

Wills and Estates

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When people die, their assets including personal belongings, bank accounts, stocks, and real estate need to be safeguarded and managed. Bills need to be paid. Because of the grief process and the effects on families when there is a death, it can be difficult to deal with the business of settling the deceased person's affairs.

The process can be simple or complex depending on such factors as the size and nature of the deceased person's assets, whether assets are hard to locate, and whether the survivors can cooperate with one another. California law permits estates under \$150,000 to be settled outside of the formal Probate Court process. Estates that exceed \$150,000, and sometimes smaller estates for various reasons, are handled by the Probate Department.

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Probate Definitions

The person who died is called the decedent. If the decedent signed a will, the person who is designated in the will to handle the decedent's estate is called an executor. The executor files the will with the Court and files a petition for probate of the will and for appointment as the executor. If the decedent has not made a will, his or her affairs will still be settled through the Probate Court. In those cases, the person who the Court appoints to handle the estate is

called an administrator. The term personal representative means either an executor or an administrator. Although the law does not require a person to have a lawyer in the Probate Court, the process is complicated and an experienced probate lawyer is most helpful.

After a Petition of Probate is Filed

After a petition for probate of a will and appointment of a personal representative is filed, it is set for hearing in the Probate Court. It is the responsibility of the Probate Court to determine whether the will is a valid will, who the decedent's heirs are, and whether family members and beneficiaries named in the will have been notified of the probate proceedings as required by law. After being appointed by the Court, the executor or administrator, assisted by his or her attorney, must prepare a list of all the assets of the decedent. This is called an Inventory. The attorney then sends the Inventory to a neutral appraiser who is called a Probate Referee. The Probate Referee is a person who has been appointed by the California Controller. The Probate Referee values all non-cash assets and returns the inventory to the attorney for filing with the Court.

Duties of the Executor

The executor or administrator must keep careful track of all the assets, income and expenses during the probate process and must file an accounting to the Court that is reviewed in detail by the probate examiners unless the accounting is waived by all beneficiaries or heirs. Settling the estate of a decedent can become complicated and lengthy if the estate is large or contains unusual assets, or if the Probate Court must resolve disputes. For example, the Court may have to decide which of several wills is the decedent's true wishes, or

decide what the language of the will means, or decide the rights of different people to certain assets.

Closing the Estate

When all the assets have been collected and inventoried, property sold if necessary, all the bills and taxes paid, and any disputes resolved, the estate is ready to be closed. The executor or administrator files a petition with the Probate Court to report what he or she has done, to request a court order to distribute the assets remaining, and to request approval of fees for the executor or administrator and the attorney. State law sets the ordinary fees for attorneys and executors or administrators according to a percentage of the value of the estate. If the executor or administrator or the attorney has done extra work, he or she can request additional fees. The Probate Court reviews all fee requests to make sure the ordinary fees are correctly calculated and any extra fees are reasonable. If the decedent had a will, the will specifies how the decedent wanted his or her property to be distributed. If the decedent did not make a will, the California Probate Code specifies how the estate will be distributed. The Probate Court examiners review the petition for distribution to be sure that the executor or administrator is abiding by the terms of the will if there is one, or the provision of the California Probate Code if there is no will. When all the assets have been distributed as the Court ordered, the probate proceedings are over and the executor or administrator can ask the Probate Court to be discharged.