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Probate & Estate Taxes

What Is Probate?

Probate is the court process which distributes the property owned by a person (the decedent) at the time of death. This procedure is needed whether or not the decedent had a will. Not all property is subject to the probate process. "Probate property" is property owned in the decedent's individual name not covered by another contract. Property that has a designated beneficiary or survivorship clause are not subject to probate and pass directly to the named beneficiaries upon the decedent's death. See below.

What Is Involved When Probating An Estate?

When a person dies someone must apply to be the personal representative of the estate. If the decedent had a will, the will must be presented to the county probate court. Once the court accepts the will, within two weeks of admission of the will to probate, notice of the will's filing must be sent to the surviving spouse, to all beneficiaries under the will and to all who would be entitled to inherit if there were no will. The court gives letters of authority appointing the personal representative and granting him or her power to act on behalf of the decedent. That representative is called the executor, if named in the will, or the administrator, if there is no will.

What Is "Release From Administration" And When Can It Be Used?

"Release from Administration" is a simplified probate procedure which can be used when:

a) the value of the estate assets is $35,000 or less; or
b) if the surviving spouse is entitled to all the estate assets, the value of the estate assets can be $100,000 or less.

See Pro Seniors' *Small Estates* fact sheet for more details.

Who Can Be Executor Or Administrator?

To qualify as executor, the person named in the will must be 18, competent, and

a) an Ohio resident, or
b) a nonresident related to the decedent by blood or marriage.

If there was no will, the court will appoint an Ohio resident as administrator in the following order of preference: a) spouse; b) next of kin; or c) another suitable Ohio resident.

To qualify as administrator, the person must be 18, competent and an Ohio resident. Executors and Administrators must accept the appointment in writing and give bond if required.

What Are The Duties Of The Executor/Administrator?

The executor or administrator must:

a) file, within three months of appointment, an inventory listing the value of all property owned by the deceased;
b) pay all valid debts decedent owed at the time of death from the estate's assets;

(c) file a Federal Estate Tax return if required; (d) file decedent's Federal Income Tax return;
(e) file decedent's Ohio Income Tax return;
(f) distribute the remaining estate property to the heirs or the beneficiaries under the will; and
(g) file a final and distributive account.

What Time Limits Apply To Probate?

Some key time limits are:

a) surviving spouse has 5 months from the date of initial appointment of executor or administrator to elect to inherit probate assets as allowed by Ohio law instead of according to the will;
b) decedent's creditors must file their claim within six months after decedent's death;
c) a will must be contested within three months after the filing of the certificate that all notices of the will's admission to probate have been given;
d) Federal Estate Tax return must be filed within nine months of death; and
e) Federal and Ohio Estate Income Tax returns must be filed by April 15th following the end of the estate's taxable year.

Who Inherits If There Is No Will?

If there is no will, Ohio law decides who will inherit.

a) If the decedent had a surviving spouse and no children, or only children with the surviving spouse, the spouse will inherit the entire estate.
b) If the decedent had a surviving spouse and children with someone other than the spouse, there is a division of assets between the two, depending on the circumstances.
c) If the decedent had no surviving spouse or children or grandchildren, the estate would go to his parents.
d) If his parents have predeceased him, to his brothers and sisters or their children.
e) Ohio law provides further distribution even after this.

Also in Ohio, the children of a deceased heir inherit their parents' share except when all descendants are equally related, in which case they divide the estate equally.

What Property Passes Outside The Probate Estate?

Property of the decedent that passes automatically to survivors or named beneficiaries without being subject to probate includes:

a) property owned by the decedent and another as joint tenants with right of survivorship, such as land or bank accounts;
b) financial accounts that are "payable on death";
c) land transferred under a transfer-on-death deed or subject to a transfer-on-death affidavit;
d) assets which pass to a named beneficiary based on a contract, such as retirement accounts, bank accounts payable on death and life insurance policies;
f) property in trusts funded prior to death; and
g) up to two automobiles (not over $65,000 FMV for both), one watercraft, and one outboard motor selected by a surviving spouse, not otherwise transferred.

Non-probate property may still be subject to estate or beneficiaries' income taxes.

How Is The Transfer Of Land Handled After Death?

Before filing the final account, the executor or administrator must request the court to issue a certificate of transfer for the real estate. The court then issues a certificate to be recorded in the county in which the land is located.

If real estate is held jointly with the right of survivorship, the survivor(s) must file with the county recorder a survivorship affidavit, stating the date of death, the names and address(es) of the survivorship owner(s), the description of the property, and a certified copy of the death certificate. Land subject to a transfer-on-death deed or transfer-on-death affidavit is similarly transferred by filing a transfer on death designation affidavit with the county recorder that must also include certified copies of the death certificates of non-surviving beneficiaries.

Are Executors And Administrators Paid By The Estate?

Yes, they receive fees, based on the value of the estate and its income during probate, and the proceeds of any sold real estate, calculated as follows:

a) 4% on the first $100,000;
b) 3% on the amount between $100,000 and $400,000;
c) 2% on the amount over $400,000; plus
d) 1% of the value of real estate not sold and of non-probate property (other than joint and survivorship property) includable for Ohio estate tax purposes.

What Happens To Bank Accounts And Safety Deposit Boxes During Probate?

The Ohio Estate Tax has been repealed for the estates of individuals dying on or after January 1, 2013. This eliminated the requirement that written permission be obtained from the Tax Commissioner before certain assets of a decedent may be transferred to another person. When a depositor dies on or after 2013, a bank may transfer 100% of the account and the contents of safe deposit boxes without consent of the Tax Commissioner.

Are Ohio Estate Taxes Due On Inherited Property?

No. Ohio Estate tax was repealed January 1, 2013.

When Must Federal Estate Taxes Be Paid?

An IRS filing is required for estates with combined gross assets and prior taxable gifts exceeding $13.61 million in 2024.

Pro Seniors helps older Ohioans solve legal and long-term care problems and fight Medicare fraud. Our Legal Helpline provides free legal information and advice for Ohio residents aged 60 and older.

This fact sheet provides general information, not legal advice. The law is complex and changes frequently. Before you apply this information to a particular situation, call Pro Seniors' free Legal Helpline or consult an attorney in elder law.

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