Filing for Probate: What to Know

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When a loved one dies, grieving families are often told they must “go through probate.” These words can sound intimidating, but understanding the basics can make the process far less stressful.

What Is Probate?

Probate is the court-supervised process of settling a person’s estate. The process is filed with the Probate and Family Court in the county where the person lived at time of death. The Court confirms who has the authority to act on the decedent’s behalf to pay final debts and taxes, and to transfer property to the people entitled to receive it.

Does Every Estate Need to Go Through Probate?

No. Three categories of assets generally avoid probate:

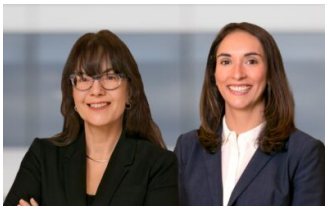
1. Jointly owned property

2. Property that names one or more beneficiaries (e.g., life insurance, retirement accounts, payable on death accounts)

3. Property held in a trust. Probate is typically needed only for those assets held in a decedent’s name alone.

Formal and Informal Probate

Many estates can proceed through informal probate, which is a quicker process typically handled by a court magistrate, when the original will can



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be located, the will is unambiguous, and family members agree. Formal probate involves a judge and is used when there is no original will, a dispute is expected, real estate is involved, or other complications arise.

For smaller estates, Massachusetts also offers a simplified "voluntary administration" procedure when the probate assets, not counting a car, are less than $25,000, and no real estate is involved. A family member may be able to use this shortcut instead of a full probate filing.

What Does the Personal Representative Do?

The Court appoints a "personal representative," formerly called an executor or administrator, who gathers the assets, notifies creditors and heirs, pays valid bills, files required tax returns, and distributes what remains to the beneficiaries. It is a serious responsibility, and the personal representative can be held accountable for mistakes.

Get Help Early

Every family's situation is different, and an early conversation with an estate planning attorney can prevent costly delays. Planning ahead with trusts and beneficiary designations can also help your family avoid probate altogether.

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