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Probate Group

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What is Probate in Oregon?

What Is Probate?

Probate is the court process to determine who receives assets owned by someone who has died. The court appoints a personal representative (or executor) to take charge of the estate, pay all debts and taxes and, ultimately, distribute the remaining assets to the heirs.

When Is Probate Required?

Some situations requiring probate include:

- The deceased person held sole title to land, bank accounts, or stocks and bonds, and title needs to be cleared and/or ownership passed to heirs.
- A dispute exists about who is entitled to receive the deceased person's assets.
- To collect debts owed to the deceased person.

If the deceased person owned real property in another state, a second probate action may also be needed in that state.

When Is Probate Not Required?

Situations that may **not** require a probate include:

- The deceased person owned assets of very little value, possibly qualifying for transfer without court supervision.
- The deceased person owned assets jointly with or 'payable on death' to another person, passing automatically to the surviving co-owner.
- The deceased person owned assets that named another person as beneficiary.
- The deceased person held all assets in a Revocable Living Trust.

The Probate Process

Step 1: With or Without a Will. The process begins when the person named in a Will as personal representative (sometimes called an 'executor') files papers in the local probate court. This person must prove that the Will is valid. In Oregon, a valid Will requires two witnesses to testify that the person who created the Will was of sound mind and knew what he or she was doing. These witnesses must sign the Will in the presence of each other at the time the Will is created. The personal representative usually provides the court with proof of these requirements in an affidavit signed by at least one of the witnesses.



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The Probate Process (*continued*)

If there is no Will or if the person named in the Will cannot serve as personal representative of the estate, the court will appoint someone, usually the spouse, an adult child, or a close relative. Probate without a Will is called intestate succession.

Step 2: Inventory and Accounting for Assets. The personal representative must provide a list of all of the deceased person's assets to the court, and to everyone named in the Will. During the probate, the personal representative may sell assets to pay expenses, depending on the instructions in the Will and the amount of debts. The personal representative must account for all expenses and receipts during the probate process. This accounting must be provided to the court and to all people and entities named in the Will.

Step 3: Creditors of the Estate. The personal representative must actively search for possible creditors of the deceased person. The estate must also publish a notice to creditors in a local newspaper. This process alerts creditors that they have four months in which to make a claim for any debts the deceased person may owe. Finally, the personal representative must provide written notice to all known and possible creditors of the estate.

Step 4: Distribution. The personal representative can request court approval to distribute estate assets after: (1) securing all assets; (2) paying all debts, taxes, and expenses; and, (3) the four-month creditor period expires.

How Long Does Probate Take?

From start to finish, you can expect probate to take six months to one year. You can begin probate immediately after a person dies. Probate can take longer if real property must be sold, or if complex tax issues exist.

What Kinds Of Expenses Does Probate Have?

Expenses associated with probate include the court's filing fee, a fee for the personal representative, publication of legal notices, tax-preparer fees, and attorney fees. The personal representative's fee is a set percentage of the estate's value, based on Oregon law. Tax-preparer fees and attorney fees will vary, depending on the size, complexity, and number of heirs of the estate. Sometimes estates will also have appraisal fees and/or insurance premiums for real or personal property, as well as postage and/or shipping costs.

Attorney fees must be approved by the court before they can be paid. The range of attorney fees can vary greatly depending on the case. The attorney for the personal representative submits a detailed description of all attorney and staff time to the court. The court reviews the attorney's documents and gives the personal representative permission to pay the attorney.



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What If There Are Very Few Assets?

An estate may qualify for a 'small estate' proceeding IF:

1. Real property is worth \$200,000 or less; AND
2. Personal property is under \$75,000.

Real property includes land and its structures. Personal property includes everything else, such as bank accounts, stocks and bonds, furniture, clothing, cars, and collections.

A small estate proceeding is generally much simpler, less expensive, and faster than a full probate. It has fewer court formalities, and typically takes only four to nine months to complete.

DISCLAIMER: The information contained in this document is based on Oregon law and is subject to change. It should be used for general purposes only and should not be construed as specific legal advice by Fitzwater Meyer Hollis & Marmion, LLP or its attorneys. Neither this website nor use of its information creates an attorney-client relationship. If you have specific legal questions, consult with your own attorney or call us for an appointment.

