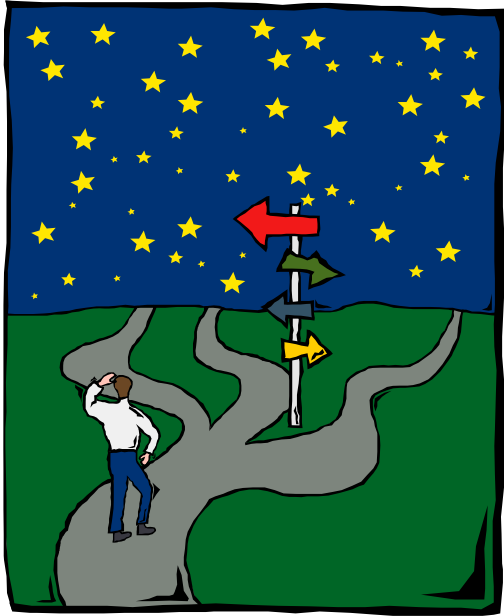


WHAT IS PROBATE?



BASIC INFORMATION YOU SHOULD KNOW

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What is Probate?

Probate is the court process to transfer titles of property of a decedent, a person who has died, to his or her successors and pays any creditors.

Is probate always necessary?

Probate is not always required for every estate. A small estate with no real property may not need to go through probate. This is explained later in the “affidavit” method. There are ways to avoid probate. An attorney can describe these to you.

What if the decedent had a will?

Probate will be necessary to declare the will to be valid and to appoint the personal representative under the will. The personal representative, then, can carry out the terms of the will.

What if the decedent did not have a will?

If the decedent had no will (intestate) then probate may be required to make a determination of heirs and to appoint a personal administrator to handle the estate. This process would determine the proper heirs according to the law of intestate succession.

Is there more than way to handle an estate?

There are four methods for handling the disposition of an estate. The first method is by an affidavit. This is only for certain small estates and does not involve the court. The other three are court proceedings. The first is called Informal Probate, the second is Formal Probate and the third is Summary Administration of Estate where Surviving Spouse is Sole Beneficiary.

Here are some basic descriptions of the four methods that may assist you in determining what method is appropriate for your situation:

1. The first method does not involve a court process. It is referred to here as the “affidavit” method. An affidavit may be used if the decedent did not own real estate and had personal property with a net value of less than \$100,000. This affidavit allows a successor of the decedent to collect any property, money or other items owed to the decedent. The successor would complete the affidavit, which may be obtained at the Court Assistance Office, and sign it in front of a notary.

2. The second method is called Informal Probate. This is a court process

that transfers title of property after payment to creditors. If the decedent had no will (intestate) or had a will (testate) or owned personal property with a net value of more than \$100,000, or owned real property, then Informal Probate may be the appropriate method to handle the estate.

In the Informal Probate process, several events take place. An Application for Informal Probate and Appointment of a Personal Representative is filed with the court. Along with this, the will, if any, and an Acceptance of Appointment by the proposed personal representative are also filed. If a person who has priority to be personal representative does not want to be appointed as personal representative, then a Renunciation must be filed. This renounces the person's right to be personal representative.

If everything filed is proper according to law, and the decedent died testate, the court may sign a Statement of Informal Probate and Appointment of Personal Representative, and Letters Testamentary. This allows the Personal Representative to conduct the business of settling financial matters, property transfer and other duties. If there was no will, the paperwork is slightly different, but the process is usually similar. There is also a required notice period to creditors. This allows creditors of the decedent to file a claim against the estate to collect any debt.

Once all matters have been resolved, the Personal Representative will file a Receipt and Release from each person who may have received a distribution from the estate. The Personal Representative will then file a Verified Statement of Personal Representative Closing Estate. Under certain circumstances, an accounting of the estate and a hearing may be required to close the estate and discharge the Personal Representative. It is recommended that you seek the advice of an attorney for this type of case.

3. The third method is called Formal Probate. This is required when there is any question as to the validity of a will or any objection to the appointment of a Personal Representative or disputes over heirship or other matters. The formal process is initially similar to the informal process except that a hearing is required to settle any of the issues listed above. A Formal Probate case can quickly become quite lengthy, complicated and costly depending on issues and arguments presented. Again, it is recommended that you seek the advice of an attorney if you have to do a Formal Probate.

4. The fourth method is Summary Administration. This may be done when the decedent leaves a spouse as the sole surviving beneficiary. This does require proper notice and a hearing, but is a fairly

fast process. Filing a Petition for Summary Administration of Estate Where Spouse is Sole Surviving Beneficiary starts this process. A hearing is then scheduled and notice must be given or waived as required by law. At the hearing, if all is proper, the Court may sign a Decree Vesting Estate in Surviving Spouse. This decree is an order that legally transfers the estate, property and debts, to the surviving spouse.

Specific legal information regarding probate requirements may be found in the Idaho Code 15-1-101 through 15-3-1205.

The Ada County Court Assistance Office provides this information as a public service. It is not a substitute for legal advice. The laws and court rules are complex. It is always advisable to talk to a lawyer about your situation before filing your action.