

Learn how real estate probate works

What you need to know about real estate probate

When the owner of a home or other type of property passes away, the owner's Will typically dictates who will inherit the real estate or what will happen to it.

Even if a property is handed down in someone's will — and especially if it's not — there's a legal process to verify that everything is legitimate and that the home is properly and legally transferred. This process is known as "real estate probate."

Real estate probate is a weedy concept and process that can vary in complexity from case to case. Take time to learn the basics about real estate probate and work closely with your attorney to understand how it applies to you.

What is probate in real estate?

The word "probate" refers to the legal procedure of examining a will to determine it is legitimate and authentic. Probate also relates to the general administration of the will of a decedent (a person who has died) or the estate of a decedent who passed away without leaving a will behind.

Probate in real estate is the legal transfer of asset ownership or selling of the estate that was previously owned by a deceased homeowner. When the initial property owner has passed, their assets are reviewed by a probate court, which decides on a ruling of the division and distribution of assets to the named beneficiaries.

A beneficiary is someone who inherits assets or property from the deceased person's estate.

What happens to a property in real estate probate?

The real estate probate process is easiest if the deceased has directed that their property should be given directly to an heir. What happens to the property will be at least partly determined by the provisions in their will.

But things can be more complicated.

If no guidelines were given about a particular real estate property, then how it should be handled is determined by other variables.

The property may, for example, need to be liquidated to pay off obligations. Some heirs may prefer to preserve the property, while others may choose to sell it.

What if there were two homeowners?

When a person dies, real estate property jointly owned with a surviving owner usually does not go through probate in most states. Instead, a quitclaim deed may be used. This is a type of deed that allows heirs to obtain property without having to go through probate in some states.

How real estate probate works

Real estate probate may initially seem complicated, considering the court procedures and legal documentation involved. But this process typically follows the same path.

First, the court selects either an executor specified in the will or an administrator, if there is no will, to oversee the probate procedure after an asset owner dies. This entails gathering a deceased person's assets to pay any lingering liabilities on the estate and to divide the estate's assets to beneficiaries.

If you want to sell an inherited home, the probate process is often divided into four essential parts, although it may vary from state to state:

1. **Choose the executor of the estate.** An estate executor must be chosen before the probate process can commence. The Will specifies whether the property will be passed on to an heir or sold. If a decedent's will does not specify an executor, the court will appoint an administrator to carry out the duties
2. **Have the property appraised.** If the property is to be sold, the executor will set a listing price. The list price will be established following an appraisal by a real estate agent with expertise in probate sales
3. **List the property.** The property will be listed on the market after the listing price has been established. The property's real estate agent will advertise it like any other home
4. **Sell the home.** After an offer is made, the real estate agent will work with both the seller and buyer to negotiate acceptable conditions. All heirs of the estate will receive an official notification stating that they have 15 days to object to the property's sale. If no objections are raised, a court date will be set for the sale of the residence to be officially completed

What probate means for the beneficiary of real estate

Beneficiaries under a will have crucial rights, such as the rights to obtain what was left to them, to gather information about the estate, to demand a replacement executor, and to have the executor work in their best interests if the decedent left a will.

A beneficiary — often the surviving spouse or close family member — has the legal right to collect a deceased person's assets. However, this means they will be responsible for paying any outstanding taxes or debts. If the deceased homeowner's estate does not have enough assets or cash to repay the remaining obligations on the estate, it may be sold.

A last Will does not, by itself, transfer marketable title from the deceased to the beneficiaries named in the last Will.

There may be creditors of the deceased whose rights supersede those of the beneficiaries. Even if there are no creditors or other parties with higher priority claims, a last will must be filed with and approved by the probate court. The court will, after proper petitions are filed and notice is given to the appropriate parties, issue orders regarding the last will, including orders regarding any real property owned by the deceased. Only then can the property be sold.

What probate means for an investor looking for a probate real estate deal

Many beneficiaries or heirs want to sell the property they inherit, often as quickly as possible to avoid the ongoing taxes, upkeep, insurance, and other costs of real estate ownership.

After a beneficiary obtains authorization from the probate court to sell the home, they may be able to unload it quickly to a home flipper or a real estate investor — not necessarily a buyer who plans to live in the home as their primary residence. A real estate investor/flipper can often purchase a home more quickly because they can pay cash.

Buying property in probate is profitable for real estate investors since they [may] get them at a lower price than the market value.

How long does the real estate probate process take?

The probate process could last from a few months to two years or longer.

The number of heirs, any problems with the will's administration, and any unpaid taxes or obligations related to the property can impact the probate procedure. Furthermore, the state and local legislation in the area where the asset is located may impact the entire timeline.

Real estate probate can be wrapped up in as quickly as three months or so.

If all parties are responsive and present — meaning all recipients can be located, the will is uncontested, and debts and liabilities are easily resolved — the process will be smoother and quicker.

Can you sell a house during probate?

The probate process doesn't need to be completed before property can be sold in many states, although the process and requirements to sell during probate can vary based on your location.

The petition to open probate is usually the first stage for the home seller. Depending on the laws in the state where the asset is located, you may also be required to file a petition for sale approval ahead of time. To assess the property's value, you might have to get it inspected and appraised, too.

The next step is to employ a real estate agent to promote the property. It's often better to find an agent who has worked with probate properties before or is certified because they'll be familiar with the intricacies of selling one.

While many states do not require you to employ a probate attorney to manage a home sale, you may find it necessary because they'll be more knowledgeable with the requirements to ensure a successful transaction.

When you receive an offer, you must decide whether to accept it or negotiate. Your attorney will need to submit the offer to the court for approval when you and the buyer have agreed on it. Expect this to last at least 30 to 45 days, although it could take much longer. To complete the sale, a court date will be required.

On probate homes, some states compel buyers to bid. The property may be awarded to the highest bidder. The legislation of each state governs the bidding process.

Alternatively, you might be allowed to use an "informal" probate procedure, depending on your state. In this instance, the executor is free to sell the property without the court's involvement. The property is usually sold without the official probate's restrictions and lengthy procedures.

Can a house be foreclosed on in probate?

A home left behind in probate can be foreclosed upon if the executor and beneficiaries fail to repay debts owed on the home, such as mortgage payments and property taxes.

The lender has the right to foreclose on the property in this situation. Only a state court case seeking an injunction to stop the foreclosure, or a bankruptcy filing can usually stop the foreclosure.

However, if the property was the home of the deceased, and if there are family beneficiaries who continue to make the required monthly payments, there are federal protections which generally prevent foreclosures in this instance.

What happens if a deceased homeowner doesn't have a will?

Probate will be required to sell property owned by a decedent, regardless of whether that person had a will or not.

The only way real property can be sold without any meaningful probate process involved is if the decedent owned the property in question indirectly, such as through a trust, a corporation, a limited liability company, or another entity, or if the deed has a mechanism, valid under applicable state law, which passes title to another living person upon the death of the owner.

Solomon adds that, if an individual dies without children and leaves no heirs, their estate will commonly go to their remaining parents. If neither parent survives, the property will likely be distributed equally among siblings (including half-siblings). The property will be shared amongst siblings and the surviving parent if one parent dies.

But suppose a single person dies without leaving a will and has no surviving parents, siblings, or descendants. In that case, the property is split equally between relatives [on] both sides of the family. If an individual dies without children but has property, it will be split equally among them. If any children die, their portion will be passed down to their children (the property owner's grandchildren).

If, on the other hand, a married couple passes away without a will, their assets are usually split based on how they were owned. Separate property will be shared among the spouse, siblings, and parents, whereas community property will go wholly to the spouse, per Solomon. If the person is married more than once, the present spouse will get the entire estate (if they have children).

How can probate be avoided?

Even though probate is often straightforward, many people prefer to avoid it, especially considering how long it can last. Here are several strategies that homeowners can pursue to avoid real estate probate for their beneficiaries:

- **Create a revocable or “living” trust** — or a limited liability company or other entity— and transfer your property to the entity
- **Shrink your estate.** Most states have a probate exemption level, allowing for a more streamlined process for what is considered a small estate. By lowering the worth of your estate when you’re still alive, you might be able to get it into a simplified or exempt probate situation.
- **Give your possessions to your family members and friends.** This way, you’ll be able to lower the amount of the estate that goes through probate
- **Make all accounts payable at the time of death.** Without going to probate, your bank and other funds payable on death go directly to your selected beneficiary. Many states also authorize such real estate transfers.
- **Make your spouse or another person a joint owner.** This can allow you to transfer your assets without going through probate. Joint tenancy with right of survivorship, tenancy by the entirety, and community property with right of survivorship are among the ways to secure such assets.

Real estate probate: The bottom line

There's often no getting around real estate probate once a property owner dies. This legal process is necessary to authenticate a will and ensure that assets are properly distributed. Knowing what's involved and how to avoid delays can keep the process moving smoothly.

It's often best to consult with an experienced probate attorney to find out what must be done, and the approximate timeline involved.