

WHAT IS *PROBATE?*

Are you wondering how to handle the property of a deceased relative?

You may be initiating the process of probate. When someone dies with or without a will, there is a legal process to oversee the transfer of ownership. This process is known as probate.

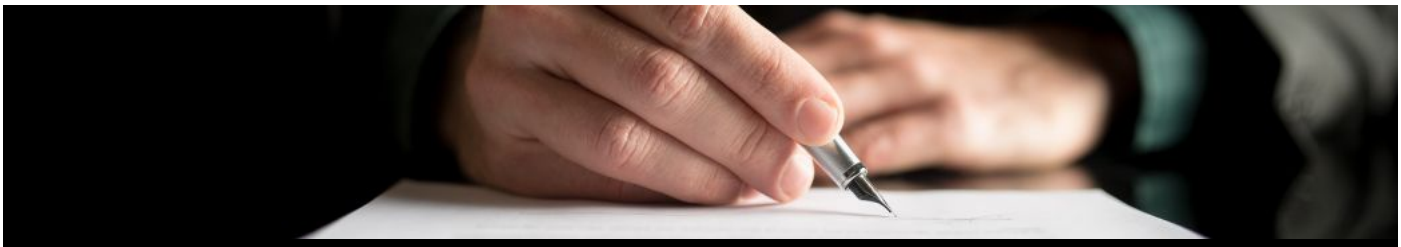
Probate is when the court oversees the transfer of legal title of a property from the deceased's estate to their beneficiaries. It can be a complex, stressful process for families, often requiring legal and professional guidance.

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Probate is when the court oversees the transfer of legal title of a property from the deceased's estate to their beneficiaries (usually relatives).

As part of the probate process, you need to:

- Prove the Will is valid to the court.
- Appoint a legal representative to act on behalf of the deceased
- Identify the deceased's property and have it appraised
- Pay any debts and taxes
- Distribute remaining property (or profits, if you sell the property) according to the Will

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IS PROBATE NECESSARY?

> Does all property go through probate when a person dies?
> The simple answer is no. Probate is not always necessary.

When is Probate Necessary?

The heirs of the deceased may decide to open probate for three reasons:

- There are debts owed.
- There is a need to set a deadline for creditors to file claims.
- There is a property to transfer (note: the probate process facilitates the distribution of the estate's property to the heirs).

When is Probate not Necessary?

- Some states also have differing requirements when it comes to defining probate estate, which refers to any property subject to the authority of the probate court.
- Very often, certain assets are defined as "non-probate estate." For non-probate estate assets, probate is not necessary. Different states define probate versus non-probate estates differently.
- The necessity of probate often depends on the state the deceased resided in.



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COSTS OF PROBATE

Probate costs are set by each state's law, and usually make up for at least 4% to 7% of the total estate value. These costs are a sum of the following:

- Appraisal costs
- Executor's fees
- Court filing fees
- Certified copies
- Costs for a "surety bond" insurance policy
- Legal and accounting fees



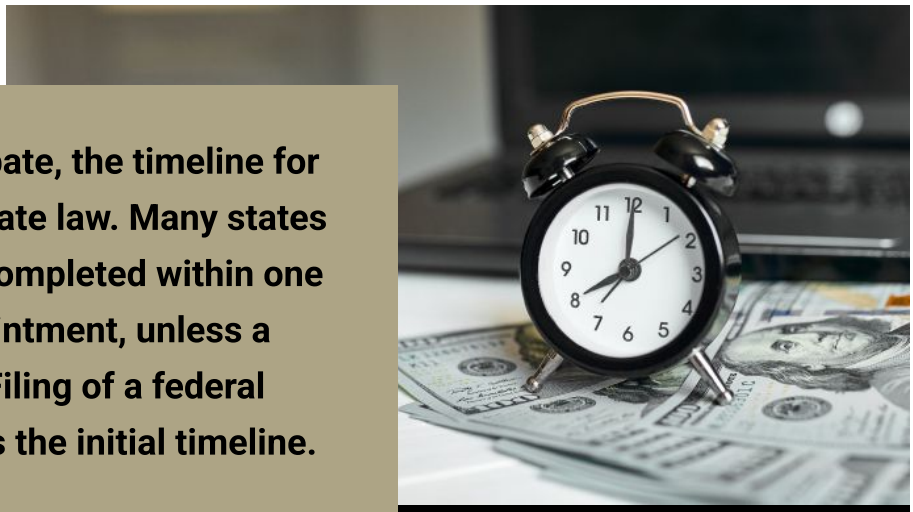
In addition to these predicted costs, if someone contests the Will, this process can incur an additional thousands of dollars in litigation costs.

Costs of probate should be considered by heirs when determining whether probate is necessary. These costs are essentially deducted from the final total distribution amount to the deceased's heirs. When the option presents itself based on the specific situation and type of estate, the costs of probate can be a reason to avoid probate if it is not necessary.



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TIMELINE FOR PROBATE



Similar to the costs of probate, the timeline for probate is dependent on state law. Many states say that probate must be completed within one year from the date of appointment, unless a federal estate tax is filed. Filing of a federal estate tax typically extends the initial timeline.

What can delay the timeline?

Several avoidable and unavoidable circumstances can delay the timeline of a typical probate process:

- The appointed administrator or executor of the estate is the cause for delay. In this case, the court can rule to appoint a new representative to aid in the process completion.
- There are unforeseen and unavoidable delays in the probate process, such as delays in the sale of a property or delays in the heirs' review of certain documents.
- The Will can be contested, as in a claim filed with the court that all or part of the Will is invalid.
- The size or complexity of the estate can take extra time.



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WHO IS IN CHARGE OF THE PROBATE PROCESS?

In probate, it's important to have an authorized representative or executor of the estate. In some cases, the Will defines this person and in other cases, the court appoints the deceased's closest relative as the representative.

If the deceased left no will, an estate administration process must go through the probate court. The court may appoint an administrator to manage the probate process.



The executor does not have to be a financial or legal expert in any way. However, the executor must assume fiduciary duties, which include having reasonable judgment and care when making decisions on behalf of the deceased.

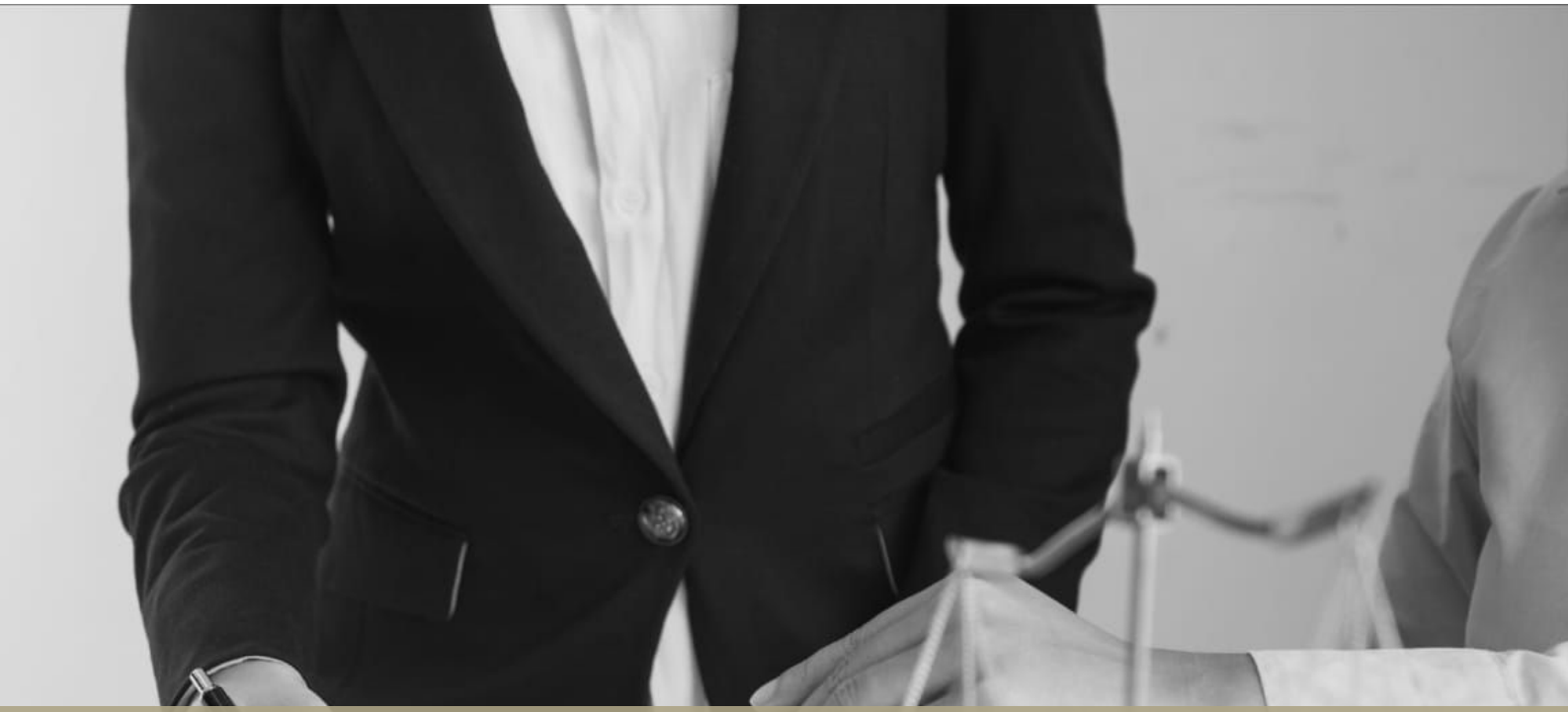
Once appointed, the executor or administrator is responsible for:

- Managing the estate
- Ensuring the wishes of the deceased are met fairly
- Distributing assets to the remaining beneficiaries
- Following the probate Rules of Court and procedures





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Most people don’t know about the probate process until family circumstances force them to learn about it. It’s common for the probate process to be complicated, especially when left without a will. If you find yourself unexpectedly involved in probate and considering the sale of a property, make sure you hire an experienced local realtor to support you. With years of experience guiding clients through the probate process, I can guide you and simplify the process from start to finish. Get in touch today!

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