



GUIDE TO FILING PROBATE IN DODGE COUNTY

What is Probate?

Probate is the legal process for the orderly transfer of a decedent's assets to those who are entitled to them. The probate process ensures that notice is given to all interested parties and that all debts, taxes and expenses are paid. It also ensures that the estate property is protected and distributed either in accordance with the testator's last will and testament or to the heirs at law as determined by statute. Special protections are given to minors and incompetent persons.

Does all of a decedent's property have to be probated?

No. Examples of property **not subject to probate** includes: (1) insurance proceeds, pensions, annuities, bank accounts, savings bonds, etc. that are payable on death (POD) to a person or entity other than the decedent's estate; (2) joint tenancy or survivorship marital property; and (3) property held in an inter vivos (living) trust. Property may also be transferred without probate if there is a marital agreement with dispositive provisions upon the death of a spouse.

Sometimes a proceeding in probate may help facilitate non-probate transfers, e.g., termination of joint tenancy, termination of survivorship marital property, or confirmation of interest in property. Most of the time no court proceeding is necessary.

Transfer by Affidavit

There is a method to transfer a decedent's assets without a court supervised administration, called "Transfer by Affidavit," for estates having a value of \$50,000 or less. The State Bar of Wisconsin maintains and updates this form. The person who completes and uses this form has certain legal responsibilities and it may be appropriate to consult with an attorney before deciding whether you should use a "Transfer by Affidavit". Forms can be found at:

Transfer by Affidavit Instructions:

<https://www.wisbar.org/forPublic/INeedInformation/Documents/Transfer%20by%20Affidavit%20Instructions.pdf>

Transfer by Affidavit:

<https://www.wisbar.org/forPublic/INeedInformation/Documents/Transfer%20by%20Affidavit.PDF>

Affidavit of Heirship:

<https://www.wisbar.org/forPublic/INeedInformation/Documents/Affidavit%20of%20Heirship%20-%20addendum%20to%20Transfer%20by%20Affidavit.pdf>

Affidavit of Service or Waiver of Notice:

<https://www.wisbar.org/forPublic/INeedInformation/Documents/Affidavit%20of%20Service%20or%20Waiver%20of%20Notice.pdf>

You **do not** file a Transfer by Affidavit form with Dodge County.

When is Probate necessary?

A probate proceeding is necessary if the decedent owned **more than \$50,000 of assets in his/her name only** or if there is **real estate of which the decedent is the sole owner or a tenant in common**.

Will of Deceased Person

Wisconsin Law requires the filing of the original Will for every deceased person. Please see [§856.05](#), Wis. Stats.

- If a probate proceeding is required for a deceased person, the original Will can be filed at the same time the documents for probate administration are filed.
- If no probate proceeding is required, please complete and file an [Affidavit of No Probate](#) at the same time you file the original Will. This document requires that the signature be notarized. If you do not have access to a Notary Public, please wait to sign this form until you file it in person at the Probate Office so that your signature may be notarized.

What procedure should I use if the estate exceeds \$50,000?

Informal Administration is the most commonly used procedure. You may use informal administration (1) if the decedent's will does not prohibit the use of informal administration and contains an attestation clause, or (2) if the decedent dies without a will and the interested persons agree. In most cases, you do not need an attorney to proceed informally.

<https://www.co.dodge.wi.gov/home/showpublisheddocument/50961/638174170083100000>

Formal Administration is a formal proceeding in circuit court. Formal probate requires an attorney to represent the estate. It is necessary when required as a condition of the will or if there is a disagreement among the heirs or legal issue requiring a hearing and court order.

<https://www.co.dodge.wi.gov/home/showpublisheddocument/50965/638174207633370000>

Special Administration may be used when there is no estate to administer or the probate proceeding has been completed, but there is still some legal act in regard to the estate that must be performed. It may also be used to facilitate a transfer of property pursuant to Summary Assignment.

<https://www.co.dodge.wi.gov/home/showpublisheddocument/50979/638175071573800000>

The **Summary Settlement** proceeding can be used whenever there is a surviving spouse or minor children **and** the estate (solely owned or tenancy in common property) does not exceed \$50,000. It may also be used whenever the value of the estate does not exceed the priority debts (e.g., administrative, funeral and burial, taxes, last illness, spousal and family allowances). This procedure can usually be completed in a day or two.

<https://www.co.dodge.wi.gov/home/showpublisheddocument/50989/638175125875200000>

Summary Assignment can be used whenever the value of the estate does not exceed \$50,000 (solely owned and tenancy in common property) and summary settlement does not apply. This procedure takes at least four to six weeks.

<https://www.co.dodge.wi.gov/home/showpublisheddocument/50991/638175128091700000>

Ancillary Administration To apply for ancillary letters to administer property in Wisconsin when an estate is pending elsewhere. Ancillary Administration requires an Attorney licensed in Wisconsin to practice law to represent the estate.

<https://www.co.dodge.wi.gov/home/showpublisheddocument/50993/638175128905930000>

Do I need an attorney?

If you are proceeding by **Formal Administration**, the personal representative must retain an attorney.

It may also be advisable to retain an attorney in other situations. An attorney can help you meet deadlines, file tax returns, draft legal documents, appear in court for you, do post-death estate planning, and provide general legal advice.

What if I still have questions?

You may make an appointment to meet with one of the Probate Registrars, who will direct you to the appropriate legal forms, and answer your questions about probate procedures.

Other helpful publications are available from the State Bar of Wisconsin and information is available on the internet at the websites listed.

Forms

State Forms – pdf or Word formats <http://www.wicourts.gov/forms1/index.htm>

Case Information <http://wcca.wicourts.gov>

State Law Library's Links to Probate Websites

<http://wilawlibrary.gov/topics/estate/probate.php>

A Personal Representative's Guide to Informal Probate in Wisconsin

http://www.wripa.org/uploads/1/0/1/9/10190269/informal_guide_9.16.13.pdf

Wisconsin Register in Probate Association

<http://wripa.org/>

Dodge County

Dodge County Justice Facility – Room 2042
210 W Center Street
Juneau, Wisconsin 53039-1091

CALL FOR APPOINTMENTS:

(920) 386-3550