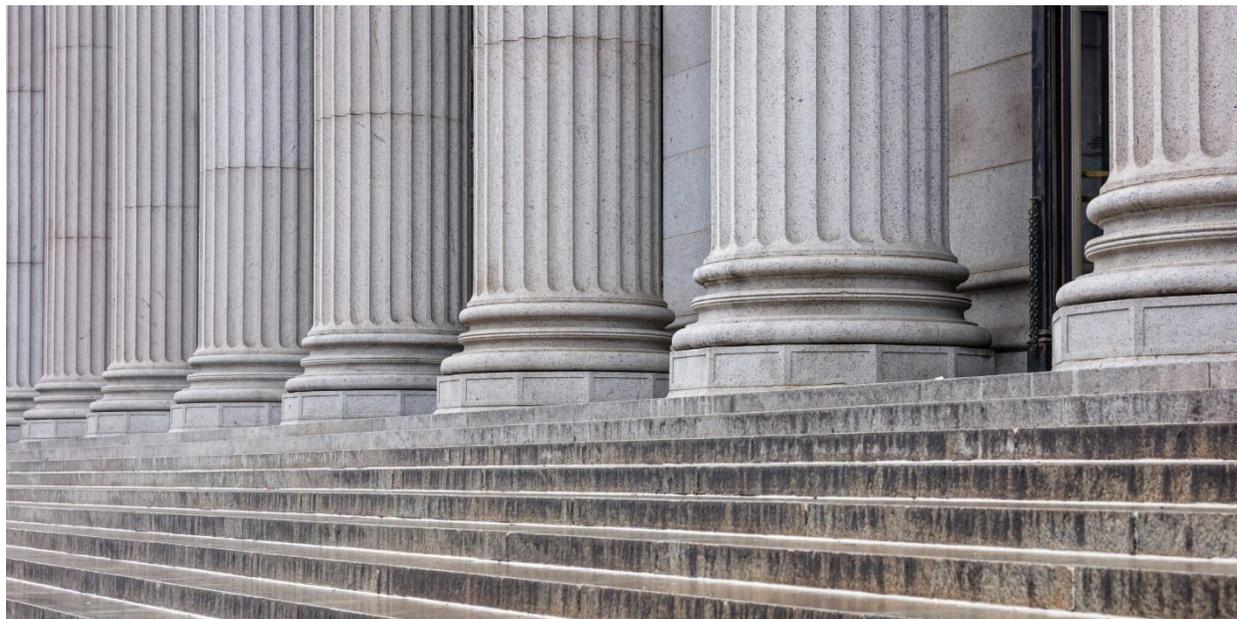


Understanding Probate



Probate is the legal process established to properly transfer ownership of your estate at the time of your death. The process includes ensuring that your [last will and testament](#) is valid and legal, determining the value of all the assets that comprise your estate, paying all of your outstanding debts and taxes, and distributing the remainder of the estate according to the instructions left in your will.

If you pass away without a will, your estate is considered to be “intestate.” In this case, the probate process normally takes longer. The probate court appoints a representative to administer your estate and determines how to handle your debts, assets, and other matters that are normally detailed in a will – all without your input. In other words, without documentation of your final wishes in your will, the court has the final say.

Does anything *not* have to go through probate?

There are certain assets that usually are not required to be part of the probate process. These include:

- **Life insurance death benefits:** These are paid directly to the beneficiaries identified in the life insurance policies. If no beneficiary is named, the proceeds go to the deceased’s estate, so it’s important to keep your life insurance beneficiaries up to date.
- **“Payable-on-death” or “transfer-on-death” accounts:** This type of account includes bank accounts, brokerage accounts, and retirement accounts for which you have designated a surviving beneficiary. These designations are made through the bank or investment company that manages your accounts. Bank accounts (checking accounts, savings accounts, and CDs) are paid to the beneficiary upon the account owner’s death. Stocks, bonds, and retirement accounts transfer ownership to the beneficiary when the owner passes away.
- **Assets contained within a trust:** Assets contained within a properly established trust are distributed according to the rules of the trust and not through probate.



- **Property that is jointly owned with rights of survivorship:** Upon the death of one of the owners, sole ownership of the property is transferred to the surviving owner. Typically, this applies to homes that are jointly owned by two spouses or jointly owned bank accounts.
- **Small estates:** Small estates are not required to undergo the probate process; they can instead distribute assets after filing a small estate affidavit. However, what qualifies as a “small estate” varies from state to state. For example, in Virginia, a small estate is one that is [less than \\$50,000](#). In Texas, a small estate is one that is [less than \\$75,000](#) – excluding the value of the deceased’s home.

What does probate entail?

Probate involves:

1. Submitting the death certificate of the deceased to the court to prove death.
2. Submitting the will of the deceased to the court to initiate the probate process. Additional paperwork may be required at this time, but documentation requirements vary by state.
3. Validating the will, which may require the individuals who witnessed the signing of the will to appear in court.
4. Naming an executor who is then put in charge of settling the estate. Typically, the court appoints the individual named as executor in the deceased’s will. If there is no will, or if the individual designated in the will is unavailable or unwilling to serve, the court may choose someone else to administer the estate, or a friend or family member of the deceased may offer to become executor. This individual will be given Letters Testamentary or Letters of Administration, which grant them control of the estate and the assets contained within. A probate bond may be required.
5. Determining the value of the estate and determining any debts owed by the deceased, including taxes. This may require an appraisal, which is paid for by the estate.
6. Informing creditors of the death of the deceased and settling accounts, using money contained within the estate or with proceeds from the sale of estate assets.
7. Paying taxes owed by the deceased, including income taxes, property taxes, estate taxes (if the estate is greater than \$12.06 million), and inheritance taxes (if required).
8. Informing beneficiaries that they are named in the will and informing any named guardians of their obligations under the will.
9. Distributing assets to beneficiaries. If the will states that particular assets should be given to a particular individual (e.g., “the truck goes to my brother”), those will be distributed accordingly. Assets that are not specifically bequeathed by the will may be sold or divided up among beneficiaries.

Note: If a named beneficiary in your will passes away before you do and you fail to update your will after their death, the court will decide how to distribute the assets that would otherwise have gone to the deceased under the will.

Are there downsides to probate?

Probate can be expensive. Probate can cost between [3–8% of the value of the estate](#). The costs are made up of executor fees, administrative fees, and legal fees – and the longer the process is drawn out, the more expensive the associated costs will usually be. Probate fees are typically paid out of the estate, meaning that the more expensive the probate process, the less there is left for the estate’s beneficiaries to inherit.



Note: While immediate family members may be able to ask the court to release limited funds while probate is ongoing, assets are not usually released to beneficiaries until the estate has been mostly settled – at the end of the probate process. If you have family members or other beneficiaries who may rely on an inheritance for everyday life, it's important to make sure they can receive their payout independent of the probate process.

Probate can also be time consuming. For those without a will, probate can take months or even years to complete. Even for those with a will, if the estate is large, it can take time to find and pay off all debts and then distribute the assets. Probate can also be drawn out if an individual with a claim to estate assets decides to contest the will.

Probate proceedings are public. While they may not make for light reading, probate files are public documents and are a part of the public record. If a family wants privacy, they may want to avoid probate as much as possible.

Is probate avoidable?

Unless you have a small estate as determined by your state's laws, your beneficiaries are unlikely to be able to avoid probate all together. However, there are things that you can do while you are alive to minimize the assets that are required to be probated to simplify the distribution of inheritances after your passing.

- Put assets into [a trust](#) and provide instructions for their distribution. It is important to work with an attorney to create a legally valid trust that accomplishes what you intend. Before moving assets into a trust, make sure that you understand the implications of the trust owning the assets – and not you personally – while you are still living.
- Gift items to your beneficiaries while you are alive. As of 2022, under federal tax law, you can gift up to \$16,000 each year, to as many people as you would like, without triggering a gift tax. If you are married, you and your spouse can each gift up to \$16,000 each to any given individual.
- Add beneficiaries to your bank and brokerage accounts.
- If you are married, own property jointly with rights of survivorship.

Having a will in place at the time of your passing does not help your family avoid the probate process altogether, but it does make it a lot less complicated and time consuming. Your will provides instructions for the court and your executor to follow, meaning that few to no decisions have to be made by a judge and the process of finalizing your estate can occur as smoothly and quickly as possible.

Active duty servicemembers and retirees have access to [legal personnel on base](#), and they will be able to help you create your will at no cost. The American Bar Association also maintains [a directory of legal programs](#) that are available to military families in each state. If you are unable to access military-specific legal aid, you can write your will by enlisting the help of an estate lawyer, whom you could find by word of mouth or on your state's bar association website.

When it comes to estate planning, Navy Mutual is here to help. If you need to change the beneficiary on your life insurance policy or an annuity, you can do so through your [Navy Mutual Customer Portal](#) at any time. If you simply want a document that helps you keep all your [estate planning](#) notes in one place, we have your back. To discuss life insurance options or to make sure that your current insurance policy fits your needs, [schedule an appointment](#), or give us a call at [800-628-6011](tel:800-628-6011).



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