

Your Legacy, Your Way

The probate process after the death of a loved one may be complex or simple but it doesn't have to be stressful with the help of our team.

This is why it is important to engage with a probate and estate planning attorney that utilizes decades of planning and courtroom experience to help you navigate the process or help plan your legacy.

Contact Attorney, Jad A. Duncan, and his team to get started.

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What is Probate?

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What is Probate?

Probate is a legal process, administered through court, that occurs after a person dies to ensure their assets are distributed and their affairs are settled in an orderly way. Here's the "WHY:"

- **Validating the will:** The probate court verifies the authenticity of the deceased person's will to ensure it's the true last will and testament.
- **Appointing a personal representative:** The court appoints a personal representative, either named in the will (executor) or appointed by the court if no will exists (administrator), to manage the estate.
- **Identifying and managing assets:** The personal representative gathers and inventories the deceased's assets, which can include real estate, vehicles / personal property, and cash or banking accounts (which do not have listed beneficiaries or POD).
- **Paying debts and taxes:** The personal representative uses the estate's assets to pay any outstanding debts, bills, and taxes owed by the deceased.
- **Distributing assets:** Once debts, etc. are paid, the remaining assets are distributed to the beneficiaries named in the will or, if there's no will, according to state intestacy laws (heirs-at-law / next of kin by law).

- **Closing the estate:** The personal representative motions the court to close the estate once the process is complete. This is usually performed without a court hearing.

Probate with a valid will:

- If the deceased had a will, the executor initiates the probate process by filing the original will and a petition with the probate court.
- The court verifies the will's validity and officially appoints the executor, giving them legal authority to act on behalf of the estate, usually without a full court hearing or appearance.
- The executor then pays debts and expenses and distributes assets as instructed in the will and according to law.

Probate without a will (intestate):

- If the deceased died without a will, the estate is considered "intestate".
- Upon filing a petition, the probate court appoints an administrator to oversee the estate, often requiring a court hearing or appearance.
- The administrator then pays debts and expenses and follows state laws (intestacy succession laws) to distribute the assets.



Assets subject to probate:

- Assets solely in the deceased's name.
- Assets without designated beneficiaries.
- Personal property like jewelry and household items.
- Real estate owned solely by the deceased.
- Vehicles registered solely to the deceased.
- Accounts without Payable on Death (POD) or Transfer on Death (TOD) designations.

Assets that can avoid probate:

- Assets held in a trust.
- Jointly owned property (with right of survivorship).
- Assets with named beneficiaries (e.g., life insurance policies, retirement accounts).
- POD or TOD accounts.

Avoiding Probate:

- **Creating a will:** A WILL DOES NOT ELIMINATE PROBATE, however, it can simplify the process and ensure assets are distributed as intended.
- **Establish a living trust:** Assets properly held by a trust bypass probate.
- **Use joint ownership:** Jointly owned property passes directly to the surviving owner. (WARNING: transferring some items before death may result in tax consequences.)
- **Designate beneficiaries:** Naming beneficiaries on accounts like life insurance or retirement accounts avoids probate.
- **Use POD or TOD accounts:** These accounts allow direct transfer to named beneficiaries upon death.

Contact Us

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