



Probate is the court-supervised process of gathering a deceased person's assets and distributing them to creditors and inheritors. Every probate court has its own detailed rules about the documents it requires, what they must contain, and when they must be filed. Bearing in mind that no estate is perfectly typical, here is an outline of the probate process.

Initial Steps

The process begins by filing an Application For Authority To Administer Estate and appoint an Executor of the estate with the court. An Executor may need to:

- File a request (called a petition or application) for probate in the county in which the deceased person was living at the time of death. The Executor will also need to file the death certificate and the original will (if there is one) with the court.
- Publish a notice of the probate in local newspaper according to court rules. Mail notices to creditors the Executor know about.
- Mail the notice to beneficiaries and heirs, as required by the court.
- File proof that the Executor properly published and mailed the notice.
- Post a bond (if required by the court), which protects the estate from any losses the Executor cause (up to a certain dollar amount). The amount of the bond depends on the size of the estate.
- Prove the will's validity by providing statements from one or more witnesses to the will. This is often done by submitting the "self-proving affidavit" that was signed by the witness in front of a notary at the time the will was signed.
- File other documents required by the court.

Administering the Estate

The Executor is in charge of keeping estate property safe during the probate process. They will prepare a list of the deceased person's assets and, if necessary, get assets appraised. The Executor will need to:

- Get an employer identification number for the estate from the IRS.
- Notify the state health or welfare department of the death, if required by state law.
- Open an estate bank account.
- Arrange for preparation of income tax returns.
- Prepare and file an inventory and appraisal of estate assets.
- Mail a notice to creditors and pay debts (state law may impose a deadline on the Executor).
- If the court requires it, file a list of creditors' claims the Executor have approved and denied.
- If required, file a federal estate tax return within nine months after death. (Most estates are not large enough to owe federal estate tax).
- If required, file a state estate tax return, usually within nine months after death. (Fewer than half the states impose their own tax.)

Closing the Estate

After the creditor's claims have passed, all debts have been paid, tax returns have been filed and all disputes have been settled, the Executor can distribute all remaining property to the beneficiaries. This could include:

- Mailing a notice to heirs and beneficiaries that the final hearing is coming up. (This must be done a certain period of time before the hearing; the court will have a rule.)
- Filing proof that the Executor mailed the notice as required.
- Getting the court's permission to distribute property.
- Transferring assets to the new owners and getting receipts.
- Upon distributing assets and concluding all matters, filing receipts and asking the court to release the Executor from the Executor duties.

Cost of Probate

There can be several cost associated with probating an estate.

- Court cost for filings; these can range from \$50-\$500+ depending on the court and the estate.
- Executor's fee; this is a fee paid to the Executor to administer the estate. When the Executor is a family member, they usually waive this fee, but not always. It will usually be set by the county court and can range from a set percentage of the probatable assets to a fixed hourly fee.
- Attorney fees; everything discussed above is usually done with the help of the attorney. Most courts have strict rules on attorney fees. They can be charged in a number of ways, for example in Geauga County, they have to be just and reasonable; in Cuyahoga County, they are charged on a sliding percentage scale:
 - For the first \$100,000 at a rate of 4%;
 - From \$100,001 to \$400,000 at a rate of 3%;
 - For \$400,001 and above at a rate of 2%
- Appraisal fee; paid to appraiser for any assets that do not have a readily ascertainable value or for any asset where there is a dispute over the assets value. This is also set by the probate court handling the estate.