

FACTS

What is Probate?

Probate is a legal process that takes place after someone dies. It includes:

- proving in court that a deceased person's will is valid (usually a routine matter)
- identifying and inventorying the deceased person's property
- having the property appraised
- paying debts and taxes, and
- distributing the remaining property as the will (or state law, if there's no will) directs.

Typically, probate involves paperwork and court appearances by lawyers. The lawyers and court fees are paid from estate property, which would otherwise go to the people who inherit the deceased person's property.

Probate usually works like this: After your death, the person you named in your will as executor -- or, if you die without a will, the person appointed by a judge -- files papers in the local probate court. The executor proves the validity of your will and presents the court with lists of your property, your debts, and who is to inherit what you've left. Then, relatives and creditors are officially notified of your death.

Your executor must find, secure, and manage your assets during the probate process, which commonly takes a few months to a year. Depending on the contents of your will, and on the amount of your debts, the executor may have to decide whether or not to sell your real estate, securities, or other property. For



example, if your will makes several cash bequests but your estate consists mostly of valuable artwork, your collection might have to be appraised and sold to produce cash. Or, if you have many outstanding debts, your executor might have to sell some of your property to pay them.

Eventually, the court will grant your executor permission to pay your debts and taxes and divide the rest among the people or organizations named in your will. Finally, your property will be transferred to its new owners.

Probate rarely benefits your beneficiaries, and it always costs them money and time. Probate makes sense only if your estate will have complicated problems, such as many debts that can't easily be paid from the property you leave.

If you're in your 50s or older, in ill health, or own a significant amount of property, you'll probably want to do some planning to avoid probate.

Contact the elder law attorney at Connelly Law Offices to assist you with this process.



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