

Overview of National Probate Court

Probate is a court proceeding. It is the legal process by which a person's final debts are settled and legal title to property is formally passed from the decedent to his or her beneficiaries and heirs. This tutorial presents the steps in the process in a generalized way addressing several issues and questions that often arise.

- * How It Begins
- * The Three Basic Steps Of Probate
- * The Duties of the personal representative (executors and administrators)

How It Begins

The probate process is initiated in the county of the decedent's legal residence at death. Somebody acting on behalf of the decedent must come forward with the decedent's original will. Usually, this person is named in the will as the executor, chosen by the decedent as the one in charge of "wrapping up" his or her affairs. If there is no will, somebody must ask the court to be appointed as administrator, to perform the same function. Most often, this is the surviving spouse or an adult child. If there is a dispute over who should serve as administrator, the court will appoint a neutral public administrator who can be counted on to be fair. This person is paid an hourly fee from estate funds.

Executors and administrators have practically identical legal rights and responsibilities, and may also be referred to as the decedent's personal representative. These terms are used interchangeably in this tutorial. Note that the personal representative's authority only extends to the "probate estate" - defined as property subject to the jurisdiction of the probate court. Assets disposed of outside the probate process are part of the "non-probate estate," and the executor or administrator has no control of these.

If a decedent has probate property outside the court's jurisdiction, then that property must be subjected to ancillary probate in the other jurisdiction.