

Introduction to Probate in Missouri

Many myths circulate surrounding probate. Most of them are either exaggerations or extreme examples of highly irregular circumstances. However, there is no question that Probate is not a fun, cheap, or efficient process. Please note that we are dealing with “Death Probate” here, and are *not* discussing “Living Probate”, which involves conservatorships and guardianships.

One short answer to the question is as follows: Probate is the process of getting property from someone who dies to where it is supposed to go when no other provisions have been made to get it there.

Where is your stuff supposed to go? If it goes through probate you either follow the rules that the state has set up (“intestate succession”), or you prepare and execute a Will.

One of the most common myths concerns the results of preparing a will. **Wills absolutely do not, by themselves, avoid probate.** Indeed, a common definition of a will is a “set of written instructions to the probate court”.

The common objections and complaints about the probate process are as follows:

1. It’s too expensive
2. It’s too slow
3. It’s too public

These are all valid complaints.

Probate Costs

The costs include attorney's fees, Personal Representative's ("executor's") fees, Court costs, and surety Bonds. The largest of these is normally Attorney's fees. Following is a list of the Missouri "minimum" Attorney's fees, as well as a range of total costs for a typical probate estate.

Missouri "Minimum" Attorney Fee Schedule established by Missouri Statutes

Estate Size	Fee
Less than \$5,000	5%
\$5,001 - \$25,000	\$250 + 4% of excess over \$5,000
\$25,000 - \$100,000	\$1,050 + 3% of excess over \$25,000
\$100,001 - \$400,000	\$3,300 + 2 3/4% of excess over \$100,000
\$400,001 - \$1,000,000	\$11,550 + 2 1/2% of excess over \$400,000
Over \$1,000,000	\$26,550 + 2% of excess over \$1,000,000

Unfortunately, the Attorney's fees are not the only costs involved in settling a Probate Estate. Following is an analysis of potential total estate costs in Missouri:

Estate Size	Costs
\$50,000	\$2,300 - \$4,100
\$150,000	\$5,300 - \$10,000
\$300,000	\$9,400 - \$18,200
\$500,000	\$14,800 - \$28,800
\$750,000	\$21,100 - \$41,400
\$1,000,000	\$28,600 - \$55,100
\$1,500,000	\$38,750 - \$75,300
\$2,500,000	\$59,500 - \$115,900

Assumptions: Lower amount includes "Minimum" Attorney's fees, estimated Court Costs, estimated Surety Bond Costs, and other miscellaneous costs; Higher Amount also includes fees of Personal Representative ("Executor"). **Costs listed above do NOT include estate taxes.**

In complex or disputed cases Attorney's fees can be much higher.

Probate Administration

1. In Missouri there are three basic modes of Death Estate Administration:

A. Small Estates

- i. Small Estates Affidavit (\$40,000 or less)
- ii. Spouse's Refusal
- iii. Creditors Refusal

Costs run from \$65 to \$150. Legal fees from \$300 to \$900

Takes from 5 days to 6 weeks.

B. Independent Administration. The preferred method for "normal" estates. Estate is administered with only a minimum amount of Court intervention and reporting. Keeps costs down and makes administration much more efficient, and greatly expedites closing.

C. Supervised Administration. Used in situations where there are likely disputes among heirs, or if for some reason the Will requires. Most transactions require pre-approval on the part of the Court, which makes things quite cumbersome. Closing the estate can take up to 90 days longer than would be otherwise required.

2. Timeline for typical probate (NOT Small Estates) IF everything goes smoothly, and assuming Independent Administration

- Death - January 1
- Filing of Application with Court (and will, if there is one) - January 20
- Issuance of "Letters" February 5

- First Publication - February 10
- Inventory Due - March 5
- Assets liquidated/sold, expenses, and Aclaims@ paid, etc. - February 5 - July 31
- Closing documents filed with Court, etc. August 20
- Final Distributions – August 31

3. Other Points.

A. Except in small estates, in Missouri an attorney **MUST** be involved, since the Personal Representative (commonly “Executor”) technically represents others.

B. A “Bond” may be required. This can be waived in the Will, or can be waived by ALL beneficiaries, but subject to the Court’s discretion. A bond increases costs, and delays the opening of the estate. Sometimes individuals with credit problems cannot secure a bond.

C. If the decedent owns real property in another state, an “ancillary” administration must be opened in that state.

D. The estate must obtain its own EIN (Tax number), and becomes a taxable entity unto itself as of the death of the decedent. A tax return often must be filed for the estate.

E. Preliminary distributions may be made prior to the closing of the estate in certain circumstances. This carries some inherent dangers with it.

F. In Missouri, a probate estate must generally be open for at least 6 months and 10 days. Many stay open for 2, 3, or 4 times that long depending on the particular facts and circumstances.

G. Probate records, absent very unusual circumstances, are public records and can be viewed at any time, by any one, for any reason, or no reason.

Guardianship and Conservatorship

Just a few words on these matters.

Guardianships and Conservatorships are sometimes referred to as “Living Probate”. They come into play when other tools are not effectively used to provide for disability management. These tools include Living Trusts, Durable Powers of Attorney, and Health Care Powers of Attorney.

Generally when an individual is disabled, and cannot take care of their physical well being or financial affairs, the Probate Court is petitioned by a family member or other person seeking appointment. This can be a simple matter if families are unified and the need is clear, or they can be ugly, expensive, hotly contested matters. If the Court decides an appointment is necessary, then it issues an order accordingly.

Although Guardianships and Conservatorships are based on the same law and facts, there is a distinction. The Guardian takes care of the person’s physical well being – their living arrangements, health care, etc. A Conservator takes care of their money, property, and assets. In most, but not all situations, the Guardian and Conservator are the same person. Both are very cumbersome, expensive, and time consuming arrangements. Court approval is required for most expenditures, and annual reporting to the Court is required. In most situations they should be viewed as a last resort.

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The choice of a lawyer is an important decision and should not be based solely upon advertisements