

April 3, 2017 by Jen Murray and Joseph Gibson, JVG LAW, PLLC

If you have lost a loved one or know someone who has, you likely have been involved in the probate process on some level. However, if you are unfamiliar with the probate process in Texas, this article will help guide you through the process.

What Is Probate?

Probate is the process by which a court legally recognizes a person's death and authorizes the administration of his or her estate. This process typically must be completed whether the person has died with a Last Will and Testament in place, or whether no will existed. Whether or not there is a will determines what type of probate you will go through. Below is a discussion on each process.

Independent Administration: This is what most people deal with when it comes to Probate. If the person who died (the "decedent") left a valid will, it will name an executor. The duties of an executor are to inventory the decedent's assets; pay debts and taxes of the estate; file lawsuits for claims owed to the estate; and distribute assets from the estate to the beneficiaries as named in the decedent's Last Will and Testament. These duties are called the "Administration of the Estate." An "Independent" administration means the Executor has more freedom to carry out his or her duties without strict oversight by a probate court. With this type of probate, another key distinction is that the Executor is not required to post a bond or insurance policy for the estate.

Dependent Administration: When someone has died and they did not leave a will, most of the time the law requires that the estate fall under a stricter oversight by the court known as Dependent Administration. The "administrator" (the name for the executor when there is no will) is required to post a surety bond for the value of the estate, seek court approval for every step in the process of distributing an estate, as well as filing detailed reports every year with the court.

Muniment of Title: If a decedent dies with a valid will AND the estate has no debts except those secured by real estate, you can choose another process to probate a will in Texas – Muniment of Title. This process is relatively inexpensive and simple compared to Independent or Dependent Administration. This process can be utilized when a valid will exists, the estate has no debts except secured real estate, and Medicaid has no claims against the estate to recover benefits the decedent may have received.

With Muniment of Title, the court must determine that there is no need for a probate administration and admit the will into probate as a muniment (or evidence) of title to the assets of the estate. No Executor is appointed, but the person who request the Muniment of Title must file a sworn statement with the court within six months verifying that the terms of the will have been carried out.

Small Estate Affidavit: When a decedent had no will and the value of his or her estate is \$50,000 or less, the beneficiaries of the estate can file a Small Estate Affidavit to collect the property without going through the probate process.

How To Probate A Will In Texas: A Step-by-Step Guide

Texas has made probate very user-friendly in the past 10 years. Even still, the process can be daunting for someone not familiar with it. The steps are as follows:

- **Step 1: File an Application.**
 - In order to begin the probate process, you must file an application with the court. The application must be filed with the county where the decedent resided when he or she died.
- **Step 2: Post Notice of Probate Administration.**
 - After the probate application is filed, there will be approximately a two week waiting period before a hearing is held for the application. During this time, the County Clerk will post a notice at the courthouse stating that a probate application was filed to serve as notice to anyone who may contest the will or administration of the estate. If no contests are received, the probate court proceeds in opening the administration.
- **Step 3: Authenticate the Will:**
 - After the notice waiting period, a hearing will be presided over by a probate judge. He or she will legally recognize the decedent's death and the jurisdiction of the court over the case; verify that the decedent had a valid will (or that there was no will); and confirm the person named as Executor (or appoint an Administrator).
- **Step 4: Inventory of Assets:**
 - Once an Executor or an Administrator is officially appointed by the court, they must inventory and report all the assets held by the estate, or file an affidavit in lieu of inventory.
- **Step 5: Identify beneficiaries:**
 - If the decedent left a valid will, the Executor will notify beneficiaries of the estate and file an affidavit confirming notice was given. If no will was found, the probate court is charged with the task of determining who the heirs are (an heirship proceeding).
- **Step 6: Notify Creditors:**
 - Most decedents leave behind debts that must be resolved, including but not limited to medical bills, mortgages, credit cards, utility bills, etc. Those debts will be paid from the estate before any beneficiaries receive their gifts. Before they are paid, however, creditors must be notified of the decedent's death by the estate's Executor and given the opportunity to file claims against the estate. This can be done with a notice published in the local newspaper.
- **Step 7: Resolve Contests or Disputes:**
 - If family members or other potential beneficiaries contest a will in Texas or file other grievances, these will be brought before the court in a hearing and must be resolved before the estate can be finalized.
- **Step 8: Distribution of Assets:**
 - When the debts and expenses of the estate are paid and any will contests resolved, then the remaining assets of the estate can be distributed to the beneficiaries.

When Is Probating A Will In Texas Not Necessary?

Certain assets do not have to go through the probate process. If the decedent left only these kinds of assets, you will not have to go through the probate process. The following are considered Non Probate Assets in Texas and can be transferred to the beneficiary without probate:

- Property that is held as joint tenancy with right of survivorship
- Community property held also with right of survivorship

- Bank accounts that are payable on death
- Funds from life insurance policies
- Survivor benefits that come from an annuity
- Any other contractual agreement with a named beneficiary

This article is not legal advice, but is for informational purposes only. JVG LAW, PLLC does handle probate matters. While the probate process has been streamlined, it is still a process that, if you are unfamiliar with, can be difficult and burdensome. Whether you hire us or another attorney, it is our recommendation at JVG LAW, PLLC that you secure assistance from an attorney to help guide you through the probate process.