



## ***Did you ever wonder, What is Probate?***

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### **What is probate?**

Probate is the process by which the New York State Surrogate's Court determines whether a last will and testament is valid, and authorizes the distribution of the deceased person's property to his or her heirs. The Court calls the heirs "distributees."

If the court decides that the will is not valid, or there is no will at all, property is distributed according to state law, called the law of "intestacy", using the process called "administration."

### **What is probate property?**

After someone dies, the property that they owned that is affected by probate — such as their musical instrument, let's say, or their car, or money in an account that has no named beneficiary — is said to be owned by their estate.

Some types of property are NOT the kind of property included in the probate process. Examples of property not part of the probate process include bank accounts with a payable-on-death designation (assuming that the person designated to receive the funds is alive), IRAs or other accounts with a named beneficiary, property held in a trust, life insurance proceeds, and real estate owned jointly with someone else. If you have any of these types of property, and you haven't named a beneficiary, you may want to. These types of property will pass to the people the deceased person intended to inherit them without any involvement of the court. When people talk about "avoiding probate," this is what they have in mind.

### **Who distributes probate property?**

The person whose job it is to handle the probate process and distribute the estate's property is the "executor" (or, in the case of an administration, the "administrator"). The people or sometimes charities or other organizations who receive this property – after any payments to creditors or tax authorities are made – are the distributees, or beneficiaries.

In an administration, which is really the same as probate, except it refers to the situation where there is no valid will, or no will at all, or where the estate is less than \$30,000, the administrator distributes the property according to where the intestacy law says it goes.

The probate or administration process will be more or less complicated depending on the quantity and nature of the probate property involved, which, if it totals less than \$30,000, can be handled via a "simple administration."

So, if the person who died did not have many assets, you can ask the Surrogate's Court to let you divide and give away their property to people who have a legal right to inherit it using the small estate or "simple administration" process. To do this, you will need to file a form called an "Affidavit of Voluntary Administration" (also known as the "small estate affidavit"). LawHelpNY makes available an online form that helps you prepare the "Affidavit of Voluntary Administration." It is a free program that helps you create the affidavit that you will need to file in Surrogate's Court. To use this form, go to <http://www.lawhelpny.org/resource/interactive-form-online-small-estate-affidavi?ref=jINjB>.

### **Where can clients get help?**

Often people who have been named as executor in a will, or who want to become an estate administrator, don't know where to turn for help.

Answers to frequently-asked questions can be found on the NYS Court System's website, by clicking [here](#), and the Surrogate is Court clerk's office, (for Manhattan, located at 31 Chambers Street), can be helpful. Every county has a Surrogate Court.

In New York City, there are two legal-services offices that offer free assistance with the probate process, if you qualify for their services. One is the **New York Legal Assistance Group (NYLAG)**, which can be reached at (212) 613-5000. The other

is the City Bar Justice Center's **Planning and Estates Law Project**, which can be reached at (212) 382-6756. Neither program assists in cases where the estate is contested — that means where someone is arguing that the will is not valid in some way. Nor do these programs offer representation in court.

VOLS hosts monthly clinics for free advice and referrals on this and many other legal subjects. For more information, go to their website, [www.volsprobono.org](http://www.volsprobono.org), or call (212) 966-4400.