

## What is Probate?

At death, your assets have to go through probate before they can be passed on to your heirs.

Probate is a process by which the court pays your debts and divides your assets between your heirs/beneficiaries. If there is a will, the court will follow what the will states. If there is no will, the court will follow what is legally required by statute. During a probate, the court appoints an executor (person who will be responsible to seeing the probate through the court).

Probate is a public process and anyone can see what is going on in your estate if they know where to look.

Probate takes time, usually 9 or more months in most cases; though in more complicated circumstances it is not uncommon for a probate to take several years.

Finally, probate is expensive. The cost of the probate depends on the size of your estate. The fees are four percent of the first \$100,000 of the estate, three percent of the next \$100,000, two percent of the next \$800,000, one percent of the next \$9,000,000, and one-half percent of the next \$15,000,000. It works out that for a million dollar estate, the probate fees will be about \$23,000. Of special interest is that in calculating the fees, debts are not taken into consideration. Thus, if an estate is comprised of a million dollar home with an \$800,000 mortgage, the fees are calculated on \$1,000,000.

Probate can be avoided, however. Placing your assets into a living trust will avoid probate. Also, owning assets in certain ways will avoid probate; joint tenancies and beneficiary accounts (like life insurance policies where you name beneficiaries) are all assets which pass on outside of probate.