

## Frequently Asked Questions about the Illinois Probate Process

In most instances, after a person dies in Illinois, the decedent's estate goes into probate. As an experienced estate planning lawyer, Marc Blumenthal knows the ins and outs of the Illinois probate process and, in this e-book, he answers some of the most frequently asked questions about the Illinois probate process.

### When Does Probate Apply?

In most cases, a decedent's estate will go into probate after he or she dies. Generally, the formal probate process is necessary in Illinois if:

- The estate consists of assets that the decedent owned individually (not jointly); and
- The value of all estate assets, together, exceeds more than \$100,000.

Certain assets do not need to go through probate, however, including:

- Assets held in a trust (such as a living trust)
- Assets owned in joint tenancy or tenancy by the entirety
- Assets subject to a beneficiary designation (such as retirement accounts or life insurance policies)
- Real estate subject to an Illinois transfer-on-death instrument.

Probate applies whether a decedent leaves a will or dies intestate (without a will). While a properly drafted will does not exempt a decedent's estate from probate, as explained in further detail below, the probate process will be significantly less costly and time consuming with a will than without one.

### What Is a Small Estate Affidavit?

If the total value of the decedent's estate is less than \$100,000 and does not contain any real estate assets, a formal probate process is not required. Instead, those beneficiaries who stand to inherit the decedent's assets can submit an affidavit (sworn statement) to claim their inheritance. The standard small estate affidavit is a brief form that can be completed by providing basic information about the decedent and attesting that no probate proceedings are in place. A copy of the death certificate must be provided with the affidavit, along with a copy of the will if the decedent had one.

### How Does the Illinois Probate Process Work?

If there is a will, the named executor will file a petition with the probate court. If there is no will, the court will name an administrator for the estate. Notice will be sent to the decedent's heirs, notifying them of the probate proceedings. Notice will also be published in a local newspaper to notify creditors of the probate proceedings.

If there are no problems with the will, the court will approve the named executor, who will then distribute the assets pursuant to the terms of the will. If the decedent died intestate, the administrator will generally be required to post a bond and the court will direct distribution of the assets pursuant to state law.

During the probate process, federal and state tax returns must be filed and the executor/administrator must pay the necessary federal and state estate taxes.

Once all assets have been distributed, all debts have been paid, any disputes have been resolved, and the claims period has expired, the executor/administrator will submit to the court a final accounting showing how the estate assets were handled. Thereafter, the probate estate can be closed.

### What Are the Advantages of the Illinois Probate Process?

Although the probate process can take time, there are several advantages to estate administration in probate court. For instance, when an estate goes to probate, any claims against the estate must be filed within six months of the notification of death. If the estate is not in probate (*i.e.*, if all property is distributed through a trust), creditors have up to two years to file a claim against the estate.

Another advantage of the probate process is that it provides a forum in which any disputes can be settled. For instance, if there are disputed creditor claims or will contests, the probate court will handle these disputes and provide a ruling on the matters. Though most probate proceedings are processed without dispute, will contests can arise over issues such as:

- Claims that someone unduly influenced the decedent in connection with the will
- Claims that the decedent didn't have the mental capacity to make a valid will
- Claims that the execution of the will was invalid and did not meet Illinois state law requirements
- Claims that the language in the will is unclear
- Accusations of wrongdoing by the executor
- Identification of the appropriate heirs under state law (in the event that there is no will)

### How Does the Probate Process with a Will Differ from the Intestate Probate Process?

If a decedent dies intestate (without a will), the property will be distributed to the beneficiaries according to state law. If there are no relatives, the property will go to the state. If minor children are impacted by the decedent's death, a guardian ad litem will be appointed to determine guardianship issues. Additionally, intestate probate proceedings are *public* proceedings, with all information publicly available. Accordingly, the value of your assets, the amount of your debts, and any family secrets could be aired in court and available for public eyes to see.

If the decedent dies with a will, however, the probate court will distribute assets to the beneficiaries designated in the decedent's will. The probate court will also deal with minor children according to the specifications in the will, which can avoid the necessity of appointing a guardian ad litem and may prevent confusion among family members about who will assume guardianship. In general, the probate process is significantly less costly and time-consuming when there is a will because the decedent's wishes are clear and the executor does not need to post a bond.

### How Can an Attorney Help with the Probate Process?

An experienced Illinois probate attorney can help significantly with the probate process. For instance, an Illinois probate attorney can do the following:

- Educate clients on the probate process
- Appear in court on behalf of the executor/administrator
- Document and facilitate any real estate transfers
- Advocate on behalf of clients in any will contests

***If you would like additional information regarding the probate process or assistance with your estate plan preparation, please contact Illinois probate lawyer Marc Blumenthal at (847) 808-7090.***