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How “Probate” Works

Many people who hear the word “probate” conjure up images of the long and complicated process that takes place when someone dies. Although traditional probate procedures have tended to be lengthy and complex, many states now have simplified procedures for most estates. As a result, with a lawyer’s help most people should not have too much difficulty serving as the personal representative of an estate.

The Probate Process

Probate is a process whereby a person supervised by a court accounts for the decedent’s property, pays debts and taxes, and distributes what remains according to the person’s will or, if the person dies without a will, according to state law. In short, probate winds up the decedent's affairs, makes sure all creditors have been paid and then transfers the decedent's assets to his or her beneficiaries. All states have their own probate laws, but the basic procedure is generally the same. Here’s a closer look at what goes on in the process.

1. Opening the estate and notifying creditors. When a person dies, someone begins the probate process by submitting the will to the probate court, usually in the county where the decedent lived, and a court verifies that the will is valid. Usually the person who starts the probate process is the executor named in the decedent's will. If there is no will, a court will appoint an "administrator," who performs the same function as the executor. Many areas now use the term "personal representative" to encompass both executors and administrators.

As soon as possible, the personal representative will ask a court for documents authorizing him or her to act on the estate’s behalf. These are usually called "letters testamentary" (if there was a will) or "letters of administration" (if there was no will). The personal representative notifies relatives, heirs and creditors of the death. In most states this is done by both letters to interested parties as well as publishing notice of

the death in a newspaper.

2. Collecting assets and paying debts. The personal representative is required to make an inventory of all the decedent's real and personal property, determine its value, collect money owed the estate, and pay valid debts. Professional appraisals may be needed for some property, and some property may need to be sold in order to pay claims or to pay beneficiaries who are supposed to receive cash instead of physical assets.

3. Paying taxes. The personal representative is responsible for estate and inheritance taxes and for the decedent's final federal and state income tax returns. Only a small percentage of estates owe federal estate tax, but most states have an inheritance tax. Sometimes the estate pays it, sometimes the heirs.

4. Distributing the estate. The personal representative usually cannot distribute property to heirs until there are receipts showing all debts and taxes have been paid and an accounting has been filed with the court. There is a waiting period during which people can object to what the personal representative has done, but sometimes this comes after property has been distributed. In any case, once the personal representative has filed the accounting and distributed the property, and the waiting period has expired, the estate is "settled" and the process is over.

Non-Probate Property

Not all property goes through probate. Non-probate property is transferred automatically to another person. There are many different types of non-probate property, including:

- "joint tenancy" property. When a person dies, any property that he or she holds as joint tenants automatically goes to the surviving joint tenants.
- life insurance. The proceeds of life insurance go to beneficiaries outside of probate.
- living trust. Property that is held in a living trust goes to the beneficiaries of the trust without the involvement of the probate court.
- retirement accounts. Money in a retirement account goes to the person named as beneficiary of the account.

Smaller Estates

In most states, people whose estate is worth less than a certain amount of money can have their property transferred to beneficiaries without having to go through probate or going through a simplified procedure. The size of an estate that qualifies for this

faster procedure varies between states, but it generally ranges between \$25,000 and \$150,000.

Although probate in theory is simple — a person's will is verified, property gathered, debts and taxes paid, and remaining property distributed to heirs — the process can be complex and time-consuming, as it involves a significant amount of paperwork as well as court appearances. If you have been named executor or administrator of an estate, our law firm can help you perform some or all of the duties of probating the estate.

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