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**UNDERSTANDING PROBATE:
A BASIC GUIDE TO THE PROBATE PROCESS**

WHAT IS PROBATE?

Probate is the legal process regarding the administration and distribution of the estate of a deceased person (or “decedent”). It is administered under the jurisdiction of probate courts. (See our Probate Glossary for assistance with probate terminology.) The court makes sure that the decedent’s real and personal property is identified, inventoried and appraised, and ensures that any applicable debts and taxes are paid before the balance of the property is distributed to the beneficiaries or heirs. Probate is a very time consuming and paperwork intensive process. Most persons hire an attorney to help them with the probate administration process. Some probate estates can be administered in one year or less, but many take longer.

Probate is concerned with:

- Cataloging all property of the deceased
- Paying all debts, claims or taxes that are due
- Collecting rights to any income (royalties, stock dividends, etc.) to which the deceased was entitled
- Settling financial and property disputes
- Liquidating property (real or personal) of the deceased
- Distributing or transferring the remaining property to beneficiaries or heirs.

A personal representative is appointed by the Court to administer the decedent’s estate. A personal representative can have various names (Executor, Administrator, etc.), depending on the type of probate estate, but each personal representative has similar duties and responsibilities, which include managing the probate estate. Usually, in a Will, the decedent names an “Executor” to act as personal representative. If there is no Will or decedent failed to name an Executor, the Court will appoint a personal representative called an “Administrator.” The Executor or Administrator will fulfill the same duties listed above.

HOW THE PROBATE PROCESS WORKS

The following outline can help you understand the probate process and can show you which phase of the process you may be experiencing.

Phase One: Filing Petitions and Court Dates

The law and unique probate language can make understanding the probate process difficult to grasp. If certain deadlines are not met, the probate case will likely be delayed, and there could be a greater chance for something to go wrong. An experienced attorney should always be consulted to assist in ensuring that the estates of your loved ones are properly handled.

Probate administration is initiated by filing a petition for probate with the court.

Probate administration is initiated by filing a petition to open the estate to appoint a personal representative (Executor or Administrator) who must closely follow probate procedure and carefully account for and distribute estate assets. A personal representative may be appointed with “full authority” under the Independent Administration of Estates Act, which allows certain actions, like selling real property, to be taken without Court approval. Actions conducted with “full authority” can speed up a probate administration, but must be cautiously approached since court approval is not being sought. Alternatively, a personal representative can be appointed with “limited authority,” which would require court approval for certain actions. For example, the personal representative would be required to seek Court approval to sell estate real property. A benefit of having “limited authority” is that a Court order approving certain actions usually insulates the personal representative from any allegations of misconduct. For example, if the personal representative requested Court approval of the sale of the estate real property, it is very unlikely that anyone could allege that the personal representative sold the property for too little since the Court approved the sale.

The Court will usually set a hearing date for your petition approximately 45 days after the petition is filed.

Prior to the hearing on the petition to appoint a personal representative, each beneficiary and heir should receive notice and a copy of the petition for probate, including any applicable Will. At or before the hearing to appoint a personal representative, the beneficiaries and heirs will have an opportunity to consent or object to the appointment. Some heirs may also object to the admission of a Will, often referred to as a “will contest,” while others may object to the particular person seeking to be the personal representative.

Although the California Probate Code establishes rules of priority for parties who file competing petitions for probate, a trial is sometimes the only method to resolve such a dispute. Certain counties require the parties to mediate their dispute before the case goes to trial. Mediation is an informal process of resolving disputes with the help of a neutral third party usually experienced in the legal area of the dispute. The mediation process is less time consuming and less expensive than a trial, and usually produces an amicable resolution.

Administration of the estate begins once a personal representative is appointed.

If the petition has been properly prepared and presented at the hearing, the Court will review it and likely appoint a personal representative. Otherwise, the hearing will

likely be continued for about thirty days so additional information can be provided to the Court.

When the petition for probate is approved, Letters of Administration (no Will) or Letters Testamentary (with a Will) are issued to the personal representative. The issuance of Letters is the starting point of a probate administration. These Letters empower a personal representative with authority and responsibility to collect and inventory estate property, identify and settle creditor claims against the estate, and sell real and personal property (among other duties).

Preparing the estate inventory means searching for all property belonging to the estate, such as houses, bank accounts, investments, automobiles and other items of personal property like jewelry and furniture. After assembling a list of the property, the personal representative will forward the list of property to a Court appointed probate referee, whose job is to place values on the particular items.

For each probate estate, a probate referee is appointed by the Court to appraise estate assets with a date of death value. A personal representative must also publish a "Notice to Creditors" in a local newspaper. The personal representative will also notify all known creditors that a claim must be filed if a debt is owed to them. Anyone claiming that the deceased owed them money has a limited amount of time to file a claim in the estate. Creditors of the deceased usually have four months to file their claims after the estate is opened. Upon receipt of a creditor claim, the personal representative can accept (and pay) or reject the claim in whole or in part. A creditor can file a separate civil lawsuit against the estate on a rejected claim, the effect which generally prolongs the administration of the estate for months, or sometimes years.

Phase Two: Additional Pleadings, Filings, and Settlements

Probate is an on-going process of filings, notifications, and applicable settlements. Any missed steps can delay the distribution of an inheritance.

These notices, filings and actions usually include:

- Notice to state agencies, including the Department of Health Services for potential Medi-Cal recovery by the State
- Filing an Inventory and Appraisal (with the help of a probate referee) of estate assets
- Paying any State and Federal Taxes that are due
- Allowing or rejecting creditor claims
- Initiating a lawsuit to recover property (e.g. homes, cash, automobiles, etc.) that belongs to the estate, but which is being held by another person or entity.

Note that some sizeable estates cannot close without filing tax returns. If a Federal Estate Tax Return (Form 706) is due, the estate cannot close until the Internal Revenue Service (IRS) issues a "closing letter" approving the tax return, which may take up to six months to be prepared by an IRS agent and delivered to the personal representative.

Phase Three: Closing and Distributions

After the estate assets have been inventoried and appraised (and most often times liquidated) and the time for the creditor claims has expired, the personal representative must prepare a petition to close the estate and distribute the remaining assets. This

petition must disclose all the actions taken by the personal representative, including an accounting of his dealings with estate assets, and must request a proposed distribution of remaining assets. An accounting is sometimes waived by the heirs, which may facilitate an earlier distribution of assets. Unless all the heirs waive the requirement of an accounting by the personal representative, an accounting must be prepared.

Again, the Court will usually set a hearing date approximately forty-five days after the petition to close the estate is filed. The interested parties in the estate are usually provided with notice and copy of the petition for their review. If an interested party has any objection, the party may contest the petition, which is usually done by filing written objections with the court and serving those objections on the other interested parties. Any contested actions on the petition to close the estate will likely require a court hearing or perhaps a trial, either of which will further delay distribution of the inheritance.

If all goes smoothly, the final actions in the probate will be

- Obtaining a court order of distribution
- Closing the estate accounts
- Making final distributions to beneficiaries
- Getting receipts from beneficiaries for distributions made to them
- Filing the Order of Discharge releasing the personal representative from any further duties

PROBATE GLOSSARY

Administrator - A court-appointed who administers the estate of a person who died without a will.

Beneficiary - An individual or entity to whom a gift of property is made, by Will or Trust.

Blocked Account - Cash or securities that are placed in a bank subject to withdrawal only upon court order.

Codicil - An amendment or supplement to an existing will.

Creditor - A party to whom a Decedent owes money.

Creditor Claim - The document representing a creditor's basis for payment of a debt. These claims are usually filed with a Court and served upon the personal representative or the attorney.

Decedent - A person who has died.

Estate - A person's total assets, both real and personal, which are managed by a personal representative.

Executor - The person named in a will to carry out the directions as set forth in the will. This person is the Personal Representative of the decedent's estate.

Fiduciary - A person or organization that manages property for a person, with a legal responsibility involving a high standard of care, e.g., conservators, guardians, personal representatives, agents, or trustees.

Guardian - A person appointed by court to protect and manage the personal care or financial affairs, or both, of a minor.

Heir - A person who would naturally inherit property through a will, or from another who died without leaving a will.

Holographic Will - A will that is handwritten and signed by the person making the will.

Intervivos Trust - A trust set up during the lifetime of a person to distribute money or property to another person or organization (as distinguished from a person who transfers money or property after death).

Interstate - Without a will. Opposite of Testate.

Irrevocable Trust - Trust wherein the grantor has expressly released the power of revocation.

Letters of Administration - The court document that establishes the petitioner's authority to act as personal representative (administrator). Letters Testamentary are issued to an executor.

Notice of Proposed Action - Formal written notice by a personal representative with full authority (under the Independent Administration of Estates Act) to the interested parties in an estate, of the intent to take certain action (e.g. sell real property on or after a certain date).

Personal Property - Anything owned by a person that can be moved such as money, securities, jewelry, etc.

Personal Representative - A person appointed by the court to administer a decedent's estate.

Petition - A written, formal request, properly filed with the Court, for a specific action or order.

Probate - The legal process of administering a decedent's estate. Also, a judicially supervised process for marshalling a decedent's assets, paying proper debts, and distributing the remaining assets to heirs.

Probate Court - The court that handles matters concerning wills and estates, such as the distribution of property or money to those handled in a will. In California, the Probate Court also handles guardianships and conservatorships.

Property - Anything that can be owned such as money, securities, land, buildings, etc.

Real Property - Land and movable objects on the land.

Revocable Trust - A trust in which the person making the trust retains the power to revoke the trust.

Small Estate - A decedent's estate may avoid a formal probate administration and have property transferred directly to an heir if the decedent's estate meets the requirements of California Probate Code §13100 et. seq. (e.g. estates have less than \$100,000).

Successor Fiduciary - The next person or organization appointed if a vacancy arises in a conservatorship, guardianship, or decedent's estate because of the fiduciary's death, removal, or resignation.

Testate - Having made a valid will. Opposite of intestate.

Testator - A person who makes a will.

Testamentary Trust - A trust created by a will.

Trust - The handing over a property to a person to be held for the benefit of another (i.e. held in trust).

Trustee - A person or organization authorized by a trust to hold and manage property for the benefit of a beneficiary.

Will - A document that directs disposition of a person's property after death.

Will Contest - A legal proceeding challenging a will.

The pamphlet and glossary are only offered to aid in understanding general probate administration and terminology, and is not intended, nor should any of the information be relied upon, as a substitute for legal advice. An experienced attorney should always be consulted for particular probate questions. Please refer to the California Probate Code for more precise definitions contained in this glossary.

CALIFORNIA PROBATE TIMELINE

Simple Estates with Real Property only

