

THE PROBATE PROCESS

What is the probate process?

Probate is the process supervised by the probate court by which a deceased person's property, known as the "estate," is passed to his or her heirs and legatees (people named in the will). The entire process usually takes about a year. However, substantial distributions from the estate can be made in the interim and non-probate property may pass to designated beneficiaries with no wait.

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 deceased and another person, life insurance, and property held in trust, are not part of the probate estate and 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. The 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 probate court, 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 executor named in the will is appointed by the court.

What does the “executor” or “personal representative” do?

The “executor” or “personal representative” is responsible for collecting the probate property and for paying any debts of the estate. The personal representative must file with the probate court an itemized list, known as an "inventory," of the probate property, including the value of each item. The personal representative 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 personal representative wants his or her final accounting allowed by the probate court. Creditors of the estate have one year to bring claims against the estate. Personal representatives 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 personal representative must file an accounting with the probate court showing the income and expenditures of the estate administration.

What about taxes?

The personal representative is also responsible for filing the decedent’s final income tax return and, in some instances, an estate tax return. As of January 1, 2011, the threshold for federal estate taxes is \$5 million, so it applies to very few estates. But the threshold for Massachusetts estate taxes is \$1 million, which means that a return will have to be filed for many deceased residents of Massachusetts and for non-residents owning property in the state.