

UNDERSTANDING PROBATE

The Family Guide



PREPARED BY ROBERT L. FERRIS



I

FIRST STEPS: WHAT TO DO

1. **Obtain certified copies of the Death Certificate.** When a person dies in California, an official Death Certificate is filed in the county health department or vital statistics office of the county where the decedent died. Certified copies of the Death Certificate are needed to collect insurance proceeds and other death benefits, and to transfer joint tenancy property. Mortuaries often assist in obtaining the Death certificate.
2. **Locate the decedent's most recent will.** If the decedent left a will naming an executor this is normally the person who will be the estate representative. If there is no will, the decedent is said to have died "intestate."
3. **Locate and examine the decedent's safe deposit box.** A certified copy of the Death Certificate is usually required.
4. **Collect the decedent's mail and/or have it forwarded.** If the decedent lived alone, it is a good idea to notify the post office to have the mail forwarded.
5. **Cancel credit cards and subscriptions.** To prevent unauthorized use, all credit cards in the decedent's name should be either destroyed or cut in half and the credit card company should be notified.
6. **Notify Social Security Administration and/or the California Director of Health Services.** If the decedent was receiving monthly Social Security benefits, you must notify the Social Security office that the decedent has died. In addition, the check for the month in which the decedent died must be returned (even if he or she died on the last day of the month), along with any checks after that month which may be inadvertently mailed to the decedent. If the decedent was receiving benefits under MediCal, you must notify the Director of Health Services of the death within 90 days.

7. Get bank accounts released if possible. Sometimes, immediate cash may be needed to pay some obligations of the decedent or the decedent's family. If the account is in the decedent's name alone, but there is a named pay on death beneficiary the bank will usually release the funds to the beneficiary upon presentation of a certified Death Certificate and some form of valid identification. If the account is in the decedent's name alone, but there is no named pay on death beneficiary and the value of the estate is under \$100,000, the bank will usually release the funds to the heir upon presentation of a certified Death Certificate and a form Affidavit.
8. Collect Life Insurance Proceeds. Life insurance claims are frequently handled directly by the beneficiary of the policy and the proceeds are usually paid promptly. All that is usually required is the completion of the insurance company's printed claim form and a certified copy of the Death Certificate.
9. Collect Annuity Benefits. If the decedent had purchased annuities naming someone to receive the benefits on his or her death, the beneficiary may obtain the benefits by submitting a certified copy of the Death Certificate and a claim form to the insurance company issuing the annuity.
10. Collect Social Security Benefits. If the decedent was covered by Social Security, there will be a \$225 lump sum death benefit. Mortuaries often assist with information on this.
11. Collect Veteran's Benefits. Dependents of deceased veterans may be eligible for benefits. Information on veteran's benefits may be obtained by phoning the nearest Veterans Administration Office.
12. Collect Railroad Retirement Benefits. Death benefits and survivor's benefits may be available if the decedent was covered by the Railroad Retirement Act. Information may be obtained by contacting the nearest Railroad Retirement Board Office.
13. Prepare decedents final income tax returns. A Federal and State income tax return (Forms 1040 and 540) may be required covering the period from the beginning of the decedent's tax year to the date of death. Additional income tax returns (Forms 1041 and 541) may be required covering the period from the date of the decedent's death until the end of the tax year. If the decedent is survived by a spouse, the final returns may be a joint return. A tax preparer can advise you in this regard.



II

WHAT IS PROBATE?

Probate is the legal process regarding the administration and distribution of the estate of a deceased person (or "decedent"). It is administered under the jurisdiction of probate courts. (See the Probate Glossary for assistance with probate terminology.)

The court makes sure that the decedent's real and personal property is identified, inventoried and appraised, and ensures that any applicable debts and taxes are paid before the balance of the property is distributed to the heirs.

Probate is a very time consuming and paperwork intensive process. Most people hire a probate attorney to help them with the probate administration process.

Some probate estates can be administered in one year or less, but many take longer.

Probate is concerned with:

- Cataloging all property of the deceased
- Paying any debts, claims or taxes that are due
- Collecting rights to any income (royalties, stock dividends, etc.) to which the deceased was entitled
- Settling financial and property disputes
- Liquidating property (real or personal) of the deceased
- Distributing or transferring the remaining property to heirs

A personal representative is appointed by the Court to administer the decedent's estate. A personal representative can have various names

(Executor, Administrator, etc.), depending on the type of probate estate, but each personal representative has similar duties and responsibilities, which include managing the probate estate. Usually, in a will, the decedent names an "Executor" to act as personal representative. If there is no will or the decedent failed to name an Executor, the court will appoint a personal representative called an "Administrator." The Executor or Administrator will fulfill many of the same duties listed above.

III.

HOW THE PROBATE PROCESS WORKS

The following outline can help you understand the probate process and can show you which phase of the process you may be experiencing.



Phase One

Filing Petitions and Court Dates

The law and the unique probate language can make understanding the probate process difficult to grasp. If certain deadlines are not met, the probate case will likely be delayed, and there could be a greater chance for something to go wrong.

While you can file the necessary court documents yourself, an experienced probate attorney should always be consulted to assist in ensuring that the estates of your loved ones are properly handled.

**Probate administration is initiated
by filing a petition
for probate with the court.**

Probate administration is initiated by filing a petition to open the estate to appoint a personal representative (Executor or Administrator) who must closely follow probate procedure and carefully account for and distribute

estate assets. A personal representative may be appointed with “full authority” under the Independent Administration of Estates Act, which allows certain actions, like selling real property, to be taken without court approval. Actions conducted with “full authority” can speed up a probate administration, but must be cautiously approached since court approval is not being sought. Alternatively, a personal representative can be appointed with “limited authority,” which would require court approval for certain actions. For example, the personal representative would be required to seek Court approval to sell estate real property. A benefit of having “limited authority” is that a court order approving certain actions usually insulates the personal representative from any allegations of misconduct down the road. For example, if the personal representative requested Court approval of the sale of estate real property, it is very unlikely that anyone could allege that the personal representative sold the property for too little since the Court approved the sale.

**A probate administration begins
once a personal representative is appointed.**

If the petition has been properly prepared and presented at the hearing, the Court will review it and likely appoint a personal representative. Otherwise, the hearing will likely be continued for about thirty days.

When the petition for probate is approved, Letters of Administration (no will) or Letters Testamentary (with a will) are issued to the personal representative. The issuance of Letters is the starting point of a probate administration. These Letters empower a personal representative with authority and responsibility to collect and inventory estate property, identify and settle creditor claims against the estate, and sell real and personal property (among other duties).

Preparing the estate inventory means searching for all property belonging to the estate, such as houses, bank accounts, investments, automobiles and other items of personal property like jewelry and furniture. After assembling a list of the property, the personal representative will forward the list of property to a Court appointed probate referee, whose job it is to place values on the particular items.

For each probate estate, a probate referee is appointed by the Court to appraise estate assets with a date of death value.

A personal representative must also publish a "Notice to Creditors" in a local newspaper. The personal representative will also notify all known creditors that a claim must be filed if a debt is owed to them. Anyone claiming that the deceased owed them money has a limited amount of time to file a claim in the estate. Creditors of the deceased usually have about four months to file their claims after the estate is opened. Upon receipt of a creditor claim, the personal representative can accept (and pay) or reject the claim in whole or part. A creditor can file a separate civil lawsuit against the estate on a rejected claim, the effect of which generally prolongs the administration of the estate for months, or sometimes years.



Phase Two

Additional Pleadings, Filings and Settlements

Probate is an on-going process of filings, notifications, and applicable settlements. Any missed steps can delay the distribution of an inheritance.

These notice, filings and actions usually include:

- 1 Notice to the Department of Health Services for potential Medi-Cal recovery by the State
- 2 Filing an Inventory & Appraisal (with the help of a probate referee) of estate assets
- 3 Paying any State and Federal Taxes that are due
- 4 Allowing or rejecting creditor claims
- 5 Initiating a lawsuit to recovery property (e.g. homes, cash, automobiles, etc.) that belongs to the estate, but which is being held by another person or entity

Note that some sizeable estates cannot close without filing tax returns. If a Federal Estate Tax Return (Form 706) is due, the estate cannot close until the Internal Revenue Service (IRS) issues a "closing letter" approving the tax return, which may take up to six months to be prepared by an IRS agent and delivered to the personal representative.



Phase Three

Closing and Distributions

After the estate assets have been inventoried and appraised, and most often times liquidated, the personal representative must prepare a petition to close the estate and distribute the remaining assets.

This petition must disclose all the actions taken by the personal representative, including an accounting of his dealings with estate assets, and must request a proposed distribution of remaining assets. An accounting is sometimes waived by the heirs, which may facilitate an earlier distribution of assets. Unless all the heirs waive the requirement of an accounting by the personal representative, an accounting must be prepared.

Again, the court will usually set a hearing date within forty-five days after the petition to close the estate is filed. The interested parties in the estate are usually provided with notice and copy of the petition for their review. If an interested party has any objection, the party may contest the petition, which is usually done by filing written objections with the court and serving those objections on the other interested parties.

Any contested actions on the petition to close the estate will likely require a court hearing or perhaps a trial, either of which will further delay distribution of the inheritance.

If all goes smoothly, the final actions in the probate will be:

- 1 Obtaining a court order of distribution
- 2 Closing the estate accounts
- 3 Making final distributions to beneficiaries
- 4 Getting receipts from beneficiaries for distributions made to them

- 5 Filing the Order of Discharge releasing the personal representative from any further duties

IV. PROBATE GLOSSARY

Administrator

A court appointed person who administers the estate of a person who died without a will.

Beneficiary

An individual or entity to whom a gift of property is made.

Blocked Account

Cash or securities that are placed in a bank subject to withdrawal only upon court order.

Codicil

An amendment or supplement to an existing will.

Creditor

A party to whom a Decedent owes money.

Creditor Claim

The document representing a creditor's basis for payment of a debt. These claims are usually filed with a Court and served upon the personal representative or the attorney.

Decedent

A person who has died.

Estate

A person's total assets, both real and personal, which are managed by a personal representative.

Executor

The person named in a will to carry out the directions as set forth in the will. This person is the Personal Representative of the decedent's estate.

Fiduciary

A person or organization that manages property for a person, with a legal responsibility involving a high standard of care, e.g., conservators, guardians, personal representatives, agents, or trustees.

Guardian

A person appointed by court to protect and manage the personal care or financial affairs, or both, of a minor.

Heir

A person who would naturally inherit property through a will, or from another who died without leaving a will.

Holographic Will

A will that is handwritten and signed by the person making the will.

Intervivos Trust

A trust set up during the lifetime of a person to distribute money or property to another person or organization (as distinguished from a person who transfers money or property after death).

Intestate

Without a will. Opposite of Testate.

Irrevocable Trust

Trust wherein the grantor has expressly released the power of revocation.

Letters of Administration

The court document that establishes the petitioner's authority to act as personal representative (administrator). Letters Testamentary are issued to an executor.

Notice of Proposed Action

Formal written notice by a personal representative with full authority (under the Independent Administration of Estates Act) to the interested parties in an estate, of the intent to take certain action (e.g. sell real property) on or after a certain date.

Personal Property

Anything owned by a person that can be moved such as money, securities, jewelry, etc.

Personal Representative

A person appointed by the court to administer a decedent's estate.

Petition

A written, formal request, properly filed with the Court, for a specific action or order. Some form petitions are preprinted and available on the Court's websites.

Probate

The legal process of administering a decedent's estate. Also, a judicially supervised process for marshaling a decedent's assets, paying proper debts, and distributing the remaining assets to heirs.

Probate Court

The court that handles matters concerning wills and estates, such as the distribution of property or money to those named in a will. In California, the Probate Court also handles guardianships and conservatorships.

Property

Anything that can be owned such as money, securities, land, buildings, etc.

Real Property

Land and immovable objects on the land.

Revocable Trust

A trust in which the person making the trust retains the power to revoke the trust.

Small Estate

A decedent's estate may avoid a formal probate administration and have property transferred directly to an heir if the decedent's estate meets the requirements of California Probate Code §13100 et. seq. (e.g. estates less than \$100,000).

Successor Fiduciary

The next person or organization appointed if a vacancy arises in a conservatorship, guardianship, or decedent's estate because of the fiduciary's death, removal, or resignation.

Testate

Having made a valid will. Opposite of intestate.

Testator

A person who makes a will.

Testamentary Trust

A trust created by a will

Trust

The handing over of property to a person to be held for the benefit of another (i.e. held in trust).

Trustee

A person or organization authorized by a trust to hold and manage property for the benefit of a beneficiary. _____

Will

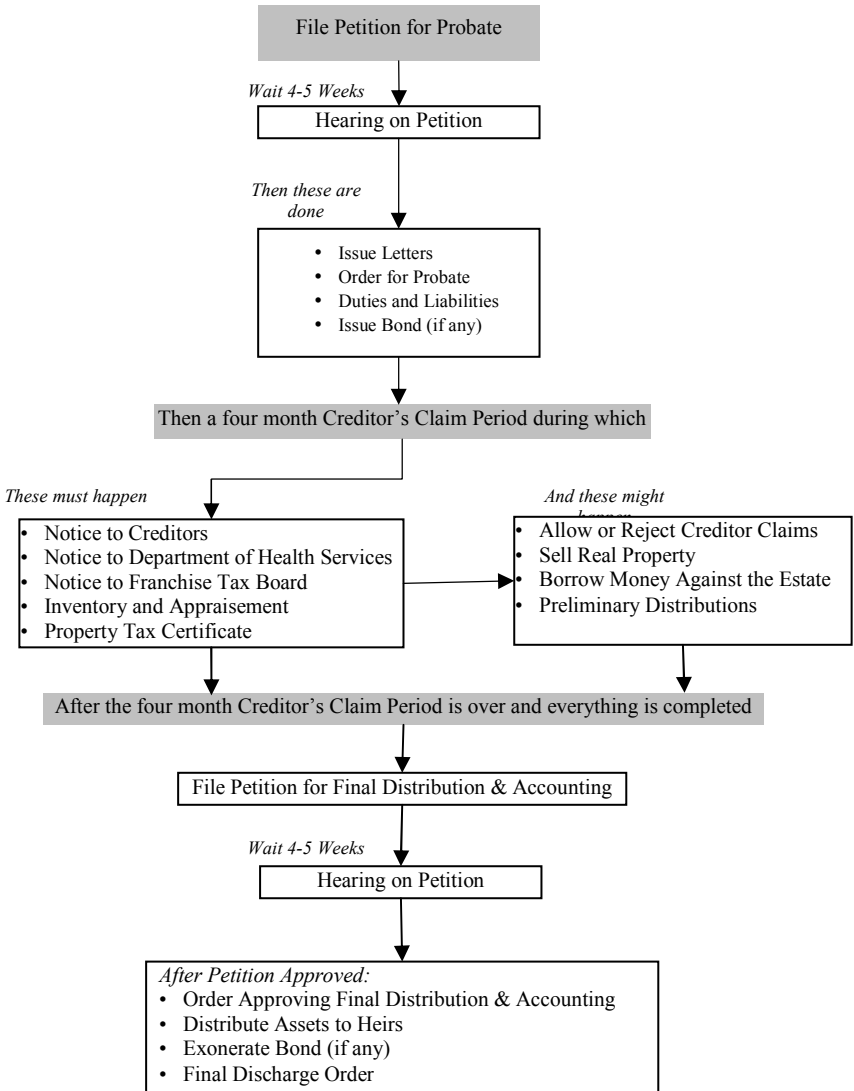
A document that directs disposition of a person's property after death.

Will Contest

A legal proceeding challenging a will.

This pamphlet and glossary are only offered to aid in understanding general probate administration and terminology, and is not intended, nor should any of the information be relied upon, as a substitute for legal advice. An experienced probate attorney should always be consulted for particular probate questions. To arrange for a free 30-minute consultation with a probate attorney, call the Law Office of Robert L. Ferris at (415) 626-6975.

CALIFORNIA PROBATE TIMELINE
Simple Estates with Real Property only



Notice: This timeline serves only as a guide. Many factors can delay the process, including lawsuits, creditor issues, locating a beneficiary, etc. Although much of the work can be completed through the mail and court filings, the court may elect to conduct a hearing on any particular issue.