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Harbor Probate Law PC

Our Harbor guidebook is a resource for understanding probate in general and is not intended to provide legal advice. Each individual estate is unique, so please consult an attorney about the particulars of your case. Harbor Probate Law PC is available to assist you with all matters related to probate.

HAVE QUESTIONS?
Call us at (858) 723-8551

None

Let’s take the confusion out of probate.



No matter how overwhelming probate may seem, this guide, paired with the right legal assistance, can make the path clearer and less daunting. To help you understand the intricacies of probate in California, we will introduce you to all the probate basics, such as key concepts and proceedings, and then delve into specific challenges and considerations.

By understanding these concepts, you can better anticipate potential probate hurdles and arm yourself with the necessary knowledge to tackle them. The process may feel intimidating, but rest assured, we are in this together.

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Chapter 1

Introduction to Probate

Get started with the basic fundamentals
of what probate is and why it exists.

What is Probate?



Probate refers to the legal process by which a deceased person's estate, including most of their assets, is collected, managed, and distributed. After death, debts need to be paid, and assets need to be distributed pursuant to the decedent's wishes (if expressed in a valid will) or pursuant to the state's intestate succession laws (if no will exists). Probate is essentially the court-supervised process to ensure this happens correctly and legally.

Why Does Probate Exist?

The probate process historically was the only process to safeguard the decedent's intentions and to protect the rights of the beneficiaries or heirs. Today, it provides a court process that ensures that title, to assets and their ownership, transfers to the intended beneficiaries or heirs, and it makes sure that all debts and taxes are paid, leaving no liabilities for the ultimate owner of the assets. It also provides a platform to handle any disputes that may arise regarding the decedent's estate.

While probate might seem like another legal labyrinth, it is an important process. Without probate, assets might revert to the state or disputes over estates could go unresolved, causing distress to grieving families. Probate helps validate the will, if any, and ensures the orderly transfer of assets.



Chapter 2

Essential Probate Concepts

Explore key concepts for understanding the probate process and making informed decisions.

Estate Administration

Estate administration is the process of collecting assets, settling debts, and then closing out, accounting for, and distributing the assets a deceased person owned to the intended beneficiaries or legal heirs. Probate is the term for court supervised estate administration, as opposed to non-court estate administration.

With probate, the court appoints a personal representative to handle the decedent's affairs, including collecting all the probate assets, paying off valid debts, distributing assets, and wrapping up any remaining aspects of the decedent's life.

While estate administration can occur without probate in certain scenarios, such as when decedents own their assets in a trust or jointly with others, probate is often required for many estates. It is the court's way of overseeing that everything is done according to the rule of law, providing a system of checks and balances to prevent abuse or fraud.

Role of the Personal Representative

The personal representative (otherwise known as executor or administrator) plays a pivotal role in the probate process. It is a significant responsibility that requires time, attention, and often a deep understanding of the probate process.

The personal representative may be a surviving spouse, adult children, other family members, an executor named in the will, creditors of the decedent, or a professional such as an accountant or an attorney.

If there is a valid will, the executor named in the document carries out the wishes of the decedent. In the absence of a will or named executor, the personal representative is referred to as an administrator.

The personal representative's responsibilities are vast and include marshaling and inventorying assets, paying valid debts and taxes, managing the estate, and distributing assets to the beneficiaries or heirs. The court may also require the personal representative to post a bond, a form of insurance that protects the estate against loss through mismanagement. A will can waive the bond, and so can all of the beneficiaries in writing.

As a personal representative, understanding the probate process helps you know what to expect and how to safeguard your rights and observe your duties. It is essential to understand your responsibilities to avoid legal troubles and personal liability.

Understanding Wills

A will is a legal document that dictates how a person's property and affairs should be handled after their death. It usually designates an executor to carry out these wishes and can specify guardianship for minor children. However, contrary to popular belief, having a will does not avoid probate.

In California, for a death on or after April 1, 2025, an estate generally must go through probate if the assets in the decedent's own name are worth more than $208,850, whether there is a will or not. Trust assets, joint tenancy property and accounts with a named beneficiary do not count toward that figure. The presence of a will influences who inherits, not whether the estate goes through probate.

What Happens When There's No Will?



When a person dies without a valid will, they are said to have died "intestate." In such cases, the distribution of the decedent's assets will occur according to California's intestacy laws. These laws follow a hierarchy, generally favoring the deceased's spouse and children first.

In the absence of immediate family, the estate may be distributed to other relatives such as parents, siblings, or more distant relatives. If no legal heir can be found world-wide, the property may ultimately escheat, or revert, to the state. The process can become considerably more complex and time-consuming, highlighting the importance of having a valid will in place, or even better, a proper trust.



Chapter 3

When Probate is Necessary

Learn how to assess the need for probate and the various circumstances under which probate can be avoided.

Assessing the Need for Probate

While probate is a common procedure, it is not always required. Understanding when it is necessary can simplify the handling of a decedent's estate and potentially save time and resources.

In California, the need for probate largely depends on the value and nature of the decedent's assets. For a death on or after April 1, 2025, an estate with more than $208,850 in the decedent's own name must typically go through probate. A primary residence has its own, higher limit of $750,000.

For example, joint tenancy assets, retirement accounts with properly named beneficiaries, life insurance policies, and assets held in a trust typically do not need to go through probate. Also, if the decedent was survived by a spouse, a Spousal Property Petition might suffice. In Chapter 5, we explain these simplified procedures.



Situations When Probate Can Be Avoided

TRUSTS

A trust generally allows assets to avoid probate. Assets are transferred into the trustee's name and managed by the trustee for the benefit of the named beneficiaries. Generally, upon the death of the trustor (the person who created the trust), the assets are transferred or managed for the benefit of the beneficiaries according to the instrument's terms.

SMALL ESTATE PROCEDURES

California offers a few simplified processes for small estates when the gross value of certain real and personal property located in California does not exceed set amounts. For deaths on or after April 1, 2025, they include the Affidavit Procedure for Collection or Transfer of Personal Property (property worth $208,850 or less), the Petition to Determine Succession to Primary Residence (a home worth $750,000 or less), and the Affidavit Re Real Property of Small Value (California real property worth $69,625 or less). These summary proceedings are usually quicker and less costly than probate.

While probate serves a crucial purpose, it can be a lengthy and costly process. There are several legal arrangements and tools that can avoid the probate process while ensuring a smooth transition of assets. These are just some examples.

DESIGNATED BENEFICIARIES

Certain types of assets, like life insurance policies, retirement accounts, and payable-on-death bank accounts, allow the naming of designated beneficiaries. Upon the death of the owner, these assets pass directly to the named beneficiaries, avoiding probate.

JOINT TENANCY

Sometimes, property is held jointly by two or more owners. One form of joint ownership, called Joint Tenancy with Right of Survivorship, allows title to pass automatically to the surviving owner(s) without going through probate.

While these tools can be effective, their availability depends on various factors. Thus, it is always recommended to consult with a probate attorney to navigate these intricacies. If full probate is necessary in your situation, you will find more about the probate process and a step-by-step guide in Chapter 5 of this guidebook.


CALIFORNIA REPUBLIC

Chapter 4

The Uniqueness of California Probate

Understand what makes California's probate laws different from other states, and how that affects California's process.

State-to-State Variations



Probate practices vary widely across the United States, shaped by individual state laws, and even between counties of the same state. Some states offer simplified probate procedures for smaller estates or uncontested wills, reducing both the time and expense involved.

A number of states have adopted the Uniform Probate Code, which attempts to provide a standard set of probate laws aimed at simplifying the process and giving greater flexibility to personal representatives. California has not.

Also, some states allow the "independent administration" of estates, giving the personal representative greater freedom to handle probate assets without court intervention or supervision unless disputes arise.

Key Differences in California Probate Law

In California, the probate laws can be particularly complex and stringent, placing the state among the more difficult jurisdictions for probate. With some exceptions, if the assets in the decedent's own name exceed $208,850, probate is necessary.

In addition, California has a specific statute called the California Independent Administration of Estates Act (IAEA). It allows the personal representative to take actions without having to come back to court and seek approval or permission. However, not all actions fall under this statute. California requires the executor to obtain court approval for many actions, including distributing estate assets to beneficiaries or heirs. This rigorous court supervision can mean a longer, more intricate process, especially if mistakes are made.

California also has a statutory fee structure. It is based on the gross value of the estate assets, with certain adjustments for gains and losses, rather than purely net value, which can oftentimes result in higher fees.

Specific Challenges in the California Probate Process

A LONGER PROCESS

The strict court supervision often translates to a longer process, typically 9 to 18 months, sometimes extending up to several years if complications come up, or personal representatives are unequipped for their roles. The process timeline varies significantly and is quite dependent on the individual court calendar and docket.

MORE STEPS AND HURDLES

California requires the personal representative to obtain court approval for many actions. This generally means more paperwork, court hearings, and administrative hurdles.

Given the unique aspects of California probate law, you will want to be aware of these potential challenges.

HIGHER COSTS FOR LARGER ESTATES

The statutory fee structure can also pose challenges. Personal representatives and their attorneys are each entitled to a percentage of the gross estate, which can lead to significant costs for larger estates. This can be a shock for many heirs who are not aware of these fees and expect to inherit a larger amount.

Understanding the distinctive nature of California's probate laws will better prepare you for the process. As we venture further into this guide, we will address how to effectively manage these challenges.



Chapter 5

Navigating The California Probate Process

Discover the types of probate proceedings available and get a roadmap of the process.

Approaching the Process with Confidence



California's probate process may seem daunting, but knowledge and preparation can help you approach it without getting overwhelmed. First, we will explore the various types of proceedings you might encounter. Then, we will walk you through the probate process step-by-step. You will get a clear roadmap from the beginning to the end.

Types of Proceedings



Each probate situation is unique and requires different procedures and considerations. As discussed before, in some situations a full probate is not necessary and simpler procedures can be used to collect and distribute assets. In contrast, with complex estates, additional services and effort might be needed on top of the basic probate process. Let's look at the potential proceedings involved depending on the levels of the estate complexity.

CATEGORY

Summary Proceedings

Simplified procedures for small estates and surviving spouses.

Summary proceedings can significantly shorten the probate process for small estates and surviving spouses, with fewer court interactions, lower fees, and quicker distributions. The dollar limits shown apply to deaths on or after April 1, 2025.



Affidavit Procedure for Collection, Receipt, or Transfer of Personal Property

This procedure is used when the gross value of the decedent's real and personal property in California, not counting a home passing by the petition below, is $208,850 or less.

Affidavit Procedure for Real Property of Small Value

This procedure is used when the gross value of all of the decedent's real property in California is $69,625 or less. It may be filed six months after the death.

Petition to Determine Succession to Primary Residence

This procedure is used when the decedent's primary residence in California has a gross value of $750,000 or less.

Passage of Property to Surviving Spouse Without Administration

This procedure is available to a surviving spouse when the deceased spouse's real and/or personal property belongs, or should belong, to the surviving spouse. This usually involves the filing of a Spousal Property Petition.

CATEGORY

Complete Probate

Court-supervised administration of a deceased person's estate.



Estates that do not qualify for any of the summary proceedings will need to go through the full probate process to administer the estate. Probate procedures include the appointment of a personal representative, filing of a detailed asset inventory, payment of debts and taxes, and final distribution of assets.

We will go through this process step-by-step in the next section.

Probate for Complex Estates

For complex estates, the probate process is especially challenging. Issues above and beyond the most common probate situations can require more detailed and time-intensive work, as well as additional strategies and guidance on top of the regular probate proceedings.

Potential estate complexities include significant debts, business entity entanglements, multi-state assets, foreign jurisdiction affairs, and other unique issues.

A Step-By-Step Guide to the Probate Process

Now, let's go through the California probate process step-by-step. It begins with the filing of a petition and usually ends with the final distribution of estate assets.



01

Petition Filing

The process starts by filing a petition with the probate court in the county where the decedent lived or owned real property. The court will then set an initial hearing date.

02

Probate Examiner Review

In some counties, a probate examiner will review the petition to ensure it meets the legal requirements. If there are any issues, they are noted as defects by the examiner and must be addressed prior to the hearing.

03

Notice to Interested Parties

Interested parties, including potential heirs and creditors, are notified of the hearing through a legally required publication and service of the legal documents.

04

Court Hearing and Appointment of Representative

At the initial hearing, if all goes well, the court confirms the validity of the will (if there is one), admits it to probate, and appoints the personal representative (also known as the executor or administrator).

05

Inventory and Appraisal

The personal representative collects and protects the decedent's assets, inventories them, has a probate referee value certain assets, and files the inventory with the court within four months of appointment.

06

Payment of Debts and Taxes

The personal representative uses estate assets to pay off the decedent's debts and any owed taxes.

07

Final Distribution

Once debts and taxes are paid, the representative files a final accounting with the court and a petition to distribute the remaining assets to the beneficiaries or heirs. Upon court approval, the assets are distributed, and the probate case is closed.

Each step comes with its nuances and potential challenges. Having the right legal help by your side can streamline this process, ensuring you navigate it efficiently and in compliance with all legal requirements. We will offer more advice on when to work with a lawyer and what to look for later in this guide.

Key Deadlines After a Death

The original will

Whoever holds the original will must deliver it to the superior court clerk within 30 days of learning of the death, and send a copy to the executor named in it.

Opening the case

California sets no deadline to file the petition for probate. Until the court appoints a personal representative, though, no one has authority to sell estate property or act for the estate.

Inventory and appraisal

The inventory and appraisal is due within four months after letters are first issued.

Creditor claims

A creditor must file a claim by the later of four months after letters are first issued or 60 days after notice is mailed or delivered to that creditor.

Will contests

An interested person generally has 120 days after a will is admitted to probate to petition to revoke it.

Notices to state agencies

Within 90 days after letters are first issued, the personal representative or the estate attorney must notify the Franchise Tax Board. Notice must also go to the Department of Health Care Services if the decedent received Medi-Cal, to the California Victim Compensation Board if an heir or beneficiary has been incarcerated, and, for letters issued on or after January 1, 2026, to the Department of Child Support Services if the decedent had a court-ordered child support obligation.

Notice of Proposed Action

With authority under the Independent Administration of Estates Act, the personal representative can take many steps without a hearing. For certain actions, most often the sale of real property, a Notice of Proposed Action must go to interested persons at least 15 days before acting. A written objection generally means the action needs court approval. Compensation, accountings and distributions always require a court order.

Hearings in San Diego

San Diego County probate cases are heard at the Central Courthouse downtown. Most hearings can be attended in person or remotely by Microsoft Teams, unless the court orders otherwise.



Chapter 6

Handling Disputes & Litigation

Explore the common problems that can arise during probate, including potential litigation, and get effective strategies for conflict resolution.

CATEGORY

Disputes & Litigation

Court resolutions for contested wills, estate claims, and beneficiary disputes.



Common Issues and Hurdles in Probate

Whether it is familial conflict or legal complexities, there are many obstacles that can complicate the probate process and potentially delay the settlement of the estate. However, awareness of these potential issues, alongside strategic planning and guidance, can mitigate these challenges.

Issues that can arise in the probate process include: disputes over the validity of the will, arguments among beneficiaries and/or heirs, claims from creditors, complications with taxes, and difficulties in managing the estate assets.

In addition, there are administrative challenges to deal with. The personal representative bears significant responsibilities, such as accurately inventorying and appraising the estate and fulfilling their obligations to beneficiaries and creditors. Mistakes can lead to delays, legal complications, and potential personal liability. Again, legal assistance and guidance can help you avoid mistakes and manage any challenges.

Resolving Conflict

Effective communication is key to resolving conflicts. Here are examples of decisions and concerns that might come up in the probate process and lead to potential conflict:

- Deciding whether or not to sell a property, and if so, at what price.
- Deciding what personal items to keep.
- Figuring out whether to maintain a business, shut it down or sell it.
- Concerns about the length of the process and if it is being done efficiently.
- Concerns about dishonesty.
- Disputes over the validity of a creditor's claim.
- For insolvent estates, figuring out how to pay creditors.

Here are a few strategies to consider when faced with a conflict:

Open Dialogue

Encourage open and honest communication among all involved parties. Transparency can prevent misunderstandings and build trust.

Mediation

If conflicts persist and cannot be resolved otherwise, professional mediation can be a valuable tool. A neutral third party helps facilitate discussions, guiding parties towards a mutually agreeable solution.

Legal Advice

Engage a probate attorney to provide legal advice and manage contentious situations. They can help interpret the will, explain the legal obligations, and provide guidance on complex issues to help protect the personal representative from claims and liability.

Navigating Probate Litigation



Sometimes, conflicts escalate to a point where litigation becomes unavoidable. The court might have to resolve disputes over the will's validity, interpretation, or the conduct of the personal representative.

Navigating probate litigation requires expert legal knowledge and experience. If you find yourself in this situation, hiring an experienced probate attorney is crucial. They can advise you on the strengths and weaknesses of your case, guide you through the complex legal proceedings, and advocate for your interests.

Remember, though probate challenges can be daunting, you are not alone. With the right tools, strategies, and legal assistance, you can complete the process successfully and ensure a fair and efficient distribution of the decedent's assets.



Chapter 7

Costs and Compensation

Learn what to expect when it comes to the compensation, fees and additional costs involved in probate.

Probate Financial Considerations



The subject of costs is one that cannot be avoided when discussing probate. With so many variables at play, the financial aspect can quickly become a significant concern for all parties involved. The main financial considerations of probate include compensation for the personal representative and their attorney, as well as additional fees and costs.

Personal Representative and Attorney Compensation

Administering an estate involves significant time, effort, and responsibility. Accordingly, the law provides that the personal representative and their attorney are entitled to compensation. In California, the probate code sets forth a "statutory fee" based on the gross value of the probate estate. This fee is the same for both personal representatives and the attorney who represents them. The fee schedule is as follows:

- 4% of the first $100,000 of the gross value of the probate estate
- 3% of the next $100,000
- 2% of the next $800,000
- 1% of the next $9,000,000
- 0.5% of the next $15,000,000

A reasonable amount is determined by the court for amounts above $25,000,000. It is essential to note that these percentages apply to the gross value of the estate, not the net value. So, the personal representative's compensation is not affected by any mortgages or loans on the estate's property, but it is adjusted for gains and/or losses.

Additional Costs and Fees

It is important to note that statutory fees as referenced earlier only pertain to those services that are considered customary or "ordinary" services expected to be performed by every personal representative and an estate's attorney. Those fees do not cover "extraordinary" services such as selling property, obtaining financing, dealing with tax audits, handling litigation, and other non-ordinary services. Compensation for extraordinary services must be approved by the court as just and reasonable. In addition to the statutory fees, there are other costs associated with probate. These may include the following:

COURT FEES

The first petition costs $435 to file in 2026, and further filing fees apply later in the case.

PUBLICATION FEES

The costs related to the publication of notices for the initial probate hearing. This could include publication in a local paper and postage costs for notifying interested parties.

PROBATE REFEREE FEES

A court-appointed probate referee values most non-cash assets for one tenth of one percent of their value, at least $75 and no more than $10,000 unless the court allows more.

BOND FEES

If the court requires a bond, the estate pays the bond premium. A will, or all of the beneficiaries in writing, can waive the bond.

TAXES

Depending on the estate, there may be property, estate, or income taxes due.

MISCELLANEOUS FEES

These may include fees for certified copies of the death certificate, postage, and other incidental expenses.

Understanding the costs and fees associated with probate can help you plan better and avoid unexpected surprises.

The Family Home and Property Taxes

When a child inherits a parent's home, the county assessor will reassess it to current market value unless the parent-child exclusion under Proposition 19 applies. For transfers on or after February 16, 2021, that exclusion is far narrower than the rule it replaced, and the family home is often the largest asset in the estate.

Who qualifies

The home must have been the parent's principal residence. The child must make it their own principal residence within one year of the transfer and file for the homeowners' exemption within one year. A grandchild qualifies only if the grandchild's parent who was the grandparent's child has died.

The value limit

The exclusion protects the existing assessed value plus an allowance, $1,044,586 for transfers from February 16, 2025 through February 15, 2027. If the home's market value exceeds that total, the difference is added to the assessed value, and the property tax rises accordingly.

The claim

File form BOE-19-P with the county assessor within three years of the transfer, and before the property is transferred to anyone else. For an inheritance, the date of death is the date of transfer.

Exceptions

The rules have exceptions, including for family farms and for homes damaged in declared disasters. Confirm your situation with the assessor, or with us, before relying on an estimate.

Our Proposition 19 calculator at harborprobate.com/prop-19-calculator estimates the new assessed value for a given market value.



Chapter 8

Choosing to Work With a Lawyer

Get guidance on when you might need legal assistance and how to choose the right lawyer for your case.

Why and When You Might Need Legal Assistance



The probate process can be time-consuming and emotionally challenging, especially when you are coping with the loss of a loved one. While it is possible to navigate probate on your own, hiring a lawyer to assist can alleviate stress, reduce potential mistakes and/or related delays, and provide essential guidance.

If the estate is simple and relatively straightforward, and there is a clear will, you may be able to handle probate independently if you are comfortable with the potential personal liability exposure.

There are several circumstances when you might benefit from legal assistance:

Disputes

If there are family conflicts, or if someone challenges the will, a lawyer can help navigate the resulting litigation.

Complex estates

If the estate includes a business, significant assets, or property in other states or countries, an attorney can provide essential guidance.

Tax issues

If the estate owes federal estate tax, state income tax, or other tax issues are involved, an attorney can assist with the complicated task of filing an estate tax return and addressing these issues.

Engaging a lawyer can bring peace of mind, knowing that the probate process is being handled correctly, professionally, and in accordance with the law.

Selecting the Right Lawyer for your Case

Choosing an attorney is a significant decision. Here are a few key considerations when selecting a lawyer.

EXPERIENCE

Find out how much experience the attorney has with probate law and, specifically, with the California probate process. It is a technical area of practice. The State Bar of California certifies specialists in Estate Planning, Trust and Probate Law, and you can check any lawyer's certification on the State Bar's website.

COMMUNICATION

You want a lawyer who will keep you informed and answer your questions in a timely manner, and in a way you can understand.

FEES

Understand the fee structure. Some lawyers might charge a flat fee, others an agreed upon hourly rate, and some will accept the statutory structure which is based on a percentage of the estate's value. Ensure this is clear upfront to avoid surprises.

COMFORT

You should feel comfortable with the attorney. They should be someone you trust and feel you can work with through what can be a challenging and emotional process.

Remember, while a lawyer can guide you through the probate process, ultimately they work for you. It is crucial to feel confident in their abilities and comfortable with their approach to your case. The right legal assistance can make a challenging process much more manageable.



Chapter 9

Real Life Probate Scenarios

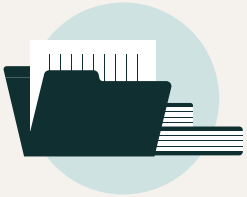
Learn from real-life case studies to deepen your practical understanding of the process.

Bringing Probate to Life



Real-world examples can make the legal landscape of probate easier to understand. By examining actual case studies, we will shed light on various procedures and solutions, from summary proceedings, to handling complex and intricate estates. These real-life narratives reveal the practical applications of the process, offering guidance you can apply to your own situation.

CASE STUDY



Summary Proceedings

The Benefits of a Real Property Affidavit

How Harbor Helped a Family
Save Time and Money

Time	Value at Issue	Location
5 months	$52,000	Valley Center, CA

The Challenge

Years after a man's death, his family was notified about a plot of undeveloped land owned in his name. At the time of his death, they had no idea this asset existed. Since the title remained in the deceased's name, the parcel prevented the closing of a high-stakes real estate transaction. The deceased's family was faced with a confusing and stressful situation. With pressure mounting from interested parties, probate seemed like the only solution to obtain a clean title for the land.

The Solution

Harbor Probate Law was originally brought on board to probate the decedent's Last Will and Testament. Our first step in handling this newly discovered asset was looking for a way around a full probate proceeding. Given the lapse in time since death and the size of the parcel, we concluded that a *summary* proceeding, available for properties under a certain value, could offer a more advantageous route.

Harbor promptly engaged a local probate referee to conduct an inventory and appraisal of the parcel. If the property's value was under $61,500, it could pass by an Affidavit Re Real Property of Small Value under the Probate Code. Utilizing this summary procedure would expedite the process significantly, saving the clients thousands of dollars in legal fees, and bypassing the need for a lengthy and complete probate process.

The Result

Our initial assessment was correct. The appraisal came in under the $61,500 limit, and we were able to complete the affidavit procedure quickly. The real estate transaction closed, and the deceased's portion of the sale was distributed to his family, without the need of a complete probate proceeding or significant legal fees.

The dollar limits quoted were those in force at the time of the death.

CASE STUDY



Complete Probate

Navigating Red Tape

Overcoming a Hurdle in a Well Prepared Estate

Time	Value at Issue	Location
10 months	$560,000	San Diego, CA

The Challenge

While a well-prepared estate plan is one of the best ways to minimize the need for probate, challenges can still arise.

In this case, the decedent had left behind a comprehensive estate plan that included a trust, a durable power of attorney, an advance healthcare directive, and a pour-over Last Will and Testament. However, he had inherited his late wife's IRA and never updated or completed the beneficiary designation before his death. This created a roadblock for his children as they dealt with his estate.

The custodial company in charge of the IRA refused to administer it without a formal Estate and "Letters of Administration" or "Letters Testamentary." This meant that probate was now required to administer this asset, despite their father's detailed preparations.

The Solution

To enable the family to collect the IRA, Harbor Probate Law stepped in to assist in petitioning for probate of their father's Last Will and Testament. As part of the process, we negotiated with the IRA's custodial company. According to California law, each custodial company is able to set their own internal policies for administering assets. We worked to convince them to allow the direct heirs to inherit the IRA, however their inflexible policies meant this avenue was unavailable.

The Result

Despite these obstacles, Harbor and the Executor completed the probate successfully. Following a detailed final accounting and Order for Distribution, the custodial company released the IRA and we ensured the rightful transfer of all the family assets to the children.

We managed to not only secure the IRA, but also another retirement asset. What seemed like a roadblock was overcome with expert navigation, making the process less burdensome for the bereaved family.

CASE STUDY



Disputes & Litigation

Cleaning up a Messy Situation

How Harbor Helped Administer a Hoarder's Estate

Time	Value at Issue	Location
1.3 years	$1,400,000	N. Hollywood, CA

The Challenge

A woman died intestate, with no spouse, children or surviving parents. Under the hierarchy of inheritance, her only heirs were her two estranged, aging brothers who had little knowledge of her estate. They discovered she was a hoarder with several dozen cats, and owned multiple properties scattered across Los Angeles and Riverside counties. In addition to the work of petitioning for probate, the dangerous conditions inside the properties made the tangle of real estate and personal belongings even more complex.

The Solution

Harbor Probate Law took up the case and started with the most urgent issue: dealing with the decedent's properties. We visited each individual property and assessed the level of work required and the types of professionals needed so we could create a strategic plan. After documenting the properties' conditions, we immediately asked the court for appointment of a Special Administrator. This allowed us to begin working on the properties while waiting for the general Petition for Probate to be granted.

We then engaged a contents specialist to help with the arduous task of emptying and cleaning the properties. During this time-intensive process, we diligently continued working on the necessary probate procedures. Once the properties were cleaned and prepared, we brought expert real estate agents on board to market and sell the properties.

The Result

Just as the first probate seemed close to resolution, an unexpected curveball was thrown our way: one of the heirs passed away, also without a will (intestate). Without missing a beat, we initiated a separate probate process in another county to allow the distribution to continue. One of Harbor's strengths is its state-wide practice and its ability to probate estates in all counties.

Administering two probates in parallel, we successfully closed the first one and then turned our full attention to the secondary probate, bringing it to completion as well. Due to our significant work on the decedent's properties, we were able to market and sell them to developers, maximizing the value for the heirs. After so much loss and confusion, the family members found relief in our services and were able to put this stressful situation behind them.



Chapter 10

Additional Resources

Find beneficial resources such as major forms,
a glossary of probate terms and common FAQs.

MAJOR FORMS

Major forms to know for handling the probate process.



Embarking on the probate process requires a thorough understanding of various legal documents and forms. In this section, you'll find a collection of key forms essential for navigating the various stages of the probate process in California. These forms cover everything from initial filings to final distributions, providing a foundational toolkit for effectively managing the probate proceedings.

Important Note:

The following forms provide a basic overview and may not encompass all necessary details. For the most up-to-date documentation and additional requirements, always refer to the State of California's official website at www.courts.ca.gov.

Mandatory Probate Filings

DE-111

PETITION FOR PROBATE



Form is used to initiate a probate proceeding for estate

DE-142

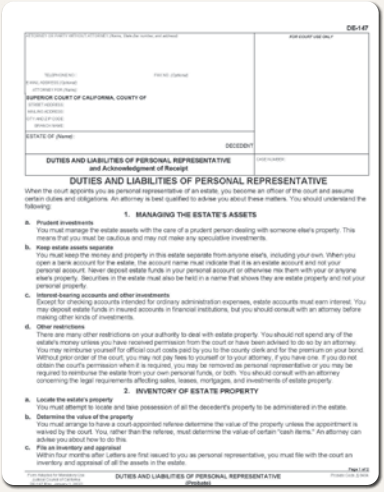
WAIVER OF BOND BY HEIR OR BENEFICIARY (DE-111 ATT. 3E)



Form is used by an heir or beneficiary to waive the posting of a bond by personal representative

DE-147

DUTIES AND LIABILITIES OF PERSONAL REPRESENTATIVE



DE-147

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

ESTATE OF (Name):

DECEDENT

DUTIES AND LIABILITIES OF PERSONAL REPRESENTATIVE and Acknowledgment of Receipt

DUTIES AND LIABILITIES OF PERSONAL REPRESENTATIVE

When the court appoints you as personal representative of an estate, you become an officer of the court and assume certain duties and obligations. An attorney is best qualified to advise you about these matters. You should understand the following:

1. MANAGING THE ESTATE'S ASSETS

a. **Prudent investments**
You must manage the estate assets with the care of a prudent person dealing with someone else's property. This means that you must be cautious and may not make any speculative investments.

b. **Keep estate assets separate**
You must keep the money and property in this estate separate from anyone else's, including your own. When you open a bank account for the estate, the account name must indicate that it is an estate account and not your personal account. Never deposit estate funds in your personal account or otherwise mix them with your or anyone else's property. Securities in the estate must also be held in a name that shows they are estate property and not your personal property.

c. **Interest-bearing accounts and other investments**
Except for checking accounts intended for ordinary administration expenses, estate accounts must earn interest. You may deposit estate funds in insured accounts in financial institutions, but you should consult with an attorney before making other kinds of investments.

d. **Other restrictions**
There are many other restrictions on your authority to deal with estate property. You should not spend any of the estate's money unless you have received permission from the court or have been advised to do so by an attorney. You may reimburse yourself for official court costs paid by you to the county clerk and for the premium on your bond. Without prior order of the court, you may not pay fees to yourself or to your attorney, if you have one. If you do not obtain the court's permission when it is required, you may be removed as personal representative or you may be required to reimburse the estate from your own personal funds, or both. You should consult with an attorney concerning the legal requirements affecting sales, leases, mortgages, and investments of estate property.

2. INVENTORY OF ESTATE PROPERTY

a. **Locate the estate's property**
You must attempt to locate and take possession of all the decedent's property to be administered in the estate.

b. **Determine the value of the property**
You must arrange to have a court-appointed referee determine the value of the property unless the appointment is waived by the court. You, rather than the referee, must determine the value of certain "cash items." An attorney can advise you about how to do this.

c. **File an inventory and appraisal**
Within four months after Letters are first issued to you as personal representative, you must file with the court an inventory and appraisal of all the assets in the estate.

Page 1 of 2

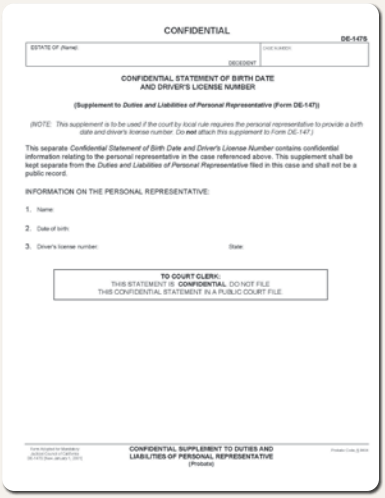
DUTIES AND LIABILITIES OF PERSONAL REPRESENTATIVE (Probate)

Probate Code, § 8404

Form is mandatory to be filed prior to appointment of personal representative; can be filed with initial filing

DE-147S

CONFIDENTIAL SUPPLEMENT TO DUTIES AND LIABILITIES



CONFIDENTIAL

DE-147S

ESTATE OF (Name):

DECEDENT

CONFIDENTIAL STATEMENT OF BIRTH DATE AND DRIVER'S LICENSE NUMBER

(Supplement to Duties and Liabilities of Personal Representative (Form DE-147))

*(NOTE: This supplement is to be used if the court by local rule requires the personal representative to provide a birth date and driver's license number. Do **not** attach this supplement to Form DE-147.)*

This separate *Confidential Statement of Birth Date and Driver's License Number* contains confidential information relating to the personal representative in the case referenced above. This supplement shall be kept separate from the *Duties and Liabilities of Personal Representative* filed in this case and shall not be a public record.

INFORMATION ON THE PERSONAL REPRESENTATIVE:

1. Name:
2. Date of birth:
3. Driver's license number: State:

TO COURT CLERK:
THIS STATEMENT IS **CONFIDENTIAL**. DO NOT FILE THIS CONFIDENTIAL STATEMENT IN A PUBLIC COURT FILE.

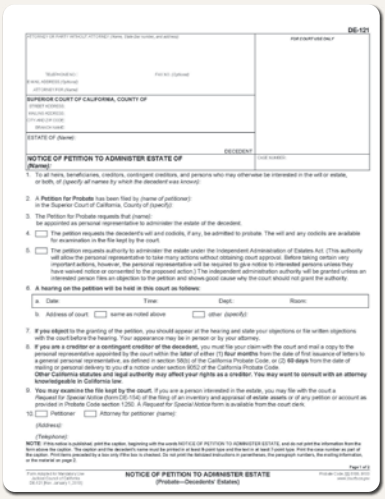
CONFIDENTIAL SUPPLEMENT TO DUTIES AND LIABILITIES OF PERSONAL REPRESENTATIVE (Probate)

Probate Code, § 8404

Form is required in some counties as part of the filing of a petition to appoint a personal representative

DE-121

NOTICE OF PETITION TO ADMINISTER ESTATE



NOTICE OF PETITION TO ADMINISTER ESTATE
(Probate—Decedents' Estates)

Form is used to provide notice to all interested parties of an initial probate hearing

DE-140

ORDER FOR PROBATE



ORDER FOR PROBATE

Form is used as the court order appointing a personal representative in a probate

DE-150

LETTERS



Form is used to show authority of personal representative once appointed

DE-160

INVENTORY AND APPRAISAL



Form is used to list all assets of the estate and is provided to the probate referee so the referee may value those assets

Creditor Filings

DE-157

NOTICE TO CREDITORS



NOTICE OF ADMINISTRATION OF THE ESTATE OF

[NAME]

DECEDENT

NOTICE TO CREDITORS

Form is used to provide notice to creditors of estate

DE-172

CREDITOR'S CLAIM



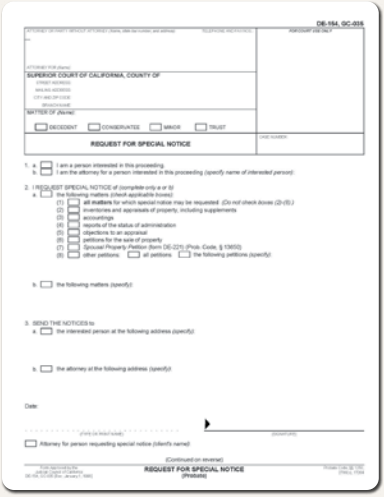
CREDITOR'S CLAIM

INSTRUCTIONS TO CLAIMANT

Form is used by a creditor to present its claim in the probate

DE-154

REQUEST FOR SPECIAL NOTICE



Form can be used by any interested party to be notified of probate events

DE-174

ALLOWANCE OR REJECTION OF CREDITOR'S CLAIM



Form is used in response to a filed creditor's claim

DE-300

MAXIMUM VALUES FOR SMALL ESTATE SET-ASIDE & DISPOSITION OF ESTATE WITHOUT ADMINISTRATION



Form is required to be attached to summary proceedings forms and filings as indicated on the form.

DE-305

AFFIDAVIT RE REAL PROPERTY OF SMALL VALUE



Form is used to collect decedent's interest in real estate property of small value.

DE-310

PETITION TO DETERMINE SUCCESSION TO PRIMARY RESIDENCE



Form is used to determine and transfer a decedent's primary residence in California to its successor-in-interest without a formal administration.

DE-315

ORDER DETERMINING SUCCESSION TO PRIMARY RESIDENCE



Form is the final court order following the Petition to Determine Succession to Primary Residence being granted and vests the primary residence ownership in the successive owner.

Spousal or Domestic Partner Filings

DE-221

SPOUSAL/DOMESTIC PARTNER - PROPERTY PETITION



DE-221

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

ESTATE OF (Name):

DECEDENT

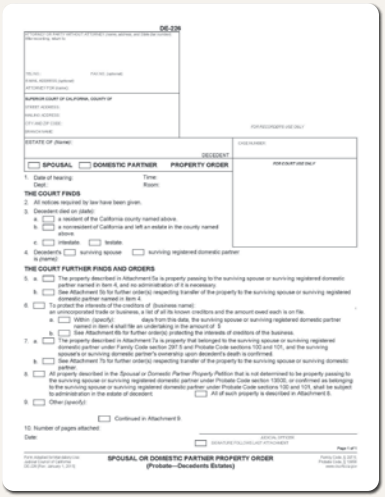
SPOUSAL DOMESTIC PARTNER PROPERTY PETITION

SPOUSAL OR DOMESTIC PARTNER PROPERTY PETITION
(Probate—Decedents Estates)

Form is used to initiate a spousal or domestic partner property petition to claim ownership in the deceased's assets

DE-226

SPOUSAL/DOMESTIC PARTNER - PROPERTY ORDER



DE-226

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

ESTATE OF (Name):

DECEDENT

SPOUSAL DOMESTIC PARTNER PROPERTY ORDER

THE COURT FINDS

THE COURT FURTHER FINDS AND ORDERS

SPOUSAL OR DOMESTIC PARTNER PROPERTY ORDER
(Probate—Decedents Estates)

Form is issued as a final court order in a spousal or domestic partner property petition

Proof of
Service Filing

DE-120

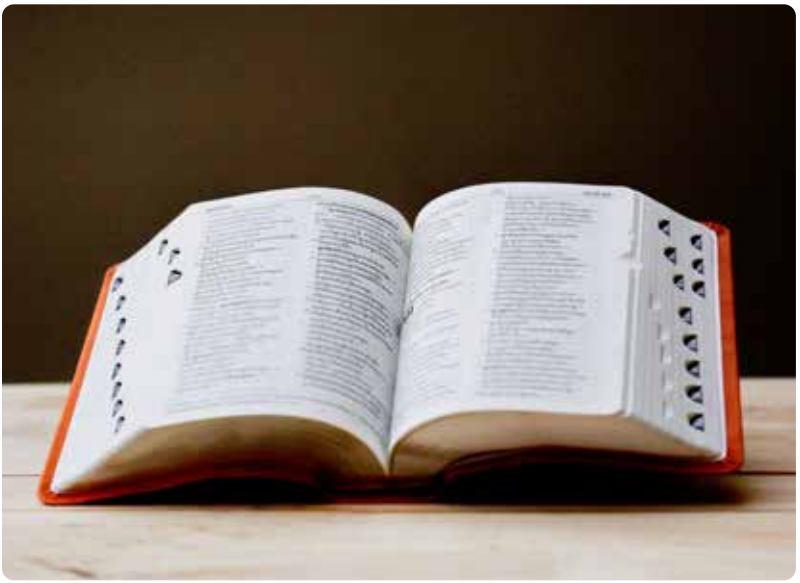
NOTICE OF HEARING – DECEDENT'S ESTATE OR TRUST



Form is used to give notice to, and to show service upon, the parties, of court documents for all probate hearings except for the initial hearing.

GLOSSARY

Empower yourself with an understanding of common terms.



Administrator

A person appointed by the court to manage an estate if there's no will, or if the will didn't name an executor. Also known as a personal representative.

Affidavit Procedure

A simplified alternative to probate for small estates, in which successors claim property by affidavit.

Beneficiary

A person or organization that is designated in a will or trust to receive assets.

Creditor

A person or institution to whom the decedent owed money at the time of death.

Debts and Taxes

These must be paid from the estate before any distribution to the heirs or beneficiaries can occur.

Estate

Generally refers to all the property and assets owned by a person at the time of their death.

Executor

The person named in a will to manage the estate of the deceased. Also known as a personal representative.

Fiduciary or Court Accounting

A detailed accounting report showing all the financial transactions related to the estate which complies with the California Probate Code.

Heir

A person legally entitled to inherit from the estate of someone who died without leaving a valid will.

Intestate

Dying without leaving a valid will. The estate of an intestate person is distributed according to state intestacy laws.

Inventory

A detailed list of all of the decedent's assets at the time of death.

Letters of Administration

A document issued by the probate court giving an Administrator the authority to handle the decedent's estate.

Letters Testamentary

A document issued by the probate court giving an Executor the authority to take control of and distribute the decedent's assets.

Living Revocable Trust

A trust created during a person's lifetime that can be altered, changed, modified or revoked entirely, so long as the creator or settlor is alive and with capacity.

Non-Probate Assets

Assets that can be transferred to another person upon death without going through probate, such as life insurance, payable-on-death assets, or assets held in a trust.

Probate

The legal court-supervised process of marshaling and

distributing a deceased person's assets to heirs or beneficiaries and paying off any debts.

Probatable Assets

Assets that are owned by the deceased and not immediately transferable upon death without probate.

Probate Court

The department or district within a local judicial system that oversees the probate process and probate matters.

Spousal Property Petition

A procedure that allows for a quicker and simpler transfer of estate assets to a surviving spouse.

Summary Proceedings

Simplified procedures, outside of a full probate, for estates or property below set dollar limits.

Testate

Dying while having a valid will in place.

Trust

A legal arrangement in which one person (the trustee) holds legal title to property for the benefit of another person (the beneficiary).

Will

A legal document in which a person specifies how their estate should be distributed after their death.

FAQS

Frequently Asked Questions about California Probate



What is probate in California?

Probate is a legal process that occurs after someone dies, in which their assets are identified, debts are paid, and the remaining assets are distributed to their heirs or beneficiaries. It is a court supervised process.

How long does the probate process take in California?

The probate process in California typically takes around 9 to 18 months, but it can last longer if the estate is complex or if disputes arise.

Is probate necessary for all estates in California?

Not all estates require probate. For example, estates valued under a certain threshold can go through a simplified process. Also, assets placed in a living trust or jointly owned property might avoid probate. If you're unsure whether probate is required for your situation, schedule a call with us.

How much does probate cost in California?

Probate costs can vary, but they typically include court fees, attorney's fees, and executor's fees, most of which are set by state law or must be approved by the court. Additional costs can arise from appraisals, business operations, property management, and more.

Can probate be avoided in California?

Yes, through careful estate planning such as creating a living trust, assigning payable-on-death designations, or owning property jointly with rights of survivorship, you might avoid probate.

What is the role of the personal representative in the probate process?

The personal representative (i.e. executor or administrator) is a fiduciary responsible for managing the estate while following the probate code. This includes gathering assets, paying valid debts and taxes, and distributing the remaining assets according to the will or state law following court orders.

What are the duties of a probate attorney?

A probate attorney guides the personal representative through the probate process. This can involve giving advice, preparing and filing documents, representing the personal representative in court, and helping to resolve disputes.

Do I need a probate attorney to navigate the probate process?

While it's possible to go through probate without an attorney, it's generally recommended to have one, especially for larger or more complex estates. The probate process involves many legal intricacies that can be challenging to navigate alone. Errors can expose the personal representative to liability, cause delays, and waste money. These negative consequences can be mitigated by using an attorney.

What happens if there's no will?

If there's no will, the estate will be distributed according to California's intestacy laws. Generally, the decedent's closest relatives will inherit the estate assets at the close of the probate process.



Peace of mind when you need it most.

We hope you have found this guidebook to be a beneficial resource for understanding the complexities of the California probate process. If you are heading into a probate, or believe one is necessary, remember you do not have to do it alone. Harbor Probate Law PC is ready to assist you every step of the way, with integrity and compassion. Call (858) 723-8551 or visit harborprobate.com.

About the Author



Tomer T. Gutman

Attorney and Founder of Harbor Probate Law PC

Certified Specialist, Estate Planning, Trust and Probate Law, The State Bar of California Board of Legal Specialization

Tomer T. Gutman is the founder of Harbor Probate Law PC in Solana Beach. He is a Certified Specialist in Estate Planning, Trust and Probate Law, certified by The State Bar of California Board of Legal Specialization, effective May 1, 2026.

His practice centers on probate and estate administration: guiding personal representatives through the court process, resolving disputes among heirs and beneficiaries, and litigating when agreement is not possible. He handles cases throughout California.

He is admitted to practice in California, Florida, Nevada and Washington.

Tomer takes pride in being a reliable source of support, offering clear explanations of legal processes, and helping clients navigate the probate system with confidence.