


# Guide to property after someone dies


This guide has general information about what happens to someone's property, bills, and debts after they pass away. This area of law is called **probate**. The probate division of the superior court handles these issues.

## What is probate

Probate is the legal process that you must follow to transfer or inherit property after the person who owned the property has passed away

Depending on the amount and type of property the deceased person owned, you may or may not need to go to court to transfer or inherit the property. All of the property legally owned by the deceased person is called the person's "estate." If you need to go to court, this is commonly called "going through probate." A person's estate may need to go through probate even if they had a will.

If you find an original will, you must deliver it to the court. [Learn more](#) 



Delivering a will to the court is called "lodging the will." You must also send a copy of the will to the executor named in the will. If you cannot find the executor, then send it to a person named in the will as a beneficiary.

To start a probate case (called opening probate), you go to court and ask a judge to appoint a personal representative. The personal representative is the person responsible for representing the estate in the probate process. The personal representative collects all the property of the person that died, pays their bills, and then distributes any remaining property to the people with a legal right to receive the property (called heirs or beneficiaries).

The probate court also handles other types of cases, like guardianships and conservatorships. [Learn more.](#)



The probate court also handles other types of cases, like when an adult that is not a child's parent asks for custody of the child (called **guardianship**) or when an adult asks for the right to act or makes decisions for another adult with a disability or impairment (called **conservatorship**).

## LEGAL TERMS USED IN PROBATE

You will need to learn a lot of legal terms to understand what to do in probate. For example, the property that a person leaves behind when they die is called the “decedent’s estate.”

- **Decedent:** the person who died
- **Estate:** the property the person owned when they died
- **Intestate succession:** the laws that say who inherits something if the person did not have a will or trust
- **Verify:** Most documents filed in a probate court must be verified, that is, sworn or affirmed to be true “under penalty of perjury.” Form MC-030 has the required verification statement.

To help, there's a [list of definitions you may need to know](#) to fill out or understand forms or instructions.

## Does the estate need to go through probate?

To inherit property from someone who has passed away, you will first need to figure out what process you can use to transfer the property. You may need to go to court, but in some cases, you do not. One of the first things to do is check who the right person is to handle these matters.

## Who is the right person to handle probate matters?

Typically, the person named in the will or a close relative if there is not a will handles the probate matters. Two or more people can represent an estate together. But they must act always act together.

- **If the person had a will or trust**, the person listed as in charge (often called an executor) will generally handle any probate. If they cannot or do not want to, then it will often be a relative.
- **If the person did not have a will or trust**, often a close relative will handle any probate. If the person was married when they died, their spouse is often the person. Or, if they have adult children, then an adult child. Relatives should generally talk to each other to decide who and how decisions will be made for the estate.

- **If the transfer of property needs to go through probate,** a judge will appoint someone as a personal representative of the estate. The law gives preference (also called priority) to who this will be. This is often the person named in the will. If the person named in the will cannot act or there is no will, then there's an order of priority for who may be appointed a personal representative. The order of priority is any surviving spouse or domestic partner, then a child, then a grandchild, then a parent, and then a sibling. A judge will need to decide which person has priority.

Even if someone was not named in a will, the person who died might have named them as a beneficiary, for example on retirement or bank account. These people may also have decisions to make or steps to take to claim the property.

## How does the person handling probate matters figure out what process to use?

The next sections offer the basics of how to figure out what process you can use to transfer property. To do this, you first need to organize all the information about what the person owns and owes, and then consider the options.



**Talk to a lawyer to get specific answers about your situation.** You can usually pay the lawyer's fees from the property in the estate.

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