

# FAQ: Losses & Legacies

*Teaching workshops about life's milestones, I answer a lot of questions for people. This is one of them.*



**Question:** Must the Last Will go through probate before it is used?

**Answer:** Yes. The Last Will is not effective until it goes through probate.

When your loved one took the time and thought to write a Last Will, he gave directions about who he wanted to settle his estate, and how to settle it. He trusted those who survived him to follow his directions. He hoped that his Last Will would make the burden of settling his estate easier.

The directions in the Last Will carry no force, however, until a Texas court admits the Will to probate. Why? Because once the Will is admitted to probate, it is enforceable by law. The executor named in the Will gains the power to compel others to surrender up property, and the power to dispose of that property by sale or gift. So, it makes sense that a court should make sure that the Will is genuine.

Probate is basically just about proof that the Will is genuine. The court hears evidence that the Will was duly executed and that it was never revoked. If satisfied, the court admits the Will to probate. The vast majority of probate hearings are short and sweet.

The other purpose of probate is to make sure that the person named as executor is worthy and carries out his duties faithfully. The deceased author of the Will has already vouched for the person by naming him executor. Unless the person is legally disqualified, the court will respect the Last Will's direction.

Once appointed by the court, the executor will have broad power to settle the estate without court supervision. But the law imposes one more check on the executor. He must file with the court an inventory of estate assets. This inventory is then available in the county clerk's office to be reviewed by any beneficiary of the estate.

Once the inventory has been filed and approved by the court, the executor has finished with probate and can finish his duties on his own initiative.

Sources: Texas Estates Code §§ 256.001, 256.052, 304.003, 306.007, 309.051, 351.051, & 351.052.