

this way without the other's approval. When one spouse dies, the other spouse automatically receives full title.

### Tenancy in Common (T/C)

Under T/C, you own shares in property with one or more persons, who are called tenants. When you die, your share passes directly to your heirs, or to others specified in your last will and testament. It does not pass to the other tenants. You can sell or give away your share as you wish without getting permission from the other tenants.

*If you are married, your share of T/C property does not automatically go to your spouse.* Instead, your portion of the property will go to your heirs. Who your heirs are will depend on Massachusetts statutory law and your family circumstances. Probate takes place even if you made it clear in a last will and testament that your spouse should inherit the property. Spouses who have children from previous marriages often use this form of title. It ensures that property passes as the parent intended.

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*Attorney Patricia Bloom-McDonald is a Licensed attorney in the Commonwealth of Massachusetts and has been in private practice since 2003.*

*She is admitted to practice before the U.S. District Court, 1st Circuit, U.S. Bankruptcy Court, and all courts in the Commonwealth of Massachusetts.*

*She has extensive knowledge and experience with the preparation of Wills, Trusts, Health Care Proxies, Durable Power of Attorneys, and other Estate Planning documents.*

*Additionally, Attorney Bloom-McDonald possesses exceptional knowledge of Probate law and procedure as it is applied to Estate Administration, Elder Law, Guardianships, Conservatorships, Adoptions, and Name Change procedures.*

*Her outstanding experience with Real Estate procedures relating to loan and refinance documentation, including Reverse Mortgages, affords her the ability to counsel those over 62 years of age who wish to age at home with dignity. Attorney Bloom-McDonald is able to communicate clearly and concisely with people of diverse backgrounds, age, and levels of authority and is available for in-home consultations.*

*She is a Member of:*

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## LAW OFFICES OF PATRICIA BLOOM-McDONALD

HELPING CLIENTS

THROUGH THE

**PROBATE**

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LOSING A

LOVED ONE



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**Available to meet at YOUR office,  
home, or place of convenience.**

**Zoom and Phone Consultations  
also available**

# HELPING CLIENTS THROUGH THE *PROBATE* MAZE AFTER LOSING A LOVED ONE

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Probate is the legal process through which a court makes sure that your property is distributed to your beneficiaries. Probate takes place in the court of the city or county where you had your legal home.

Only certain types of property—called probate property—must go through probate.

## **What You Should Know**

What is Probate?

Probate means to "prove" a last will and testament. During probate, a court makes sure that the last will and testament bearing your original signature is a genuine statement of how you want your estate to be distributed. The court also oversees how your probate estate is distributed to your beneficiaries or heirs.

Remember: Beneficiaries are the persons or organizations you mention in your last will and testament. Your heirs are the people the statutory laws of the Commonwealth of Massachusetts says will get your estate.

## **What is Probate Property?**

Only certain types of property must go through probate, and are called "probate property." They are:

- Property you held in your name alone.
- Property you owned jointly as "tenants in common." For more information about this type of property, see "Types of Property Ownership" below.
- Life insurance policies payable to your estate, not to another person or institution.

## **Starting the Probate Process**

You can use your last will and testament to name a Personal Representative (formerly an "executor") who will manage and settle your

estate. This Personal Representative starts the probate process by presenting your original last will and testament to the court.

If you don't have a valid last will and testament it means that you will die "intestate". If you die intestate, the court starts the probate process by appointing a Personal Representative for you. The court then notifies everyone with an interest in the estate that your property is about to be disbursed. This notice goes to your surviving family members. It also is sent to your creditors, the department of medial assistance, and may be published in the local newspaper.

## **Freezing Assets**

Before the court will transfer property to your beneficiaries or heirs, it must be satisfied that your estate has paid all of its bills and taxes. For that reason, the court may freeze your estate's probate assets at the beginning of probate. These assets might include savings accounts and safe deposit boxes. This freeze could last until the probate process is completed. In most cases, the court gives your survivors an allowance so they have money while probate is progressing. That allowance is taken from the assets of the estate.

## **What Property Does Not Go Through Probate?**

Some types of property do not have to go through probate and can be disbursed directly to your beneficiaries and heirs. These include:

- Property that you own jointly with right of survivorship
- Property in trust
- Assets that have a named beneficiary
- Life insurance
- 401(k)
- Pension
- Annuities

## **Probate Costs**

Going through probate costs money. Your estate will be required to pay attorney's fees, appraiser's fees, court costs for filing papers, and bonding fees for the Personal Representative. Your estate can save on the bonding fee if you authorize in you last will and testament that the Personal Representative can serve without bond.

## **TYPES OF PROPERTY OWNERSHIP**

The way you hold title to your property can have a dramatic impact on your estate planning process. Be sure you know how your land, home, bank accounts, stocks and bonds, life insurance policies, and pension plans are owned.

## **What You Should Know**

In the Commonwealth of Massachusetts, you have five primary ways to hold title to your assets.

## **Sole Ownership**

Sole ownership means you own the asset by yourself. You can sell the property or give it away without asking anyone's permission. You can distribute the property after your death to your beneficiaries in a last will and testament, as long as you recognize your spouse's marital interest. If you do not have a last will and testament, the property will go to your heirs as in accordance with the intestacy (statutory) laws of the Commonwealth of Massachusetts.

## **Joint Tenancy with Rights of Survivorship (JTWROS)**

JTWROS means you own an equal share of the property with one or more other persons. When you die, your ownership share in the property automatically passes to the other surviving owner(s). The surviving joint tenants get your share of the property even if you say in your last will and testament that you want that property to go to someone else.

## **Tenancy by the Entirety**

Only husbands and wives have this form of joint ownership. In Massachusetts, only real estate can be held in tenancy by the entirety. Neither spouse can sell or mortgage property owned in