



BERRY LAW OFFICES

WHAT IS PROBATE?

Probate is a court proceeding by which a person's final debts are settled and legal title to property is formally passed from the decedent to his or her beneficiaries and heirs.

HOW THE PROBATE BEGINS

Usually, the probate proceeding is initiated in the county of the decedent's legal residence at the time of their death.

- A) If there is a Will. The original copy of decedent's will is submitted to court along with a petition or application to probate the will and appoint a personal representative. The will typically nominates a personal representative.
- B) If there is no Will. If there is no will, a person with priority of appointment must submit a petition or application requesting to be appointed as personal representative of the decedent. Most often, this is the personal representative is the surviving spouse or an adult child. If there is a dispute over who should serve as personal representative, the court may appoint a neutral personal representative who can be counted on to be fair. This person is paid an hourly fee from estate funds.

A personal representative's authority only extends to the "probate estate" - defined as property subject to the jurisdiction of the probate court. Assets disposed of outside the probate process are part of the "non-probate estate," and the personal representative has no control of these. An example would be a life insurance policy that has a beneficiary designation. If a decedent has probate property in another state, then that property must be subjected to ancillary probate in the other state.

The personal representative will file a Petition or Application for Probate and Appointment of Personal Representative. The petition or application will be filed at the county court administrator's office along with a certified copy of the death certificate and the original will, if there is one.

We will then publish and cause the notice of probate to be served in accordance with Minnesota law. Once submitted to probate, a will is a public record, and so are the subsequent filings with the court. These papers are open to inspection by anyone.

Depending upon whether we have initiated a formal or informal probate proceeding, a hearing date may be set for the personal representative to appear be formally appointed by a judge. At the hearing the court will review the will to determine its genuineness and validity as well as appoint a personal representative. The court issues an order appointing the personal representative.

Once appointed, the personal representative has full authority to administer the decedent's probate property and accounts. The court will issue letters of administration to the personal representative to reflect the personal representative's authority.

BASIC STEPS OF PROBATE



After we have received the documents from court appointing the personal representative appointed and commencing the probate, there are four basic steps of probate that we will assist you with. The difficulty of these steps vary greatly based upon the nature of the decedent's property and the reasonableness of the people involved, but it usually takes between six to twelve months to complete.

STEP 1. The first step is collection, inventory and appraisal of all assets that are subject to probate are taken. The values taken at the appraisal are based on the value at the date of death. One of the first duties that we will assist the personal representative with is to take an inventory of estate assets. These assets include real estate, personal property, investment and bank accounts, vehicles as well as funds that are owed to the decedent or the estate, e.g. loans, final paycheck, life insurance, or retirement account made payable to the estate. We will assist you in preparing this inventory so that it can be filed with the court within thirty days of being appointed as personal representative.

An estate checking account is created for the decedent's household final bills and estate expenses (e.g., attorney, appraiser). It is necessary to have the account set up so that check images are returned to the personal representative. This checking account is also useful for combining all the decedent's financial accounts into a single pot.

STEP 2. Paying the bills - taxes, estate expenses, and creditors of the decedent is the next step. The personal representative is not personally responsible for paying these expenses out-of-pocket if estate funds are not available provided the personal representative administers the estate in accordance with Minnesota law. The order of payment of claims against the estate is as follows:

- a) secured creditors;
- b) costs/expenses of administration;
- c) funeral expenses;
- d) debts and taxes;
- e) all other claims and creditors.

We will assist the personal representative in reviewing the decedent's final bills, debts and claims, to determine which bills are valid and then pay those and reject the rest.

We will assist you with the legal requirements pertaining to the allowance and disallowance of the claims. A creditor has four months from the time the notice of probate is published to submit a claim against the estate.

STEP 3. Formal transfer of estate property according to the will or by Minnesota laws on intestate succession (if there is no will).

When all rightful claims, debts and expenses have been paid, the remainder of the property is distributed by the executor as the will directs. At this point, if there is no will, the personal representative distributes property according to Minnesota intestate law. We will assist the personal representative to determine whether the personal representative should distribute the estate in cash or in kind (i.e., give away the property itself to the beneficiaries instead of liquidating the assets for cash).

Most wills allow the personal representative to sell or transfer real estate after a legally specified waiting period. The personal representative usually may sell or transfer the testator's (decedent's) personal property any time but may not begin final distribution of property or sale proceeds until after all expenses have been paid or pursuant to an order of court.



When the waiting periods have expired and all legitimate bills, debts, and taxes have been paid, what remains of the estate is available for distribution to heirs or beneficiaries. Only then will we assist the personal representative to make disbursements of cash, send copies of documents such as deeds and investment statements showing new ownership and transfer physical property to the respective beneficiaries.

STEP 4. The final step is to prepare and file the final probate documents closing the estate, including an accounting of all income, payments and distributions made collected or made by the personal representative. Depending upon whether an informal or formal probate had been commenced, once the judge approves the final settlement, the personal representative usually has no further duties and the estate is considered closed if it is a formal estate or administratively closed after one year of filing all closing documents if it was an informal probate.

THE DUTIES OF A PERSONAL REPRESENTATIVE

In most cases, the personal representative has discretion in how to handle the estate assets and the affairs of the estate. If there is a will, the intentions of the testator as expressed in the will should always be considered as well as the desires of the estate beneficiaries - when practical. For the sake of family harmony, a personal representative should be fair in the administration of the estate.

The personal representative should not act until the estate is probated as the personal representative does not have such authority until they are actually appointed by court. The personal representative should, however, maintain real estate or continue to operate a business.

If the personal representative is also a beneficiary under the will or an heir according to law if there is no will (e.g., an adult child), he or she is absolutely forbidden to "self-deal" or give anyone preferential treatment. Note that - absent his or her own negligence or wrongdoing - the individual serving as personal representative is not personally responsible for satisfying claims or lawsuits against the decedent or the estate itself.

The personal representative is responsible for prudently investing estate assets. The law imposes a fiduciary duty on personal representatives to act cautiously and always to have the best interests of the beneficiaries in mind. If this duty is violated and a loss or waste of assets results, the personal representative might be ordered to pay compensation personally (or as an institution) to the beneficiaries in this situation, as well.

However, the personal representative is not held responsible for a poor return on estate investments as long as any investments chosen by him or her are appropriate. For example, if a general market downturn decreases the value of the estate portfolio of "blue chip" stocks and bonds, the law would not hold the personal representative responsible. By contrast, if the personal representative lost money risky speculative investments or failed to get a reasonable return by leaving substantial assets in a checking account, these would probably be considered inappropriate, and he or she might be individually liable.

The personal representative's fiduciary duty also requires him or her to protect and preserve estate assets. For example, if estate funds were available but the personal representative neglected to pay an insurance bill and a fire loss to the decedent's home resulted, he might well be held liable to the beneficiaries.

A personal representative is entitled to reasonable compensation. The fee taken is must be listed on the final account and is, therefore, it is ultimately subject to approval by the court. Our fees,



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accountant's fees as well as any other professional fees will typically be paid or reimbursed out of the assets of the estate.

WHAT PROPERTY IS SUBJECT TO PROBATE?

A common misconception is that probate applies to all assets of the estate. Actually, probate handles only those assets within the probate estate. The estate is made up of all the property that's distributed through probate; the remaining property is referred to as nonprobate property.

In a general sense, probate assets are those owned by the decedent own alone, without any beneficiary designations, while nonprobate assets are owned jointly with others or have a beneficiary designation on them. Nonprobate assets passed automatically upon the decedent's death.