

# **Probate & Estate Administration**

## **What is probate?**

Probate is the process where a deceased person's (the decedent) assets are collected; the debts, taxes, and costs of the estate are paid; and any balance is given to the beneficiaries (people named in the will) or intestate heirs (people determined by the law because there was no will). Probate is usually a formal process in court.

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## **Is there more than one type of probate?**

There are different types of probate proceedings. Common form probate is the most common and is usually what people think of when they think of the probate process. There are shorter probate proceedings when the decedent has few assets.

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## **Is probate always required?**

When all of a person's assets pass outside of probate, probate is not necessary. For example, life insurance proceeds pass to the beneficiary named in the policy. A home or car can be jointly owned with a right of survivorship, so that it passes to the other owner upon death.

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## **What happens during the probate process?**

First, the court must determine if the decedent had a will or other document. If there is no will, the person has died "intestate," and Tennessee law decides who takes the assets. If the person had a will, then the person died "testate," and the will decides who takes the assets.

Then, the personal representative is selected. The personal representative is the person responsible for handling the estate. Where a will names a personal representative, that person is called the “executor.” Where the will does not name a personal representative, that person is called an “administrator.” The personal representative has a fiduciary duty to the beneficiaries and heirs of the estate and must act impartially and in good faith.

The personal representative then must locate and bring all of the decedent’s assets under the control of the estate and gather information about debts and obligations owed. The personal representative is also responsible for notifying creditors of the estate and getting a TennCare release if the decedent was over the age of 55. The personal representative must make an inventory of the decedent’s assets and provide an accounting, or a history of the finances of the estate. After all taxes, debts, and costs of the estate have been paid, the remaining estate assets can be distributed as indicated by the will or by Tennessee law (if there was no will).

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## **Does a surviving spouse have any special rights in the probate process?**

A surviving spouse has the option to take an “elective share” instead of the amount given to the spouse in the will or the amount determined by Tennessee law if there was no will. The amount of the elective share is determined by how long the couple was married.

### **LENGTH OF MARRIAGE    ELECTIVE SHARE PERCENTAGE**

Less than 3 years                      10% of net estate

3 years but less than 6 years    20% of net estate

6 years but less than 9 years    30% of net estate

9 years or more                      40% of net estate

The net estate is all of the decedent's real and personal property after funeral and administrative expenses, secured debts, homestead, year's support, and exempt property are paid. A Petition for Elective Share must be filed in probate court within 9 months of the decedent's death.

The surviving spouse can also choose for rights to exempt property, homestead, and a year's support instead of the amount given to the spouse under the will. Exempt property includes up to a fair market value of \$50,000 in personal items located in the decedent's home and cars. The homestead is the decedent's home. A year's support is a reasonable allowance of money from the decedent's estate for 1 year after the death in accordance with the previous standard of living. The surviving spouse's claims for exempt property, homestead, and a year's support must be made with the probate court within 9 months of the decedent's death.

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