

The probate process is a mystery to many people in Texas, including a fair number of attorneys. It's based on practices courts devised hundreds of years ago to ensure that when someone died, the debts were paid and their property passed to those entitled to have it by law.

The procedures put in place to pursue these objectives often seem unnecessarily burdensome and time-consuming—and expensive. That's why many people have their estate planning attorneys develop strategies to avoid probate using revocable trusts and other measures.

When probate cannot be avoided, however, it is helpful to understand the different types.

Contested vs. Uncontested

One of the most important factors to consider from the start of the process is whether anyone is likely to contest the proceedings. If family members disagree over the choice of a personal representative or the version of a will or provisions in that will or the handling of a trust or other issues, then proceedings will be more complicated.

It is best to begin working with a probate attorney who handles litigation or who works closely with litigation attorneys because disputed issues will usually need to be heard before a judge. It is possible, however, that your attorney can negotiate resolutions out of court which will save considerable time and expense.

Court-Supervised Dependent Administration

The most formal type of probate process is dependent administration. The court will supervise each step in the process, and the personal representative will generally have to request permission from the court before taking measures such as selling property, paying debts, and paying professionals. The need to report to the court and seek permission before carrying out duties makes this type of probate lengthy and expensive.

Independent Administration

When probate proceeds through independent administration, the court is not involved in the routine execution of the personal representative's duties. The personal representative, once approved, can begin managing assets, notifying potential creditors, and satisfying debts.

It is important to realize that the personal representative still has a duty to follow the rules and complete tasks in the proper order following approved procedures. Because this can be complicated, most people choose to work with an attorney who can either handle certain steps on their behalf or explain the appropriate way to complete each task. Mistakes can cause the personal representative to be personally liable to the estate or beneficiaries.

An estate can generally be probated through independent administration if the will specifies that the estate should be administered independently or if all heirs or beneficiaries agree to independent probate.

Other Probate Options

For estates with limited assets, other types of probate procedures may be available. These include:

Muniment of title - when the only asset in an estate is real property, muniment of title can be used to transfer ownership to the beneficiaries

Small estate affidavit - in specific circumstances, a simple affidavit can be used to transfer assets to beneficiaries

Simplified probate for small estates - estates with limited assets that cannot be settled with an affidavit may still qualify for simplified probate procedures

Get Help with the Probate Process

Texas laws are designed to ensure that property is handled correctly when someone passes away. While this is designed to protect legal heirs, it also puts a burden on them because failure to follow the rules can subject them to liability.

The experienced team at The Nordhaus Firm can guide you through the probate process efficiently to avoid mistakes that can lead to delays and added costs. Contact us today to learn more about how we can help.