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## legally speaking

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### WILLS, TRUSTS & ESTATES: PLAIN AND SIMPLE

# what is Probate?

When a last will and testament is admitted to probate, it simply means that the court is satisfied that the will is valid and has decreed the will valid to direct the distribution of a decedent's assets. The court then provides the executor with what is called letters testamentary, which is a document that gives the executor of the will the power to collect the decedent's assets and administer the estate. (Note that a will can direct what happens only to assets that are in the decedent's name alone; that is, the will generally does not affect the distribution of IRAs, 401(k)s, pension plans, and jointly owned assets.)

The proceeding to have the will admitted to probate involves filing papers with the court (in New York, the Surrogate's Courts handle probate proceedings), including the original will, a certified copy of the death certificate and the probate petition. The probate proceeding should be relatively short, only taking a few weeks, if the executor and all beneficiaries/distributees agree the will is valid. Distributees are the people who would be entitled to share in the decedent's estate if he/she had died without a will; New York law requires them to receive notice of the probate proceeding.

On the other hand, if the decedent died leaving no close relatives, or if the decedent's distributees and/or beneficiaries believe that the will is not valid and, therefore, object to the will being admitted to probate, the probate proceeding can be quite long, sometimes lasting for months to years. In that case, the named executor can file an additional document with the court, requesting that preliminary letters testamentary be given to the named executor. Preliminary letters testamentary are generally issued by the court within a couple of weeks; and once the named executor receives the preliminary letters testamentary, he/she may do everything an executor who has received letters testamentary may do, other than distribute the assets of the estate to the beneficiaries named in the will. For example, the preliminary executor can collect the decedent's bank and brokerage accounts into the estate account and can invest and reinvest the assets in the account.

Probate is just the very beginning of the administration of a decedent's estate. In fact, the administration of a decedent's assets cannot begin until the executor or preliminary executor has been appointed, as no one is authorized to exercise control over a decedent's assets until they have been appointed as such. The great bulk of the administration of a decedent's estate happens

after the will has been admitted to probate.

If there is a trusts or estates topic that you would like to know more about, please feel free to email me at [pmarcin@farrellfritz.com](mailto:pmarcin@farrellfritz.com) with your suggestion and I will do my best to cover it in a future column.

*Patricia C. Marcin is a partner at the law firm of Farrell Fritz, P.C. concentrating in trusts, estates and tax law. She can be reached at [pmarcin@farrellfritz.com](mailto:pmarcin@farrellfritz.com) or at 516-227-0611. Patricia has lived in Lloyd Harbor for 14 years with her husband, John Pastula, their two teenage sons, Sam and Matt, and their dog Blizzard.*



*"I'm so glad we updated our wills. Farrell Fritz helped us understand all the recent changes and the best part is, we minimized our estate taxes. I feel so much more secure about our family's future."*



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