

What Is Probate?

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A death in the family can be emotionally draining what with all the necessary arrangements not only for the burial of a loved one but also for the management and distribution of any property he may have left.

Most people find it horrid to make a living will. However, the preparation of a last will and testament while a person is still alive can be beneficial to both the testator who is the person making the will, as well as his heirs or beneficiaries. Failure to make a living will can sometimes lead to disgruntlement and conflict within the family, when the testator dies.

A will can either be written or holographic. A written will is one that is usually prepared by lawyers and should follow the essential requisites provided by law in terms of the number of witnesses and the preparation of the will. A holographic will is in the handwriting of the testator and need not be witnessed for as long as it can be proven that it is the handwriting of the deceased and it was made without fraud.

A person can die testate when there is a will, or intestate when there is no will. If there is a will, then the testator's property will be distributed according to the will. This means that aside from his legal heirs, the person can also give something to other beneficiaries. If he dies intestate, then his property is distributed according to the state law. If a person dies without a will and without heirs, then his property reverts to the state through escheat.

Purpose of probate proceedings

1. One of the most important procedures in distributing the estate of the deceased is the probate proceedings. Probate is the legal term which refers to a court procedure aimed at ascertaining the validity of a will. The probate court is also the venue where other heirs and beneficiaries can question the validity of the will.
2. The probate court will determine how the property of the deceased should be distributed. The law has already provided a certain percentage of the estate that should go to the legal heirs of the deceased including the children, spouse and parents. The beneficiaries can only get the free portion, or that percentage of the property that remains after the legal heirs get their shares.
3. Probate is also a method which allows the government to efficiently collect debts and taxes due from the decedent's property. The debts and taxes are the first priority before the property is distributed to the heirs and beneficiaries.

There are cases when a will is valid but it can be consequently declared invalid when a more recent will is found; the will was made by the decedent while mentally ill or otherwise in an incompetent state or the will did not follow the formal requisites or it was obtained by fraud.

While probate proceedings take time, effort and stress, it is the best venue to make sure that all the issues involving or that may be hurled against a will is settled according to law. This would be advantageous to the heirs and beneficiaries since a probated will makes sure that the properties they will be getting are legal. The probate proceeding is also a good defense against the claim of other parties in the future.

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