

Estate Settlement FAQ

What does probate mean?

What happens after the Will is admitted to probate by the Court?

How long should it take to do all that is required to “settle” a person’s estate?

Does the person named as Executor have a duty to justify his or her actions to the beneficiaries?

What tax returns are required to be filed by an Estate?

What does probate mean?

Probate simply refers to the process where, after a person dies, his or her Will is filed with the Probate Court (known as the Surrogate’s Court in New York State) having jurisdiction over the estate, together with certain documents and a Petition. The Petition is usually brought by the person named as Executor in the Will, and asks the Court to declare that the Will is a valid and genuine last Will of the decedent and should be used to determine who is entitled to receive the decedent’s property. If there are no minors or persons under disability interested in the Estate and where everyone’s whereabouts is known, the probate process can in most cases be completed within a couple weeks.

What happens after the Will is admitted to probate by the Court?

After the Will

is admitted to probate, the person designated in the Will

as Executor is granted what are known as Letters Testamentary, which give the Executor the power and duty to collect and value the decedent’s assets, pay all of the person’s just debts

and funeral and administration expenses, file whatever estate or income tax returns that may be required, and, when all of this has been accomplished, look to the Will

to see who the decedent wants to receive the remaining assets of the Estate.

How long should it take to do all that is required to “settle” a person’s estate?

How long it takes to “settle” an estate depends on the facts and circumstances involved in the particular estate. Assuming that there are no major disputes among the beneficiaries or the need to commence a lawsuit to collect a debt owed to the decedent or to pursue a wrongful death claim, an estate where no estate tax returns are required can be wound up in less than one year after the decedent dies.

Does the person named as Executor have a duty to justify his or her actions to the beneficiaries?

An Executor does have a duty to account to the beneficiaries as to the value of the assets that have come under his or her control, any increases or decreases in the value of those assets on their sale or other disposition, all income earned by the Estate and all debts and funeral and administration expenses paid on behalf of the Estate. Normally, this is accomplished by a form of informal accounting by the Executor, but in some instances, such as when there is a minor or person under disability interested in the estate or if there is a dispute between a beneficiary and the Executor, a formal accounting detailing each and every item must be prepared and filed with the Court to obtain the Court’s approval of the Executor’s actions.

What tax returns are required to be filed by an Estate?

Returns that may be required include the decedent’s final federal and state personal income tax returns, federal and state fiduciary income tax returns reporting income earned after death and federal and state estate tax returns if the value of the estate is large enough to require estate tax returns to be filed.