



Probate Answers PDF

Idaho Probate

... Answers to the 20 Most
Common Probate Questions

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[Information Provided by Idaho Probate Attorneys](#)

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ANSWERS START HERE

1. What is Probate?

[Probate in Idaho](#) is the legal process of wrapping up the affairs of a person who has died. It involves paying the debts and transferring the deceased person's property to others. Technically, the word "probate" refers to the process of proving wills, but the term is usually used more broadly and refers to all of the affairs of a deceased person whether they died with a will or not.



2. When is Probate Required in Idaho?

The Idaho Code requires probate if the estate of a deceased person exceeds \$100,000 in value or contains real estate. Sometimes it's not clear whether probate is required or not. In that case, it's best to visit with an experienced Idaho Probate Attorney for a free consultation. Also, in some cases where the estate is valued at less than \$100,000, there may still be benefits in probating in order to make the process more formal. It often makes it easier to deal with creditors and heirs if a personal representative is appointed by the court. Check Out the Three Step Procedure to See if Probate is Required. In addition, if the decedent had a will, then the will must be submitted to probate in order to be legally effective.

3. Is Probate Required if the Deceased Person had a Will?

Yes, in order to be effective, a will must be submitted to probate. Many people share a misconception that if a person has a will when they pass away, probate is avoided. That is not correct. A will provides the intent of the person making it, but the will is not effective to legally transfer property until it is submitted to probate.

4. What Happens if a Person Dies in Idaho Without a Will?

The answer is yes, if the deceased left property which needs to pass to his or her heirs. A probate is required whether or not the deceased person left a will. The heirs of a person who left no will are determined by the Idaho laws of intestacy, found in sections [15-2-101 through 15-2-103 of the Idaho Code](#). The main purpose of probate for a person who left no will is to get a personal representative appointed who can then administer the estate.

5. Is There a Time Limit for Filing a Probate in Idaho?



Yes, the Idaho Code requires a probate to be filed within three (3) years after the death of the person. After that time, an action to declare heirs under the Idaho laws of intestacy may be filed, but the will cannot be probated and followed. Probate offers more options than an action to determine heirs so it's best to probate within the three (3) year period if possible.

6. Can a Person Avoid Probate if the Estate is Small?

Yes. If the probate estate does not exceed \$100,000, then the heirs may collect property of the decedent by signing an affidavit meeting the requirements of section 15-3-1201 through [15-3-1203 of the Idaho Code](#). A form for the affidavit can be found on the [Ada County Court Website](#).

7. How Much Do Attorneys Charge to Probate?

Most probate attorneys or lawyers in Idaho charge by the hour or charge a set fee for probate work. Hourly rates can range between \$150 to \$300 per hour. Set fees can run between \$787 (from [Idaho Probate Attorneys](#)) up to \$3,500 with some other firms. The court filing fees and costs are generally charged in addition to the legal fees. If a probate case becomes contested such as a dispute among heirs or disputes with creditors, then the legal costs can even be higher.

8. What is a Personal Representative?

A “Personal Representative” is the Idaho term for the person who administers the estate and executes the will. A personal representative may also be called the “executor” or “administrator” of the estate. The term Personal Representative means that the person appointed stands in the shoes of and represents the deceased in the probate process.

9. Who has the Priority or Right to be a Personal Representative?

A Personal Representative in Idaho must be an adult who is fit to serve. Fitness to serve will be determined by the court, but generally requires a sound mind and a lack of conflicts with the estate which would impair his or her impartiality. If more than one person desires to serve, is fit and meets the age requirement, appointment is given in this order:

- (a) the person nominated in the probated will
- (b) the surviving spouse of the decedent who is a devisee (heir) of the decedent;
- (c) other devisees of the decedent;
- (d) the surviving spouse of the decedent;
- (e) other heirs of the decedent;
- (f) any creditor, if no other person is appointed with 45 days after death of the decedent.



10. How Long Does Probate in Idaho Take?

This is one of those “it depends” answers. A personal Representative can usually be appointed within a couple of weeks of filing the initial paperwork with the court. Sometimes, that is all that is needed and then the Personal Representative can go about the business of administering the estate. The Personal Representative has authority to collect and sell property of the estate and to distribute property to heirs. If there are problems or disputes with heirs, then the matter may require a trial before the probate judge and this process can take much longer.

11. Can a Personal Representative Receive Compensation for Their Services?

A Personal Representative is entitled to be paid a reasonable fee for their service as a personal representative. Family members or related parties often do not request compensation but they are entitled to it. However, the fee must be reasonable depending on the circumstances and must be for services that actually apply to and benefit the estate. Also, if you are going to request compensation, then you need to keep good records of what you have done and the time involved. You need this in case some heir or some creditor complains that you are being paid too much.

12. Can a Personal Representative be Removed?

Yes. Any interested person can petition the court for removal of the Idaho Personal Representative. The court can order removal “for cause” if:

- Removal would be “in the best interest of the estate.”
- The Personal representative “intentionally misrepresented” facts in gaining his appointment, or

If the Personal Representative has:

- disregarded an order of the court,
- become incapable of discharging the duties of his office,
- mismanaged the estate, or
- failed to perform any duty pertaining to the office.

13. Can a Personal Representative be Required to Pay Debts of the Estate Personally?

Generally, no. A personal representative is not personally liable for the debts of the decedent. However, a personal representative acts in a fiduciary capacity and can

have some liability if he/she is negligent or wrongfully administers the estate. In other words, if a personal representative distributes assets of the estate to the wrong parties or distributes assets to heirs when creditors have not been paid, then they could be liable to repay the money. That's why it is important for a personal representative to get good legal advice from an experienced probate attorney.

14. What if There is not Enough Money in the Estate to Pay Creditors and Heirs?

In most cases, creditors who file valid claims against the estate are entitled to get paid ahead of the heirs. There are certain exceptions to this rule, such as the homestead allowance for surviving spouses and exempt property allowance for surviving spouses and minor children. In addition, certain creditors have priority over other creditors. So if there is not enough money to pay all creditors or to pay creditors and heirs, the personal representative must determine who gets paid first. If a personal representative pays the wrong parties and there is not enough money left to pay others, the personal representative could have some liability. The Idaho Code sets forth the priority in making payments which is basically as follows:

- The costs of the probate, including attorney's fees and Personal Representative compensation are paid first.
- All valid debts are paid second.
- Heirs get their shares from whatever is left after payment of the debts.

15. Why Can't I sell the House Without Probate?

If a surviving spouse is trying to sell the house, the house is most likely considered community property which means the deceased spouse has a community interest in the property. Their name cannot be removed from the deed without the court appointing a personal representative who then has legal authority to sign a new deed showing the surviving spouse as the sole owner of the property. As a practical matter, most title companies in Idaho will not close the sale of property, where a deceased person is involved, without the appointment of a personal representative who can then legally act on behalf of the deceased person and sign a deed transferring the interest of the deceased person in the house to the new owner.

16. Is a Lawyer Required to File Probate in Idaho?

Anyone can file a probate or file to be appointed as a personal representative as long as they know what to file and how to do it. People who try to file on their own are treated the same as people who file using an attorney. There are difference procedures in probate for different circumstances. For example, some situations allow for filing informally without court hearings where other situations require a formal filing that entail a court hearing. The process can get complicated so knowing what procedure to use and what documents to file takes some experience and understanding with the probate system.

17. Will an Idaho Probate Cover Property in Another State?

Generally, no. Sometimes personal property can be collected. Usually, if a probate is needed for property outside of Idaho, a probate will have to be filed in the state where the property is located. Sometimes, the other state will have a simplified system for an “ancillary probate” related to a probate already filed in Idaho.

18. How Does a Personal Representative Give Notice to Creditors?

The Personal Representative in an Idaho Probate can give notice of the probate to the creditors of the estate in one of two ways:

1. By publishing notice once a week for three consecutive weeks in a newspaper of general circulation in the county of the probate. A creditor’s claim is barred four months after the first published notice unless the creditor files a written claim.
2. By notification in a letter to a creditor to present claims within four months of the first published notice in a newspaper, or within 60 days of the letter, whichever period is later.

19. What are the Duties of a Personal Representative in Idaho?

Most probates have different circumstances so the procedures followed and the duties of a Personal Representative in an Idaho probate may vary depending on the circumstances but often include the following:

- (a.) Get control and possession of the assets of the estate.
- (b.) Prepare an inventory and appraisal (valuation) of property owned by the decedent at the time of his death, and send it to interested persons who ask for it.
- (c.) Report all financial matters of the probate to “interested persons” in the probate.

- (d.) File tax returns and pay taxes on estate property.
- (d.) Publish notice to creditors who may not be known.
- (e.) Pay the debts of and claims against the estate, including the costs of administration.
- (f.) Determine the distributions available to heirs.
- (g.) Distribute the inheritances to the heirs.
- (h.) Close the probate of the estate, either informally with an affidavit or formally with an order of the court. ([Idaho Code Sections 15-3-701 through 15-3-721](#))

20. How Can I Get More Answers to Probate Questions About My Particular Circumstances?

Idaho Probate Attorneys have been helping people with their probate questions and problems for **more than 30 years**. You can contact us anytime and we'll answer your questions for **FREE**. If you decide to use our probate services, you won't find a more efficient service in Idaho and we believe you'll find our charges for legal services to be the most cost efficient anywhere.

Consultations Are Free - So Call Today
(208) 322-8865

[Website: Idaho Probate Attorneys](#)

Email: bmontgomerylaw@gmail.com

READ WHAT A FEW OF OUR CLIENTS OUR SAYING

*After my father passed away unexpectedly my mother needed to file “Representative of Estate” probate papers to deal with all of the legal matters my father’s death brought on. We checked out three attorneys, the prices quoted were \$3500, \$1800, and \$787. Bob was extremely helpful and the lowest price. Bob, personally delivered the paperwork to my mother's house the day we contacted him. Our situation required that the judge signed the papers as soon as possible. Bob contacted the clerk and found a way to expedite the papers and they were signed by the judge the day after they were filed, which is unheard of. We received unbelievable service from a complete stranger who charged a fraction of the price that the others attorney’s quoted us. Thank you Bob for all of your help. **Beatrice Lucia***

[\(More Client Reviews on Next Page\)](#)

I chose Idaho Probate Attorneys to represent me following the death of my husband. I had contacted several lawyers in Idaho to get quotes to finalize the will. Bob Montgomery contacted me immediately by phone as soon as he received my e-mail and we agreed that he would represent me. Not only was his firm the best price, he was prompt and compassionate, the probate of the will was complete within 4 weeks. A few questions came up after that time and I was able to contact Bob for advice and each time I had a question he got back to me almost immediately. Even though I live in Canada and the estate was in Idaho, everything went smoothly. I would highly recommend Bob Montgomery! **JACQUELINE CLAIR**

Mr. Montgomery was very responsive whenever we contacted him, his service was excellent and very timely, and his rates were very reasonable. Would not hesitate one nanosecond to refer him to my friends and family.
LARRY SMITH

**The Three Step Process to
Determine if Probate is Necessary
Starts on the Next Page**

THE THREE STEP PROCEDURE TO DETERMINE IF PROBATE IS REQUIRED STARTS BELOW

1. Decide if the Decedent Had a Will: If the decedent did have a will, then the will must be submitted to probate to be effective. It is a common misconception that if there is a will, then there is no need for probate. In order for the person identified in the will to be the personal representative to have legal authority to act for the estate, that person must be appointed by the probate court. This is true even if the estate is worth less than \$100,000 as indicated above. ([Idaho Code 15-3-102](#)) A person who has custody or possession of a will of a deceased person is obligated to provide it to a person able to secure probate or to the probate court ([Idaho Code 15-2-902](#))

It could be that if there is little value in an estate, then the heirs could proceed to try and collect property by the small affidavit procedure described in Answer 6 above, but this procedure has its limitations.

2. If the Decedent Did Not Have a Will: If the decedent did not have a will but the estate contains **real estate**, then the estate is required to be probated. As a practical matter, title to the real estate will not be able to be transferred in a sale of the property, without authority of a personal representative or court authorization. The best way to check this out is to contact a title company which would normally handle the closing of the real property sale, and ask them what will be required. Most title companies will not close a sale without the appointment of a personal representative in probate.

3. If the Decedent Did Not Have a Will: If the decedent did not have a will and there is no real estate in the estate and the estate is worth less than \$100,000, then there is no requirement for probate. However, probate may still be helpful because often times creditors or other people who hold property of the estate do not want to deal with anyone other than a court appointed personal representative. Getting a personal representative appointed often makes the process flow more quickly and easily.

Consultations Are Free - So Call Today
(208) 322-8865

[Website: Idaho Probate Attorneys](#)