

Probate Administration Law

The probate process is a set of procedures in which a deceased person's will is declared valid by the probate court. The court then grants authority to the individual(s) named as personal representative(s) in the will to settle the estate and transfer the deceased person's property to the appropriate beneficiaries or heirs. Sometimes personal representatives are referred to as "executors" outside of Wisconsin. Personal representatives are usually entitled to 2% of the estate's value for the service and time they provide in managing the estate.

If the decedent does not have a will, then the probate judge will usually select one of the heirs to serve as the personal representative. The personal representative must follow the will's directions in distributing the assets, or else distribute the assets according to the default intestacy rules in Wisconsin if the person died without a will. These default intestacy rules usually give priority to surviving spouses, children, parents, siblings, and then more distantly related biological relatives in a descending order. For example, if a person dies with no spouse or children, and also does not have a will prepared, his parents would receive all of his estate's assets. If the person did not have parents either in the same situation, then his assets would be distributed to his living siblings. Once the assets have all been retitled and given to the appropriate beneficiaries or heirs, the personal representative must file a final account of the estate's assets to close the probate action. The final account lists the value of the assets and gives the court a record of how they were distributed.

Frozen Assets

If a deceased person gives away or otherwise legally transfers title to certain items of property before death, then those items are generally not considered part of the person's estate and are therefore not subject to the probate process. This often occurs when people designate beneficiaries on their investment accounts, such as 401k or IRA plans. Since the beneficiaries are already named on the accounts, the money can usually be distributed to them directly after the decedent has passed away without involving the probate court.

But sometimes a decedent's assets are essentially "frozen" after his or her death because the assets remain titled in the decedent's name. For example, a deceased person's bank account, safety deposit box, or home residence might be titled solely in that person's name. The bank often won't allow anyone to access the deceased person's funds or safety deposit box without official authorization from the probate court. In the case of a piece of real estate, the court must grant authorization to the personal representative to sign a new deed transferring the real estate to living heirs. The authorization itself comes in the form of domiciliary letters, which are official documents stamped by the probate court to empower the personal representative. The domiciliary letters allow the personal representative to access, move, and distribute all of the deceased person's assets freely.

Complicated Process

Probate administration can be a daunting and intimidating task for personal representatives to navigate, especially if any interested party decides to bring a claim to

challenge the will as invalid or otherwise disputes actions taken by the personal representative. Personal representatives have important fiduciary duties and can be penalized and fined by the probate court for not following the directions in the will or failing to conserve and maintain the estate's assets, among other things. If you are named as a personal representative and are confused about your responsibilities, contact a probate attorney to advise you.

Probate law involves a decent amount of accounting, as various forms that track and list the estate's assets and values must be filed with the probate court. It takes at least three-and-a-half months for a probate action to be completed, but they often take between six months to a year. A notice to creditors must also be published in a local newspaper, which alerts any creditors of the decedent that the estate has been opened in probate and claims may now be filed. Common third party creditor claims against the estate include unpaid hospital, ambulance, funeral, and credit card bills. The personal representative must pay these claims, if they are indeed valid, using the estate's assets. After three-and-a-half months, the creditor period will close and no further claims may be brought.

There are many other technical and specific probate documents that must be filed by the personal representative to move the process along and eventually close the estate. If you are confused about the formal procedures, contact a probate attorney to make sure all forms are completed accurately and correctly.

Will Contests & Other Disputes

Sometimes other family members, interested parties, or even heirs themselves file claims against the estate due to disagreements with the way the personal representative is handling the estate or to challenge the validity of the will. Will contests usually boil down to alleging that the decedent signed the will through undue influence of a third party, without the mental capacity to understand what he or she was signing, or without two uninterested witnesses present. If a will is successfully invalidated by the contesting party, then the estate will revert to being distributed under the default Wisconsin intestacy rules to biological heirs. It is unwise to enter any probate litigation without an attorney, so retain legal counsel as soon as possible if you find yourself defending or challenging an estate's administration.

Avoiding Probate

The main way to avoid probate is by having proper estate planning documents in place before someone's death. Transfer on death deeds can be used to quickly and efficiently transfer real estate from a decedent to his or her heirs without going through probate. Transferring assets into a revocable or irrevocable trust also avoids probate, since the assets are owned by the trust rather than the decedent or the estate. Simply gifting items away during one's life will also eliminate those particular assets from a later probate estate, however, there may be important tax implications to consider. If you would like to explore alternatives to probate, contact an estate planning attorney to make sure that your estate transitions smoothly and without the headache of probate court.

Transfer by Affidavit for Smaller Estates

A Wisconsin-specific alternative to probate is the transfer by affidavit document for estates valued at \$50,000.00 or less. This procedure allows an interested party to transfer title of the decedent's property without going through the probate process if the property is valued at \$50,000.00 or less in total. All an interested party must do is sign the document and list the decedent's property on the form. However, it is still important to consult an attorney when preparing a transfer by affidavit to ensure it is done legally and will be successfully accepted by banks and other institutions holding the decedent's assets. Many out-of-state financial institutions are skeptical or have not heard of Wisconsin's transfer by affidavit process before, and may ask for domiciliary letters and a probate instead.