
Wisconsin Probate

A Client's Guide to the Language and Procedure



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❖ Welcome

Thank you for choosing Bakke Norman, S.C. to represent your interests.

Your satisfaction is very important to us and forms the basis for our formal quality pledge:

- ❖ To provide the highest quality legal service to the clients we serve,*
- ❖ To develop and maintain the highest personal and professional standards and reputation, and*
- ❖ To provide a quality professional work opportunity for attorneys and staff.*

We welcome your feedback at all times.

This booklet has been written to acquaint you, in general, with how we handle cases like yours. We hope it will be helpful to you.

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Probate Lawyers: Who are they? What do they do? How much will they charge?

Bakke Norman, S.C. has experienced attorneys with expertise in probate and death tax matters. Your attorney is supported by a skilled legal assistant to ensure that you receive the best professional service and help. In addition to a skilled and experienced staff, we utilize a complete professional research library, computerized research facilities and the latest in computer technology to help efficiently process your work.

You are encouraged to contact your attorney or their legal assistant regarding your file. Although our trained legal assistants can assist you with many of your questions, they are not lawyers and consequently are not permitted to give legal advice. The legal assistants will refer questions requiring legal advice to your attorney.

❖ What Do Probate Lawyers Do?

Your lawyer will advise you about the law and help you prepare and file the documents necessary to complete the probate administration of an estate. At Bakke Norman, S.C., we stay abreast of recent changes in probate law to ensure the proper administration of the estate.

Depending upon the probate process being used, this may or may not require a Court appearance for you and/or your attorney. Probate of an estate may also involve hiring or consulting with other experts, such as appraisers, accountants or surveyors.

❖ Whom Do We Represent?

If we have been retained by the individual who is appointed personal representative for the estate, we represent the personal representative, who is in essence standing in place of the deceased. It is the duty of the personal representative to complete the probate of the estate and distribute the assets according to the terms of the last will of the deceased or, if there is no will, according to the Intestate Laws of the state of Wisconsin.

❖ Can We Represent Opposing Parties?

No. There is an inherent conflict of interest that prevents a lawyer from representing the personal representative and someone who has an opposing claim against the estate such as a dissatisfied spouse, heir, beneficiary or creditor.

❖ What Does It Cost?

Probate clients of Bakke Norman, S.C. are charged for legal services on the basis of time spent on the file, as well as on the experience and expertise of the attorney handling the probate process, and the complexity of the issues involved. Time records are maintained for all work on the file, including telephone calls. These records are one of the factors used to calculate your bill unless you have a different fee agreement with your attorney.

The cost of probate is difficult to accurately predict in advance. Generally, probate administration costs are about 2-3% of the inventory value of the estate, but the total cost depends on the amount of work required of us which is affected by such issues as: the estate size, the number of heirs and beneficiaries, the number and kinds of assets which must be transferred, the cooperation and agreement of all parties involved, the complexity of any income tax or estate tax matters, and whether or not the attorney is required to appear in Court for any matters pertaining to the estate.

During the course of our representation, we will advance certain fees and costs for our clients. These include such items as filing fees, newspaper publication fees, certified copy charges, telephone charges, and photocopy, postage and travel expenses. In some cases, these costs may be quite substantial when they include appraisal fees, surveyor fees, abstract expenses, etc. In all cases, you will be billed for the costs we advance on your file, in addition to attorney fees.

We typically enter into an agreement with clients regarding fees and costs before any work is started. If, for any reason, you do not have a complete understanding and agreement regarding the fees to be paid, please discuss this with your lawyer immediately.

❖ How Long Does It Take?

Barring unforeseen complications, every estate administration should be concluded within 12-18 months from the filing of the application for probate. Generally we are able to conclude administration within that period of time or sooner. However, an audit by the Internal Revenue Service or the Wisconsin Department of Revenue, or other complications could prolong that time period. If an estate cannot be concluded within that period, an extension for closing must be obtained from the Probate Registrar or the Court.

It may be advantageous to keep an estate open for a longer period to reduce income taxes.

A decision regarding this is made as the administration progresses. The mere passage of time does not usually increase the legal fee.

❖ Your Involvement

It is extremely important that you respond to our requests for information, documents and execution of documents in a timely manner. Based on our experience, if you do not do this, it requires extra time on our

part to review the file and often increases the cost of an estate probate.

❖ Telephone Calls and E-mail

The telephone is an important tool for the ongoing communication between attorney and client. We welcome your calls and e-mail messages with questions about your case or with new information that we need. When your attorney is in court or meeting with another client, your call will be referred to the legal assistant handling your case. Please be prepared to discuss the matter completely with the legal assistant. If it is essential that you talk personally to your attorney, leave a detailed message and your attorney will return the call as soon as possible.

❖ Facts About Probate

The purpose of probate is to do the following:

- collect, inventory and value all of the deceased's property;
- protect the property;
- determine and pay debts, administration expenses and taxes (including income and death taxes);
- determine who is entitled to share in the estate;
- distribute the estate to the proper parties, in the proper form;
- present to the personal representative and heirs the necessary information needed for future tax matters.

❖ Probate Procedure and Related Legal Documents

In the majority of situations, the administration of an estate is completed under a procedure called "Informal Probate." This means that neither the attorney nor the personal representative is required to make any Court appearance. Most matters are handled by mail and by the Register in Probate.

In other situations, it may be necessary to administer the estate under "Formal Probate." This procedure is similar to the Informal Probate procedure except that it requires Court appearances by the attorney and the personal representative. Consequently, this procedure may take longer and is usually more costly. Formal probate is used only when there are significant disputes in the estate.

Probate documents are filed at specific times and for specific purposes. Some of the most frequently encountered documents and the most important ones are discussed here.

Petition or Application for Probate

A petition or application is the document used to initiate the probate process. The type of document prepared depends upon which probate process is used and/or whether the deceased died testate (with a valid will) or intestate (without a valid will).

This document provides the specifics regarding the name, date of death, etc., of the decedent; identifies and requests the

appointment of a personal representative (and trustee of a testamentary trust, if necessary); and sets forth the list of persons interested in the probate proceeding.

The petition or application may be made by any "interested person" but is usually made by an heir or the individual who is requesting to be appointed personal representative of the estate.

Appointment of Personal Representative/Order Giving Notice to Interested Persons and/or Creditors:

Usually we can have the interested parties waive notice of the initial hearing and can often have a personal representative appointed in a very short time.

There are some circumstances that will delay the appointment of a personal representative, such as:

- the whereabouts of an interested party is unknown and, therefore, a notice of the first hearing must be published in a county newspaper for three weeks,
- there is a minor child, incompetent person or person in the military who is an interested party, and a guardian ad litem has to be appointed,
- the use of informal probate is prohibited by the will document of the deceased, and/or
- the interested parties cannot agree upon the appointment of a personal representative.

In any probate situation — either formal or informal — we are required to publish a notice to creditors for a period of three

weeks in a county newspaper. Creditors will then have three months in which to file any claim they may have against the estate with the Court or Probate Registrar.

Proof of Heirship

A Proof of Heirship is the document which lists and determines the decedent's legal heirs. This may or may not be the list of individuals actually receiving assets from the estate, depending upon the decedent's last will, if any. In the case of informal probate, this document is merely filed with the Probate Registrar. In the case of formal probate, the Court will hear oral testimony, ordinarily from some close relative, from which a "proof of heirship" document will be filed.

Domiciliary Letters

Once issued, the "Domiciliary Letters" is the document that gives the personal representative official authority to perform his or her duties. All title to the decedent's probate assets is vested in the personal representative. Unless the decedent's will contains certain restrictions, the personal representative has all the powers granted by Wisconsin statute, such as authority to open and close bank accounts; endorse, deposit and write checks; sign deeds; sell property; sign tax returns; transfer property to heirs; and generally do all things necessary to complete the estate probate.

Inventory

An Inventory lists all property owned by the decedent valued at the date of the decedent's death. This document must be prepared and filed no later than six months

after the appointment of the personal representative.

The inventory includes all property subject to probate administration, such as real estate, vehicles, farm machinery and livestock, cash assets, promissory notes, stocks and bonds, valuable collections and life insurance payable to the estate. Mortgages, liens or other indebtedness against any item must also be listed.

If there is a surviving spouse, the law requires that marital property be identified. This may require inventorying property that is titled in the surviving spouse's name.

Although the following assets are not included in the probate estate, they will be listed for tax purposes: life insurance payable to named beneficiaries; IRA and pension accounts; certain gifts made by the deceased; property over which the deceased had a power of appointment; and transferred property in which the deceased still retained the use or income.

As the attorneys for the estate, we assist in identifying assets and in gathering necessary information. If issues arise concerning the value of real estate, business interests or personal property, we will obtain the necessary appraisers or surveyors.

All beneficiaries, except those receiving a specific bequest, receive a copy of the inventory.

Income Tax Returns

Final personal income tax returns for the decedent for the year of death, and any returns not filed for previous years, must be prepared and filed. Under certain circumstances, these returns may be filed by a surviving spouse. At other times, it will be necessary for the decedent to file as a separate or single individual. We will analyze the situation, advise you and, if necessary, assist in the preparation of these returns.

An estate is a separate taxable entity which exists from the date of death of an individual until the final distribution of assets to all beneficiaries. Income received during the administration of the estate must be reported on special "fiduciary" income tax forms. As attorneys for the estate, we assist in determining the tax year and preparing the returns. Generally, an estate cannot be closed until the Wisconsin Department of Revenue issues a closing document which must be filed with the Probate Registrar or the Court. This document confirms that all income tax returns filed by the deceased and the estate are in order.

Federal Estate Tax Return (706)

In general, a federal estate tax return must be filed if the gross estate exceeds the maximum applicable exclusion amount (see schedule on Table 1 next page). The return must be prepared, filed and any tax that is due paid within nine months of the date of death. After review and approval, the Internal Revenue Service will issue a closing letter which must be filed with the Probate Registrar or the Court.

TABLE 1		
Year	Estate Tax Unified Credit	Applicable Exclusion Amount
2006-2008	\$ 780,800	\$ 2,000,000
2009	1,455,800	3,500,000
2010 <i>(Estate Tax Repealed)</i>	0	0
2011 <i>(Estate Tax Reinstated)</i>	345,800	1,000,000

The gift tax applicable credit amount for the years 2006-2009 is \$1 million.

❖ Transfer Documents and Final Papers

Termination of Decedent's Property Interest/Personal Representative's Deed

In the Informal Probate process, title to real estate is transferred to the proper beneficiaries by the execution and recording of a Termination of Decedent's Property Interest and/or a Personal Representative's Deed. Depending upon the nature of other assets, separate transfer documents may or may not be prepared. The filing of copies of these documents and a Statement to Close indicates to the Probate Registrar that we are closing the estate.

Final Judgment

In the Formal Probate process, title to all assets is transferred to the proper beneficiaries by the Final Judgment. Once the Final Judgment is recorded in the Register of Deeds office, title to all real estate is transferred to the beneficiaries. Depending upon the nature of the other assets, in particular stocks, bonds, mutual funds, etc., other transfer documents may be prepared. In a formal probate, the Final Judgment is the document that indicates to the Court that we are closing the estate.

Receipt and Release

Any individual receiving a share of the assets of an estate must sign a Receipt and Release acknowledging the fact that they have received the assets. This document is then filed with the Probate Registrar or the Court.

Wisconsin Estate Tax Return

This return is only prepared and filed if a federal estate tax return is required to be filed. It does not result in any increased tax but merely pays a portion of the federal estate tax to the state of Wisconsin. Upon review and approval, the Wisconsin Department of Revenue will issue a closing certificate which must be filed with the Probate Registrar or the Court. The Wisconsin Inheritance Tax was phased out in 1992.

Final Account

In most counties, a final account must be filed before the estate can be closed. Even if a county does not require it, we prepare a final account to protect the personal representative. This document sets forth all items of income and disbursement from the date of death until the time for closing. All beneficiaries receive a copy of this account.

At the time an estate is closed and the personal representative is discharged, we present a closing booklet to the personal representative which contains copies of all important documents. This serves two purposes: it can answer any future questions by an heir or beneficiary as to how a particular matter was handled in the estate; and it provides necessary figures regarding the tax cost basis of assets to heirs and beneficiaries for the preparation of their future income tax returns.

❖ Related Items

Joint Tenancy Assets, Assets Held as Survivorship Marital Property, or Accounts or Assets Payable on Death

If assets are titled in this fashion, probate may not be necessary. All that is required to transfer ownership is to file a simple document in the office of the Register of Deeds and any necessary tax returns. Your attorney can review these assets and documents to assist in completing the transfers properly.

Wills, Trusts and Life Insurance

A death, especially a spouse's death, will generally have an effect on your estate plan. Therefore, you may want to discuss with us the need to change your will, your life insurance beneficiaries or beneficiaries of any retirement plans.

❖ Items Needed for First Interview

The following items should be brought to your initial meeting with your attorney:

- Original will and codicils/ amendments, if any
- Death certificate
- Marital property agreements and trust agreements, if any
- Information regarding decedent's prior marriages, if any
- List of names, addresses, phone numbers, social security numbers, and dates of birth of family members, beneficiaries, and fiduciaries (personal representative, trustee)
- Safe deposit box—provide inventory, if available, the name of the bank and the name of the box holder
- Copy of last income tax return and any gift tax returns
- List of assets, such as bank accounts, retirement accounts, IRAs, stocks/ bonds, real estate, insurance policies, business interests, vehicles, etc.
- List of debts, such as funeral, medical, credit cards, loans, etc.

Please request a questionnaire form from your attorney to review and complete prior to your initial meeting. Also, feel free to bring other documents or information not included on this list or questionnaire that you feel would be helpful for the attorney to review.

❖ Notes

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