

Lindstrom Estate & Trust

PROBATE

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What is Probate and what does it do?

Probate is a legal process that takes place after someone's death. This legal administration process generally involves five areas:

- 1) Identifying the deceased's Will and appointing a personal representative
- 2) Identifying the deceased person's property and its' value
- 3) Handling payment of claims/debts and taxes, if applicable
- 4) Appointing guardians, if applicable
- 5) Distributing remaining property per the deceased's Will, or if there is no Will, per state law.

If a Will is in existence, the Will appoints a personal representative (sometimes referred to as an "Executor") who is the trusted person named to carry out your wishes set forth in the Will. The personal representative typically works with legal counsel through the Probate process to carry out your wishes.

Does having a Will prevent my estate from going through Probate?

The short answer is no. In fact, your Will is the document that governs *how* your assets are administered within a Probate proceeding (subject to limitations for small estates). However, your Will and the Probate process only governs assets that are in your sole name without a joint owner, without a named beneficiary (i.e. life insurance and retirement plans), or without payable/transfer on death (POD/TOD) designations. Thus, often on the death of the first spouse there is not a probate proceeding because most assets are held jointly by both spouses or the spouse is a designated beneficiary. In contrast, non-married individuals or surviving spouses often have assets that are held in their sole name and thus a probate proceeding will generally be required.

Probate Misconceptions

There are many misconceptions about the Probate process. A common misconception is that a probate is an extremely expensive and time consuming process (1 or 2 years). More often than not, an Informal Probate proceeding can be used in Minnesota for many individuals which makes the process relatively straightforward. Nevertheless, a probate will cost \$5,000 at a minimum.

A second misconception is that everyone needs a Trust to avoid probate and the expenses of probate. If an Informal Probate proceeding is used, the expense of the Probate proceeding can be equal to the cost of creating a Trust and titling all of your assets in the name of the Trust. Moreover, much of the expense involved with handling an estate relates to matters unrelated to the Probate process such as collecting assets, paying creditors, and handling tax returns.

A third misconception is that your assets may end up passing to the State of Minnesota. This is virtually a myth. Only if you did not have a Will/Trust AND did not have any surviving relatives (including extended relatives) would your assets ever go to the State - unless, of course, you name the State as a beneficiary.

Probate without a Will

If you pass away without a Will, you are said to die "Intestate". If you pass away without a Will, there are Statutes or laws used which address the distribution of your estate referred to as "Statutes of Intestate Succession." These Statutes attempt to make an educated guess at what your wishes would have been if you had a Will. Thus, no worries? Not quite, the Intestacy statutes are as stated, an educated guess as to your wishes and typically do not match your actual desires. Furthermore, the Statutes provide who your Personal Representative (Executor) will be, do not allow for holding your assets in Trust for your young children, and do not allow you to determine who the guardian(s) of your minor children will be. Moreover, the Intestacy Statutes do not address your estate-tax planning needs and may have your assets passing to those whom you would not desire to be your beneficiaries. In short, make a Will and reduce the burden on your family and loved ones in that, without a Will, the Statutes of Intestate Succession will control distribution of your estate despite your loved ones knowing that you would have had other wishes.