

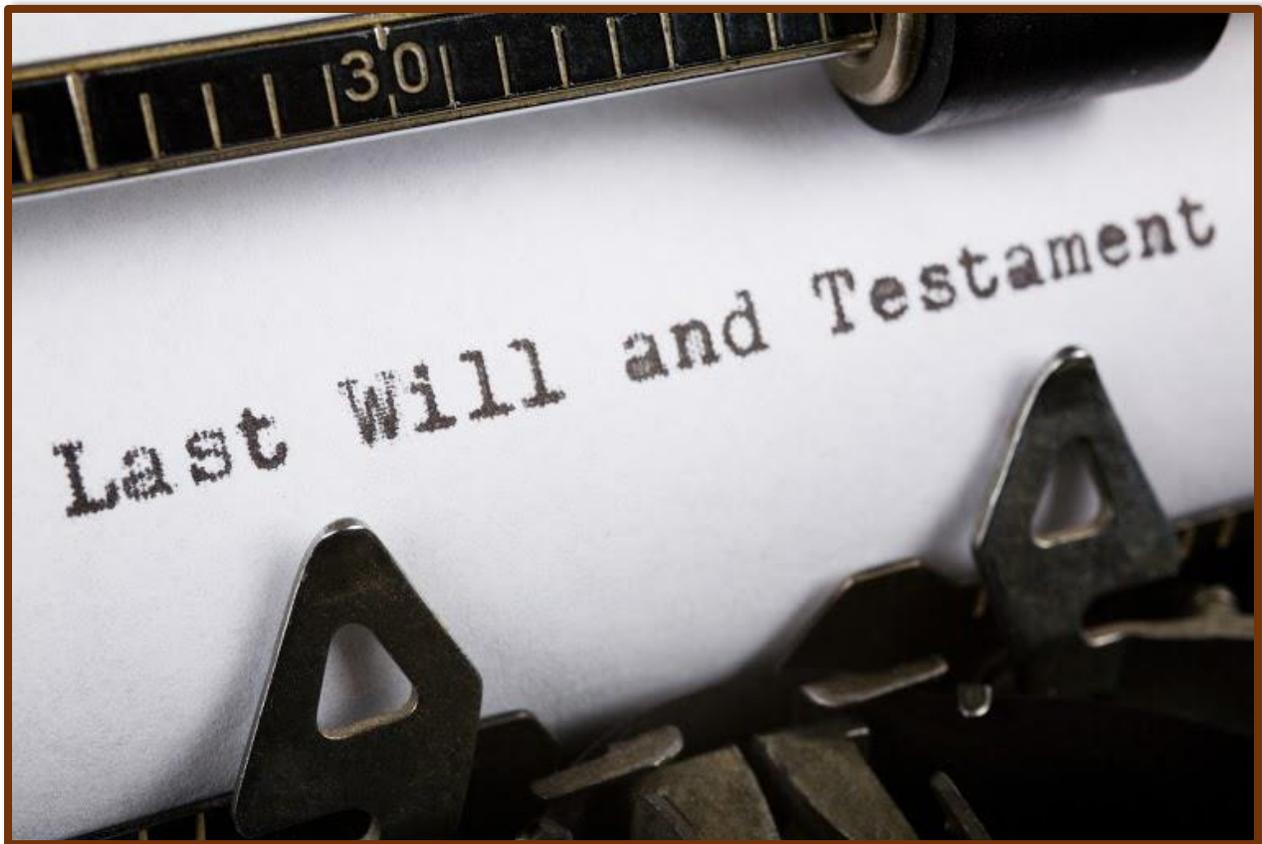
THE TEXAS PROBATE PROCESS

“Most people become involved in the probate process at some point in their lives. Whether you are appointed as executor of a Last Will and Testament, volunteer to be an administrator when a loved one dies, or receive a gift from a decedent’s estate, chances are that you will find yourself embroiled in probate at some time in the future.”



STEPHEN A. MENDEL

Houston Texas Estate Planning Attorney



Most people become involved in the probate process at some point in their lives. Whether you are appointed as executor of a Last Will and Testament, volunteer to be an administrator when a loved one dies, or receive a gift from a decedent's estate, chances are that you will find yourself embroiled in probate at some time in the future.

If you have never been through the Texas probate process it can be somewhat intimidating. Although each estate probate presents different facts and circumstances, there is some basic information that is common to the probate of most estates.

TESTATE VS. INTESTATE



The first thing that should occur following the death of an individual is a search for the decedent's Last Will and Testament. A decedent who left behind a valid Will is said to have died "testate," while a decedent who failed to execute a valid Will prior to death is said to have died "intestate."

People typically keep a Will among personal documents, in a safe deposit box, with their attorney, or with a close family member. Before doing anything else it should be ascertained whether or not a Will exists. If one is located, an original, signed copy will likely need to be presented to the appropriate court in order to open the probate of the decedent's estate.

FORMAL PROBATE VS. SMALL ADMINISTRATION

In Texas, an estate can be probated in more than one way. The most formal way to administer an estate is formal probate with court oversight.



Independent administration, muniment of title, and a small estate affidavit are other options. As the name implies, independent administration allows the executor/administrator of the estate to conduct all administrative

functions without the need for court approval after the court has opened the probate and approved the appointment of the executor/administrator. The decedent has the ability to specifically approve independent administration in his or her Will. Doing so will typically save both time and money during the probate process. When the only purpose of probate is to clear the title to property and there is no need for an executor/administrator, muniment of title is an option.

Finally, if the decedent died intestate and the total value of the property, excluding the homestead, exempt assets, and non-probate assets, is less than \$50,000 it may be possible to use a small estate affidavit. This method

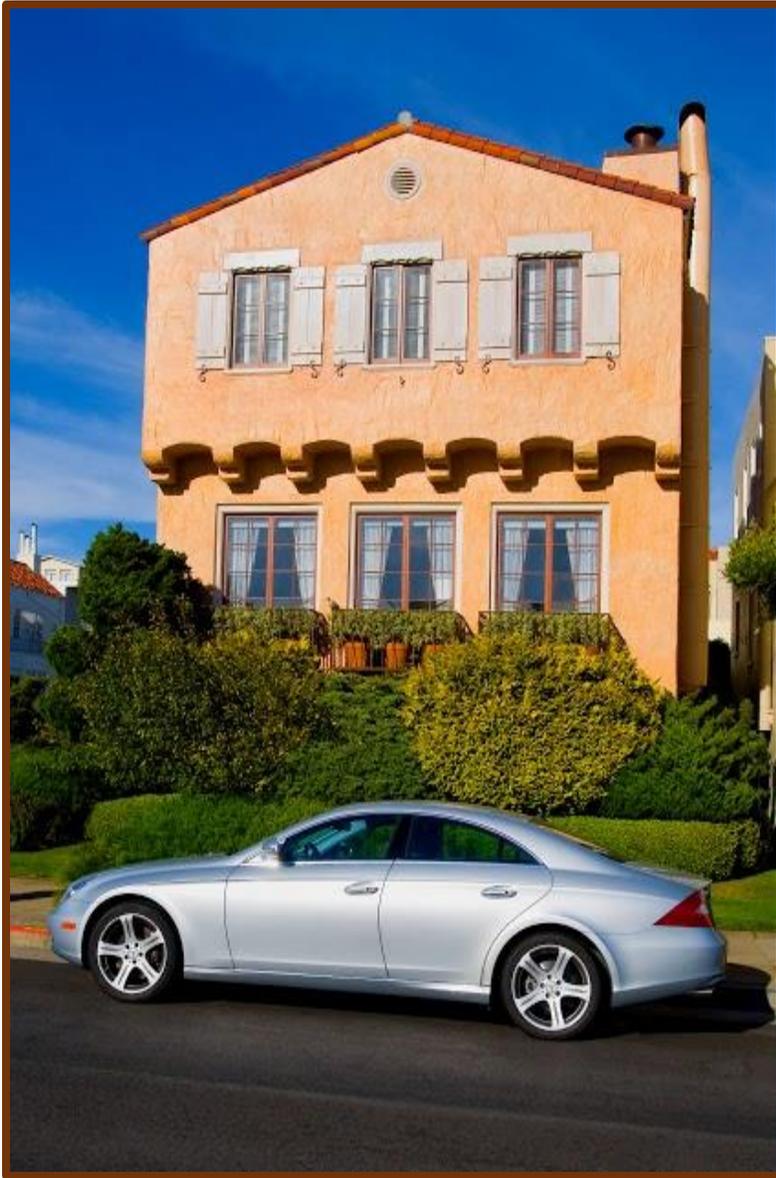
allows the heirs of the estate to sign an affidavit stating they are entitled to the estate property.

UNDERSTANDING THE PLAYERS

It helps to understand some of the common terminology as well as have a basic understanding of who the “players” are in the probate process. The following are some common terms:

- **Administrator** – person who petitions to administer an estate or who is appointed by a court to administer an estate.
- **Beneficiary** – person named by a testator in a Will as receiving a gift.
- **Heir** – a person who inherits under the state’s intestate succession laws.
- **Intestate**– term used when the decedent died without a Will.
- **Estate** – all assets owned by the decedent at the time of death.
- **Executor** – person named in a Last Will & Testament to administer an estate.
- **Probate Court** –court that will oversee the probate of an estate.
- **Testator**– person who creates and executes a Will.
- **Testate**-- term used when someone dies with a valid Will in place.
- **Will contest** – term used when someone challenges the validity of a decedent’s Will.

ESTATE ASSETS



The primary reason for creating an estate plan for most people is to ensure that their estate assets are distributed according to their wishes upon death. This is also one of two primary goals of probate. The other primary goal is to ensure that debts of the estate are paid. Unless an estate qualifies to use muniment of title or a small estate affidavit in lieu of formal/informal probate, the executor or administrator will be responsible for locating,

inventorying, and valuing all of the estate assets at the beginning of the probate process. Depending on the size of the estate this can be a cumbersome task which often requires the assistance of professionals.

ESTATE DEBTS



Just as most people die owning assets, most people also die owing debts. To ensure that creditors have the opportunity to collect on debts of the estate the executor/administrator is required to personally notify known creditors and to notify unknown

creditors by publishing notice of the probate in a local newspaper. Creditors then have a statutory period of time within which to file a claim against the estate. The executor/administrator must then review each claim and decide whether to approve or deny the claim.

Claims that are approved are paid out of estate assets, while claims that are denied may end up in litigation. If there are insufficient liquid assets with which to pay approved claims, then the executor/administrator must decide which estate assets to sell to provide the liquidity necessary to pay the claims.

ESTATE LITIGATION



Occasionally, the executor/administrator will be required to defend an estate as a result of litigation filed during the probate process. This may be a result of a creditor claim that was denied or the result of a Will contest filed by a beneficiary or heir of the estate.

Because the probate process in general typically requires an understanding of a wide variety of areas of the law, an executor/administrator typically retains the services of an estate planning attorney to assist throughout the process; however, the executor/administrator is ultimately responsible for overseeing the probate process, including defending the estate during litigation.

ESTATE GIFTS

Once all of the estate assets have been accounted for and all creditor claims reviewed, your executor/administrator will need to prepare, file, and pay both personal and gift and estate taxes owing on the estate. At that point, the remaining assets are ready to be transferred to the intended beneficiaries or heirs of the estate.

As you can see, the probate process can be lengthy, complicated, and costly. A well thought-out estate plan, however, will go a long way to reducing the costs of probate as well as the amount of time it takes to probate your estate.

Texas Young Lawyers Association, [Texas Probate Passport](#)
State Bar of Texas, [“There Has Got to Be an Easier Way!” Alternatives to Probate](#)

About the Author



Stephen A Mendel

Stephen A. Mendel is a member of the American Academy of Estate Planning Attorneys, a national organization that serves the needs of legal professionals whose practices focus on estate planning and asset protection. The Academy fosters excellence among its members and helps them deliver the highest possible service to their clients. Stephen A. Mendel provides a broad spectrum of strategies and planning tools that can accomplish very diverse goals.

Mr. Mendel is an attorney who focuses a substantial part of his practice on estate planning. Mr. Mendel's guiding principle is to provide his clients with quality legal services tailored to each client's specific needs and goals.

Mr. Mendel has been providing quality estate planning for Houston and surrounding area clients for many years. His firm helps numerous people who are concerned about protecting their families from the devastating legal effects of disability and death. The aim of the firm is to help you accomplish your estate planning goals and to take the mystery out of the planning process.

Specific services include, but are not necessarily limited to, design and preparation of wills & trusts, asset protection, use of family limited partnerships as part of the planning process, buy-sell agreements, business counseling, and succession of closely held, family owned businesses.

The Mendel Law Firm, LP
1155 Dairy Ashford
Suite 104
Houston, TX 77079
Phone: (281) 759-3213
Fax: (281) 759-3214
www.mendellawfirm.com