

# Estate Administration

## Frequently Asked Questions

### Q. What is probate?

A. Probate is a legal process that ensures that a deceased person's debts are paid and assets are allocated to the correct beneficiaries. Probate is very much interrelated with estate administration and estate tax planning. For that reason, Hemenway & Barnes takes a holistic approach to probate matters, always ensuring that the estate administration and estate tax plan are taken into account and not in conflict with probate proceedings.

### Q. When is it required to probate a deceased person's will?

A. If there are no assets in the deceased person's name at the time of their death, there may not be a need for probating their will. However there may be valid reasons to go through the probate process even in cases where there are no probate assets.

### Q. How complicated is a probate proceeding?

A. Under recently revised laws in Massachusetts, it is a relatively streamlined process.

### Q. How long does it take to settle an estate?

A. It typically takes two years to settle an estate, but the length of administration can vary depending on the nature of the assets and size of the estate.

### Q. Is there a minimum estate size that you will take?

A. We have no minimum or maximum estate sizes. The estates we work on typically range from \$1.75 million to \$75 million.

### Q. What if there are Transfer on Death documents in place?

A. Ideally, the use of Transfer on Death documents were implemented as part of the overall estate planning strategy to avoid liquidity issues during estate administration. If an account is a transfer or payable on death account, it is not a probate asset. It will be paid directly to the named beneficiary and will not pass in accordance with the will or estate plan.

### Q. If a deceased person has no probate assets, is there still a requirement to file estate tax returns?

A. Yes. The IRS and some states impose an estate tax on ALL assets the deceased person owns or controls at the time of their death. If their entire estate exceeds the federal or state filing requirements, estate tax returns must be filed.

### Q. Do you offer services to establish estate accounts?

A. Our experience shows that the administration of an estate proceeds more smoothly when there is an account opened for the estate in our Trust Department through which all estate deposits and disbursements flow. Where we provide custody only, the custody charge will be determined in accordance with our schedule for custody. Where we have investment responsibility for estate assets because one or more H&B lawyers are fiduciaries, then the firm's standard schedule for fiduciary services should be applied to the assets for which investment responsibility is being undertaken.

**Q. What if Hemenway & Barnes has a conflict with the estate or beneficiaries?**

A. On rare occasions, the interests of a client's estate and the beneficiaries of the client's estate may be in conflict with the interests of Hemenway & Barnes or a Hemenway & Barnes attorney who is serving as the estate's fiduciary. In those limited situations, we will fully disclose the conflict and attempt to resolve the conflict in a manner that enables us to perform our obligations in accordance with this statement.

**Q. What costs are involved in settling an estate?**

A. The primary expenses in settling an estate include court and filing fees, administrative costs associated with inventorying and disposing of assets, tax preparation, and fiduciary and legal fees.

The variety of estates and the diverse nature of fiduciary and legal services performed and responsibilities assumed make it difficult to provide a formula setting forth the charges for administering a client's estate. For example, the services may include those of a Hemenway & Barnes attorney who is named to serve as the estate's fiduciary, an experienced estate administrator who performs a significant portion of the work, and the services of our Tax Department if tax accountants are employed to prepare income tax returns. In each instance, the time is rendered at hourly rates commensurate with the skills and experience of the individuals.

**Q. Where do I start?**

A. When a loved one dies, we know it can be very overwhelming. It helps to have a professional by your side to help guide you through some of the complex legal hurdles that you face, such as probating a will and administration of the estate. Getting started is as easy as giving us a call.