

# A Simple Guide To Probate

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# Understanding the Probate Process

## *A Quick Introduction for Families and Executors*

Losing a loved one is difficult enough without the added pressure of navigating the probate process. Whether you've been named as the executor or are just trying to understand what probate entails, it's important to know the key concepts.

### **Key Concepts You May Know but Really Need to Understand:**

- Probate is the legal process of settling an estate after someone passes.
- An executor or administrator is responsible for handling the estate's affairs, both legally and financially,
- You may need to notify beneficiaries, file tax returns, pay debts, and get court approval for major actions.
- Some steps differ slightly depending on the complexity of the estate.
- Selling real estate in probate may require court approval unless you're in an informal process.

Always use professional services when selling real estate. These can include Realtors, title companies, financial or tax advisors, or even a CPA.

We hope this ebook provides clarity and confidence as you move forward. The enclosed pages explain each step in more detail.

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# THE STEPS TO PROBATE

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 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

- **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, 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.'

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# THE STEPS TO PROBATE

- If the court requires you to post a bond, it is to protect the estate from financial losses.
- You must 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, Social Security, or the welfare department. If the decedent was a veteran who was receiving benefits, notify the Veteran's Administraraf of the death.
- Obtain an employer identification number (EIN) from the IRS for the estate. This can often be done online.
- Next. 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
- Have assets that need an appraisal appraised. This might include real estate, antiques, certain other valuables and motor vehicles. Often appraisals cost money so be prepared.
- Create an inventory of the decedent's assets and file it with the court. This should be your first act as heirs often take items of value.
- Depending on the state you live in, you may have to file a list of creditors' claims that you denied or approved.

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# THE STEPS TO PROBATE

- A Probate Court supervises the executor or administrator as he or she locates the decedent's assets.
- A Probate Court also supervises the distribution of assets,
- The probate process is established by the laws in states of each state and are similar to other states usually with only minor differences.

If a state has not established a Uniform Probate Code (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 the personal representative for the estate.

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## THE STEPS TO PROBATE

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### SELLING REAL PROPERTY OF AN ESTATE

- Often the real property of an estate must be sold to pay debts and taxes, or because you do not have a beneficiary for the real property.
- In some cases, you must receive permission from the court before selling any piece of real estate owned by the estate.
- Hiring a Certified Probate Real Estate Specialist (CPRES) to help you with the probate real estate sale can help.
- Their expertise will help the property sale go smoothly
- Many experts will explain to you the best options for the sale based on the financial abilities of the estate, the potential values to an investor or retail, and provide the values for each.
- Their expertise may also help reduce the stress of this hardship to you and the rest of the family.

# Before You Proceed



It is always recommended to consult with multiple professionals to determine the specific needs of the estate regarding probate laws and to be sure that you are meeting all of the requirements of your state.

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