

Important Probate Rules You Should Know

When a person dies, what happens next depends on whether the deceased person had any foundational estate planning documents such as a last will and testament (otherwise known as a will) or trust, who the living relatives are, and their relationship to the person who died. If the deceased person did not have a trust or will, the state where the deceased person resided has rules for overseeing how the deceased person's money and property are to be distributed. If the deceased person died owning accounts and property in their sole name and had a will, it will contain instructions for what is to happen to the decedent's money and property and must be filed with the probate court. Probate is a formal legal process of proving that a will is valid (if the person had a will), appointing someone to carry out the deceased person's wishes (known as a personal representative or executor), and supervising the distribution of the deceased person's money and property.

While probate rules can vary by state, there are some important ones that you should be aware of should you need to wind up a loved one's affairs.

Deadlines

Deadlines are important rules that must be followed during the probate process. Failing to meet these deadlines could get you in trouble with the court.

When and if to file the last will and testament. If and when a will must be filed with the probate court can vary by state, but it is important that you understand when this task needs to be completed. Some states require that your loved one's will be filed with the probate court within a certain number of days after your loved one's death, while others only require that a will be filed if a probate is necessary. This usually occurs when the decedent died owning accounts and property in their sole name that need to be transferred. Once the will is filed, the court will generally begin by reviewing the will to ensure that it was properly made and signed. If the court is satisfied, it will appoint the personal representative.

Collecting and securing items. The personal representative must locate and secure the deceased person's money and property and create an inventory of all items. Deadlines for filing an inventory with the court are calculated from the date you were appointed as personal representative, and they vary greatly among states, from sixty days in Florida to six months in New York. The inventory will include a valuation of the items as of the date of death. During this period, the personal representative may also need to establish a tax identification number for the estate and open an estate checking account for depositing estate funds.

Notifying creditors. The personal representative must notify known creditors and attempt to find unknown creditors. Generally, at the direction of the probate court and with the assistance of an experienced estate administration attorney, the personal representative is required to publish notice of the deceased person's death in appropriate newspapers to run for a specified length of time. This notice is typically published in the local newspaper where the person died. The purpose of this notice is to allow creditors, both known and unknown, time to make a claim to the estate for any debt owed. The personal representative must then determine the validity and priority of all creditor claims received and pay those claims as appropriate.

If the personal representative follows the correct steps regarding notice to creditors, any debts not brought to the personal representative's attention during the applicable time period may be barred, and the estate may not be responsible for paying them. The creditor deadline gives creditors an opportunity to come forward with their claims, but it also provides a cutoff point for the personal representative so they can wind up the deceased's affairs in as efficient a manner as possible.

Maintaining and providing estate accounting records. The personal representatives must maintain accounting records as proof of monies coming into and going out of the estate. Depending on the circumstances, the accounting records may need to be filed with the court, and interested parties may need to sign releases at certain intervals.

Filing and paying taxes. A personal representative must ensure that the deceased's final tax return is filed by the personal income tax filing deadline of the year following the deceased's death. If the estate earns income after the deceased's death, the personal representative must file estate income tax returns (sometimes referred to as fiduciary income tax returns). Finally, a personal representative may have to file an estate tax return if required by law or for further tax planning. Each of these returns will have a specific deadline.

Who Has to Know

During the probate process, there are a lot of steps that are involved, and there may be multiple individuals who need to be kept informed about what is happening. If the deceased had a will, this would include those named in the will (beneficiaries). In some states, the deceased's relatives and the deceased's creditors can also be interested persons. When dealing with individuals other than those the deceased named in a will, it may be tempting to leave them in the dark, especially if there has been bad blood. However, personal conflicts do not absolve the personal representative of the duty to keep an interested person informed and to provide them with the information they are legally entitled to.

Who Can Be in Charge

Another important probate rule is who can be appointed as a personal representative. The personal representative can be almost anyone. Many states require that the personal representative be an adult or emancipated minor. However, some states may not appoint a personal representative who is a non-US resident, nonstate resident, or a felon. Most often, a personal representative is a surviving spouse, a family member, a close family friend, or an attorney. There is no requirement that the personal representative have any experience or expertise in handling estate matters nor is the person required to have any financial or legal experience or background.

We Are Here to Help

Probate is a process with many rules. We understand that this can be very overwhelming for many people. We are committed to working with named and appointed personal representatives to ensure a smooth estate administration. If you would like to learn more about the probate process and what is involved, please give us a call.