

Summary of Essential Probate Workflow

The administration of every decedent's estate in the probate court follows specific statutory procedures and timelines in order to settle the decedent's final affairs and distribute the estate as the decedent directed in a will, or as required by intestacy law if there is no will, all under judicial supervision and oversight.

The following steps outline the flow of work required to administer a simple estate in the probate court. There may be additional forms, papers or procedures may be required due to the particular circumstances of the estate.

1. Did the decedent leave a will? If there is a will, is it self-proving: this means that the witnesses signed after a statement that says that the formalities required for proper execution of a written will were followed. Is the person named to serve as executor able and willing to do so, or is an alternate needed?

2. Assets and Liabilities. What kinds of assets did the decedent leave and how is title held? "Assets" are any kind of property in which the decedent owned some interest, if not the whole thing. This may be real property, as in the case of a residence. It may be personal property in the case of bank accounts, brokerage accounts, tangible items, vehicles, etc. It may be a mixed form of property, such as a royalty lease on oil producing land. The decedent may own these assets exclusively or may be a joint owner with others. If the decedent was married, most or all of the assets may be community property. As you begin to discover what the decedent owned, you also will begin to collect bills and other indications of amounts the decedent may have owed to others at the time of death.

3. Initiate Probate by filing the Original Will and a *Petition for Probate* with the proper court. Probate may be conducted where the decedent resided and where the decedent left real property. This may be all in one community or in several locations. The *Petition for Probate* is a court form to which a copy of the will and any codicils are attached as well as any other information required for which there is not enough room on the court form. The purpose of the petition is (a) to ask the court to find that the Will (and any codicils) filed is the decedent's last will and that it was properly executed, and (b) to appoint someone to represent the estate. The estate representative is the executor (the person named in the will to serve as representative) or the administrator (when there is no will). The petition will be set on the court's calendar for a hearing. *Notice of the Petition* to administer the estate must be given to certain persons (usually relatives within the 2nd degree of kinship and anyone else named in the Will) and must be published in the newspaper in the community where the petition was filed.

4. The Hearing. A brief hearing on the *Petition for Probate* is held on the date and time assigned in the department of the court that handles probate matters. If the petition appears proper, the will is self-executing (see above), and notice was properly given, the petition will be granted unless someone shows up to object. Usually, we can determine if the petition has been preapproved ahead of the hearing date and, if it is, no one needs to show up at the hearing.

5. After the Hearing. You will prepare and submit an *Order for Probate* for the judge to sign. When the order is signed, the clerk will issue **Letters** to the personal representative when the form *Duties and Liabilities of Representative* has been filed. These forms may be submitted with the Order at the same time before or after the hearing (check local practices) and the clerk will return the completed forms to you. The Letters form represents your authority to act on behalf of the estate.

6. Collect the Assets. Your Letters allow you to take possession and control of all assets you have found (and may later find) belonging to the decedent. In some instances, you may be required to present a certified copy of your Letters form that you obtain from the court: a copy of the original Letters form certified by the clerk. It is convenient to open a bank account in the name of the Estate of the decedent in which you can collect and consolidate cash as appropriate. Because the estate is a separate entity for tax purposes, you will obtain a tax ID number from the IRS for the estate by filing IRS form SS-4 or applying on line. The bank will need that ID number for the estate account(s).

7. Claims. Creditors of the decedent (loans, credit cards, and any other amounts that were payable by the decedent at the time of death) have a brief period within which to file claims on their accounts. The Executor starts that period running by mailing notice to all known creditors on the Notice of Administration to Creditors court form together with a blank Creditor's Claim form. Claims discovered or presented later will be given the same forms. Creditors have a period of 4 months from the date your Letters were issued by the clerk to file a claim with the representative and the court. Claims arising or discovered later have a modified claim period. It is important to start the claim period as soon as possible so that you can conclude the probate without unnecessary delay after the 4 months has passed. If the estate has sufficient cash, the Executor can pay the estate's bills (for example, utilities, property taxes, court filing and document fees, etc.) without requiring claims. The expenses of administering the estate are not subject to the claims rules.

8. Inventory and Appraisal. All assets of the estate must be listed on an inventory and valued as of the date of the decedent's death. This entails a court form called the Inventory and Appraisal and any form attachments required to fully list the estate assets and their values. The Executor values all cash items on a separate attachment (date of death account balances, cash in the decedent's possession at the time of death, etc.), the Probate Referee assigned to your case (see the Order form) values the remaining items on separate attachment forms as needed. When ready, the completed *Inventory and Appraisal* and all attachments are filed with the court.

9. Accounting. At this point in a routine probate, the representative (Executor or Administrator) has done what is required to get the administration process moving along. If an accounting will be required, the representative needs to keep accurate records of receipts and expenses, beginning with the decedent's account statements at the time of death. If the accounting is not required (for example, all beneficiaries waive it), the representative should informally account to the beneficiaries to keep them informed of the nature of the estate and progress of the probate.

10. Report, Account and Petition for Distribution. As soon as the claim period has expired (including all shortened periods for late-arising claims), the representative can ask the court for permission to distribute the estate according to the decedent's wishes expressed in the Will or under the intestacy rules if there is no will. The representative will prepare and file a report on the administration of the estate, including the names and addresses of all beneficiaries and heirs, an accounting (if not waived), and the proposal for distribution of the estate. This is not a court form. The representative needs to provide certain minimum information in the report and petition for distribution that can be found in the Probate Code. The completed report and petition will be filed with the court and the clerk will set a date for the hearing. The representative will provide notice to all persons as required by means of a form called *Notice of Hearing* (Probate). Notice must be given no less than 15 days prior to the hearing date. If the report and petition is in order and proper notice has been given, the judge will pre-approve the orders requested unless someone shows up to object. In that case, no one needs to attend the hearing. The representative will prepare an order containing all factual findings and orders made by the court.

11. Distribution. Once the order is approved and signed, the representative has permission to carry out the orders made. These usually consist of the amount of compensation and

reimbursements allowed to the representative (and attorney) and specific instructions for distribution of the estate on hand. A form of Receipt for Distributions (not a court form) will accompany distributions by which the beneficiary acknowledges receipt of what was delivered to him or her by the representative.

12. Final Details and Closure. There often are bills, administrative costs and other miscellaneous items of business (including filing the decedent's final personal income tax returns and returns for the estate) that will be carried out for several weeks or months after the final order has been made. If the representative will need to reserve part of the estate to pay for anticipated items like this, the request will have been made in the final report and petition and authorized by the order. When the representative believes all details of the decedent, the estate and distribution have been completed; a request may be submitted to the court to be discharged as Executor or Administrator. This request is made on a court form that is submitted to the clerk for the judge to sign (the clerk will check the entire probate file to determine that all court procedures have been completed as required). This is the last paper in the probate file and signifies the conclusion of the estate's administration.

These are the steps and procedures to administering an estate through the probate process. Your use of an experienced probate attorney will make this a much easier task to handle so that you understand what you are required to do, your papers are prepared properly, and answers to questions about the process, procedures and outcomes can be readily available. Keep in mind that a simple probate can quickly become complex, demanding and frustrating. You must have the ability and patience to work through these steps if you are going to accept the job of Executor or Administrator.