

How Can I Determine if Independent Administration is the Right Option?

It is extremely unfortunate that at a time when you're overwhelmed with emotion at the loss of a loved one, you also have to deal with the stress and uncertainties of the Texas probate process. Laws regarding what happens to someone's property after they die are highly complex, and it can be challenging to determine the necessary steps and the proper procedures to follow.

The laws are designed to protect those who are entitled to a share of the deceased person's property, including creditors. However, even when you understand the need for complex requirements to ensure that legal rights are protected, that doesn't make it any easier to deal with all the intricate rules.

One central question that needs to be addressed at the start of the probate process after the death of a loved one is whether you will manage the estate using the independent administration process or the court-supervised dependent administration process. When you work with a dedicated probate attorney, your legal advisor can help you make the right decision based on the particular circumstances of your case. If you have not yet started working with an attorney or you're just trying to get a handle on the probate process, here is some background information to consider when deciding whether to choose independent administration or the court-supervised process.

The Need for Probate

As noted above, when someone passes away, several legal requirements take effect to ensure that the deceased person's final affairs are appropriately handled. Essentially, the laws are designed to ensure that the person's final debts are paid and that those who are legally entitled to receive the remaining property receive what is due to them.

If you have power of attorney for a loved one, that power only remains in effect while

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they are alive. Once they pass away, someone needs to obtain authority from the probate court before they can do anything with the deceased person's property. Court approval is required even if the deceased person left a will designating an executor to serve as the personal representative of the estate.

In situations where the deceased person worked with an estate planning attorney to create a comprehensive plan to avoid probate, if all assets are titled in accordance with the plan, then probate will not be necessary. The plan will ensure that the property is set up to be managed and distributed in ways that do not require any court approval. But in most other situations, even when there is very little property left behind, someone will need to get authorization to work with that property.

The probate process manages property that is in the deceased person's legal estate. When ownership of property is shared between the deceased person and someone who is still living, if that ownership includes a right of survivorship, then the co-owner simply assumes full ownership, and the property does not become part of the legal estate. For instance, if the deceased person owned a house and they had a deed drawn up adding a child or sibling as a co-owner, then if the co-ownership was joint tenancy with a right of survivorship, then the child or sibling owns the house outright at the time of death and the house does not need to go through probate as part of the estate. If no one else is named on the deed or the co-owner is a tenant in common without a right of survivorship, then the house must go through probate.

An attorney can help you review property to determine what may require probate and what may be distributed directly to someone else. When in doubt, it is a good idea to assume that property should be probated. If you take something before you're legally entitled to it, you could be sued.

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Probate lasts until enough time has passed to allow all creditors to make claims against the estate, and bills have been paid, taxes accounted for, and remaining assets are distributed to beneficiaries named in the will or heirs designated to inherit under the law if there is no will.

What is Independent Administration?

While a personal representative requires some form of court approval before taking action regarding a deceased person's property, the extent of that approval can vary. In many cases, the court only needs to approve a request once, and then the estate representative can act independently. In other situations, the court may need to approve actions at numerous points in the probate process. When the process is handled without court supervision, it is referred to as independent administration.

Because the court is not actively involved in the process of managing estate property, assessing and paying bills, and distributing assets, the process usually moves forward at a faster pace and involves fewer legal expenses. However, actions of the personal representative can be open to legal challenge when the estate is administered independently.

To understand how the processes can differ, it is helpful to consider an example. If someone dies owning an expensive vehicle, such as a luxury car, RV, or boat, and that person has several heirs or beneficiaries, the personal representative may decide that it is necessary to sell the vehicle to divide the asset's value fairly among the heirs or beneficiaries. If the estate is managed through independent administration, the personal representative can decide the best way to sell the vehicle, including the appropriate price and other transaction details. However, if an heir or creditor thought that the personal representative handled the sale poorly and should have gotten more

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money, that person could bring an action in court against the personal representative.

On the other hand, if the estate is managed by the court through the dependent process, the court might well need to approve the concept of a sale and the details of the transaction. This adds expense and delays to the process, but then it becomes almost impossible for someone to challenge the results in court.

When the Law Allows for Independent Administration

If you're asking whether you should use the independent administration process, there are actually two questions to consider. To begin with, you need to know whether the law allows independent administration in your situation. Then, if independent administration is allowed, you need to consider whether it is a good idea under the circumstances.

In most cases, you are legally allowed to use the independent administration process in two situations. The first is when the deceased person's will specifically calls for the estate to be administered through the independent process. The second situation is when all the heirs or beneficiaries agree to the use of independent administration.

Deciding Between Dependent and Independent Administration

As hinted at above, the decision about whether to use a court-dependent or independent process often depends on whether the heir or beneficiaries are in agreement about the way things will be handled. Unfortunately, a death in the family

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often brings conflicts to the surface that have been festering for years. People often anticipate a smooth process only to find that others in their family object to everything from funeral plans to the choice of executor and the validity of debts.

When family members disagree, having the court approve key steps in the probate process can help prevent conflict from ruining family relationships. It can also save time in the long run because family members will have a hard time challenging actions taken that have been approved by the probate court.

If you are the person named to administer an estate, it is a good idea to talk to a probate lawyer about the process. An attorney can manage the process of court interaction in all situations and help you decide whether the estate will be better served in the long run by dependent or independent administration. If you choose dependent administration, your attorney will manage much of the process on your behalf. If you go with independent administration where responsibility for decisions rests on your shoulders, working closely with your probate lawyer will ensure that you follow your legal obligations to the estate and beneficiaries.

The Nordhaus Firm Can Help You Determine if Independent Administration Makes Sense in Your Situation

Even when an estate can be settled through a simplified process, it can still be confusing and challenging to manage. At The Nordhaus Firm, we are ready to help you find the most cost-effective means of administering an estate and protecting the rights and interests of everyone involved. While you don't want to waste resources unnecessarily, you also need to ensure that you comply with all legal requirements so

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that you are not open to legal action later.

If you are planning for your own estate or need to manage the estate of a loved one, we invite you to schedule a free consultation with us to learn about the ways we can assist. Just call us at 214-726-1450 or contact us online to get started.