

HARRIS LAW & CO.

Protecting Families & Businesses Through All of Life's Journeys

WAIT . . . MY WILL GOES THROUGH PROBATE?

One of the biggest misconceptions people have when they create a Will is that their family will be able to avoid the probate process. However, this is simply not true and results in a lot of confusion and chaos.

IF YOU HAVE A WILL, YOU WILL GO THROUGH PROBATE.

The only way to administer your Will is through probate. Yes, you read that right. So, let's get real about probate to ensure you understand what your Will actually does and what your family will have to go through when you pass away.

DO I HAVE A WILL?

The law likes to make things complicated and it does a pretty good job of using terminology that a lot of people do not understand. I mean you know the difference between your Will, your Last Will, your Last Will & Testament, your Living Will, and your Living Trust, right? If those terms leave you scratching your head, you are not alone.

- A Will, Last Will, and Last Will & Testament are all slightly different terms to refer to the same legal document where you express your wishes on how your property is to be distributed at your death through the probate process.
- A Living Will is also referred to as an End-of-Life Care Directive. This legal document discusses your life sustaining treatment and organ donation wishes.
- A Living Trust refers to a legal document that holds your assets during your life for your benefit and then transfers them according to your wishes at your death by your successor trustee.



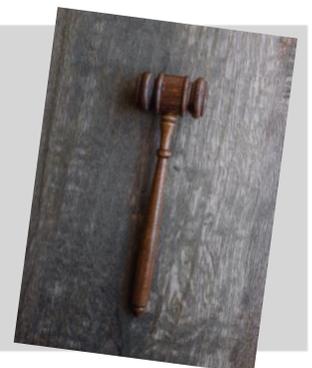
WHAT IS PROBATE?

Probate refers to the court proceedings that take place after you die. Although every probate is different, the tasks probate accomplishes are generally the same:

- Prove the existence or non-existence of a Will
- Prove that the Will is valid & was the last Will executed
- Appoint a personal representative (or executor) to administer the Will
- Notify the heirs of the death & terms of the Will
- Identify the decedent's assets & provide an inventory to the Court & the beneficiaries
- Notify Creditors
- Appraise the property & value each item of the decedent
- Pay debts & taxes
- Distribute the remaining property to the beneficiaries

DID YOU KNOW?

Beneficiary designations are great but using them as a way to avoid probate often backfires. If you beneficiary all of your assets out of your estate, who pays for your funeral? Final expenses? Bills? What are the tax ramifications to your beneficiaries? What happens if they die, get divorced, or sued? Will the money still be there? Don't set your children up to get sued by your creditors who are trying to get their money. Make sure your estate plan covers final expenses and don't rely on your beneficiaries to pony up money they likely already spent.



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HOW DOES PROBATE WORK?

When you pass away, your family submits your Will to Court. This is usually done by the person you nominated as your personal representative or executor. The Court reviews the Will and the Petition for Probate and officially appoints a personal representative to administer the Will pursuant to state law. The decedent’s assets are essentially frozen until the personal representative is appointed by the Court and receives Letters of Personal Representative, which give them power to act on behalf of the estate. No assets from the estate should be moved, distributed, or used in any manner until this point. Otherwise, the people utilizing those assets are at risk of becoming personally liable to the estate and its creditors (which may not all be known).

Your Personal Representative (PR) finds, secures, and manages the assets throughout the probate process, which can take about 2 years, unless there are further disputes or litigation holding the estate open. The PR then creates a list of all of the estate assets and values, gathers all creditor claims, and decides what property has to be sold to finalize the administration. If the surviving spouse and children need funds during the probate process, they have to ask the court for the release of such funds before they can be taken. The Court will review the assets and liabilities and give the PR permission to pay the debts, taxes, and divide the estate among the beneficiaries named in the Will.

HOW DO I AVOID PROBATE?

Probate generally ends up costing your beneficiaries more time, money, and headache than it is worth. Further, it is a public proceeding—do you want everyone knowing how much your daughter just inherited? Probate also gives anyone a place to air their grievances and cause disruption to the administration. In short, it is a lot of time and money spent fighting and pushing paperwork through the system. Now, if you are planning on going through probate intentionally and working with a qualified estate planning attorney, it may not be as bad. However, most families choose to avoid probate and make things easier on their loved ones when they pass away.

Probate can be avoided by setting up a living trust. A living trust is the most popular modern-day estate planning vehicle used by people to accomplish two overriding goals: avoid probate and make things as easy as possible for their loved ones who are already grieving. Trusts are administered privately and do not go through the Court system. Trusts may be relatively simple, straightforward, and hold a few thousand dollars or they may be more complex and hold millions of dollars. Either way, they tend to be a better fit for those wanting to ensure a smoother legal process for their family at a time when they are already grieving your loss. If you lost a loved one and need help through the probate process or want to ensure your family avoids the probate process, give us a call. 605-777-1772. We work with you to ensure your family is taken care of every step of the way.

**This article is for general informational purposes and is not intended to give legal advice. Please consult with an attorney about your situation.*