



GUIDE TO NEW YORK'S PROBATE AND ADMINISTRATION PROCESS



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What is probate?

Probate is the legal process that gives recognition to a will and appoints an executor who will administer the estate and distribute assets to the intended beneficiaries.

In New York, if someone passes away without a will, a similar proceeding may be initiated with the court to appoint an administrator of the estate. The estate assets are distributed based on state intestate succession laws ([EPTL 4-1.1](#)).



What is are the steps in New York's Estate Administration Process?

1. Obtain the Death Certificate:

- Start by obtaining the death certificate. This document plays a pivotal role in commencing the estate administration process.

2. Locate the Will:

- Search for the decedent's will. It could be at their residence, with their attorney, or in a safe deposit box. Once located, confirm that it's the latest version.

3. File the Will with the Surrogate's Court:

- Present the will to the Surrogate's Court in the county where the deceased lived. This step is essential for the court to recognize the will's validity.

4. Petition for Probate:

- File a petition for probate along with the will. This legal process confirms the will's authenticity and appoints an executor if named.

What is are the steps in New York's Estate Administration Process? (ctd.)

5. Notify Heirs and Beneficiaries:

- Notify heirs and beneficiaries about the probate proceedings, including issuing formal notices as mandated by legal requirements.

6. Collection of Assets:

- Once the executor has been formally appointed by the court, they can collect, sell and/or transfer the assets of the estate..

7. Inventory Assets:

- Create an inventory of the deceased assets. Identify and value properties, bank accounts, investments, and personal belongings

8. Pay Debts and Taxes:

- Settle outstanding debts and taxes using estate funds. This might involve selling assets or using funds from the deceased person's accounts.

What is are the steps in New York's Estate Administration Process? (ctd.)

9. Distribute Assets:

- Once debts and taxes are settled, distribute remaining assets as per the will's instructions. This is usually overseen by the appointed executor.

10. File Final Tax Returns:

- Prepare and file the deceased's last income tax return, as well as any needed estate tax returns.

11. Obtain Release from Beneficiaries:

- Secure a release from beneficiaries, confirming the receipt of their respective share. This can help prevent future disputes.

12. File a Closing Statement:

- Submit a closing statement to the Surrogate's Court, detailing the estate administration process.

13. Close the Estate:

- After court approval of the closing statement, the estate is officially closed, concluding the executor's duties.

How Long Does the Estate Administration Process in New York Typically Take?

The estate administration process varies based on complexity and individual circumstances, ranging from a few months to several years.

Who Can Initiate a Probate Proceeding?

When a Will exists, the named executor is responsible for administering the estate and carrying out the decedent's final wishes, as outlined in the Will. The executor must file for probate in the Surrogate's Court of the county where the deceased was domiciled. In cases where there is no Will, the deceased dies intestate, the Will doesn't name an executor, or the appointed executor declines the role, the Court selects an estate administrator. The administrator must settle the estate by New York intestacy laws.

What Are Letters Testamentary?

Before the executor can perform their duties, they must receive Letters Testamentary from the probate court. These letters grant the executor the legal authority to act fiducially on behalf of the estate. To conduct real estate transactions, banking, and asset distribution on behalf of the estate, the executor must submit the Letters Testamentary and a death certificate.

How Does One Determine the Primary Residence of The Deceased?

Probate proceedings must be filed in the Surrogate's Court of the county where the deceased resided and considered their primary home address before they died. If the deceased had multiple residences, the one they intended to return to is considered the primary residence.

What Is the Process for Obtaining Letters Testamentary?

To obtain Letters Testamentary, individuals should follow these steps:

1. **File the Original Will and Death Certificate:** Begin by submitting the original Will and a certified copy of the deceased person's death certificate in person to the Surrogate's Court in the county of residence.
2. **Petition for Probate:** Accompany the original will and death certificate with a petition for probate. The petition is required to initiate the process.
3. **Obtain Waivers (if necessary):** Dependent upon the circumstances, the decedent's heirs will need to waive the requirement to be served with a citation. Also a notice of probate may need to be served upon other beneficiaries of the will.

What Is the Process for Obtaining Letters Testamentary? (ctd.)

4. Pay the Court Filing Fee: Fulfill the Court's requirement by paying the probate petition filing fee, which varies based on the estate size. The executor is initially responsible for payment but will be reimbursed by the estate.

5. Issuance of Letters: If the probate petition is approved, the Court will issue Letters Testamentary. The executor can then proceed with the estate administration process.

What Happens If There Is a Will?

A Last Will and Testament is a legal document outlining an individual's wishes for property allocation and disposition of their estate.

After an individual passes away, it is crucial to locate their Last Will. This document may be among personal papers, secured in a safe deposit box or kept with the attorney who drafted the will. If needed, the Court can issue an Order to search the decedent's residence or open the safe deposit box to locate the Will.

For the instructions outlined in the deceased's Will to be executed, the Will must be filed in Surrogate's Court for probate. This legal step is necessary to properly implement the deceased person's wishes as detailed in their Will.

Does the Condition of the Will Matter?

In many states, a will can be challenged if there appear to be additional staple holes in the document or no staples at all. This is because it begs whether the Will has had pages removed, added, or altered since its execution. At best, the Court will often allow those who had possession or knowledge of the document to give the Court an affidavit on why the staples were removed or missing. The same may hold true if the Will is unstapled- an affidavit would need to be provided to the Court that no pages were inserted and why the Will remains "unstapled."

New York Code Section 1406 addresses the use of a self-proving Will, stating that attesting witnesses can, upon request, make an affidavit establishing the genuineness of the Will, its valid execution, and the testator's competence and lack of restraint at the time of execution.

Does the Condition of the Will Matter? (ctd.)

The Court accepts this sworn statement unless there are objections or other reasons prompting the Court to require the witness or witnesses to be produced and examined.

In other words, if witnesses sign an affidavit at the time of witnessing the signing of the Will, the affidavit serves as sufficient proof for admitting the Will to probate.

In New York, What Happens When There Is No Will?

When an individual passes away without a will, it is termed dying intestate. In such cases, New York law (EPTL 4-1.1) governs the distribution of the deceased person's property. The distribution depends on the relationship of each living relative to the deceased.

In the absence of a will, family members entitled to a share of the estate are referred to as "distributees." According to New York law:

The property of a decedent not disposed of by will shall be distributed as provided in this section. In computing said distribution, debts, administration expenses, and reasonable funeral expenses shall be deducted but all estate taxes shall be disregarded, except that nothing contained herein relieves a distributee from contributing to all such taxes the amounts apportioned against him or her under 2-1.

In New York, What Happens When There Is No Will? (ctd.)

If there is no Will, generally, the “closest distributee” can file for administration or small estate. If the closest distributee does not want to administer the estate, they can sign a renunciation and waiver.

What Are Letters of Administration?

In New York, when an individual passes away without a will (intestate), the New York Surrogate's Court appoints an administrator. This appointment is formalized through a Letter of Administration (LOA), which specifies the designated administrator for the deceased's estate. The letter grants the administrator the authority to manage the estate and distribute assets under New York's intestacy laws.

What Is the Process for Obtaining Letters of Administration?

If you are entitled to be appointed as the administrator, you must file an application with the Surrogate's Court. This application includes various documents, such as a Petition for Letter of Administration. Additional documentation may also be required, including the decedent's death certificate, Affidavit of Sole Heirship, Affidavit of Due Diligence, and other relevant documents.

How Long Does It Take to Get Letters of Administration?

Assuming all necessary documents are filed, the average time to receive a Letter of Administration in New York is 3 to 6 weeks. However, if there are disputes contesting your right to administer the estate, the process could extend to several years. Recent budget cuts and delays have slightly increased wait times.



What Are the Different Types of Letters of Administration?

Limited Letters of Administration:

These authorize specific functions for the entitled administrator, such as initiating a lawsuit or investigating estate assets. They may be necessary for cases involving asset theft or if the administrator wishes to file a lawsuit on behalf of the deceased. A petition must be submitted to the Court explaining the need to obtain these letters, and a hearing may be conducted.

Temporary Letters of Administration:

Issued while a petition for a standard Letter of Administration is pending, these are typically granted for immediate estate concerns or urgent matters. They expire every six months and may be issued if there's an expected delay in the standard letter issuance that could affect the estate.

What Are the Different Types of Letters of Administration? (ctd.)

Ancillary Letters of Administration:

Required when the decedent passes away in another state but leaves property in New York. The administrator appointed in the external state must file a petition for ancillary letters of administration with the Surrogate's Court of NY, specifying the county where the property is located.



If you have questions regarding the New York probate process, please contact our office at (914) 228-7448.



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