NYSUT Member Benefits Trust-endorsed
Legal Service Plan
PREVENTIVE LAW GUIDE

A newsletter designed to help guide you through the legality of reality

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Probate traps for the unwary

By Christopher M. Petillo, Esq., CPA, CELA

Many clients will ask about "avoiding probate" and how to do it. To better answer this question, we must first ask "what is probate?"

Probate is a term that typically refers to the act of offering a Will to the Surrogate's Court. The judge (known in New York state as the Surrogate) will oversee a legal proceeding to review your original Will, and make a determination as to whether the Will is valid and an Executor should be appointed to handle the property of the estate, pay debts and taxes, and distribute assets to the beneficiaries.

The probate court will want to know about the nearest blood relatives (whether living or dead) as well as the spouse of the deceased, if any. The court will also want to ensure that family members are given notice of the probate in case they want to file any objections.

Even certain relatives who are disinherited may be entitled to notice of probate so that the court can determine whether there is a concern such as fraud, undue influence or forgery. There may be court filing fees and there may also be legal fees if the Executor/trix would like help in navigating the process.

What flows assets go through probate and pass under my Will?
Generally, probate assets include assets that are titled in your name solely (i.e., where there is no joint owner with a right of survivorship and no designated beneficiary).

Isn't there a simpler way?
There can be if it makes sense for you. A Will can serve an important purpose in many cases, especially if you have provided for a trust to protect a beneficiary in your Will. But there can be ways of streamlining the process in many cases.

Probate traps for the unwary

1. Do you own a home, co-op or condo? Do you own it in your name alone? If so, the property will be a probate asset, unless you change the ownership while you are alive (such as placing the property into a trust). We often meet with clients who are the surviving spouse, and they will implement planning so the home can avoid probate upon their passing.

2. Do you own property in more than one state? You could wind up with the probate of your Will in more than one state.

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Turning ‘used lemons’ into lemonade

Quite often, consumers who encounter mechanical issues with a used vehicle simply absorb the cost of repairs, not realizing that the dealer who sold or leased the vehicle may be responsible for those repairs.

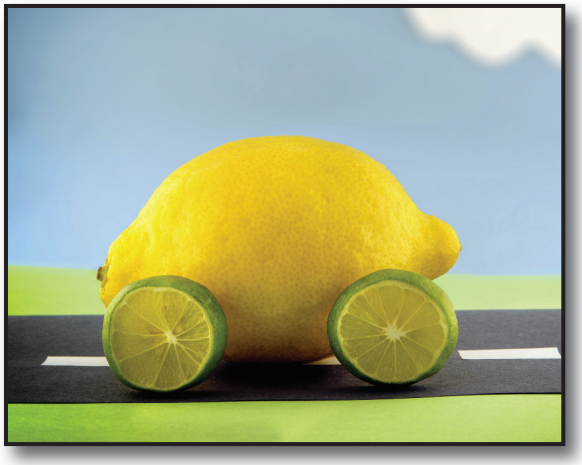
New York State provides legal remedies for consumers who may have purchased or leased certain used vehicles that turn out to be “lemons.”

The Used Car Lemon Law applies to any vehicle meeting the following criteria:

1. The vehicle was purchased, transferred or leased after the earlier of 18,000 miles or two years from original delivery;

2. The vehicle was purchased or leased from a New York State dealer;

3. The vehicle has been driven less than 100,000 miles at the time of the lease/purchase;



4. The vehicle has a purchase price or lease value of at least $1,500; and

5. The vehicle is used primarily for personal reasons and not business use.

If your vehicle meets the above criteria, New York State law requires the dealer to provide you with a written warranty for a specified length of time (depending on the mileage of the vehicle at the time of purchase or lease).

The current warranty durations are as follows:

- 18,000 to 36,000 miles requires a warranty of 90 days or 4,000 miles (whichever comes first)
- 36,001 to 79,999 miles requires a warranty of 60 days or 3,000 miles
- 80,000 to 100,000 miles requires a warranty of 30 days or 1,000 miles

During the above warranty periods, dealers are required by law to repair any defects in covered parts free of charge. Additionally, if the dealer is not able to repair the vehicle after a “reasonable number of attempts,” you are entitled to a FULL refund from the dealer.

So what is a reasonable number of attempts? The law states that it takes three or more unsuccessful attempts to repair the vehicle or the vehicle is unusable for a combined total of 15 days or more because of the required repair.

However, if the repair does not substantially impair the value of the vehicle or is required due to abuse, neglect or alteration by you, the dealer will not be required to refund you any money.

It is essential that you document any and all problems with the vehicle. The most effective way to enforce your rights under the Lemon Law is to keep detailed records of all repairs, complaints, work invoices, repair bills, and any communications between you and the dealer.

The most comprehensive information about this topic is contained on the New York State Attorney General’s website at ***ag.ny.gov***. The NYS Attorney General’s site contains a complete list of covered parts and detailed instructions on how to file a claim.

Of course, if you have any questions after visiting the site, please contact us at any time for advice on how to protect your rights.

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Leaving money to man's best friend...

By Candace Dellacona, Esq.

Pets can be an integral part of everyday family life; for many people, their pets are the only "family members" who provide unconditional love and companionship.

Unfortunately, despite the position that pets hold in owners' lives, pets are oftentimes forgotten when it comes to estate planning. As a result, many family pets are simply euthanized after the death of the primary owner or caregiver of the pet because surviving loved ones or friends do not want the financial responsibility of taking care of an animal.

Fortunately, there is a solution for all of the pet-lovers of the world. Nearly every state in the U.S. allows for the creation of a "Companion Pet Trust" (more commonly referred to as a "Pet Trust"). New York state has a specific statute that allows for the bequest of a pet within a Last Will & Testament or Living Trust.

"Funds could be left in a bank account designated for the beneficiary of the pet or be named as a specific bequest in your Will or Living Trust."

Specifically, as a dog owner for example, you could leave your beloved pet to your neighbor in your Last Will & Testament or Living Trust with funds designated to not only care for your animal but also compensate the new owner for their willingness to open up their home.

The funds could be left in either a bank account designated for the beneficiary of the dog or be named as a specific bequest in your Will or Living Trust (i.e., "I leave $25,000 to Jane Smith for the care of my beloved dog Rufus").

The Will or Trust should also provide for an alternate caregiver for the animal if the primary person named in the Will or Trust has passed away or is unwilling to take upon the responsibility of caring for a pet. If the primary caregiver does not wish to take your dog, the funds would pass to the alternative caregiver along with the animal.

There are differences, however, in creating a Pet Trust in a Will versus a Living Trust. In the case of a Pet Trust in a Will, there is generally no oversight after your furry companion and the related funds are handed over to the beneficiary. Simply put, a person could accept your beloved pet and the $25,000 that goes along with it and euthanize your dog the next day.

Alternatively, you could create a Pet Trust within your Living Trust. A Living Trust would continue in existence after you pass away with a Trustee overseeing the care of your dog. This means a Trustee could seek court intervention to remove your pet from that person's care and remove any funds left for the animal's care if the person caring for it is not doing a sufficient job.

In any event, if a Pet Trust is something that you might wish to consider, you should have a candid conversation with a person you trust to take care of your pet to ensure that person is willing to do so.

You should also consider alternative caregivers for your pet and calculate the amount of funds a caregiver would need to care for the animal along with any extra funds to compensate the caregiver themselves.

Probate traps...
Continued from page 1

3. Do you own Savings Bonds? If so, have you looked at them lately? Many clients have bonds that have no beneficiary or are "POD" (Pay on Death) with a predeceased beneficiary (such as a spouse who died first).

4. Do you have savings accounts and CDs? You may wish to add an "ITF" (In Trust For) beneficiary so the account can avoid probate.

5. Do you have a checking account? Many banks do not allow for a designated beneficiary on a checking account. You may wish to keep your checking balance low and transfer money in from savings as needed. If joint ownership is an option you are uncomfortable with, you may wish to consider a trust.

6. Do you have a Brokerage Account or Mutual Fund? Most states allow for a "TOD" (Transfer on Death) beneficiary designation, which would allow the account to avoid probate.

7. Do you have life insurance through John Hancock (now known as Manulife Financial), Prudential or MetLife? If so, you may be the owner of stock in those companies as well. These companies reorganized through "demutualization" in the early 2000's and, in doing do, had to compensate policy owners. They sent a notice and gave an option for cash or stock. Many clients ignored the letter and received stock. When the stock was issued, it was issued in the name of the policy owner only, with no joint owner (in most cases) and no designated beneficiary. So what did they create? Probate assets!

If you have policies with any of these companies, you may wish to contact shareholder services and add a "TOD" beneficiary designation. Alternatively, you may move these shares into your brokerage account (be sure you have a "TOD" on the brokerage account).

8. Are you retirement accounts & life insurance beneficiary designations up to date? It's crucial to call the contact number on your accounts and policies to confirm that the beneficiary you believe is on file is actually on file with them.

9. Do you have more than one motor vehicle in your name? New York State Department of Motor Vehicle rules allow for one vehicle to pass to the surviving spouse if the value is less than $25,000. However, if the second vehicle is in your name as well, there will be probate. So find out if joint ownership may be an option in your state.

If you do not have close relatives that live nearby or are disinheriting any blood relatives, you may want to pay particular attention to avoiding probate on your assets. If you have any questions about this topic, please contact your Legal Service Plan's National Legal Office.

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