

PROBATE

WHAT IS PROBATE

Probate is court proceedings by which a person's, who is deceased, property is transferred and distributed according to their will or by law if there is no will to the rightful heirs. Probate laws are designed to protect the rights of heirs and to ensure the orderly collection, preservation and transfer of property. The state of South Dakota has a Uniform Probate Code. Most of the Indian tribes in South Dakota have their own probate codes. Many of these tribal codes refer to the state of South Dakota's Uniform Probate Code if there are in gaps in their code and following intestate succession (who gets the property if the deceased died leaving no will).

Probating an estate is a very complex area of the law involving various notices and pleadings with different time frames. It is not advisable to probate an estate without the assistance of an attorney. An attorney has expertise and knowledge about the law you probably do not possess. Before you attempt to probate an estate you should consult an attorney.

DEFINITION OF TERMS

You should become familiar with several terms before attempting to administer an estate or before you see an attorney about a probate.

DECEDENT OR DECEASED. The person who passed away and whose estate is being probated.

ESTATE. The property a deceased person owns at the time of their death.

WILL. A legal document prepared by a person before they die that dictates who will administer their estate after they die and who will get their property.

TESTATE. When a person dies testate they die leaving a will.

INTESTATE. When a person dies intestate they die without a will and has died leaving property. In this case tribal or state law dictates who will get the deceased's property.

PERSONAL REPRESENTATIVE. This is the person nominated by will (if the decedent died leaving a will) or appointed by the court (if the decedent died leaving no will) to administer the estate and distribute the decedent's property after court approval.

CREDITORS OF THE ESTATE. This is any person or business that is owed money by the decedent. The decedent's estate is responsible for decedent's debts that the decedent accumulated while alive and that are still owed at their death.

DEVISEES. Persons designated in a will to receive real or personal property from the estate.

HEIRS. Persons entitled under the law to inherit decedent's estate when the decedent died without a will.