

Navigating Oklahoma's probate law process

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A probate is the legal process through which the property of a person who has passed away is administered, the decedent's debts are settled, and the title to property is transferred to the people named in the will or to those people named in the applicable statute, if there is no will.

Depending on the type of property owned and how the decedent owns the property, a probate is not always necessary to transfer ownership. For the property, a probate is not always necessary to transfer ownership. For example, people, often married couples, can own property jointly with others in a way that causes it to pass directly to the other owner when one of the owners dies. Most joint bank accounts pass automatically to the surviving owner at the death of the first owner. Property owned through a trust passes according to the terms of the trust without a probate.

These are just some examples of property that would pass automatically at death. If ownership to all of the decedent's property transfers automatically at the decedent's death, a probate would not be necessary in order to reassign ownership. Conducting a probate might still be advisable, however, if the decedent had debts to be settled and to stop creditors from asserting claims in the future.

Once it is determined that a probate is necessary, the location of the probate will depend on the residence of the decedent and the location of the decedent's property. If an Oklahoma resident died owning property in Oklahoma, the probate would occur in the Oklahoma county where the decedent resided. If an out-of-state resident died owning real property (interests in land, including minerals) in Oklahoma, a probate would likely be conducted in the decedent's home state and a second probate would be conducted in Oklahoma in the county where the decedent owned real property. Two probates would be necessary because the out-of-state court does not have the power to administer Oklahoma real property.

Property that is not real property works differently. As a rule of thumb, tangible personal property (clothes, equipment, collections, etc.) is deemed located where the decedent is located, and it can be administered by the court in the state where the decedent resided. But that is not always the case. A type of property that does not follow the rule is an interest in an Oklahoma entity (such as shares in an Oklahoma corporation). In a lot of states, shares are deemed located where the certificate of title is located, or the shares are deemed personal property located where the decedent resided.

Oklahoma law is different. Oklahoma law provides that shares of stock in an Oklahoma corporation are personal property, but the shares of stock are not located where the decedent



resided. Instead, the shares exist only in Oklahoma, and out-of-state courts do not have the power to adjudicate their ownership.

If a probate is not conducted in Oklahoma, a creditor of the decedent could assert a claim upon the shares decades after the deceased's death. That is an example of a situation in which it would be advisable to conduct a probate - even if the Oklahoma corporation agreed to treat the decedent's beneficiaries as the owners of the shares.

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