

POSTHUMUS PROBATE AVOIDANCE

By John Morrow Jr., Esquire
December 2014

Those of you who seek to avoid probate and have read my prior articles have hopefully absorbed my advice to sell demutualized insurance company stock and get rid of safe deposit boxes (the all-time top two unanticipated causes of probate). However, there may be other instances where you unexpectedly end up with an asset owned solely by, or an interest payable solely to, someone who has died. If that asset happens to be a motor vehicle, there is a provision in the vehicle code which permits non-probate transfer of vehicle titles. All you have to do is go to AAA. If you're not a member, they'll make you join, but they'll get the job done. For other assets / interests, you will need to resort to 20 Pa. C.S. § 3101.

This statute allows obtaining such things as wages, salary or employee benefits up to \$5,000.00 in amount, a patient care account with a balance of up to \$10,000.00, life insurance payable to an estate in an amount up to \$11,000.00, and up to \$11,000.00 in unclaimed property of a decedent in the custody of the State Treasurer's Office. Each of those categories is provided for in a different sub-section of the statute, and each one of them states that the holder of the asset or interest "may" transfer it without probate, which means that if the holder decides not to do it, there's nothing you can do about it.

There is one more sub-section of 20 Pa. C.S. § 3101 which, until last year, also provided that the holder "may" transfer without probate. But the law has now been amended to provide that the holder "shall" transfer it without probate if certain conditions are satisfied, which makes compliance mandatory. This mandatory subsection applies to all banks, savings associations, savings and loan associations, building and loan associations, credit unions or other savings organizations. It requires them to pay the account balance to the spouse, any child, the father or mother or any sister or brother (preference being given in the order named) when the total standing to the credit of the decedent does not exceed \$10,000.00. The only additional requirement is that a receipted funeral bill be presented (or an affidavit executed by a licensed funeral director which sets forth that satisfactory arrangements for payment of funeral services have been made). This law is very useful, however, there are a few matters that you should note. For one thing, it is not enough that a particular account has a balance of \$10,000.00 or less. Rather, the total on deposit at the bank in the decedent's name must be \$10,000.00 or less. So, if there is a \$10,000.00 solely-owned account plus a \$5,000.00 joint account, you will have to close (or re-title) the joint account before you can get the \$10,000.00 account. On the other hand, the person who is requesting the account balance doesn't have to be the person who paid for or arranged for the funeral, and it also doesn't matter whether the funeral was pre-paid or hasn't yet been paid.

Another thing to keep in mind is that each sub-section of 20 Pa. C.S. § 3101 contains a caution that the “person to whom payment is made shall be answerable therefor to anyone prejudiced by an improper distribution.” I do not know what that last-quoted phrase means, and no court decision of which I am aware has yet to address the issue, but the Pa. Dept. of Public Welfare has publically stated its position that assets transferred without probate under 20 Pa. C.S. § 3101 are nevertheless subject to DPW’s statutory right to recover paid Medical Assistance benefits from a recipient’s probate estate. Whether a creditor could become appointed as personal representative of a probate estate and recover funds obtained via 20 Pa. C.S. § 3101 to satisfy an unpaid bill is an open question. And, of course, avoiding probate does not avoid inheritance tax, liability for which is ultimately the responsibility of the recipients of a decedent’s assets.