Probate is a legal court procedure in which the assets of a deceased person are passed to beneficiaries. The executor or personal representative of the estate gathers together the assets of the deceased person, pays creditors, and distributes the assets to the beneficiaries or heirs. If a resident dies in Tennessee owning property or having debts in in his individual name, it is often necessary for his survivors to do a probate proceeding. Probate proceedings are conducted in the county where the person resided at the time of death or where he or she owned real estate.

In circumstances where a person died owning less than $25,000 in property, a Small Estate Administration may be a good choice. This approach is a fairly uncomplicated, quick undertaking and is helpful for dealing with a small bank account and a car, for example.

For larger estates and estates involving real estate, the traditional Common Form Probate is typically used. These procedures are begun in the probate court, which is either Chancery Court or General Sessions Court, probate division. The process typically takes about one year to complete. Any person may bring a petition for probate and any creditor may also file to open the estate. Usually, the person named in the Last Will as the Executor or Personal Representative will be appointed to handle the gathering of assets and paying of debts. If someone dies without a Will, his or her next of kin will serve.

The Court will appoint the Personal Representative. Creditors will receive notice either through the newspaper or directly, and the Court will issue letters to the Personal Representative giving him or her authority to act concerning property of the estate.

The Personal Representative has a lot of responsibility -- a duty to notify all creditors, protect and collect all assets of the estate, to pay the costs and expenses of the estate administration, pay funeral costs, pay creditors, and then distribute the property of the estate according to the Last Will or according to the law of Tennessee. The Personal Representative is a fiduciary, meaning a person with a position of trust and responsibility. The fiduciary has rules to follow in how the estate property is handled. The fiduciary has to file tax returns, obtain releases from government agencies, pay taxes and expenses, keep good records, manage and invest property of the estate carefully, protect the estate from false or fraudulent claims, and then distribute property and close the estate. This process can take from 6 months to several years. It can be simple or become contested or complicated.

At Elder Law of East Tennessee we routinely handle probate of estates for our clients. We conduct probate in Knox and most surrounding counties.