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# Informal Probate

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## Related Information



**⚠** The primary focus of this page is on procedures when everyone involved is in agreement and cooperating. It does not include information or forms for litigating a probate case.

## What is probate?

Probate is the process of winding up the affairs of the person who has died (the decedent), and includes asking the court to appoint a personal representative (sometimes called an "executor") of the decedent's estate, and to determine if there is a valid will.

An "estate" is the collection of real and personal property belonging to the decedent at the time of their death, as well as any debts they owed.

Probate is required if:

- the estate includes real property (land, house, condominium, mineral rights) of any value, and/or
- the estate has assets (other than land, and not including cars) whose net worth is more than \$100,000.

Feedback

## Personal representative

The personal representative is appointed by the court to handle and settle the decedent's estate. The duties of a personal representative include:

- contacting heirs and creditors,
- collecting and taking inventory of the estate, determining and paying taxes,
- selling property to pay taxes or debts, and
- distributing remaining proceeds to the heirs.

The personal representative may also bring court claims on behalf of the estate.

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## Small estate affidavit

If probate is not required by law, it may be possible to collect personal property (such as money in a bank account) using a small estate affidavit. In Utah, a small estate affidavit is not filed with the courts. Instead, the decedent's successor fills out the form, signs it before a notary, and gives it to any third parties, such as the bank.

A small estate affidavit may be used if:

- the entire value of the estate is under \$100,000,
- there is no real property,
- at least 30 days have passed since the death, and
- no application for appointment of personal representative has been filed.

If there is any question about who the decedent's successor is, then a third party might ask for the court appointment of a personal representative before distributing the asset. [Utah Code 75-3-1201](#).

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## Informal or formal probate?

Informal probate is the process for asking the court to appoint a personal representative for a decedent's estate without a hearing. This process is usually used when all interested parties agree about who should be appointed personal representative and how the estate should be distributed.

Formal probate is the process for asking the court to appoint a personal representative with a hearing, usually because there is some disagreement about who should be the personal representative or how the estate should be administered and the interested parties need to the court to make decisions.

This web page covers only the informal probate process, when all parties are in agreement and cooperating.

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## Who may file

Anyone may file a probate case. To be appointed the personal representative, an applicant must be at least 21 years old. See [Utah Code 75-3-203](#).

Although anyone may file a probate case, certain people have priority for being appointed the personal representative:

- Nominated in the will to be a personal representative.
- Spouse of the person who died if the will makes a gift to the spouse.
- Any person receiving a gift under the will.
- Spouse of the person who died even if no gift is made to the spouse in the will, or if there is no will.
- Any heir of the person who died.
- Any creditor of the person who died, if 45 days have passed since the death.

[Utah Code 75-3-203](#).

The personal representative is responsible for:

- Collecting all monies owed to the estate; paying taxes and mortgages on any real property owned by the decedent; managing the estate and making repairs where needed acting as a prudent investor;

- Filing estate tax returns; filing the estate income tax return and submitting problems to the court when terms of the will are unclear or ambiguous for clarification;
- Settling the remainder of the estate in accordance with the will or the law; submitting a final accounting.

The person who is appointed personal representative is responsible for distributing the estate according to the will and according to the law.

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## When to file

An informal probate case may not be filed with the court until 120 hours (five days) have passed since the decedent's death. [Utah Code 75-3-307](#).

The case must be filed within three years of the date of the decedent's death. If it has been more than three years since the decedent's death, parties will need to follow a different process for a determination of heirs, and should [contact a probate attorney](#) for help. [Utah Code 75-3-107](#).

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## Where to file

A probate case can be filed in Utah if the decedent resided in Utah at the time of their death, or if they owned property in Utah.

A probate case may be filed in the district court of the county where the decedent lived at the time of death, or in the district court of the county where the decedent owned property. [Utah Code 75-3-201](#).

### Are you filing in Utah County?

If yes, you must file your papers with the Provo Courthouse. Deliver your papers to the courthouse or email them to [ProvoFiling@utcourts.gov](mailto:ProvoFiling@utcourts.gov).

## Is there a will?

If the decedent left a will, the will may nominate someone to act as personal representative and list the decedent's wishes for how the estate should be distributed.

If there is a will, the original will must be filed with the court along with the other paperwork to start the probate case.

When a person dies without leaving a will (known as "intestacy"), Utah law describes who will inherit according to intestate succession. See [Utah Code 75-2-101 et seq.](#) for more information about intestate succession.

## Starting a probate case

The following documents are needed to open an informal probate case. If you need to litigate or close a probate case, consult a [probate attorney](#) for help.

### Application

To start an informal probate case, the person asking to be appointed the personal representative files an Application with the court along with the filing fee and a Utah District Court Cover Sheet for Probate Actions.

### Waiver of Notice

Interested persons must complete and sign a Waiver of Notice form to indicate their approval of the personal representative. "Interested persons" include:

- heirs,
- persons named in the will (devisees),
- children,
- spouses,
- creditors,
- beneficiaries, and
- any others having a property right in or claim against the estate of the decedent.

See [Utah Code Section 75-1-201](#) for a full list of "interested persons."

If an interested person will not sign a Waiver of Notice form, then a hearing will need to be scheduled and that person will need to be sent notice of the hearing. This changes the probate from informal to formal. The formal probate process is beyond the scope of this page.

In some circumstances, notice of the application is sent by the court to all interested persons listed in the application and if no interested person files an objection to the application, the court can appoint the personal representative without a hearing. [Utah Code 75-3-306](#).

Check with the court where the case is filed for local practice information.

## Renunciation

Utah law defines who has priority to be appointed personal representative. Someone with equal or higher priority than the applicant can agree to the applicant being appointed personal representative by signing a Renunciation form. See [Utah Code 75-3-203](#).

## Death certificate

The applicant must also submit an official death certificate with the probate paperwork. Information about ordering a death certificate is available on the [Utah Vital Records and Statistics website](#).

If the decedent did not die in Utah, use the National Center for Health Statistics [Where to Write for Vital Records page](#) to find contact information for other U.S. states and territories.

## Acceptance of appointment

The applicant must also file a signed Acceptance of Appointment. This document indicates the applicant's agreement to

- serve as the personal representative of the estate.
- perform the duties the law requires.
- submit personally to the jurisdiction of this court in any proceeding relating to the estate that may be filed by any interested person.

## Statement of informal probate

The Statement of Informal Probate is the document the court uses to approve the appointment of the applicant as the personal representative of the estate.

## Letters Testamentary or Letters of Administration

If the request is approved, the court signs the document called Letters Testamentary (if there is a will) or Letters of Administration (if there is no will).

A certified copy of this document can be presented to third parties - such as banks and insurance companies - to show that the named person has been appointed by the court as personal representative of the decedent's estate.

## Objection to appointment of personal representative

Any person who does not agree with having the applicant named as personal representative, or who does not believe the estate should be informally probated, may file with the court an Objection to Appointment of Personal Representative form. If this is filed, the court will schedule a hearing. The case could be referred to [alternative dispute resolution](#). This changes the probate from informal to formal. Formal probate is beyond the scope of this page.

Feedback

## After the documents have been approved

Once everything has been filed with the court, the court will decide whether to appoint the applicant personal representative and sign the letters. If the court does appoint a personal representative, the person appointed personal representative should get at least one certified copy of the Letters of Administration (no will) or Letters Testamentary (will) to present to third parties, such as banks, insurance companies, etc.

Ask the clerk's office for **certified copies** (there is a small fee for this). Certified copies have an extra stamp and signature from the Clerk of Court, certifying that they are genuine copies. You might need certified copies to share with banks, title companies, and other people who ask to see your Letters Testamentary or Letters of Administration.

## Announcement of appointment and notice to Creditors

Once the personal representative has been appointed, they can then publish notice to creditors. It is not required to publish notice to creditors; however, the personal representative may wish to do so if they do not know about all of the decedent's debts. See [Utah Code 75-3-801](#) for more information.

## Forms

### Informal Probate - Without a Will

Required forms



Optional forms



Informal Probate - With a Will

Required forms



Optional forms



Small Estate Affidavit

- Affidavit for Collecting Personal Property in a Small Estate Proceeding  [PDF Form](#) |  [Fillable Form](#)
- [Department of Motor Vehicles Survivorship Affidavit](#) (vehicle)

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