

PROBATE

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Roadmap for Series

- Guardianship
- Probate
- Trusts
- Intermediate Gifting and Tax Planning to Minimize Estate Taxes

What is Probate?

- A court procedure used to transfer assets from Decedent to named beneficiaries/heirs at law
 - *With or without a Will***
- If there is no Will, probate would determine the appropriate person to serve as administrator and the order of distribution based on Washington state law

What Probate is NOT:

- Probate is NOT the process which turns assets over to the government.
 - * That process is called “escheat.”
- Probate does not directly deal with the payment of estate taxes; and the lack of probate does not mean there are no estate taxes due.
 - *Status of Federal and State estate taxes due has to be mentioned in the court documents and taxes must be paid before estate closes.
 - *However, probate is NOT the means to pay estate taxes. IRS and WA Dept. of Revenue requires payments of estate taxes WITH or WITHOUT a probate action. WA state court is not responsible for collecting or paying the IRS or WA Dept. of Revenue.

Why is Probate needed?

- Provides a process for payment to creditors
- Grants powers to Personal Representative (Executor) to collect, maintain, sell, and distribute assets of the estate
- Resolves creditor/beneficiary disputes, if any
- Determines jurisdiction of estate, if applicable

Who would file probate?

- Personal Representative (Executor)
 - Named in Will
 - **Spouse has a statutory right to be the PR by law over community property, even if Will names someone else
- Administrator as dictated by law (intestate – no Will)
 - RCW 11.28.120 (spouse, next of kin, trustee, beneficiaries, director of revenue, creditors).

Where?

- Persons who die or own assets/properties in the state of Washington are ***subject to probate in Washington***
- File Petition in the Superior Court of ***any*** county in Washington. (May choose the county most convenient to Personal Representative per RCW 11.40.020(2)).
**Note: Creditor's notice may need to be published in county of residence

How?

- Probate begins with the filing of a Petition to the court having jurisdiction over the deceased person, along with the Will of the Decedent to verify the validity of the Will.
- The Personal Representative is required by law to **notify all heirs** (whether or not they are receiving assets), named beneficiaries, and the **Dept. of Social and Health Services** of the Petition and start of the probate proceeding.
- Heirs/Beneficiaries may file objections prior to the hearing, if there is a hearing set.
- Oath of PR required.
- Bond may or may not be required by court.

How? (Creditors)

- The Personal Representative may send direct notices to creditors of the Decedent to inform them of the death and explain the procedure required to file any claims.
 - PR may also elect to publish a notice to creditors in county newspaper for 3 consecutive weeks.
- **The Notice to Creditors starts a period of time to limit claims.

How? (Inventory)

- Within 90 days of appointment, the Personal Representative is required to prepare an inventory of the deceased person's assets.

How? (Tax Returns)

- Personal Representatives have legal obligations to prepare appropriate income, and as applicable, estate tax returns for the United States Internal Revenue Service and WA Dept. of Revenue.
- PR and/or beneficiaries may be held financially responsible for failure to file and the taxes due.

How? (Closing Probate)

- Receipts from beneficiaries
- Declaration of Completion
- Taxes, if any, paid
- Debts cleared
- 30 day notice to heirs; PR discharged thereafter

How long is the Probate process?

- Probate generally spans about 6 to 12 months.
**No disputes and PR has all information ready, including information about family/heirs/named beneficiaries.

How much does Probate cost?

- Court filing fees: \$220
 - Appraisal fees (tangible assets, business, private stocks):
Varies
 - Creditors Notice publication: \$100 to \$150
(King County Daily Journal)
 - Accounting fees (1040's, 1041's, 706's): Varies
 - Attorneys' fees: Varies
- **Attorneys' fees in some states, such as California, are percentage based (Ex: In CA, 4% to 9% of entire estate)

Can probate be avoided?

- Possibly
- Examples: Designations of beneficiaries, trusts, and community property agreements, etc.

*****Each of these methods are very specific and should not be used without careful consideration and discussion. Certain mechanisms may have unintended distribution or tax consequences depending on family dynamics and current law.***

Vivien K. Chang

- Ms. Chang's practice focuses primarily on estate planning, probate, and guardianship. She has extensive experience working with a wide range of clients from complex and high net-worth individuals, to young families with emphasis on protection of children and anticipated growth of family assets. She assists clients in the set-up of family trusts, credit shelter trusts, family limited partnerships/limited liability companies, foundations, charitable remainder trusts, family business succession planning, community property agreements, wills, powers of attorney, and health care directives. Her probate experience includes working with judicial and non-judicial administration of estates of small to large taxable estates, post-mortem tax planning, tax filings, and funding of testamentary trusts.

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