



The Basics of Probate

What is the Purpose of this Guide?

Philadelphia VIP prepared this guide to help distribute basic legal information to the community at large. While the information contained in this guide concerns legal issues, it is intended solely to provide general information. THIS GUIDE IS CURRENT AS OF July 2012. COSTS AND FEES ARE SUBJECT TO CHANGE.

This guide is not intended to constitute legal advice or substitute for the advice of an attorney. It is understood that Philadelphia VIP's provision of this guide and your review of this information does not establish an attorney-client relationship. No action should be taken in reliance on the information provided in this guide, except after prior consultation with a lawyer.

You may be eligible for free legal services. At the end of this guide, you will find contact information for organizations that may be able to help with this process, including Community Legal Services, Philadelphia Legal Assistance, and the SeniorLAW Center.

What is Probate and Estate Administration?

Probate is the process of having a deceased person's will accepted by the Register of Wills. An estate is everything the deceased person owned, in whole or part, at the time of his or her death.

Estate administration is the process of handling a deceased person's debts and assets, regardless of whether he or she had a will.

Although many people use a lawyer for probating an estate, this guide helps explain the probate and estate administration process. Inside this guide, you will find:

- A step-by-step explanation of the process
- Definitions of legal words often used in probate and estate administration
- Contact information for the agencies involved

Why Would I Want to Use the Probate and Estate Administration Process?

There are many reasons why you may want to go through the probate and estate administration process to get legal title to the house where you live. Without legal title, you can run into many problems and even lose your home. Probate and estate administration can help you:

- Stay in your home
- Get homeowner's insurance
- Enter into payment plans for utilities like water and sewer and for real estate taxes
- Get grants from the City for repairs or improvements to your house
- Sell the property
- Get a mortgage
- Work with a bank to fix an unpaid mortgage or a mortgage in foreclosure

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Why Would I NOT Want to Do the Probate and Estate Administration Process?

Sometimes the probate process can create problems that outweigh its benefits. It is important for you to understand that by taking ownership of a house, you take responsibility for any debts on the house. This includes money owed for gas, electric, water, sewer, mortgage, and real estate taxes.

You also may not want title if YOU have a lot of credit card or other types of debts. Once the house is in your name, YOUR creditors can go after the house by putting a lien on it.

Ask yourself:

- Are there any liens on the house?
 - A lien is the right to take all or part of property, like a house, to pay a debt such as back property taxes or unpaid utility bills.
- Did the last owner of the house receive medical assistance from the state?
 - If the deceased person received medical assistance from the state, you **MUST** notify the state that you are in charge of the estate, because the state may have a claim against the property for unpaid bills.
- Is there a mortgage on the house that is not fully paid or is in foreclosure?
- Do *you* have a large amount of credit card debt or other types of debt?
- What is the condition of the house? Keep in mind the potential cost of making repairs (for example if the roof, electric, plumbing needs replacement). Can you afford the possible expenses?

REMEMBER:

If you become the personal representative of the deceased person's estate, it is your responsibility to look after all of the deceased person's assets (everything they owned), to pay off any debts they had, and to make sure that the right people get whatever property is left over. If you give away assets in the estate before paying off the debt of the estate, creditors can come after anything that you personally own.

WARNING ABOUT DEBTS FOR MEDICAL ASSISTANCE:

The Department of Public Welfare (DPW) has the right to be repaid for medical care given to the deceased during his or her life.

DPW could take the house to pay these medical assistance bills.

You must contact DPW if the decedent died on or after August 15, 1994.

You should not move forward until you get a response from DPW.

If money is owed, a lawyer may be able to help you lower the debt owed and keep the house.

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What Do I Need to Start the Probate and Estate Administration Process?

You will need information about the house and the deceased owner to start. Addresses and phone numbers for the agencies that have this information are listed at the end of this guide.

Probate Checklist:

- Mortgage statements, bank statements, life insurance policies, pension documents, social security retirement benefit papers
- Bills for water, electric, gas, and property tax to see if money is owed
- House value (Philadelphia Office of Property Assessment—contact information on page 11)
- Deed for the house (Philadelphia Department of Records—contact information on page 11)
- Death certificate (Pennsylvania Department of Health, Division of Vital Records—contact information on page 11)
- Original will (if the deceased had one)
- Names and addresses for potential heirs (see below)

You should also think about potential heirs. An heir is a person who will inherit property based on a will (or state law if there is no will). If there is no will, make a list of people related to the deceased by blood, marriage, or adoption. These people will need to be contacted, because they could have a right to the property.

BEFORE GOING FURTHER:

*It is best to order a title search at this point to check for liens on the house.
Remember that you are responsible for all liens against the property
after you take legal ownership of the property.
If you want to get a title search to check for liens, you should contact a title insurance company,
which can be found by contacting a licensed real estate agent.*

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Step One: Become a Personal Representative

To begin the probate process, you must become a personal representative (also known as an “executor” or “administrator”). This is done by filing a document called a **Petition for Probate and Grant of Letters**. There are two kinds:

- If the deceased person had a will that names you the personal representative, you will need to file for **Letters Testamentary**.
- If the deceased did not have a will, or the will did not name you the personal representative, you will need to file for **Letters of Administration**.

If there is no will or you are not the person named as personal representative in the will, you will also need a **Renunciation** from other possible heirs. This paper must be signed by all possible heirs. It can be signed by the heirs at the Register of Wills or in front of a notary.

You must go to the Register of Wills in City Hall (Room 180 on the first floor) to get this paperwork.

Bring with you:

- Your photo identification
- Original death certificate for the person on the deed of the house
- Proof of the house value (Philadelphia Office of Property Assessment printout or last property tax statement received)
- Payment for fees (chart is at the end of this guide) by cash, check, money order or credit card
- Decedent’s will (if there is one)
- Renunciations from all heirs (see above)
- A stamped envelope with your name and address written on it

IMPORTANT:

*A Renunciation only means the heir does not want to be Personal Representative.
It does NOT mean the heir is giving up all right to the property.*

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The Register of Wills will take 7-10 business days to approve the Petition for Probate and issue Letters. You can pick up the Letters in person or have them mailed to you, if you left a pre-addressed, pre-stamped envelope.

Step Two: Fill Out an Inventory Form

Next, you need to fill out an **Inventory Form**. You can get this form from the Register of Wills when you turn in the Petition for Probate in Step One.

List all assets owned by the deceased person, such as real estate, bank accounts, safe deposit boxes, and other things of value. When you are done with this form, make two copies and bring it back to the Register of Wills.

Step Three: Tell Beneficiaries

As Personal Representative, you must tell all other people who could possibly inherit from the deceased person about the probate. These people are called beneficiaries. To do this, you must:

- Send a **Notice of Beneficial Interest in Estate** to any possible heirs.
- Fill out a **Certification of Notice to Heirs** at the Register of Wills.

Who is a possible heir?

- Anyone named in the will as a beneficiary, and
- People who can inherit the property based on state intestacy law, even if there is a will
 - This could be the spouse, children, parents, siblings, grandparents, aunts, uncles, and/or the children of deceased aunts and uncles, depending on whether these people died before or after the deceased.

WARNING:

If you are not sure who is a possible heir, you should contact a lawyer before taking any more steps. If you do not tell other possible heirs, they may claim a right to the property later!

Step Four: Tell Creditors

As Personal Representative, you must try to pay the debts of the deceased person out of the estate assets. If the deceased had unpaid bills and you advertise the probate, the creditor must come forward and make a claim for payment within one year of the advertisement.

- The advertisement must appear three times in:
 - The *Legal Intelligencer* (a local legal newspaper), and
 - A general newspaper (the *Philadelphia Daily News* or *Philadelphia Tribune*).

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- If creditors do not come forward within a year, they lose the right to be repaid.
- If creditors come forward and you have not advertised, they could claim the house for repayment of the debt.

Step Five: Pay Taxes

As the Personal Representative, you are responsible for paying several kinds of taxes. You should understand that this is an important step and that the following taxes must be paid:

- **Pennsylvania Inheritance Tax:** You *must* file a state inheritance tax return. You can contact the Pennsylvania Inheritance Tax Unit to find out what you need to file the return and how much you will owe. The amount you owe can be lowered if you paid for funeral and burial costs. You must file 2 copies of the inheritance tax return, along with payment for the tax owed, with the Register of Wills. (Contact information for the Inheritance Tax Unit is on page 11.)
- **Federal Estate Tax:** This only applies when the deceased owned more than \$5,120,000 of property, so you likely will not have to worry about this.
- **Income Tax Return for the Deceased:** You may also have to file an income tax return for the deceased person, if he or she recently passed away.
- **Real Estate Taxes:** As the new owner of the property, you are responsible for paying real estate taxes, both back taxes owed and current taxes going forward.

NOTE ON PHILADELPHIA PROPERTY TAXES:

*There are payment plans available for low-income people with back property taxes.
A Housing Counselor can assist you with applying for a payment plan.
Call 215-334-HOME for referral to a housing counselor.*

NOTE ON PENNSYLVANIA INHERITANCE TAXES:

There are payment plans available for low-income people who owe inheritance taxes, but if you enter into a payment plan for taxes and fall behind, you may face additional penalties. You may want to just pay as much as possible per month without entering into a payment plan.

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Step Six: Get a Deed

One of the most important steps is getting a **Deed**. This is the official document that changes legal ownership from the previous owner to you.

1. **Write the Deed:** We strongly recommend that you get a lawyer to write the deed. If you cannot afford a lawyer and do not qualify for free legal assistance, a legal services organization might be able to refer you to the Philadelphia Bar Association's Modest Means Program to write a deed for \$400. *Note that the Modest Means Program may require you to pay for additional costs, including title search and recording fees.*
2. **Get the Other Heirs to Sign the Deed:** All other *heirs* MUST sign the deed. If they do not, they have not given up their right to the house.
3. **Record the Deed:** Bring the deed to the Philadelphia Department of Records. There will be a recording fee of \$230. You may also have to pay transfer taxes if there are other heirs giving their interest in the property to you. Along with the deed, you will have to submit 2 copies of the Philadelphia transfer tax certification, 2 copies of the Pennsylvania transfer tax certification, and show a photo ID.

NOTE:

There are other legal alternatives to signing a deed, which should be discussed with a lawyer.

Step Seven: Give Out Other Assets

If there are assets in the estate other than the property – like a car or a bank account – you should give those assets to the heirs who are entitled to them. If there is a will, the assets should be given out based on what is written in the will.

WARNING:

If you are not sure who is entitled to the other assets in the estate, you should contact a lawyer before taking any more steps.

Step Eight: Fill Out a Status Report

Your last step will be to fill out a **Status Report** and to file it at the Register of Wills. This will show that you have finished the estate administration process and that the file can be closed.

Remember that if at any time during the probate and estate administration process you are unsure of what to do, you can contact a legal services organization to see if a lawyer can help you. You can find definitions of legal words, a probate fee chart, and contact information for agencies below.



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Definitions of Common Probate and Estate Administration Words:

Assets: All things of value owned by a person. All assets must be listed on the inheritance tax return.

Beneficiary: A person named in a will, life insurance policy, or retirement plan to get all or part of another person's property.

Bequest: A gift of money or personal property made in a will.

Decedent: A person who has died.

Devise: A gift of real property made in a will.

Estate Administration: The process of settling an estate after a person dies, including paying any money still owed and giving away property of the person who passed away.

Estate: Everything the deceased person owned or had an interest in at the time of his or her death, including life insurance and joint property.

Heir: A person who will inherit property based on a will or state law, if there is no will.

Intestacy Law: The state law that determines who will get property when someone dies without a will.

Lien: The right to take all or part of property, like a house, to pay a debt.

Personal Representative: The person who is named in the will or appointed by the Register of Wills to divide the deceased person's property and pay the deceased's debts. This person is sometimes also called an Administrator or Executor.

Probate Property: The deceased person's real estate and other belongings that must go through the probate system. This usually does not include unpaid wages, cars, a small bank account that will be used to pay funeral costs, property held jointly (in two names), and some life insurance and retirement benefits.

Probate: The process of having a deceased person's will accepted by the Register of Wills.

Title: If you have title to a property, it means that you are the owner of that property

Title Search: An investigation into the history of ownership of a property and the liens, unpaid claims, restrictions, or other problems with the property.

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Probate Fee Chart

Probate Values	Base Fees	Tax(20%)	Family Court Filing Fee	Filing Fees	Total Probate Fee
0 to 250	\$10.00	\$2.00	\$2.00	\$123.50	\$137.50
250.01 to 1000	\$25.00	\$5.00	\$5.00	\$123.50	\$158.50
1000.01 to 2000	\$35.00	\$7.00	\$7.00	\$123.50	\$172.50
2000.01 to 3000	\$45.00	\$9.00	\$9.00	\$123.50	\$186.50
3000.01 to 4000	\$55.00	\$11.00	\$11.00	\$123.50	\$200.50
4000.01 to 5000	\$65.00	\$13.00	\$13.00	\$123.50	\$214.50
5000.01 to 6000	\$75.00	\$15.00	\$15.00	\$123.50	\$228.50
6000.01 to 7000	\$85.00	\$17.00	\$17.00	\$123.50	\$242.50
7000.01 to 8000	\$95.00	\$19.00	\$19.00	\$123.50	\$256.50
8000.01 to 9000	\$105.00	\$21.00	\$21.00	\$123.50	\$270.50
9000.01 to 10000	\$115.00	\$23.00	\$23.00	\$123.50	\$284.50
10000.01 to 50000	\$150.00	\$30.00	\$30.00	\$123.50	\$333.50
50000.01 to 200000	\$225.00	\$45.00	\$45.00	\$123.50	\$438.50
200000.01 to 300000	\$300.00	\$60.00	\$60.00	\$123.50	\$543.50
300000.01 to 400000	\$375.00	\$75.00	\$75.00	\$123.50	\$648.50
400000.01 to 500000	\$450.00	\$90.00	\$90.00	\$123.50	\$753.50
500000.01 to 600000	\$525.00	\$105.00	\$105.00	\$123.50	\$858.50
600000.01 to 700000	\$600.00	\$120.00	\$120.00	\$123.50	\$963.50
700000.01 to 800000	\$675.00	\$135.00	\$135.00	\$123.50	\$1,068.50
800000.01 to 900000	\$750.00	\$150.00	\$150.00	\$123.50	\$1,173.50
First \$1,000,000	\$825.00	\$165.00	\$165.00	\$123.50	\$1,278.50
Each Additional \$100,000	\$75.00	\$15.00	\$15.00		
Each Additional \$1,000,000	\$750.00	\$150.00	\$150.00		

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Total Probate Fees do **not** include:

Description	Comment	Base Fees
CAVEAT	Informal	\$50.00
TRAVEL		\$100.00
CITATIONS		\$50.00
PROBATE - SHORTS	Fee for Each	\$10.00
PROBATE - RENUNCIATIONS	Fee for Each	\$10.00
PROBATE - AFFIDAVITS	Fee for Each	\$10.00
PROBATE - BOND	Fee for Each	\$10.00
PROBATE - CODICIL	Fee for Each	\$15.00
PROBATE - COMMISSION	Both	\$50.00
PROBATE - MISC. INHERITANCE TAX FILING		\$50.00
PROBATE - DBN/CTA		\$25.00
PERFECTED CAVEAT		\$75.00
RECORD WILL	Added 10/05/2006	\$22.00
EXEMPLIFIED COPY	WITH CERTIFICATION	\$20.00
AFFIDAVIT OF FOREIGN FIDUCIARY		\$15.00
PETITIONS		\$50.00
ENTRY OF APPEARANCE		\$75.00

**There are also charges for filing other forms.
Please contact the Register of Wills for those fees.**

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Government Contacts

Philadelphia Register of Wills	<p>City Hall, Room 180 Philadelphia, PA 19107</p> <p><i>*open Monday- Friday, 8:00 am to 4:00 pm</i></p>	<p>(215) 686-6250</p> <p>http://www.phila.gov/wills</p>
Philadelphia Inheritance Tax Unit, Pennsylvania Department of Revenue	<p>Pennsylvania Department of Revenue 110 North 8th Street, Suite 204A Philadelphia, PA 19107-2412</p>	<p>(215) 560-3685</p>
Philadelphia Office of Property Assessment	<p>The Curtis Center 601 Walnut Street, Suite 300 West Philadelphia, PA 19106</p>	<p>(215) 686-4334</p> <p>http://opa.phila.gov/default.aspx (At this web site, you can enter your address to find the value of your house. Free internet access is available at the public library.)</p>
Philadelphia Department of Health, Division of Vital Records	<p>110 North 8th Street, Suite 108 Philadelphia, PA 19107</p> <p><i>*open Monday- Friday, 8:00 am to 4:00 pm</i></p>	<p>(215) 560-3054</p> <p>http://www.portal.state.pa.us/portal/server.pt?open=514&objID=556854&mode=2</p>
Department of Public Welfare, Estate Recovery Program, Third Party Liability Section	<p>P.O. Box 8486, Harrisburg, PA 17105</p>	<p>(717) 772-6553 (fax) (800) 528-3708 (phone)</p> <p>http://www.dpw.state.pa.us/foradults/estaterecoveryprogram/S_001025</p>
Philadelphia Department of Records	<p>City Hall, Room 111 Philadelphia, PA 19107</p> <p>Mon-Fri: 8am-4:30pm</p>	<p>(215) 686-2260 (General Info) (215) 686-2290 (Customer Service)</p> <p>http://www.phila.gov/Records/</p>



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Free Legal Services

<p>Community Legal Services (CLS)</p>	<p>Center City Office 1424 Chestnut Street Philadelphia, PA 19102</p> <p>Law Center North Central 3638 North Broad Street Philadelphia, PA 19140</p>	<p>Center City: (215) 981-3700</p> <p>North Central: (215) 227-2400</p> <p>http://www.clsphila.org/</p>
<p>Philadelphia Legal Assistance (PLA)</p>	<p>42 South 15th Street, Suite 500 Philadelphia, PA 19102</p>	<p>(215) 981-3800</p> <p>http://www.philalegal.org/</p>
<p>SeniorLAW Center</p>	<p>Land Title Building 100 South Broad Street, Suite 1810 Philadelphia, PA 19110</p> <p>Walk-in: M,W, F: 10am-1pm Telephone: M-F: 9am-1pm</p>	<p>(215) 988-1244 (phone) Info@seniorlawcenter.org (email)</p> <p>http://www.seniorlawcenter.org/</p>