

# How Probate Works

Probate is the legal procedure used to settle the estate of a deceased person. The "estate" consists of the property owned by the decedent at the time of death. This fact sheet provides a brief overview of the probate process.

## Who is responsible for administering my estate?

The person responsible for administering the estate is the "executor" or "personal representative." A will typically nominates the executor. If there is no will, the court will appoint someone to serve as executor.

## What does the executor do?

The Executor must:

- Safeguard and inventory the property of the estate;
- Submit inventories to the court, if required;
- Publish any required notices;
- Pay the debts and expenses of the decedent, including funeral and burial expenses;
- File necessary tax returns and pay required taxes;
- Pay fees and costs associated with probate and closing the estate;
- Distribute the estate to the beneficiaries.

## Where does the executor get the money to pay the debts and expenses?

The executor is authorized to use the estate's property and money to pay all fees, costs, debts, and expenses related to settling the estate. The executor is authorized use estate property to hire an attorney, accountant, or other professionals to help settle the estate. The executor may also request reimbursement for services rendered and for any out-of-pocket expenses.

## What if there isn't enough money to pay all the estate's debts?

If the estate does not have enough money or property to satisfy all the debts, the creditors cannot collect. The creditor will still be able to try and collect from any joint account holder, co-signor, or anyone else liable for the debt. Of course, if there isn't enough money to pay the debts, the beneficiaries of the estate will not inherit anything.

## What is the first thing the executor should do?

Once the executor is appointed by the court, she should make a complete inventory of the estate. This ensures that no property disappears and helps insulate the executor from accusations of pilfering the estate. The executor should keep complete records of all property that is sold or distributed. The executor **MUST NOT** commingle her funds with the estate's funds – sale proceeds, paychecks, rental income, and any other money received should be deposited directly into an account opened for the estate.



**What tax return does the executor file?**

Two or more types of tax returns may be required. If the decedent had any income in the year of death, then a federal income tax return is due. If the value of the estate is more than \$2,000,000, then a federal estate tax return is due. The executor should check the requirements of the decedent's state of residence to find out if a state income tax return or state estate tax return is required.

**What if the decedent died on active duty?**

The next-of-kin should contact the appointed Casualty Assistance Officer. There are many benefits available to soldiers, including special income tax breaks for soldiers who die on active duty, especially if the death was due to combat or occurred in a combat zone. A Casualty Assistance Officer will be of great help identifying available benefits. If one is not appointed, the next-of-kin should call the commander or legal assistance office and ask for one.

**How is an estate closed?**

After the Executor has paid all the appropriate debts and filed all the necessary tax returns, the estate will be cleared for closing. The final step is to distribute the remainder of the estate among the beneficiaries designated in the Will or the heirs-at-law if there was no Will. The executor should obtain a receipt from each person that is given part of the estate. After the executor has accounted for all assets and expenses, the estate is closed.

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