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### **THE DREADED ANCILLARY ESTATE AND HOW TO AVOID IT**

As part of my consultations with new clients (as well as those who are updating their estate plans) I always ask them if they own any real in another state, either currently or if they intend to in the future. None of them have ever known the reason why I ask that question and are shocked to learn why it's such an important question to ask.

Most people have a hard enough time comprehending the basic probate process, let alone what happens when they own property in a multi-state situation. So when they answer "Yes" to my question, I have to advise them that they're going to have a much more complicated probate process than they ever imagined. Actually, they're going to have to endure not just one probate process, but two! And, if they own property in more than just one additional state, they will have to go through probate in EACH state they own property in.

It's called the "ancillary probate" or "**ancillary administration**" which refers to the probate of a deceased person's real property (and sometimes personal property) that is located in a state other than the deceased person's domicile. For example, Jessica dies while residing in Connecticut. At the time of her death, Jessica owned a house in Vermont. Jessica's estate is probated in Connecticut because that was her domicile at the time of her death. However, Connecticut doesn't have jurisdiction over the Vermont real property. In order to transfer ownership of the Vermont property from Jessica's estate to her designated beneficiary, the Executor of Jessica's Connecticut estate will have to open an ancillary probate administration in Vermont. This is because each state has exclusive jurisdiction over the disposition of real property within its borders.

This process is required for each and every piece of property owned in every state. So if Jessica owned a house in Vermont and a condo in Florida, her estate would have to open ancillary probate proceedings in Vermont and Florida, in addition to the main probate proceedings here in Connecticut.

Ancillary probate is an added burden to the estate's Executor and an additional cost to its finances. There's an over abundance of paperwork, as well as the additional court costs, attorney's fees and accounting costs which can be substantial. (Remember that you will need lawyers and accountants in each of the states). I'm not over stating this. Just imagine the time considerations in probating an estate in multiple jurisdictions, then multiply that by even a modest hourly rate for attorneys and accountants. Not to mention the court costs of each state.

So, how can you avoid this? It's actually quite simple, if you have a good understanding of the powers of a Living Trust. The most basic principle of a Living Trust is that you transfer ownership of your assets into the Trust, but maintain complete control over it. The benefit of this instrument is that anything owned by the Trust, rather than the decedent, doesn't flow through probate. So, if Jessica transfers her Vermont property from Jessica to the "Jessica Family Revocable Trust", the property will no longer be in her name at the time of her death and it will eliminate the need and costs of opening up an estate proceeding in Vermont. Yet during her lifetime, Jessica will have complete control over the property just as she did before she transferred it into the Trust. It's simple and greatly effective. The Trust owns the property and your estate saves the death costs, not to mention the time and aggravation that goes along with it. And the best part is, you only need one Trust instrument for all of your properties, regardless of where they are located. Yes, it's another great reason for preparing an Inter Vivos, Revocable Trust.

**Anthony J. Medico, Esq.**, has practiced law for over 27 years. To ask a question regarding this article, send an e-mail to [info@medicoandassociates.com](mailto:info@medicoandassociates.com) or call us at (203) 661-8151. To read more highly informative Estate Planning articles, visit our website at [www.medicoandassociates.com](http://www.medicoandassociates.com), where you can also download our free Estate Planning Survival Guide. Enjoy.

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