

PROBATE terms & definitions



This list of terms and definitions can help ease the stress around probate and assist anyone wanting to learn more about it. As the Personal Representative becomes familiar with probate language, they'll develop a working knowledge and feel more confident in their role. This resource can also help someone make their own estate plan.

Important note: Please be aware that Willow Wood Solutions provides these probate terms and definitions for educational purposes only. This isn't a complete list, and there is no guarantee of accuracy. We are not attorneys and do not offer legal advice. We present this list to inform the public about probate terms in layman's language.

terms & definitions for probate

ASSET

A property owned by a person or company that has economic value. An asset could be used to generate cash flow, pay off debts, and satisfy financial commitments. Asset examples include bank accounts, stocks, property, insurance premiums, etc.

ADMINISTRATOR

This person (sometimes a family member but not always) is appointed by the probate judge when someone died without a will. The Administrator (also called a Personal Representative) will go before the court, notify creditors, make decisions for the estate, and more.

ATTORNEY

A person qualified by the court to represent you in court.

BENEFICIARY

A person who receives a benefit from a trust, will, or life insurance policy. When probate is involved, beneficiaries can only receive benefits after the probate court approves it. There is an exception when a Trust is in place. Beneficiaries of trusts receive their benefits according to the trust documents.

COMMUNITY PROPERTY

Most property acquired by a couple during their marriage is owned equally by both people.

CONTESTED WILL

A probate situation when someone objects to the will or produces another one. Contested wills can be costly and create unexpected delays in the probate process.

CREDITOR

A person or institution that extended credit to the decedent, enabling them to borrow money or use goods now while expecting them to repay in the future.

COMMUNITY PROPERTY

Most property acquired by a couple during their marriage is owned equally by both people.

DEBT

About a week or so before each trip, I make a mental list of items I don't want to forget – which I WILL forget if I don't write them down. I've learned that when I think of something, I need to write it down.

DECEDENT

A person who recently passed away.

DESCENDANT

A person who is a family relation and lives after their ancestors. For example, children and grandchildren are descendants of their parents and grandparents.

DISBURSEMENT

Describes the probate process when the Personal Representative makes payments from the estate to pay the decedent's debts and ongoing costs of managing the estate. (Ongoing costs might include mortgage payments, home insurance, lawn care, attorney fees, taxes, etc.).

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DISTRIBUTION

Any money paid to beneficiaries after disbursements are made.

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ESTATE

Everything that contributes to the net worth of an individual, including all real estate, personal property, cash accounts, investments, collections, etc.

EXECUTOR/EXECUTRIX

A person named by the decedent in a will to carry out their instructions regarding their estate. An Executor refers to a man in this position; an Executrix is a female. Most people use Executor as a gender-neutral term. The term, Personal Representative, can also refer to the Executor/Executrix.

FIDUCIARY

A person or an organization that acts on behalf of another person. In the case of probate, if there is a will, the fiduciary puts the wishes of the deceased ahead of their own. Without a will, it is the estate. Being a fiduciary requires one to act with integrity.

FIDUCIARY DUTY

A commitment made by a fiduciary to act in the best interest of another person. A fiduciary demonstrates commitment so that others trust them. For example, a Personal Representative has a fiduciary duty to the probate estate and the beneficiaries of that estate.

GUARDIAN

A person appointed by the court to protect and manage the personal care and/or financial affairs of another. This person might give care and oversight to a minor child, an elderly person, or someone unable to care for themselves.

HEIR

A person who would naturally inherit some of an estate when a person dies without a will, according to the state's laws.

INTESTATE

When a person passes away without preparing a valid will. This is the opposite of Testate. Dying intestate means the State of Texas will determine who will preside over your probate case as well how your assets are distributed.

INVENTORY

In a probate case, the Personal Representative identifies estate assets and determines their value.

JOINT TENANCY WITH RIGHTS OF SURVIVORSHIP

A term that describes a property that is equally owned by two or more people. When one co-owner dies, the other becomes the sole owner of the property, regardless of what the will conveys.

LAWYER

The same as an Attorney.

LETTERS TESTAMENTARY (LETTERS OF ADMINISTRATION)

A court document that says the Personal Representative (an Administrator, Executor, or Guardian) has the authority to take action to close the probate case. When there is a will, the court grants "letters testamentary to the Executor." Without a will, the Administrator's letters are called "letters of administration."

LIQUID ASSET

Estate assets that a Personal Representative can quickly turn into cash. Cash is a liquid asset.

PERSONAL REPRESENTATIVE

"Personal Representative" is a term that refers to the individual that oversees someone's estate after they die. It's a general term that could refer to an Executor (when there is a will) or a court-appointed Administrator (when there isn't a will). Personal Representatives are given authority to act in the interest of the estate. They are responsible for carrying out the decedent's wishes.

PETITION

A formal, written request that is properly filed with the court for a specific action. In probate, for example, a petition is filed to start the probate process.

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PETITIONER

A person steps forward to submit a petition to a court. Sometimes a Personal Representative is called a "Petitioner."

PROBATE

In a nutshell, probate is a term that describes the legal process of distributing someone's property after they pass away. This legal process can mean two different things. First, probate proves if a will is authentic or not. When a will isn't present or if it's invalid, probate also refers to the legal process of settling a decedent's estate. A judge presides over the probate court and supervises the probate process.

PROBATE COURT

A probate court is a specialized court and legal process that deals with matters about probate and administering the estate of deceased persons.

PERSONAL PROPERTY

Essentially, everything that someone owns except real property. Personal property can be moved, not stationary. Examples include cars, RVs, boats, mobile homes (unless attached to the property), jewelry, equipment, furniture, guns, and more.

REAL PROPERTY

Land and all the things attached to it. Real estate is real property and includes natural and man-made items such as buildings, landscaping, fences, minerals, etc. Real property is different from personal property.

STIRPES (*pronounced, STIR'-peas*)

A family or branch of a family line. The State of Texas uses specific procedures per stirpes to locate heirs in a probate case.

TESTATE

When the deceased left a valid will; opposite of Intestate. In this case, the will provides guidelines for the Personal Representative. The will is the final expressed wishes of the decedent on his or her estate and identifies the beneficiaries, how they want things distributed, and more.

TRUSTEE

Named in a Trust document to manage the property owned by the Trust. The Trustee distributes any income according to the Trust document.

WILL

A legal document, also known as a Last Will and Testament, in which a person specifies how they want to distribute their estate after they die. When there's a will, specific instructions can guide the Personal Representative on what actions to take. For example, a guardian is identified, and pets are provided for. Specific assets can be awarded to designated charities and beneficiaries.