

What is Probate?

Probate is the legal process for the orderly transfer of a decedent's assets to those who are entitled to them. The probate process ensures that notice is given to all interested parties and that all debts, taxes and expenses are paid. It also ensures that the estate property is protected and distributed either in accordance with the testator's last will and testament or to the heirs at law as determined by statute. Special protections are given to minors and incompetent persons.

Does all of a decedent's property have to be probated?

No. Examples of property **not subject to probate** includes: (1) insurance proceeds, pensions, annuities, bank accounts, savings bonds, etc. that are payable on death (POD) to a person or entity other than the decedent's estate; (2) joint tenancy or survivorship marital property; and (3) property held in an inter vivos (living) trust. Property may also be transferred without probate if there is a marital agreement with dispositive provisions upon the death of a spouse.

Sometimes a proceeding in probate may help facilitate non-probate transfers, e.g., termination of joint tenancy, termination of survivorship marital property, or confirmation of interest in property. Most of the time no court proceeding is necessary.

When is Probate necessary?

A probate proceeding is necessary if the decedent owned **more than \$50,000 of assets in his/her name only** or if there is **real estate of which the decedent is the sole owner or a tenant in common**.

What procedure should I use if the estate exceeds \$50,000?

Informal Administration is the most commonly used procedure. You may use informal administration (1) if the decedent's will does not prohibit the use of informal administration and contains an attestation clause, or (2) if the decedent dies without a will and the interested persons agree. In most cases, you do not need an attorney to proceed informally.

Formal Administration is a formal proceeding in circuit court. Formal probate requires an attorney to represent the estate. It is necessary when required as a condition of the will or if there is a disagreement among the heirs or legal issue requiring a hearing and court order.

Special Administration may be used when there is no estate to administer or the probate proceeding has been completed, but there is still some legal act in regard to the estate that must be performed. It may also be used to facilitate a transfer of property pursuant to Summary Assignment.

The **Summary Settlement** proceeding can be used whenever there is a surviving spouse or minor children **and** the estate (solely owned or tenancy in common property) does not exceed \$50,000. It may also be used whenever the value of the estate does not exceed the priority debts (e.g., administrative, funeral and burial, taxes, last illness, spousal and family allowances). This procedure can usually be completed in a day or two.

Summary Assignment can be used whenever the value of the estate does not exceed \$50,000 (solely owned and tenancy in common property) and summary settlement does not apply. This procedure takes at least four to six weeks.

Do I need an attorney?

If you are proceeding by **Formal Administration**, the personal representative must retain an attorney.

It may also be advisable to retain an attorney in other situations. An attorney can help you meet deadlines, file tax returns, draft legal documents, appear in court for you, do post-death estate planning, and provide general legal advice.

What if I still have questions?

You may make an appointment to meet with one of the Probate Registrars, who will direct you to the appropriate legal forms, and answer your questions about probate procedures.

Other helpful publications are available from the State Bar of Wisconsin and information is available on the internet at the websites listed.

Websites for Probate

Dane County Probate Office

Information and Links

<https://courts.countyofdane.com/Prepare/Probate>

(Also contains links to forms and case information sites.)

Forms

State Forms – pdf or Word formats

<http://www.wicourts.gov/forms1/index.htm>

Administration Checklists

<https://courts.countyofdane.com/Prepare/Probate>

Case Information

<http://wcca.wicourts.gov>

State Law Library's Links to Probate Websites

<http://wilawlibrary.gov/topics/estate/probate.php>

A Personal Representative's Guide to Informal Probate in Wisconsin

http://www.wripa.org/uploads/1/0/1/9/10190269/informal_guide_9.16.13.pdf

Wisconsin Register in Probate Association

<http://wripa.org/>

Dane County Probate Office

Dane County Courthouse – Room 1005
215 S Hamilton Street
Madison, Wisconsin 53703-3285
608-266-4331

Answering Your Questions About Probate



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**CALL FOR
APPOINTMENTS:
608-266-4331**