

It's not too early to think about

## Holiday Messages!



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### BOW ROTARY CLUB NEWS FOR OCTOBER 2022

Save the Date! The annual Bow Rotary Foundation auction will be online again this year November 2<sup>nd</sup> to November 5<sup>th</sup> at 6:00pm. Last year's first online auction was a great success, and this year should be even better! This year's theme is Blast Off to Our Future. Sponsors are still needed. More info at bowrotary.org.

### ANNUAL CHRISTMAS TREE SALE

The Rotary Christmas Tree Sale will begin on November 26<sup>th</sup> at noon and run until December 10<sup>th</sup> at 7:00pm or until sold out. Last year we sold out in 10 days. Rotary will receive 200 balsam and fraser fir trees again this year. Given there is a Christmas tree shortage this year, we are expecting they will sell out fast again this year. Mark your calendars!



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### PART I: ESTATE PLAN TODAY TO AVOID PROBATE TOMORROW!

When I started practicing law I really did not understand what all the fuss was about avoiding "Probate," a term often utilized to represent probate courts overseeing the administration of estates (be sure not to confuse the term Probate with the term probation, which is a different area of the law). After years of working with clients on probate matters, I now advocate for setting up a client's estate to avoid "Probate."

**Alright, so what is Probate?** The first thing to know is that probate courts deal with various matters to include establishing conservatorships and guardianships, adoptions, name changes, partitions of real estate and administration of estates.

This article is concentrated on the administration of estates, which is the process of the probate court holding proceedings to transfer a decedent's (dead person) property, known as the "estate," to his or her heirs and legatees (people named in the Last Will & Testament) who are supposed to receive them per the decedent's wishes or per New Hampshire's intestacy statute. This is also an opportunity for the court to make sure all creditors, including the state and federal government (we all know the IRS is going to get paid!), are paid. That's it, Probate in a nutshell. Well Probating an estate sounds easy enough, right? This is rather simple in concept, however, the reality is quite different.

The probate estate includes all property held in the decedent's name. If property is owned jointly by the decedent and another person, such as life insurance, bank accounts (just about any account held by a financial institution) and automobiles, they're not part of the probate estate and are therefore not subject to the Probate process. Also, assets having named beneficiaries (as opposed to joint ownership) are not part of the probate estate (retirement benefits for example) and pass by Operation of Law. Assets held in trust avoid probate and is an essential part of most estates in my opinion.

The Probate process is started by filing a Petition for Estate Administration with the probate court, along with the original Last Will & Testament and a death certificate. Letters must be mailed to all of the decedent's heirs at law (usually the surviving spouse, children, and children of any deceased children), to those named as beneficiaries in the Will, the NH Department of Health and Human Services Estate Recovery Unit (they check to see if you have a debt with the State for public benefits received and if so, will make a claim against the estate) and to any charities named as a beneficiary of your estate. Notice must also be published in a local newspaper in large part for the purpose of informing creditors of your death. If no one objects, the personal representative named in the Will is generally appointed by the court.

Thereafter the personal representative is responsible for collecting (taking charge of legally) the decedent's probate assets (estate assets) and for paying any debts of the estate. The personal representative must file with the probate court an itemized list, known as an "inventory," of the probate property, to include the value of each item. The personal representative must also file an estate tax return within nine months of the date of death (final income tax returns need to be filed for the year of death as well). This is true even if no estate tax is owed, if the decedent owned real estate or the personal representative wants his or her final accounting (see below) allowed by the probate court. Creditors of the estate have one year from the date of death to bring claims against the estate. Personal representatives generally wait until this claim period has expired to complete distribution of the estate according to the terms of the Will. As his or her final responsibility, the personal representative must file an accounting with the probate court showing the income and expenditures of the estate administration. The entire process generally takes about a year (some are quicker, others take, well you can imagine).

*Estate Plan, Part II will continue in the November edition of The Bow Times.*

The information provided in this article does not constitute legal advice.