

What to Expect When the Will is Unexpected

ARTICLE SERIES | Part 1

Probate 101

Probate is a little-understood process, but many people will encounter it at some point in their lifetimes. Read on for a quick primer on going through probate in the Buckeye State.

In Ohio, a probate court is a division of the Court of Common Pleas, and every county has one. They handle a variety of functions, but here we are discussing the process that begins after a decedent has passed away, often referred to simply as “probate.” Probate courts are tasked with administering the distribution of assets, deciding the validity of wills, preventing wrongdoing by fiduciaries of estates, and determining equitable division of assets for those who die intestate.

Generally, an estate must go through probate when the decedent owned assets in their name alone, but there is an exception for some small estates. If the estate is worth



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Important Terms

Probate: The process of distributing a decedent's assets, overseen by a probate court

Decedent: Someone who has died

Fiduciary: Someone legally required to act in another's best interests (in this case, they are appointed by the probate court)

Estate: All property (money, physical items, etc.) owned by a decedent when they die

Intestate: Having died without a valid Will

Probate Property: All property titled solely in the decedent's name at the time of their death, without a beneficiary designation

Non-Probate Property: All property that the decedent held jointly or designated a beneficiary to receive; such property transfers directly to the joint owner(s) or beneficiary upon the decedent's death and avoids probate

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less than \$5,000 or the amount of the funeral expenses, anyone (except a surviving spouse) who is responsible for paying those expenses may ask the court for a summary release from administration—the process for a small estate to skip probate court. If there is a surviving spouse, he or she may request a summary release from administration if: the spouse inherits everything and is legally entitled to a family support allowance, the decedent's assets are worth no more than \$45,000 in total, and the spouse assumes the funeral costs.

For small estates that cannot skip probate entirely, Ohio also has a simplified probate process that is easier and takes less time. That applies when:


- (A) the value of the estate's assets is \$35,000 or less or
- (B) when the surviving spouse is entitled to inherit the entire estate and the estate's assets are less than \$100,000.

In addition to the probate property which must go through this process, some non-probate property can go straight to its named beneficiaries without probate. That can include life insurance benefits, payable on death accounts, transfer on death property, trust assets, retirement accounts, and survivorship tenancy and joint tenancy property.

Ohio does not have a legally mandated time frame for beginning the probate process, but Ohio probate courts recommend starting it within a "reasonable" period of the decedent's passing. The process must last at least six months, as creditors have that long to file a claim. Barring complications, it is often completed within nine


months of a fiduciary being appointed. However, it can take longer if someone files a will contest.

For more information on will contests and other complications, make sure to check back for the next installment in this series.




Attorney Spotlight

Need help navigating the probate process?
David M. Lenz and Veronica Garofoli are both experienced in Probate and Estate Administration.



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