

14. Probate in the State of Washington

What Is Probate?

Probate is a court-supervised procedure that determines the ownership of property of a deceased person (a decedent). When a person dies, all property owned by him or her is subject to a legal proceeding under state law called “probate” unless the property is held in such manner as to pass directly to others at the decedent’s death. This direct passage is often called “passing by operation of law.” Property will pass by operation of law if it is subject to the following:

- A community property agreement that provides for the surviving spouse to receive the property
- Rights of survivorship, as is usually the case with “joint tenancy”

- A contractual beneficiary designation (e.g., life insurance, annuity, retirement plans, or IRAs)
- Other nonprobate transfers, such as a living trust

Chapter 15 describes some transfers that avoid probate.

Probate in the state of Washington takes place under the jurisdiction and supervision of the Superior Court in each county. The location for a probate proceeding is generally the decedent's county of residence or any county in which a nonresident owns property.

Why Is Probate Necessary?

The purposes of a probate proceeding are to permit the decedent's legal successor (personal representative) to:

- Take possession of the decedent's property
- Protect and preserve the property of the decedent
- Pay all debts, claims, and taxes and otherwise settle the decedent's affairs
- Determine who is entitled to the property and distribute it accordingly

The Responsibility of a Personal Representative

If the decedent leaves a Will, the Will usually designates a personal representative—referred to as an “executor” or “executrix”—to manage the property of the estate. The executor is confirmed by the court in the probate proceeding. If there is no Will, the court will appoint a personal representative—referred to as an administrator.

The personal representative, normally guided by a lawyer, is personally responsible for the proper handling and settlement of the estate in accordance with the terms of the Will and Washington probate law. Typically the personal representative will:

- Determine the names, ages, residences, and degrees of relationship of all heirs (determined by statute) and next of kin of the decedent and also the identity and addresses of beneficiaries named in the Will
- Notify heirs, beneficiaries under the Will, and creditors of the probate proceedings
- Take possession of, inventory, and preserve the probate assets of the decedent
- Collect all income, such as rents, interest, and dividends, and make demand for and collect all debts, claims, and notes due the decedent
- Complete any pending lawsuits in which the decedent had an interest and represent the estate in any Will contests
- Determine liability for, prepare tax returns for, and pay all state and federal inheritance, estate, and income taxes
- Pay the valid claims of creditors of the decedent
- When necessary, sell property to raise funds to pay any claims, taxes, or expenses of administration
- Transfer title to real property to the decedent's beneficiaries
- Transfer title to personal property, such as stocks and bonds, to the decedent's beneficiaries
- Distribute the remaining assets to the decedent's beneficiaries

Probate procedures in Washington are not complicated, but to achieve the desired results, they must be handled with an understanding of the underlying legal principles. These proceedings require the preparation and filing of legal documents and the holding of one or more hearings in Superior Court (even though these are usually uncontested).

What Is the Role of the Court?

All probate proceedings in Washington state are subject to the jurisdiction of the Superior Court. The day-to-day work of the personal representative, however, such as paying bills, settling uncontested claims, liquidating estate assets (where appropriate), preparing tax returns and paying taxes, is generally carried out without any intervention by the court. Sometimes disputes arise, uncertainty exists as to the proper meaning of a document, or the identity of a person entitled to share in the estate is unknown. At such times, if the interested parties cannot otherwise agree, the court will take testimony at a hearing and enter appropriate orders.

How Long Does Probate Take?

The initial step of petitioning for the admission of the Will to probate and court appointment of the personal representative is usually done by the personal representative named in the Will and takes place immediately following death. Following admission of the Will to probate (or the personal representative's appointment if there is no Will), the personal representative notifies the decedent's heirs and all persons named as beneficiaries in the Will. Usually, the personal representative will also file and publish a notice to creditors and send actual notice to known creditors.

The filing of state and federal death tax returns may be required. The due date for the returns and payment of any required taxes is no later than nine months after the date of death. Although a partial distribution of assets may be made before closing the estate, final distribution is generally delayed until any creditors' claim period has expired and until after tax clearances have been received. The tax clearances are not usually received for six to nine months after any death tax returns are filed. Closing the estate may take longer if there are tax complexities or difficulties in identifying and valuing property, or if property must be sold in order to pay the estate's obligations or to distribute cash to beneficiaries or heirs.

What Are the Fees and Costs?

The fee of the personal representative must be reasonable based on the type of work, its complexity, and the risks undertaken. The fee of the lawyer for the estate should be reasonable with regard to the fair value of the services actually performed for the personal representative. It is common today for lawyers to charge for their time on an hourly basis; however, some attorneys will fix a fee for a probate matter. The personal representative should always discuss the lawyer's fee at the time of his or her first meeting. The fees of the personal representative and the lawyer are subject to the approval of the probate court. There are no fee schedules or statutory fees for personal representatives or lawyers for Washington probate matters.

In addition to the personal representative's and lawyer's fees, there are certain costs associated with probate. Probate is a civil court matter, so there is a court filing fee, as well as costs to publish notices and costs for certified copies of court papers, if required. Publication costs can vary dramatically depending on the newspaper.