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ARKANSAS PROBATE

Terms to know:

- A. **Intestate** – the act of not having a will at death.
- 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 probate process is how an estate is handled, whether it is dictated by a will or in cases where there is no will, it is dictated by state law.

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 was living at the time of death. The petition, also known as an application, needs to accompany the will and the death certificate. Every petition must contain certain information; such as 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, on top of containing all the above information, also requests the court admit the will and appoint an executor, often there will be a section in a will that specifies who the decedent wants the executor to be.

***It is common for the person submitting the petition to be requesting to be the executor. ***

Step Two – The (First) Hearing

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

The person requesting to be the executor **MUST** also send notices to the creditors that they know about, and publish a legal notice in a local newspaper to alert other creditors.

Step Three – The Accounting

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

This is also the step where all creditors that were 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

When a will is submitted to the court, it must be proven as valid. Typically, statements of the witnesses are enough. So long as 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 must determine which creditors’ claims are legitimate and pay those, plus other final bills from the estate, including, the final tax return(s), funeral expenses, and estate expenses. Occasionally, the executor will need court approval to pay creditors.

Step Six – Property to Beneficiaries

After all creditor claims and disputes are dealt with (when a creditor’s claim is found to not be valid, often litigation will commence), typically, the executor petitions the court for authority to transfer the remaining assets, if any, to the beneficiaries as directed in the will. 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 was living at the time of death. The petition, also known as an application, must ask the court to appoint an administrator. Often the person submitting the application, wishes to be the administrator.

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

Step Two – The (First) Hearing

The court you file the petition in 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 should send formal legal notice to creditors that they know about.

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 all creditors are to be identified and notified and **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

While the probate case is pending it is common for the administrator 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 administrator must determine which creditors' claims are legitimate and pay those, plus other final bills from the estate, including, the final tax return(s), funeral expenses, and estate expenses. Occasionally, the administrator will need court approval to pay creditors.

Step Five – Property to Heirs

After all creditor claims and disputes are dealt with (when a creditor's claim is found to not be valid, often litigation will commence), typically, the administrator petitions the court for authority to transfer the remaining assets, if any, to the heirs as directed by state intestate succession laws. 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

When two spouses live together in a home, it is often referred to as the marital home or the homestead. This is only the case if, before death, the house was owned by the deceased spouse or by both spouses (this includes homes with mortgages that have not been paid off yet). However, if the home is owned by someone else before death, the surviving spouse cannot generally claim rights to property that is not part of the estate. There are exceptions to this, so please consult an attorney for this issue.

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 in state law.

Generally, a final tax return for the deceased does need to be filed, for the fiscal year in which he or she died. This is traditionally 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 that would be exempt from creditors without an attorney.

The executor (if there is a will) or the administrator (if there is no will) will be in charge or notifying creditors. A creditor will then have 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. Which means that he or she can have

the statutorily allotted amount that a spouse would receive 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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