

What is Probate?

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Harrison Herald

Probate is the process by which a deceased person's property, known as the "estate," is first used to pay the decedent's debts and the cost of the administration of the estate, and then the balance is passed to the decedent's heirs and legatees (people named in the will). The entire process, supervised by the Surrogate's court, usually takes several months, sometimes longer. However, substantial distributions from the estate may be made in the interim.

What property is subject to the probate process?

The probate estate includes all property held in the decedent's name. Certain kinds of property, such as property owned jointly by the decedent and another person, real estate, life insurance, retirement plan assets and property held in trust, are not part of the probate estate and are not subject to the probate process. In New York, unless the will directs the executor to sell the decedent's real property, the real property passes directly to the beneficiaries named in the will and is not part of the probate estate. Jointly owned bank accounts pass automatically to the surviving joint owners upon death of one of the owners without going through probate. Retirement plan assets pass to the designated beneficiary without going through probate. The non-probate property however, is part of the decedent's taxable estate.

How is the probate process started?

First, the original will, probate petition, and a certified death certificate are filed with the Surrogate's court. Thereafter, the court appoints the executor named in the will. Unless surety is waived in the will, the executor must post bond for his promise to faithfully administer the estate. The executor must mail notice of the probate proceeding to all of the decedent's heirs at law (usually the surviving spouse, children, and children of any deceased children), and to those persons named as beneficiaries in the will.

What does the executor do?

The executor is responsible for collecting the probate property and paying the debts of the estate. If the value of the decedent's taxable estate exceeds \$1.5 million, then the executor must file an estate tax return within nine months of the date of death. This is true even if no estate tax is owed. In New York, estates valued at \$1 million and greater are subject to New York's estate tax. Income tax returns may also be required for the decedent and the estate. Being an executor is not like being a godparent. It brings real responsibility and requires difficult and tedious work. In summary, among other responsibilities, an executor of an estate must

- Arrange for the will's probate;
- Pay the estate's expenses;
- Pay the decedent's debts;
- Collect all debts owed to the estate;
- Keep complete and accurate records of all the estate's transactions;

- Collect, value, inventory, and protect all the estate's assets;
- File all necessary tax returns;
- Prepare an accounting for the probate court and the beneficiaries;
- Distribute all estate assets as directed by the will.

Depending largely on the size of the estate, a professional or corporate executor may be the best choice, but that adds extra expense. Many people, especially those with smaller estates, choose a close and trusted friend or family member as executor. Invariably, if the executor has little experience with estate administration, he or she will need some guidance. Remember, as an executor you are acting as a fiduciary and are held to a very high standard of care.