

# UNDERSTANDING PROBATE

## An Introduction to Selling an Estate Through Probate

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## MY PROBATE PAL

PROBATE & TRUST SPECIALIST

# WELCOME

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We created this brochure to give you an introduction to probate, what it is, and what the process involves. Our intimate understanding of the process stems from our own personal experiences, as well as the challenges we've encountered while guiding dozens of clients through probate.

We hope you find this introduction helpful.

## WHAT IS PROBATE?

At its most basic level, probate is the legal process of administering the estate of a deceased person, resolving any claims and distributing the deceased's assets under the supervision of the court.

If the decedent had a last will and testament, its validity will be determined during the probate process. The person appointed to manage the decedent's estate will also be chosen during the probate process.

## HOW LONG DOES PROBATE TAKE?

Generally the process takes up to a 8-16 months in the state of California. However, this depends on a number of variables such as:

- The size and complexity of the estate
- The number of creditors
- The number beneficiaries and their cooperation
- Are you managing the probate on your own (Pro-Per)
- Are you assisted by a skilled lawyer in probate and estate planning
- Does the lawyer have the support staff, such as a paralegal to handle your case

**Note:** Certain CA counties are known to experience significant backlogs. This is often attributed to factors such as a shortage of judges and support staff, as well as higher death rates compared to the civilian population.



# PROBATE COSTS

## HOW MUCH DOES A PROBATE COST?

Typically probate expenses range from **5%** to **8%** of the estates gross value (this sum does not reflect any estate or income taxes that the deceased may have due).

### Probate expenses include, but are not limited to:

- Court fees (are paid directly to the court)
- Legal fees (set by the CA Legislator)
- Personal Representative fees (set by the CA Legislator)
- Extraordinary fees (must be approved by the court)
- Accounting fees (CPA)
- Probate Referee/Appraisal fee (1/10 of 1% paid by the estate)
- Miscellaneous fees (for example the sale of a home)

### Attorney Fee structure:

| <u>Estate Value</u>     | <u>Compensation</u> |
|-------------------------|---------------------|
| <i>First \$100,000</i>  | <i>4%</i>           |
| <i>Next \$100,000</i>   | <i>3%</i>           |
| <i>Next \$800,000</i>   | <i>2%</i>           |
| <i>Next \$9 million</i> | <i>1%</i>           |
| <i>Next 15 million</i>  | <i>0.5%</i>         |

**Pro-Tip:** Attorney and Personal Representative fee structures are identical (PC 10800). The Personal Representative has the option to accept or decline the fee.



## DO ALL ASSETS HAVE TO GO THROUGH PROBATE?

In California, assets that go through probate are generally those **solely owned by the decedent** — and do not have a designated beneficiary or transfer-on-death (TOD) or pay-on-death (POD) provision.

### Some common assets that **ARE** probated include:

- Real estate held solely by the deceased
- Bank accounts held solely by the deceased w/out payable-on-death (POD) or transfer on-death (TOD) beneficiaries.
- Investment accounts held solely by the deceased without POD or TOD beneficiaries
- Personal property, such as vehicles, jewelry, and artwork solely owned the deceased
- Business interest held solely by the deceased
- Any assets not held in a living trust or designated beneficiaries

### Some common assets that are **NOT** generally probated include:

- Assets held in a living trust
- Retirement accounts with designated beneficiaries, such as IRAs and 401(K)s
- Life insurance policies with designated beneficiaries
- Bank accounts with POD or TOD beneficiaries
- Bank accounts jointly
- Property held in joint tenancy w/rights of survivorship or community property w/right of survivorship
- Property held in a trust



## COMMON MISTAKES WHEN NAVIGATING PROBATE IN CALIFORNIA

- Not properly communicating with family members or beneficiaries
- Purposely leaving out family members or beneficiaries
- Not dealing with holdovers living in estate property
- Not securing estate assets in a timely manner
- Distributing estate assets prematurely
- Failing to obtain professional appraisals
- Incomplete or incorrect paperwork
- Not meeting or unaware of court timelines
- Not seeking legal advise

## COMMON OPTIONS FOR SPLITTING AN INHERITED HOME

### **Selling the home:**

Easiest solution is generally to sell the house and divide the proceeds

### **Buyout:**

One sibling can offer to purchase the other siblings shared interest. A sibling would need to qualify for a loan (or have the cash on-hand) to buyout the other siblings equity.

## COMMON OPTIONS FOR SPLITTING AN INHERITED HOME (cont.)

### **Private Arrangement:**

- Siblings can swap assets of equal value
- One sibling can finance the transaction using a promissory note
- One sibling can rent for the other sibling to pay off equity owed

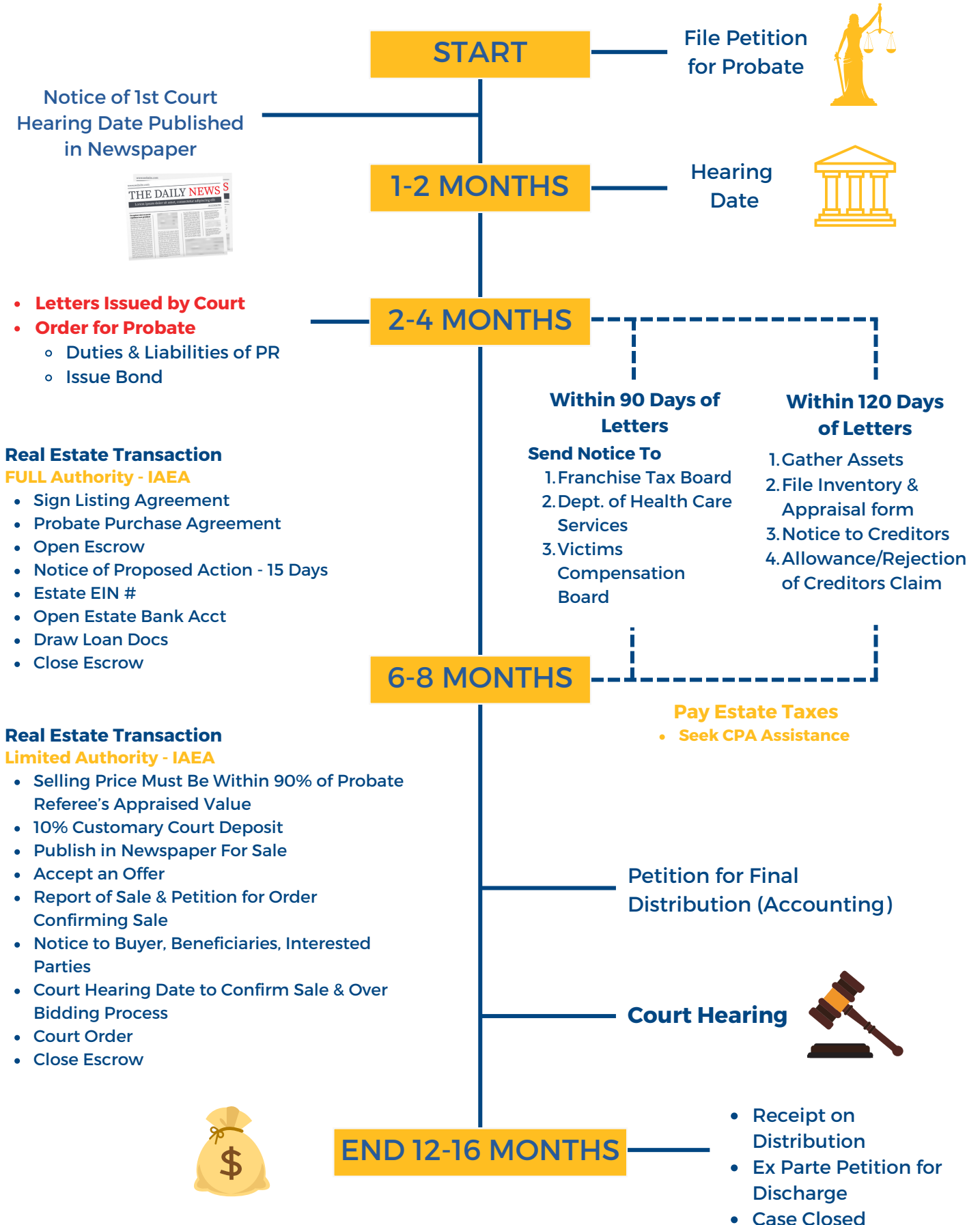
### **Partition Action:**

As final option. If an amicable agreement cannot be reached, a lawsuit maybe filed (independent of your probate case) requesting a judge to mandate the sale of the home and terminate co-ownership.

**Note:** A court supervisor will be required, control of the assets will be relinquished — and a court mediator will be appointed to oversee the sale of the home.



# PROBATE TIMELINE



## OBTAINING A BOND

If the judge orders you to obtain a bond, you'll need to secure one.

This is basically insurance to protect the estate against the risk of **mismanagement** by the executor/personal representative.

**Pro-tip:** Contact My Probate Pal team if you need help obtaining a bond, or visit our website: [www.MyProbatePal.com/resources](http://www.MyProbatePal.com/resources)

## "LETTER OF ADMINISTRATION"

This document grants you authority to act on behalf of the estate.

Upon receiving the Letters of Administration, you can present them to financial institutions to commence estate administration.

**Pro-Tip:** Without the issuance of Letters of Administration, bank accounts, mortgage notes, or real property cannot be liquidated, accessed, or sold.

## SELL REAL PROPERTY

Once Letters of Administration have been issued, the Personal Representative (PR) can immediately initiate the process of selling real property.

"**Full Authority**" you may sell real property assets as necessary.

**VS.**

"**Limited Authority**" any sale of real estate must be confirmed by the court.

**Pro-tip:** Documents necessary to close escrow in a probate transaction:

1. **Letters of Administration** - (Form DE-150, signed by county clerk, with a wet signature)
2. **Notice of Proposed Action** - (Form DE-165, signed by beneficiaries or heirs — court grants 15 days to contest the action)
3. **Original Death Certificate** - (not a copy)



## CREDITORS)

### Creditors Paid By Priority Ranking:

- All debts that are owed to the state of California and/or the U.S.
- Administrative expenses associated with the estate
- Anything regarded as a secured debt: mortgages and loans secured by liens or deeds of trust
- Funeral expenses
- Any bills that remain due to an illness of the person who died
- Family allowances
- Wage claims owed to employees of the decedent (up to \$2,000)
- Unsecured debts (credit cards), as well as remaining general debts

**Pro-tip:** Section 9100 of the California Probate Code stipulates that unsecured claims against the estate, if not presented within one year from the date of the decedent's death, are barred. This means that creditors must submit their claims within the specified timeframe to be considered for payment from the estate





# PROBATE CHECKLIST

## FIRST WEEK

- Notify close friends & family
- Notify employer
- Arrange funeral
- Notify Veterans Affairs
- Order death certificate (minimum of 5 certified copies)

## FIRST MONTH

- Locate original will (if one exists)
- Gather documents to account for assets
- Forward decedents mail to you
- Estates totaling over \$186K in personal and real property must be probated
- Retain attorney specializing in probate matters
- Submit original will, list of assets, and death certificates to attorney
- Determine beneficiaries and/or heirs with attorney
- Gather addresses for beneficiaries and/or heirs
- Protect unoccupied property and secure assets
- No formal action allowed until appointed by court Administrator or Executor of estate

## FIRST 2-3 MONTHS

- Prepare and submit formal probate petition to court (attorney)
- Once appointed and “letters of appointment” have been issued, formal action can be taken
- Cancel any unneeded services
- Notify Social Security
- Request EIN (Estate Identification Number)
- Open estate bank account with EIN number
- Notify life insurance companies
- Prepare real estate for sale
- Conduct estate sale (if desired)
- Deal with any firearms (best done by a Federal Firearms Lic. Dealer)
- Formal inventory and appraisal of assets due to court 90-days after appointment (attorney)

## AS POSSIBLE

- Inventory debts
- Deal with debt claims (attorney)
- Dispose of unwanted assets (if applicable)
- Plan asset allocation

## FIRST YEAR

- Pay local property taxes
- Submit and pay State and Federal Income taxes if necessary (seek advice of CPA)
- Submit final decedent income tax forms (1040) (seek advice of CPA)
- Submit estate income tax forms (1041) (seek advice of CPA)
- Submit personal liability discharge (5495) (seek advice of CPA)
- Submit estate tax form (706) (seek advice of CPA)

## FINISH (12-16 MONTHS)

- Prepare and obtain receipts for distribution to be filed with court (attorney)
- Submit probate and final accounting to court (attorney)
- All distributions and compensation in probate need to be approved by the court
- Make all distributions
- Close case with court (attorney)
- Close estate bank account

**Disclaimer:** The information provided on this document does not, and is not intended to, constitute for legal financial, or tax advice; instead, all information, content, and materials available on this document are for general informational purposes only. Information on this document may not constitute the most up-to-date legal financial, tax and/or other information.

# INVENTORY GUIDE

| ASSETS                          |                     |                                  |                 |          |
|---------------------------------|---------------------|----------------------------------|-----------------|----------|
| Asset                           | Date-of-Death Value | Value of Deceased Person's Share | How Title Held* | Probate? |
| Real Estate                     |                     |                                  |                 |          |
| Cash Accounts                   |                     |                                  |                 |          |
| Stocks, Bonds, and Mutual Funds |                     |                                  |                 |          |
| Life Insurance and Annuities    |                     |                                  |                 |          |
| Retirement Accounts             |                     |                                  |                 |          |
| Wages or Benefits               |                     |                                  |                 |          |
| Business Interests              |                     |                                  |                 |          |
| Limited Partnerships            |                     |                                  |                 |          |
| Vehicles                        |                     |                                  |                 |          |
| Other Assets                    |                     |                                  |                 |          |
| <b>Total Assets</b>             | <b>\$</b>           |                                  |                 |          |

## \*Abbreviations:

**S:** solely owned

**CP:** community property

**TBE:** tenancy by the entirety

**T:** held in trust

**JT:** joint tenancy

**TIC:** tenancy in common

**P:** partnership

**POD:** payable-on-death

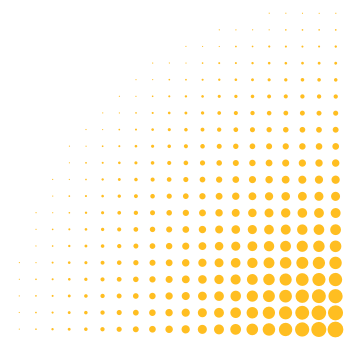
**CP WROS:** community property with right of survivorship

Credits: [www.nolo.com](http://www.nolo.com) "Inventory of Assets and Debts"

# INVENTORY GUIDE (continued)

| <b>DEBTS</b>                     |               |                 |                              |
|----------------------------------|---------------|-----------------|------------------------------|
| <b>Debt</b>                      | <b>Amount</b> | <b>Creditor</b> | <b>Date Next Payment Due</b> |
| <b>Car Loan</b>                  |               |                 |                              |
| <b>Credit Card #1</b>            |               |                 |                              |
| <b>Credit Card #2</b>            |               |                 |                              |
| <b>Other Debt</b>                |               |                 |                              |
| <b>Retirement Accounts</b>       |               |                 |                              |
| <b>Wages or Benefits</b>         |               |                 |                              |
| <b>Business Interests</b>        |               |                 |                              |
| <b>Limited Partnerships</b>      |               |                 |                              |
| <b>Total Debts</b>               | \$            |                 |                              |
| <b>Total Net Value of Estate</b> | \$            |                 |                              |

Credits: [www.nolo.com](http://www.nolo.com) "Inventory of Assets and Debts"



# PROBATE GLOSSARY



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**Beneficiary:** A person who inherits when there is a will.

**Conservatee:** The person whose care is provided for under a conservatorship.

**Conservator:** A person who has the court-appointed fiduciary responsibility for the care of another adult.

**Conservatorship:** A court proceeding wherein a judge appoints a responsible person (conservator) to care for another person (conservatee) who cannot care for him/her self or his/her finances.

**Custodian of the Will:** The person in possession of the will when the person who wrote the will dies.

**Decedent:** The person who died.

**Executor:** A person named in a will and appointed by the Court to carry out the decedent's wishes. This person is usually named as the seller of the real property.

**Heir:** A person who inherits. Trust: When a person (trustee) holds property at another person's (Settlor's) requests for the benefit of someone else (Beneficiary).

**Intestate succession:** The order of who inherits the property when the decedent does not have a will.

**Legatees, or Devisees:** People who are named in a will.

**Personal Representative (Administrator or Executor):** The person responsible for overseeing the distribution of the estate.

**Probate:** The process of deciding where, how and to whom to distribute the decedent's estate, such as the real property.

**Probate Real Estate Sale:** The transfer of legal title (ownership) of real property from the estate of the person who has died to his or her beneficiaries or to a buyer under the supervision of the Court.

**Probate Referee:** Before real property can be sold through probate, it must be appraised. This is done by a probate referee.

**Real Property:** The term used to refer to real estate (land and buildings) in probate and trust sales.

**Spousal Property Petition:** legal document filed by a surviving spouse to transfer property or assets owned by the deceased spouse into the surviving spouse's name without the need for lengthy probate proceedings.

**Spousal Property Petition (w/out a will):** will accelerate the transfer of community property; however, if the decedent owned separate property, those separate assets will likely go through probate.

**Testate:** When someone dies leaving a will.

**TOD:** Transfer on death.

**Will:** A legal document that specifies how a person's assets and property should be distributed after their death.

# TRUSTED PARTNERS & REFERENCES

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## PROBATE & ESTATE PLANNING

**CPT Law Group, Dustin Macfarlane:** Estate Planning & Probate.

Website: [cpt.law](http://cpt.law)

Email: [dustin@cpt.law](mailto:dustin@cpt.law)

**Law offices of Michael Johnson:** Estate Planning & Probate.

Website: [www.michaeljohnsonlaw.com/](http://www.michaeljohnsonlaw.com/)

Email: [michaeljohnsoncases@gmail.com](mailto:michaeljohnsoncases@gmail.com)

**Law Office of Lauren Jones:** Estate Planning, Probate & Contract Law.

Website: [Laurencjoneslaw.com](http://Laurencjoneslaw.com)

**Law Office of Vanessa Amador:** Real Estate & Contract Law.

Website: [norcalattorneybroker.com](http://norcalattorneybroker.com)

## LANDLORD/TENANT EVICTION

**Law Offices of Daniel Hunt:**

Attorney Eric Fernandez: Senior Litigation, Landlord/Tenant Eviction.

Website: [www.dhtrustlaw.com](http://www.dhtrustlaw.com)

Email: [efernandez@dhtrustlaw.com](mailto:efernandez@dhtrustlaw.com)

## BANK FINANCIAL ADVISOR

**Wells Fargo Bank**

Assistant Vice President, Scott Walton,

Tax Return Preparation, Small Business Accounting, Tax Issues & Resolution.

Email: [scott.a.walton@wellsfargo.com](mailto:scott.a.walton@wellsfargo.com)

# TRUSTED PARTNERS & REFERENCES

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## CERTIFIED PUBLIC ACCOUNTANT (CPA)

Certified Public Accountant, Scott Montgomery:  
Tax Return Preparation, Small Business Accounting, Tax Issues & Resolution.  
Website: <http://scottmontgomerycpa.com/>

## CALIFORNIA PROFESSIONAL FIDUCIARY

Professional Fiduciary, Ryan Anderson, Walcott & Hartin LLC:  
Trust Administration, Estate & Probate Management, Conservatorship, Durable Power  
of Attorney.  
Website: [whcalifornia.com](http://whcalifornia.com)  
Phone: [\(916\) 235-3777](tel:(916)235-3777)  
Email: [ryan@whcalifornia.com](mailto:ryan@whcalifornia.com)

# LET'S WORK TOGETHER

*We hope that is information was helpful during this difficult time.*

Please feel free to contact us with any questions or to schedule a complementary consultation:



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