

**ALLEN SUPERIOR COURT
OFFICE OF MAGISTRATE PHILLIP E. HOUK**

**GENERAL INFORMATION REGARDING WILLS AND THE
ADMINISTRATION OF ESTATES**

If, after reviewing this information, further information is needed to answer questions about estate administration, two other sources are suggested.

The Indiana statutes, which deal with probate matters, are in Volume 29 of the Indiana Code. This book is available online and at the public library.

The best source of information is from an attorney. If you do not have an attorney, the Allen County Bar Association sponsors a lawyer referral service. The Bar Association's phone number is (260) 423-2358.

Please do not seek the advice of Court and Clerk's Office employees. This includes Judges, Magistrates, Court Reporters and Law Clerks. All of these individuals are ethically and statutorily prohibited from giving out legal advice.

Anyone who administers an estate without the benefit of legal counsel by law is held to the same standards of ethics and competence as a lawyer. In fact, the vast majority of probate matters are handled with the assistance of an attorney.

IN GENERAL

The purpose of "probate" is to accomplish an orderly and proper transfer of a deceased person's property. Not all property is "probate" property. Examples of property, which pass without the Court's intervention include: life insurance proceeds (usually), joint bank accounts and real estate held as tenants of the entireties. The key question to ask is: Can the property in question be transferred without the Court's involvement? For example, when a person dies owning shares of stock held in their name only, the shares cannot be sold or dividends collected by anyone until ownership is transferred to the rightful heirs. The probate process provides the mechanism to transfer such property.

Another function of probate is to provide a decedent's creditors with a mechanism to collect debts. For example, when someone dies owing money on a car loan, it is the role of the Court to determine if the debt is valid and how it is to be paid.

PROBATING A WILL

“Probating a Will”, is the procedure which makes a decedent's wishes and directives a matter of public record. By admitting the Will to probate, the document is officially recognized as the Last Will and Testament of the deceased. Usually, this procedure is just a formality, but sometimes there is a dispute over the authenticity of a Will and sometimes a person dies with more than one Will. **“Probating a Will” does not by itself grant any authority or powers to transfer or administer assets.**

If you are in possession of a decedent's Will, you may obtain the necessary forms to probate it on the website of the Allen County Clerk's Office (www.allencountyclerk.us). You will need to fill out a Petition To Probate Will and have the original Will. After completely filling out the forms, take them to room 201, where they will be scanned and transmitted to the Court. If everything is in order, the paperwork will be approved and the Will admitted to probate. This process usually must take place within three years of the date of death.

OPENING AN ESTATE

Opening an estate is the procedure through which someone is actually granted powers which allow them to transfer ownership of a decedent's assets. In special situations, the law makes it possible to transfer small amounts of “probate” property without opening an estate. Generally, if the value of the estate does not exceed \$100,000.00, a summary process is provided for under the law, which allows for transfers without Court involvement. A form for this purpose, entitled “Affidavit for Transfer of Assets without Administration” is available on the Clerk's website.

If you have determined that an estate needs to be opened, there are several forms and documents which must be completed and filed with the Court. Some of these forms are available on the Clerk's website.

After preparing all necessary pleadings, you may take them to Room 201 of the Courthouse, where your documents will be scanned and transmitted to the Court for review by a Judge. In addition, at this time, you must pay the Clerk for court costs. You are also required to arrange for publication of notice.

If it is appropriate, a Court order will be signed appointing you as Personal Representative (PR). At this point, the Clerk's Office will issue to you "Personal Representative's Letters". These "letters" serve as evidence of authority to act on behalf of the estate.

If you choose not to hire an attorney to assist you, the Court will order you to obtain a surety bond.

ADMINISTERING THE ESTATE

Once appointed, the task of administering begins. If you have chosen to pursue this process without the assistance of an attorney, keep in mind that you will be held to the same standards as an attorney when performing these tasks. You must meet deadlines, secure Court approval for various transactions, resolve tax issues and keep detailed records.

If the estate is a supervised administration, it is required that an Inventory of assets be filed within sixty days of the appointment. All Personal Representatives must file either a Final Report and Accounting (supervised estate) or a Closing Statement (unsupervised estate). The formats of these reports will differ from case to case; therefore, no forms are available.

Completing these filings with the Court is only a portion of the work you will face as a Personal Representative. You are required to resolve claims, deal with transfer agents, file fiduciary tax returns and possibly resolve complex legal issues. At every step along the way, there is what is called a "fiduciary duty" to fully, and in a timely fashion, properly perform required statutory tasks and to meet high standards of due diligence. Failure to do so could result in personal liability.

The probate process may appear to be complex and lengthy. In fact, due to notice requirements, an estate administration will take a minimum of three months and usually 9-12 months. It is true that some estates are easier to administer than others. It is not necessarily true that smaller estates are less complicated than estates with high values.

If you decide to proceed without being represented by an attorney, remember that you cannot rely upon the Court and Court employees, including the Clerk's Office for any substantive advice. This is because the Court cannot retain its function of impartiality towards interested parties if it offers advice to any of those same persons. For this and other reasons already mentioned, it is a good idea to get at least some expert guidance before beginning this process.

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