

Probating an Estate

“Probate” is the legal name of the process through which the property of a deceased person, “the estate,” is distributed after death. If a person dies possessed of real or personal property, an estate may be opened and a personal representative named. This person will be responsible for managing the affairs of the estate, paying the debts of the estate and distributing the property included in the estate.

If the decedent had a will, a petition will be filed with the probate court asking the court to determine if the will is the valid and true will of the person who is deceased. The heirs are those persons who would inherit the property of the estate in the absence of a will. These heirs and surviving spouse must be notified of the will and given an opportunity to contest the validity of the will. The spouse may also petition the court for the spousal share of the estate if necessary. A petition will also be filed with the court asking the court to grant Letters Testamentary to the executor nominated in the will. If the nominated executor is unable to serve, some other person as determined by law will be granted Letters of Administration with the Will Annexed. This person becomes the personal representative with the authority to act on behalf of the estate.

If the decedent dies without a will or “intestate”, a petition will be filed asking the court to appoint an Administrator. The Administrator will be granted Letters of Administration and will have the authority to act on behalf of the estate.

Notice must be given of the estate by publication for three weeks in a newspaper of general circulation. Actual written notice must be given to the known creditors of the decedent in order to give them an opportunity to file claims against the estate. Creditors must file claims either within six months of the grant of Letters or within thirty days of receiving actual notice which ever is later. If the estate is very large or there are income earning assets, the required taxes must be filed and paid.

A certain portion of a decedent’s estate is exempt from the claims of creditors and is for the benefit of the surviving spouse and dependents. Once this portion is distributed and the claims of creditors have been paid, the remaining assets of the estate will be distributed to either the beneficiaries named in the will or the heirs if there is no will. The estate can then be closed and the executor or administrator relieved of his or her responsibility for the estate. Complex estates can remain open for many years.