

**HANDLING AN ESTATE IN NEW YORK***A legal information resource by the Cancer Advocacy Project*

When a loved one passes away, any outstanding debts and taxes must be paid and their property distributed in a timely manner. This is typically handled by a close family member in the Surrogate's Court in the county where the deceased person (the "decedent") lived. Distribution can follow the wishes in a Will prepared by the decedent (a "probate proceeding") or, if no Will was prepared, then according to the law (an "administrative proceeding"). In New York, there are three types of estate proceedings:

**VOLUNTARY ADMINISTRATION**

For "small estates" with property totaling \$50,000 or less and any 'real property' (e.g. a house) is jointly-owned with someone else and is not being sold.

**PROBATE**

For estates either with property totaling at least \$50,000 and/or that include real property where the decedent left a valid Will.

**ADMINISTRATIVE PROCEEDING**

For estates that total more than \$50,000 and/or that include real property but where the decedent did not leave a valid Will.

# VOLUNTARY ADMINISTRATION

Voluntary administration is the process used, whether or not there is a valid Will, when the decedent has left a small estate, that is, less than \$50,000 in personal property and any 'real property' (e.g. a house, condo or land) was jointly-owned and is not being sold. During voluntary administration, the court issues certificates for the estate's assets and names a Voluntary Administrator to distribute them. The process can be started [online](#).

## WHO FILES FOR VOLUNTARY ADMINISTRATION?

If there is a Will, the executor of the Will starts the voluntary proceedings with the Surrogate's Court. If there is no Will, the closest family member to the decedent will file with the court.

## HOW MUCH DOES IT COST TO FILE?

One dollar (\$1.00)

## WHAT ARE THE STEPS OF VOLUNTARY ADMINISTRATION?



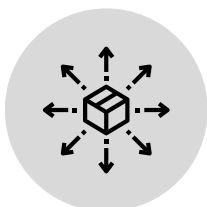
### 1. FILING

The executor of the Will or the closest family member to the decedent (if no Will) must file a small estates affidavit and death certificate with the Surrogate's Court and provide additional information. The court names the Voluntary Administrator.



### 2. COURT PROCESSING

The court processes and approves the affidavit and then issues a certificate for each asset listed in the affidavit.



### 3. DISTRIBUTION

The Voluntary Administrator uses the certificates to distribute the assets. If there was a Will, the people named in it ("beneficiaries") will inherit. If there was no Will, the assets will be distributed to the decedent's family members ("distributees") according to the laws of intestacy.

# PROBATE

Probate is the legal procedure used when the decedent left a valid Will and their estate is worth more than \$50,000 in personal property and/or includes real property (such as a condominium, house or land). During this process, the Surrogate's Court ensures that the decedent's Will is real, was properly signed and witnessed, and then settled (administered) according to the Will. After approving the validity of the Will, the probate process includes appointing the Executor named in the Will to carry out the tasks stated in the Will.

## WHO FILES FOR PROBATE?

The Executor of the Will must file a probate petition with the court to begin the process.

## WHAT IS THE COST TO FILE?

The cost depends on the value of the estate, but it can range from \$45- \$1,250 in New York State.

## WHAT ARE THE STEPS OF PROBATE?



### 1. NOTIFICATION

The person named as Executor of the Will must notify all individuals and guardians of children or incompetent persons who may receive property from the estate.



### 2. COURT REVIEW

The court reviews a variety of documents, including the original Will, the petition for decree of probate and appointment of an Executor, death certificate, and more.



### 3. DECREE ISSUED

The Surrogate's Court issues official "Letters Testamentary" that gives the Executor authority to carry out his/her duties. Property is then distributed according to the Will.

# ADMINISTRATIVE PROCEEDING

Administration is the process used when there is no Will but the estate is worth more than \$50,000 in personal property and/or includes real property (such as a house). During this process, the Surrogate's Court grants Letters of Administration, usually to a family member of the decedent, that authorizes them to distribute the decedent's property according to intestacy law.

## WHO FILES FOR ADMINISTRATIVE PROCEEDING?

In New York, there is no rule for who can file the administrative proceeding, but it is typically a close relative of the decedent.

## WHAT IS THE COST TO FILE?

The filing fee depends on the value of the estate.

## WHAT ARE THE STEPS OF AN ADMINISTRATIVE PROCEEDING?



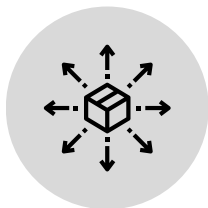
### 1. FILING

The closest family member files for administration with a copy of the death certificate, funeral bill and the Petition for Letters of Administration, which should include a list of the decedent's debts and closest family members ('distributees').



### 2. NOTICE

The distributees must be given citation (notice) that the Surrogate's Court has authority over the matter. The citation will tell the distributee that someone is asking for Letters of Administration to manage the decedent's estate.



### 3. DISTRIBUTION

The assets of the estate are distributed according to the laws of intestacy (laws that specify which family members receive property/assets of the deceased).

# NEED LEGAL HELP?

The City Bar Justice Center's **Planning and Estates Law Project (PELP)** offers free legal advice and assistance with probate and estate administration matters to New York City residents with limited resources.



212-382-6756



[www.citybarjusticecenter.org/projects/planning-and-estates-law-project/](http://www.citybarjusticecenter.org/projects/planning-and-estates-law-project/)

The NYC Bar's **Legal Referral Service** provides referrals to private attorneys who offer free 30-minute consultations, including estate administration questions. This will help you decide whether to hire an attorney to assist you with the process.



212-626-7373



[www.nycbar.org/get-legal-help/](http://www.nycbar.org/get-legal-help/)

For free advice or assistance with other life planning issues (Wills and advance directives), please contact the **Elderlaw Project** (ages 60+) at 212-382-6658 or the **Cancer Advocacy Project** (for cancer patients and survivors) at 212-382-4785, if you live in NYC and have limited resources.

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