

to the terms of the will. If there is no will, the estate property will be distributed according to inheritance laws, which vary from state to state. The law in Minnesota is rather complicated; it looks at factors such as whether there is a surviving spouse and whether there are children of both the deceased and the surviving spouse. You should consult a lawyer to determine exactly how your estate will be divided if you do not have a will.

How long does probate take?

The timetable for probate varies, but generally probate in Minnesota takes at least five months. Factors that affect the amount of time necessary include which type of probate process is used, whether an estate is subject to estate tax, and whether there are any claims against the will.

Does having a will help avoid probate?

No. Probate is the process of settling your estate after you die. If there is property to be administered or taxes to be paid, having a will does not avoid probate nor does it increase probate expenses. Whenever the owner of property dies, the probate court must either decide that the will is valid or determine who is to receive the property if there is no will. That means that with or without a will you could end up in court.

If all of your property is held jointly or in trust, probate may not be necessary after your death. However, probate avoidance may increase expenses and taxes and may not be desirable. The advice of a lawyer can help you decide the best plan for your particular situation.

This pamphlet contains general information and not legal advice. It is based on Minnesota law in effect at the time of writing. An O'Brien & Wolf lawyer can advise you about how the law applies to your specific situation.

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Probate



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When is probate necessary?

Minnesota probate law applies to the estates of people who were residents of Minnesota at the time of their death. Probate also applies to residents of other states who own real property in Minnesota. The need for probate depends on what property you own and whether you own it alone or with others.

Real Property. Real estate must be probated unless it is owned in joint tenancy with right of survivorship or placed into a trust. (Joint tenancy means that the property is owned by two or more people who have an undivided interest in the property, and that interest continues in the survivors after the other owners die.)

Personal Property. If your personal property is valued at more than \$20,000 or you own real estate in your name alone, your estate must be probated. If, however, your estate is worth less than \$20,000, your heirs may be able to collect the property by using an Affidavit for Collection of Personal Property, which does not require any court involvement.

What does “probating” an estate involve?

The personal representative you name in your will is responsible for probating your estate. If you have no will or did not name a personal representative, the court will appoint one for you. The personal representative starts the probate process by filing an application with the probate court in the county where you lived at the time of your death.

Probate can be a formal or informal process, with or without the supervision of the court. Probate proceedings generally must be initiated

within three years after the decedent's death. The range of probate procedures includes (1) formal, court-supervised proceedings, (2) formal proceedings that are not supervised by the court, (3) informal proceedings by the Probate Registrar rather than the court; and (4) summary proceedings.

How does the personal representative know which type of probate process is appropriate?

The following are some of the factors to consider when deciding which type of probate procedure to use:

- size of the estate
- nature of the assets
- complexity of issues in the estate
- likelihood of disputes among heirs, will beneficiaries, and creditors
- whether any real estate is to be distributed
- minor beneficiaries
- estate insolvency
- out-of-state personal representative

Are there some types of property and assets that don't need to be probated?

Yes. These types of property and assets include property owned as joint tenants, jointly held bank accounts, payable-on-death accounts, life insurance proceeds to a specific beneficiary, and pension benefits with a designated beneficiary in the event you die. There also are provisions for transferring a car without going through probate.

What are the duties of a personal representative?

The main tasks of a Personal Representative are to:

- determine if there are any probate assets
- identify, gather, and inventory the assets of the deceased
- receive payments due the estate, including interest, dividends, and other income (e.g., unpaid salary, vacation pay, and other company benefits)
- set up a checking account for the estate
- figure out who is going to get what and how much under the will (if there is no will, the state's “intestate succession laws” apply)
- value or appraise the estate's assets
- give legal notice to potential creditors (the procedure and deadlines for creditors to file claims vary from state-to-state)
- investigate the validity of all claims against the estate
- pay funeral bills, outstanding debts, and valid claims
- pay the expenses to administer the estate
- handle various paperwork, such as discontinuing utilities and charge cards, and notifying Social Security, Civil Service, and Veterans Administration of the death
- file and pay income and estate taxes
- distribute the remaining property in accordance with the instructions provided in the deceased's will
- close probate

How will the estate be distributed to heirs?

If there is a will, the personal representative should distribute the estate property according