



SENIOR RIGHTS ASSISTANCE (SRA)

Probate

What is "Probate"?

Probate is the legal process of transferring the property of a deceased person to his or her heirs. It is overseen by the Superior Court of Washington State in the county where the deceased lived.

Don't I want to avoid Probate?

Washington State's probate procedures are simple and inexpensive compared to most other states. Probate allows an orderly process that is an economical and efficient method for transferring property from a deceased person to the heirs.

How does a typical Probate work?

Typically the person named as Personal Representative (Executor) in the Will petitions the Court to appoint a Personal Representative (Executor) or Administrator to manage the probate process. The Executor is responsible for identifying all the estate's assets, paying the bills, finding all the deceased's heirs, notifying all potential creditors of the estate, and finally distributing the estate's assets to the heirs. At the conclusion of the Probate, the Court discharges the Executor.

How much will a Probate cost?

Unlike many states, Washington State attorneys are not permitted to base their fee on a percentage of the estate's value, which usually means lower attorney fees. Attorney fees are generally charged on an hourly basis. The costs of probate vary greatly, depending on the size and nature of the estate. A Will can help keep the costs of probate lower. Planning ahead by doing a complete estate plan will lower probate costs.



How long will a Probate take?

The time required to complete a probate varies depending on the specific factors involved. Four months is the minimum time and if an estate is complicated with federal estate taxes owing, it can take more than a year.

How do I know if I need to start a Probate?

When someone dies, the person named as Personal Representative (Executor) in the Will hires an attorney and starts the probate. If there is no Will, an heir usually hires the attorney to start the probate. An experienced probate attorney will help you determine if you need to start a probate and, if so, will prepare the necessary documents. Even if you do not start a probate, you must still file the original Will with the Court for safekeeping.

What is the difference between an Executor and a Personal Representative?

"Personal Representative" is the term used now instead of the old terms "Executor" (a man) or "Executrix" (a woman). Regardless of which term is used, this is the person responsible for administering the estate during Probate.

I'm named as the Personal Representative (Executor) in my uncle's Will, and he died last week. Now what?

First, you need to determine whether or not you need to start a probate. Contact a probate attorney to advise you. If you need to begin a probate, your attorney will prepare documents and take them to the Court along with the original Will. Once the Court has approved your documents and entered an appropriate Order, you will begin to administer the estate.



Can I start a Probate if there is no Will?

Yes, an estate can be probated with or without a Will.

What do "testate" and "intestate" mean?

To die "testate" means that you had a valid Will at the time of your death. To die "intestate" means you either did not have a Will at the time of your death, or the Will was not valid.

Can't I use a Durable Power of Attorney instead of starting a Probate?

No. You cannot use a Power of Attorney after the person dies. All Durable Powers of Attorney end at the time of the Principal's death. The Principal is the person who signed the Durable Power of Attorney.

If I have a Community Property Agreement, will my estate need to go through Probate?

Maybe. If your Community Property Agreement has some special language in it, and if your spouse survives you, assets could pass to the surviving spouse without probate. However, you might want to probate your estate even if you have a Community Property Agreement. After looking at your Community Property Agreement and analyzing your situation, a probate attorney will advise you whether probate would be a good idea.



My relative had a Will, but I think they were not competent when they signed it. What can I do?

A family member or interested party may have legal "standing" to contest a Will, and any will contest must be filed within four months of the opening of probate. Probate is the process through which the Will is submitted to the court for review and appointment of a Personal Representative (also known as Executor or Administrator) to administer the estate. If a deceased person's competency to execute a will is contested, the court will consider facts to assess the deceased person's "testamentary capacity." A person has "testamentary capacity" -- and is "competent" to execute a Will -- if he or she 1) understands that a Will is a document that gives instructions as to distribution of your assets after your death; 2) has an understanding of nature and extent of the property he or she owns; and 3) knows who are the "natural objects of his/her bounty". The "natural objects of one's bounty" are generally the spouse, children, grandchildren, etc. A person does not have to leave his or her estate to the "natural objects of his/her bounty" but they need to show understanding of who those people are, and that they've made a conscious choice to exclude them and to leave the estate to someone else.

I am the beneficiary of an estate. What should I do if the Personal Representative is taking a long time, or is not communicating with me?

A Personal Representative has a "fiduciary duty" to act in the best interests of the estate and ALL of the heirs/beneficiaries. A beneficiary can file a "Request for Special Notice" with the court which then obligates the Personal Representative to advise that beneficiary of the actions that he/she takes on behalf of the estate, such as: selling real estate; distributing property; paying legal fees, etc. A Personal Representative is required to conduct an inventory and appraisal of all estate assets within three months of the commencement of the probate. An heir may request in writing a copy of that inventory and appraisal, and the Personal Representative must then provide it to the heir within ten days of his/her request. A Personal Representative has discretion as to the timing of distributions to heirs, and must settle all debts of the estate -- including taxes - - prior to the final distribution to heirs. Often a Personal Representative may need to sell real estate of the deceased, and there may be delays due to economic conditions and slow-downs in the housing market. However, the Personal Representative continues to owe an equal duty to all heirs of the estate, and if he/she is refusing to communicate with an heir, then the heir has the right to seek court intervention. A court has the authority to order a Personal Representative to act, and may remove a Personal Representative if he/she fails in exercising his/her duties. For more detail, see the section on TEDRA below.



What does "TEDRA" mean?

TEDRA is the Trusts and Estates Dispute Resolution Act of Washington. This statute gives the court very broad authority to resolve trust and estate disputes in an expedited and efficient manner. An interested party may file a TEDRA petition with the court identifying the disputes and seeking relief. The court may then resolve some or all of the issues at the initial hearing; order mediation or arbitration; or set the matter for trial. Mediation and arbitration are forms of Alternate Dispute Resolution, and are "alternatives" to trial. In mediation, the parties negotiate toward a resolution with the assistance of a trained mediator. In arbitration, the parties submit their facts and argument to an arbitrator who then issues a decision as to the resolution of the disputed issues. If a matter is set for trial under TEDRA, it is given an expedited schedule.