Knowledge Center Guide

How Probate Works in North and South Carolina

A guide for families and individuals navigating estate administration after the death of a loved one.

When a person passes away, their estate often must go through a legal process called probate before assets can be distributed to heirs and beneficiaries. Whether you are an executor named in a will, a surviving family member, or someone planning your own estate, understanding how probate works is essential.

This guide walks you through the probate process in both North Carolina and South Carolina, highlights the key differences between the two states, and explains how proper planning can help your loved ones avoid unnecessary delays and costs.

Our attorneys regularly guide families through probate and estate administration in both North Carolina and South Carolina, helping executors navigate court requirements while minimizing delays, disputes, and unnecessary costs.

Quick Comparison: Probate in NC vs. SC

Feature	North Carolina	South Carolina
Court	Clerk of Superior Court	Probate Court with elected judge
Creditor Claim Period	90 days	8 months
Small Estate Threshold	$20k ($30k if spouse sole heir)	$25k
Typical Timeline	9–18 months	12–18 months

What Is Probate?

Probate is the court-supervised process by which a deceased person's estate is administered. It typically involves:

- Validating the deceased person's will (if one exists)
- Appointing an executor or personal representative to manage the estate
- Identifying and inventorying all assets
- Notifying and paying creditors and taxes
- Distributing the remaining assets to heirs and beneficiaries

Not every asset goes through probate. Assets held in a trust, accounts with named beneficiaries (such as life insurance or retirement accounts), and jointly owned property with rights of survivorship typically pass outside of probate entirely.

When Is Probate Necessary?

This guide is for educational purposes only and does not constitute legal advice.

Probate is generally required when someone dies owning assets solely in their own name that do not have a built-in transfer mechanism. If the deceased had:

- A will that names a beneficiary but the asset is not held jointly or in trust
- No will at all ("died intestate")
- Real estate owned only in their individual name
- Bank or investment accounts without a beneficiary designation or payable-on-death designation

…then the estate will likely need to go through some form of probate in the state where the deceased resided, and potentially in other states where they owned real property.

> **NC vs SC:** Both states require probate for qualifying estates, but they use different court systems, terminology, and procedures. Read on to understand what applies in your situation.

How Probate Works in North Carolina

The Court That Handles Probate in NC

In North Carolina, probate is administered by the Clerk of Superior Court in the county where the deceased person was a resident at the time of death. North Carolina does not have a separate "probate court" — the Clerk's office handles estate matters directly. If the deceased owned real property in another NC county, ancillary probate filings may be required there as well.

Step-by-Step: The NC Probate Process

Step 1: Filing the Will and Petition

The first step is to file the original will (if one exists) with the Clerk of Superior Court in the county of residence. The person named as executor — or a close family member if there is no will — files a petition to open the estate. If there is a will, the Clerk will "qualify" the executor. If there is no will, the Clerk will appoint an administrator (often a surviving spouse, adult child, or other close relative).

The executor or administrator may be required to post a surety bond, unless the will waives this requirement or all beneficiaries consent to waiving it.

Step 2: Letters Testamentary or Letters of Administration

Once qualified, the executor receives "Letters Testamentary" (if there was a will) or "Letters of Administration" (if there was no will). These letters are the legal authorization that allows the executor to act on behalf of the estate — to open bank accounts, transfer assets, and deal with creditors.

Step 3: Inventory of Assets

Within 90 days of qualification, the executor must file an inventory of the estate's assets with the Clerk's office. This includes all personal property, real estate, bank accounts, investment accounts, business interests, and other assets owned solely in the deceased's name. The inventory must list the fair market value of each asset at the date of death.

Step 4: Notice to Creditors

The executor must publish a notice to creditors in a newspaper in the county where the estate is being administered. Creditors then have 90 days from the date of first publication to submit claims against the estate. The executor reviews and either approves or disputes those claims.

The executor is also responsible for filing and paying any final income tax returns for the deceased and, if the estate is large enough, any applicable estate tax returns.

Step 5: Payment of Debts and Taxes

Before any assets are distributed to beneficiaries, the estate must pay all valid debts, taxes, administration costs, and expenses. North Carolina law specifies the order of priority for paying these obligations. Debts that exceed the value of the estate can create difficult situations, and beneficiaries should be aware that heirs generally do not inherit personal liability for a deceased relative's debts — but the assets of the estate may be used to satisfy them.

Step 6: Final Accounting and Distribution

Once debts and taxes are settled, the executor prepares a final accounting — a detailed report showing all income received, expenses paid, and the assets remaining for distribution. This accounting is filed with the Clerk and shared with beneficiaries. After any final objections are resolved, the executor distributes the remaining assets according to the terms of the will (or according to North Carolina's intestate succession laws if there was no will) and the estate is formally closed.

Small Estates in North Carolina

- If the total value of personal property (not including real estate) is $20,000 or less (or $30,000 or less if the sole heir is the surviving spouse), a qualifying family member or other person may collect assets using a "Small Estate Affidavit" without going through the full probate process.
- This simplified process is not available for real estate or when there is significant debt.

How Long Does Probate Take in North Carolina?

The minimum timeline for most NC probate matters is approximately 6 months, because creditors have 90 days to file claims and the estate must remain open long enough to address those claims. In practice, most straightforward estates take 9 to 18 months. Complex estates involving business interests, disputes among beneficiaries, real estate in multiple counties, or federal estate tax obligations can take several years.

What Does Probate Cost in North Carolina?

NC probate costs include:

- Court filing fees (vary by county and value of estate)
- Executor fees (typically up to 5% of estate value, though this can vary)

> ***Note:*** *North Carolina law requires executor compensation to be 'reasonable.' While many estates use a benchmark around 5% of estate value, the Clerk of Court ultimately determines what compensation is appropriate.*

- Attorney fees (varies; often charged hourly or as a percentage of estate value)
- Bond premiums (if required)

- Publication costs for creditor notices

Total costs for a straightforward NC estate often range from 2–5% of the estate's gross value, though complex estates can cost more.

Dying Without a Will in North Carolina

If someone dies without a valid will, they are said to have died "intestate." North Carolina's intestate succession laws govern how the estate will be divided. The rules prioritize the surviving spouse and children, but the formulas can produce outcomes that may not reflect the deceased's actual wishes. For example, in North Carolina, if a person dies leaving a spouse and children from a prior relationship, the estate may be split between them in ways the surviving spouse did not anticipate.

This is one of the most compelling reasons to have a valid will in place before death.

How Probate Works in South Carolina

The Court That Handles Probate in SC

South Carolina has a dedicated Probate Court in each county. Unlike North Carolina, where probate is handled by the Clerk of Superior Court, South Carolina's Probate Courts are separate judicial bodies with elected judges who specialize in estate and probate matters. The appropriate court is the one in the county where the deceased was a resident at the time of death.

Step-by-Step: The SC Probate Process

Step 1: Filing the Petition and Will

The executor named in the will (or a family member if there is no will) files a petition with the Probate Court to open the estate. The original will must be filed with the petition. The court will formally admit the will to probate if it is valid.

If no executor is named or the named executor cannot serve, the court will appoint a personal representative from among those eligible under SC law — typically the surviving spouse, then adult children, then other heirs.

Step 2: Appointment and Letters

The court issues "Letters Testamentary" (if the deceased left a will) or "Letters of Administration" (if not) to the personal representative. These letters authorize the representative to act on behalf of the estate: accessing accounts, managing property, and dealing with creditors and third parties.

Step 3: Inventory and Appraisement

Within 90 days of appointment, the personal representative must file an inventory and appraisement of the estate with the Probate Court. The inventory lists all assets owned solely in the deceased's name as of the date of death, along with their fair market values.

Step 4: Notice to Creditors

The personal representative publishes a Notice to Creditors in a newspaper of general circulation in the county. Under South Carolina law, creditors have 8 months from the date of first publication to file claims against the estate. This 8-month window is longer than North Carolina's 90-day window and is one of the key distinctions between the two states.

Claims submitted after the 8-month deadline are generally barred, with limited exceptions.

Step 5: Payment of Debts and Taxes

After the creditor claim period closes, the personal representative pays valid debts, final taxes, and estate administration expenses in the order of priority established by SC law. Federal and state income taxes for the year of death, as well as any estate tax obligations, must be addressed before final distribution.

Step 6: Final Settlement and Distribution

The personal representative files a final accounting with the Probate Court showing all transactions, receipts, disbursements, and the assets available for distribution. After court approval and the resolution of any objections, the remaining assets are distributed to beneficiaries as directed by the will, or according to South Carolina's intestate succession laws if there was no will. The estate is then formally closed.

Small Estates in South Carolina

South Carolina offers a simplified small estate affidavit procedure for qualifying estates. If the total probate estate is valued at $25,000 or less, a surviving spouse or other qualified person may collect assets using an affidavit without filing a full probate proceeding. Real estate is excluded from this simplified procedure. Additionally, SC allows for a summary administration process for small estates that simplifies some of the formal requirements of the full probate process.

How Long Does Probate Take in South Carolina?

Because South Carolina's creditor claim period is 8 months (compared to 90 days in NC), the minimum timeline for a SC probate estate is typically 10 to 14 months. Most routine estates close within 12 to 18 months. Complex estates with significant assets, disputes, business interests, or federal estate tax issues may take considerably longer.

What Does Probate Cost in South Carolina?

Costs in a South Carolina probate proceeding include:

- Court filing fees based on the value of the probate estate
- Personal representative fees (SC does not set a statutory rate; reasonable compensation is permitted)
- Attorney fees (typically hourly or a percentage of estate value)
- Publication costs for the creditor notice
- Appraisal fees if needed for real estate or business interests

Overall costs for a typical SC probate estate are similar to NC — often ranging from 2–6% of the gross estate value.

Dying Without a Will in South Carolina

Like NC, South Carolina's intestate succession laws will govern the distribution of your estate if you die without a valid will. South Carolina's laws divide assets among the surviving spouse, children, and other family members according to a specific formula that may not align with your actual wishes. In South Carolina, if you die leaving both a spouse and children, the estate is split equally among them — meaning your spouse does not automatically receive the entire estate.

Having a properly drafted will or trust is the most direct way to ensure your wishes are followed.

NC vs. SC Probate: Key Differences at a Glance

Understanding the differences between the two states can help you know what to expect depending on where your loved one lived.

Court System

North Carolina: Clerk of Superior Court handles probate in each county. South Carolina: Dedicated Probate Court in each county with an elected judge.

Creditor Claim Period

North Carolina: 90 days from first publication of Notice to Creditors. South Carolina: 8 months from first publication — a significantly longer window.

Small Estate Threshold

North Carolina: $20,000 in personal property ($30,000 if the sole heir is the surviving spouse). South Carolina: $25,000 in total probate estate assets.

Minimum Timeline

North Carolina: Approximately 6 months minimum; typically 9–18 months for routine estates. South Carolina: Approximately 10–14 months minimum; typically 12–18 months.

Intestate Spousal Share

North Carolina: Surviving spouse shares estate with children (including children from prior relationships), which can produce unintended outcomes. South Carolina: Estate is divided equally between the surviving spouse and children when both survive — again, potentially different from what was intended.

How to Avoid Probate — or Make It Easier

Probate can be time-consuming, costly, and public (since court filings are generally public record). With proper planning, many people are able to reduce or eliminate their probate estate entirely. Common strategies include:

Revocable Living Trust

Assets held in a revocable living trust pass directly to trust beneficiaries without going through probate. The trustee can distribute assets quickly and privately, according to the terms of the

trust. A revocable living trust is one of the most versatile and commonly used tools for probate avoidance.

Beneficiary Designations

Life insurance policies, retirement accounts (IRAs, 401(k)s), annuities, and similar assets allow you to name a beneficiary directly on the account. At your death, these assets transfer automatically to the named beneficiary outside of probate. It is important to review and update beneficiary designations regularly, especially after major life events such as marriage, divorce, or the death of a beneficiary.

Payable-on-Death (POD) and Transfer-on-Death (TOD) Accounts

Many bank and investment accounts can be designated as payable-on-death or transfer-on-death to a named beneficiary. These designations are easy to set up at your financial institution and allow the account to pass outside of probate.

Joint Ownership with Right of Survivorship

Property held as joint tenants with right of survivorship passes automatically to the surviving owner(s) upon death. This can be effective for real estate, bank accounts, and other assets, but it comes with potential drawbacks — including gift tax implications and loss of individual control — that should be discussed with an attorney.

Lady Bird Deeds (Life Estate Deeds)

In some cases, enhanced life estate deeds (sometimes called “Lady Bird” deeds) can be used to transfer real property at death outside of probate while retaining full control during your lifetime. The availability and rules for these instruments vary by state and circumstances, so professional guidance is essential.

> **Note:** Avoiding probate is not the right goal for everyone. In some situations, a simple will with a straightforward probate process is entirely appropriate. An estate planning attorney can help you evaluate which approach makes the most sense for your family and assets.

Questions About Probate or Estate Administration?

Whether you are handling a loved one’s estate right now or planning ahead for your own, the probate process in North Carolina and South Carolina can be complex — and the stakes are high. An experienced estate planning and probate attorney can guide you through each step, help you avoid costly mistakes, and ensure that your loved one’s wishes are carried out properly.

If you have questions about estate administration, probate, or building an estate plan designed to protect your family, our attorneys are available to help you understand your options and develop a strategy tailored to your situation.

► Schedule a Consultation

Related Knowledge Center Guides

- Do I Need a Will or a Trust?
- Revocable Living Trusts Explained
- What Happens If You Die Without a Will?
- Executor Duties and Responsibilities
- How Long Probate Takes
- Medicaid Planning Basics

This guide is intended for general educational purposes only and does not constitute legal advice. Laws and procedures may change, and every estate is unique. Please consult a licensed attorney in North Carolina or South Carolina for guidance specific to your situation.

Frequently Asked Questions About Probate

Does every estate go through probate?

No. Assets held in trusts or with beneficiary designations — such as life insurance, retirement accounts, and payable-on-death bank accounts — typically transfer outside of probate entirely. Only assets owned solely in the deceased's individual name without a built-in transfer mechanism generally require probate.

How long does probate usually take?

Most estates in North Carolina take between 9 and 18 months from the time the estate is opened. South Carolina estates typically take 12 to 18 months due to the longer 8-month creditor claim period. Complex estates involving business interests, real estate in multiple locations, or disputes among beneficiaries can take considerably longer.

Can probate be avoided?

In many cases, yes. Through the use of revocable living trusts, beneficiary designations, payable-on-death account designations, and proper asset titling, it is often possible to significantly reduce or eliminate the probate estate. The right approach depends on your specific assets, family situation, and estate planning goals. An attorney can help you evaluate your options.