

# How Probate Laws Work in California – 2022

The death of a loved one can be quite devastating. However, you may have responsibilities even while dealing with your grief. You must deal with the estate and the assets left behind by your family member. This can be quite a process that will take a great deal of time and effort.

An estate of a deceased person must be handled through a legal process known as probate. Even though probate is basically the same in all states, each state has its own unique rules and statutes. It's important that you know the basics about probate as it pertains to estates in California.

## Is Probate Required in California?

Probate is generally required in California. However, there are two different types of probate for estates. Simplified procedures may be used if the value of the estate is less than \$166,250. Probate may not be necessary if assets are attached to a beneficiary or surviving owner. For example, life insurance policies with a named beneficiary would automatically go to that person. Real estate owned by a couple would go to the surviving spouse.

## How Do You Avoid Probate in California?

If probate sounds complicated, you will be glad to know it is possible to avoid this process in California. The most effective way to accomplish this goal is by placing all your assets into a living trust. You can designate one or more beneficiaries to receive the assets of the trust after your death, which will automatically transfer to them. Another option is by listing assets as payable on death or having a named beneficiary, such as the case with bank accounts and life insurance. Property that is owned jointly will automatically transfer to the surviving owner. Sometimes real estate with a transfer on death deed can avoid probate.

## **Can an Executor of an Estate in California Be Compensated?**

California is one of the states that not only allows for compensation for the executor but addresses it directly in the probate code. Executors will receive the amount specified by the court unless the will makes a stipulation for the amount to be paid to the executor, In this case, the will takes precedence.

## **How Much Does an Executor Get Paid in California?**

The amount of compensation is directly addresses in California Probate Code Division 7 Chapter 1 Article 1. Based on ordinary services provided by the executor, they would receive 4 percent of the first \$100,000, 3 percent of the next \$100,000, 2 percent of the next \$800,000 and 1 percent of the next \$9 million dollars. Over this amount, they would receive one-half percent of the next \$15 million dollars and anything over that would be determined by the court as a reasonable amount. The amount is based on the appraised value of the total property of the estate.

## **How Long Does Probate Take in California?**

Time for probate to be completed varies widely in California. The state allows for several shortcuts to reduce the time it takes for a simple estate to be completed. However, creditors have four months to make a claim against the estate, which means it must stay open at least that long. The state probate code requires that orders for final distribution should be filed within one year or 18 months if federal tax returns are necessary. However, this timeline can go much longer if the will is being contested or other litigation is pending.

## **Do All Estates Have to Go Through Probate in California?**

All estates don't need to go through probate, but the majority will be processed through the courts. In many cases, it may be a simplified procedure with little oversight by the court. If an estate is put in a living trust, it will not need to go through probate because the trust will automatically transfer title to the beneficiary. If all assets of an estate are

attached to beneficiaries or are either payable upon death or transferable upon death, there is no need for probate.

## **Does a Will Have to Be Probated in California?**

A will must be filed with the court in California in the county where the deceased person lived. The court will use the will to determine if probate is necessary and to ensure the decedent's wishes are followed for the dispersal of the estate.

## **Settling an Estate in California**

Basic steps exist for the process of probate in California, which is similar to every other state. Though these steps may sound quite simple, they can be complicated with a large estate or if there are disputes.

- File a petition with the court in the county where the person lived to open probate. You will also need to file the will.
- The court will determine who the representative or executor of the estate will be.
- The executor will determine the heirs and beneficiaries.
- The executor must secure all known assets and inventory them for the court, along with their value.
- The creditors must be notified by mail or published notice in the local newspaper.
- The executor pays all claims, files taxes, and pays any outstanding taxes.
- A request is made for the estate to be closed. Once that is granted, the executor will distribute remaining assets to the heirs.

## **How Long Do You Have to File Probate After Death in California?**

According to the California Probate Code, the executor must file the will within 30 days of the person's death. If they don't file during that timeframe, they may unwittingly waived their right to be the executor. A request for a small estate affidavit may not be filed until 40 days have passed from the date of death.

## Probate Court in California

The Superior Courts in California hear cases on probate, under the Judicial Branch of California. You can find the Superior Court for the county where the deceased person lived by visiting the website: <https://www.courts.ca.gov/superiorcourts.htm>.

## Probate Code in California

California has its own probate code as part of the California Law, which can be found at <http://leginfo.legislature.ca.gov/>. Under Probate Code, there are 11 divisions, which provide the rules for the courts to follow.

## Sources:

1. <https://www.courts.ca.gov/8865.htm>
2. <http://leginfo.legislature.ca.gov/>
3. <https://www.courts.ca.gov/superiorcourts.htm>