



SOUTH CAROLINA FAMILY AND COMMUNITY LEADERS

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Steps Through the Probate Process

Objectives:

This lesson is designed to assist you in the probate process. Although probate is different from state to state, this should give you some guidance.

Lesson Overview/Introduction:

After having a loved one die, you may be wondering what will happen next. Everyone has questions about the probate process, probate law, how long it takes and what you will need to do. While this is a complex process, you can get some basic ideas.

Lesson:

What is Probate: Probate is a legal process of distributing the assets of a person who has died. This includes paying the debts and settling all assets. Each state laws a differ, but similar.

What is the Purpose of Probate Court? Probate acts in a supervisory role to oversee the probate process. They will oversee the probate process, interpret documents and guide you through the process. If there are any disputes about the will, the court resolves them.

How Long Does the Probate Process Take? The timeline varies widely. It can range from just a few months to well over a year. In some cases, probate can linger on for several years. Probate is **not** a quick process in many cases.

Chronological Steps of the Probate Process

1. File the Petition

The first step with any estate is to file a petition with the court. This includes:

1. copy of the death certificate
2. Original will.

The court will review the petition and other documents to open the probate. At this point, it will determine who should be appointed executor.

If the will names someone as executor, also known as administrator or personal representative, the court will most likely approve that person. If no one is named or if the person named is unable or unwilling to act as executor, the court must appoint someone else. While it may be one of the beneficiaries, an attorney or accountant for the estate may also be chosen if none of the heirs want the task.

2. Issue Bond

The executor will need to get a probate bond to protect them from any claims made against them for fraudulent activity. This bond is a surety bond to cover the work they do on behalf of the estate. If they should make a mistake that costs money to the estate or heirs, the bond would cover them.

When the person is approved or chosen by the court, they are given documents called Letters of Administration or Letters Testamentary. These documents show they are allowed to act as managers of the estate. This gives them the authority to pay bills, sell assets and do other tasks as executor or administrator.

3. Notice to Creditors

Once a person has been named as executor or administrator, one of their first jobs is to give notice to creditors. The exact process will vary by state. Sometimes, the person simply publishes a notice in the local newspaper. Other times, they are also required to send letters to the known creditors. The creditors are given a certain timeframe to submit claims to be paid. Generally, they have three or four months to do so, but this time can vary by state.

4. Take Inventory

While the executor is waiting to hear from the creditors, they will be taking inventory of all the assets owned by the deceased. In a small estate, this could take only a couple of days. In a large estate, it could last for several months.

The executor must track down all assets and get proof of ownership. They must secure the assets to ensure none are lost, stolen or sold during this time. They may need to sell some of the assets to pay the creditors. If the deceased person owned a business, it may need to be closed to allow for liquidation. This process can take quite a bit of time.

5. Pay Estate Taxes

The next task is to pay the estate taxes. The executor will need to file personal or business tax returns if necessary and pay any amounts owed. This task must be completed before

the estate can be distributed. They will need to wait for the returns to be approved to ensure no changes are made.

6. Final Petition for Final Distribution

Once all the other tasks are completed, the executor is responsible for distributing the rest of the estate to the heirs. This can be as simple as issuing funds for each person. It can be more complicated if the will stipulated for the transfer of nonliquid assets. For instance, the deceased person may have given their home to one of their children. The title must be transferred to the new owner, which is the job of the executor to oversee.

How Long Do You Have to File Probate After Death? The answer varies by state and can be a little complicated. The will must be filed with the court in a timely manner even if there's no petition to file probate at that time.

What Happens After Probate is Closed? Once probate is closed, the executor's job is done. Any involved parties do have up to six months to object to the proceedings. They can sue the executor or file an objection for the actions of the executor or administrator. If the estate wasn't closed correctly, this timeline may be extended.

Before Taking on Responsibility as an Executor

Before you agree to take on the responsibility of being an executor for an estate, you need to think about what it will mean. If the estate is large and complicated with multiple heirs, you may have a great deal of work to do. Plan to spend hours upon hours working on the tasks of this estate. It can be like having another job. If you already work full-time or take care of kids, you may not have the time or energy to devote to this task.

Another issue to consider is how you get along with the heirs. Many times, the person chosen is an heir, and you have to think about how the others will see your actions. What you do must be above reproach. If you don't get along with the other heirs, probating the estate can compound

Activities:

Share experiences of your dealings with probate.

Sources/References: <https://probateadvance.com/probate-process/>

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