



## Probate Basics: Is It As Bad As Everyone Thinks?

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Probate is the legal procedure that is required to identify the decedent's separately owned property, make sure that the decedent's creditors are paid and that the remaining property is distributed to the decedent's beneficiaries. Those beneficiaries depend on whether the deceased person had a Will. If the person had a Will, the separately owned property is distributed to the persons named in the Will. A Will must be probated to be effective. If there is no Will, the separately owned property is transferred to the deceased person's heirs.

A person's heirs are generally those people most closely related to the person by kinship. Generally, in Oregon, a person's heirs are determined under the following rules: If the decedent was survived by a spouse and has no lineal descendants (children, grandchildren great-grandchildren), the spouse is the heir. If the decedent was survived by a spouse and lineal descendants, and if all of the decedent's lineal descendants are also the spouse's lineal descendants, the spouse is the sole heir but if any of the decedent's lineal descendants are not the lineal descendants of the spouse (step-children), the spouse is the heir to  $\frac{1}{2}$  of the separately owned property and all of the decedent's lineal descendants are heirs to the other  $\frac{1}{2}$  of the separately owned property. If there is more than one non-spouse heir, all of the heirs share the  $\frac{1}{2}$  equally.

A typical formal probate, without complications, will last for at least six months and the attorney fees and probate expenses generally range between \$3,000 to \$7,000. The personal representative is also entitled to a fee of approximately 2% of the value of the estate property. The costs can be much higher if probate is contested or if the probate estate consists of complicated assets such as a business. If the value of the probate property is under specific limits, a Small Estate proceeding can be used. The current Small Estate property limits are personal property valued at \$75,000 or less and real property valued at \$200,000 or less. The Small Estate proceeding takes at least five months and the attorney fees and cost are generally around \$1,500. Note: Separately owned bank accounts, with a total value of not more than \$25,000, US Savings Bonds and motor vehicles may not be subject to probate if there are no other assets that must be probated. In that case, those assets can be distributed to the decedent's heirs, if all such heirs sign an affidavit consenting to such distribution.

When planning their estates, many people consider whether avoiding probate is an objective for them. It is important to remember that probate is a court supervised process; therefore, additional time and expense will be incurred. That time and cost affects only the estate beneficiaries. And, the procedural requirements of probate may be beneficial if the decedent had potential or unknown creditors or litigation was likely. If no benefit is expected, it is a personal decision as to whether saving time and expense for your beneficiaries is worth the cost of establishing an estate plan that avoids probate.

For more information about probate and how it might affect your estate, please contact Ryan Correa at Hurley Re, P.C. (541) 317-5505.