

Newsletter

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The Boppre Law Firm Family



The Boppre Law Firm's mission is to provide high quality legal services and keep pace with and to anticipate the needs of existing and potential business and individual clients. We are North Dakota attorneys, serving in a manner that adheres to the highest standards of excellence and integrity, in a timely manner, at fees that our clients are willing and able to pay and that are fair to our firm. In pursuit of this mission, we will hold to these values: Excellence - we strive to become one of the most sought-after providers of legal services in this region; Service - we endeavor to meet or exceed the expectations of our clients in all aspects of their legal representation. Community - we will pursue our belief that individuals with a sense of family and community and with interests outside the practice of law are better for it.

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Hi there! I'm Aimee Williamson, and I'm the lead paralegal here at Boppre Law Firm. I have been with the firm for almost six years. In my position, I research legal questions and issues, draft documents under the direction of our attorneys, and provide guidance to the paralegal team and administrative support staff.

I am a North Dakota native. I graduated from Minot State University in 2012, with a BA degree and from the University of North Dakota in 2015, with a Master of Arts degree in history. Outside of the firm, I teach online United States and North Dakota history courses for Dakota College at Bottineau. In the past, I also taught for Minot State University. In my free time, I enjoy spending time with my husband and stepdaughter, doing genealogy research, and antiques.

The Probate Process

Unfortunately, most of us do not realize what probate is until someone passes away, and leaves property or assets that only the deceased had access to. For example, an only son moves in with his mother before she dies. After she passes, it may be months or years before said son decides to sell the property. At that time, he realizes that he is unable to sell the property because the only recorded owner was his deceased mother. For another example: a deceased father leaves an \$80,000 bank account; however, he was the only owner, and there were no beneficiaries associated with the account. In both examples, probate will need to be completed for the deceased's heirs to gain access to the property and distribute the assets in accordance with the decedent's wishes or state law.

In general, probate is the legal process necessary to ensure your loved one's assets are distributed legally after they pass away. It also refers to the court-supervised process of gathering the deceased person's assets, paying debts and taxes, and distributing what is left to the heirs. If your loved one passed away with a will, they passed away *testate*. If they passed away without a will, they passed away *intestate*. If an individual passes away intestate, North Dakota law has guidelines for how that estate should be administered and to whom. Having a will does not necessarily help avoid probate. There are ways to avoid probate through the estate planning process. However, the terms of a will do help guide probate, which makes the process easier for everyone involved. When a person passes away, the assets become part of the decedent's estate, unless those assets are co-owned by someone else. As discussed previously, how those assets are distributed to loved ones is a major part of the probate process.

Because probate involves a person's death, often the first contact an attorney has to the case is through a family member who has lost someone. These family members will need legal counsel as they pursue the administration of their loved one's estate. Additionally, these family members also need time to grieve and attend to themselves and other family members while making final arrangements. We at Boppre Law Firm recognize that probate can be one of the most stressful times for family members. After a loved one passes away, it can be overwhelming to begin the process to distribute his or her estate. Moreover, even though, in

some cases, our clients may have been through the grieving process before they contact us, we are still sensitive to the fact they have lost a loved one.

In some cases, loved ones passed away many years before and probate was never done, and now real property cannot be deeded to their heirs. Is it too late? Although North Dakota law does have some restrictions on timelines, generally probate can be opened at any time to help your family deed land, minerals, or other assets—even many years after the individual has passed away. In all cases, however, it is necessary to designate an individual known as a Personal Representative. What is a personal representative? In Probate, a personal representative is an individual whom another has trusted to manage his or her property and money. When someone passes away leaving property, a personal representative is required to administer the decedent's estate, which involves resolving any debts and handling the distribution of property in accordance with the decedent's wishes. If the deceased died testate, the personal representatives may have been appointed in the will. If they died intestate, North Dakota law governs how the property is administered. In both cases the personal representative must be appointed by the court. Most of the work required to be done is the legal and orderly transfer of the decedent's property to the persons entitled to receive it. The first step to be taken in any estate is to prepare a list of all the property owned by the person who has passed away and the value of each item, which is the fair market value as of the date of the decedent's death. Finally, the representative sees to the distribution of the remaining estate among the decedent's beneficiaries. The personal representative must also pay the estate's creditors, as well as any Estate and Gift Taxes due under federal law.

Does all of a deceased person's property have to go through probate? Not necessarily. For example, if the property had a properly designated beneficiary associated with the deceased person's bank accounts, insurance policies, IRAs, or 401(k)s, or if the decedent completed a life estate or transfer on death deed for real property, those do not go through probate.

Furthermore, in North Dakota, if an estate is \$50,000 or less and no real property is involved, probate generally does not need to be started. Instead, 30 days after the decedent's death, the administrator may prepare an Affidavit for Collection of Personal

Property, in accordance with North Dakota law, and present the Affidavit to the holder of the personal property for transfer to the person entitled to receive it. On the other hand, probate may be required, and a Personal Representative appointed to administer and distribute decedent's property if assets are above \$50,000.00.

North Dakota has adopted the Uniform Probate Code, which allows a person to informally probate a will and have a personal representative appointed without the necessity of a court appearance or a court hearing, as long as the proper forms are filed, and the correct procedures followed. Once approved by the court, the personal representatives receive official documents to fulfill their duties. Executors receive documents called letters testamentary and administrators receive letters of administration, authorizing the representative to handle the legal affairs of a decedent.

Most importantly, throughout the process of administering an estate, all personal representatives serve as officers of the court. They derive their authority from the court and as such, serve at the court's pleasure. Their authority can be revoked on various grounds, ranging from neglect to incompetence. The Personal Representative must observe a heightened standard of care in dealing with the decedent's assets. They should not engage in uncertain transactions or take any actions that are not good faith efforts to manage the estate's assets. The representative also has a duty to put the estate's interest before their own. As such, the representative should not transact personal business with the estate assets. The representative can be held liable for actions not taken in good faith or actions that constitute mismanagement. Simply stated, the personal representative must act in the best interests of the estate, and he or she may be held personally liable if he or she fails to uphold this duty.

After a loved one passes away, it can be overwhelming to begin the process to distribute their estate. Additionally, probate can be an expensive and lengthy process, especially when family members disagree. This is where we come in. The Boppre Law Firm has assisted many Personal Representatives, from all across the country, successfully administer their loved one's North Dakota estate, and if you need a Probate or an Estate Planning Attorney, we are here for you. Check us out online or give us a call at 701-852-5224 to speak with one of our attorneys and let us serve you.

Boppre Law Firm Bottineau Satellite Office Now Open!

Our Bottineau satellite office had its Grand Opening, August 19, 2021. Hours of operation: Tuesdays and Thursdays from 10 am to 3 pm.



Bottineau Annual Car Show Giveaway Bundle!



Estate Planning Seminars!

The Boppre Law Firm has launched free Estate Planning seminars in our communities. These are a great opportunity to learn more about protecting your assets. All are welcome. Call our office today for more information.

Wills & Wine Seminar, 10 North Main



Boppre Law Firm Extended Family, Saying Hello!

