



# PROBATE: SETTLING ESTATES



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## WHAT IS PROBATE?

Probate means proving the will is valid. The fact that a person has a will does **NOT** mean that they will avoid probate; in fact, there usually is at least an informal or “summary” probate procedure. The size of one’s estate and how the property is titled are important factors in whether an estate will avoid formal probate proceedings. For example, if everything is owned jointly by the decedent and his/her spouse, the estate may be able to avoid formal probate.

## WHAT IS INVOLVED IN SETTLING THE ESTATE?

The person who dies is called a “decedent.” His or her will usually names an “executor” or “personal representative” who is responsible for settling the decedent’s estate. There are many things involved with settling an estate, but the most common duties are: 1) determining what property is owned by the decedent; 2) paying the decedent’s debts and taxes (if there are any); 3) notifying the creditors, the Social Security Administration, and the Veteran’s Administration; and 4) distributing all of the remaining property to the appropriate beneficiaries after the court gives approval for such distribution.

## PROPERTY OWNED AS A JOINT TENANT

In California, property owned in joint tenancy with rights of survivorship generally avoids probate. Real property, stocks, bonds, cars, and bank accounts all can be held jointly. When one of the co-owners dies, his/her interest in the property shifts to the surviving joint tenants automatically. The property must say “as joint tenants” or “with right of survivorship” to be considered joint property (except for motor vehicles registered in the names of two people with the word “**or**” between their names. If the title of the vehicle says “and,” it is not joint tenancy with rights of survivorship and the vehicle will have to be included in a probate proceeding). However, formal steps must be taken to remove the decedent’s name from the property.

To obtain sole ownership of jointly owned property after the other owner dies, you must fill out a form called an **Affidavit – Death of a Joint Tenant**. A certified copy of the death certificate must be attached to the affidavit. The affidavit must be signed by the surviving joint tenant in the presence of a notary public. The affidavit must then be recorded in the County Recorder’s office in the county where the real property is located as soon as possible after the death. There is a fee for recording this affidavit. Recording the affidavit will remove the deceased person’s name from the title so ownership appears solely in the name of the survivor. If the asset is stock or bonds then the holding company will probably require that a probate be opened and require the Executor to present a court order confirming his or her authority to collect the asset.

## ESTATES WITH A GROSS VALUE UNDER \$150,000

In California, per California Probate Code §13100, estates with a gross value of \$150,000 or less may be settled without formal probate proceedings. This is available regardless of whether the assets are real property or personal property so long as no probate administration proceedings are pending or have been conducted, or if they have, the personal representative consents in writing to the settlement process. An estate’s gross value is the fair market value on the date of death of all property owned by the decedent without subtracting any liens against the property or debts or mortgages owed by the decedent. Some types of assets are not included in computing the estate’s gross value: real property located outside California; joint tenancy property (real or personal); property passing outright to a surviving spouse (such as community property); life insurance where the decedent is not the beneficiary; death benefits; amounts due the decedent for services in the armed forces; among other types of property. For small estates, no published notice is required and there are no special rules for notifying creditors. There are three separate procedures for small estates:

1. For personal property – the person entitled to the property only needs to present an affidavit requesting that the property be transferred to the personal representative that has custody or control of the property. The affidavit must include a list of the personal property. Personal property can be a car, bank accounts, furniture, jewelry, (almost everything except land/real property). A certified copy of the death certificate, evidence that the decedent owned the property, and proof of identity must accompany the affidavit. There is a 40-day waiting period from the date of death of the decedent before the affidavit can be presented to the holder of the property. Most people will fall into this category.
2. For real property not exceeding \$50,000 in value – the heirs or beneficiaries must file an **Affidavit Re Real Property of Small Value** with the Court and record a certified copy with County Recorder. See California Probate Code §13200. This affidavit may not be filed until six months after the decedent's death. A certified copy of the death certificate and a copy of the will (if one exists) must accompany the affidavit.
3. For real or personal property not exceeding \$150,000 in value – the heirs or beneficiaries can file a **Petition to Determine Succession to Real Property** which asks the court to issue an order that allows the taking of the property without probate administration. See California Probate Code §13151. The Petition can include a request to issue an order determining succession rights to real and personal property. Forty days must have passed since the decedent's death.

#### THE FORMAL PROBATE PROCEEDING PROCESS

1. **Submit the Will to the Court** – within thirty days of the decedent's death, the will's custodian must submit the original will to the probate court clerk's office. The custodian may contact the superior courthouse to locate the probate court clerk's office.
2. **File the Petition for Probate** – this document initiates the probate proceeding. The form requests that the will, if there is one, be admitted to probate, and that a representative be appointed to administer the estate. This form is also used if there is no will, in which case you will be filing a Petition for Letters of Administration. On the Petition, you will check whichever box applies. When you file the Petition, the court clerk gives you a case number and a hearing date. Notice of the time and date of the hearing must then be given to certain people. If notice is not properly given, the Petition will not be approved.
3. **Mail and Publish the Notice of Petition to Administer the Estate** – this Notice must be received by **all heirs and beneficiaries** at least 15 days before the hearing date. The Notice must also be published in a newspaper of general circulation in the city or county (if there is no city) where the decedent resided at the time of death. The Notice must be published three times before the date of the court hearing and the latest date that the first publication must take place is 15 days before the date of the hearing. The purpose of publishing the Notice is to make creditors aware that the estate will be going through probate.
4. **Prepare the Order for Probate** – if the Petition is approved, you must prepare and submit to the court an Order for Probate. The purpose of this document is to admit the will (if there is one) to probate and appoint the estate representative.
5. **Prepare the Letters** – when the Order for Probate is signed by the judge, admitting the will and appointing the representative, the court clerk will issue Letters Testamentary (if there is a will) or Letters of Administration (if there is no will) which appoint the representative for the estate.
6. **File Petition for Final Distribution** - for a period of four months after the Letters Testamentary/of Administration are issued, creditors can file claims against the estate. The personal representative must give actual written notice to all known or reasonably ascertainable creditors. This written notice is in addition to the published notice. This written notice is given on a form called the Notice of Administration to Creditors. After the four-month creditor's claim period has ended, the representative can file with the court the **Petition for Final Distribution**. This petition requests that the court order the distribution of the assets to the beneficiaries.

### **PROBATE LAW IS STATE/COUNTY-SPECIFIC**

This Handout ONLY serves as a brief overview of the various ways to settle an estate in CALIFORNIA. Each county in California may have different filing requirements, probate forms, and times when forms must be filed. Furthermore, probate law is state specific with each state having its own laws on how to settle an estate. To help determine the proper forms and procedures, please consult the California Probate Court or Superior Court where the decedent resided.

### **LEGAL ASSISTANCE SERVICES**

A legal assistance attorney is available by appointment Monday through Thursday from 0800 - 1030 and 1300 - 1500, and Friday from 0900 - 1100. Powers of attorney and notaries are available Monday through Friday at the same times. For more information, please contact the Legal Assistance Office, located in Building 56, 32nd Street Naval Station, San Diego, CA, by telephone at (619) 556-2211, or our office at Naval Air Station North Island – Coronado, Building 318 – Second Deck, above the Fleet and Family Support Center, Saufley Road, by telephone at (619) 545-6437.

### **RESOURCES:**

**California Courts** Self-Help: [www.courts.ca.gov/8865.htm](http://www.courts.ca.gov/8865.htm)

San Diego County Court: [www.sdcourt.ca.gov](http://www.sdcourt.ca.gov) (click on “Wills, Estates & Trusts” under the “Probate” menu)

To find your local court in a different California county, visit <http://www.courts.ca.gov/find-my-court.htm>

California Probate Code §§ 6100 et seq., 7000 et seq., 13000 et seq. (2013)

**Nevada Probate Info:** <http://www.nvbar.org/sites/default/files/probate%20and%20administration.pdf>

Churchill County Court: <http://www.churchillcounty.org> (Click on “District Court” under the “Departments” menu)