

Understanding the Basics of the Probate Process

Any property, asset
of age at +1
benefit

Last Will And Testament



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What is Probate?

Probate is defined as the process by which an official proves a will. A probate proceeding occurs after an individual's death. The court initiates a process to verify the validity of the individual's will. The review must be initiated in the state where the person lived at the time of their death. The probate court will supervise, distribute, and administer the decedent's estate. It will also settle any legal disputes regarding the estate. The executor (now called the personal representative) of the decedent's will is in charge of making sure all their affairs are settled, such as by settling their debts. During the probate proceeding, the executor of the will identifies the deceased person's property, pays off any debts, and oversees the distribution of the inherited estate.



Probate Process

Probate is a lengthy process, and the required time varies based on the state it is filed in and the decedent's living conditions/properties. Important factors may include the size of the estate, tax issues, amount of taxes and debts owed, number of heirs, and more. The probate process typically takes about two years beginning from the death of the decedent. However, depending on the case and specific issues, it could also take years or decades to conclude.

The basic probate process includes filing a petition, sending notice to creditors, heirs, and beneficiaries, collecting the probate property of the decedent, paying all debts, taxes, and claims owed by the estate, settling any disputes, and finally, distributing the property to designated beneficiaries.



Probate Process Timeline

1 - 4 months

File a petition for probate with a will and determine who the executor will be. Identify all heirs/ relatives and prepare death certificates with necessary waivers, and consents.

3 - 4 months

After receiving Letters of Administration from the Court, the executor will prepare for a court hearing on the petition for probate. They will issue relevant documents including the Letters of Administration, Letters Testimony, orders for probate, duties, and liabilities.

3 - 5 months

If required, issue a probate bond.

3 - 6 months

The executor must notify all creditors, beneficiaries, and heirs that the estate is in probate. They must also consult with an accountant on taxes and prepare the following forms: Federal Estate Tax return, Form 706, Form 1040, and 1041

6 - 12 months

If the decedent received medical benefits, the Department of Health Services should be notified. An inventory of assets should be filed/included in the estate. Additionally, property should be appraised in order to calculate the estate's value. These values will eventually be presented to the court. The executor must also accept or deny creditors' claims and decide how to pay the necessary bills, debts, taxes, estate administration costs, and family allowances.

Probate Process Timeline (continued)

7 - 15 months

File a petition for the final distribution and accounting of estate, determining the distribution of assets to beneficiaries and which property needs to be sold.

8 - 16 months

Tax clearance letters: pay creditor and tax bills in order to close the creditors' claims. Then, attend a hearing for the petition on the final distribution and accounting for beneficiaries, and wait for the order of approval.

9 - 24 months

Prepare the Beneficiary Agreement and final discharge order. Distribute last remaining assets or estate funds to the rightful heirs. Request for the estate to be closed after submitting records of the distributed estates in order to conclude probate.



Issues that May Occur

A will can be contested, which is a formal objection against the validity of a will. Contesters may argue that the decedent may not have been in a sound state of mind when creating their will or that they were influenced/controlled by others to manipulate their will. Additionally, contestants may question whether it can be proven that the will is indeed the last and final updated will of the decedent. This can complicate the probate process, especially without the help of a probate attorney.

If the decedent did not leave a will, it is hard to distribute the assets of a decedent who died without their wishes in writing. In the event that the probate court determines the will to be invalid, or if the decedent did not leave a will, the decedent's estate will be transferred according to the state laws of estate distribution. However, if a person dies with a will, the assets will be transferred to the beneficiaries designated on the will after it went through probate.

If the decedent's assets are not allocated and inventoried, or if the debts, taxes, and other fees have not been settled, then the decedent's estate cannot be distributed until they are settled.



Associated Costs

The probate process usually has monetary obligations that need to be paid out of the estate's assets before distributing the remaining assets to the named beneficiaries. Probate costs attribute to approximately 3% to 7% of the estate value, although that can vary based on many factors. These costs may include creditors' claims, debts, taxes, executor fees, attorney fees, court fees, appraisal costs, and accounting fees. Probate filing fees are charged by the court in relation to the value and size of the estate. The legal fees from meetings with attorneys usually follow a hourly fee, flat fee, and percentage. Fees vary according to an attorney's expertise in the field, experience, and location. The fee arrangements vary depending on your situation and the services that you request.



Frequently Asked Questions

When would probate be required?

Probate may still be required if you own any assets that were not transferred over to your living trust prior to decease. If you die intestate, or without a will, these assets will transfer to your closest heir as determined by your state's intestate succession laws. A safety net for this kind of situation is known as a "pour-over will," which allows for a decedent's assets that were not already placed into a trust to be transferred to their living trust after their death.

What is Probate?

Probate is the process by which an executor proves the validity of a decedent's Last Will and Testament in the Surrogate Court. The probate process only takes place after the decedent passes away, and can be a very complex legal proceeding that may take up to a year and a half in New York State. Getting through this process is extremely challenging, and retaining an experienced New York Probate Attorney can help make sure that the entire legal process goes smoothly.

How does a living trust avoid probate?

Most assets in a will face probate because after the testator's death, they are still in his or her name and need to be identified and collected before they can be distributed to the appropriate heirs. Once the assets are placed into a living trust, however, they are no longer property of the grantor (but that of the trust) and will no longer need to be collected since they will automatically become property of the beneficiaries upon the grantor's passing.

How long does probate usually take in NY?

Depending on its complexity and whether or not the will is contested, the probate process can last anywhere from several months to several years. On average though, a typical estate proceeding can take 8-12 months to be probated.



Hire An Attorney

Law Office of Inna Fershteyn and Associates, P.C. understands that the probate process is personal and tedious. The best trust and probate lawyers in New York will work diligently to ensure that individual concerns are carefully addressed and goals are met. With our extensive knowledge of trust and probate administration, we will work with you to develop a comprehensive estate plan and offer knowledgeable guidance that will give you peace of mind as well as secure your family's future. For help with the probate process, please call (718) 333-2394 to set up a consultation or contact us.



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