

Key Aspects to Understanding Probate

Illinois Probate

For deceased Illinois residents, if at the time of the person's death one does not own real estate or have other assets in one's sole name exceeding a total of \$100,000, no court-administered probate is required.

- Instead, one can use Illinois' Small Estate Affidavit (SEA) in lieu of probate.
- Attorney drafts the SEA containing certain specific information, and it is then used to wind-up the deceased person's affairs without court.
- However, there still exists an independent statutory requirement to file the original Will with the court; this does not open a probate case.

Wisconsin Probate

For Wisconsin residents, if at the time of the person's death he does not have more than \$50,000 in total assets (including real estate), no court-administered probate is required.

- Instead, one may use Wisconsin's Transfer by Affidavit in lieu of probate.
- Like Illinois, there is an independent statutory requirement to file the original Will with the court; this does not open a probate case.

Key Aspects to Understanding Illinois Business Forms

Sole Proprietorship

- No partners
- Personal liability for all debts of the business
- Not officially organized as a corporation or Limited Liability Company (LLC)

Partnership

- Parties join to carry out a business, share the profits, and exercise mutual control of the business.
- Most partnerships are formed informally (no documents), and Illinois law automatically kicks-in and governs relations among the partners, and between the partners and the partnership.
- Partners are jointly and severally liable for all partnership obligations.
- Property acquired by the partnership is the partnership's property and not the partners' individually.
- Partnership can be sued in its own name and any or all of the partners can be added to that case.
- A court judgment cannot be satisfied out of the partners' personal assets unless there also is a judgment against the partner.

Key Aspects to Understanding Illinois Business Forms (continued)

Corporation

- Formally organized
- Separate and distinct legal entity from its shareholders, directors, and officers
- But all persons who assume to exercise corporate powers without authority are jointly and severally liable for all debts and liabilities incurred

Limited Liability Company (LLC)

- Hybrid between a partnership and a corporation
- Combines lower tax burden with personal liability protection
- Separate and distinct legal entity from its managers/members
- Shields members/managers from liabilities of the LLC, but not from their personal conduct
- Members/managers may be liable for “wrongful acts or omissions”

Key Aspects to Understanding Estate Planning

A well conceived estate plan can be thwarted by a poorly worded deed or financial account co-ownership record.



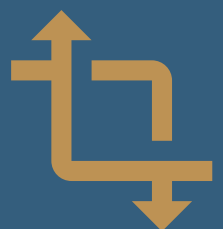
Joint: each co-owner owns an undivided portion of the asset, with no inheritance rights to heirs upon deceased co-owner's death.

Tenants in Common: each co-owner owns an undivided portion of the asset, with inheritance rights to heirs upon deceased co-owner's death.



Tenancy by the Entirety: each married co-owner owns an undivided portion of the asset with no inheritance rights to heirs upon deceased co-owner's death.

Form of co-ownership not specified: law kicks in automatically and treats it as tenants in common, with inheritance rights to heirs upon deceased co-owner's death.



Key Aspects to Understanding Real Estate Ownership



JOINT TENANCY

“Joint Tenancy” means each joint tenant has an equal right to enjoy the use of the whole property during his/her lifetime. Upon one’s death, that right is terminated. Since a joint owner’s interest in a property is terminated on death, it cannot be inherited by someone, and the surviving joint owner(s) now become the sole owner(s). A joint owner can “sever” his joint tenancy.

Tenancy by the Entirety

“Tenancy by the Entirety” operates like joint tenancy, but is designed to protect a married couple’s principal residence from creditors of only one spouse.



Tenants in Common



“Tenants in common” means that each person is a co-tenant (a type of co-owner) of the property, with each person having an undivided interest in the property with the other co-owners, and the co-owners cannot exclude one another from the property. Each co-owner is responsible for his or her share of the property expenses, and each co-owner has a right of contribution for property expenses from the other co-owners. Further, the co-owners have a right to partition (break off a portion of) the property. Therefore, when someone who owns property as tenants in common dies, that person’s ownership interest passes to that person’s heirs.

Trust

A “trust” is a form of asset ownership established by private agreement used to protect and manage assets. You can select the person or institution you want as the trustee(s) to carry out your instructions. Essentially, a trust creates a separate legal person (the trust) that holds title to (owns) the things transferred to the trust. A trust functions like a will, and whomever is listed as inheriting the property owned by the trust receives that property without the necessity of a probate case.



Form of co-ownership not specified: law kicks in automatically and treats it as tenants in common, with inheritance rights to heirs upon deceased co-owner's death.