

The Probate Process

What is the probate process?

Probate is the process by which a deceased person's property, known as the "estate," is passed to his or her heirs (relatives who would inherit with or without a will) and legatees (people named in the will). The entire process, which is supervised by the Orphans' Court for the County in which the decedent resided, usually takes about a year. However, distributions from the estate can sometimes be made in the interim.

What property is subject to the probate process?

The probate estate includes all property titled in the decedent's sole name. Certain kinds of property, such as property owned jointly by the deceased and another person, life insurance, annuities, and property held in trust, are not ordinarily part of the probate estate and, as such, are not subject to the probate process. For example, jointly owned bank accounts pass automatically to the surviving joint owners upon the death of one of the owners without going through probate. Non-probate property, however, is part of the decedent's taxable estate (see below).

How is the probate process started?

First, a petition for probate of the will must be filed with the Orphans' Court or Register of Wills, along with the original will and a certified copy of the death certificate. Notice must be mailed to all of the decedent's heirs-at-law (usually the surviving spouse, children, and children of any deceased children), to those named as beneficiaries in the will, and, if a charity is involved or there are no heirs at law, to the Attorney General. Notice must be also published in a local newspaper. If no one objects by a deadline set by the court, the Personal Representative (executor) named in the will is appointed by the court.

What does the Personal Representative (PR) do?

The PR is responsible for collecting the probate property and for paying any debts of the estate. The PR must file with the probate court an itemized list, known as an *Inventory*, of the probate property, including the value of each item as of the testator's date of death. The PR must file an estate tax return within nine months of the date of death. This is true even if no estate tax is owed, if the decedent owned real estate or the PR wants his or her final accounting (see below) allowed by the probate court. Creditors of the estate have six months from the appointment of the PR to bring claims against the estate. PRs generally wait until this claim period has expired to complete distribution of the estate according to the terms of the will. As his or her final responsibility, the PR must file an accounting with the probate court showing the income and expenditures of the estate administration.