

A Guide TO PROBATE

Everyone has a will or plan, whether created or by default. Even if you have not made out a will or a trust, you still have a plan – a plan dictated by the laws of the state where you reside upon your death. Making a will is not a way to avoid "probate", the court procedure that changes the legal ownership of your property after your death. Probate makes sure it is your last valid will, appoints the executor named in your will and supervises the executor's work. You can do several things now that can help your executor and family later, hopefully much later on.

Q. I am in possession of a will that distributes the decedent's estate to me, isn't this all I need?

A. No. The will must be admitted to probate and the estate of the decedent must be "probated."

Q. What does "probate" actually mean?

A. Generally, probate is a court proceeding that administers the estate of an individual.

Q. What is the purpose of "estate administration"?

A. Generally, there are five purposes, many of which have subsets to them:

1. To determine that the decedent is in fact dead,
2. To establish the validity of the will,
3. To identify the heirs and devisees of the decedent,
4. To settle any claims that creditors may have against the estate of the decedent, and
5. To distribute the property.



Q. Who is the Public Administrator?

A. Generally speaking, a public administrator is a person or entity appointed by the State to act when there is no will or relatives.

Q. What is the difference between "Testate" and "Intestate"?

A. When one is said to have died "Testate," it means he or she died leaving a will. If one is said to have died "Intestate," it means he or she died without leaving a will.

Q. What is the difference between an executor and an administrator?

A. An "executor" carries out the directions and requests set forth in the decedent's will. An "administrator" is appointed by the court to manage the estate of a decedent who dies intestate.