

# What Happens When You Die

Death is certainly a painful process for most everyone involved but perhaps none more than for your heirs. In the midst of their grief, they are left to carry out your last wishes. For some decedents, they have not only made arrangements as to how they want their assets and possessions distributed but they have also done so efficiently and effectively with the use of a Living Trust allowing their estate to bypass probate. But for others, their neglect leaves family and heirs a potential for heightened stress and conflict while, quite possibly, receiving less inheritance than the deceased intended.

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## WHAT IF I HAVE A WILL OR DIE WITHOUT ONE?

Your assets will go into a process called “Probate”—an expensive and extended legal approach to proving who inherits your assets. This can take from months to years depending on the complexity of your estate situation and will cost your heirs thousands to potentially tens of thousands of dollars.

If you left behind a will, the probate court system must validate that your will is authentic and then distribute your belongings to your heirs. When a person dies without a will—known as dying “intestate”—it is up to the state court to decide who gets what items.

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Intestacy laws vary greatly from state to state. Generally speaking, if you die and leave a spouse and children, your assets will be split among them. If single, then your state of residence will determine which of your blood relatives will inherit your estate. Did you really intend for your estranged family member to have all of your stuff?

Dying without a will leaves you with no say over who receives your assets, and can leave your heirs and the court system the complex and costly job of determining who gets what parts of your estate or belongings. Dying with a will but not a Revocable Living Trust is also frustrating, costly, and time-consuming for your heirs.

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## California Probate—Opt Out

### **WHAT IS PROBATE?**

Probate is a legal proceeding that is used to wind up a person's legal and financial affairs after death. In California, probate proceedings are conducted in the Superior Court for the county in which the decedent lived, and can take at least eight months and sometimes as long as several years.

Avoiding probate is easy if you plan ahead. The benefits are lower costs for your estate administration and less frustration for your family.

### **WHAT HAPPENS DURING A PROBATE?**

The person who is nominated in the will as executor files a petition with the Superior Court asking that he or she be appointed as executor. If there is no will, the Probate Code provides a list of persons who have priority to petition to become

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administrator. The will also is filed with the petition, and notices are sent to the heirs and/or relatives to let them know when the hearing will be held. If there are objections to the petition, or if the validity of the will is contested, the hearing will be used to resolve any problems that have arisen. In some cases this may mean that the validity of the will is not upheld, or that some other person than the original petitioner is chosen to administer the estate. In most cases, however, there is no objection and the petition is granted. The executor then makes an inventory of the estate's assets, locates creditors, pays bills, files tax returns, and manages the estate assets.

When all of the duties of the executor are completed, another petition is filed with the court asking that the estate be distributed to the heirs. If this petition is granted, the estate administered is completed by distributing the assets to the heirs and filing final tax returns.

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## **HOW MUCH DOES PROBATE COST?**

The fee charged by the court to file a probate petition is \$435, but may be slightly higher in some counties due to surcharges. There will be an additional \$435 fee when the petition for final distribution is filed. There are other fees for publication of the probate notice, for the probate referee, and for certification of copies of court documents.

California Probate Code section 10810 sets the maximum statutory fees that attorneys can charge for a probate. Higher fees can be ordered by a court for more complicated cases. The fees are four percent of the first \$100,000 of the estate, three percent of the next \$100,000, two percent of the next \$800,000, one percent of the next \$9,000,000, and one-half percent of the next \$15,000,000. For estates larger than \$25,000,000, the court will determine the fee for the amount that is greater than \$25,000,000.

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The fees listed below are the California statutory fees used to compensate attorneys and executors in probate cases for various sizes of estates. If both the attorney and the executor receive a fee, the amount paid will be double that shown below. The value of the estate is determined, in general, by the inventory for the estate. (If an accounting of the estate has been waived, the total value of the estate for attorney's fees purposes is the inventory, plus gains on sales, minus losses on sales.) Debts are not included in determining attorney's fees, and if a house is appraised at \$1,000,000, and it has a mortgage of \$800,000, it is still considered a \$1,000,000 asset when calculating attorney's fees.

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California Probate Fees For Attorneys

ESTATE VALUE	STATUTORY FEE
\$100,000	\$4,000
\$200,000	\$7,000
\$300,000	\$9,000
\$400,000	\$11,000
\$500,000	\$13,000
\$600,000	\$15,000
\$700,000	\$17,000
\$800,000	\$19,000
\$900,000	\$21,000
\$1,000,000	\$23,000
\$1,500,000	\$28,000
\$2,000,000	\$33,000
\$3,000,000	\$43,000
\$4,000,000	\$53,000
\$5,000,000	\$63,000
\$6,000,000	\$73,000
\$7,000,000	\$83,000
\$8,000,000	\$93,000
\$9,000,000	\$103,000
\$10,000,000	\$113,000
\$15,000,000	\$138,000
\$20,000,000	\$163,000

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## **APPRAISAL OF THE ESTATE**

Estates are appraised by probate referees, who are appointed by the State Controller to determine the fair market value of the asset. The fair market value includes mortgages and other debts, which can result in an appraisal of the property that is higher than the equity that the deceased owned in the property. Probate referees receive a fee based on .10 percent of the assets that have been appraised.

## **FEES CAN GO HIGHER**

In probates that are complicated by lawsuits or tax problems, the attorney and executor can ask the judge to approve fees that are higher than those set by state law.

## **ADVANTAGES OF PROBATE**

The proceedings are controlled by a judge, who can decide disputes between heirs or between the heirs and the executor.

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## **DISADVANTAGES OF PROBATE**

The cost is usually much higher than would be required for the administration of a living trust for an estate valued at the same amount. It usually takes longer to probate an estate than to administer a trust. Most estates don't need the supervision of the court unless disputes occur.

## **AVOIDING PROBATE—DON'T OPT-IN**

Many estates do not need to be probated. If there is a surviving spouse and there is no will, or the will gives the estate to the surviving spouse, a spousal property petition might be used. For estates valued at less than \$150,000, the small estate law may be useful. Otherwise, the Living Trust (see Appendix) may be your best way to opt-out of probate by not opting-in in the first place.

## **REVOCABLE LIVING TRUSTS**

**OPT-OUT of Probate.** Assets owned through a Revocable Living Trust do not need to be probated.

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Probate is easy to avoid if you pay attention to what you own and how you own it. But not taking the time to avoid probate can result in a costly, time-consuming, and frustrating experience for your family. Working with a qualified estate planning attorney to set up your Living Trust can save your heirs thousands of dollars, countless hours of work and frustration, and save your good name.

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## Appendix: Ten Important Questions You Should Ask Yourself About Forming A Living Trust

1. DO YOU NEED TO PROVIDE FOR A SPECIAL NEEDS CHILD TO PROTECT THEIR FUTURE BENEFITS?
2. DO YOU HAVE CONCERNS ABOUT YOUR CHILDREN FIGHTING OVER YOUR PROPERTY AND ASSETS AFTER YOUR DEATH?
3. DO ANY OF YOUR HEIRS HAVE A SUBSTANCE ABUSE PROBLEM?
4. DO YOU WANT TO SPECIFY GIFTS OF YOUR PERSONAL PROPERTY TO SPECIFIC HEIRS?
5. DO FAMILY CIRCUMSTANCES REQUIRE YOU TO CUSTOMIZE SPECIAL INHERITANCE SCENARIOS?
6. DO YOU HAVE HEIRS WHOS INHERITANCE NEEDS TO BE SCHEDULED OR CONTROLLED?
7. DO YOU HAVE CHILDREN IN AN UNDESIRABLE RELATIONSHIP THAT THREATENS THEIR INHERITANCE?
8. DO YOU WANT TO DIRECT YOUR ASSETS TOWARD YOUR GRANDCHILDREN FOR THEIR EDUCATION?
9. DO YOU HAVE SPECIFIC CHARITABLE GIVING GOALS AT YOUR DEATH SUCH AS CHURCH, PETS, CANCER SOCIETY ETC.?
10. DO YOU WANT TO PROTECT THE INHERITANCE TO CHILDREN FROM A FORMER MARRIAGE?

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