

## **Michigan Probate: An Overview**

**When probate is required--and when it isn't -- in Michigan.**

**Probate in Michigan is a court-supervised legal process that may be required after someone dies. Probate gives a surviving family member [or someone else] authority to gather the deceased person's assets, pay debts and taxes, and eventually transfer assets to the people who inherit them.**

**Will Probate Be Necessary?**

**Probate court proceedings are necessary only if the deceased person owned assets in his or her name alone. Other assets can probably be transferred to their new owners without any probate court involvement.**

**Examples of common assets that do not need to go through probate include:**

**assets the deceased person owned in joint tenancy form, which pass automatically to the surviving owner**

**•assets the deceased person owned with his or her spouse as "tenancy by the entirety" property, which pass to the surviving spouse without probate**

**•assets subject to a beneficiary designation (for example, retirement accounts for which the deceased person named a beneficiary, or payable-on-death bank accounts)**

**•life insurance proceeds that are payable to a named beneficiary**

**•assets held in trust (commonly, a revocable living trust designed to avoid probate)**

## **Simplified Probate for Small Estates**

**Even if the deceased person left some property that was owned in his or her name alone, formal probate may not be necessary. Michigan offers a simpler procedure for small estates. It's available if:**

- the value of the gross estate, after funeral and burial costs are paid, is less than \$15,000, or**
- the estate is large enough only to cover the expenses of the last illness and funeral, the family allowance, the homestead allowance, and some expenses.**

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**In either of these situations, the probate court can order the assets turned over to the surviving spouse or heirs. (Heirs, the people entitled to inherit under state law when there's no will, are the closest relatives.)**

## **Special Procedure for Vehicles**

**If the deceased person owned vehicles with a total value of no more than \$60,000, and no probate is necessary for other assets, the surviving spouse or next of kin (closest relative) can obtain ownership of the vehicles with a simple, fill-in-the-blanks form. This one-page form, called a "Certification From the Heir to a Vehicle," is available from the state department of motor vehicles.**

## **Who Conducts a Probate Proceeding?**

**The person named to serve as executor (called a personal representative in Michigan) in the deceased person's will generally takes charge of the estate. If there is no will, or the person named in the will isn't available or willing to serve, the probate court will appoint someone to serve as personal representative. The surviving spouse, if any, has**

**first priority to be appointed as personal representative if he or she inherits under the will. Mich. Comp. Laws § 700.3203.**

**Once the court issues a document called "Letters of Authority for Personal Representative," the personal representative must:**

- gather, inventory, and safeguard the deceased person's assets**
- have those assets appraised, if necessary**
- pay debts and taxes, and**
- distribute the remaining property as the will (or if there's no will, state law) directs.**

**The personal representative must keep careful records of how estate assets are handled and distributed.**

### **Formal Probate**

**Most Michigan probate cases can be wrapped up within seven months to a year after the personal representative is appointed. After notice of the probate is given, creditors have four months to file a claim. (Mich. Comp. Laws § 700.3801) If the estate owes federal estate tax (most don't), probate is likely to take a year or more.**

**The case will also take longer if someone contests the will in court, alleging that the deceased person wasn't of sound mind or was under undue influence when he or she signed the will. Will contests,, however, are rare.**

**In Michigan, probate costs commonly include:**

- court costs (this depends on the value of the estate)**

**•executor or administrator's fee, which must be a "reasonable" amount (though many family members don't accept compensation for their work, in part because it's taxable income)**

**•attorney fees (these fees can be negotiated between the executor and the lawyer)**

**•appraisal fees (when necessary to determine the value of estate assets).**

**If the estate is very large, it may owe federal estate tax. Estate tax isn't affected by whether or not there is a probate court proceeding; even if no probate is necessary, tax may still be owed.**