

PROBATE – What It Is and How It Works

What is Probate?

Probate is a necessary court mandated legal process that takes place after someone dies testate (with a Will) or intestate (without a Will). In California if the value of the estate is in excess of \$166,250, then a probate is necessary.

The Court's role is to ensure that all of the decedent's debts are paid and the assets are allocated to the correct beneficiaries.

How does Probate work?

The first step in the probate process is to file a Petition for Probate. After the Petition is filed with the court, a hearing date is provided, following this a Notice of Petition is sent to all the beneficiaries named in the will, or all heirs in intestate.

If there are no objections, the Court then has a hearing where a personal representative is appointed to administer the estate, and Letters Testamentary are issued. The Letters are the document which shows the representative has authority to act on behalf of the decedent's estate.

If the Court finds there is a valid Will, usually, the decedent would have named an "Executor" to act as the estate's 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 personal representative can be any interested person, including a family member, friend or creditor of the decedent.

The personal representative will have many responsibilities during the course of administering the decedent's estate. Some of the responsibilities include:

- Inventorying personal and real property
- Notifying creditors
- Paying any final debts owe
- Filing tax returns if necessary
- Distributing the assets to the heirs

The personal representative gets the estate valued, the attorney's and personal representative work together in finding any creditors of the estate, determining the beneficiaries, and deciding how to distribute the property to the heirs.

Probate is a complex and often times long process with many nuances. Although it is not required, in order to get the process completed in an efficient manner and to avoid unnecessary delays; it is advised that the representative seek assistance from an estate administration attorney.

How Long Does Probate Take?

If there is a will and no one tries to contest it, the average probate process takes six to nine months. If there isn't a will, the process could be much longer. Depending on how complex the estate is and how complete the documents are, it could take upward of a year.

How Much Does Probate Cost?

Probate fees are statutory for the attorney and personal representative. Statutory fees are calculated based on the value of the estate. The fees are on a tiered percent system 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

Court filing fees are separate and paid based on what the filing fees at the county or state court are.

What Should One Do To Avoid Probate?

The best thing one could do is to establish a comprehensive estate plan that includes a revocable living trust. Not only does a trust provide for incapacity planning, but trust administration is also an easier process, and one that does not involve the court. Being that it is a private process, if your assets have been transferred and retitled to be a part of your trust, it will save your loved ones the stress of a long, expensive, drawn-out process when it comes time to administer your estate.

Should you have any questions or would like to learn more, please feel free to consult with one of our attorneys at McDowall Cotter by giving us a call at 650-572-7933. The accomplished attorneys of McDowall Cotter work in civil litigation, business services, and estate planning and are located in San Mateo. Our experienced and knowledgeable staff will be able to help you with any of your needs or concerns. Additionally, you can find McDowall Cotter on Facebook, Instagram, Twitter and LinkedIn @McDowallCotter.

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