

## Probate, What is it?

The term “probate” comes from the Latin word probatio, meaning “to prove.” The legal definition is the “act or process of proving a will.” In reality, the probate process encompasses more than just proving the validity of a will. It includes the entire administration process, determination of the deceased total assets, paying debts, liabilities and taxes, and the distribution of remaining assets to beneficiaries. In effect, **probate is the process that enables beneficiaries to receive property that is rightfully theirs.**

When a person dies and leaves a valid will (testate), or a person dies without a will (intestate), the probate process takes effect. When a will exists, the probate process involves establishing its validity. If no will exists, the process centers on establishing who will be entitled to receive the property under state law. In either event, evidence will be presented to the court having probate jurisdiction, typically requiring the services of an attorney. **Structuring financial affairs will help avoid probate costs.**

### Advantages of Probate

The probate process provides judicial verification of a will and helps ensure distribution of property according to the decedent’s intentions. Although the process can be **time-consuming and costly**, the additional assurance provided by court supervision may be **attractive if a conflict** among family members or creditors is anticipated.

In many circumstances, to give effect to certain rights under state law, probate proceeding may be necessary. For example, in some non-community property states (such as Connecticut), a surviving spouse is entitled to an elective share of the estate. Under such a statute, a surviving spouse may elect to take the property described in the will or take the property allowed according to that statute.

### The Probate Process - Overview

The death of a family member is always a traumatic time for families. Planners can help survivors determine when to begin the probate process as often, other issues emerge besides probate. Urgency usually depends on the beneficiaries’ access to funds.

If a joint account with a spouse, or other person has sufficient cash to take care of current expenses, generally, no immediate need to open the probate administration.

The probate court will ensure payment of the decedent’s debts, including funeral expenses and taxes, before distributing the remaining assets to beneficiaries.

### Necessary Steps

1. **Filing an application** in the court that has jurisdiction over the estate (usually determined based on residence).
2. **Appointment and qualification of the executor.** Generally, the application to probate a will includes an application for appointment of an executor. The executor named is the person responsible for administering the estate. The court will appoint an executor, if none was designate in the will or when a person dies without having a will. Upon appointment of an executor, the court will issue letters providing evidence of the executor’s authority to act on behalf of the estate.



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Without the letters, third parties generally will not follow the instructions of the executor.

- Determine the executor's administration powers.** An independent administration allows the executor to act without the supervision of the probate court. Conversely, a dependent administration requires the executor to obtain approval from the probate court before taking any action. Connecticut law does not provide for independent administration.
- Determine the executor's responsibilities.** The executor's responsibilities extend to fiduciary duties that exist at common law, and in state statutes. The fiduciary duties at common law include loyalty, fair dealing and prudent investment. An executor serves in a fiduciary capacity extending to heirs (death without a will), beneficiaries (death with a will), and creditors.

The executor's three primary responsibilities are:

- / Gathering estate assets
- / Paying creditors and expenses of administration, including any applicable taxes
- / Distributing the remaining assets to beneficiaries or heirs

## COST OF PROBATE

**Costs associated** with probate include:

- ' Filing fees
- ' Attorney fees
- ' Executor fees
- ' Bond premiums
- ' Appraisal fees

Typically, **fees depend on** the size of the estate (the larger the estate, the higher the costs). However, small estates with administration problems (numerous creditors, real estate, closely-held businesses, etc.), can generate significant probate costs.

## Filing Fees

Filing the application involves a fee to cover the **cost of processing**. Additional filing fees may be necessary if additional documents are required to be filed during the probate process. For example, if the estate consists of real property in different counties or states.

## Attorney Fees

Generally, the attorney fees are the **most significant** cost associated with an estate administration. An engagement letter clearly identifying responsibilities and fee arrangement of the attorney, is recommended.

## Executor Fees

The executor is entitled to receive a fee, often **based on a percentage** of the probate estate. In some states, the law establishes the amount and may make it mandatory, unless waived. Connecticut law does not mandate executor fees.

## Bond Premiums

If the state requires the executor to post a bond, the surety company will require an annual premium to ensure coverage. The amount is usually regulated and not subject to negotiation.

## Appraisal Fees

Appraisal fees may be incurred in the following ways:

- When the estate includes real property or closely-held businesses.
- When an estate or inheritance tax return must be filed to substantiate the value of the assets shown in the filings.
- To facilitate division of the estate when disagreements among heirs or beneficiaries arise as to the value of certain assets.

*If you have any questions, please call us. We are at (203) 929-3535*