

## **How Long Should You Expect the Probate Process to Last?**

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Probate has a reputation for lasting just short of forever, but it can actually depend on many factors. Some estates settle or close within a few months, or even a few weeks. Others can take a year or longer.

The process involves a good many steps, all of them necessary to move assets from the ownership of a deceased individual into that of a living beneficiary. The decedent's taxes and outstanding debts must be paid before this can happen.

All this often chugs along under the supervision of the court, and this can further slow things down. The process can stall entirely for a while when there are complications.

### **Where Does the Executor Live?**

The executor, sometimes referred to as the personal representative, is in charge of managing the estate through the probate process. Sometimes, an attorney might be involved as well with larger estates.

Where the [personal representative](#) lives in relation to where the attorney is located might not seem like a big deal in this day and age, what with all the modern technology at our fingertips. But the distance between the personal representative and the attorney can indeed make a difference.

A personal representative can drop by to take care of problems relatively quickly when closely located to the attorney's office. But quick meetings just can't happen when the personal representative lives far from the office or in another state.

And keep in mind that almost all documents that are filed with the court require the original signature of the personal representative. Faxed or emailed signatures won't do.

### **How Many Beneficiaries Are There?**

Probate will take longer as the number of estate beneficiaries increases, particularly if they, too, live far from the attorney's office or from the personal representative. This is simply a function of the time it takes to send multiple documents back and forth between numerous people who are located in many different places.

## **Do the Beneficiaries Agree or Disagree?**

It's unlikely that any two beneficiaries will agree on *everything* that must happen with an estate, let alone three, four, or more of them. Some beneficiaries might even hire their own attorneys to monitor the [probate process](#) and these types of attorneys tend to nitpick over every action the executor takes.

Suffice it to say that the more beneficiaries an estate has and the more they find fault with the process, the longer probate will take.

## **Is There Going to Be a Will Contest?**

A [will contest](#) is a legal proceeding that's initiated to invalidate a [last will and testament](#). Will contests are based on one of four arguments, or sometimes a combination of them:

- The will was not signed with the proper legal formalities.
- The will was written as it was because of issues of fraud.
- The will was written under duress and [undue influence](#) by a beneficiary.
- The deceased lacked the mental capacity to create a will.

A probate proceeding will remain open for a very long time if a will contest occurs. These issues are typically resolved after lengthy court trials.

## **Are There Many Debts?**

Payment of taxes and a decedent's debts are a major component of the process because transfers to beneficiaries can only occur after all this has been accomplished. And payment to creditors can take some time, depending on state law.

Most states require that all known creditors must be sent notice, letting them know of the death and how long they have to make claims for the money owed to them. Some states also require that a notice for unknown creditors be published in a local newspaper, sometimes more than once for a period of weeks.

The deadline for filing creditor claims can vary considerably from state to state, from just 30 days in Texas to as long as seven months in New York and an entire year in Massachusetts. Closure of the estate will be delayed until this period has passed and all claims have been resolved.

This might not affect smaller estates, however, if state law includes provisions for summary or simplified proceedings for these estates.

## **Is There a Will?**

A big snarl can occur if the deceased didn't leave a will. This doesn't mean that the estate doesn't have to be probated, but rather that the court will be more heavily involved in the process every step of the way.

The judge will have to appoint someone to act as personal representative if deceased didn't nominate anyone in a will. State law will determine which heirs will receive bequests from the estate and in what percentages. Even simple steps in the process will take longer than they would have if a will had been available.

## **Is the Estate Taxable?**

It takes longer to probate an estate that owes [estate taxes](#) because a taxable estate can't be closed until a [closing letter](#) is received from the Internal Revenue Service. A closing letter must be received from the state taxing authority as well if state estate taxes are also due.

It can take anywhere from six to eight months after filing an estate tax return before receiving any type of response from the IRS. As a practical matter, however, very few estates are subject to the federal estate tax. Only those with values in excess of \$11.4 million are subject to taxation on the balance at the federal level as of 2019.

But 12 states and the District of Columbia also impose state-level estate taxes, and some of their thresholds are much less than \$11.4 million federal exemption. It can delay the process if the deceased died owning property in any of them.

## **How Complicated Are the Assets?**

Probate should be relatively simple if an estate is comprised of just a couple of assets, like a house and maybe a bank account. The exact rules and requirements can vary by state, but many states make simplified probate options available when an estate isn't complicated.

The court will allow the transfer of assets to living beneficiaries based on a small estate affidavit in these cases. This type of "probate" can take as little as a couple of weeks. The total value of the deceased's probate assets must usually fall below a certain dollar limit to qualify.

Full-blown administration can get complicated and drag out if the estate is comprised of a house, a bank account, and an interest in the family business.

## **Is Probate Even Necessary?**

You can avoid probate of your estate entirely by funding your assets into a living trust. They would pass to living beneficiaries according to the terms stated in your trust formation documents so a probate case never has to be opened with the court.

Of course, this assumes that you remember to title all your property in the trust's name after you form it. Omitted assets would still require probate.

You don't necessarily have to go to all the trouble of creating a living trust, either. You might consider minimizing your estate by holding title to certain assets in such a way that they'll pass automatically to living beneficiaries at the time of your death.

Talk to an estate planning attorney about the possibility of creating payable-on-death accounts or holding real estate with someone else with rights of survivorship. Any of these options might minimize your estate so it can qualify as a small estate and pass to your beneficiaries by affidavit.

## **So How Long Does Probate Take?**

The probate process can take well less than a year if the personal representative and the beneficiaries get along, if the assets aren't complicated, and if the estate isn't taxable. Otherwise, it can drag on for a year or more.