



Understanding the Probate Process

Pro-bate: The process of legally establishing the validity of a will before a judicial authority.

When a person dies, they leave behind their estate of assets - all of their money, real estate and worldly belongings. It also includes their debts, expenses, and unpaid taxes. After they die, somebody must take charge of their estate through probate. One of the reasons for probate is to provide needed assurance to certain third parties that their will is valid and that their executor is authorized to act in their name with regard to their assets after their death.

There are several things people can do now that can help their executor and family later on. Below is a list of commonly asked questions:

Q. What is the difference between an executor and an administrator?

A. The “executor” is the person whom you choose to handle the settlement of your estate according to your will. Typically, it is a spouse or a close family member, but it can also be a bank or attorney.

An “administrator” is appointed by the court to settle your estate if you don’t name an executor.

Q. Who is the Public Administrator?

A. Basically, a public administrator is a person or entity appointed by the State to act when there is no will or relatives.

Q. I am in possession of a will that distributes the decedent’s estate to me, isn’t this all I need?

A. No. The will must be admitted to probate and the estate of the decedent must be “probated.”

Q. What is the purpose of “estate administration”?

- A.** Generally, there are five purposes:
1. To identify the heirs of the decedent,
 2. To establish the validity of the will,
 3. To give notice to any creditors and settle any claims against the estate,
 4. To pay bills and file tax returns, and
 5. To distribute estate assets according to the will and the law.

Q. What is the difference between “Testate” and “Intestate”?

A. When one is said to have died “Testate,” it means he or she died leaving a will. If one is said to have died “Intestate,” it means he or she died without leaving a will.



Q. If there is no will, how are the estates assets distributed?

A. The method of intestate distributions is complex and you should specifically discuss intestate distributions with your legal advisor.

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

A. Yes, it can be sold either at private sale or at public sale.

Q. What are the steps to an uncontested probate?

A. Probate generally works as follows:

1. The person designated in the will as the “Executor”, hires an attorney to start probate.
2. The Will is delivered to the Court Clerk.
3. A petition is filed for the Letters of Administration or Probate of Will.
4. A hearing is held on the petition.
5. Court issues Letters of Administration.
6. Creditors are notified to file any claims they may have.
7. Inventory and appraisal of the estate is made by an independent probate appraiser.
8. File the Federal estate tax return.
9. Finalize accounting and petition for distribution.
10. Final distribution of estate assets.
11. Discharge of Executor.

For step-by-step information and tools – including forms, worksheets, and sample letters go to:

<http://www.courtinfo.ca.gov/reference/documents/handbook.pdf>

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