

Administering an Estate Through Probate

What is Probate?

When a person dies, he or she is referred to as the decedent. Probate is the process by which the decedent's debts, taxes and administrative expenses are paid and the person's assets are distributed to the heirs-at-law (if there is no Will) or the beneficiaries (if there is a Will). Probate is essentially a lawsuit. It is usually a friendly lawsuit, but it is a lawsuit, nonetheless. Probate is necessary to transfer the ownership of any property titled solely in the decedent's name or to the estate.

Who is Responsible to Probate a Decedent's Estate?

When a person writes a Will, that person is known as the Testator. If a decedent left a Will, the named Personal Representative (sometimes referred to as the Executor) is responsible to initiate the probate process. If the decedent did not leave a Will, someone else (most often a family member) is responsible for initiating the court process.

How is the Personal Representative or Administrator Chosen?

If there is a Will, the decedent nominates someone or entity to take on the role of Personal Representative. Once the Will is filed for probate and the initial hearing is conducted before a judge, the judge issues a court order which appoints the Personal Representative. Normally, the judge appoints whomever is named in the Will. However, sometimes that person is unable, unwilling or unfit for the job. When that happens, if a backup is named in the Will, the probate judge will appoint that named person or entity, otherwise the Personal Representative will be chosen by the judge. A statute (law) lists that priority given to various family members or interested parties in the order in which they could be appointed. The first priority is given to the decedent's surviving spouse or a competent person the spouse requests to have appointed.

If there is not a Will, the probate judge appoints an administrator. While any competent person may petition the court to be appointed administrator, the same statute discussed above is considered by the judge.

What Does the Personal Representative or Administrator Do?

The Personal Representative or administrator's job is to manage the decedent's estate. Essentially, this boils down to collecting all of the decedent's belongings, paying off all of final debts, paying the expenses of administering the estate and distributing what is left to the heirs (beneficiaries).

The process is begun by filing a petition to probate the Will in the county where the decedent was a resident or in which he owned real property.

During probate, the Personal Representative or administrator's primary duties are to:

1. Gather and protect all of the assets of the estate;
2. Oversee any investments or businesses owned by the decedent until the estate can be distributed. This can be done personally or by hiring professionals;
3. Prepare and file with the court an inventory listing all of the assets of the estate;
4. Prepare and file the decedent's final income tax return. The Personal Representative will need to determine whether to file fiduciary income tax, estate tax, gift tax, and generation-skipping tax returns as may also be required;
5. Notify all known creditors and handle all claims filed against the estate for outstanding bills and other debts;
6. Liquidate those assets that are necessary to provide the estate with funds to pay claims against the estate;
7. Prepare, file with the court, and distribute an accounting of the income and distributions of the estate during probate; and
8. Distribute what is left to the beneficiaries according to the language of the Will, state law when there is no will and pursuant to the probate court's orders.

Should the Personal Representative or Administrator Hire a Probate Attorney?

A myriad of issues may come up during a probate causing it to seem an overwhelming experience for some; however, most of this work can be done efficiently by an experienced probate attorney.

If you find yourself in the role of Personal Representative, hire an experienced probate and estate lawyer. It is wise to hire one well versed in taxes, as well. These attorneys have the skills to help you through the court processes, tax filings, and managing the responsibilities of closing out someone's final affairs. Personal Representatives have personal liability for any failures to file tax returns. Ignorance is not an excuse.