

# Arizona Bar Association

## Myths and Facts About Wills and Probate

*Myth: Probate costs and attorney fees are usually as high as 10% of your estate.*

Fact: Arizona attorneys may charge only reasonable fees for necessary services, not percentage fees. Fees may increase in the event of tax issues, disputed creditor claims, or other litigation, but these same issues can arise with a trust.

*Myth: With probate there is a 1-3-year waiting period for distribution of assets.*

Fact: An informal probate procedure can start as early as five days after death, and distribution can occur as soon as it is clear there are sufficient assets to pay expenses, creditors and taxes. Creditors have up to four months to submit claims and the personal representative may, but need not, delay distribution until the end of the creditors' claim period. A trustee may also have to delay distribution in order to pay taxes or liquidate assets in order to divide property. An improperly prepared or funded trust may require money and time to correct before distribution can be carried out.

*Myth: Probate forces the liquidation of your assets.*

Fact: Liquidation of assets is required only if necessary to pay expenses, creditors, taxes, or to make distributions to beneficiaries. A trust is no guarantee against such liquidation for the same purposes.

*Myth: Probate litigation is more expensive than trust litigation.*

Fact: Unhappy family members or beneficiaries can challenge both wills and trusts. A trust is not a guarantee against litigation. Expenses will depend on the nature of the litigation.

*Myth: A trust will avoid Federal estate taxes.*

Fact: A will or trust that provides for a "credit shelter trust" arrangement can reduce estate taxes for married couples who have combined assets over the federal estate tax exemption. A trust in and of itself does not reduce estate taxes at an individual's death, nor does a will.

*Myth: Probate proceedings are complex and require special court approval.*

Fact: In Arizona, most estates use the informal probate procedures that do not require formal court approval and in many cases do not even require a single personal appearance in court.

[http://www.azbar.org/LegalResources/PubInfoBrochures/wills\\_text.cfm](http://www.azbar.org/LegalResources/PubInfoBrochures/wills_text.cfm)