



Q: What is meant by probating an estate?

A: Upon the death of a property owner, Oklahoma law provides for a legal process to determine the assets, assess their value, and distribute them to creditors and heirs. Such procedure takes place in the district court of the county where the deceased property owner lived. If there is property of the deceased located in another state, additional proceedings called “ancillary administration” will be necessary in that state. Oklahoma law provides for the probating of estates to protect all parties who have any interest in the estate.

Q: What is the necessity of probate?

A: An estate is probated for the following reasons:

- to identify and collect the property and assets of the estate
- to protect the property of the estate
- to pay debts and taxes
- to determine who is entitled to share in the estate and distribute the property to the proper parties
- in the case of real estate and other record ownership property, probate provides a method to secure the legal transfer of such record ownership and thereby maintain a clear chain of title to the property.

Although this procedure may be considered lengthy and detailed, it is provided by law to assure that all property of the deceased is accounted for, and that all debts and taxes are paid. Someone is required to step into the shoes of the deceased person, so to speak, and carry out the business of the estate and pay the debts and the expenses, and, in the end, see that the property is distributed to the rightful parties in interest. That someone is called the personal representative of the estate. All of these functions are carried out under the supervision of the district court.

Q: What does probate involve?

A: Probating an estate requires that a responsible party, called the personal representative, be appointed by the court to carry out the duties outlined above. The personal representative may be a bank or a trust company or it may be an individual such as the spouse or child of the deceased. If the deceased names a personal representative in a will, that party is usually appointed by the district court. If the deceased does not have a will, the district court will usually appoint the closest relative as the personal representative. The functions and duties of the personal representative are:

- to identify, take possession, protect and conserve all of the real and personal property of the estate, except for the homestead of the surviving spouse and children
- to receive and collect all rents, payments, and debts due the estate, including interest, dividends, claims and notes
- to determine the names, ages, residence and degree of relationship of all possible heirs
- to determine and pay any outstanding debts, including taxes
- to carry out the orders of the district court in all matters before the court and to distribute the property to the proper parties.
- in general, to wind up the affairs of the deceased in an orderly manner.

These steps and proceedings require preparing and filing numerous legal documents, publishing certain notices in a newspaper, holding district court hearings, securing appraisals of property, preparing interim and final income tax returns and any required gift and estate tax returns, providing an accounting of funds, making actual distribution of the property, and receiving the final discharge of the personal representative by the district court.



The District Judge

All of these proceedings are under the jurisdiction of the judge of the district court. Every action taken by the personal representative is subject to the scrutiny and approval of the judge. All determinations are made by the judge, without a jury, including the payments of debts, payment of attorney and personal representative fees, and the final distribution of the estate assets.

Q: How long does probate take?

A: It is difficult to predict how long it will take to settle any estate because each one is different. There is usually a minimum of 10 days required before a hearing can be held for the appointment of the personal representative. Creditors must be given two months in which to submit claims following publication of a notice to creditors in a newspaper. The personal representative must file an inventory of the assets of the estate within two months after appointment, unless the inventory is waived by the court. The personal representative must file an accounting of the handling of the estate funds at the conclusion of the probate and a minimum of 20 days notice must be given for a hearing on his accounting. The state and federal taxing authorities will usually take from two to 15 months to complete an audit of the estate tax report, depending on the size and complexity of the estate.

The minimum time required to complete a simple estate is six to 12 months. Large estates with property to be sold usually take longer. If an estate is taxable, tax releases from the taxing authorities must be filed with the court before the judge will issue a final decree distributing the estate property.

Special procedures are available for administering small estates, estates passing completely to a surviving spouse, and terminating a joint tenancy or a life estate. In these cases, the time required may be considerably shorter.

Fees, Costs And Taxes

Three sources of expenses that arise in connection with the administration of the estate, other than property management expenses, are court costs, estate and inheritance taxes, and attorney and personal representative fees.

District court costs are based on a schedule of charges made for each matter handled by the court.

Federal estate taxes are charged against estates over the exemption amount for persons who pass away in a given year, as set forth below:

<u>Year</u>	<u>Exemption Amount</u>
2004-2005	\$1,500,000
2006-2008	\$2,000,000
2009	\$3,500,000
2010 or later	\$5,000,000 (note: there are special rules for persons who died in 2010)

Oklahoma no longer has an estate tax for property owners who pass away after January 1, 2010. Depending on the size of the estate, there may still be Oklahoma estate taxes due for individuals who died before that date.

Oklahoma estate tax exemptions for persons who passed away before 2010 are shown below:

<u>Year</u>	<u>Exemption Amount</u>
2006-2007	\$1,000,000
2008	\$2,000,000
2009	\$3,000,000
2010 and after	No Estate Tax

In most cases there are no federal or Oklahoma estate taxes on property passing to the spouse. Life insurance owned by the decedent is subject to tax under both the federal and state estate tax laws.

Attorney fees are based upon reasonable charges necessary to provide appropriate compensation to the attorney, considering the scope and extent of services rendered and responsibilities assumed. The personal representative is allowed a fee, fixed by law, based on a percentage of the probated estate. Fees for attorneys and personal representatives are subject to the approval of the district court.

Non-Probate Assets

Some property may not be included in the probate estate, such as life insurance, pension and/or profit sharing benefits, trust property and property held in joint tenancy; but this property is still generally subject to estate taxes. However, proper transfer of these assets may require considerable effort on the part of your attorney.



Joint Tenancy

Joint tenancy is a form of co-ownership of property whereby two or more persons own property together. On the death of one joint tenant, court proceedings are occasionally necessary to transfer title. Normally a joint tenancy may be terminated by the execution of an affidavit filed in the county clerk's records. Joint tenancy can be a useful transfer device for a married couple; however, the unrestricted use of this device by a layman for every property acquisition can lead to disastrous tax consequences. The court proceedings are simple if all of the property of the deceased is in joint tenancy; however, many people do not have all of their property in joint tenancy and a full probate is required for the solely owned property. Usually, a great deal of time and expense can be saved by obtaining the advice of the family lawyer before title is taken in joint tenancy.

Your Will

Whether or not you make a will is up to you. Experience has proven the wisdom of one who has carefully considered the provisions of a will. Having your will timely and properly drawn will assure you and your loved ones that upon your death disposition of your property will be as you intended.

After you have made your will, it is important that you periodically review it with your attorney to keep it up to date, taking into consideration current individual circumstances and tax laws.

Wills must be filed in the district court upon deaths, if a probate is required. If you do not make a will, your prop-

erty may be distributed according to the Oklahoma laws of descent and distribution, depending on how you held title to each asset.

Laws Of Descent And Distribution

If a person dies without a will, the legislature has written a law determining how that person's estate will be distributed at death, called the law of descent and distribution. The law of descent and distribution will be subject to any prenuptial marriage contract. Assuming there is no prenuptial contract, if the deceased leaves a spouse and children of their marriage, the surviving spouse receives one-half of all the property of the deceased, whether acquired by the joint industry of the husband and wife during marriage or otherwise. The remaining one-half of the estate passes in equal shares to the surviving children. When a person dies leaving a spouse and children, one or more of whom are children from a prior marriage, the surviving spouse receives one-half of the property acquired by the joint industry of the husband and wife during the marriage and the children share the other half equally.

All remaining property of the deceased person is shared equally by the surviving spouse and children of the deceased. Additionally, where a person's child has predeceased them, if that deceased child is survived by children (the deceased person's grandchildren), those grandchildren will receive equal shares the portion of the estate that their parent would have received if living.

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