

The Ins and Outs of the Probate Process

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Handling the death of a loved one is always difficult, and may become insurmountable when the task of administering their estate is left in your hands. After the funeral is over and society's designated grieving period has ended there is a lot that must be tended to. The process of handling an individual's matters after death is referred to as estate administration. The legal right to handle these matters is prescribed by the Surrogate's Court, typically in the county where the deceased lived. While you might assume that being a close family member of the decedent inherently gives you the right to close their bank accounts and transfer funds that is not the case. Rather, you must be appointed by the Court as the legal representative of the estate.



Where the decedent had a Last Will and Testament (Will), the Will is presented to the Court in a Probate Proceeding. Probate is a legal structure that encompasses the examination of a Will or estate after the death of an individual. To explain it simply, probate is the process of legally establishing the validity of a Will before a judicial authority. A valid Will must be properly executed and correctly reflect the desires of the testator. In order to be valid a New York Will must be signed by the testator in the company of at least two witnesses who also must sign in the company of each other. The testator must be competent to do so of his or her own free will, and not under any duress or undue influence. Once the court determines the Will is valid, it appoints a legal representative to the estate, known as the Executor or Administrator, with the legal authority to administer the estate by providing him or her with Letters Testamentary (or Letters Administration if the decedent died without a will).

There are quite a few tasks that an Executor is responsible for. Initially, in order to get the process started, it is the Executor (or the attorney for the estate) that presents the Will along with the filing of a probate petition to the Court to account for and protect the assets of the deceased. After being officially appointed by the Court, there are four basic steps to probate that the Executor will be responsible for:

- (1) Gathering assets: When gathering assets the Executor will look to record an inventory of any or all of the following: cash and bank accounts, money owed to the decedent (i.e., Mortgage or Note), real estate, stocks and bonds, life insurance benefits, etc.
- (2) Paying debts: Notably, the personal representative is never personally responsible for paying these expenses out-of-pocket if estate funds are not available. The order of payment of claims against the estate is usually: Costs/expenses of administration, Funeral expenses, Debts and taxes; and all other claims. The Executor must file the required tax returns for the estate, including federal and state returns, and pay outstanding tax liabilities.
- (3) Distributing assets: Once the estate's debts and taxes have been settled the Executor can commence distributing assets. Financial accounts must be accessed by the Executor so she can distribute the money to heirs in accordance with the Will's provisions, retaining a reserve for unanticipated claims and the costs of closing out the estate.
- (4) Filing a final account: The Executor must file an account with the Court taking inventory of any income that came into the estate since the decedent's death and all expenses and estate distributions. Upon approval from the Court, the Executor can distribute any funds left in the reserve, and close out the estate. Once the judge approves the final settlement, the Executor usually has no further duties, and the estate no longer exists.

Undertaking the probate process is understandably overwhelming for most, which is why it is important to choose competent, trustworthy counsel to assist in this process. Because an attorney handling estate administration is paid out of the estate, you want to ensure you are working with an attorney keeping the decedent's best interests in mind, as well as the decedent's loved ones. Be sure to take time to interview potential counsel and ensure a level of trust and transparency in your relationship prior to proceeding. Preferably, you want to work with an attorney who will guard the estate's interest as if they were assisting their own family member, which is the service we aim to provide. For additional information about requesting our firm to assist with probate, contact Rachel Weinrib, Esq. at (516) 747-6700 x. 317 or at RWeinrib@kirschenbaumesq.com.

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