

Probate in Utah

What is probate? Probate is the process for handling a person's property after their death, including transferring title. It begins when a person, usually a family member, petitions the court to probate the estate and appoint a personal representative. The personal representative then administers the estate. This includes paying debts and claims against the estate, selling property (if required), and distributing assets.

When is probate necessary? Probate is necessary in the following situations:

1. The deceased person owned real property (i.e. a home or real estate) solely in their name, or as a tenant in common;
2. The deceased person had probate assets exceeding \$100,000 (see *What are probate assets v. non-probate assets?*, below).

When is probate unnecessary? Probate may not be necessary where:

1. All of the decedent's real property was held in joint tenancy or tenancy by the entirety;
2. The value of decedent's probate estate is less than \$100,000 (see *What is a Small estate affidavit?*, below);
3. Decedent's assets are non-probate assets.

What are probate assets v. non-probate assets? Probate assets are assets that will be distributed to the decedent's heirs by the court. Non-probate assets bypass the court process and go directly to beneficiaries. Examples of each include:

Probate assets include:

1. Real property owned solely in the decedent's name, or as a tenant in common;
2. Personal property such as cars, household items, and jewelry;
3. Bank accounts titled solely in decedent's name;
4. Life insurance policies and brokerage accounts listing decedent or decedent's estate as beneficiary;
5. Interests in partnerships, limited liability companies, or corporations.

Non-probate assets include:

1. Property held in trust;
2. Real property held in joint tenancy or tenancy by the entirety;
3. Brokerage accounts or bank accounts held in joint tenancy, or with pay on death (POD) or transfer on death (TOD) beneficiaries;
4. Accounts that designate a beneficiary (such as life insurance, IRAs, brokerage accounts).

How do I start the probate process in Utah? You can file probate either informally or formally.

For informal probate, you file several documents, including an application requesting appointment of a personal representative with the court, along with a copy of the death certificate and will, if the decedent left one. If all of decedent's heirs sign waivers of notice, the court can act upon your application without holding a hearing. Otherwise, the court will schedule a hearing on the application and send notice to all interested parties.

For formal probate, you file several documents, including a petition for formal probate, along with the death certificate and will, if the decedent left one. A hearing is always required for formal probate.

If there are no objections to the application, the court will appoint a personal representative for the estate, and issue letters testamentary (if there is a will), or letters of administration (if there is no will). The letters give the personal representative authority to begin administering the estate.

Who is entitled to be in charge of the probate process in Utah? The person in charge of the probate process is known as the personal representative, or executor. The court appoints the person with the highest priority as personal representative. If a decedent nominates a personal representative in their will, that person will have priority to serve. If the will does not name a personal representative, or if there is no will, priority for who can be appointed as personal representative is determined by statute, with decedent's surviving spouse having highest priority.

What does a personal representative do? The personal representative's duty is to settle and distribute the decedent's estate. The personal representative has a duty to administer the estate expeditiously and efficiently.

Once appointed, the personal representative identifies and collects decedent's assets. The personal representative prepares an inventory of property owned by the decedent at the date of death, including the fair market value of the property and any encumbrances. The inventory is then filed with the court. The personal representative also manages and protects the property during administration, including paying taxes owed and other debts or claims against the estate. The personal representative also distributes the assets according to decedent's will.

How long does the probate process take in Utah? That depends on the nature of the assets in the estate, and whether there are any objections to the appointment of the personal representative or the validity of the will. In most cases, however, the probate process takes approximately four to five months.

In Utah, how long do I have to begin the probate process? You have up to three years after decedent's death to initiate the probate process. If more than three years have lapsed, you can no longer probate the will, and should instead file a determination of heirs to administer decedent's estate.

What if someone objects to my petition for probate? In Third District Court, which covers Salt Lake, Tooele, and Summit County, mediation is required if there is an objection to a petition for probate. This includes objections to the personal representative as well as objections to the validity (or existence) of a will.

How does mediation work? If there is an objection to an application for probate, the court will refer the parties to mandatory mediation. The mediation process involves hiring a neutral mediator, and meeting with all interested parties (and their attorneys) in an attempt to resolve the dispute. While attending mediation is required, the parties are not required to settle the case. If the case is settled, however, the settlement is legally binding. The parties are responsible for the mediator's fees. If the case is not settled in mediation, the parties may litigate the contested issues.

What is a small estate affidavit? A small estate affidavit is a probate alternative that can be used when decedent's probate property is less than \$100,000 and does not include any real property (such as a home or land). The decedent's successor can collect the decedent's property using the affidavit, including bank accounts and insurance policies. An attorney can prepare the affidavit for you, and a sample form is available at

https://www.utcourts.gov/resources/forms/probate/affidavit_personal_property.pdf.

How do I let the court know if I disagree with something in the petition for probate? If a hearing is scheduled on the petition, you can attend the hearing and object in person. You can also file a written objection with the court within the time required. An attorney can file an objection on your behalf.

How can I avoid probate after I die? Assets held in trust do not need to be probated. By creating a trust while you are alive, and funding all your assets into it, your family can avoid the probate process after your death. A trust has many other benefits, including management of your property in case you are incapacitated. An attorney can help you set up a trust to meet your individual needs.

Alternatively, you can also title your assets so they are non-probate assets. Real property titled in joint tenancy passes automatically to the surviving joint tenant. Bank and brokerage accounts that are jointly held or have pay on death beneficiaries do not pass through probate. You should consult with an attorney to ensure that all assets are titled correctly.

How do I get authority to open a safety deposit box to see if someone left a will? You can include a request to access a safety deposit box for the purpose of determining if there is a will in your initial petition to the court.

Can anyone receive a partial distribution before probate is over? Yes. The personal representative has discretion to make partial distributions during the administration period, if such distributions would be warranted.