

# Probate and Administration of Estates

## What is probate?

“Probate” is a court-monitored process of proving the validity of a will, inventorying estate assets and debts, transferring property and settling the affairs of the deceased’s estate. If there is no will, a similar process known as “administration” is used to settle the deceased’s affairs.

## When should a probate be opened?

As soon as practical following the person’s death. In Nevada, if the total amount of the deceased person’s assets exceeds \$25,000, or if real estate is involved, probate (or administration) will be required, and there is normally no reason to delay starting the process. Nevada law requires that a person in possession of the deceased person’s will must “deliver it to the clerk of the district court” within 30 days of the death or when the person discovers the will.

## How do I inherit a deceased person’s assets valued at less than \$25,000?

If there are no real estate holdings and the value of the estate does not exceed \$25,000, certain surviving family member(s) or a person entitled to inherit the property from the estate may initiate proceedings 40 days after the death. Without any court proceeding, these parties may use a form called Affidavit of Entitlement permitting the release of the assets from any person or business holding those assets (such as a bank, stock brokerage company or pension plan administrator). For the spouse of a deceased person, the limit is raised to \$100,000 without real estate.

## What if the estate is worth more than \$25,000?

If the deceased person’s assets exceed \$25,000 or if real estate is part of the estate, probate or administration must be used. However, if the net value of the deceased person’s assets subject to probate does not exceed \$100,000, a special petition to the court by the beneficiary or heirs may allow the estate to be “set aside” without administration. A resulting court order will allow distribution of the estate property.

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### What if the estate's net value exceeds \$100,000?

If the deceased person's estate has a net value exceeding \$100,000, but does not exceed \$300,000, the estate must proceed through probate by "Summary Administration," which provides for a somewhat simplified procedure. If the deceased person's estate has a net value exceeding \$300,000, the estate must proceed through probate by "General Administration," where the procedure is somewhat more extensive.

### Can I become the executor or administrator of an estate if I do not live in Nevada?

Nevada does not impose restrictions on residency of an executor named in a will, but does require a non-resident administrator of an estate where there is no will to associate with a Nevada resident as co-administrator.

### How long does probate or administration normally take?

In a routine Summary or General Administration case without disputes, you can expect a minimum probate period of from 10 to 12 months. This allows for publication of creditor notices and gives creditors time to file claims. However, probate and estate administration often take much longer if complications arise. Estates without complications and a net value less than \$100,000 usually take less time.

### Who can withdraw funds from a deceased person's bank account?

Normally, if the account is held jointly, the surviving owner is entitled to withdraw the money. If the deceased designated a "Payable on Death" (POD) beneficiary, that designated beneficiary is entitled to withdraw money from the deceased's account. The financial institution will probably require a certified copy of the death certificate and valid identification for the person claiming to be the surviving owner or beneficiary of the POD designation. If the bank account was owned individually by the deceased person, and there is no POD designation, normally only the person appointed as executor or administrator of the estate may withdraw funds.

### Will the executor or administrator need to obtain a separate tax identification number for the estate?

Yes. A tax identification number for an estate normally is required. You should not use the deceased person's social security number in most cases. A tax identification number for the estate can be obtained from the Internal Revenue Service. Consult a tax advisor.

### Is the executor or administrator of an estate liable for the deceased person's debts?

Not normally. However, the executor or administrator is obligated to act in the best interests of the estate and its beneficiaries. It is advisable to consult with an attorney regarding the duties and obligations of an executor or administrator prior to accepting the responsibility.

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### How do I start probate or administration proceedings?

Usually a relative of the deceased submits to the Probate Division of the District Court a "Petition for Issuance of Letters Testamentary" or a "Petition for Issuance of Letters of Administration."

### Do I need an attorney to open a probate or administration?

Although you can open a probate or administration yourself, it is strongly recommended that you seek the assistance of an attorney who has experience with probate matters. An experienced attorney can guide you through the probate or administration process (including sending out proper notifications) and can be helpful if a dispute arises with creditors or other potential heirs. Probate and administration of estates have detailed procedures that must be followed to ensure the property of the deceased's estate is properly distributed.

### How much will it cost to hire an attorney to process probate or administration?

The cost of probate or administration will vary depending upon the complexity of the estate. An attorney may charge a flat rate or by the hour or a percentage based on the net value of the estate. State law governs the percentage that an attorney can charge the estate for the attorney's fees. You will need to compare rates and the experience of attorneys.

### How do I find an attorney with experience in estate matters?

You can contact the State Bar of Nevada's Lawyer Referral Service at (702) 382-0504 (toll-free in Nevada at 1(800) 789-5747) or look in the yellow pages of your telephone directory. You can also ask friends and/or relatives if they can recommend a good lawyer. The state bar's main office (see numbers listed on first page) can tell you whether or not an attorney is licensed in Nevada and in good standing.