

Demystifying Probate - The Probate Process, Step-By-Step

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One of the most common goals of people as they grow older and build their assets is to avoid the probate process. Although it is not necessary a horrendous ordeal, it does have drawbacks, which include costs, its public nature, and the unavailability of assets for significant periods of time.

Many people consider it preferable to avoid the probate process altogether.

To Probate or not to Probate Your Will

Probate is the court's supervision of the process that transfers the legal title of property from your estate when you die to your beneficiaries. In short, the probate process proves the validity of your will. This counters the erroneous, but widely held belief that if you have a valid will, you will avoid probate. However, not all estates need to go through the probate process.

Any property that passes outside of your will is considered non-probate property. Any property that is held in trust or in joint names is also non-probate property. In addition, property passing by beneficiary designations to anyone other than your estate, such as transfer on death accounts, payable on death accounts, life insurance, annuities, retirement, and pension accounts are non-probate property. If all of your property is non-probate, there is typically no need to go through the probate process. However, if any asset is owned by you alone, without a joint owner, beneficiary, or held in trust, that asset is considered a probate asset must go through the probate process to reach its proper beneficiary.

The Probate of Your Will

To commence a probate action in Massachusetts, a petition to the probate court asking for the allowance of your will and the appointment of its executor are required. Until such time as the executor is appointed, he or she has no

authority to pay bills or distribute your property. In the event that you did not have a will, a similar procedure is necessary to appoint an administrator with power to handle your property. It is important to note that if your assets are below \$15,000, a shortened procedure called a voluntary administration may be possible.

An executor, or administrator, as the case may be, typically engages an attorney to prepare and file the petition for probate, the fiduciary bond, and other corresponding legal documents. After the petition is filed, the probate court will issue a formal notice that needs to be published in a local newspaper and sent to all heirs at law. This notice alerts any creditors and other interested parties that your will has been offered for probate. If no one objects to the allowance of your will or to the appointment of the nominated executor or administrator, the attorney requests the allowance of the will, for a judge to sign the fiduciary bond, and the appointment of the nominated executor or administrator.

Three months after the judge signs the fiduciary bond and the executor or administrator is appointed by the court, Massachusetts requires the filing of an inventory showing the probate estate held at the date your death. However, oftentimes an executor waits until the estate tax figures have been established before completing and filing the final inventory.

Massachusetts also requires an accounting at the end of administration of an estate providing all probate estate items received and distributed during the administration, income earned, and fees and expenses paid. Accounts are either prepared annually, or one account, called the first and final account, is prepared at the end of the administration. Typically, once the court allows the account, the executor's liability for the estate closes.

In sum, during the probate process, the executor typically performs the following tasks:

- Identifying and inventorying estate property;
- Paying estate debts, expenses of administration, and taxes;
- Distributing property as directed by a will or state law;
- Accounting to the probate court or beneficiaries for the collection and distribution of probate assets; and
- Preparing estate tax returns, if necessary.

The probate process is complicated, and it would behoove a petitioner to engage an attorney experienced in the field of Massachusetts probate law to facilitate the administration of the estate. The assistance of an attorney will help ensure that your own or a loved one's estate is handled in a proper and legal manner.

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