

WHAT PROBATE IS AND HOW IT WORKS

Probate is the legal process in which the probate court authenticates a written document as the will of the deceased person and directs the distribution of the estate to the persons entitled to it, according to the will. If there is no will or if the will is declared invalid, the probate court distributes the property to the heirs entitled to it under state law.

Within 30 days after a person dies, the person named in the will as executor must offer it for probate. He or she does this by filing the will, a death certificate, and a petition to administer the estate. These are filed in the probate court in the county where the deceased person had his or her principal residence. To probate the will, the executor usually hires an attorney, whose fees are paid by the decedent's estate. If the person died without a will, the next of kin can file the same documents (except the will).

The close relatives of the deceased usually must be notified of the probate proceedings. A court hearing is held at which the executor must prove that the document is in fact the deceased person's will, that the person was of sound mind when he or she signed the will, and that the will satisfies all legal requirements. Most states permit a person who witnessed the will to sign an affidavit stating that he or she was present at the signing of the will, saw the person sign the will, and that the witnesses then signed the will.

After the will has been proved to be that of the deceased person, the court will have an order accepting the will for probate, and the executor is usually confirmed by the court. If the executor named in the will refuses to or cannot accept the position, the court will confirm the testator's second choice, or if there is not, appoint another person. If the person died without a will or if the court rules that the will offered for probate is invalid, the court will appoint an administrator of the estate, whose functions are the same as those of an executor. The administrator is usually the deceased person's next of kin – the person who will inherit all or the largest portion of the estate. Like the executor, the administrator generally hires an attorney to probate the estate; the fees, like those of the executor's attorney, are paid by the decedent's estate.

The executor (or the administrator) collects all of the decedent's assets, inventories them, and then has them appraised. Creditors of the decedent are notified so they can file their claims with the probate court. If a creditor fails to file a claim within the specified time, the claim is forfeited. If a creditor's claim is disputed, an amount sufficient to satisfy that claim may be put in a separate fund pending the outcome of the litigation, and the rest of the estate may be distributed.

After any challenges to the will and disputed creditor's claims have been resolved, the taxes, costs of administration (include fees to the executor or administrator and attorney), funeral expenses, creditors, and the like are paid. Finally, the remaining property is transferred to the persons named in will or entitled to it by law.