

News & Events

What is probate?

An Overview of the Probate Process for Owners of Rural, Texas Land

When someone dies owning Texas land, including oil, gas and mineral interests, these assets and everything else they own – cash, stocks, bonds, life insurance, retirement accounts, cars, household goods — comprises their estate. That person’s estate must be distributed to the heirs after a process of administration known as probate. The purpose of probate administration is to protect the rights of the family, including heirs who are entitled to receive the estate, and to pay the creditors of the one who passed (otherwise known as, the “decedent”).

Probate is the process by which a Court formally recognizes the decedent’s death and authorizes a qualified person, known as an executor or an administrator, to administer the decedent’s estate.

Some people believe that if they signed a last will and testament then their estate won’t pass through probate. However, having a will guarantees probate. The probate process also applies when someone dies without a will.

Whenever land is part of the estate, completing the probate process:

- helps ensure that the heirs will take title to the land correctly,
- establishes a clear chain of title in the deed records of the county where the land is located,
- avoids future problems conveying the property,
- and prohibits creditors from later attempting to put liens on the land to satisfy the decedent’s debts.

Starting the Probate Process.

Initiating the probate process is easy. Whether or not the person died with a Will, an Application for probate will need to be filed in a Texas Probate Court, usually within four years from the date of death. The person named in the will as executor usually files this Application. If there is no will then any interested party, including a creditor or a

surviving spouse, can file the Application.

After the Application has been filed there is a two week waiting period during which the county clerk posts notice at the courthouse that an Application for probate is pending. This posting provides notice to anyone who might want to contest the will or administration. After the waiting period, Texas probate law requires a court hearing.

If the person died with a will, the court must determine that the will is the decedent's true last and valid will, and formally appoint the named executor to administer the probate estate.

If the person died without a will, the court must determine who are the heirs entitled to receive the property, and formally appoint an estate administrator. Dying without a will risks that the land may pass to undesired heirs instead of those the decedent intended because the land will pass under the strict scheme contained in the Texas intestacy laws. Dying without a will is the most expensive, time-consuming and difficult process for heirs attempting to secure their title to land.

Steps in the Texas Probate Process

The Texas Probate Code requires that executors and administrators in any probate proceeding complete two requirements:

1. Publish a Notice to the Creditors that they must file any claims against the estate if they desire to be repaid for their outstanding debt, and
2. file an Inventory of the Estate Assets.

If the decedent died without a will, the Court will make a formal determination as to the identity of the decedent's heirs.

The executor or administrator must work through any claims presented to the probate estate for payment, and determine which claims are valid and necessary to pay, and which claims can be denied. The assets remaining in the estate after payment of claims, debts and expenses are distributed to either a) the beneficiaries listed in the will or b) the heirs determined by the court, if there was no will. If the family members of the decedent engage in a fight over the assets of the estate, the court will hear that dispute and resolve whatever issues may exist.

Conclusion

Probate can sometimes be avoided or simplified by having a [professional estate plan](#) (which I will discuss in my next blog), but the process itself is often not difficult or expensive, and usually offers the best solution to protecting the rights of the family to lands they are entitled to receive.