



# UNDERSTANDING PROBATE

## What Is “Probate”?

The property that a person leaves behind when they die is called the “decedent’s estate.” The “decedent” is the person who died. Their “estate” is the property they owned when they died. To transfer or inherit property after someone dies, you must usually go to court this is called Probate. Dealing with the courts and the property of someone who has died is very complicated. Sometimes, however, family or relatives may be able to transfer property from someone who has died without going to court. Probate means that there is a court case that deals with:

- Deciding if a will exists and is valid;
- Figuring out who are the decedent’s heirs or beneficiaries;
- Figuring out how much the decedent’s property is worth;
- Taking care of the decedent’s financial responsibilities; and
- Transferring the decedent’s property to the heirs or beneficiaries.

In a probate case, an executor (if there is a will) or an administrator (if there is no will) is appointed by the court as personal representative to collect the assets, pay the debts and expenses, and then distribute the remainder of the estate to the beneficiaries (those who have the legal right to inherit), all under the supervision of the court. The entire case can take between 9 months to 1 ½ years, maybe even longer.

## What are the different ways an estate can be transferred after someone dies?

It depends. There are some ways that do not involve going to probate court. Here are some common examples:

- If a particular asset (like a retirement plan, life insurance policy, or a bank account) already has a named beneficiary, that asset goes to the beneficiary (or beneficiaries, if there are more than one) without going to court.
- If a house is owned by two or more people as joint tenants, the other owners have the right of survivorship, which means that they inherit the entire property in their name.
- Real estate sometimes can be transferred without court with a transfer-on-death deed (also called a beneficiary deed).
- Property in living trusts can be transferred without going to court.

There are also some simplified procedures for estates that are under \$166,250. Any portions of the estate that can’t be transferred more informally will likely have to be dealt with in probate court. How the estate is dealt with will partly depend on whether the decedent died with a will or without one.

## Probate and Title Insurance

While real property is “in probate” can it be sold?

Yes. Without getting into too much detail it can be sold either at private sale in which the executor of the estate negotiates a transaction with a buyer or at public sale in which the property is sold at public auction. Property is vested in the administrator or executor for the estate of the decedent. If the administrator/executor is appointed under the Independent Administration of Estates Act (IAEA) the letters will state that. This means the administrator/executor is authorized to sell or borrow money on behalf of the estate without court supervision. If the administrator/executor is appointed without IAEA, the administrator/executor has to get an order from the court authorizing the sale. Please ask your WFG Title Officer for more information on Probate and Title Insurance.

*For more information, please visit [www.courts.ca.gov](http://www.courts.ca.gov)*