# Guide To Arkansas Estate Administration

How to Settle the Estate of a Loved One

*presented by*

L. JENNINGS LAW
A GOOD STEWARD FIRM

# WELCOME

Losing a loved one is difficult enough without the added stress of having to make important financial decisions while grieving. For many people, the duties and responsibilities of probating a loved one's estate can feel overwhelming.

We created this book to give you an introduction to probate, what it is, and what the process involves.

*We hope you find the information helpful during this difficult time in your life.*

# WHAT IS PROBATE?

At the most basic level, probate is a court proceeding by which the estate of a person who has passed away (known as the "decedent") is inventoried and distributed according to the decedent's will or state laws. If the decedent had a last will and testament, its authenticity will be determined during probate. The person authorized to administer the decedent's estate will also be determined, and appointed, during the probate process.

L.J

L. JENNINGS LAW

A GOOD STEWARD FIRM

# ESTATE ADMINISTRATION CHECKLIST:
## WHAT TO DO WHEN A LOVED ONE PASSES?

**First Steps To Take:**

1. Obtain the death certificate: You will need to obtain copies of the death certificate, which is usually provided by the funeral home or the state where the person passed away. You will need multiple copies of the death certificate for various purposes.

2. Notify family and close friends: It's important to notify immediate family and close friends about the passing of your loved one.

3. Hire a funeral director. You may want to consider hiring a funeral director to assist with funeral arrangements.

4. Secure the person's property: You should secure the person's property and notify their bank and other financial institutions to prevent any unauthorized access to their accounts.

5. Review the person's will and estate plan: If the person had a will or estate plan, you should review these documents to understand their wishes for the distribution of their assets and the appointment of an executor or trustee.

6. Contact an Attorney. You will want to hire an attorney to guide you through the probate process and protect your loved ones assets, and yourself. This should not be just any attorney. It should be an attorney that specializes in estate planning and probate.

7. Seek other professional advice: It may be helpful to consult with an advisor or other professionals to help you navigate the various legal and financial issues that may arise after the passing of a loved one. Your attorney at L. Jennings Law can connect you with trusted advisors.

L. JENNINGS LAW
A GOOD STEWARD FIRM

# THE BIG QUESTIONS

## HOW MUCH DOES PROBATE COST?

The cost of probating an estate varies. That said, probate costs typically depend on the type and value of the estate's assets—the greater the value of the estate, the higher the cost to probate it. For most estates, probate costs anywhere from 3% to 10% of the value of the estate's assets. (This amount does not include any income or estate taxes owed by the decedent.) The costs associated with probate include court fees, accounting fees, personal representative/executor fees, attorney fees, appraisal and business valuation fees, and a number of other miscellaneous fees.

## WHAT HAPPENS IF THE DECEDANT DIDN'T HAVE A WILL?


When a person passes away without a will, he or she is said to have died "intestate." In this situation, assets will be distributed according to what is known as "intestate succession," which involves ranking family members according to their right to inherit property. While each state has its own laws governing intestate succession, an Arkansas surviving spouse typically receives at 1/3rd of the estate while the couple's surviving children receive the rest. Family members who are further down the intestate succession "list" will generally not receive anything if those ahead of him or her are still alive. Of course, intestate succession does not take into account the decedent's wishes regarding "who gets what." Assets are simply distributed according to state law.

# DO ALL ASSETS HAVE TO GO THROUGH PROBATE?

Certain assets are exempt from probate. Assets held in a trust, for example, avoid probate. It is important to note that only assets transferred and/or designated to the trust will avoid probate. Assets not in the trust will have to be probated unless they have a joint owner or beneficiary designation. In addition, jointly held assets do not have to go through probate if the co-owner is alive and competent. Assets with beneficiary designations, such as bank accounts, IRAs, and insurance policies, can avoid probate as well provided the beneficiary is alive and competent.

# WHAT ARE LETTERS OF PERSONAL REPRESENTATIVE?

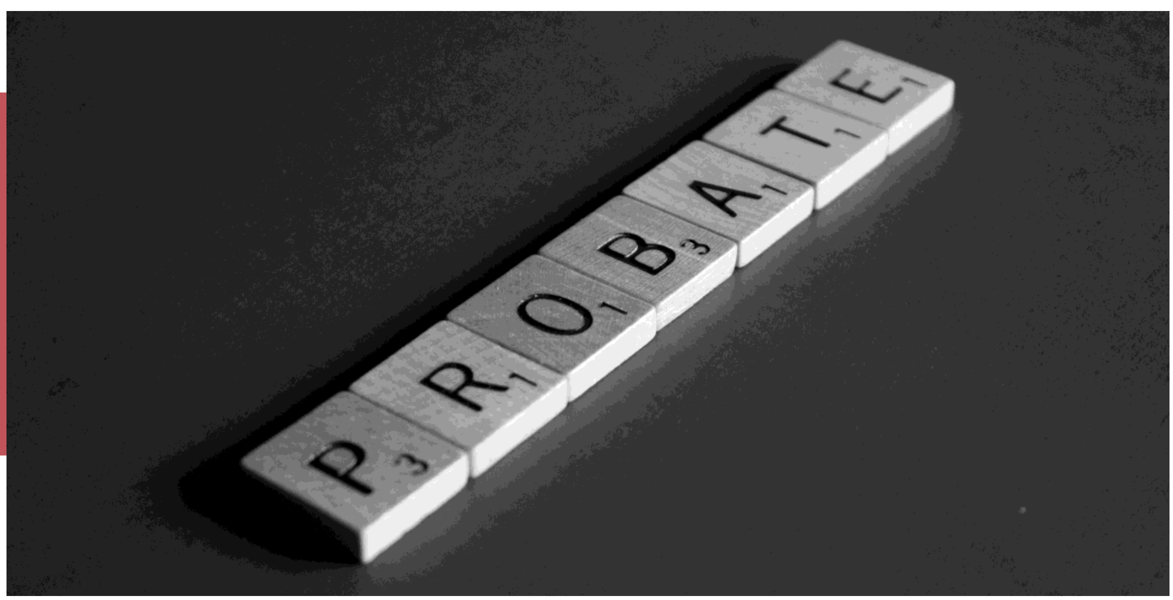
The term "letters of appointment" refers to a legal document issued by the court that authorizes the executor or personal representative of the estate to inventory, appraise, and distribute the decedent's assets. This is the "legal trigger" that gives the nominated person the legal authority to act on behalf of the estate. Without these documents, the person named in the will (or any family member if there is no will) lacks authority to act on behalf of the estate.

# WHAT ARE THE EXECUTOR'S RESPONSIBILITIES DURING PROBATE?

The executor is responsible for settling and distributing the decedent's estate as efficiently as possible by following the instructions contained in the decedent's will. While every probate is unique, here is a partial list of the duties required to settle an estate in a "typical" probate:

- Locate and file the Last Will and Testament with the local court
- File required probate documents with the court
- Ascertain, and notify, all known creditors of the estate
- Secure the decedent's personal residence and tangible personal property
- Locate, inventory, marshal, close and transfer personal assets/accounts
- Process and receive life insurance death benefits
- Pay debts and expenses associated with the last illness and funeral
- Make payments to creditors, discharge obligations, and obtain creditor releases
- File appropriate tax returns (federal and state) and make appropriate tax elections
- Pay estate taxes and final personal income taxes
- Obtain tax releases and closing letters from local courts and the IRS
- Make specific bequests, as well as partial and final distributions, to beneficiaries
- Provide complete, detailed accounting to the local court and estate beneficiaries
- File closing paperwork/documentation with the court

It is important to note that if an executor fails to follow the will's instructions, as well as the probate laws, he or she can be held personally and legally responsible - even if the errors were unintentional.



# THE BIGGEST MISKTAKES PEOPLE MAKE WHEN PROBATING AN ESTATE

If you have been named as an executor or personal representative and are tasked with settling an estate through probate, you'll want to avoid these common mistakes.

**Handling Assets Incorrectly**
One of the first things an executor or personal representative must do is secure all of the decedent's assets. Accomplishing this requires taking different steps for different types of assets. For example, financial accounts may simply need to be closed, whereas real property (such as a house) might have to be secured and maintained.

**Categorizing Assets Incorrectly**
Some assets do not have to go through probate. When you inventory assets, it is important to make sure you categorize them properly. Assets that are not typically subject to probate include:

- Assets held in trusts
- Funds held in certain "beneficiary designated" accounts
- Certain forms of property held jointly

**Failing to Determine Date of Death Values**
The term "date of death values" refers to the fair market value of each estate asset at the time of the decedent's passing. The sooner this task is undertaken, the easier it will be to determine the correct value. Executors often turn to professional appraisers for assistance with this task.

## Handling Creditors Improperly

Every potential creditor of the estate must be notified about the estate going into probate. If the creditor is known, he or she can be notified personally. Unknown creditors, on the other hand, must also be notified.

How? Through a notice published in a local newspaper. The probate must be kept open for a period of time mandated by state statute to allow creditors to file claims against the decedent's estate.

## Failing to Communicate Effectively with Estate Beneficiaries

The single biggest mistake a personal representative can make is failing to communicate with beneficiaries. In fact, poor communication sometimes leads to unnecessary, and expensive, litigation. Remember: You are not the only one dealing with the loss of a loved one—so, too, are the decedent's heirs. It is an emotional time for them, and they may feel slighted or ill-treated if you don't stay in touch with them.

## Distributing Estate Assets Too Soon

As the estate's executor, you have the authority to distribute assets to beneficiaries as well as to approve and pay creditor claims. However, sometimes an estate lacks sufficient assets to honor bequests made in the will and pay every creditor claim. In such a situation, creditors must be prioritized according to the law and assets must be dispersed based on that prioritization. If you, as executor, do not follow the law, you could be held personally liable.

L.J L. JENNINGS LAW
A GOOD STEWARD FIRM

# What is the Timeline of an Arkansas Probate?

**Month 1:**

- Gather information and draft documents
- Get client approval and file probate documents
- Await court approval

**Month 2:**

- Get court order appointing a personal representative
- Obtain bond and approval if required by court
- File acceptance and obtain letters
- Run Ad in the paper notifying creditors and heirs
- File inventory with the court
- Obtain Estate Tax Id Number
- Start gathering estate assets

**Months 3-9**

- Sale assets, if required
- Wait for 6 month creditor period to run
- Object to any improper claims that arise

**Months 9-12:**

- Compile assets, expenses, and claims
- Object to improper claims
- pay expenses and claims
- make final distribution to heirs
- Close Estate

# Trusted Advisors:

## THESE ARE IMPORTANT ADVISORS TO HAVE IN YOUR CORNER

If you already have these advisors, great! It is important to have professionals guide you through the difficult process. Especially when you are unable to think clearly.

L. Jennings Law has a trusted network of professional advisors who are experienced in this process. We are happy to make connections and recommendations.

### Trusted Professional Advisors:

1. Estate Planning Attorney: An estate planning attorney can help navigate the probate process, review the will or trust, and advise them on their legal rights and obligations.

2. Financial Advisor: A financial advisor can help understand their options for managing the deceased's assets, including investments and retirement accounts.

3. Accountant: An accountant can help prepare tax returns for the deceased and the estate, and advise them on any tax issues that may arise.

4. Insurance Agent: An insurance agent can help review the deceased's insurance policies, including life insurance, and assist with filing claims.

5. Realtor: An Realtor can help navigate selling and valuing property of the deceased.

6. Funeral Director: A funeral director can help make arrangements for the funeral or memorial service, and assist with other end-of-life matters.