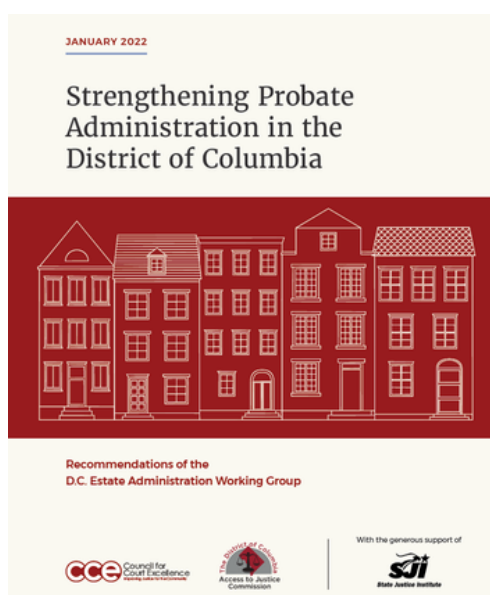


Strengthening Probate Administration Act of 2023

The *Strengthening Probate Administration Amendment Act* will simplify and modernize **probate (estate administration), which is the legal process of collecting, distributing, and administering a deceased person's assets**. This is the first major probate reform considered by the Council of the District of Columbia since 2001.

Surviving loved ones can find the probate process difficult to navigate, especially at such an emotional and overwhelming time. Few legal services providers are able to offer free, legal help in probate cases, and **many impacted people lack legal representation (about 97% for small estates and 35% for large estates)**. Yet, navigating the probate process is often necessary to allow D.C. families to retain intergenerational property and wealth.

This bill will help improve people's experience by strengthening the process and procedure of probate in D.C. Like many justice access issues, these changes will benefit everyone but especially people with fewer financial resources. Along with other reform efforts, which include providing the public with simplified forms, education, and guidance, the *Strengthening Probate Administration Amendment Act* aims to make probate more accessible and user-friendly.



In the following pages you will find a list of definitions that are important for understanding the bill, as well as specific challenges the bill takes on and solutions it offers.

For more information, you can read the D.C. Access to Justice Commission and Council for Court Excellence report [Strengthening Probate Administration in the District of Columbia](#) or contact Nancy.Drane@DCAccessToJustice.org or Danielle.Burs@CourtExcellence.org.

Definitions

Letters of Appointment are used to appoint personal representatives (executors) who have permission to act on behalf of a deceased person's estate.

A Will Registry is a place to store a will after it is made so that others can find it when the maker has died.

A **beneficiary** is someone a person names in a legal document (like a will) to receive their property. An **heir** is someone who has a legal right to a deceased person's property without a will.

Transfer by affidavit is a way to transfer property, such as when an heir can obtain the deceased person's property by showing a death certificate and a signed **affidavit** (a statement someone swears is true and accepts punishment if they are lying) to someone who holds the deceased person's property.

Homestead Allowance is an amount set aside for the deceased's immediate family members before distributing the estate to others. It is especially important when the family would otherwise receive less than the Homestead Allowance or when the remaining amount is low enough to qualify the estate for a simplified probate process.

Family Allowance is an amount available to support immediate family throughout the probate process.

Exempt Property Allowance allows immediate family to keep items like furniture, appliances, etc. up to a certain dollar amount.

Types of probate in the District:

- Supervised (most court oversight);
- Unsupervised; and
- Small estate (least court oversight).

Proposed Solutions

Streamlining the appointment of representatives for deceased people's estates

Current Challenge: Experienced court staff receive petitions for probate, then send them with their recommendations to a judge. This can **delay the start of the probate process**, because no one can act on behalf of the deceased person until Letters of Appointment are issued.

Proposed Change: Remove a step from the process for many estates by allowing experienced court staff, who already evaluate every petition, to decide whether to issue Letters of Appointment or send them to a judge for further review. This “hybrid judicial/non-judicial model” will **allow the process to begin much sooner**.

Reducing the publication requirement for Notice of Probate

Current Challenge: In D.C., notice that probate has begun must usually be published for three weeks and in two different publications. This is longer than other states, and the cost is higher in D.C. than neighboring jurisdictions. **These costs can be a burden for people with lower and middle incomes.**

Proposed Change: Reduce the publication requirement to two weeks in only one publication, **which will save time and money.**

Creating An Electronic Will Registry

Current Challenge: A missing will can delay or even prevent probate, burden families, and prevent the decedent's wishes from being carried out. Paper wills can be lost, damaged, or mistakenly destroyed. Not everyone has a lawyer to store their will. Also, many lawyers will not keep wills for their clients because of the open-ended responsibility that creates.

Proposed Change: An electronic will registry would **provide safe storage for anyone who wants to file a will and make it easier to find wills when needed.** The costs of creating and maintaining an electronic will registry should be minimal.

Expanding the number of estates that qualify as “small estates”

Current Challenge: D.C. defined “small estates” in 2001 as those with no real property and worth less than \$40,000 and provided a much less complicated

process for them. Adjusted for inflation, \$40,000 is \$68,690 in 2021. Still, few states cap a “small estate” at \$60,000 or less. **Too many estates are going through a process longer and more complicated than needed.**

Proposed Change: Define small estates as those worth up to \$80,000 (instead of only \$40,000). This **should make the probate process for many estates faster, easier, and less expensive.**

Increasing the allowable reimbursement rates for funeral expenses

Current Challenge: **The limit on funeral expenses has not kept pace with inflation;** the \$1,500 established in 1980 has the same buying power as \$5,536 today. In addition, D.C. has fallen behind other jurisdictions: Virginia allows \$4,000 and Maryland allows \$15,000.

Proposed Change: **Increase the reimbursement rate for funerals to up to \$10,000** (without court approval) to meet actual costs.

Allowing transfer by affidavit for small estates

Current Challenge: Transferring property can be a longer and more complex process without transfer by affidavit.

Proposed Change: A new transfer by affidavit process will allow legal transfer of some property without having to go to court.

Increasing the Homestead, Family, and Exempt Property Allowances

Current Challenge: D.C. law places some family assets beyond the reach of creditors. However, **the amounts of those allowances are too low to provide the protection intended because they have not kept pace with inflation.**

Proposed Change: Increasing these three allowances to align with inflation, the Uniform Probate Code, and other jurisdictions would **provide more appropriate support to grieving families.** Both Uniform Probate Code (UPC) and non-UPC jurisdictions have adopted this reform as part of a trend toward less court involvement.

Replacing the term “standard probate” with “formal probate”

Current Challenge: The name “standard” confuses attorneys and non-attorneys.

Proposed Change: The requirements for this type of probate only apply in certain circumstances, so the term “formal probate” is more accurate.