

WHAT YOU NEED TO KNOW ABOUT THE TEXAS PROBATE PROCESS

Only an Experienced Texas Estate Planning Attorney Can Answer Specific Questions Regarding Probate of a Loved One's Estate; However, there are Some Things that You Should Know About the Probate Process in General Which May Help You Avoid Making Mistakes



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The death of a family member or loved one is often filled with grief, loss, and confusion. In addition to the emotional turmoil a death often causes, someone must handle the legal aspects of the death. In Texas, this often requires probating the decedent's estate. Probate is the legal

process by which the debts of the estate are paid, assets inventoried and valued, and estate property is transferred to the appropriate beneficiaries or heirs.

Because of the heightened emotions that often accompany the death of a loved one, mistakes are often made in the probate of the estate. Only an experienced attorney can answer specific questions regarding probate of a loved one's estate; however, there are some things that you should know about the probate process in general which may help you avoid making those mistakes.

ARE ALL ESTATES PROBATED THE SAME WAY?

No, all Texas estates are not probated the same way. Some estates require formal probate while others may qualify for a less formal process. For example, if a decedent dies without leaving behind a Last Will and Testament, and the only estate property is a homestead, it may be possible to use a [Small Estate Affidavit](#) to transfer the real property to the decedent's heirs. However, in the absence of a Will, if there is substantial property or substantial debt, a court may first be required to determine who the legal heirs of the estate are which usually requires a formal probate. For estates that require formal probate, the probate process may be dependent or independent, the former requiring a significantly more amount of oversight by the court.

TESTATE VS. INTESTATE (AND OTHER TERMS YOU SHOULD KNOW)



When a person dies without leaving behind a Last Will and Testament, the person is said to have died “intestate”. When a Will was executed prior to the death, the person died “testate”. How the estate is probated, and how the assets are divided, will depend on whether the estate is an intestate or testate estate. If a valid Will was left behind, the court is bound, for the most part, by the terms in the Will. Those who receive gifts under the Will are beneficiaries. In an intestate estate, the Texas intestate laws, found in the [Texas Estates Code](#), will determine how the estate property is divided. The type of property and the relationship to the decedent will determine who receives which estate assets under an intestate administration. Anyone who receives property through intestate administration is referred to as an heir to the estate. In addition, the person who oversees the administration of a testate estate is referred to as the “Executor” and is nominated by the decedent in the Will but ultimately appointed by the court. In

an intestate administration, the person who oversees the process is the administrator and is also appointed by the court, typically after filing a petition asking to be appointed.

WHO BEGINS THE PROBATE PROCESS?

When a family member or loved ones dies, someone needs to locate a Last Will and Testament if one exists. If a Will is located, the person named as executor in



the Will needs to begin the probate process by filing a petition with the appropriate court. The original Will must be filed with the court as well. The county in which the decedent was a resident at the time of death will determine where the probate must take place. In Texas, some counties

have a separate [Probate Court](#). In smaller counties, the County Court may handle probate matters. If no Will was found, then typically a spouse or adult relative will petition to open the probate process and asked to be appointed the personal representative.

WHAT HAPPENS DURING PROBATE?

The first thing that must be done in any type of probate is to ascertain what assets the decedent owned and determine a value for those assets. Assets come in all forms; however, some of the more typical assets included in an estate are real property, personal property, bank accounts, investment portfolios, and life

insurance policies. Not all estate assets are required to pass through probate. Common assets that are considered non-probate assets include trust property, certain types of jointly held assets, and assets that pass by contract, such as life insurance proceeds on a contract with a named beneficiary.

The next step is to notify creditors of the estate and pay claims against the estate. Along with notifying known creditors, public notice must be given of the probate by publication in a newspaper. The executor or personal representative is then required to evaluate all claims submitted by creditors to determine if they should be paid or not. Approved claims are then paid out of estate assets. Any taxes owed by either the decedent or the estate must also be paid.

WHAT HAPPENS IF SOMEONE CHALLENGES THE WILL?

Sometimes, a Will contest is filed with the court. Contrary to popular belief, people cannot contest a Will simply because they are unhappy with what they were left under the terms of the Will. In Texas, a challenge to a Will must allege that the Will is invalid for one of several possible reasons, including:

- Fraud
- Mistake
- Undue Influence
- Lack of Testamentary Capacity
- Lack of Due Execution
- Revocation

If a contest to the Will is filed, it will be litigated by the court before any substantive action is taken in the case. In other words, beneficiaries under the

Will must wait for the outcome of the Will contest before any estate assets can be transferred in most cases.

HOW ARE ASSETS TRANSFERRED TO BENEFICIARIES OR HEIRS?

Only after all creditors have been paid and any challenges to the Will settled can the court authorize the transfer of assets to beneficiaries or heirs of the estate. The executor or personal representative will then be responsible for filing the appropriate documents to effectuate the transfers.

FINAL THOUGHTS

For small estates with uncomplicated assets, the probate process can be handled without significant cost or commitment of time by the executor/personal representative. Estates that require formal probate, however, can take months, even years to probate. Most executors/personal representatives retain the services of an experienced estate planning attorney to assist during the probate process. For additional information about the probate process, the Texas Young Lawyers Association, or TYLA, has published the “[Texas Probate Passport](#)” which provides a wealth of useful information.

About the Author

John R. Vermillion



John R. Vermillion works as an estate planning and probate attorney and is licensed to practice in Texas, Louisiana, Oklahoma, and Tennessee. A native Texan, he graduated from Texas Christian University in 1974 receiving a Bachelor of Arts Degree in Political Science. In 1977, he received his Juris Doctor degree from the Louisiana State University Law School.

Upon graduation from law school, Mr. Vermillion worked extensively as a corporate attorney in the fields of oil and gas exploration and production, real estate development, finance and estate planning. He served for many years as corporate counsel and Vice President of a private independent oil and gas company.

Mr. Vermillion is a member of the State Bar of Texas, the Dallas Bar Association, the Louisiana State Bar Association, the Oklahoma Bar Association, and the Tennessee Bar Association. He is a member of the American Academy of Estate Planning Attorneys and the National Academy of Elder Law Attorneys.

Also active in his community, he currently serves as a director for the Charles Coody Classic Golf Tournament which benefits Catholic Charities of Fort Worth, Texas. A member of the French-American Chamber of Commerce, Louisiana Chapter, Mr. Vermillion pursues their goal of promoting and developing commercial and financial relations between France and the United States. In addition, he serves on the TCU Dallas Alumni Board and sponsors the Dallas area NAMI Walkathon (National Alliance for Mental Illness).

Coming from a family of entrepreneurs, Mr. Vermillion has owned and operated his own businesses, including an historic inn. His experience has given him a hands-on understanding of the legal and practical issues facing his clients and their estate planning needs.

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