



Probate

*Author: Carolyn Paseneaux
307-778-0040
carolyn.wyoming@gmail.com*

The word "probate" has acquired a negative and notorious connotation commonly thought of as an unnecessary rip-off of a dead person's estate by lawyers and the court. Probate serves a valid purpose in providing a legal forum for determining the outcome of a disputed will, especially an estate that has many debts or claims by creditors. A wise choice is to reduce or eliminate probate fees by transferring property outside of probate through living trusts, pay-on-death designations, life insurance and individual retirement programs as well as other devices. Contact an attorney for a complete discussion of probate.

What is Probate?

Probate is the legal process by which a district court in Wyoming oversees and settles an estate, regardless whether the decedent died with or without a will. During probate, your assets are identified, all debts and death taxes are paid, fees for lawyers, appraisers, accountants and for filing the case in court are paid, and the remaining property is distributed to your inheritors. The process can take a year or more before your estate assets are distributed.

The process of probate includes:

- Filing the deceased person's will with District Court
- Identifying and inventorying the deceased person's property
- Having the property appraised
- Paying off debts and taxes
- Having the will proved valid by the court
- Distributing what is left of the estate as the will directs

The individual you appoint in your will as your executor will administer your estate by filing your will, paying off debts, paying estate taxes and appearing in court when necessary. Many functions are accomplished without the supervision of the court and a complete report is submitted to the court at the end of the process.

Disclaimers

When a person wishes to disclaim any interest in property that he or she would receive by gift, bequest, devise, inheritance, beneficiary designation, by power of appointment or would pass by right of survivorship, he or she must do so in writing. The interest disclaimed usually reverts to the transferor if living, or under a residuary clause of the transferor's will if he or she is dead. If the interest disclaimed would have passed by right of survivorship, the interest passes just as though the individual was not a survivor.

Court Fees

The Clerk of Court collects all fees associated with probate. Court fees can change, so it's important to get an updated list.

1. Original filing fee..... \$50.00
2. Filing fee at five thousand dollars or more, additional fees based on value is collected as follows:
 - A. \$5,000...\$10,000.....\$5.00
 - B. Each additional \$5,000.....\$1.00
3. In addition to the filing fee \$10.00
4. Additional court fees.....
5. The cost of the probate case per day \$5.00
6. For each order \$2.00

Small Estates Distribution Process

In addition to probate avoidance methods, there is another avenue an asset holder can utilize that allows him or her to avoid formal probate. Application can be made for a simplified probate process call "**Informal Probate**" under the Uniform Probate Code. In Wyoming, the process



is known as "Distribution by Affidavit and Summary Procedure." Estates under \$150,000, less liens and encumbrances are eligible for distribution under this law. A personal representative is not required for making distributions as is necessary under formal probate procedure.

Applications for an affidavit can be made to the County Clerk, NOT the court, 30 days after the death of the decedent. The affidavit provided by the county clerk can then be presented and dividends are then given to the beneficiaries. Personal property of all kinds can be distributed by affidavit under this section of the code when the estate is small.

Intestacy

If the deceased person did not leave a Will, or the Will isn't valid, the estate must still go through probate. In the event of intestacy, (dying without a will) the Wyoming code lists the order in which eligible persons may inherit:

1. If the intestate leaves a spouse and children, or the decedents of any children surviving, one half (1/2) of the estate descends to the surviving spouse, and the residue goes to the surviving children and descendants of children.
2. If the intestate leaves a spouse and no children, nor descendants of any children, then the estate of the intestate goes to the surviving spouse.
3. In addition to the above, any surviving children of the intestate and descendants of his children who are dead, the living descendants collectively take the share which their deceased parents would have taken if living.
4. If there are no children or their descendants, then collectively the father, mother, brothers and sisters receive the estate. If the brothers and sisters are dead, then their children take equally the shares their parent would have taken.

5. If the father, mother, brothers and sisters or their children are not living, then the estate goes to the grandfather, grandmother, aunts, uncles and their living descendants taking equal shares collectively.

If a child is conceived before the decedent's death, but born after, that child inherits as if they had been born during the lifetime of the decedent.

Who is eligible to administer the estate of a person dying intestate?

Administration of the estate of a person dying intestate is granted to the relatives of the deceased only when they are entitled to succeed to his or her personal estate, or a portion of the estate. The following order sets out the hierarchy:

1. The surviving spouse, or some competent person whom he or she may have appointed
2. The children
3. The father or mother
4. The brothers or sister
5. The grandchildren
6. The next of kin entitled to share in the distribution of the estate
7. The creditors
8. Any person legally competent

A nonresident of Wyoming cannot be appointed as administrator unless a resident of Wyoming is appointed as co-administrator.

Avoiding Probate

A will does not avoid probate and inheritors face attorney's fees and other costs and time delays, but it is a simple and easy way to distribute an estate. A will provides for naming a guardian for minor children. Probate proceedings are a court record that the public has access to, which is a sensitive area for many individuals and families.

Several transfer devices avoid probate and are listed below:

1. A living trust gives complete control over your property while you are alive. It provides



flexibility in providing for beneficiaries. It takes more effort than a will to establish and is more trouble to maintain than a will.

2. Joint tenancy avoids probate and is simple to put together, but is usually not a good substitute for a living trust. Each joint tenant can sell their interest and there may be gift taxes involved in creating joint tenancy. It may mean partial loss of stepped-up tax basis.
3. Payable-On-Death Bank Accounts avoid probate, are very easy to create and there are no additional costs. They may not be a good idea if small children are involved since a property guardian will have to be appointed.
4. Naming a beneficiary of a Pension Plan or Retirement Account avoids probate and generally easy to do. A specific plan can impose limits.
5. Life Insurance is probate free and a good way to provide quick case for beneficiaries or to use to pay estate taxes.

There is a way to avoid both probate and double death taxes. By creating a funded revocable living trust, it avoids probate as it is funded, and drafting it as a by-pass trust it avoids the second estate tax or the double estate tax; resulting in a dual benefit.

When you may want probate

If your estate is in a lot of debt, probate may be a good idea when your executor chooses to contest some of the larger debts. In addition, if your business was failing at death and/or you have complicated business transactions or litigation is pending, probate is beneficial as there is a ready-made, fast court procedure for resolving creditor issues. The probate process is faster than a lawsuit. Under probate law only a brief time is allowed for attacking a will.

Probate is a legal administrative process that allows for the collection, management and protection of estate assets until final distribution. On the whole, probate is a helpful process.

With good estate planning most probate can be avoided, and when it cannot, the process is helpful in many instances.

Disclaimer

This manual is not intended to be a substitute for legal advice. It is designed to help you become familiar with some of the tools available in planning an estate, and the need to do such planning. Laws change when the Wyoming State Legislature meets and votes to change a section of the law. This publication is based on laws as they exist at the time of this document's printing.