



Probate In South Carolina

One of the most common questions asked of an estate planning attorney is, “What exactly is Probate?” Probate is the transferring of assets from a deceased person to those directed to receive them.

Usually, if the decedent executed a Will, they will have named an individual to be their Personal Representative/Executor. The named Personal Representative is to administer the estate and ensure any assets are distributed to the appropriate heirs. If a person dies without a Will, the Court will follow the intestacy statute and appoint a Personal Representative.

It becomes the job of the Personal Representative to determine (1) what assets comprise the decedent’s estate, and (2) are those assets probate assets or non-probate assets.

Probate Assets are those titled only in the decedent’s individual name and are without designated death beneficiaries. Non-Probate assets are those assets either not titled solely in the decedent’s name or have a designated death beneficiary.

Example:

John Smith’s assets at death include a bank account, a house, and a car. If each of these assets are titled in only John Smith’s name, then they are probate assets.

But, if the bank account has a “payable on death” designation (POD to Jane Smith), then that asset is a NON-probate asset and would pass directly to the named beneficiary.

Similarly, if the bank account was titled jointly with rights of survivorship, “John Smith and Jane Smith”, then the account is a NON-Probate asset because it would pass directly to Jane. (These same scenarios hold true for the titling of the house and the car.)

Once it is determined there are probate assets, then it becomes the Personal Representative’s job to administer the estate.

South Carolina’s Probate Code directs a decedent’s estate to be probated in the county where they were domiciled. Once the proper Court is identified, the Personal Representative will

DISCLAIMER: All Materials contained herein are made available by The Elder Law & Estate Planning Center for informational purposes only and should not be construed as legal advice. The transmission and receipt of information contained herein and on our website does not form or constitute an attorney client relationship. Persons should not act upon information found herein or on the website without first seeking professional legal counsel.

submit to the Court the petition to probate, proof of death (usually the death certificate), the last will and testament, and remit a filing fee to open the estate.

Typically, in South Carolina, the entire probate process takes at minimum one year. All probate cases are not equal. Some probate cases may be completed in less than a year if the estate is small or the Personal Representative is the only beneficiary. Some probate cases may take longer than year if there are disputes or other hindrances.

If you have been named as a Personal Representative/Executor of an estate, contact a local attorney who is well versed in your state's probate process.

Every state has different statutes and rules governing probate. States like California, have a complex process, whereas, states like Georgia's are relatively simple. The worst mistake a Personal Representative can make is attempted to navigate the probate process on their own without a working knowledge of what is required.

DISCLAIMER: All Materials contained herein are made available by The Elder Law & Estate Planning Center for informational purposes only and should not be construed as legal advice. The transmission and receipt of information contained herein and on our website does not form or constitute an attorney client relationship. Persons should not act upon information found herein or on the website without first seeking professional legal counsel.