

Probate

How Inheritance Is Handled In Maine

Probate is the legal process by which the state assures that the property of a person who dies is distributed, after all debts and taxes are paid, according to the terms of that person's will, or according to state law if there is no will.

The process includes:

- ✓ identifying a legal will
- ✓ appointing someone to handle the deceased person's affairs
- ✓ identifying and inventorying the deceased person's property
- ✓ paying debts and taxes
- ✓ identifying heirs
- ✓ distributing the deceased person's property according to the will or, if there is no will, according to state law

Starting the Process

When someone dies, a family member or representative must notify the Probate Court in the county where the person who died was a resident, and submit the decedent's will. Often, the attorney who helped write the will holds the original. Otherwise the will is likely to be filed with other important personal documents, such as in a safety deposit box, or it may have been given to a trusted friend or relative. Usually the will includes the name of a person who has been chosen by the decedent to be the Personal

Representative (PR) in charge of carrying out the instructions in the will according to Maine law. These laws are set under Title 18-A in the Maine Statutes, and are available online at <http://janus.state.me.us/legis/statutes/18-A/title18-Ach2sec0.html>.

If no Personal Representative is named in the will, if the named person is unwilling or unable to perform these duties, or if there is no will, the Probate Court will appoint a Personal Representative in the order of priority set forth in the Maine Probate Code.

The Probate Process What the Personal Representative Does

The Personal Representative must bring to a close the business and financial relationships that the decedent had in every day life and see to the payment of all debts and taxes. The following is a list of the PR's responsibilities.

Notification

The Probate Court or the PR notifies all devisees and heirs and sends a copy of the will to those who request it, whether or not they are named in it. A devisee is a person named in the will. An heir is a person, such as spouse or relation, who the state would consider in line of succession if there were no will.

Inventory

Within three months of the death, the PR must make a complete inventory of the decedent's possessions and properties, including the actual or estimated value of each. This inventory must be filed with the court and distributed to all devisees and heirs who request it. It is illegal for people to remove any of the decedent's property before this inventory is completed and filed. If the Personal Representative believes anyone has taken

property, the court can be asked to order the property returned, and otherwise prevent interference.

Collection of Income

All the money due the estate, such as rental fees paid by a tenant, insurance payable to the estate, and money received if estate property is sold, must be collected and added to the estate.

Payment of Debts

The estate must be held open for a period of time so that people owed money by the decedent can submit their claims for payment. If the decedent's estate is not sufficient to cover payment of all debts, neither the heirs nor people named in the will are personally responsible for the unpaid debts. The PR will also not be held responsible, provided that the estate has been held open for the legally required time, and that the PR has followed the law.

Filing of Taxes

Two types of taxes may be imposed on estates - federal and state *estate* taxes; and federal and state *income* taxes. Estate taxes are based on the net value of the total estate, which may include assets outside the probate proceedings. Income taxes are based on the income earned by the estate as long as it is open. Both federal and state estate tax systems involve complex forms and calculations that your lawyer or accountant can take care of for you. A federal estate tax return must be filed for estates that exceed \$2,000,000 for individuals dying in 2006 through 2008. If a return is filed, the Internal Revenue Service may audit it or approve it as filed. The effective federal tax rates range from 37% to 55%. Under current law, a Maine

estate tax return is required for estates that exceed \$1,000,000. The Maine estate tax return, and if required, the federal estate tax return must be filed within nine months after the date of death. In addition, there are deadlines for the preparation and filing of *individual* income tax returns for the decedent covering the period from January 1st to the date of death.

Payment of Fees

The Personal Representative is entitled to compensation for services. The amount is figured as a reasonable hourly rate based on the person's skills and experience, plus some allowed expenses such as travel. Any fees paid to a PR must be reported as income for federal and state tax purposes. If needed, the PR may hire the professional services of an attorney, accountant, appraiser or others. Professional services should be documented in written fee agreements signed by the Personal Representative. The Probate Court may review compensation amounts.

Final Accounting

The PR must submit a complete and detailed accounting of how the estate was disbursed, including income from anything that was sold, and make this available to all interested parties.

A Note About Handling Finances

The Personal Representative must establish a separate bank account on behalf of the estate and keep careful account of all receipts and disbursements. It is very important to keep good records. Mismanagement of the estate can be grounds for suit.

Patience, Good Communication...

The most frequent complaints in probate matters are that estate settlement takes too long, and that people are not kept informed. The process can be lengthy, especially if the estate is complex, properties need to be sold, or tax returns are audited. Whether an attorney or a non-professional, the PR has a responsibility to family members and others interested in the estate to keep them well-informed and up-to-date.

... And Professional Help

The resolution of probate issues will be important to you and your family for years to come. Mistakes, misunderstandings, and hard feelings can be avoided by engaging an unbiased legal professional to help explain and guide you through the process.

For referral to an appropriate attorney call
1-800-860-1460
or use the

Client Referral Request Form

found in the Lawyer Referral section of the
Maine State Bar Association website.

www.mainebar.org

Use of the ABA Lawyer Referral and Information Service logo indicates that this lawyer referral program has been reviewed by the ABA and meets the specific public service standards established by the ABA. ABA approved lawyer referral programs:

- Agree to establish and maintain objective experience criteria for their panel attorneys,
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