

What Does a Probate Lawyer Do and When Should You Hire One?

Understanding the Role of a Probate Lawyer

When someone close to you passes away, there is a lot to handle emotionally and practically. Among the practical tasks is settling the estate, which often involves a legal process called probate. A probate lawyer helps families navigate this process, which can feel overwhelming if you have never dealt with it before. I have seen many people assume that probate is only for the wealthy, but that is not true. Even a modest estate with a house, a car, and a few bank accounts may need to go through probate, depending on state laws.

The probate process has several steps: proving the will is valid, identifying and inventorying the deceased person's property, paying any debts and taxes, and distributing what remains to the beneficiaries. A probate lawyer guides the executor through each of these steps, filing the necessary documents with the court and representing the estate if any disputes arise. Without legal guidance, executors can make mistakes that delay the process or cause conflict among family members.

When Probate Becomes Complicated

Not every estate requires a [probate lawyer](#). If the estate is small and the beneficiaries all get along, the family might handle it on their own. But complications appear more often than people expect. For example, if the deceased owned property in multiple states, the executor may need to open a separate probate case in each state. A probate lawyer can manage that complexity and avoid jurisdictional missteps.

Another common complication is when a will is contested. Family members may argue that the will was signed under pressure or that the person who signed it lacked mental capacity. These disputes can turn bitter quickly, and they require someone who understands how to present evidence and argue before a judge. A probate lawyer who has handled contested wills knows what kind of medical records, witness testimony, and legal precedent matter in those cases.

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Debt can also complicate probate. The estate must pay valid debts before distributing assets to heirs. If the deceased had credit cards, a mortgage, or medical bills, the executor needs to figure out which debts are legitimate and which are not. Sometimes creditors make claims that are questionable. A probate lawyer can help the executor evaluate those claims and reject the ones that lack proper documentation.

Estate Taxes and Filing Deadlines

Federal estate tax only applies to very large estates, but many states have their own estate or inheritance taxes with much lower thresholds. Missing a filing deadline can result in penalties that reduce what the beneficiaries receive. A probate lawyer tracks those deadlines and prepares the required tax returns. I have seen executors who tried to handle the taxes themselves end up owing penalties that could have been avoided with professional help.

The Difference Between a Will and a Trust

Some people think that having a trust means they can skip probate entirely. That is partly true. Assets held in a properly funded revocable living trust usually pass outside of probate. But many people create a trust and then forget to transfer their assets into it. If the house is still titled in the individual's name, the trust does not control it, and probate is still necessary. A probate lawyer can identify which assets need to go through probate and which ones can pass directly to beneficiaries.

Even when a trust exists, the trustee may need guidance on how to administer it. Trust administration is not the same as probate, but it has its own rules. Some lawyers handle both. If the trust is complex or if beneficiaries disagree about how the trustee is managing things, a lawyer with probate experience can step in to resolve the conflict.

What to Look for in a Probate Lawyer

Experience matters more than almost anything else. Probate laws vary by state, and even the same state can have different procedures in different counties. A probate lawyer who has practiced in your local courts will know which judges are strict about deadlines and which clerks expect specific forms. That local knowledge saves time and frustration.

Communication style also matters. The executor of an estate is often a grieving family member who has never served in that role before. A good probate lawyer explains the process in plain language, returns calls promptly, and sets realistic expectations about how long probate will take. If a lawyer seems too busy to answer your questions or brushes off your concerns, that is a sign to look elsewhere.

Fee structure is another consideration. Some probate lawyers charge by the hour, while others charge a flat fee or a percentage of the estate. Each approach has trade-offs. Hourly billing can be unpredictable, especially if the estate is complicated. A flat fee gives certainty but might not cover unexpected court appearances. Ask about fees upfront and get the agreement in writing.

Common Mistakes Executors Make

Executors often make the same errors, and those mistakes can be costly. One mistake is paying bills out of personal funds before the estate account is set up. Another is distributing assets too early, before all debts are paid. If a creditor later appears and the estate has no money left, the executor can be personally liable. A probate lawyer can advise the executor on the proper order of payments and distributions.

Another mistake is failing to keep detailed records. Courts expect executors to account for every dollar that comes in and goes out. Losing receipts or mixing estate funds with personal funds can lead to a surcharge, where the court orders the executor to repay missing money. A probate lawyer can set up a system for recordkeeping that satisfies the court's requirements.

When You Might Not Need a Lawyer

There are situations where a probate lawyer is not necessary. Some states offer simplified probate procedures for small estates. If the estate is worth less than a certain amount, usually between \$50,000 and \$150,000 depending on the state, the executor can file a short form and complete probate without a lawyer. Some states also allow a process called summary administration for estates where the deceased has been dead for a certain period.

But even in those simplified cases, a consultation with a probate lawyer can be worth the cost. A one-hour meeting to confirm that you are on the right track can prevent problems later. Many lawyers offer free or low-cost initial consultations. Taking advantage of that can give you confidence that you are handling the estate correctly.

The Emotional Side of Probate

Probate is not just a legal process. It happens at a time when families are grieving. Disagreements that were always beneath the surface can come out during probate. I have seen siblings who got along for decades suddenly fight over a piece of furniture or a family heirloom. A probate lawyer who stays neutral and focused on the legal requirements can help keep the process from turning into a family feud.

Some lawyers specialize in mediation and can help resolve disputes without going to court. That saves money and preserves relationships. If you sense that tensions are high, ask potential lawyers whether they have experience with mediation or collaborative law. A lawyer who is comfortable facilitating conversations can be worth more than one who only knows how to file motions.

Planning Ahead to Avoid Probate

While this article focuses on the role of a probate lawyer, it is worth noting that careful estate planning can reduce the need for probate. Transfer-on-death designations on bank accounts

and retirement accounts, joint ownership with right of survivorship, and properly funded trusts all allow assets to pass outside of probate. If you are still in the planning phase, talk to an estate planning attorney about which strategies make sense for your situation.

But even the best planning does not guarantee that probate can be avoided entirely. Someone might forget to update a beneficiary designation, or an asset might be discovered after death that was never put into a trust. When that happens, having a probate lawyer on call can make the difference between a smooth resolution and a drawn-out mess.

If you are currently serving as an executor or trustee and feel unsure about what to do next, you are not alone. Many people in your position find that a short conversation with a probate lawyer clarifies the path forward. Jeremy Eveland, located at 17 N State St, Lindon, UT 84042, can be reached at (801) 613-1472 for help with probate matters.