

What Is Probate?

After a loved one passes away, his or her estate often goes through a court-managed process called probate, or estate administration, where the assets of the decedent are managed and distributed. Whether your assets are large or small, the process can be very lengthy and complex.

If the estate is not automatically passed to the surviving spouse through joint tenancy, and is not held within a trust, it must go through probate. If the decedent died without a will, the probate court will appoint an administrator and the estate is distributed according to North Carolina law. If the decedent had a will, the named executor is tasked with following the instructions outlined in the will.

Through local court proceedings, the instructions of the decedent are interpreted so that all claims can be resolved and the assets can be transferred to the appropriate beneficiaries. There are technical components involved with probate administration. These include:

- Filing petitions to appoint personal representation and obtaining Letters of Administration
- Contacting creditors and issuing legal notices
- Following timelines for filing claims, and managing objections to claims filed against the estate
- Helping executors of the will understand creditors' rights, and guiding them through the process of distributing assets to beneficiaries
- Identifying and reviewing any lawsuits that are pending against the estate
- Selling real estate or other property to ensure correct asset distribution or to pay off debts
- Verifying that estate taxes, gift taxes, or inheritance taxes are within appropriate thresholds
- Deducting administrative costs and taxes from the estate before distributing assets to beneficiaries

After opening the probate case with the court, the executor or administrator ("personal representative") inventories and collects the decedent's property. He or she then pays any debts and taxes and distributes the remaining assets to the beneficiaries as defined in the will or North Carolina law. If the personal representative does not comply with fiduciary responsibilities, interested parties can petition for his or her removal and hold the personal representative liable for any harm to the estate. A party may challenge any aspect of the probate administration, which is known as a will contest. This can be based upon the status of the person serving as the personal representative, the identity of the beneficiaries, or concerns about how the estate is being administered.

Probate generally lasts several months, and often over a year, before all the property is distributed. Aside from joint tenancy with a surviving spouse, there are some additional situations where assets in an estate are not required to enter probate. Property that passes to another person contractually, such as an insurance policy or retirement account, is not subject to probate. Contractual property might name the beneficiary, be "payable on death", or be listed as "jointly owned with right of survivorship". As for real estate, an individual may add a joint owner to a deed by executing a life estate deed. The property can be passed down several generations. Another example of property exempt from probate would be assets held in a trust that was created during the decedent's lifetime. In the United States, these cases require no court action and the property is distributed privately.

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