

## The Makofsky Minute | June 29, 2021

### What is Probate?



Dealing with the loss of a loved one is difficult, but often family or close friends are faced with the challenge of figuring out how to gain access to the deceased's assets, paying his or her bills and "wrapping up" the estate. But how does one go about obtaining legal authority to handle these matters?

The term "probate" refers to the legal process in which the original Last Will and Testament of a decedent is submitted to a Court, often the local Surrogate's Court, and the Executor named in the Will seeks the Court to declare the Will a valid Will and to provide the Executor with the authority to collect the estate assets and carry out the wishes of the decedent. Once the probate process is complete, the Court issues a legal document called "Letters Testamentary," which evidences the Executor's authority to collect the decedent's assets, pay bills and distribute the remaining estate assets according to the terms of the Will.

It is important to note that the Executor has authority to collect only "probate assets" which are assets that the decedent died owning in his or her name alone with no named beneficiary or joint owner. Assets that have a joint owner with rights of survivorship or a named beneficiary are referred to as "non-probate assets" and pass by "operation of law" directly to the surviving joint owner or beneficiary, even if the Will provides a different direction. Common examples of assets that pass by operation of law include:

- Real property owned by husband and wife
- A life insurance policy with a named beneficiary
- Retirement accounts (i.e. IRA, 401K) with a named beneficiary

There are potential downsides to the probate process which can include:

- No one having immediate authority to handle estate matters such as protecting and preserving the decedent's real property
- Delay in gaining access to estate monies to pay bills such as mortgage payments, etc.
  - Waiting for the Court to issue Letters Testamentary can take several weeks or even months, depending on the circumstances
- Opportunity for heirs at law to contest the Will
  - The decedent's heirs at law, whether named as a beneficiary or not in the Will, have the right to contest the decedent's Will, potentially leading to additional costs and delays

Although the probate process is intended to ensure that a decedent's estate is handled in an equitable manner and according to the wishes of the decedent, it can lead to unexpected and extensive delays and costs. If you are concerned about how probate could affect your estate plan or family, it is a good idea to speak with a knowledgeable estate planning attorney. As always, we are available to answer any questions you may have!

[Visit Our Website](#)



Don't forget to visit the Makofsky Law Group, P.C. Facebook page and like us!

For more helpful information and to keep up to date on all Elder Law and Trust and Estate matters, visit our website at [www.makofskylaw.com](http://www.makofskylaw.com).

Don't forget to share any information you found helpful and informative with your friends and family!



Our mailing address is:  
600 Old Country Road  
Suite 444  
Garden City, NY 11530  
516-228-6522

Want to change how you receive these emails?  
You can [update your preferences](#) or [unsubscribe from this list](#).