

The word “probate” has entered your life. Someone you love or who has trusted you as a steward of their estate has died, and it is now time to settle what remains.

First, we are so sorry for your loss. At a time when you may just want to curl up and grieve, going through legal paperwork is not the highest priority. We understand. **We are legal experts so you don't have to be.**

We hope this toolkit will provide you a starting point as you work through this process. If at any time you feel overwhelmed and need more help, please don't hesitate to call Measure Law. Our core value is to be your legal expert so you can focus on living.



## Probate Defined

**Probate is simply the legal process of transferring property after an owner's death, acting out the wishes in a will, and if there isn't a will in place, according to state law.**

### Is probate required?

**Whether or not probate is required depends on one thing, the title of assets, namely property and bank accounts.** This is anything owned by someone individually, without a beneficiary.

While it's not always obvious if an estate will require probate, here are a few examples:

#### Not Required

The deceased's home, which has a title in both spouse's names and with rights of survivorship, is not subject to probate. The survivor simply takes on the title of the property after recording an affidavit in the county property records.

A bank account where an individual named specific beneficiaries upon their death does not require probate.

#### Required

A residential property owned by a single individual is subject to a probate proceeding.

Any account that is not either jointly held, or set up with designated beneficiaries is subject to probate.

*An exception to this rule applies for estates less than \$50,000 in total assets value.*

**If you don't have clarity on whether or not probate will be required, don't worry. It's our job to be the experts on probate, not yours. Just give us a call, we are here to help.**

## Helpful Probate Definitions

### ■ Heir

Children, spouse, or other family members who are legally entitled to inherit from an estate (if there is not a will or trust in place).

### ■ Devises

All individuals and organizations named in a will or trust to receive a distribution from the estate.

### ■ Beneficiary

An individual named to receive a certain asset upon death.

### ■ Transfer on Death Beneficiary

Ownership of the asset transfers to the beneficiary upon death without the need for probate, **typically used for a retirement or investment account.** Payable on Death beneficiary funds held in the account are paid upon death to the beneficiary, **typically used for a bank account.**

### ■ Executor or Personal Representative

The person named to take care of all of this - most likely you, if you're reading this. If there is no will, this will be determined by closest living relatives.

### ■ Administrator

A court-appointed executor, if someone dies without leaving a will.

### ■ Intestate

A case where someone dies without a will. This can be very simple or very messy. **If you own anything at all, make everyone's life easier and draft a simple will.**

### ■ Intestacy

State laws that determine how to distribute the estate of someone without a will, and varies from state to state.

### ■ Letters of Administration

A document from a probate court authorizing the executor (defined above) to act on behalf of the estate.

### ■ Notice of Probate // Notice to Creditors

Notices the executor has to submit, in writing, to the heirs (“interested parties”) and creditors. These also must be published in a local newspaper and begins the creditor claim period.

### ■ Small Estate Affidavit // Summary Probate // Summary Administration

Documents or processes that can allow you to collect personal property or accounts small in value without a full probate proceeding. In Montana, estates with an overall value of \$50,000 or less are eligible as a small estate.



## Steps to the probate process

We recommend our clients start working through the probate process anywhere from 2-8 weeks after the death.

While there isn't a specific deadline for opening a probate, if you wait longer than three years from the date of death it will require a "formal" probate proceeding, which means you will need to have a hearing in court to open the probate.

**These steps are for when things stay close to on track and with no disputes.**

However, probates can get complex and sometimes even messy if heirs try to contest the will.

Montana law requires a probate be open for a minimum of six months before it can be closed.

### Step 1:

Gather initial information and set up meeting with your probate attorney

### Step 2:

Meet with probate attorney

### Step 3:

File documents necessary for opening probate with District Court

### Step 4:

Court issues an Order Appointing Personal Representative and the Letters of Administration

### Step 5:

Obtain a tax identification number from the IRS

### Step 6:

Publish and send notice to creditors

### Step 7:

Send notice to heirs and devisees

### Step 8:

Tax returns due nine months after death.

### Step 9:

Final inventory

### Step 10:

Final accounting

### Step 11:

Final distribution and closing

### Step 12:

Receipts filed

### Step 13:

Decree of Final Discharge issued by court

Since a personal representative is not named without a will, choosing one is also based on a priority of Montana law. The surviving spouse typically has first priority, then adult children, and so on.

**Remember, you don't have to be the expert on this, call Measure Law if you have any questions.**



### If there is a will

In an ideal world, your loved one or partner has outlined their wishes in a legal will.

**It is important to locate the original will and not a copy,** as the personal representative must file the original will with the probate court.

The will names a "personal representative" or executor of the estate. This is the individual who is responsible for administering the probate process, possibly you.

The will also sets out the distribution of the estate assets.



### Ready to begin - a checklist

Once you are ready to begin the probate process, here is a checklist of items you will need to bring to your attorney if you are the personal representative, or assisting the personal representative.

**You may not have all of this information right away, and that's ok.**

It often takes time to gather and most times a financial institution will not provide you with any bank information until they receive verification you are the legally appointed personal representative. Remember, this is a process.

- A copy of the death certificate, usually obtained by the funeral home.
- The original will, if there is one.
- Contact information for all of the people, businesses, and/or organizations named in the will
- Copies of deeds for real estate
- Copies of the most current bank statements, investment accounts, etc.
- Vehicle titles
- A personal property list, if the decedent left one
- Information regarding any out of state assets
- Information on known debts or claims against the deceased



### What happens without a will?

The short answer is this: **in Montana if you die without a will, your assets are distributed according to a priority under state law known as "intestate succession."**

Montana law sets out specific requirements for intestate succession, but in general, **if you are survived by a spouse, your spouse will receive 100% of your estate.**

However, **if you have children from a prior marriage then it gets more complicated.**

And If you are not married at the time of death then the assets are distributed to children, parents, or more remote heirs based on a priority set by Montana law.



Expert legal advice, so you can  
**FOCUS ON LIVING**

PROBATE. WILLS. TRUSTS.

## Don't Panic

If after reading all of this you're feeling even more overwhelmed, don't panic. That is completely normal. Probate is a process and the first step is to simply start. If you're not sure what the next right step is, give Measure Law a call, we'll navigate this together.



### PROBATE TIP

The only information necessary to file documents with the court to begin the probate process are the death certificate, original will, and names and addresses of those named in the will.