



## THE PROBATE PROCESS: WHAT YOU NEED TO KNOW

Many people are afraid of the mysterious Probate process. Here we will describe the nuts and bolts on how the process actually works in practice.

Generally, the probate process only applies to “probate” assets. **A probate asset is any asset that is not held in joint tenancy with someone else, in a trust or have a beneficiary or pay on death/transfer on death designation.** Typically, probate assets are an asset that someone holds in their own name and no one else's name. Keep in mind, each state has different rules to what assets are probate assets.

The document that controls the probate process is the will. The will contains the instructions on what happens during the probate administration and who gets the assets once the estate administration is complete. Persons who are named in the will are known as “legatees.” If a person does not have a will, the state usually has a default type of will that applies. If there is no will and you are entitled to estate assets under the default rules, you are called an heir.

### 1. Filing the Will and the Court Petition

Once a person with a will dies, the executor must file the will with the court. Then the process of transferring his or her assets to his or her legatees/heirs through the probate process begins with the filing of a petition to admit the decedent’s will to probate (or to administer the estate without a will), and to appoint a personal representative.

The petition contains factual information about the decedent and attachments to the petition lists any heirs or legatees. If the court approves the petition, it will accept the will for probate (or accept the estate without a will for probate), and authorize the personal representative to manage the assets of the estate. In general, the personal representative should not distribute the assets to the beneficiaries until the end of the process, which usually takes 6 to 9 months.

### 2. Notice to Interested Persons

The personal representative has a duty to seek out and inform interested parties that the decedent's estate is being administered. This is so heirs, legatees, and creditors can make claims against the estate, or challenge the will. As part of this responsibility, the personal representative is required to publish a notice to interested persons in a local newspaper once each week for three consecutive weeks.

### 3. Inventory

In some probate cases, especially the cases that a judge directly supervises, the personal representative must file with the court a list of the decedent's assets and liabilities within 60 days of being appointed. This is called the Inventory.

### 4. Six-month waiting period

The publication of notice in the newspaper starts a waiting period. During this time creditors, claimants, heirs, and other interested persons may present claims against the estate, or challenge the will. At the end of this time, the personal representative must file an affidavit with the court detailing the steps taken to seek out creditors and claimants.

### 5. Final Accounting

Once the creditor-claim period described above has elapsed, the personal representative may file a final accounting of the estate in an estate that is under supervised administration. In unsupervised administration, the administrator does not need to file the accounting with the court, but does need to give that accounting to the other interested parties.

### 6. Final Distribution of Estate Assets

Generally, once all parties agree with the final accounting, the executor distributes the assets in the estate to those who are entitled to receive the assets and then the estate is closed.

*There are many more steps in administering the estate, but these are the major steps that you should know. As always, you should consult with an attorney about the specific laws in your own state.*

*Courtesy of Ben A. Neiburger, Attorney, Generation Law*

