



What Is Probate?

By Grosskopf & Burch Law Firm

Have you ever wondered if you can avoid probate by having a Will? Unfortunately, the answer is no. A Will merely lays out your plan for where your assets should go upon your death. What determines if your estate goes through probate or not depends on whether assets are still in your name after your death.

If you die with assets remaining in your name, there is no one who has authority to sell or transfer those assets. Probate is needed to legally authorize someone to sell or transfer your assets according to the plan in your Will.

Because probate is only required for assets left in a deceased individual's name, all assets with a beneficiary designated, or jointly owned with another person, would not have to go through the probate process. Those assets automatically transfer ownership by law. All other assets must go through probate.

In Wisconsin, there are typically two different types of probate estates go through. If the total value of all assets of the estate is less than \$50,000, you can do a simplified version of probate by using a Transfer by Affidavit (some states call this a "small estate affidavit"). If the asset total of the estate is greater than \$50,000, then a full probate is required.

The probate process begins with paperwork being completed and submitted, along with the Will. The court then must admit the Will and appoint the Personal Representative (i.e., executor). If there is no Will, the court still must open the Probate Estate and appoint a Personal Representative. The court sets certain deadlines the Personal Representative is responsible to meet. For example, the deadline to publish notice of the estate in the newspaper and deadline to file an inventory of assets with the court.



The Personal Representative then must collect all of the estate's assets, pay the estate's bills, make distributions to beneficiaries, and coordinate to have any necessary tax returns done. To finalize and close the Probate Estate, the Personal Representative must file an accounting with the court to show the court what happened to all of the estate's assets. In addition, the Personal Representative must obtain receipts from

the beneficiaries to show proof the beneficiaries received the distributions from the estate, and also must show the court proof there are no outstanding taxes to be paid or returns still to be filed. After this, the court dismisses the Personal Representative and closes the estate.

If a loved one has passed away, and they have assets requiring probate, please contact our office to schedule a consultation to discuss how we can help you.



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