Closing the Door Behind You…After You're Gone, Do You Still Want Some Privacy?

By Sarah Ruef-Lindquist for Pen Bay Pilot

For the past 36 years, I have had countless conversations with people engaged in their planning trying to understand options for how to structure their estates. A primary question is always "Do you care if it's public?"

This question is often met with some level of astonishment. "Why would it be public?" And of course, the answer is that wills are public documents filed in the Probate Registry as the initial step in probate of an estate. In fact, the word 'probate' derives from the Latin word that means 'to prove' which is the intent of the probate process: To prove a will is the intent of the decedent and is presented to allow for its administration.

This means that to begin the process of proving the will and administration of the estate, the will is filed and made a public document. Nowadays, that means the will is not only physically available at the registry of probate but also electronically available through on-line records portals used by most states and open to the public.

Recently, there was an unusual case in Knox County, Maine: A request from the person seeking appointment as administrator of an estate to seal a will. In other words, the person making this request wanted the will to be administered, but not publicly available. Over her 40+ years in office, the county's Registrar could not remember a request for a will to be sealed in the county. Subsequently, a probate judge denied the request to seal the will.

It is possible that such a request to seal a will from public view indicates there are controversial, or perhaps embarrassing, dimensions of family dynamics articulated in the will itself. A disinheritance and perhaps an actual memorialization of the reason therefor might be best kept out of public records.

How could this be accomplished? For centuries, our legal system has recognized that people who use a trust to administer their estates may do so privately and with little or no involvement of probate. A trust can be created during lifetime and include a pour over provision such that if there is any property owned by the decedent but not already in the trust at the time of death it will pass into the trust and then be administered according to the terms of the trust, which remains private.

People utilize trusts for a variety of reasons: Tax efficiency, creditor issues, remarriage, spendthrift issues – and the list goes on. In my experience, this is the most-often cited reason for folks here in Maine: Privacy. No one will be able to look up in one place what was owned and to whom it was given after their death. However, using a trust does require that one has absolute trust and confidence in their trustee – the person who will be responsible for carrying out unsupervised administration. Sometimes this is a professional, such as a lawyer or accountant, instead of a friend or family member.

Each situation is unique. Consult your own legal and financial advisor to learn more about whether yours warrants consideration of trust planning for privacy or other reasons.

Allen Insurance and Financial does not provide legal or tax advice. You should consult a legal or tax professional regarding your individual situation.