



# PROBATE AND TRUST & ESTATE ADMINISTRATION

WE WILL DO EVERYTHING WE CAN TO MAKE THIS DIFFICULT PROCESS EASIER FOR YOU.

VOLUNTARY ADMINISTRATION	INFORMAL PROBATE	FORMAL PROBATE
<p><u>This process is only available when:</u></p> <ul style="list-style-type: none"> <li>• 30 or more days have passed since the date of death; &amp;</li> <li>• the total of all the assets included in a decedent's estate is \$25,000 or less, (excluding the value of one vehicle).</li> </ul> <p><u>This process is not available if the decedent:</u></p> <ul style="list-style-type: none"> <li>• was not a Massachusetts resident at the time of death, or</li> <li>• owned any real property.</li> </ul> <p>A person who chooses to wrap up the decedent's affairs may serve as a Voluntary PR ("VPR").</p> <p><u>The VPR will not receive Letters of which are often required, such as to obtain the decedent's medical records.</u></p> <p>Instead, the VPR will only receive an attested copy of the Voluntary Administration Statement he or she filed with the Court.</p> <p>The VPR serves at his or her own risk &amp; will be personally liable for any wrongs in the administration of the decedent's estate.</p>	<p>This process is intended to be simplified and somewhat expedited. You are still required to file all the same forms, but the process is overseen by a Magistrate, rather than by a Judge.</p> <p><u>This process is available when:</u></p> <ul style="list-style-type: none"> <li>• 7 or more days have passed since the date of death if the decedent was a Massachusetts resident; or</li> <li>• 30 or more days have passed since the date of death if the decedent was not a Massachusetts resident, unless:</li> <li>• the person asking the Court to appoint her or him PR was already appointed PR in another jurisdiction,</li> <li>• or the decedent's Will specifies that the estate should be subject to Massachusetts law.</li> </ul> <p><u>This process is unavailable when:</u></p> <ul style="list-style-type: none"> <li>• it has been more than 3 years since the date of death; or</li> <li>• there may be any disputes or "contests" about the matter; or</li> <li>• you do not have the original Will; or</li> <li>• the original Will has handwritten words added, or words crossed out; or</li> <li>• there is more than one Will presented; or</li> <li>• you do not have an official death certificate; or</li> <li>• you do not know the identities or whereabouts of any heirs or people, the decedent intended to leave something (the law requires reasonably diligent search); or</li> <li>• there is a minor child or incapacitated spouse who is not represented by someone other than the person asking the Court to appoint him or her PR of the estate; or</li> <li>• someone who was the decedent's heir or devisee has also since died and does not yet have an appointed PR; or</li> <li>• the person asking the Court to appoint him or her does not have priority under the law to serve; or</li> <li>• a Special PR is required because the appointed PR is unable to serve or someone is concerned he or she should not serve; or</li> <li>• supervised administration is required for any reason; or</li> </ul>	<p><u>This process is best when:</u></p> <ul style="list-style-type: none"> <li>• any of the reasons that made Voluntary or Informal Probate unavailable apply;</li> <li>• the decedent owned real property in his or her name; or</li> <li>• there are substantial assets in the decedent's estate.</li> </ul> <p>This process is preferable because, <u>no less than one year from the date of death</u>, the PR may petition the Court to issue a Decree and Order of Complete Settlement to formally and finally close out the estate and relieve the PR of any risk of liability for claims against the estate.</p>

	<ul style="list-style-type: none"> <li>• there is any reason to amend the initial Petition to the Court; or</li> <li>• any hearings or court orders are required, including a Decree and Order of Complete Settlement of the Estate, which is what finally closes out the estate and relieves the PR of personal liability related to the administration of the decedent's estate. For that reason, it is generally preferable to proceed with the formal probate process even if Informal Probate would otherwise be available.</li> </ul>	
<p>INITIAL COURT FILING FEE: \$115</p>	<p>INITIAL COURT FILING FEE: \$390</p>	<p>INITIAL COURT FILING FEE: \$405 ORDER OF COMPLETE SETTLEMENT FILING FEE: \$75</p>

## Glossary of Terms

**Decedent** - the person who died .

**Testator** - the person who makes a Last Will & Testament.

**Personal Representative ("PR")** - formerly called "Executor," the person in charge of wrapping up the decedent's final affairs.

**Heirs at Law** - the people who have a legal right to inherit through a decedent who died without a Will ("intestate").

**Devises** - the people the decedent named in her or his Last Will & Testament to take property.

**Letters of Authority** - (a/k/a Letters Testamentary) from the Court showing the PR has authority to act on behalf of the decedent's estate.

**Timing.** The timing of the Probate process is, in all cases, driven by the Court, its personnel, its schedule, and the cooperation and responsiveness of the person seeking appointment as PR. Once the initial Petition is filed with the Court, it may take anywhere from 3-6 weeks to receive Letters of Administration. Provided there are no delays or unexpected issues that arise, the average length of time to fully settle an uncomplicated estate is approximately 12-16 months.

**Required Notice.** The person asking the Court to appoint him or her PR must provide notice, by in-hand delivery or by mail, to all heirs at law, devisees (including any charities), anyone who has an equal or higher right, under the law, to be appointed PR; anyone already appointed PR anywhere; the Massachusetts Attorney General if there are any named charities or if the decedent left no spouse or heir at law; anyone appointed to represent an incapacitated or underage heir at law or devisee, and anyone else appropriate. The Court also orders Publication of Notice about the Probate proceeding in a newspaper. The newspapers determine the fees which generally average approximately \$350.

**Deeds to Real Property.** If the decedent owned real property in his or her name, it will be necessary to record documents with the Registry of Deeds which may total anywhere from \$75 to several hundred dollars depending on how the property has been titled and whether the title is registered with the Land Court.

**TOTAL AVERAGE FORMAL PROBATE FILING & RECORDING FEES PAYABLE TO THE COMMONWEALTH: \$905**