

PROBATE IN VIRGINIA: How to Begin

Initial steps to take immediately when someone has passed away:

- **Get multiple copies of the person's death certificate.** Start with at least 10. Many places will require originals.
- **If the deceased person (decedent) had a will, the person named as the executor should find it and safeguard it. Never discard an original will.** Even if you don't use it for probate now, an original will is very valuable and should be kept safe. You never know when you might need it in the future.

Steps to take within the first 30 days when someone has passed away:

- **If the decedent was a servicemember, locate a copy of the person's DD-214** or request a copy. You will need this document for any monetary benefits that the servicemember may be entitled to.
- **Make a list of the assets of the decedent.** Did he/she own a home, have a bank account, life insurance, pension, retirement accounts, certificates of deposit etc? Look for statements of account coming in the mail if you don't know what the person owned.
- **Make a list of the decedent's debts:** What bills are coming in the mail?
- **Locate a copy of the decedent's taxes from the prior year if possible.** This can be helpful for clues about assets if nobody knows.
- **If the decedent did not have a will, make a list of the decedent's closest relatives and next of kin.**

What is probate?

Probate is a court supervised process that you may or may not have to go through when somebody passes away. Probate can apply to situations where someone has a will or never had a will. Probate literally means "to prove." It is the process of proving a document is a genuine will (when there is one). The probate process still may be necessary even if there was no will.

The probate process is different in every state. The information contained here is specific to probate in Virginia.

Is probate in Virginia even necessary?

- **No, if:**
 - **All assets were jointly titled** with someone who is still alive (i.e. you owned your home with your spouse and both names were on the title. One spouse has passed away and the other spouse is still living.)
 - Or in rare circumstances if any/all assets were held in the name of a trust
 - And/or had **beneficiaries** named (and the beneficiaries are still alive)
 - In the case of a **vehicle**, held solely by the decedent, where a will designates who shall receive the Tangible Personal Property, use a Virginia DMV form and copy of the will to transfer the vehicle

PROBATE IN VIRGINIA: How to Begin

Is probate in Virginia even necessary?

- **Yes, if:**
 - **Any assets** such as real property were **owned solely in the name of the person who has passed away** (and there was no transfer on death deed in the case of real property)
 - And/or assets did **not have a beneficiary named** (or the named beneficiary predeceased)
 - And/or if **any assets that were not jointly titled and do not have a beneficiary named are less than \$50,000 and the total value of the probate estate is less than \$50,000**
 - See the Virginia Small Estate Affidavit for getting access to this asset
 - May be used for assets such as bank accounts, certificates of deposit, brokerage accounts, tax refund, stock etc.
 - If the total probate assets are below \$50,000, the probate process will be very short
 - And/or if any asset that was held solely by the deceased individual and did not have a beneficiary named, has a value on the date of death of **more than \$50,000.00**

For any assets that do not require probate,

- If the home was held jointly with someone who is still alive, the executor (or family member or friend willing and able to handle things when there is no will) will need to file an original of the decedent's death certificate with the clerk in the city or county where the decedent owned a home.
- The executor may begin contacting the companies and financial institutions where beneficiaries were named in order to notify the company of the person's passing, and to request the necessary forms to have money be distributed to the beneficiary.
- The executor may fill out a Small Estate Affidavit for any assets that require it. The executor will need to schedule an appointment with the clerk of court to file the original will at the courthouse. If there is no will, then this step is not required.
- The executor or person who is to receive the tangible personal property under a will may fill out the Virginia DMV form and take it to DMV to transfer the vehicle title

For any assets that will require probate:

- You may want to hire a private attorney to help you with the process. This can be expensive, but may be necessary if you are overwhelmed by the forms or need help understanding things.
- If you want to handle the probate process on your own, the forms are available on the Virginia Court Website at: <https://selfhelp.vacourts.gov/node/37/probate-forms>
- You will need to contact the Clerk of Court in the city or county where the decedent resided to make an appointment.
 - **You will need to take the following items to this first appointment:**

PROBATE IN VIRGINIA: How to Begin

- 1) The decedent's **original will** (if there is one) and any original codicils [amendments to the will] (if there were any)
 - 2) An **original death certificate** for the decedent
 - 3) Applicant's government issued photo i.d.
 - 4) "**Probate Information Form**" Form CC-1650
 - 5) "**Probate Tax Return**" Form CC-1651
 - 6) A "**List of Heirs**" Form CC-1611
 - 7) **Check, cash, money order, or credit card** (check with the clerk for what is acceptable) to pay probate costs and fees
 - 8) If you are not the primary named executor, you will need to take a "**Waiver of Qualification**" Form CC-1608 signed by the primary executor (or a death certificate for that person if he/she predeceased)
 - 9) If the will was not properly executed or if it is a handwritten will, you will need "**deposition**" forms from the witnesses and/or notary Forms CC-1601, 1602, 1603, or 1604 as applicable
 - 10) If a bond is required, you will need to arrange to have a **bondsperson** present at your appointment. You may ask the clerk for a list of agents in your area.
 - 11) If the named executor, or person applying, is not a resident of Virginia, you will need a "**Consent of Nonresident Fiduciary for Service of Process**" Form CC-1610 and must have the resident agent sign this form before the appointment.
 - This will typically be an estate planning attorney that you will pay a fee to in order to receive mail and to be served with any lawsuits that may come against the estate. The resident agent will forward all this material to the executor to handle or you can hire the attorney to do more work if necessary.
- There will be many more appointments with the clerk, deadlines, and forms to fill out during the course of probate. You will need to consult a private attorney if you need help filling out the forms. The clerk of court may or may not be able to tell you which forms to fill out. The complete probate process involves many steps, and typically lasts at least a year, if not longer.