Inside Business

Is probate avoidance a concept that is past its prime?

You have the right to remain silent. Possession is nine-tenths the law. Caveat emptor. Avoid probate. These well-known legal adages are taken as a given and commonly inform the actions of those who are familiar with them. The last one merits some discussion because it causes people to make sometimes costly and occasionally risky steps to avoid the so-called "specter" of probate.

Matthew Trinidad
Pro Bono Publico

Probate is a court-authorized process for the confirmation of a decedent's will (if there is one) and the administration of his or her estate. It used to be a needlessly inefficient and expensive process, primarily because the laws required close supervision of the administration by the court in a public proceeding that typically required the significant involvement of the estate's attorney, even in routine and uncontested cases.

Two developments resulted from this inefficient state of affairs. First, people began structuring their estates to avoid the legal requirement that their estate be probated. Meanwhile, many states, including Colorado, adopted progressive laws that require, as a default, significantly less court involvement during the probate process, resulting in a simpler administration that requires limited or no involvement of an attorney.

Some modern-day attorneys, even in states with simplified probate laws, favor probate avoidance strategies. Others prefer traditional estate planning methods, but will use probate avoidance tools if the circumstances counsel in favor of doing so. Both of these philosophies have merit.

The most comprehensive tool to avoid probate is a revocable trust. A revocable trust requires than an individual hold his or her property in trust, subject to a trust document that spells out how the property will be managed and distributed during life and after death. The "settlor" of the trust remains in control of the property until he or she is no longer able, usually as a result of incapacity or death. The individual's property is held in a fiduciary estate, so there is no personal estate to activate the legal requirement of probate. Other tools to avoid probate involve owning property in a manner that results in an automatic transfer on death under law, by contract, or otherwise.

Those who favor probate avoidance generally do so for a number of reasons: (i) even though the probate procedures in Colorado are relatively simple, the process can still be tedious and complex, so the likelihood of incurring significant expense remains; (ii) probate is usually an open proceeding that makes the decedent's will and estate discoverable by the general public, including the curious neighbor, the creditor of an heir, or the news media; (iii) some would say that probate invites litigation or opens a door to claims against the decedent's estate; and (iv) some say that a revocable trust is the best mechanism to manage a settlor's property if he or she becomes incapacitated.

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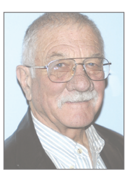
Each one of these points has a countervailing consideration: (i) setting up and maintaining a revocable trust can be complicated, and the costs may exceed those that would otherwise be incurred. Moreover, if the trust isn't properly maintained, the estate may have to go through probate anyway; (ii) the courts in Garfield and Pitkin counties, unlike most courts, impose certain restrictions on public access to probate cases, so, at least in our community and at least for the time being, public access to probate court files is limited; (iii) creditors, beneficiaries, and other parties have the same rights and can initiate the same litigations in both revocable trust and probate administrations, though it is somewhat more inconvenient to commence litigation in the context of a revocable trust administration; (iv) powers of attorney and other planning methods that are typically part of traditional estate plans, if properly designed and used, generally work well in the event of an incapacity; and (v) improper use of probate avoidance techniques may result in unintentional gifts and may disqualify an individual for government benefits like Medicaid.

Ideally the arguments for and against probate avoidance should be considered and carefully applied to the circumstances. Sometimes the correct path is obvious. For example, if you own real property in multiple states, especially in a state with an archaic and burdensome probate process, or if privacy is a major concern, use a trust. In other cases, the matter may boil down to whether to invest money now to avoid probate or whether to subject your estate to relatively insignificant marginal expenses after death.

Matthew Laurel Trinidad is a transactional attorney at Karp Neu Hanlon PC. His practice emphasizes business law, estate planning and probate. Contact him at mlt@mountainlawfirm.com, (970) 945-2261, or visit www.mountainlawfirm.com.

Banks are mostly healthy as they feast at a good spread

First, we hear about how bad off banks are. Four years or so ago, we were told that the U.S. banking business was a financial sinkhole, with profit a quaint term relegated to the mists of the 20th century.



Pat Dalrymple
Bankers Hours

Now, suddenly it seems, banks are in pretty good shape. There are a few sick ones, hanging on, waiting for a purchaser or merger partner, but most are in fair condition, and not a few are doing very well, thank you.

We see that some mega banks are hit with billions (dollars or euros) in fines and are still turning a nice, and in some instances, a record, profit. How do they do this? It's a one word answer: Spread.

America's bankers are showing that they have a thorough understanding of what is maybe one of banking's oldest tenets: the 3-3-3 rule: "Pay 3 percent on your deposits, mark your money up by 3 percent, and be on the golf course by 3:00." Except, currently, the spread is better than 3 percent.

A look at the FDIC website that provides financial information on every bank and thrift in the country will show that, in many instances, the spread, or "net interest margin" as it's called in bankerese, can be well above 4 percent.

Depositors scream when they earn 1 percent on their retirement money, but they benefit by borrowing at lower rates than they've ever seen in their lifetimes, so probably nobody's getting ripped off.

Even banks on life support, that are compelled to invest a good portion of their deposits in government paper or mortgaged banked securities with correspondingly low yields, are showing spreads of 3.12, 3.25, 3.68.

All of this is possible because financial institutions currently pay very little, sometimes nothing, when they buy their inventory, money, at wholesale. Rates on loans are still at historically low levels, but yields, if any, on deposits, hark back to the 19th century. A couple of years ago the joke was that, soon, banks would be charging the public to keep their money. The laughter has died down a bit as everybody wonders if that could really happen.

As the world economy improves, and the demand for money increases, spreads will shrink. Competitively, it's a lot harder to mark your retail price up 100 percent when you're paying 5 percent wholesale for your commodity. This situation won't last, but it's been a big factor in getting banking back on its feet.

This ability to buy cheaply from the public and sell at a healthy margin is why people still want to get into banking, despite all of the personal and financial risk that comes with the draconian regulation in the wake of the financial crisis.

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But, when other businesses look at banking, there must be some head shaking. Wouldn't a car dealer just love to buy that SUV at $10,000 and resell it at $30,000?

Pat Dalrymple is a valley native. He's been in the mortgage and banking business since 1961. He'll be happy to answer your questions or hear your comments. His e-mail is dalrymple@sopris.net.

BUSINESS BRIEFS

Alpine Bank announces officer promotions

Alpine Banks in the Colorado River Valley would like to congratulate the following people on their recent promotions:

Susie Wright to assistant vice president, HR/Training

Susie Wright

Susie grew up in Bogalusa, La., where her vast family still resides. She began her career with Alpine Bank in 1998 as a teller at the Glenwood Springs location, and has since held many positions including CSR, regional marketing director, lender, trainer, HR assistant and now training manager. Susie is very active in her community and currently serves on the Center for Financial Training board, as parade coordinator for the Silt HeyDays committee, and as a member of the Alpine Bank Relay for Life team. She and her husband Toby have two grown sons, Andy and Josh, and just celebrated 23 blissful years of marriage. Susie enjoys reading, gardening, hiking and spending as much time as possible with her family.

Tom Snyder to IT officer

Tom Snyder

Originally from Ogden, Iowa, Tom attended Iowa State University and holds an Associate of Specialized Technology in Electronics Engineering Technology from the National Education Center. Tom joined Alpine Bank in 2008 as a network engineer and currently manages the bank's network and system administrators, technicians, help desk personnel and physical/information security personnel. Tom is a member of the Battlement Mesa Kiwanis Club and enjoys camping and fishing with his wife, Teresa, and children, Hunter and Tristan.