

The Problems with Probate

Many people have heard they should avoid probate, but few understand what probate is and how the process works.

What Is Probate?

Probate is the legal process that wraps up a person's legal and financial affairs after his or her death. During the probate process a person's property is identified, cataloged, and appraised. In addition, probate makes certain any outstanding debts and taxes are paid. It can be a complex process, filled with very specific legal requirements.

For example, if someone dies without a valid will, the probate court sees that the deceased person's assets are distributed according to the laws of the state.

If someone dies with a valid will, the probate court is charged with ensuring the deceased person's assets are distributed according to their wishes.

Probate Process

Probate can take a long time -- anywhere from a few months to more than a year. If there is a will, and one or more of the heirs chooses to contest the document, the process can take a lot longer.¹

Probate can be expensive. Even though probate costs are capped in some states -- they may reach between 5% of the estate's value. That's calculated on the gross value of the estate -- *before* taxes, debts, and other expenses are paid. And if probate process is challenged, the legal costs can rise.²

Finally, probate takes place in a public court. That makes everything a matter of public record; there is no privacy. Anyone who wants to can find out exactly what was left behind -- and how much each of a deceased person's heirs received -- can review the court records for the deceased person's estate.

Those who have concerns for their heirs' privacy may want to take steps to manage the probate process.

Every estate passes through probate following the person's death. Probate can be a public process that discusses all your assets, or it can be managed to include as little information as possible. When preparing your estate documents, consider how you want the courts to handle your personal finances after your passing.

Probate Fees

Both the lawyer and the executor are entitled to fees from an estate. In addition, there will be court costs, appraiser's fees, and maybe other expenses.

- Nolo

Fast Fact: Sounds like Latin

The word "probate" comes from the Latin verb "probatum" which means "to prove." Thus, when a will is probated, its validity is "proved" before a court, which then orders the terms of the will to be followed.

- Merriam-Webster

Property That Avoids Probate

Some assets can be structured so they may not have to go through probate. Here's a partial list:

- Property held in a trust.³
- Jointly held property (*but not common property*).
- Death benefits from insurance policies (*unless payable to the estate*).⁴
- Property given away before you die.
- Assets in a pay-on-death account.
- Retirement accounts with a named beneficiary.

^{1,2} Nolo.com

³Using a trust involves a complex set of tax rules and regulations. Before moving forward with a trust, consider working with a professional who is familiar with the rules and regulations.

⁴Several factors will affect the cost and availability of life insurance, including age, health and the type and amount of insurance purchased. Life insurance policies have expenses, including mortality and other charges. If a policy is surrendered prematurely, the policy holder also may pay surrender charges and have income tax implications. You should consider determining whether you are insurable before implementing a strategy involving life insurance. Any guarantees associated with a policy are dependent on the ability of the issuing insurance company to continue making claim payments.

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