Published on *SeniorNavigator* (https://seniornavigator.org)

Probate 101: What It Is, and Why You Need It

We’ve all seen the movies – a rich grandfather dies, and every distant relation immediately begins plotting how to seize the estate to enjoy the spoils. The dry and often complex issue of probate isn’t even referenced. Probate may not make exciting movie plots, but that’s precisely what makes it effective. As a legal process, probate was created to protect the heirs and beneficiaries. Probate can be stressful for any real-life family. Here’s what everyone in the family needs to know about an estate in probate.

What Happens in Probate?

In simple terms, probate tallies all of the assets and the debts of someone who has died. It ensures that all the outstanding bills, personal and estate taxes are filed and paid. Then the executor or administrator distributes remaining assets, or the “residual,” according to the directives in the decedent’s Will (or state laws if there is no Will).

Every state has its own probate laws, but they’re all fairly similar. The key functions of probate court are to:

- Validate the Will, or apply intestate laws if there is no Will
- Appoint an Executor (or Administrator, if there is no Will)
- Oversee and managing all of the estate assets, following the Will or intestate law. Assets include financial accounts, personal property and real estate
- Certify creditor claims against the estate and ensure debts are settled.
- Approve the final distribution of the estate

How Long Does Probate Take?

Even the simplest estates may take months, at minimum, to settle. That’s because every state has a process and timeline for filings from creditors making a claim after someone dies.

Additionally, many states give potential heirs and beneficiaries a short time to contest the Will or the distribution of assets. If that happens, court procedures could drag on for years – without anyone inheriting anything during that time.

What Assets Can Be Excluded from Probate?

Even without a trust, there are some assets that don’t go in probate. For example, life insurance policies (with named beneficiaries still living) are separate from the estate. Benefits will go directly to the policy’s beneficiary. Also, most bank, brokerage and retirement accounts allow owners to designate beneficiaries in the event of the owner’s death. If the decedent took advantage of that option, those assets will also bypass probate.

Real estate held jointly with right of survivorship will pass directly to the co-owner. Because the primary house is often one of the largest assets in an estate, we’re seeing more and more families use this strategy because it ensures that the equity stays within the family and out of the reach of creditors.

Probate Isn't Always a Negative

There are plenty of reasons why the thought of being in probate worries family members. Probate can be time consuming, and beneficiaries usually don’t want to wait for their inheritance. But it can also give the family peace of mind that their loved one’s wishes were carried out. Plus, probate provides legal protection if creditors or would-be heirs show up to throw the estate plot off script.

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Article Source
WayForth
Source URL

https://www.wayforth.com

Last Reviewed

Tuesday, March 5, 2019