



PROBATE ADMINISTRATION

FREQUENTLY ASKED QUESTIONS

1. What is Probate?

Probate is the legal procedure a family must go through when a person passes away with assets in his/her name only.

2. Why is Probate necessary?

The main function of probate is to transfer the title of the decedent's property to his or her heirs and/or beneficiaries. If there is no property to transfer, there is usually no need for probate.

Another purpose of the probate procedure is to provide for the payment of outstanding debts and taxes of the estate, for setting a deadline for creditors to file claims (thus foreclosing any old or unpaid creditors from haunting heirs or beneficiaries) and for the distribution of the remainder of the estate property to the heirs or beneficiaries.

3. What assets are subject to probate administration?

All assets owned by you in your name alone are subject to probate administration when you die. Real and personal property owned as a joint tenant pass to the surviving joint owners without going through the probate process.

Other types of assets, such as a life insurance policy or annuity payable directly to a named living beneficiary, avoid the probate procedure. Money from IRAs, Keoghs, and 401(k) accounts transfer automatically, outside probate, to the persons named as beneficiaries. Bank accounts that are set up as payable-on-death account with a named beneficiary also pass to that beneficiary without probate.

If a Trust holds legal title to some of your property, then that also passes to the beneficiaries without probate. (The Trust is a legal entity which survives you after your death.)

4. Where does probate occur?

Your will is probated in the probate court of the county and state in which you lived at the time of your death. If you own any property in another state, another probate proceeding may be required in that state.

5. **What if there is no will?**

If a person dies without a will, he or she will be considered to have died intestate. In this case, the probate court will appoint a personal representative and the assets remaining after any creditors have been paid will be distributed according to the intestate laws of the state.

6. **Why avoid Probate?**

Clients who choose to avoid probate protect their privacy, reduce the expenses, reduce time delays and avoid Medicaid estate recovery.

7. **Will my family have to pay "Death Taxes"?**

If your gross estate exceeds the Federal Estate Tax Exemption for the year of death:

Year of Death	Tax Exemption
2006-2008	\$ 2,000,000
2009	\$ 3,500,000
2010-2011	\$ 5,000,000
2012	\$ 5,120,000
2013	\$ 5,250,000
2014	\$ 5,340,000
2015	\$ 5,430,000
2016	\$ 5,450,000
2017	\$ 5,490,000
2018	\$11,180,000
2019	\$11,400,000

8. **Is it possible to avoid or reduce the "Death Tax"?**

Yes – by making lifetime gifts or establishing qualifying trusts to reduce your gross estate when you die. Surviving spouses also have portability to capture any unused exemption amount of the first spouse.

9. **How can the Jordan Balkema Elder Law Center assist you?**

The attorneys of the Jordan Balkema Elder Law Center have provided assistance to hundreds of families who have required the legal knowledge necessary to manage the probate administration process.