



Estate Planning: Understanding Probate

When you die, you leave behind your estate. Your estate consists of your assets – all of your money, real estate, and worldly belongings. Your estate also includes your debts, expenses, and unpaid taxes. After you die, somebody must take charge of your estate as to settle your affairs. This person will take your estate through probate, a court-supervised process that resolves your financial affairs after your death. The proceedings take place in the state where you were living at the time of your death. Owning property in more than one state can result in multiple probate proceedings. This is known as **ancillary** probate.

This paper attempts to answer some of the most commonly asked questions concerning probate – the information provided covers the basics and is the tip of the iceberg for such a complex topic. Should you want to know more about probate and its correlation to estate planning we invite you to contact SOUND Wealth Management Group for a complimentary consultation.

■ How does probate start?

If your estate is subject to probate, someone (usually a family member) begins the process by filing an application for the probate of your will. The application is known as a **petition**. The petitioner brings it to the probate court along with your will. Usually, the petitioner will file an application for the appointment of an executor at the same time. First, the court will rule on the validity of the will. Assuming that the will meets all of your state's legal requirements, the court will then rule on the application for an executor. If the executor meets your state's requirements and is otherwise fit to serve, the court generally approves the application.

■ What is an executor?

The executor is the person whom you choose to handle the settlement of your estate. Typically, the executor is a spouse or a close family member, but you may want to name a professional executor, such as a bank or attorney. You will want to choose someone whom you trust will be able to carry out your wishes as stated in the will. The executor has a fiduciary duty – that is, a heightened responsibility to be honest, impartial, and financially responsible. Now, this does not mean that your executor has

to be an attorney or tax wizard, but merely has the common sense to know when to ask for specialized advice. Your executor's duties may include:

- Finding and collecting your assets, including outstanding debts owed to you
- Giving notice to your creditors (e.g., credit card companies, banks, retail stores)
- Paying any debts or other taxes
- Distributing your assets according to your will
- Inventorying and appraising your assets
- Filing an estate tax return and paying estate taxes (if any)
- Providing a detailed report of how the estate was settled to the court and all interested parties

The probate court supervises and oversees the entire process. Some states allow a less formal process if the estate is small and there are no complicated issues to resolve. In those states allowing informal probate, the court may be involved only indirectly. This may speed up the probate process, which can take years.

■ What if you do not name an executor?

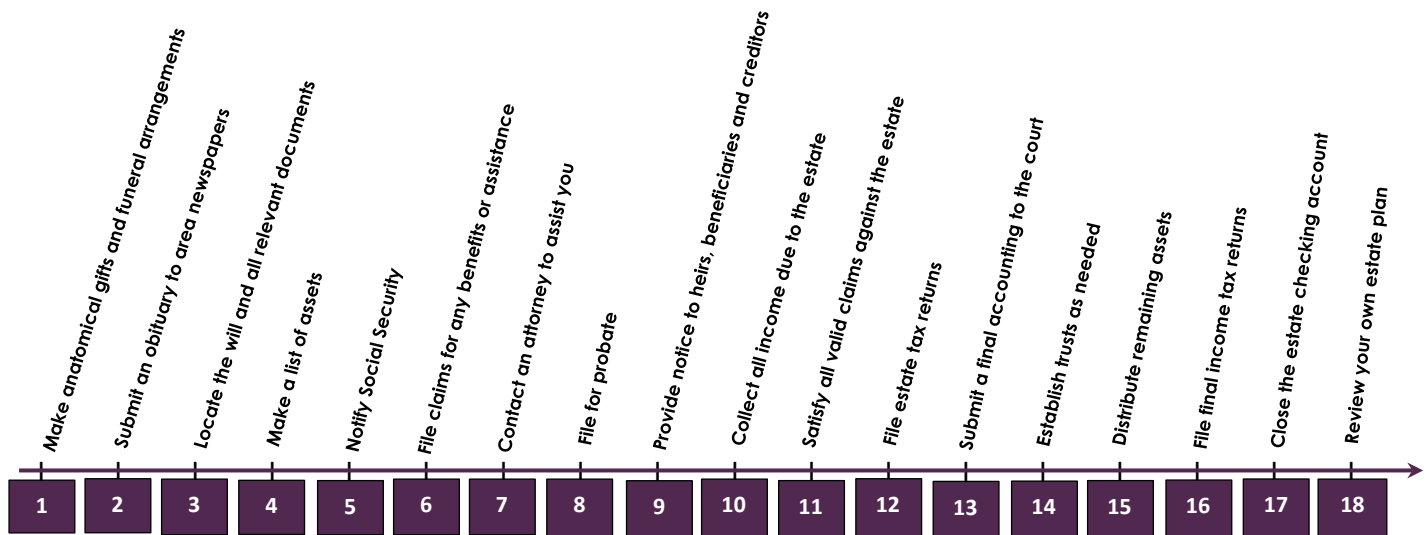
If you do not name an executor in your will, or if the executor cannot serve for some reason, the court will appoint an administrator to settle your estate according to the terms of your will. If you die without a will, the court will also appoint an administrator to settle your estate. This administrator will follow a special set of laws, known as **intestacy laws**, which are made for such situations.

■ Is all of your property subject to probate?

Although most assets in your estate may pass through the probate process, other assets may not. It often depends on the type of asset or how an asset is titled. For example, many married couples own their residence jointly with rights of survivorship. Property owned in this manner bypasses probate entirely and passes by "operation of law." That is, at death, the property passes directly to the joint owner regardless of the terms of the will and without going through probate. Other assets that may bypass probate include:

- Investments and bank accounts set up to pass automatically to a named person at death (payable on death)
- Retirement plans with a named beneficiary
- Life insurance policies with a named beneficiary (someone other than the estate)
- Other property owned jointly with rights of survivorship

The Probate Process



1. In the event the decedent made no provision for anatomical gifts, many states allow you to make that decision. In most jurisdictions, the funeral director can obtain certified copies of the death certificate for you (you will need several copies).
2. Word of mouth may not travel in time for the funeral.
3. Locate the will, birth certificate, marriage certificate, Social Security card, and any other relevant documents.
4. Note the location and value (you may need to retain an appraiser) of all real estate, insurance policies, jewelry, and other assets. Make sure assets are adequately insured.
5. Inform the Social Security Administration to stop payments that were being made to the decedent. Inquire about survivor's benefits.
6. Investigate the existence of any veteran's benefits, private pensions, or life insurance and make claims at this time.
7. Contact an attorney to assist you. He or she can help you determine whether probate is needed.
8. Petition the appropriate court for probate.
9. Place a legal notice in the paper to notify unidentified heirs and creditors. Contact named beneficiaries and known creditors directly.

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10. For example, if the decedent owned investment property, rents will need to be collected.
 11. This includes expenses, debts, and bequests (paid out in that order). Court permission may be required before writing checks through the estate account – keep meticulous records.
 12. The federal estate tax return is due nine months after the date of death. State filing deadlines vary, so check with the appropriate agency.
 13. This is necessary to close the probate proceedings and relinquish the executor's duties.
 14. Set up any trusts outlined in the will.
 15. Distribute remaining assets to all beneficiaries.
 16. The federal income tax return is due on tax day (typically April 15) of the year following death. State filing deadlines vary, so check with your local tax office.
 17. Notify the bank to close the estate checking account.
 18. Review and update your own estate plan.

Summary

When legal structure and documents are required please be aware that Sound Wealth Management Group (SWMG) can provide guidance, refer you to an appropriate trusted legal partner, or assist with your current trusted professionals. SWMG can help you cut through the possible confusion and make the best choice for your goals. If you have any questions regarding the probate process and your overall financial plan, we invite you to contact SWMG for a complimentary consultation. Let's have the conversation...



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