

DO IT RIGHT THE FIRST TIME
PART 2: PROBATE
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I. WHAT IS PROBATE?

The court process of transferring assets from the name of the deceased to the heirs or devisees of the deceased.

II. WHEN IS PROBATE NECESSARY?

When an asset is owned by an individual (not a trust), has no designated death beneficiary, and no co-owner(s) with a right of survivorship.

III. WHEN IS PROBATE NOT NECESSARY?

Living Trusts
Death beneficiary designations
Co-ownership with right of survivorship

IV. WHAT ARE SOME OF THE ADVANTAGES OF PROBATE?

Cutting off creditor claims
Resolving any and all disputes and bringing closure

V. IF PROBATE IS NECESSARY, HOW DO YOU BEGIN THE PROCESS?

Small Estate Affidavit

Value of Assets in Estate: \$150K real property; \$50K personal property
30 day waiting period from date of death
Form, filing fee, and process
Court-certified affidavit
Notice to State, Heirs and Devisees, potential claimants (no public notice)
Wait 4 months and distribute

Standard Probate

Testate Estate
Intestate Estate
Form for Probate Petition, attachments, filing fee
Form for Limited Judgment Admitting Will to Probate and Appointing Personal Representative

Filing for Bond (Intestate Estate)
Court-certified Letters Testamentary

EIN Application

Public Notice - 3 wks in newspaper published in county or probate

Notice to Heirs and Devisees (Form)/Affidavit of Mailing (Form)/Copy Notice to State

Notice to Creditors (Form)

VI. ONCE PROBATE PROCESS BEGINS, THEN WHAT?

Inventory: within 60 days of appointment

Values as of date of death

Filing fee

Resolve bills and claims

Duty to search and notify - review financial records; talk to family; monitor mail

In insolvent estate - priority of debts (ORS 115.125)

Spousal, children support

Admin expenses

Funeral expenses

Debts, taxes with pref under Fed law

Med. Expenses from last illness

State taxes

Labor performed within 90 days of death

Child support arrearages

DHS

All other claims

In solvent estates - claim allowance/disallowance (forms)

4 months for creditors to present claims

60 days to disallow. If no disallowance, allowed automatically

30 days to request summary determination on claim

Affidavit of compliance (form)

Pay taxes, file returns

VII. WHEN IS THE PROBATE PROCESS OVER?

Four month waiting period

Creditor Receipt and Release

Final Account (Standard Form)

PR Fee calculation (ORS 116.173)

Notice to heirs and devisees

Attorney Fee Affidavit

Affidavit of Compliance

20 day objection period

Verified Statement (Short Form) - Few heirs, devisees; simple estate

Waiver and Consent of Beneficiaries

No objection period; no financial statements, documentation

Order Approving Final Account, General Judgment of Distribution
Receipts for Distribution

Supplemental Judgment closing estate and discharging personal representative

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