

Probate Law And Frequently Asked Legal Questions

What exactly is probate?

Probate is a legal process, which is undertaken after a person's death. This process is designed to settle the decedent's last will and testament:

- If there is a will, the validity is assessed through probate.
- If there is no will, an executor is appointed to oversee disbursement of assets.

What sort of issues can probate settle?

Probate can determine the validity of a will, and through this process the courts and attorneys have to decide whether the decedent was of sound mind when the will was made. They also have to decide whether the current will (if there is one) is the most up to date one; whether the will was written of free will and with witnesses; whether there is any chance of the will being a forgery; and other issues relating to the validity of the will.

What if the decedent was in debt at the time of death?

The probate process is designed to disburse the decedent's assets in accordance to the will (if there was a will) as well as deal with any debts and taxes that the deceased owned at the time of death. Creditors are normally given six months from the date of notification of probate in which to file a claim. Once all claims have been filed, the remainder of assets can be distributed accordingly.

How long does the probate process normally take?

The probate process usually takes at least seven months but the time period generally depends on a number of factors such as the size of the estate, the length of time taken to locate and validate the will, the length of time taken to appoint an executor in the absence of a will, and the length of time taken to find and notify all beneficiaries.

If the will is then contested, probate can go on for even longer until matters have been resolved, and so the process could end up taking years.

Are all of the decedent's assets subject to the probate process?

Not all assets will be subject to probate. For instance, if the decedent jointly owned assets such as property, bank accounts or anything with a contractual successor or beneficiary, these will not be subject to probate. Depending on the location of the decedent's residency and where the probate is handled, assets under a specified value (determined by the state) may also be exempt from probate.

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What happens if there is no will?

If there is no will, the probate courts will look to appoint an executor, and the appointed executor will be supervised by the courts in all financial matters and decisions.

If there is no executor as well as no will, the court will then appoint an estate administrator to deal with the matter.

What sort of fees are involved in probate?

The fees involved in probate cases include court fees, administration fees and legal fees. The actual cost will often depend upon the amount of work required e.g. the size of the estate, the time taken to settle the will etc.

Generally, fees are based on a percentage of the actual estate and are around the five percent mark in total.

What types of assets are normally dealt with through probate?

All manner of solely owned assets can be dealt with through probate, including property, land, business shares, jewellery, heirlooms, artwork and collections, cash and bank accounts and vehicles.

Where is probate normally handled?

Probate is usually handled by a probate court in the area in which the decedent lived (as a permanent resident) at the time of death. The probate court oversees the validation of the will, the appointment of an executor or administrator in the absence of a will, and the disbursement of assets in accordance to the will (if there is one).