

## A VERY BASIC EXPLANATION OF PROBATE FOR NON-LAWYERS

Probate is the act or process of proving a will is valid and reflects the true wishes of a deceased individual, identifying and inventorying a decedent's property, paying any taxes and debts and distributing the remainder to the beneficiaries named in the will or according to state law. An easy way to think of the probate process is as a script that guides the orderly transfer of an estate according to specific rules created by each state.

### **How does the probate process work?**

Probate works a little bit differently depending on which state law is being applied; however, it usually works like this: When someone dies, if they left a will, the person named in the will as the "executor" (or in some states the "personal representative") will need to file papers with the local probate court. When someone dies without a will, the court will appoint someone to act as the executor of the estate. Depending on the complexity of the estate an attorney may be necessary, and in any case hiring an attorney can help the executor navigate the sometimes complex web of rules that must be followed when probating an estate.

Once the court accepts the will as valid, and the executor is approved by the court, the executor must track down all assets that the decedent owned during life. Obviously, this can be quite a chore if the decedent did not leave details regarding owned stocks, bonds, financial institutions where accounts were held, insurance policies, etc- a major reason why planning during life can go a long way in helping loved ones after death. Once all assets are tracked down, the executor must take steps to appropriately secure and manage them while the probate process plays out (anywhere from a couple months to a year or more). The executor will then need to identify any debts that the decedent may still have held upon death, identify all beneficiaries, and notify any creditors that the decedent has passed away.

Creditors will then need to be paid out of the estate funds, after which the beneficiaries will receive anything that may have been left to them. Depending on the contents of the will, and on the amount of debts, the executor may have to decide whether or not to sell certain property to accommodate all creditors and beneficiaries. For example, if the will makes a number of cash bequests but your estate consists mostly of real estate, property might have to be sold to produce cash.

Once the court is satisfied that all creditors have been paid, all beneficiaries and assets have been identified, and all taxes have been paid, it will grant the executor permission to divide the remaining assets among the people named in the will (or if there is no will then to certain individuals based on state-specific laws).

*Michael F. Brennan is an attorney at the Virtual Attorney™ a virtual law office helping clients in Illinois, Wisconsin, and Minnesota with estate planning. He can be reached at [michael.brennan@mfblegal.com](mailto:michael.brennan@mfblegal.com) with questions or comments, or check out his website at [www.thevirtualattorney.com](http://www.thevirtualattorney.com).*

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By Michael Brennan