

Probate and Property Distribution

Probate is the formal court process of distributing an estate at death. Probate is often necessary to transfer title to the estate's assets, settle claims of creditors, and resolve disputes between heirs or other people. This article answers some common questions about probate.

If I have a will, does my estate have to be probated? The presence of a will does not dictate whether probate needs to occur. The determination is based on what type of property you own at your death, how you own it and who may have a claim against it. Probate is not necessary if title to your property can otherwise be legally transferred and everyone agrees with how it is to be distributed.

My estate is small, does it have to be probated? Generally speaking the need for probate does not depend on the size of your estate. If you are the sole owner of any real property, your estate will have to be probated so that your heirs can have clear title to the property. If you don't own real property, there may be other alternatives and the size of your estate will be important.

How long does probate take? Most estates can be probated in less than one year. As part of the probate process, notice is given to creditors of an estate so that they can submit claims for payment. Estates must be closed three years from the date of the second publication of this notice to creditors. In some instances, a judge may give approval for the estate to be opened for a longer period of time.

How much can an attorney charge to probate an estate? According to Iowa law, attorneys can receive \$220 for estates less than \$5000 and \$220 plus 2% of the gross estate if it is over \$5000. If the estate is very complicated, a judge can order additional attorney fees.

What are alternatives to probate? You can own property as joint tenants with right of survivorship so that your property will automatically pass to the other owner at your death. You can also name beneficiaries on some property such as life insurance, IRA's, bank accounts and CD's, so the property is distributed at the time of your death to the named beneficiary. If your estate is less than \$25,000 and does not include solely owned real property, your estate can be distributed by affidavit.

An affidavit can direct a third party to distribute property to the proper heirs. If you have a large estate, you may need to do more extensive estate planning. Trusts are one option that you may consider.

It is important to understand different types of ownership and consequences. Please consult an attorney before making any changes to your estate plan.

If you have questions about this article please contact the Legal Hotline for Older Iowans 1-800-992-8161. This information is from the Legal Hotline for Older Iowans. The Legal Hotline is a project of Iowa Legal Aid that is partially funded by the U.S. Administration on Aging. The Hotline is a free, confidential service for all Iowans 60 or older with questions on non-criminal legal matters.