

# THE PROBATE PROCESS IN IDAHO



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## INTRODUCTION

### WHAT IS PROBATE?

Probate is the court process to transfer titles of the decedent's (the person who has died) property to his or her beneficiaries and to pay any outstanding debts to creditors.

### IS PROBATE ALWAYS NECESSARY?

Probate is not always required. For example, a small estate with no real property (your land and home) may not need to go through formal probate if the beneficiary uses the affidavit method, which is described below.

### WHAT IF THE DECEDENT HAD A WILL?

Probate will be necessary to declare the will valid and to appoint the personal representative named in the will. The personal representative can then carry out the wishes expressed in the will.

### WHAT IF THE DECEDENT DID NOT HAVE A WILL?

If the decedent had no will, then probate may be required to determine the proper beneficiaries and to appoint a personal representative to handle the estate. This

process would determine the appropriate beneficiaries according to the laws of intestacy in the State of Idaho.

## FOUR PROBATE METHODS

### WHAT ARE THE FOUR WAYS TO HANDLE AN ESTATE IN IDAHO?

1. **The first method** is by an *Affidavit* and does not involve a court process. This method may be used if the decedent did not own real estate and had personal property with a net value of less than \$100,000. To start this process, the beneficiary must submit a completed notarized affidavit.

2. **The second method** is called *Informal Probate*. This is a court process that transfers property after payment to any creditors. If the decedent (1) had no will; (2) had a will; (3) owned property with a net value of more than \$100,000; or (4) owned real property, then Informal Probate may be the appropriate method to handle the estate.

To start this process, an "Application for Informal Probate and Appointment of a Personal Representative" must be filed along with a copy of the will (if there is a will) and either an "Acceptance of Appointment" or "Renunciation of Appointment" by the proposed personal representative. If everything is proper, the court may sign a "Statement of

Informal Probate and Appointment of Personal Representative” and “Letters Testamentary,” which allows the personal representative to handle the estate. If there was no will, the paperwork is slightly different, but the process is usually similar. In some cases, an accounting of the estate and a hearing may be required to close the estate and discharge the personal representative. It is recommended that you seek the advice of an attorney before beginning this method of probate.

**3. The third method** is called *Formal Probate*. This method is required when there is (1) any question as to the validity of a will; (2) any objection to the appointment of a personal representative; or (3) any disputes over beneficiaries or other matters. Formal probate requires a hearing before the court to resolve any of the issues listed above. Formal probate has the potential to become lengthy and expensive. It is recommended that you seek the advice of an attorney before beginning this method of probate.

**4. The fourth method** is called *Summary Administration* and may be used when the decedent leaves a spouse as the only surviving beneficiary. This method does require proper notice and a hearing; however, it is a fairly quick process.

The beneficiary must file a “Petition for Summary Administration Estate Where Spouse is Sole Surviving Beneficiary” to start the process. At the hearing, if everything is proper, the court may sign a “Decree Vesting Estate in Surviving Spouse” to legally transfer the estate, property, and debts to the surviving spouse.

You can find more information regarding probate requirements in Idaho Code §§ 15-1-101 through 15-3-1205.

**\*This handout is general in nature. It is not a substitute for legal advice from an attorney regarding individual situations. (August 2021)**

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