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Probate in Arkansas

Probate is the legal process that takes place after someone dies. Whether dictated by a will or in cases where there is no will, the process is governed by state law.

Terms to know:

- A. **Intestate** – to die without a will.
- B. **Testator** – decedent who writes/executes a will.
- C. **Power of appointment** – the holder, can appoint someone to benefit from a trust.
- D. **Executor** – the person who directs the operation of an estate if there is a will.
- E. **Administrator** – the person who directs the operation of an estate if there is no will.
- F. **Devise** – a share of the inheritance.
- G. **Estate** – all the money and property owned by a person at death.
- H. **Decedent** – the person who died.

The General Process (if there is a will)

Step One – The Petition

The process starts with a petition to the court in the county where the decedent lived at the time of death. The petition, also known as an application, is filed with the will and the death certificate. Every petition must contain certain information, including the date of death, names of surviving family members, and names of beneficiaries named in the will. (Often courts have pre-made forms that can be filled out). The petition also requests that the court admit the will and appoint an executor. Usually the will specifies who the decedent wants the executor to be.

It is common for the person who submits the petition to request to be the executor.

Step Two – The (First) Hearing

The court will schedule a hearing, to give all interested parties a chance to object to the appointment of the executor. The person seeking to be the executor **MUST** send formal legal notice of the hearing to beneficiaries named in the will and to heirs under the law (those who would inherit if there is no will) **BEFORE** the hearing.

The person requesting to be the executor MUST also send notices to known creditors, and publish a legal notice in a local newspaper to alert unknown creditors.

Step Three – The Accounting

After the executor is appointed, he or she must take a full accounting of all of the decedent's probate property; including real property, stocks, bonds, business interests, etc.

This is also the step where creditors not identified and notified in step two MUST have written notice sent to them. Any creditor that wants to make a claim against the probate estate must do so within a limited amount of time.

Step Four – The Will's Validity

A will submitted to the court must be proven as valid. Typically, statements of the witnesses are enough if the statements are notarized, sworn, or in court testimony.

Step Five – Managing the Estate and Paying Debts

While the probate case is pending it is common for the executor to gather assets and open a bank account to pay creditors. Probate cases must stay open for several months to give creditors a chance to come forward.

The executor determines which creditors' claims are legitimate and pays those and other final bills from the estate, including final tax return(s), funeral expenses, and estate expenses. Occasionally, the administrator needs court approval to pay creditors.

Step Six – Property to Beneficiaries

Typically, the executor petitions the court for authority to transfer the remaining assets to the beneficiaries as directed in the will once all claims and disputes are resolved. Beneficiaries may petition the court for an accounting of how the assets were managed by the executor during the probate process.

Once the petition to transfer is granted, the executor may draw up new deeds and transfer the property to the appropriate beneficiaries. Then the executor petitions to close the estate. Once this is done, the executor is released from his or her duties as executor.

The General Process (if there is no will)

Step One – The Petition

The process starts with a petition to the court in the county where the decedent lived at the time of death. The petition, also known as an application, asks the court to appoint an administrator. This is usually done by the person who wants to be the administrator.

Generally, notice of the court hearing regarding the petition **MUST** be provided to all the decedent's heirs, or people who would inherit under the law. If an heir objects to the petition, he or she can do so in court. Also, a notice of the hearing is typically published in a local newspaper. This is to notify others, such as unknown creditors of the decedent, of the beginning of the proceedings.

Step Two – The (First) Hearing

The court will schedule a hearing to give all interested parties a chance to object to the appointment of the administrator. Before the hearing, the person seeking to be the administrator sends formal legal notice to known creditors of the decedent.

Step Three – The Accounting

After the administrator is appointed, he or she must take a full accounting of all of the decedent's probate property; including real property, stocks, bonds, business interests, etc.

This is also the step where creditors not identified and notified in step two **MUST** have written notice sent to them. Any creditor that wants to make a claim against the probate estate must do so within a limited amount of time.

Step Four – Managing the Estate and Paying Debts

It is common for the administrator to gather assets and open a bank account to pay creditors while the probate case is pending. Probate cases stay open for several months to give creditors a chance to come forward.

The administrator determines which creditors' claims are legitimate and pays those and other final bills from the estate, including final tax return(s), funeral expenses, and estate expenses. Occasionally, the administrator needs court approval to pay creditors.

Step Five – Property to Heirs

Typically, the administrator petitions the court for authority to transfer the remaining assets to the heirs as directed by state intestacy laws after all claims and disputes are resolved. Heirs may petition the court for an accounting of how the assets were managed by the administrator during the probate process.

Once the petition to transfer is granted, the administrator may draw up new deeds and transfer the property to the appropriate heirs. Then the administrator petitions to close the estate. Once this is done, the administrator is released from his or her duties as administrator.

FAQ

Property that is owned that is not the residence is still a part of the overall estate. If there is no will, then the non-residential property is distributed through the allocations dictated by state law.

Generally, a final tax return for the deceased needs to be filed for the fiscal year in which he or she died. This is usually handled by the administrator or the executor.

If the deceased spouse was in debt and the surviving spouse is also listed on the accounts, the surviving spouse will still be liable for the debts accrued by the deceased spouse. If the deceased spouse has debt in only his or her name, then there will be certain property that is exempt from the creditor's ability to claim. This does not always apply, and it is difficult to predict the exact amount exempt from creditors without an attorney.

The executor or the administrator is responsible for notifying creditors. A creditor has a specific amount of time to file a claim against the estate.

If there is a will and the spouse is unhappy with the amount he or she is allotted, an action to “take against” the will may be filed. This means that he or she can have the statutorily allotted amount that a spouse receives rather than the amount listed in the will.

Things that are not a part of the probate estate include property owned jointly by the spouses, beneficiary deeds, transfer upon death accounts, pensions, life insurance benefits, etc.

In Arkansas, boats and other vehicles are not considered part of the property that passes through probate.

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