

How to Probate an Estate in California

This article will provide you with a basic outline of how to probate an estate in California should you be brave enough to attempt the process on your own. If you feel that it is just too difficult of a process for you to navigate alone, then please give Afsar Estate Planning a call. With over 20 years of Estate Planning and Probate experience we can get you through the process quickly and with minimal costs. If you have any questions, call (858) 356-2731 or email info@afsarestateplanning.com.

Do You Need A Probate?

A California Probate is necessary when a decedent dies testate (with a Will) or intestate (without a Will) with a California estate value in excess of \$166,250. If the decedent had a formal Trust then Probate will not be necessary, as long as the decedent's assets are held by the Trust.

Petition for Probate

To start, a formal "Petition for Probate" is filed in Probate Court and a personal representative of the decedent's estate is appointed by the Court to administer the decedent's estate. A personal representative can have various names (Executor, Administrator, etc.), depending upon whether or not the decedent left a Will. After you have been given a hearing date for your Petition for Probate, you will then have to give all heirs "Notice of Petition."

Executor

Usually, in a Will, the decedent names an "Executor" to act as the estate's personal representative. If there is no Will or decedent failed to name an Executor, the court will appoint a personal representative called an "Administrator." The personal representative can be any interested person, including a family member, friend or creditor of the decedent. As a personal representative you will be responsible for:

1. Cataloging all property of the decedent (including real property and personal property);
2. Paying any debts, claims or taxes that are due;
3. Collecting rights to any income (royalties, stock dividends, etc.) to which the deceased was entitled;
4. Settling financial and property disputes;
5. Filing the decedent's final income tax return;
6. Filing the estate tax return, if needed;
7. Preparing an accounting of estate assets and expenses;
8. Litigating creditor's claims; and
9. Distributing or transferring the remaining property to heirs.

Bond

As personal representative of an estate you may be required to post a bond to serve. If the Will waives bond and the named Executor is appointed, no bond is required. However, if a Will does not waive bond or the Administrator lives out of state, then a bond will be required. The amount of the bond required is based on the value of the estate, minus any mortgages. The "cost" of the bond will depend on the value of the estate and the personal representative's credit score. It goes without saying that the worse your credit score the more you will pay for a bond.

Notice To Beneficiary

The Petition for Probate must be served on all beneficiaries named in the Will, if any, and all intestate heirs of the decedent. Intestate heirs are defined in Probate Code §6400-6414. Check the court's local rules to see if any special procedures are required in the jurisdiction you will be filing in.

Letters Testamentary

Once the personal representative is appointed at the first hearing (assuming there are no challenges to the appointment) the Court will issue "Letters Testamentary" to the personal representative. The "Letters Testamentary" is the official document that you will show to the banks, real estate agent, etc. to show that you have Court authority to act on behalf of the decedent's estate.

Notice To Creditors

After the appointment, the personal representative will need to serve "Notice to Creditors" (include a blank "Creditor's Claim" form with the notice) on the California Franchise Tax Board (FTB is mandatory to ensure the decedent's California income taxes have been paid) and all known creditors of the decedent. Creditors include credit cards, utilities, landlord and anyone else the decedent may owe money to. Be sure to be over inclusive not under inclusive. The creditor's will typically file a "Creditor's Claim" with the probate court and the personal representative will have to decide whether or not to pay the claim. The creditors have 4 months from the date of service of notice to file a claim or "technically" their claim is barred.

Inventory

The personal representative will have to file an "Inventory" of all of the estate assets within 4 months of being appointed. There are potentially 2 attachments to the inventory. Attachment No. 1 is for listing cash and cash equivalent accounts and is completed by the personal representative. Attachment No. 2 (which is the same form as Attachment No. 1) is for listing everything else and must be completed by the Court assigned "Probate Referee." All assets of the estate must appear on these attachments. If items are missed when the first Inventory is filed then supplements and amendments can be filed.

Final Account & Petition For Final Distribution

After the 4-month mandatory creditor period has run the personal representative can file a "Final Account and Petition for Final Distribution." It is at this time that the personal representative can request compensation for serving. The compensation is equal to statutory fees that are awarded to the attorneys. The statutory attorneys' and personal representative fees for a Probate are broken into statutory fees and fees for extraordinary services. Statutory fees are calculated based on the value of the estate as follows:

4% of the first \$100,000
3% of the next \$100,000
2% of the next \$800,000
1% of the next \$9,000,000
.005% of the next \$15,000,000

For all amounts above \$25,000,000 a reasonable fee to be determined by the Court. Note that life insurance policies paid for by the decedent directly will be included in the value of the decedent's estate. In addition, the gross value of the estate is considered, not the net value. As such you get no discounts on value for mortgages or other debts. In addition to the statutory fees set forth above, attorneys and representatives are entitled to additional fees for extraordinary work, such as work involved in real estate transactions and tax work. While such fee requests have to be submitted to the Court for approval the fees can range anywhere from \$390.00 to \$490.00 per hour, depending on the complexity of the work.