

A Guide to Minnesota Probate

When a loved one passes away, family and friends are called upon to make important decisions regarding the estate of the one who has passed away – decisions which will impact family members and friends who remain.

Immediate questions must be answered:

- Who pays the bills for such things as funeral and medical expenses?
- Who cares for the home, car, and other assets?
- How do debts and taxes get paid?
- How will the surviving spouse or children be cared for?
- How does the estate's property get transferred to the rightful recipients and when should that occur?
- If there is a will, what should be done?
- If there is no will, who gets the property?
- What if there is a dispute among family members about how things should be handled?

These questions must be answered correctly and probate may be required to address these issues.

Probate is the legal process of safeguarding the assets of the estate, paying creditors, making tax filings, caring for the family, and ultimately distributing assets to the rightful recipients. This process places a significant responsibility on the court appointed representative. With the help of an attorney experienced in probate, the representative can make these decisions and fulfill his or her legal responsibilities while protecting the interests of family and friends.

This guide provides a basic overview of the probate process in Minnesota. It is specifically designed to help the court appointed representative (called the personal representative) understand the probate process and to make the right choices for the benefit of family and friends.

IS PROBATE REQUIRED?

One of the first questions to consider is whether Minnesota law requires a probate. Not all property owned by a decedent must be transferred through probate. To determine whether probate is required, the decedent's property must be listed and categorized as either probate or nonprobate property. All property can be categorized in one of these two ways. The form of ownership of the property determines whether an asset is classified as a probate asset or a nonprobate asset. Once the asset is classified, the legal process required to transfer title of the asset to the appropriate persons becomes clearer.

Nonprobate Assets

A nonprobate asset is one in which title to the property passes without the necessity of having a court's help. The most common types of nonprobate assets are those created by contracts, property law, and trusts. Examples include:

- Annuities, life insurance, and retirement plans with beneficiary designations.
- Property titled in joint tenancy.
- Property with transfer on death or payable on death designations.
- Assets within a trust.

It is generally not necessary to obtain the assistance of a court to transfer title to these nonprobate assets. This typically results in a much faster settlement of the estate and a savings in the cost of administration. However, caution needs to be exercised to avoid ignoring important issues in the transfer of nonprobate assets. For example, although title to joint tenancy property automatically passes to the surviving joint tenant upon the death of one of the joint tenants, the recording or delivery of documentation proving the decedent's death is required to complete the formal transfer of title. Other documents may be required as well. Additionally, when handling the transfer of nonprobate assets to the appropriate beneficiaries, it may be necessary to address other important issues including state and federal tax returns, calculation of the tax basis in the property, and resolution of creditors' claims.

Probate Assets

A probate asset is one in which title to the property does not transfer by operation of law upon the death of the owner and therefore requires court involvement. Typical probate assets include:

- Property titled solely in the decedent's name.
- Tenancy in common property.
- Assets designating the beneficiary as "the estate."
- Assets with a deceased beneficiary and no successor beneficiaries listed.
- Property without title, such as personal property.

These assets can only pass to the appropriate heir or beneficiary by legal action.

It is important to consult with an attorney to categorize the decedent's property. Some property can fall into gray areas and careful consideration of all the facts and applicable law is required to determine the status of the property. Failure to properly classify property may result in transfers of the property to improper individuals and may cloud the title to the property such that it is impossible to sell it without further, often expensive, court involvement.

TYPES OF PROBATE PROCEEDINGS

The Minnesota statutes dealing with probate, called the Probate Code, provide several different types of probate proceedings to address the variety of issues and needs which might arise. The

complexity of the type of proceeding required will depend upon such issues as determining the decedent's heirs, the validity of a will, the types of assets in the estate and their value, the potential for disputed claims, and the desire for formal court approval of the acts of the personal representative. When more than one type of proceeding is permissible, it is important to select the one that best fits the specific needs of the decedent's estate. The five most common types of probate proceedings are listed and described below.

Collection by Affidavit for Small Estates

When the net value of the decedent's probate assets is \$50,000 or less, a simplified procedure is available to collect certain probate property. This is accomplished by means of an affidavit prepared in duplicate and in accordance with the law. The person entitled to receive the property signs a legal form known as an affidavit, which sets forth the required information, including that the person signing the affidavit is legally entitled to receive the decedent's assets. Under this affidavit procedure, no personal representative is appointed. When the properly executed affidavit is presented to the person in possession of the property, that person is then authorized to deliver the property and be fully discharged of any further responsibility regarding the property. This process can be complicated by the existence of creditors' claims and therefore should not be done without legal counsel. Some property, such as real estate, cannot be transferred by affidavit, making this procedure unavailable.

Summary Administration

Some probate assets are exempt from the claims of creditors. When all the probate assets of the estate are exempt from creditors and the value of the assets do not exceed certain limits specified by law, summary administration may be available. Summary administration settles the estate without a lengthy administration since creditors do not need to be given an opportunity to make claims. The statutes authorizing summary administration are quite restrictive. Because of this, it is infrequently available for a decedent's estate.

Determination of Descent

If more than three years have elapsed since the death of the decedent and no probate proceeding has been commenced, a determination of descent proceeding is typically required in order to transfer the decedent's probate property. No personal representative is appointed. The court issues a decree ordering the property to be transferred according to the decedent's will or Minnesota's statutes. This procedure is often used when it is discovered that the decedent is still in title to real property long after his or her death and the property has not been transferred to the appropriate individuals.

Informal Probate Administration

Informal proceedings for the appointment of a personal representative and probate of the estate may be available for certain estates. The court appoints a personal representative to handle the estate in a more informal manner unless court supervision is requested by an interested party. Although informal administration may work well in many estates by minimizing the court's

involvement and supervision of the estate, it may not properly resolve issues better addressed and approved by the court. More information about the process of this type of proceeding is discussed below.

Formal Probate Administration

Formal probate administrations are judicial proceedings commenced by filing a petition with the probate court. Court orders throughout the proceedings are made only after advance notice is given to all interested parties. Formal proceedings can be either court supervised or unsupervised, depending upon the extent to which court involvement is desired or necessary. More information about the process of this type of proceeding is discussed below.

THE PROBATE PROCESS

The court appointed representative of the estate (i.e., the personal representative) is responsible for carrying out and closing the probate in compliance with Minnesota law. The administration of the estate must be done in a timely and accurate manner. The various stages of a typical informal or formal probate are outlined below.

Probate Initiation

The administration of a decedent's estate involves people, property, and paper. The first step is to determine whether the decedent had an unrevoked will and, if so, to locate the original. The will specifies the people who will be involved in the probate process. That is, typically the will nominates the personal representative of the estate and the people who are to receive the decedent's property (called the devisees).

If the decedent did not leave a will, Minnesota law provides a method for the appointment of a personal representative and sets forth the people who will receive the estate assets (called the heirs). The priority of a person to be appointed by the court is governed by state statute. Determining the identity and location of the heirs is required regardless of whether or not there is a will because the heirs must be notified of the initiation of the probate, even if they do not receive anything under the decedent's will.

Next, it must be decided what type of probate procedure would be best to administer the estate. The most common options are whether to proceed informally or formally. If formal administration is chosen, the type of formal probate must be decided— either supervised or unsupervised. These decisions may be the most important decisions in the entire probate. There are many factors that should be weighed. Sometimes the will specifies which type of probate procedure is preferred or mandated. If the decedent owned real property, often formal administration is required to properly convey the property. If it appears that the estate will be insolvent, it is best to proceed with a formal supervised administration so that the payment of creditors' claims and expenses receives oversight from the court. Formal proceedings are usually required when distribution will be made to a minor. If disputes among the parties are likely to arise, obtaining the court's approval through a formal supervised proceeding may be important. Since formal proceedings often cost more than informal proceedings, informal

probates are generally preferred unless there are reasons to proceed otherwise. Counties in Minnesota also vary in their practice. A metro-area county may allow a particular probate to proceed informally, while an out-state county may not. Ultimately, it is the court that decides which type of probate proceeding will be allowed, though the court will generally defer to counsel of the nominated personal representative so long as the option is discretionary according to state law or county practice. Because there are so many factors involved, the advice of experienced counsel should be obtained.

Once it has been determined whether to proceed formally or informally in probate, an interested party to the estate (i.e., a person who has some tangible interest in the outcome of the administration) will either file an application with the probate registrar or file a petition with the probate court. Usually, this is done by the person seeking to be appointed as the personal representative.

A copy of the notice of hearing on the petition or application for the probate and appointment of the personal representative must be provided to all heirs, whether or not they are named in the will, and to all devisees, those named in the will to receive assets. If there is a charitable beneficiary, Minnesota's Attorney General must receive a copy of the notice. If the decedent was born in a foreign country, the consulate of that country must receive a copy of the notice. It also may be necessary to obtain a bond. The amount of the bond and the bond premium varies depending on the value of the assets in the estate and the creditworthiness of the personal representative. There may be numerous other documents to file with the court. Once all the paperwork has been accepted by the court and any required hearings completed, the personal representative can be appointed after filing an acceptance and oath. The personal representative will be issued a document that proves that the court has appointed that person as the personal representative. This document is called the Letters Testamentary, if the decedent had a will, or the Letters of General Administration, if the decedent did not have a will.

Asset Collection

After securing appointment by the court, the personal representative must locate the assets. There are several ways of doing this. The decedent may have left a letter of instruction or a list of assets. Often there is a family member who is knowledgeable of the decedent's holdings. A review of the prior year's tax return and checkbook register may reveal additional information. There may be assets located in a safe deposit box. It is also a good idea to have the decedent's mail forwarded to the personal representative so that it can be monitored. Frequently, assets are discovered in this manner. As the decedent's assets are located, each asset needs to be classified as either a probate asset or a nonprobate asset. The classification of each asset will determine the steps necessary to transfer title when the appropriate time comes.

Record Keeping

Once the personal representative has been appointed, an estate bank account should be set up. In order to do so, it is necessary to obtain a new tax identification number for the estate from the Internal Revenue Service. This number essentially replaces the decedent's social security number since, upon the death of the decedent, the estate becomes a distinct taxpayer.

It is important for the personal representative to keep complete records of the sources of all deposits and expenditures. Decisions should be made about when to pay bills and which bills to pay. By law, some categories of bills must be paid before other categories. If there is a possibility that the estate will be insolvent, this becomes an even greater area of concern. It is crucial that accurate records are kept from the beginning of the estate so that the necessary information will be available for the preparation of the final accounting of the probate and various tax returns.

The personal representative also has the responsibility of preserving and protecting the estate assets. For example, insurance on real estate and vehicles must be maintained. Mortgage and utility payments need to be made. Charge cards, memberships, and magazine subscriptions need to be canceled and refunds obtained where appropriate.

Handling Claims

Another important responsibility of the personal representative is to notify creditors of the probate. Notice must be published in a legal newspaper in the county in which the probate is filed. Additionally, notice must be provided to known creditors and the Commissioner of Human Services. There are time limits in which creditors have the opportunity to make a claim against the estate's assets. If a creditor fails to timely make a claim, the claim may be barred by the personal representative and the claim will not be paid. The time limit varies depending on the identity of the claimant and the time the claim arose.

It is important for the personal representative to keep track of claims. If a claim is disputed, the personal representative must mail a notice of the disallowance of the claim to the creditor within two months after the time for presentment has expired. Failure to disallow a claim in a timely manner has the effect of allowing the claim. If claims are not accounted for and paid, the personal representative could become personally liable for the debt.

Valuation of Assets

The personal representative is also responsible for the valuation of the assets for inventory purposes and possibly for estate tax purposes. Estates may be made up of a variety of assets. Examples include real estate, securities, cash, life insurance, and personal property. There are different methods employed for valuing the different types of assets. For example, securities are valued by determining their fair market value on the date of death. The fair market value is the mean between the highest and lowest selling prices quoted on the valuation date. If the decedent died on a date the securities market was closed (e.g., a weekend), valuation becomes more complex. Other assets, such as real estate or jewelry, may require an appraisal to determine their fair market value. Once all the assets have been valued, the personal representative must proceed to prepare an inventory of the estate assets to be filed with the probate court. This inventory must be accurate for several reasons, including providing the starting point for the preparation of required accountings for the estate.

Tax Payments

Ensuring that the necessary tax returns are prepared on behalf of the decedent's estate and that the tax is paid is a responsibility of the personal representative. A final lifetime individual income tax return (Federal Form 1040) for the decedent usually will be required. This return includes only income earned through the date of death. Income paid after the date of death should be claimed on the estate's income tax return. This return is called a "Fiduciary Income Tax Return" (Federal Form 1041). Corresponding Minnesota tax returns also must be filed. It is important to work with someone who is familiar with preparing decedents' final lifetime returns and fiduciary returns so that income is reported and deductions are claimed on the proper returns. If timely filed, certain elections may be taken to minimize the tax owed.

If the gross estate (i.e., the value of all the decedent's property) is near or exceeds certain thresholds, federal and Minnesota estate tax returns must be filed. The estate tax is based not on the income of the decedent or the estate, but the value of the decedent's property. These tax returns are quite complex and they must be filed along with the taxes owed within nine months after the decedent's death, unless an extension is granted. Failure to file and pay the tax may result in the assessment of penalties and interest against the estate or personal representative. If the decedent held property in a state other than Minnesota, there may be additional returns that need to be prepared.

The Final Account

Often the most difficult of the personal representative's duties is the preparation of the final account. As the name suggests, the final account is computed at the end of the probate. It lists all the assets of the estate, income and gains generated from the assets, and expenses incurred in the administration of the estate. Through this document, devisees and heirs of the estate can be sure that they are receiving their fair share of the estate's assets. Good record keeping is critical to making the preparation of the final account less burdensome.

Asset Distribution and Closing Procedures

In Minnesota, probates are required to remain open for at least four months to allow certain creditors to make claims. However, once this time period has expired and assets have been gathered, claims settled, property sold that will not be distributed, taxes paid and returns filed, and other matters resolved, the property may be distributed and the probate closed. Because of the nature of these things, it may take much longer than four months to accomplish these objectives. The procedures for the distribution of probate assets vary depending on the type of probate proceeding and may even require court approval.

The type of probate asset involved will determine the method of distribution. For example, where real estate is involved, deeds and other documents will need to be recorded in the county records. After distributing the property pursuant to a court order, if required, or under the terms of the will or state statute, the probate may be closed. Closing the probate may be as simple as filing a statement to close the probate with the court. Once the personal representative has filed this statement, the estate is essentially closed. The personal representative's appointment

automatically terminates one year after the statement is filed. This allows the personal representative to act in that capacity should it be necessary during that time. In other instances, more formal procedures must be followed which could include a court hearing and judicial review of the acts of the personal representative. In these situations, the court issues an order discharging the personal representative and the estate is immediately closed.

GOING FORWARD

The personal representative has many responsibilities during the probate. Given the complexity of the issues relating to the entire probate process, it is important for the personal representative's protection and the protection of family and friends that the attorney for the personal representative is experienced in probate matters. Inexperience can lead to unnecessary delays, lack of protection for the family, and unnecessary fees and expense. In handling probate, there is no substitute for experience.

Please contact us if we may be of assistance to you.

VEST & GOLTZ, P.A.
Attorneys at Law
7077 Northland Circle, Suite 300
Brooklyn Park, MN 55428
763-566-3720
www.vestandgoltz.com