



5 Most Frequently Asked Questions

During Estate Administration



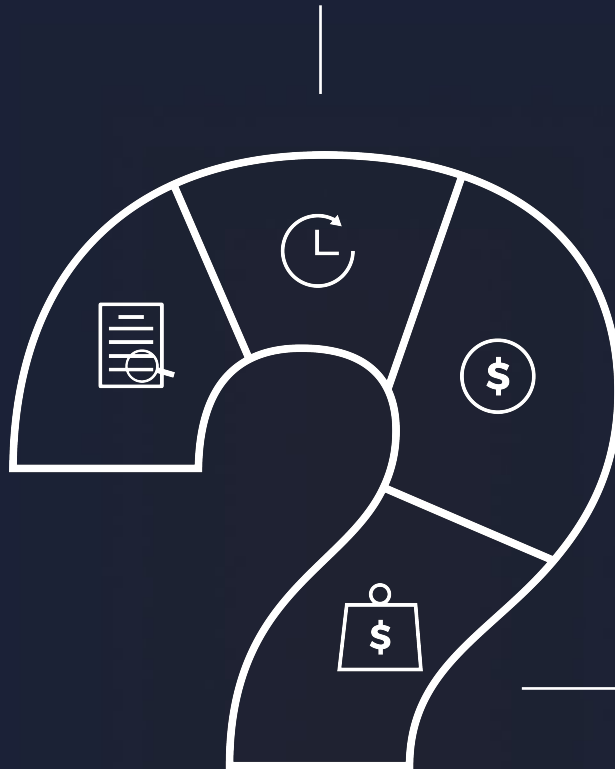
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QUESTION 2

How long does Probate take?

QUESTION 1

Who gets the decedent's assets if there is no valid Will?



QUESTION 3

How much does Probate cost?

QUESTION 4

Who is responsible for decedent's debts?



QUESTION 5

Who gets the decedent's assets if there is no valid Will?

QUESTION 1



WHAT IS PROBATE?

It is a process of finalizing and administering decedent's estate after death, whether or not decedent had a Will. The minimum required steps are:

STEP 1

The court determines the validity of the Will (if any).

STEP 2

The court determines the closest family members entitled to notice and potentially distribution.

STEP 3

The court appoints the Executor to manage the probate process.

STEP 4

The Executor identifies, collects and appraises all of decedent's assets.

STEP 5

The Executor identifies and pays decedent's debts from the decedent's assets.

STEP 6

The Executor distributes any remaining property to the proper beneficiaries.

QUESTION 2



HOW LONG DOES PROBATE TAKE?

The length of probate depends on many factors, including the complexity of the estate, the disputes amongst the beneficiaries, the location of assets, whether any of the beneficiaries are minor / disabled / cannot be found, and the county where the decedent lived (some courts are more busy than others). In New York State, the process can take anywhere between a few weeks to a few years.

QUESTION 3



HOW MUCH DOES PROBATE COST?

The cost varies depending on the size and the complexity of the estate. Common expenses include executor's fees, attorney's fees, accounting fees, court fees, appraisal costs, and surety bonds. These expenses typically account for 5-10% of the total estate value.

QUESTION 4



WHO IS RESPONSIBLE FOR DECEDENT'S DEBTS?

Usually, only the assets of the estate should be used to pay the decedent's debts. Neither the Executor personally, nor the decedent's spouse, nor the decedent's children are responsible to pay the debts.

- ◆ However, if the Executor or someone else is listed with the decedent as a guarantor or a co-borrower, then this person is personally responsible for the debts.

HOW DOES EXECUTOR LEARN ABOUT THE DEBT:

The creditors have 7 months from the time of Executor's filing of the Probate Petition to file their claim with the Court. Therefore, no distributions from the estate should be made before this time has passed. To be clear – no beneficiaries or any creditors should get any money from the estate for the first 7 months after the Letters of Administration are issued, because more creditors with higher priority may come forward.

- ◆ However, even if no claim has been filed but the Executor is aware about a creditor's claim, (i.e. lien from Medicaid, bank mortgage, etc.) the Executor should pay it. Otherwise, the creditors will later argue that the Executor had constructive notice of the debt and sue him personally for breach of fiduciary duty.

WHICH CREDITOR GETS PAID FIRST

It's important to figure out whom to pay first when there are not enough asset to pay everyone. If there is any doubt about the priorities, Executor should get an explicit approval from the court. The Executor is ultimately responsible to ensure that the law of the claim priority is followed. Usually, the expenses of the estate administration get paid first (court fees, professionals, etc.). The IRS gets paid next. There are many additional rules, such as bank mortgage, etc.

- ◆ If the Executor makes a mistake and distributes the estate assets to the wrong people or pays the wrong claims, the creditors of the estate may sue the Executor personally for breach of fiduciary duty.



QUESTION 5

WHO GETS THE DECEDENT'S ASSETS IF THERE IS NO VALID WILL?

Every State has its own rules regarding intestate estate distribution. In New York State, the rules are straightforward.

RULE 1

If decedent was married and had no children: **100% to the spouse**

- ◆ Length of the marriage does not matter. A spouse is entitled to the entire estate even after 1 day of marriage.

RULE 2

If decedent was married and had children: **first \$50K to spouse, then 50% of remaining to spouse and 50% to children.**

- ◆ Children receive the same inheritance regardless of whether they come from the marriage, but non-marital children have to show proof of paternity.
- ◆ If the children are minor, a guardian of the property must be appointed. If decedent was married and had no children: 100% to the spouse before any estate distributions can be made.

RULE 3

If decedent was NOT married but had children: **100% to children.**

- ◆ If any children predeceased the decedent, the predeceased child's share goes to her surviving children (decedent's grandchildren).
- ◆ Again, children receive the same share of the inheritance regardless of whether they come from a marriage or not.

RULE 4

If decedent was not married and had no children, **100% of remaining assets will be distributed to decedent's surviving parents.**

RULE 5

If decedent was not survived by parents, then **100% will be distributed to decedent's siblings.**

- ◆ If any siblings predeceased the decedent, the predeceased siblings' children receive their share.
- ◆ Half siblings have the same inheritance rights as full siblings.

RULE 6

If decedent had no surviving spouse, children, grandchildren, parents, siblings, nieces or nephews, then **100% to decedent's parents' survivors** (aunts / uncles / first cousins).

RULE 7

If none of the above exist or cannot be found after a diligent search, **the New York State receives 100% of the money.**



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**If you would like to discuss the next steps of the
probate process, please call us at**

212-709-8112

or

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