



The Probate Process in California

While most people engage in Estate Planning to avoid probate, sometimes it is unavoidable!

In California, the process has been created to as efficiently and fairly as possible, transfer assets to heirs or beneficiaries and creditors. This can be a frustrating and time consuming process. Delays in the probate process can be caused by Will contests; fighting amongst heirs; the nature of assets; contested creditor claims; and valuation issues. Nevertheless, an understanding of the process, can help prepare you for what will be occurring, give you an understanding of the reasoning behind the process, and eventually aid you in final distributions

Here are the steps of a simple probate in California:

1. Determine Whether a Will Exists: If so, it is the responsibility of the person nominated as executor to file the Will to protect its integrity and to allow inspection by those that wish to do so.
2. File a Petition for Probate: in the petition, an individual seeks to be the executor or administrator of the decedent's estate. If there is a Will, this is done by the person nominated as the executor. If a Will was not found, it is done usually by an heir. The California probate code provides a basis for determining priority if more than one person seeks the role of an administrator.
3. Publish: Notice of the Petition has to be published in a local newspaper at least three times with the last of which being at least 15 days prior to the hearing.
4. Mailing of Notice: All persons, entities, and creditors entitled to receive notice shall receive notice at least 15 days prior to the court hearing.
5. Hearing on Petition for Probate: the hearing is set between four and six weeks after the filing of the petition for probate. In the event that no one opposes the person who has petitioned the court (and that everything has been done properly), the court will issue "letters" naming the individual the executor or administrator of the estate.
6. Inventory and Appraisal: the court will appoint a probate referee and the executor or administrator through his or her attorney will prepare an inventory and appraisal

which will be sent to the probate referee for valuation. Upon receiving it back from the probate referee, the executor or administrator; or the attorney will file it with the court.

7. Pay All Valid Claims: The executor or administrator has a duty to give notice to all known creditors; to accept or reject creditors' claims; and to pay all debts including the filing of all necessary tax returns. These include income tax returns and possibly an estate tax return.

8. File Accounting and Final Petition for Final Distribution: When all of the above has been accomplished, the estate is in a position to distribute its assets to the legally entitled individuals, entities, and creditors. The petition will be given a hearing date and notice must be given to interested persons.

9. Hearing Date: If the petition meets with the court's approval, the judge will grant the petition and sign the Judgment of Final Distribution.

10. The executor or administrator will then distribute assets and obtain signed receipts from the beneficiaries; have the attorney record the Judgment if there is real property; and file the receipts with the court.

Not that Difficult!

The above is simply meant to illustrate what has to occur. If everything is done as efficiently as possible, the process must take 7 months and is generally concluded within nine months to a year. Many probates do not involve complications. We will be happy to assist you in managing this interesting, but not really scary, process.