

## TEXAS PROBATE GENERAL OVERVIEW

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With the laws often changing, it is important to note that this may change various parts of the following basic guidelines. There are no substitutes for detailed discussions with your attorney and their staff.

In the days and weeks following the death of a loved one, there are many emotions, including grief and sadness. Unfortunately, during this time many people will also experience frustration and confusion when it comes to handling matters of the loved one's Estate. It can be difficult to sort through the personal and business affairs of a loved one who has died. Whether the death was sudden or expected, there are a lot of emotions to process.

A Texas probate attorney has obtained the education and experience necessary to navigate the Texas probate process and can help explain the process to the family and help take away the confusion and frustration, so that you and your family can mourn the loss of your loved one and not be concerned about other matters.

Probate of an Estate 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 should be considered whether the person died with a Will or no Will existed. This process also encompasses the administration of the decedent's Estate, collection of debts due to the Estate, and payment of the Estate's creditors as necessary, together with conveying ownership of a decedent's property to the rightful beneficiaries or heirs. If the decedent did not leave a Will and Administration becomes necessary, the State of Texas has specific guidelines to determine how the Estate will be handled and distributions made.

Additionally, someone may question the validity of the Will or the claim of a potential heir which may need to be address through probate proceedings.

While initiating the Probate process may seem simple, it may often be more complex. It can be difficult when there is no Will or qualified document that is a Will that expresses the desires of the deceased.

Families expect it only natural for the decedent's property to passed to their surviving spouses and children. Sometimes however, a Will may provide otherwise.

It's normal to feel intimidated by these legal challenges, but you don't have to face them on your own. A probate attorney can help you file an Application, represent you as Applicant in Probate Court and be an advocate on your behalf.

When there is a Will, generally the court case can move quicker in the process and distribution of the property to the rightful heirs could occur. As you go through the probate process there are many legal terms that might be unfamiliar or unclear to you. These include:

**Decedent:** When probating a Will in Texas, you will likely encounter the term “decedent” often. This is the legal term for the person who has died and whose Estate is in the probate process.

**Will:** This is the legal document in which a decedent has outlined how he or she would like assets distributed among their loved ones and or named beneficiaries.

**Estate:** In the state of Texas, an Estate consists of all the decedent’s assets. These include, but are not limited to, cash, real Estate holdings (homes, land, etc.), stocks and bonds, life insurance policies, retirement accounts, vehicles and personal belongings.

**Beneficiaries:** These are named in a Will, or determined by the Court who will receive assets from the decedent’s Estate.

**Executor:** When a person dies with a valid Will in place, the document typically names a person to serve as Executor/Executrix of the Estate. The chief duties of the Executor Will be to take charge of the property and assets, inventory and catalogue the decedent’s assets; pay debts of the Estate as necessary; pay taxes on behalf 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. **Administrator:** When the decedent has passed on without leaving a valid Will and no Executor has been named, Texas law requires that an administrator be named to carry out the duties of an Executor.

Before outlining the steps of how to probate a Will in Texas, it’s important to understand the distinction between the several different types of probate proceedings:

**Independent Administration:** This process is the usual route when a decedent had a Will, which named an Executor/Executrix for the Estate. With an Independent Administration, 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 if the Will so provides, the Executor is not required to post a bond, or insurance policy, for the Estate.

**Dependent Administration:** When someone has died without a Will, Texas probate law typically requires that the Estate fall under a stricter oversight by the court known as Dependent Administration. The Administrator is required to post a surety bond, seek court approval for every step in the process of distributing an Estate, as well as filing detailed reports every year with a Texas probate court regarding the Estate.

Muniment of Title: Another process by which you can probate a Will in Texas is the relatively inexpensive and simple process known as Muniment of Title. 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's 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 and the real property is homestead, a Distributee of the Estate can file a Small Estate Affidavit (sworn statement) to collect the property without going through the probate process.

Some of the probate steps that the Texas probate attorney may consider and take include:

Step 1: Filing of an Application With The Court. The process is actually fairly easy to start. Whether a Will is present or not, an Application for probate must be filed with the proper Texas probate court in the county where the decedent resided.

Step 2: Posting 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: Validating the Will: After the waiting period, a hearing will be presided over by a Texas probate judge. He will legally recognize the decedent's death and the jurisdiction of the court over the case; verify that the decedent had a Will or that there was no Will; and appoint Executor or Administrator to oversee the Estate. The law attaches important duties to this designation; accordingly, the court will determine the qualifications of those to be appointed as executors or administrators of the Estate.

Step 4: Inventory of Assets: Once an Executor or Administrator is officially named to the Estate, that person must catalogue and report all the assets held by the Estate.

Step 5: Identifying beneficiaries: If the decedent had a valid Will, the Executor Will notify beneficiaries of the Estate. In the event no Will was filed, the Probate Court is charged with the task of determining heirs of the Estate.

Step 6: Notify Creditors: Most decedents leave behind debts that must be resolved out of their Estate. Medical bills, mortgages, household expenses, etc.

will be paid from the Estate as necessary. 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 and several other methods.

Step 7: Resolving Disputes: If family members or other potential beneficiaries are contesting a Will in Texas or file other grievances, these will be heard by a probate court judge and resolved before the Estate can be finalized.

Step 8: Family Allowance: Submitting an application to establish an allowance for the decedent's family, if necessary.

Step 9: Distributing Assets: Once the debts and expenses of the Estate are resolved and any contests of the Will are cleared up, the remaining assets of the Estate are then distributed to the beneficiaries.

While most people will experience the above process in the probate of a loved one's Estate, there are some who can avoid this process in specific circumstances, such as the following which are considered Non Probate Assets in Texas and can be transferred to the beneficiary without probate:

- A. Property that is held as joint tenancy with right of survivorship;
- B. Community property held also with right of survivorship;
- C. Bank accounts that are payable on death;
- D. Funds from life insurance policies; and
- E. Survivor benefits that come from an annuity.

With the complexities attendant to these proceedings, it is usually advisable to hire the services of a Texas probate attorney to facilitate the process. Further, since each probate case is unique, it is usually important that the process happen as close to your loved ones date of death as possible to help expedite the rightful transition of the decedent's property.

It is important you keep in mind that the Texas probate process can be quite lengthy and involved, but working with a Texas probate attorney makes certain that the Estate's assets and liabilities are handled in the proper fashion and that the wishes of the decedent as provide in his Will are carried out in an appropriate manner.

Even with a valid Will, there are time limitations for the probate process, so it's imperative to talk to a legal professional as soon after your loved one passels as possible.

Probate "litigation" can involve contesting a Will, trust or probate proceeding. There are many different grounds for these types of legal actions, which include:

Forgery – If you suspect that the Will is a product of forgery, your attorney can

help you establish that it is invalid and that a previous or superseding Will should be used instead.

Invalid Will – Wills that are not drafted correctly, are unclear, or do not satisfy the basic requirements of a valid Will, can be contested with the assistance of an experienced attorney.

Asset Categorization – Certain assets may not be categorized correctly or may not be included in the final Will or trust. A legal professional can help you with these disputes.

Lack of Capacity – When an individual is unable to comprehend the changes that they are making to their Will and how it will affect their Estate, it can be contested.

Undue Influence – When someone overcomes someone's natural desires and wishes and causes them to dispose of their Estate other than the originally intended.

Fiduciary Negligence – If you believe that a Will unduly benefits a person in a fiduciary position, then an attorney with probate litigation experience can help you contest it. The competency and intentions of the executor, trustee or administrator can be brought into question.

Determining Heirship – A Texas probate litigation attorney can help you determine if you have the right to institute proceedings to declare your heirship and enforce your legal rights.

Overview of Probate Litigation and Intestacy: Probate litigation and intestacy often go hand in hand. A qualified Texas attorney can help you challenge a Will or trust, so that the rightful beneficiaries obtain the decedent's assets.

A single individual or multiple parties can contest a Will. Probate litigation often occurs due to a suspicion of an invalid instrument or trust, undue influence, mental defect, forgery or fraud, no-contest clauses, disqualification, property characterization and the administration of the Estate, among many other grounds.

Intestacy refers to a decedent that died without a Will in place. As a result, the State determines how the property is distributed among varying levels of heirs. In certain cases, a heir may not receive their fair share or nothing at all. A lawyer can assist in attempting to obtain a just allocation based on your relationship with the decedent.

Probate "litigation" and intestacy can also relate to improper distributions, a failure to make distributions, or misappropriation of funds.

Remember, with the laws often changing, it is important to note that this may change various parts of the above basic guidelines. There are no substitutes for detailed discussions with your attorney and their staff.

There's no need to suffer through this time alone. Contact our office at [817-335-9600](tel:817-335-9600) or [INFO@THEMAYNARDLAWFIRM.COM](mailto:INFO@THEMAYNARDLAWFIRM.COM), to schedule a free consultation to discuss your legal needs and help you make the best decisions about moving forward.