

THE STEPS TO PROBATE



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The death of a loved one is stressful enough, but when you are chosen to be the executor or administrator of the estate, you may feel more overwhelmed, even if your appointment was known of ahead of time. If a person dies without a will – intestate – it may be a bit of a surprise when the court appoints you as the administrator of the estate.

Key Terms

When you are managing an estate for probate purposes, you'll come across several key terms.

These terms include:

- *Decedent*: The person who passed.
- *Probate*: This is the legal process of processing and closing a decedent's estate. Probate may take as little as a few months, or it could go on for years, especially if someone contests the will. The probate court also closes out any liabilities if the estate does not have the assets to pay the debts.
- *Testate and intestate*: If a person dies 'testate,' he or she died with a will and/or other estate documents, such as trusts. If a person dies 'intestate,' he or she died without a will.
- *Administrator, personal representative or executor*: A state may use 'personal representative' or 'executor' to name the person who manages the estate. This is state preference. Some states may call the manager of the estate of a person who died without a will the 'administrator.'
- *Beneficiaries or heirs*: Those who will be receiving an inheritance from the decedent's insurance, retirement accounts, estate, etc.

The Steps to Probate

In a probate case, the court supervises the executor or administrator as he or she locates the decedent's assets. The court also supervises the distribution of those assets. A state may follow the Uniform Probate Code (UPC), or it may not have adopted those laws. States that adopted the UPC all follow the same laws when probating an estate. The probate process is nearly the same in states that follow the UPC and states that don't; however, there are some minor differences.

Probate in a State That Has Not Adopted UPC

- Locate the will and any other estate documents, including trusts, if there is one.
- If the will names you as the executor, you will be the one in charge of the estate once the court appoints you. If the decedent passed without a will, you may ask the court to appoint you the administrator if no one else has already done so.
- File a petition for probate. This should be filed in the county in which the decedent lived when he or she passed. Attach the original will and the death certificate to the petition. After the court reviews these documents, they will officially appoint you as the personal representative for the estate.
- Check the court rules about publishing the notice of probate in a local newspaper, and then publish the notice. Be sure to mail a notice of death to each creditor that you find. File the proof of publishing with the court; and for each creditor you notified, file the notification.

- If the court requires you to post a bond, it is to protect the estate from financial losses.
- Mail a notice of probate to any of the beneficiaries and heirs mentioned in the will. File proof of notification and mailing with the court.
- Prove that the will is a valid will. Those who witnessed the signing of the will should provide statements for this. The statement must be signed in front of a notary and then filed with the court.
- File any other documents requested by the court.
- Notify any state agencies of the death of the decedent, as required by law. Agencies may include the health department or the welfare department. If the decedent was a veteran who was receiving benefits, notify the Veteran's Administration of the death.
- Obtain an employer identification number (EIN) from the IRS for the estate.
- Open a bank account in the name of the estate.
- Contact an accountant to prepare the decedent's income tax returns. You may need to file a federal estate tax return within 9 months of the date of death. Your accountant will advise you on this matter.
- Have assets that need an appraisal appraised. This might include real estate, antiques, certain other valuables and motor vehicles.
- Create an inventory of the decedent's assets and file it with the court.
- Depending on the state you live in, you may have to file a list of creditors' claims that you denied or approved.
- File a state tax return for the estate if your state requires it.
- After all tax returns have been filed, creditors have been paid and other actions ordered by the court have been completed, you are ready to close the estate. Mail a notice to beneficiaries and heirs to notify them of the final hearing. File the original notice with the court.
- File the proof that you notified the beneficiaries and heirs of the final hearing.
- Ask the court for permission to distribute the decedent's property.
- Effect the transfer of all assets to the new owners. Be sure to get receipts. File the receipts and request that the court release you from your duties.

Probate Process in States That Follow the UPC

If your state has adopted the UPC, you may have a choice in how you file probate. If everyone is getting along and the will is not contested, and if you do not expect problems with creditors, you may file for *Informal Probate*. There are no court hearings – just paperwork.

- File the petition for probate requesting to make yourself the personal representative.
- Once the court has reviewed these documents and all requirements have been met, the court will legally appoint you in charge of the

estate. In some states this document is called Orders for Probate.

- Once approved, you'll need to request letters testamentary. This document may also be referred to as "Letters of Administration" in some states. This document is signed by the court and notifies the public that you are the personal representative for the decedent and the decedent's date of death.
- The Letters Testamentary must be forwarded to beneficiaries, heirs and any creditors that you found in your search for assets and liabilities.
- Publish a notice in the local paper to notify other creditors that you may not know about.
- File proof of mailing with the probate clerk.
- Create an inventory of the decedent's assets.
- Distribute the property.
- Close the estate by filing a final accounting with the probate court clerk.
- File a closing statement that shows you paid all of the debts and the taxes that were due, that you distributed the property and that you filed a final accounting.

If you need a traditional court proceeding, you would need an *Unsupervised Formal Probate*. If the will is contested, if there is no will and the court needs to determine who the heirs are, or if minors are inheriting a lot of property, you would file an unsupervised formal probate.

If you have to file an unsupervised formal probate, you will most likely need to get permission from

the court before you sell the decedent's real estate, before you are able to pay a probate lawyer, yourself or to distribute assets. Otherwise, the steps are similar to the steps for filing regular probate.

In some rare cases, such as when a beneficiary cannot manage his or her interests, you may have to file *Supervised Formal Probate*. The steps are also similar to filing regular probate; however, the court will look after the interests of the beneficiary. Again, you need permission from the court to distribute assets, sell real property or to pay professionals working with you on the probate.

In all types of probate, you will need to file a final accounting of the assets, who they were distributed to and which liabilities and taxes were paid before you will be able to close the estate.

Selling Real Property of an Estate

In some cases, you may want to sell the real property of an estate. If the decedent had a lot of debt, you may need to sell the property to pay those liabilities. If the decedent owes more taxes than the estate has cash, you'll need to get the money for those taxes from selling some of the assets, including the real property. You may also choose to sell the real estate if the decedent did not name a beneficiary for it or if the person named does not want the property.

In most cases, you will need permission from the court to sell the property, unless you filed informal probate and you do not need the proceeds from the property to pay taxes and liabilities. Regardless of the case, you should retain a Certified Probate Real Estate Specialist (CPRES) to help you sell the real estate. Real estate agents with this special training understand the probate process and will work within the rules of the court to sell the property.

The CPRES will also be able to help you find appraisers, surveyors and other real estate professionals that you may need to sell the real estate. And, the CPRES can offer you ideas on how to increase the value of the property by doing some basic repairs. It is recommended that you check with your accountant to be sure that you are not creating any tax liabilities by doing this.

**It is always recommended to consult with an attorney and an accountant to determine your specific needs regarding the probate and to be sure that you are meeting all of the requirements of your state.