

Types of Probate Administration – Formal and Informal

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This chapter will describe the different types of probate, what it is, how to avoid it, and how some states deal with it.

Probate happens after someone dies. It is the process of proving a will is valid and thereafter administering the estate of the deceased person according to the will, or via the state's intestacy statutes if someone dies without a will. In the simplest terms, probate is nothing more than the process of getting an asset from the person who died to the person who is alive. The person who died is called the decedent and for our purposes, the person who is alive is the beneficiary. An asset can be a home, a car, money, books, furniture, or any other type of property. It includes retirement plans, IRAs, 401(k)s, etc.



Probate is frequently thought of as a bad thing. It is a time-consuming, expensive, court-supervised, and public process. However, avoiding probate is not always the best answer. Having the court oversee the process provides protections to the people who are supposed to receive the property of the decedent; it can ward off family arguments; it can ensure creditors are paid; and it generally assures everything is handled correctly.

In general, there are two types of probate — formal and informal. Formal probate is what most people think about when they hear the word probate. This is the “long, drawn-out, expensive court process” in states such as California. In states other than California, probate can be handled relatively quickly and inexpensively. Livingston County Michigan Probate Court, for example, has defined informal probate as a method of administering an estate of the deceased individual without the intervention of the Probate Judge.

The person handling the probate can have many different names, such as executor, executrix, administrator, special administrator, and others. We will use the general term administrator.

Formal probate generally consists of a very formal process with specific steps. These steps are taken by the administrator and must be followed exactly and in a timely manner. Each step is supervised by the probate court and normally by a judge.

Formal probate steps usually consist of establishing that the decedent really died by producing a death certificate, determining who should be appointed as administrator, determining how formal the court supervision will be, notifying creditors, determining what the decedent owned upon death, and determining which assets will have to go through probate. The administrator is also responsible for paying bills, terminating credit cards, notifying state agencies, and paying taxes. Finally, the administrator must obtain the court's permission to distribute property to the decedent's beneficiaries and then closing the probate. Closing the probate is very important to the administrator as this is when he or she is no longer responsible for handling the estate's issues.

In California, a formal probate cannot realistically be done in less than six months for the simplest estate, and usually takes longer. As mentioned, probate can be expensive. In California, the formal probate of an estate consisting of one home with a value of \$1,000,000 and a mortgage of \$990,000 is \$23,000 for legal fees, \$23,000 for administrator fees, and approximately \$700 in costs. So as you can see in California and other states with similar formal probate proceedings, it is very important to avoid probate if you can.

Informal probate, on the other hand, can be very simple and not even involve the court. The informal probate process varies considerably between states. California's informal process, although simple, can only be used when the value of real estate is less than \$20,000 and the total value of all property going through the informal process is less than \$100,000. Usually, judges are not involved and the longest waiting time is the initial 40 day waiting period required before an informal process can be used. In Alaska and Maine, informal probate is simpler than formal probate but still involves the courts. In Michigan, Minnesota, and Wisconsin, informal probate involves the courts and many of the same steps as a formal probate. Please keep in mind that we are only touching on the highlights of probate. There are many different ways of completing the probate process. It is very important to check with your local court for the process to follow.

Probate can be avoided by several methods. However, the selection of one or more of the following mechanisms must be considered in context with your overall planning goals. Each idea is correct for a specific situation but might not be appropriate in the next situation or for you.

- Have pay-on-death or transfer-on-death beneficiaries named for bank accounts and other accounts with this feature.
- Have detailed beneficiary designations and name back-up beneficiaries on life insurance and retirement accounts such as 401(k)s, IRAs, and 457 plans.
- Hold joint ownership property title in such a way that property will pass to other joint owners upon your death (subject to the cautions detailed in other chapters).
- Create a revocable living trust (discussed in other chapters).

The foregoing are just a few ways probate can be avoided. Later chapters provide more detail about how to keep your property out of the probate process.

In summary, formal probate is a court-supervised process that is normally time-consuming, expensive, and detail-oriented. Informal probate can be simple, quick, inexpensive, and much less complex. Probate can be avoided using a number of techniques, but avoiding probate is not always the best choice for your situation. Be sure to consult with an attorney before making a final decision.

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