as opposed to someone owning property in their individual names. Trusts, when properly created and funded, can avoid the probate process because a Trust will appoint a person to be in charge of administering the trust estate called a "Trustee." Instead of having to go to court to have a person appointed by a judge to be in charge, the Trustee is already in a position of authority to begin administering assets.

When deciding whether a will or a trust is best for your family, consider the following facts: Wills and Trusts generally shake out to be about the same in costliness and in the amount of time it takes to set up or administer. The difference is that a will is generally inexpensive and not time consuming to set up, however the Probate process is time consuming for the Personal Representative and has expenses associated with it. So, the question is where to spend the time and expense: up front or after a decedent has passed away.

Keep in mind that some families should have a trust due to the Estate Tax. In 2011, all estates passing more than \$5 million in assets are subject to the Estate Tax, which can result in federal and state taxes which add up to 1/3 of the estate being taken. Stay tuned for the April, 2011 Newsletter which will discuss the Estate Tax in further depth.



"A light exists in Spring  
Not present in the year  
at any other period  
When March is scarcely here."  
- Emily Dickinson

If you haven't already done so, please take a look at our website at:

[www.wytychakelderlaw.com](http://www.wytychakelderlaw.com)