

What is Probate?

Probate is the legal court process for paying a person's debts and expenses and distributing a person's property after that person's death. In a probate matter, the person who has died is called the "decedent," and his or her property is called the "estate." Usually, a decedent's debts are paid from the estate and any property remaining is divided among heirs or beneficiaries, according to a Will or according to state law.

Does having a Will help avoid probate?

Not necessarily. Probate is the process of determining the validity of the Will. If property needs to be administered or taxes paid, the existence of a Will does not avoid probate or increase probate expenses. When an owner of property dies, the probate court must decide that the Will is valid or determine who receives the property if there is no valid Will.

With or without a Will, your estate can end up in court.

If all property is held jointly or in trust, probate may not be necessary. However, probate avoidance may increase expenses and taxes and may not be desirable. The advice of a lawyer can help you decide the best plan for your situation.

When is probate necessary?

Minnesota probate law applies to people who lived in Minnesota when they died and to residents of other states who owned real estate in Minnesota. Whether a matter is "probated" depends on a number of factors, including the type of property and the nature of the ownership of that property. For example, unless real estate (a home, a cabin, a farm, etc.) was transferred into a trust or was owned as "joint tenancy" property with a right of survivorship, it usually is subject to the probate process. If you are considering a Will, you should consult with an attorney about the ownership of any real estate and whether there are advantages to certain types of ownership.

For personal property, an estate must be probated if the personal property is valued at more than \$20,000. If the decedent's estate is worth less than \$20,000, the decedent's legal heirs may be able to collect the property by affidavit, which does not require probate court involvement. Collection by affidavit allows for a small estate to keep its costs of administering the estate low.

What property does not need to be probated?

Non-probate assets include property owned as joint tenants, jointly held bank accounts, payable-on-death accounts, life insurance proceeds to a specific beneficiary, and pension benefits with a designated beneficiary. The law also provides for transferring a car without involving probate.

Transferring joint assets does not necessarily occur automatically upon a person's death. For example, to transfer real estate to the surviving owner, an affidavit of survivorship must be filed with the county recorder where the

property is. Other jointly held assets require filing specific forms and usually require a certified copy of the death certificate. Consult your attorney about how best to handle transfer of property at death.

What does probating an estate involve?

A personal representative is an individual or entity who is responsible for administering or "probating" the decedent's estate. Usually, if a person dies with a Will, the decedent has named a personal representative in the Will. If there is no Will or the decedent's Will did not name a personal representative, the court will appoint a personal representative from those who are nominated to serve as a personal representative.

A person—usually the person who will be the personal representative—initiates the probate process by filing legal documents with the probate court in the county where the decedent lived at the time of death. Once appointed by the court, a personal representative must take an inventory of all of the property owned by the estate and report that inventory to the court and to potential heirs or beneficiaries. Probate ends when all debts and taxes are paid and all assets are distributed to the people or organizations entitled to the assets.

Probate can be a formal or informal process. It can be supervised by the court or could proceed in an unsupervised process. Though there are legal exceptions, a probate matter must be filed within three years after the death of the decedent.

How does the personal representative know which type of probate process is appropriate?

The following are some of the factors to consider when deciding the type of probate procedure to use:

- Size of the estate
- Nature of your assets
- Complexity of issues in the estate
- Disputes among heirs, beneficiaries, or creditors
- Real estate to be distributed
- Beneficiaries who are under 18 years old
- Estate insolvency
- Out-of-state personal representative

How will the estate be distributed to heirs?

If a valid Will exists, the personal representative should distribute estate property according to the terms of the Will. If there is no valid Will, then the property will be distributed according to specific Minnesota laws about inheritance.

How much does it cost to probate an estate?

The cost of probate depends on the specifics of the situation involved. Generally, the expenses of settling an estate include the cost of a funeral, cremation or other ceremony, copies of the death certificate, attorney fees, accounting services, real estate transfer fees, court fees, notices to potential creditors and heirs, and personal representative fees. All of these expenses are paid from the assets of the estate before anything is distributed to the heirs.