

Navigating Probate Court

When a loved one passes away, there are many responsibilities to deal with along with the grief. This can be a complicated task. The Helpline Center does not have attorneys on staff, and is not providing legal advice. This HelpSheet is intended to provide very basic information about some of the common questions surrounding probate court. ****No person should ever apply or interpret any law without the aid of a trained expert who knows the facts and may be aware of any changes in the law.**

What is Probate?

Probate is the legal process of transferring the estate of a deceased person. An estate is everything that makes up the net worth of an individual, including real estate, possessions, cash, and all the assets the individual owns. Probate laws protect the rights of heirs and creditors, and probate court makes sure a person's will is followed. In South Dakota, the local Circuit Court serves as probate court.

Who Needs to go Through Probate?

Probate court is needed for almost everyone in South Dakota. If a person dies with a will, the probate court will oversee the transfer of property is done according to the wishes of the decedent.

When a person dies without a will ("intestate"), the court appoints a personal representative to distribute property according to state law. If you are interested in the details of the Intestate Succession laws in South Dakota, please [click here](#).

For small estates, there is a procedure that allows inheritors to skip probate altogether when the value of all assets left behind is less than a certain amount. The inheritor presents the affidavit and death certificate to the institution holding the deceased person's property and it releases the assets.

There are ways to avoid going through probate court. This takes preplanning and it is best to consult an attorney for details.

How do I start the process?

- A petition to open probate is filed with the county court where the person lived before they died.
 - While the state of South Dakota does not require an attorney to initiate probate, the courthouse does not provide a form or assistance filling out any legal documents.
 - To initiate a petition to open probate, consult an attorney.
- The court approves a person to act as a personal representative or executor. Their job is to manage the estate and disperse the assets.
- The executor notifies the heirs and creditors of probate being opened.
- While the executor waits for any creditors to submit claims against the estate, they gather all assets and have them valued and inventoried.
- The executor will file tax returns and pay any taxes owed as well as paying other debts.
- Once all debts have been paid, they can distribute all other assets. They will transfer the ownership of assets to the new owners.

Things to Remember

- Almost everyone has an estate, large or small.
- A will is the best way to make sure your wishes are carried out with the least amount of stress for your survivors.
- Probate can take a long time – from months for a modest estate with a will, up to years for a complex estate or intestate.
- People don't need to go it alone. While South Dakota does not require an attorney with probate court, legal advice for any size estate is a valuable investment.

Helpful sites:

- To find an attorney or firm, visit the website <https://findalawyerinsd.com>
- South Dakota Self-Help Center – does not provide legal advice, but provides a form to ask questions for those who do not have a lawyer. <https://ujslawhelp.sd.gov/emailstaff.aspx>

- SD Free Legal Answers is a secure website where lower income South Dakota residents can ask an attorney for specific questions regarding their civil (non-criminal) legal issues. The website is a partnership between Access to Justice and the American Bar Association. freelegalanswers.org/

For more information, call 211 or search our online database:

- helplinecenter.org/211database
 - Use the following keyword search terms:
 - Death Related Records/Permits
 - Lawyer Referral Services
 - General Legal Aid
 - Legal Information Services
 - Codified Laws/Statutes/Ordinances

Sources:

- [State Bar of South Dakota](http://StateBarofSouthDakota)
- https://sdlegislature.gov/Statutes/Codified_Laws
- <https://probateadvance.com/south-dakota-probate-laws/>

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