



# The Probate Process and What to Expect

## Managing Legal Obligations in Ohio



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## Probate – Defined

The word probate derives from the Latin “probare,” meaning to prove. A modern-day probate procedure is the court process of proving a will is valid. Probate also refers to a court process of distributing assets when the decedent did not have a will in place.

When one passes away, his or her belongings become known as the probate estate.



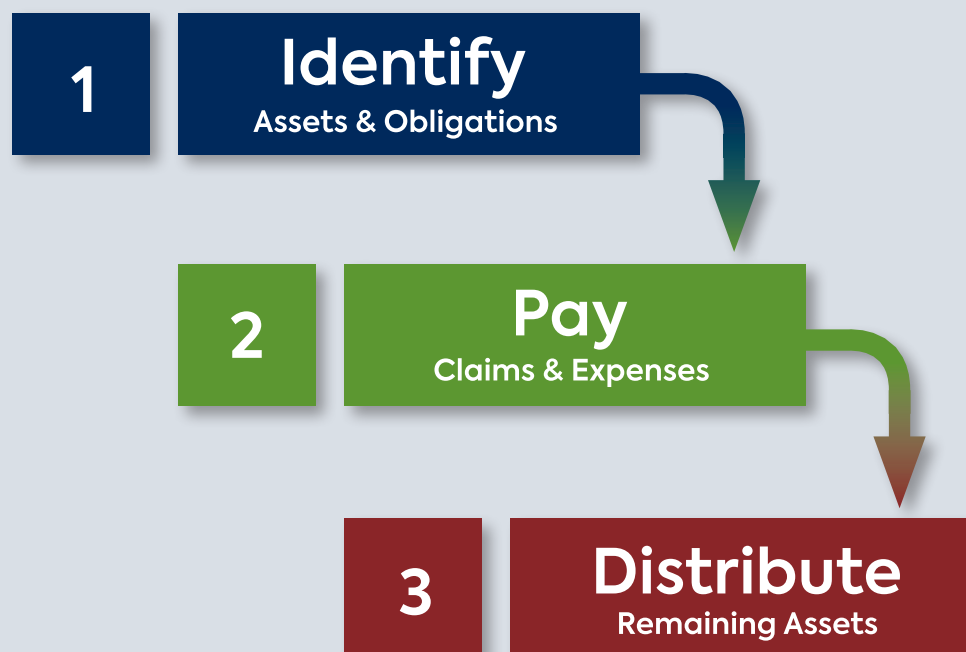
### The purpose of the probate process is to:

- Identify all the assets and obligations of the estate
- Pay claims, taxes and expenses
- Distribute remaining assets to the proper beneficiaries

If there is a will, the person is said to have died in testate. If there is no will, the person passed away intestate. You will hear these terms as you move through the process.



## Roles and Responsibilities



A probate case is opened in the Ohio county where the deceased lived by the executor named in the will. If there is no will, a next of kin must open the probate case and will be known as the administrator.

The executor or administrator is also referred to as the case fiduciary. This is the person who will be put in the position of trust to manage the day-to-day affairs of the probate estate.

The fiduciary is not personally liable for any debts of the deceased. Debts are paid by assets in the estate. If the assets are insufficient, the estate is declared insolvent, and notice is sent to creditors.



## Alternatives

### Variations to the probate process include:

- If the deceased had created a trust, the property remains in the trust, and no probate is needed.
- Where there are no assets to be distributed, no probate is necessary.
- For small probate estates, the court has a procedure called Relief from Administration where basic forms are submitted, and the assets are released from further oversight.
- For larger estates, the executor or administrator will administer the estate, and the court will oversee the process.

### Non-Probate Assets

Certain assets are considered non-probate, meaning they pass directly to others outside probate immediately upon the death. These assets are not subject to the jurisdiction of the probate court and will not be reported:

- Life insurance proceeds payable to a beneficiary
- Any financial account where beneficiaries are named or a “payable upon death” form is on record
- Any property held jointly with a right of survivorship, such as real estate
- Joint financial accounts

**Relief from Administration** – In cases where the only beneficiary of an estate is the surviving spouse, and the gross assets are under \$100,000, the court allows a summary procedure where the executor or next of kin files a packet of forms and the assets are summarily released. If there is not a surviving spouse, the next of kin may be eligible to inherit the assets if the gross estate is under \$35,000. In either case, the court will require minimal documents to be filed and no hearings will occur.

**Full Administration** – Where gross assets exceed Release from Administration limits, the probate case is referred to as a full estate and will be subject to court oversight.

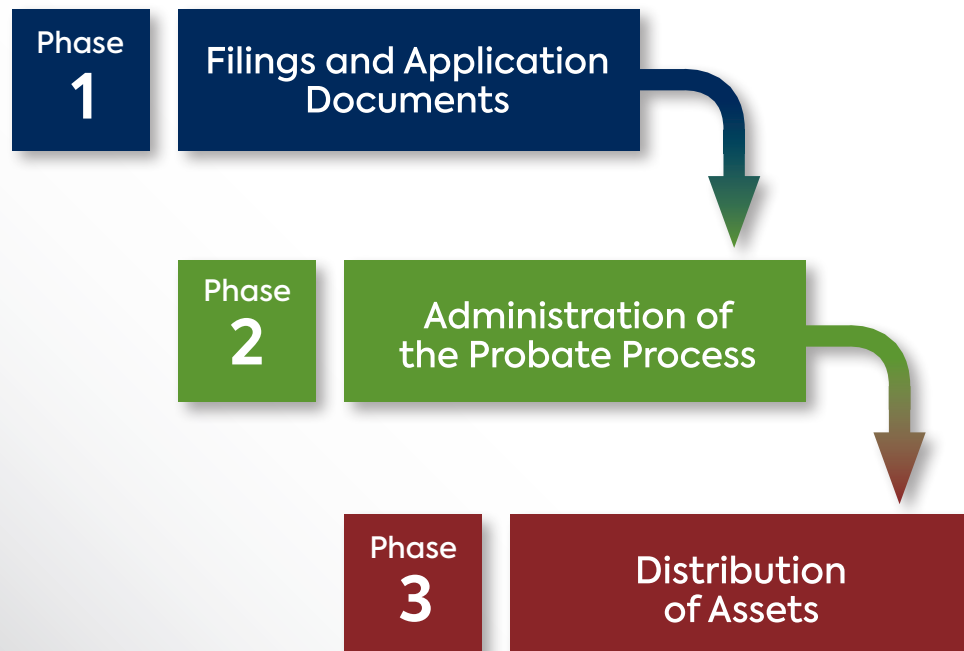


# The Probate Process

## Phase One: Filings and Application Documents

The initial documents filed in opening a full estate administration probate case are: the death certificate, the will and the application to probate the will – if there is one – an identification of the next of kin, a form seeking authority to administer the estate and a certificate that all necessary people have been given notice of the death.

The court will require the payment of a deposit to secure future costs, usually between \$200 and \$400.



If the case is intestate, the court will require the posting of a bond by the administrator. This bond is an insurance policy to ensure that all debts and beneficiary distributions are carried out correctly. The cost of the bond increases with the estimated value of the estate. A small estate bond can cost as little as \$100. Bonding companies require a minimum credit score for approval. If a person's credit score is insufficient, they may choose to have an attorney act as the fiduciary.

If the initial filing documents are in order, the court will issue the Letter of Authority, which is the court order allowing the executor or administrator to have access to all of the assets of the deceased, including the bank accounts, safety deposit boxes and debt information.

## Phase Two: Administration of Probate Process

The second phase is the administration phase. The first duty in this phase is to obtain a federal tax identification number from the IRS and open an estate bank account. Then, the executor/administrator must find all the assets, such as bank accounts, all real estate held, insurance policies which may be payable to the estate, veteran's benefits, stocks and other investment accounts, jewelry, antiques, safety deposit boxes and anything else of value.

After the discovery of each asset, the item must be appraised if a value is not readily available. The court requires an interim report on all assets found called the inventory.

The administrative phase will also include paying hospital bills, debts, court costs, attorney fees, appraisal fees, caring for any other matter required like law suits (wrongful death if applicable), paying taxes due, running or shutting down a business and paying for funeral expenses. These debts must be paid in a specific order, so it is important to know the law.

The fiduciary may choose to sell assets. This can be accomplished through private estate sales or auctions. Ohio law has set strict rules on these sales.

## Phase Three: Distribution of Assets

The final phase in the probate process is to distribute any final assets (if any) according to the will, or if there is no will, to the next of kin pursuant to the Ohio statutes on distribution and descent. The fiduciary will also provide a final accounting to the court showing assets recovered, debts paid, expenses paid and distributions to beneficiaries.

When the court accepts the final accounting, the fiduciary will be released from any future obligations. This process can last anywhere from six to thirteen months (which is the maximum case time allowable under Ohio law barring unforeseen circumstances.)





## Resources

**Probate Litigation** – Each part of the probate procedure can be contested. People with an interest in the estate may choose to bring an action to remove the executor or administrator, contest any of the filings or distributions made in the case or to even question the validity of the will. These situations are rare, but do occur.

**Attorney or No Attorney** – A probate attorney can be very helpful in managing the process for you. You may even choose to have the probate attorney handle the administration and act as the fiduciary.

A probate case can be handled without an attorney, but when an attorney will not be used it is always a good idea to consult one for a basic guideline on what to expect.

The cost of an attorney to handle a probate estate will vary with each office. Some attorneys charge a percentage of the gross estate and some charge by the hour. It is best to talk to several probate attorneys to get a good idea of the expected range of costs and determine your comfort level with the counsel.





## Estate and Property Sales

Often, a will prescribes distribution of sentimental personal property. When it's time to convert remaining assets, including home and furnishings to cash for distribution, a probate attorney can advise you on the legal technicalities involved. Local firms specialize in organizing and managing sales of the assets, and cleanup of difficult properties like hoarder houses, to assist in closing the case.

**For the best resolutions, get the right advice.** Probate may seem confusing, but with proper counsel the task can be simplified. Competent counsel can greatly help alleviate the stress involved in this demanding process.







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