

Say What? Probate Terminology Defined¹

March 26, 2010 by Rania Combs

Attorneys use a lot of words when talking about probate, but from talking to friends and clients, I realized that many people outside the legal community don't understand what we're talking about. Below are some commonly used probate terms defined:

Probate: Probate is the legal process of proving the validity of a will. Probate is also commonly understood to refer to the legal process in which the estate of a decedent is administered.

Decedent: Someone who is no longer alive.

Probate Court: The court with jurisdiction over the probate of wills and the administration of estates.

Will: A legal document that contains instructions about how a person's property should be divided after death. Typically, a will also names a guardian for minor children, and appoints an executor to administer the estate in accordance with the decedent's last wishes.

Testator (Testatrix): A man (woman) who makes a will.

Beneficiary: A person or entity eligible to some benefit under a will.

Heir: A person who is statutorily entitled to inherit property from the decedent when there is no will specifying how it should be divided.

Intestate: A person who dies without a will.

Intestate succession: The statutory scheme addressing who inherits the property of someone who dies intestate.

Administrator (Administratrix): A personal representative appointed by the Court to oversee the administration of an estate.

Executor (Executrix): A personal representative appointed by the testator to administer the estate in accordance with his last wishes.

Independent Administration: A probate proceeding in which a personal representative of an estate is able to administer an estate with very little court supervision.

Dependent Administration: A probate proceeding in which the personal representative of the estate must seek and receive approval from the probate court for tasks related to the administration of an estate.

Probate assets: Assets such as real estate, vehicles, and bank accounts which are owned exclusively by a decedent which contain no provision for automatic succession of ownership at death.

Non-probate assets: Assets that do not have to pass through probate to be transferred, including life insurance policies, pension plans, 401(k) plans, IRA's, joint bank accounts, payable-on-death accounts, and property owned as joint tenants with right of survivorship.

Estate: All the property the decedent owned. (gross estate) the total value of the assets as defined for estate tax purposes.

Estate tax: A tax imposed on the transfer of a "taxable estate" to a decedent's heirs and beneficiaries.

Guardian: A person granted full legal and personal custody of a minor child.

Guardian ad litem: A person appointed by the court to represent and protect the interests of someone who is underage or incompetent.

Self-proving affidavit: An affidavit that affirms the will was properly signed by the testator in the presence of two witnesses who observed the testator signing his will and heard him or her say that it was his or her last will and testament. A self proving affidavit eliminates the need for witnesses to appear in a probate proceeding to affirm the validity of the will.

¹ <https://texaswillsandtrustslaw.com/2010/03/26/probate-terminology-defined/>