



PROBATE

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AT YOUR SPECIFIC DIRECTION



WHAT IS “PROBATE?”

The word “probate” is the term generally used to describe what happens to a person’s property when he or she dies. The primary purpose of a probate proceeding is to make sure all of the decedent’s debts are paid and that the remaining property is distributed to the rightful owner(s). In California, different methods are used depending on the fair market value of the assets and how title is held.

NON-PROBATE PROPERTY

One of the first steps in settling an estate is to determine which of the decedent’s assets are actually “probate property.” Not all property in which the decedent had an interest is necessarily probate property. Some assets can pass to survivors outside a probate proceeding aside from the terms of a will. This typically includes jointly-owned property that transfers by “right of survivorship” to the surviving joint owner(s), life insurance policies and pension plans that pay cash benefits directly to survivors and property held in trust. Separate administrative tasks are required before non-probate property can be re-titled in the name(s) of the new owner(s).

SMALL-ESTATE ADMINISTRATION

Probate property on the other hand, as opposed to non-probate property, normally includes assets held in the decedent’s name alone. Sometimes probate property amounts to relatively little. If the gross value of the probate property does not exceed \$150,000, one of California’s “summary administration” procedures may be used. These procedures are available in many estates because the \$150,000 limitation does not include joint tenancy property (real or personal); property that passes outright to a surviving spouse or a surviving registered domestic partner; life insurance proceeds payable to named beneficiaries; bank trust accounts or pay-on-death accounts; mobile homes; automobiles or property held in a living trust. After a 40-day waiting period any personal property (i.e. assets other than real property) can be transferred to the “successors of the decedent” with a simple affidavit. If real property is involved a two-page printed form petition may be filed with the court to obtain an Order transferring title to the successors. Alternatively, if the gross value of the real property does not exceed \$50,000, a simple one-page affidavit may be used after six months. Summary procedures are a boon for estates that qualify. They save time and money and the estates are settled within weeks.

The forms used for summary administration are:

If the estate contains real property and is worth less than \$61,500, you need these forms.

Affidavit Re Real Property of Small Value	(DE-305)
Inventory and Appraisal	(DE-160)
Inventory and Appraisal Attachment	(DE-161)
Transmittal Letter to Probate Referee	
Change of Ownership Statement, Death of Real Property Owner	
Claim for Reassessment Exclusion for Transfer Between Parent and Child (if applicable)	

You may also need the Affidavit for Collection of Personal Property if there is other personal property assets to collect, as the *Affidavit Re Real Property of Small Value* procedure is only for real estate).

If the estate contains real property and is worth less than \$184,500, you need these forms.

Petition to Determine Succession to Real Property	(DE-310)
Inventory and Appraisal	(DE-160)
Inventory and Appraisal Attachment	(DE-161)
Transmittal Letter to Probate Referee	
Order Determining Succession to Real Property	(DE-315)
Notice of Hearing (Probate)	(DE-120)
Change of Ownership Statement, Death of Real Property Owner	
Claim for Reassessment Exclusion for Transfer Between Parent and Child (if applicable)	

This procedure will also allow you to collect personal property, such as cash, stocks, or motor vehicles, as long as the estate is worth less than \$150,000.

If the estate contains NO real property and is worth less than \$184,500, you need these forms.

Affidavit for Collection of Personal Property	(not a court form)
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PROPERTY THAT PASSES OUTRIGHT TO A SURVIVING SPOUSE OR REGISTERED DOMESTIC PARTNER

The probate code states that no administration is necessary for assets that pass outright to a surviving spouse or registered domestic partner. Nevertheless, title companies, stock transfer agents and other entities and/or persons who have control over certain assets usually require some type of official document showing that the surviving spouse or partner is entitled to the

property. In this case a form petition may be filed to obtain a court order confirming that the property belongs to the surviving spouse or partner and that no administration is necessary. There is no waiting period and no limit on the value of the property that can be transferred. The main forms for this procedure are:

Spousal or Domestic Partner Property Petition	(DE-221)
Spousal or Domestic Partner Property Order	(DE-226)
Notice of Hearing (Probate)	(DE-120)

FORMAL PROBATE COURT PROCEEDING

Usually a formal probate court proceeding is required if the estate has probate assets over **\$184,500** in value. Probate property passes to the beneficiaries named in the decedent's will or, if there is no will, to the decedent's heirs under California's laws of intestate succession. A personal representative is appointed to see that the proper steps are taken, called the "executor" or "administrator." The will usually states the decedent's choice for executor. If there is no will an administrator is appointed in order of priority starting with the surviving spouse, then children, etc.

A formal probate court proceeding takes a minimum of seven months to complete, and often takes a year or more. Creditors are given four months within this period to file their claims against the estate. All the forms except the last petition are pre-printed court forms with blank spaces to insert the required information. The only form which must be fully typed from beginning to end is the petition to close the estate which must be typed on legal numbered "pleading paper."

THE FORMS NEEDED FOR A FORMAL PROBATE PROCEEDING ARE:

PART 1: PETITION FOR LETTERS

Petition for Probate	(DE-111)
Notice of Petition to Administration	(DE-121)
Waiver of Bond Attachment to Petition	(not a court form)
Proof of Subscribing Witness (if the will is not self-proving)	(DE-131)
Proof of Holographic Instrument (for handwritten wills)	(DE-135)
Order for Probate	(DE-140)
Letters	(DE-150)
Duties and Liabilities of Personal Representative	(DE-147)
Confidential Supplement to Duties and Liabilities	(DE-1475)

PART 2: INVENTORY AND APPRAISAL

Application and Order Appointing Probate Referee: (local form required in some counties)	
Inventory and Appraisal	(DE-160)
Inventory and Appraisal Attachment	(DE-161)
Notice of Administration to Creditors	(DE-157)
Creditor's Claim	(DE-172)
Allowance or Rejection of Creditor's Claim	(DE-174)

If the estate contains real property:

Change of Ownership Statement, Death of Real Property Owner

Claim for Reassessment Exclusion for Transfer Between Parent and Child (if applicable)

PART 3: FINAL DISTRIBUTION

Petition for Final Distribution

(not a court form)

Notice of Hearing (Probate)

(DE-120)

Ex Parte Petition for Final Discharge and Order

(DE-295)

WHAT ABOUT TAXES?

The executor, administrator or survivors of a decedent are responsible for the filing of the decedent's final returns. They are also responsible for paying any taxes due before the estate is settled and the assets distributed.

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