

legal links

WHAT IS PROBATE?

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What is probate?

Probate is a process in which the court decides who receives assets that were owned by a person who has died. Assets are anything a person owns with value, such as property, cash, etc.

When is probate needed?

Probate is not always necessary. If the deceased person owned bank accounts or property with another person, the surviving co-owner will then own this property automatically. If a person dies leaving very little assets, such as personal belongings or household goods, these items can be distributed among the person's heirs without the supervision of the court.

Sometimes probate is needed to:

- Collect debts owed to the deceased person.
- Clear title to land or stocks and bonds, or large bank or savings and loan accounts that were held in the name of the deceased person only, and pass title of these assets to the heirs.
- Settle a dispute between people who claim they are entitled to what the deceased person left behind.
- Resolve any disputes about the validity of the deceased person's will.

What happens during the probate process?

- A personal representative is selected.
A personal representative is someone who handles the deceased person's affairs. The person is either selected by the deceased person in his or her will or by a court. If a person dies without a will, the personal representative is usually the spouse, child or close relative. If none of those people are available or willing to be the personal representative, the court may choose a bank, trust company or lawyer.
- The will is proved and delivered to the court.
The deceased person's will is proved by a written statement made under oath by the witnesses to the will. At the time the will was created, there must have been two witnesses who signed the will in the presence of each other. Each witness must be able to testify that at the time the will was signed, the deceased person was of sound

mind and knew what he or she was doing. If someone has the deceased person's will, he or she must deliver it within thirty days to the personal representative or to a court (this is required by Oregon law).

- An inventory of assets is given to the court. The personal representative gathers together information about the deceased person's assets and gives the inventory to the court. The personal representative may sell some assets if expenses need to be paid, and if selling the assets is not against the will.
- A notice to creditors is published in a local newspaper. This public notice to creditors tells the creditors that they have four months to bring any claim against the estate for debts the deceased person owes them. The personal representative also gives written notice to all known creditors and those who may be possible creditors.
- The heirs and people named in the will are notified of the probate proceeding.
- The personal representative collects debts that are owed to the deceased person.
- The personal representative prepares state or federal tax returns and any inheritance, gift and estate tax returns and pays the taxes.
- The court approves the inventory of assets. After approval by the court, the deceased person's assets are distributed to the people and entities (such as charities or trusts) named in the will or to the heirs of the deceased person.

What is the role of the court?

- The court makes sure that creditors are notified and their claims are settled. (Clearing such claims is an important reason for court supervision.)
- The court examines the will and the statements of the witnesses to make sure that the will is valid.
- The court makes sure that proper receipts are filed for all expenses taken from the estate during probate.
- The court makes sure that all Oregon income taxes are paid.
- The court makes sure that all assets are distributed to the people who are supposed to receive them.

What is a “small estates” proceeding?

Oregon has a “small estates” proceeding. If an estate fits in this category, the cost and time for distributing the estate is greatly reduced. A small estate proceeding applies to you if: 1) your total assets are \$140,000 or less; 2) your real property is less than \$90,000; and 3) your personal property is less than \$50,000. Real property includes land and buildings or structures placed on land, such as houses, commercial buildings and agricultural buildings. Personal property includes all other property, such as cars, boats, clothing, stocks, bonds and personal items.

How long does probate take?

Probate can be started immediately after death. The process will take a minimum of six to nine months. If the estate includes property that must be sold, or if there are complicated tax matters, probate can last much longer. However, a small estate proceeding will only take four to six months and can be handled informally.

What are the costs involved?

A personal representative will earn a fixed percentage of the value of the total estate. Extra costs may be approved by the court for the personal representative and a lawyer if the estate is complicated. Other costs include court filing fees, legal notices published in the local newspaper and any other necessary expenses.

Does probate mean more taxes?

Probate does not affect taxes that must be paid. Federal and Oregon estate taxes apply only to estates that have a value greater than \$675,000 (for the years 2000 and 2001).

Do I need a lawyer?

Probate in Oregon is not complicated but involves a good deal of paperwork that must be filed in a timely manner. To achieve the results you want, probate should be handled with an understanding of the legal principles involved. A probate lawyer can help you avoid the many possible tax traps and other problems that could arise. Also, a lawyer can help you prepare and file the legal documents and prepare you for hearings in the court.

Estate Planning Topics on Tel-Law

The bar's Tel-Law Program provides a collection of free, general legal information recordings accessible to the public by phone. Recorded and available 24 hours-a-day, taped selections of general information span more than 100 different legal topics. Some recordings are offered in Spanish and Vietnamese. Tel-Law scripts are revised following each legislative session. Tel-Law pamphlets are free and list all recorded topics. To access Tel-Law recordings, call **503-620-3000** in Portland or **800-452-4776** elsewhere in Oregon. Tel-Law scripts are also available on the bar's web site.

The following is a list of estate planning topics you can find on Tel-Law:

- 800** Your Will
- 801** What is probate?
- 802** What taxes have to be paid if someone dies?
- 803** What is a trust?
- 804** What is a living will?
- 805** Estate planning for parents of the disabled
- 806** Powers of attorney and other decision-making tools

For more information
contact us at

www.osbar.org

or P.O. Box 1689

Lake Oswego, Oregon 97035-0889



This pamphlet, based on Oregon law, is issued to inform, not to advise. It is not intended to apply to any specific situation.

Resources

Lawyer Referral Service (\$35 office consultation)

Modest Means Program (application required)

9:00 to 5:00 p.m. on weekdays. Spanish available.

Portland: 503-684-3763

Elsewhere in Oregon: 800-452-7636

Tel-Law

Free, general legal information recordings. Some recordings are offered in Spanish, Russian and Vietnamese.

Portland: 503-620-3000

Elsewhere in Oregon: 800-452-4776

For a list of Tel-Law topics, write: Tel-Law, P.O. Box 1689, Lake Oswego, OR 97035-0889.

Legal Information Pamphlets

Legal information pamphlets cover a variety of general legal topics. To order pamphlets, call the Oregon State Bar Order Desk.

Portland: 503-620-0222, ext. 413

Elsewhere in Oregon: 800-452-8260, ext. 413.

Legal Issues for Older Adults

A comprehensive guide to legal issues important to senior citizens. Topics include health care, wills, housing, property management, age discrimination and much more. Information and resources provided in this publication can help older adults determine if professional legal assistance is necessary. 146 pages. Cost \$10.00 + postage.

To order, call the Oregon State Bar.

Portland: 503-620-0222, ext. 413

Elsewhere in Oregon: 800-452-8260, ext. 413.

Legal Aid

Free legal assistance may be provided for low income clients with non-criminal cases. Legal Aid services depend on location, community legal needs, and availability of Legal Aid lawyers. Your local Legal Aid office phone number is available in the Community Service pages of the local phone book.

Oregon Senior and Disabled Services Division (SDSD)

Human Resources Building

500 Summer St. NE – 2nd Floor N

Salem, OR 97310

General Information: 503-945-5811

or 800-232-3020

Web site: www.sdsd.hr.state.or.us