



PROBATE - STEP BY STEP

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.

First Steps in Dealing with an Estate When Someone Dies

STEP 1: Figure out who will be the estate representative.

The first thing is to figure out who will be the representative of the estate. If there is a will, the representative is the executor named in the will. If there is no will, it depends on whether the case needs to go to probate court or not.

- If the estate is small or the estate can pass to other people through simplified procedures informally, then a close relative, often the person who will inherit most of what is left behind can be the informal estate representative.
- If the case has to go through a formal probate court case, then the court appoints an administrator to be the estate representative.

STEP 2: As estate representative, the representative will gather information and fulfill specific duties.

As an estate representative, there are a number of preliminary duties you have:

- Take possession of the property and safeguard it until everything is distributed and any debts are paid. For example, if the assets are in the decedent’s house, make sure the house is secure, and store any important papers and valuables in a safe place.
- Find the will, if there is one.
- Get certified copies of the death certificate. You will need them for many of your duties.
- Collect any assets and death benefits, if you can, such as bank account funds, life insurance proceeds, annuity benefits, Social Security death and survivor benefits, veteran’s benefits, etc.
- Figure out who all the heirs and beneficiaries may be.
- Check out any safe-deposit boxes for important papers or other valuables.
- Collect the decedent’s mail, to make sure you don’t miss anything important.
- Cancel credit cards and subscriptions.
- Manage “digital assets” (like online accounts, photos and documents stored on line, etc.). You may need to get email access for important information.
- Notify the Franchise Tax Board.
- Notify the Social Security Administration if the decedent was receiving monthly social security benefits.
- Prepare the decedent’s final income tax returns.

Important: These are just some of the steps you will have to take. Make sure you are doing all you need as estate representative to take care of the estate and help make sure it gets distributed correctly.

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STEP 3: Figure out who the heirs and beneficiaries are.

“Heirs” refers to people who have the right to inherit when someone dies without leaving a will (called “dying intestate”). Beneficiaries are the people who inherit according to a will.

Who the beneficiaries or heirs are is usually decided by:

- The terms of the will,
- State law, if there is no will, or if there is a problem with the will, or
- Other estate planning documents like beneficiary designations (like in retirement accounts), living trusts, or joint tenancy arrangements.

It is not always straightforward to figure out who heirs or beneficiaries are. Even if there is a will, maybe it was not up to date and the new spouse was not included, or the will was not changed after a divorce, or a beneficiary named in the will already died, and many other situations. You may need to talk to a lawyer to help you figure out who the heirs or beneficiaries are.

If you are the estate representative, keep in mind that:

- You must be trustworthy, very organized, and act diligently and responsibly.
- You must always stay informed of your responsibilities, keep good records, and communicate with everyone involved.
- Until the property goes to the right beneficiary, you are responsible for managing it in everyone's best interests. This is called a “fiduciary duty.”
- You have a duty to act responsibly and honestly. If you break your duty, you may end up being personally responsible for any loss to the value of the estate.

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