



Probate

What you need to know about administering an estate

What is probate?

Probate is a legal procedure for administering the estate of the decedent (the deceased person). Probate involves collection of all the decedent's assets; determination of the proper beneficiaries and notification of their interests; notifying and paying legitimate creditors; filing any required tax returns and paying any taxes due; and finally distributing the decedent's assets to the proper beneficiaries.

What are probate assets?

Probate assets include any assets that are titled in the decedent's name alone. A few common non-probate assets are joint bank accounts with rights of survivorship, property held in joint tenancy, property subject to a community property agreement, property held in a trust, life insurance and other assets and accounts that pass by contract or have some type of beneficiary designation. These non-probate assets pass outside of probate proceedings.

Is probate necessary?

Probate proceedings are not necessary for all estates. Factors including the value, nature, and titling of assets determines whether a probate is required.

Washington law provides a simplified procedure for the transfer of assets in a small estate when the value of such does not exceed \$100,000.

What if there is a will?

Any person in custody of a will must produce the will within 30 days of learning of the testator's death. Delivery of



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the will must be made to either the executor or the Superior Court.

The person named personal representative in the will should petition the court to be appointed personal representative of the estate and for letters testamentary and nonintervention powers. This will allow the personal representative to begin administering the estate without having to ask the court to approve every action taken thereafter.

What if there is no will?

If there is no will, then someone will need to petition the court for letters of administration and nonintervention powers in order to begin administering the estate. The terms personal represen-

tative and administrator are indicative of whether there was a will, but their functions are basically the same.

Where are the probate papers filed?

Probate proceedings for a Washington resident can be commenced by filing the necessary items in any Superior Court in any county.

If the decedent owned real property in another state, then the personal representative may be required to file an ancillary probate in that jurisdiction. That state's court would have jurisdiction over that property and the rules of that state would need to be followed with respect to that particular property.

What does a personal representative do?

The personal representative is the person that administers the estate. They owe fiduciary duties of loyalty and care to the beneficiaries of the estate. They have a duty to settle the estate and distribute the assets to the rightful persons in a timely and efficient manner.

They are responsible for:

- Notifying heirs and creditors of the probate proceedings
- Taking possession of, inventorying, and preserving the probate assets
- Valuation of the assets by appraisal or otherwise
- Collecting any estate income (rents, interest, dividends or debts owed to the decedent)
- Representing the estate in any challenges to the will and any pending lawsuits
- Timely filing any tax returns
- Paying valid creditors' claims
- Transferring title to real and personal property to the proper recipients
- Distributing the remaining assets to the designated beneficiaries or heirs
- Filing a Declaration of Completion of Probate with the court to notify third parties that the administration of the estate is complete

How do I properly notify potential creditors?

A creditor's claim is a debt of the decedent that existed at the time of his or her death. The personal representative must properly notify potential creditors and pay legitimate claims.

The personal representative may deliver notice, by hand or mail, or publish notice to creditors in a legal newspaper within the county of probate. This notifies creditors that they must bring their claims within four months of the first date of publication or one month after delivery of actual notice. If a creditor does not bring his or her claim within the statutory period, then

that creditor cannot collect on the debt. If the personal representative does not publish notice, potential creditors have two years within which to file their claims instead of four months.

What tax returns must be filed?

In most cases, the decedent's final Form 1040 income tax return must be filed for the partial tax year in which he died.

An estate is a legal entity, and if it has income of \$600 or more for the tax year or it has a beneficiary who is a nonresident alien, then it must file a Form 1041 estate income tax return.

In Washington, two types of transfer or "estate" taxes may apply: federal estate tax and the Washington state estate tax. The federal estate tax imposed on estates valued at an amount greater than the remainder of the decedent's lifetime exemption amount (currently \$5.25 million). Washington state imposes a transfer tax on estates valued at greater than \$2 million. This is a complex area of law, and if the estate may be subject to tax, you should contact an attorney.

How do I close the probate?

After administering the estate as discussed above, the personal representative should attempt to get each beneficiary or heir to sign a receipt and waiver indicating that he or she has received all the estate property to which he is entitled and waiving receipt of a copy of declaration of completion of probate. Then the personal representative should file the declaration of completion and the signed receipt and waivers with the court to formally end the probate process and close the estate.

How much will it cost?

The personal representative and his attorney have a right to reasonable compensation for their services. Costs can vary, ranging from a few hundred dollars to several thousand, depending on the complexity of the estate, including type of assets, claims by creditors, and the need to file tax returns.

For More Information

- Washington Probate
www.wa-probate.com

Attending to the details of a probate proceeding may be a complex and time-consuming task. A lawyer can help you navigate through the probate system.

This pamphlet was prepared as a public service by the Washington State Bar Association. It contains general information and is not intended to apply to any specific situation. If you need legal advice or have questions about the application of the law in a particular matter, you should consult a lawyer.

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