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Frequently Asked Questions about The California Probate Process

How do I start the Probate process? Most probate cases are initiated by the filing of a petition with the clerk's office. At the time of filing, the clerk will assign a hearing date – usually 4-8 weeks after the filing date.

For the most common types of petitions, a Judicial Council pre-printed form must be used. Examples include:

- Petition for Probate
- Petition for Appointment of Conservator
- Petition for Appointment of Guardian

Most executors hire an attorney who practices probate law in the county where the deceased lived. The executor can file without the aid of an attorney.

Do all estates need to be probated? Not necessarily, estates valued at more than \$100,000 generally have to be probated. There are exceptions made when the decedent is survived by a spouse. If an estate includes **real property**, it must be probated if the **real property** is valued at more than \$30,000.

What is an Executor? An executor may also be called an Administrator or a Personal Representative. This is the person who is responsible for managing the probate, paying the bills, paying the taxes and distributing the assets. Executors are normally named in the will. In the case where there is no will, or if all the nominees have died or are unwilling to serve, state law provides that the decedent's closest relatives have the highest priority to become executor.

Inventorying your property: The executor must inventory the different types of property – real and personal – that makes up the estate so that the estate value can be determined. This inventory is important for a couple reasons:

- To make sure you left enough to cover your debts and distributions to beneficiaries: If your estate doesn't meet the monetary obligations of both your estate creditors and your property transfers to your beneficiaries, it's subject to abatement statutes, meaning that one or more beneficiaries may receive less than you had wanted or even nothing at all.
- To ensure that all property is accounted for: The executor is in charge of collecting and inventorying the estates assets to make sure that all the property is available for distributing at the end of the probate process. (Beneficiaries, of course, will want to know what assets are in the estate). If property is missing or not in the deceased's ownership at the time of death, ademption statutes become relevant. These statutes determine if a replacement asset or cash equivalent should replace the missing property intended for the beneficiaries.

NOTE: When determining the value of *real property* in an estate, it is essential that you get an independent third party opinion of value. **Professional Realtors specializing in probate real estate are an excellent resource for this process.**

How long does a typical probate take? Presuming there are no unusual problems, a probate can be completed in approximately eight months. That includes a four month creditor's claim period and the time after a petition is filed before it is actually heard by the court. With today's full court calendars, hearings are often held six weeks or more after a petition is filed. Problems with creditor's, taxes of contesters can delay probates for much longer periods.

How much does a probate cost? Fees in California are set by the State Probate Code, Section 10810. The fees are 4% for the first \$100,000 of the estate value, 3% of the next \$100,000, 2% of the next \$800,000, 1% of the next \$9,000,000 and ½% of the next \$15,000,000. For estates larger than \$25,000,000 the court will determine the fee for the amount above \$25,000,000.

NOTE: One again, in the case of real property in an estate it is essential that you get an independent third party opinion of value. **Professional Realtors specializing in probate real estate are an excellent resource for this process.** Improperly valuing an estate can result in unnecessary expenses to the estate. Some attorneys will refer or recommend real estate professionals to assist you. Make sure there are no referral fees involved.

What is the process for Appraising an Estate? Estates are appraised by probate referees who are appointed by the State Controller to determine the fair market value of the assets. Fair market value takes into consideration mortgages and other debts.

NOTE: A probate referee's fees are based on a percentage of the assets appraised unlike a bank appraiser who is paid a flat fee or a Realtor who normally provides *broker price opinion* without cost to the estate. **In the case of real property valuation an independent third party opinion of value from a Professional Realtor specializing in probate real estate can be very helpful**

What are the advantages of Probate? The proceedings are controlled by a judge who can decide disputes between all parties in the process. Creditors are required to submit all claims to the court and the executor is required, in most cases, to prepare an accounting and a report of activities.

What is a Probate Asset? Assets owned by the decedent are normally probate assets. If property is owned in joint tenancy, it is normally a probate asset. Properties owned in Tenancy in Common may not be considered a probate asset. If there is another means of determining who receives the assets after death of the owner, such as life insurance and IRA's, those designations may avoid probate. If there is a surviving spouse a formal probate can usually be avoided.

Do I need a Independent Realtor to handle the Real Property? In most estates employing an independent Professional Realtor who specializes in Probate Real Estate transactions is an invaluable asset. The Realtor can provide a variety of services, including real property valuations, property management (if necessary), cleaners, haulers, movers, contractors, landscapers, painters, staging and other services necessary to get the properties market ready to the estate the highest value for all real property in the estate.