

CONNECTICUT PROBATE COURT SYSTEM _____

By Paul A. Hudon

There are one hundred and thirty separate probate districts within the State of Connecticut. Each district has a probate court which has jurisdiction over all probate matters concerning persons who are residents of the district. There is a separate judge for each district.

Frequently, the geographic area, which comprises a probate district, will correspond with a municipality. For example, the probate district of Avon includes the town of Avon and no other area. There are some multi-town probate districts, however. The probate district of Norwich includes the towns of Norwich, Franklin, Lisbon, Preston, Sprague and Voluntown. Similarly, the probate district of Newington includes the towns of Wethersfield, Newington and Rocky Hill.

Probate judges are elected officials and are not required to be lawyers. Probate judges are elected for four-year terms and, absent special elections to fill vacancies in office, are elected in the same year as the Governor of Connecticut.

Among the powers granted to courts of probate are the power to admit wills to probate (approve their validity); appoint administrators for estates of persons who die without wills; appoint conservators for persons who have become incapable of managing their own affairs; appoint guardians for minor children; and to approve adoptions. In addition, probate courts may hear petitions to terminate parental rights regarding minors; remove guardians of minors; grant temporary custody of minors in certain instances; grant name changes; commit persons to hospitals for mental illness; determine the proper placement of certain mentally retarded persons; approve involuntary sterilizations; in certain instances, determine paternity; determine title or rights of possession to personal and real property that may constitute part of any estate under its jurisdiction; construe the meaning of any will or trust agreement under its jurisdiction. Probate courts can waive the requirement for blood tests, the waiting period concerning the issuance of marriage licenses; and determine who should have the custody of the remains of a deceased person.

While probate courts have jurisdiction over a broad range of matters generally dealing with the settlement or estates of deceased persons or provid-

ing for the needs of persons who, as the result of some incapacity are not able to provide for themselves, probate courts have limited jurisdiction and can only exercise those powers which the legislature has specifically granted to the probate courts. Probate courts have no general equitable powers.

Generally, persons must go to probate court when someone dies and it is necessary to transfer property from the deceased to his or her heirs. Death of a person will not, in and of itself, require or result in contact with the probate court. Members of the decedent's family, the executor of the decedent's will, or the decedent's creditors may apply to probate for the will of the decedent or to request the appointment of an administrator (if no will) so that the decedent's property can be administered. If there is no property to be administered, there will be no probate proceedings.

If someone dies with a valid will, the property, which was held in the decedent's name alone, will be distributed in accordance with its terms. If there is no will, the property, which was held in the decedent's name alone, will be transferred to his or her intestate heirs. A person who has died "intestate" has died without leaving a valid will. A person who had died "testate" has left a valid will.

If a person dies without a will, their heirs are determined in accordance with particular statutes adopted by the legislature. Sometimes this scheme of disposition is referred to as "the law of intestate succession." For example, if a person dies survived by a wife and children and all of the decedent's children are children of his wife, his wife will be entitled to receive the first \$100,000 of property which was owned by the decedent in his name alone and one-half of the balance. The children will receive the balance of the estate. If, however, all of the decedent's children are not children of the surviving spouse, the surviving spouse is entitled to one-half of the estate and the other half to the children. Generally, when there is no surviving spouse, a person's heirs are his or her closest living relatives. It is important to note that a person's "probate estate" only consists of that property owned in his or her name alone and does not include property owned with rights of survivorship; property in trust; life insurance or other benefits with designated beneficiaries.

Probate courts have jurisdiction over the accounts and acts of fiduciaries. This includes executors or administrators of decedent's estates, conservators for persons who are incapable of managing their own affairs, guardians

for minors and trustees of trusts established under wills. While the court has jurisdiction over the accounts of fiduciaries, it does not always have direct jurisdiction over all of the actions of a fiduciary. For example, if an executor of an estate elects not to pay a creditor who alleges to be owed money from the estate, the court cannot order or force the executor to make the payment. The creditor would be obligated to institute proceedings in the probate court to determine the validity of the claim or, in the alternative, sue the executor in a court of general jurisdiction (the superior court) to enforce his or her rights. In addition, probate court's authority to construe and interpret wills is not exclusive. When there is an ambiguity as to the meaning of a will, a will construction action may be instituted in the superior court instead of the probate court.

Any person aggrieved by a decision of a probate court may appeal that decision. Appeals must be commenced within thirty days of the date of the probate court's decree. Any appeal on a probate matter is made to the superior court for the judicial district within which the probate court is located. When a matter is appealed to the superior court, unless agreed by all parties, the matter is "*de novo*" (the reviewing court hears the entire proceeding again). On appeal, however, the superior court sits as a probate court and can only exercise those powers which a probate court could have exercised over the matter initially.

In addition to the judicial functions of probate courts, Connecticut Succession Tax Returns are required to be filed with the probate courts. Succession Tax Returns must be filed in all estates when any property or economic benefit passes to another person or institution as a result of someone's death. In many situations, it is not necessary for an administrator or an executor to be appointed for an estate, but it is necessary to file a Succession Tax Return. The most common instance would be when someone dies and all of their property is held in survivorship bank accounts with another party. The funds in only bank accounts automatically belong to the survivor upon the death of the first person and therefore it is not necessary to have an administrator or executor appointed. It is necessary; however, to file a Succession Tax Return since economic benefits pass to the survivor. The transfer of wealth by means of the survivorship account is subject to succession (inheritance) tax. The tax return is filed in duplicate with the probate court and the court forwards one copy to the Inheritance Tax

Division of the Department of Revenue Services in Hartford. Probate courts hear and decide all disputes concerning the items listed on the Succession Tax Return. Although probate records are public and subject to review by anyone, tax returns are considered private and are not available for review by members of the public. The Connecticut Succession Tax is being phased out and will be totally eliminated by January 1, 2005.

With the exception of certain adoption and commitment records, the official record of the probate court is available for public inspection. Permanent records of the proceedings of the court are maintained in every probate district.

In addition to the probate judges, there exists the office of the probate court administrator. At the time of appointment, the probate court administrator must be an elected probate judge. The appointment is made by the Chief Justice of the Supreme Court and the probate court administrator serves "at the pleasure of the chief justice." If, after being appointed, the probate court administrator ceases to serve as a probate judge, he or she may continue to serve as probate court administrator. It is the duty of the probate court administrator to regularly review the auditing, accounting, statistical, billing, recording, filing and other procedures of the several courts of probate. By statute, the probate court administrator, or his designee, is required to periodically visit each court of probate to examine its records and files and to ascertain whether the business of the court is being conducted in accordance with law, the rules of the court of probate and the canons of judicial ethics. The probate court administrator has the power to issue rules and regulations concerning the procedures of the several courts. In addition, the probate court administrator may make recommendations to the General Assembly regarding possible changes in the statutory law of the state, as may be necessary or advisable, to improve the administration of the courts of probate.

Fees charged by probate courts are uniform throughout the state. Fees are established under certain provisions of the Connecticut General Statutes and are paid directly to the probate court. All fees paid to the courts are used to meet court expenses including the judge's compensation. The judge's compensation is fixed by statute, on a sliding scale, dependent upon the volume of business in the probate court. Any fees in excess of those sums needed to meet court expenses are paid into a general probate court administration fund.