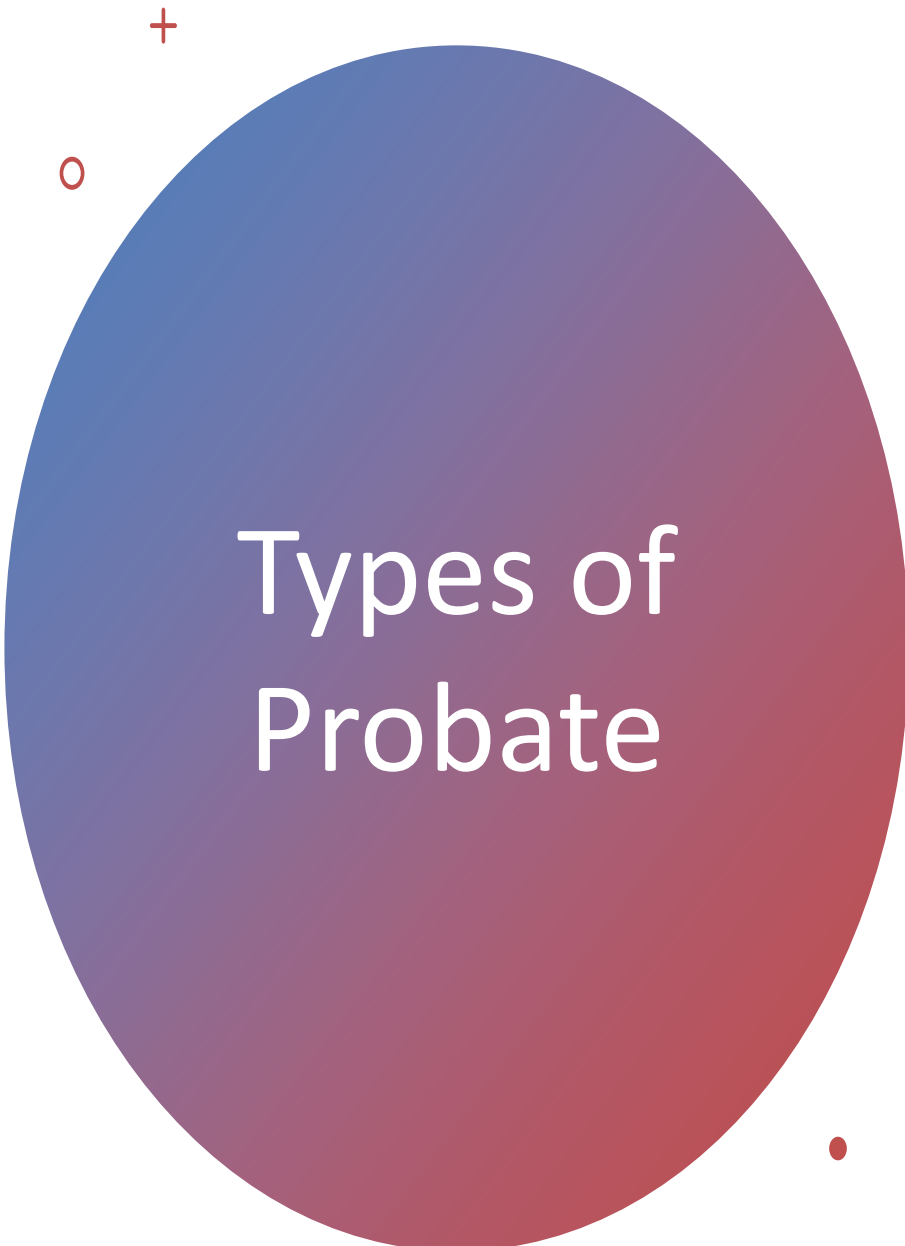


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Avoiding Pitfalls During Probate

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Types of Probate

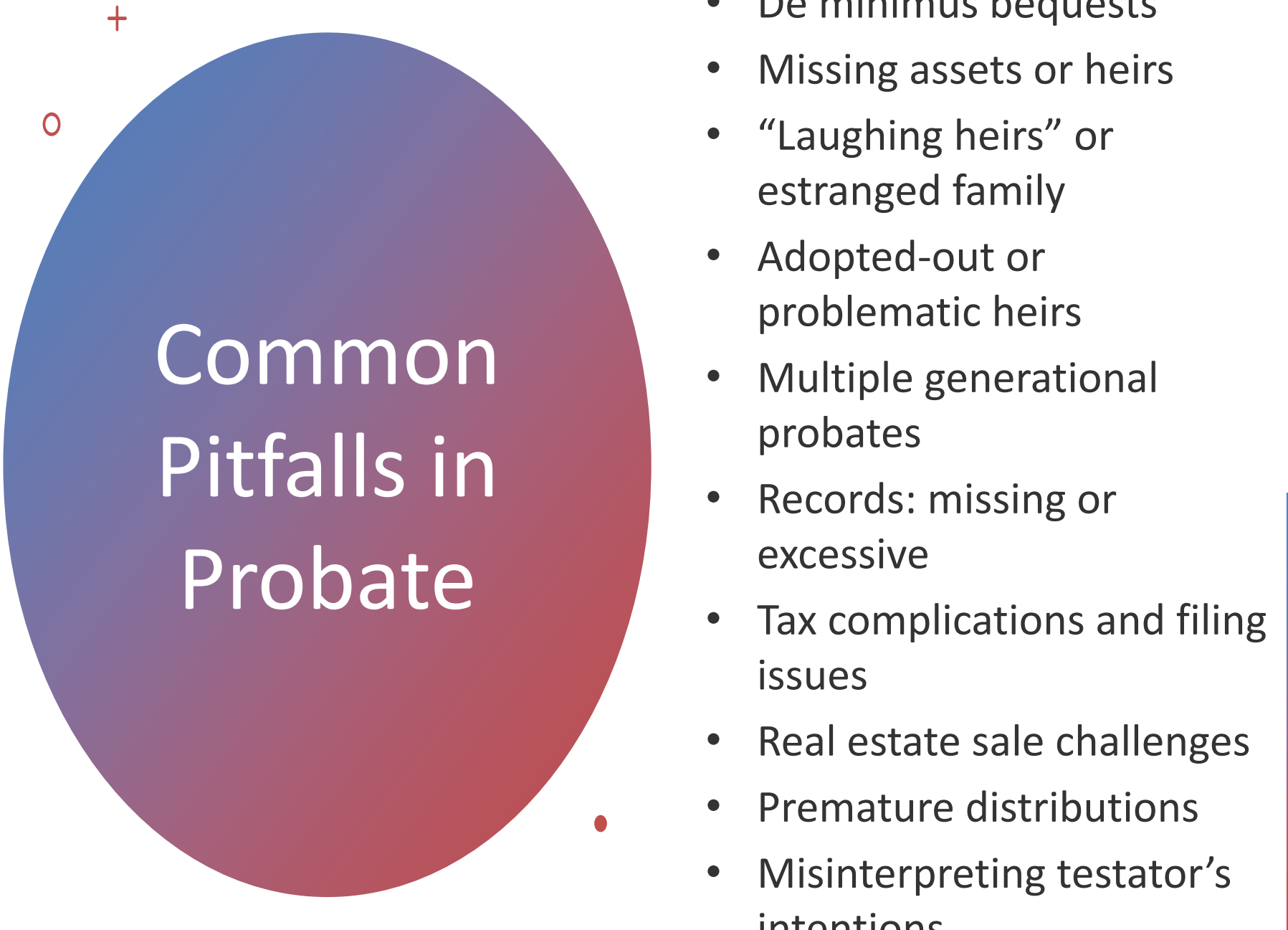
- **Standard Probate**
 - If Will, Court appoints Personal Representative with Letters Testamentary. Okla. Stat. Tit. 58, §1, *et seq.*¹
 - If no Will, Court appoints Administrator with Letters of Administration
- **Summary Administration**
 - With or without Will; shorter (about 45 days); Special Administrator (§245)
- **Ancillary Probates**
- **Other types of “Letters”**
 - Letters of Administration with Will Annexed: When named PR cannot serve
 - Letters of Special Administration: appointed before initial hearing or in case of vacancy to address emergency matters (e.g. payroll)

1. Unless otherwise noted, all citations are to Title 58 of the Oklahoma Statutes



When to Use Each Type

- A standard Probate, with or without a Will, is used for most estate administrations.
- A Summary Administration is good: when expediency is a concern (takes about 45 days) (§246), for smaller estates (\$200,000 or less in assets) (§245), and with no significant issues (no disputes, no real estate being sold in probate).
- Ancillary probates are for foreign wills.



Common Pitfalls in Probate

- De minimus bequests
- Missing assets or heirs
- “Laughing heirs” or estranged family
- Adopted-out or problematic heirs
- Multiple generational probates
- Records: missing or excessive
- Tax complications and filing issues
- Real estate sale challenges
- Premature distributions
- Misinterpreting testator’s intentions

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Pitfall: De Minimus gifts

- Avoid this issue before it arises: don't put de minimus gifts into an estate plan at all (i.e. \$1.00 or \$5.00 dollars to a "disinherited" beneficiary).
- If the testator desires to disinherit a beneficiary, they should be fully disinherited. If they desire to recognize an heir or friend without making a sizable bequest, then a sentimental gift would serve as a good substitute.
- If probating a Will with such gifts, the funds may be interpled into the Court fund through the Court Clerk.

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Pitfall: Missing Assets

- Missing assets can fast-become a fiduciary's worst nightmare.
- Keen asset management is imperative.
- Encourage clients to keep updated asset inventories
- Use a "Financial Snapshot" form during planning
- Check unclaimed property databases
- Encourage clients to have frank and honest conversation with the named fiduciaries shortly after completing their estate plan, if not before.
- Named fiduciaries should have a good understanding of the decedent's assets prior to the decedent passing.

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Pitfall: Missing Heirs

- An issue with a missing heir (or devisee/legatee) often arises when there are many distant heirs (e.g. the decedent's siblings or cousins take by intestacy). However, it can also arise with a small number of devisees/legatees over the passage of time as people move.
- Consult family members-often one member of the family is able to provide sufficient genealogical histories and contact information.
- Use genealogical services or skip-tracing.
- Publish statutory notices.
- Deposit unclaimed shares with the Court Clerk

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Pitfall: Laughing Heirs

- A “Laughing heir” is one that is so distantly related to the deceased that they ‘laugh’ when they learn of their relation’s passing.
- If an individual dies without a will, their assets will be distributed to next-of-kin, regardless of how distantly related.
- The only way to avoid laughing heirs is to encourage clients without close family to prepare a Will or Trust to ensure their assets pass to those they desire to have the property at their death (usually, friends or charities).

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Pitfall: Thieving Children

- It's not uncommon to learn a child of a decedent was using the parent's funds without authority for personal expenses in the months or years leading up to the death.
- These expenses are frequently commingled with legitimate expenses for the decedent's benefit.
- While counsel's first instinct may be to sue the thief, file criminal charges, or seek to limit distributions, these situations should be taken on a case-by-case basis.
- In many cases, the remaining beneficiaries may desire harmony, the thieving child may be dangerous, or the investigative costs may far outpace any possible recovery.

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Pitfall: Children Adopted Away

- In Oklahoma, a child that is adopted away will still inherit from their biological parents.
- Again, must address this issue preemptively with effective estate planning and potentially uncomfortable questions.

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Pitfall: Multiple Generations Needing Probates

- It can be common for families to not probate real estate for one or more generations.
- When this occurs, multiple probates are required.
- Consolidate multiple probates if possible (when decedents share a common property interest).

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Pitfall: Records Missing or Voluminous

- Work with clients to ensure good recordkeeping, retention, and collection of records.
- Be clear about which documents are necessary and which are not necessary.
- Be prepared with third-parties that may be able to assist with the records collection process (e.g. the entity that created the document).

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Pitfall: Sale of Real Estate

- In the case of a Will lacking a “Power of Sale” or an intestate decedent, Oklahoma law provides for a final bidding process during the hearing to confirm the sale.
- Someone at the Hearing to Confirm Sale can out bid the contract buyer, causing the contract purchaser to lose out.
- Always include a provision in sale contract making sale contingent upon Court Approval.

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Pitfall: Taxes

- It is incumbent upon the fiduciary (and you as advisor) to prepare and file all state and Federal tax returns.
- Ensure fiduciaries are working with a reputable CPA.
- Be prepared to assuage client's concerns related to "death" or "gift" taxes and steer them away from behavior that is for the purpose of avoiding such taxes.
- Such taxes ARE a concern, but only for clients with \$15 Million or more.

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Pitfall: Premature Distributions

- Fiduciary can be torn between beneficiaries desiring or demanding their inheritance.
- While early distributions can be made from an Estate, certain guidelines should be followed.
- Wait for claim period to expire or ensure fiduciary is certain as to debts.
- Keep reserves for future costs (more than anticipated).
- Get court approval for interim distributions (even certain expenses).

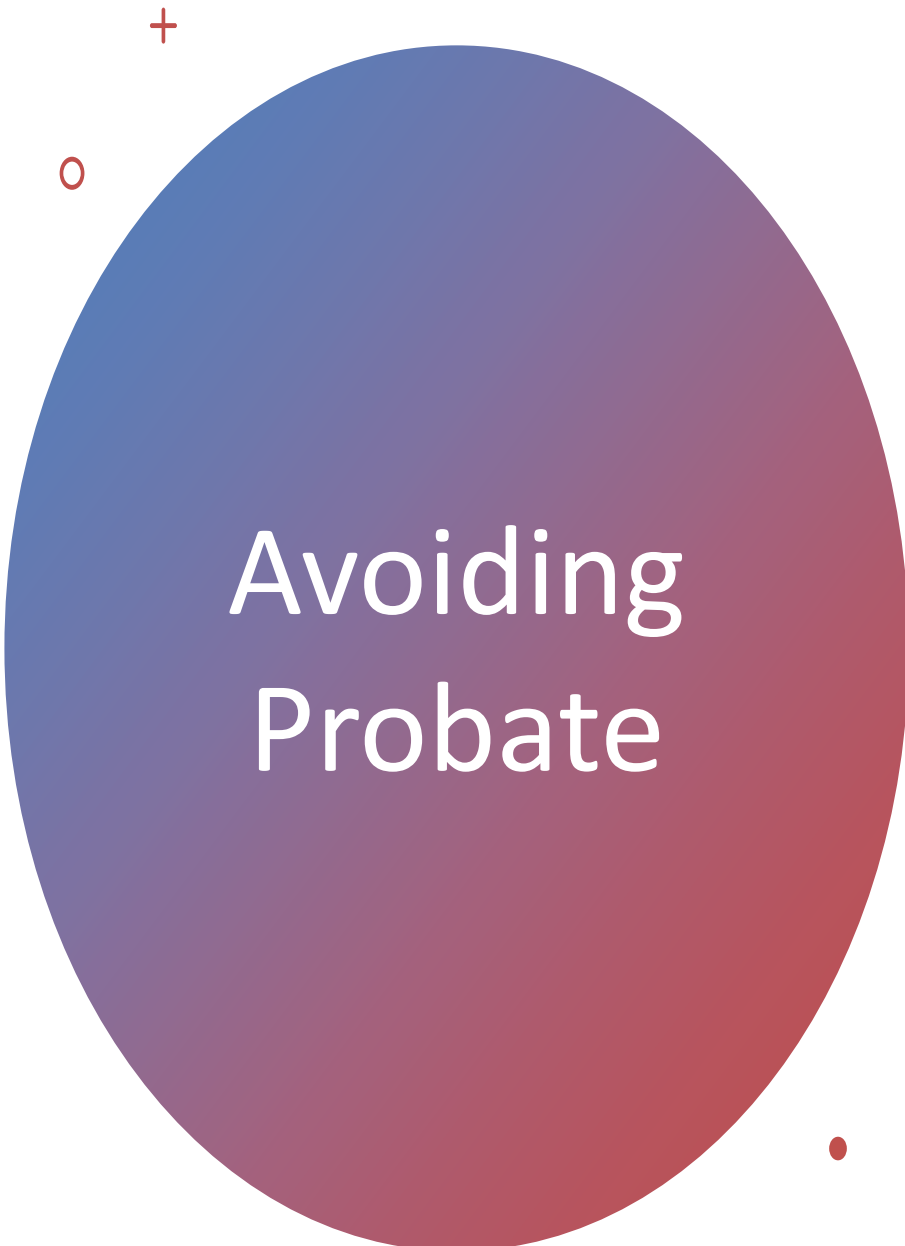
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Pitfall: Testator's Desires vs. Legal Directives

- Ensure Testator never expresses “desires” or “wants” in their Estate Plan.
- Educate clients on enforceability of 'verbal wishes'
- Use trusts for flexibility and clarity



Avoiding Probate

- There are several ways to avoid Probate:
 - Contracts-whether a “Pay on Death” designation on a financial account or a Trust, the law permits drafting contracts which allow the automatic passing of property upon death.
 - Joint Tenancy with Right of Survivorship will allow the property to pass to a third-party on death.
 - Transfer on Death Deeds and car titles
 - Small Estate, Mineral, and Vehicle affidavits-Oklahoma allows estates valued under \$75,000 to pass by affidavit.



Trusts as a Probate Alternative

- Functions as private probate.
 - Avoids court, public notices, and delays.
 - Minimizes conflict by avoiding legal venues. (The best way to get someone to object to an estate plan is to give them a time, a place, and a judge.)
 - Keeps administration private and efficient.
 - Chat GPT thinks they're swell
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Final Thoughts (From GPT)

- Probate is complex and costly without planning
 - Early and clear planning avoids major pitfalls
 - Trusts offer control and privacy
 - Avoid court whenever possible through proactive tools
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Questions & Discussion

- Questions now?
- Questions later:
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