

The Probate Process

As the nation's largest professional resource for household relocation and estate liquidation, Caring Transitions is often hired by attorneys, banks and family members to help support the probate process. We are often asked questions about probate and in all cases we recommend our clients seek proper legal advice, as probate laws vary a great deal from state to state. Caring Transitions is pleased to provide general information and our local office can also recommend other resources to help you manage a loved one's estate.

Probate Is

Probate is a court-supervised process of distributing assets when a deceased individual (decedent), has not established a [living trust](#). When the distribution of assets is not clearly defined prior to death, families and heirs are left to sort things out through probate courts. The probate process involves locating, defining and determining the value of assets owned by the decedent. It also includes payment of bills and taxes and eventually, the process results in the distribution of remaining assets.

Probate Pros and Cons

Probate can be a lengthy, frustrating and expensive process for families, however establishing a living trust may be equally as costly and complex for those with a number of valuable assets. Probate fees may include the attorney, the executor, filing fees and court costs. The cost for a living trust includes legal and filing fees. Some individuals opt to purchase software or work on the basics through internet companies, such as [LegalZoom](#), to reduce their overall costs. It is still recommended you consult an attorney at some point in the process.

Smaller estates may meet the state requirements for "summary" proceedings, which are a simplified and less costly form of probate. Refer to your county court website for more information on applications, forms and Summary Probate restrictions and requirements.

Probate Is Required

When the decedent does not designate new owners in advance, property typically has to be probated to remove the decedent's name and legally name the beneficiaries. This applies to property owned solely in the decedent's name and also when property is held "in common" with another owner. As mentioned above, if property was titled to a living trust before the individual died, probate is not necessary.

Bank accounts, insurance policies, IRAs and other such accounts that are "payable on death" may also need to be probated if the decedent never named beneficiaries for the accounts or if the beneficiaries have already died. This is referred to "predeceased beneficiaries."

Even if the decedent has a Last Will and Testament, probate may be required if any of the property has not been designated or if living beneficiaries were not named.

Steps of Probate

Some states have adopted a Uniform Probate Code (UPC) and adhere to a general set of laws. Other states have a different set of requirements and processes. Yet, a general outline of the process includes:

Appointing a Personal Representative

This role is usually referred to as *Executor* or *Administrator* and is the fiduciary put in charge of settling the decedent's estate. If there is a Last Will, the probate judge will typically appoint the Personal Representative named in the will as the Executor, unless the will is contested or the representative does not qualify on legal grounds, such as being convicted of a felony.

If a Personal Representative is not named, the judge will appoint one based on specific guidelines established within each state. Individuals may apply for the role. Once the Executor is named, or appointed, they may also hire an attorney to handle the paperwork and necessary filings. Executors who are family members often, but not always, waive the customary fees.

Inventory of Documents and Assets

Again, individuals need to locate the state requirements for inventory of assets, but in general the decedent's estate planning documents such as the Last Will and Testament, funeral instructions and living trust, should be organized for the estate attorney. In most cases, set aside three years of tax returns and locate a 3 month inventory of all Account statements, such as checking, savings, cd's, retirement accounts and brokerage accounts. Stock and bond certificates are required, as well as life insurance policies and the beneficiary designations for payable on death accounts such as insurance and IRAs, real estate deeds, titles for automobiles and other recreational vehicles, corporate records, household and utility bills, medical bill and funeral bills. The Executor must also try and identify all creditors and outstanding debts. A list should be made of what the decedent owned as well as what they owed. (*Refer to our August 2011 Newsletter for information on securing personal documents.*)

Valuation

The next step is determining the [value of the estate](#) at the time of death. For all items listed on the inventory, this is typically the fair market value of the asset at the time of death. Bank and retirement accounts are listed per the most recent statements. Real estate may be listed at its value as assessed for real estate taxes. For other property, fair market value is normally "the price at which the property would change hands between a willing buyer and a willing seller in the

retail market.” Appraisals are often required and the cost of appraisal or advice of accountant in these matters is usually allowable as an administrative cost of the estate.

Publishing Notices

Again, refer to local requirements, but in most cases the Executor will send out formal written notices of the probate to heirs, beneficiaries, and creditors and then provide proof that such notices were sent.

Paying Bills and Taxes

An account is typically set up for the estate and used to pay estate management expenses and pay the decedent’s outstanding debts. Careful records of all transactions must be kept.

Typically, Estate taxes must be filed within a specific time frame. Estate taxes can be very complicated and can have a significant impact on the value of the estate, as well as heirs and beneficiaries. It is advisable to seek the experience of an estate tax attorney or CPA, who can help determine state and federal liability.

Distributions

After all else is done, the executor will distribute the decedent's assets to the beneficiaries named in the Last Will, or if there was no will, according to decedent's heirs at law. The estate is closed by filing a "final accounting" with the court. The Executor also files a "closing statement," that indicates all taxes and debts have also been paid and all property distributed.

About Us

With offices in most major cities, Caring Transitions supports your family or your clients as they navigate changing or difficult circumstances. Our full service menu includes liquidation services to help support the closing of an estate, such as professional [estate sale](#) and [online auctions](#). We also provide downsizing, organizing, move support, estate clean out services and much more. Learn about us at www.CaringTransitions.com.

About Caring Transitions

As life changes, it may become necessary to leave a familiar home and part with personal belongings in order to downsize and relocate to a smaller home or retirement community. At Caring Transitions, we help our clients understand the process, evaluate their options and make informed decisions that suit their best interests. We are committed to making each client’s experience positive by minimizing stress and maximizing results.

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Visit us online at www.CaringTransitions.com.

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