

PROBATE 101:

AN EXPLANATION OF THE CALIFORNIA PROBATE PROCESS

This handout discusses the alternatives to probate, when probate is necessary in California, simplified probate procedures and the cost and time involved for a probate.

The traditional means of transferring assets upon the asset owner's death is through the Probate Court. Probate may be necessary if the decedent left a will or died intestate (without a will).

However, not all assets need to be probated. Following is a partial list of assets that avoid Probate:

- Assets in a Trust (this is the reason "Living Trusts" are popular);
- Life Insurance benefits naming a beneficiary other than the Estate;
- Retirement Accounts naming a beneficiary other than the Estate;
- Real Estate, if title is in joint tenancy with a surviving owner;
- Joint bank accounts, where one of the owners is still living.

In addition, probate can be avoided for non-real estate assets if the total value of the assets to be probated is less than \$100,000.

Simplified Probate procedures are also available in the following circumstances:

- The asset consists of an interest in Real Property worth less than \$100,000; or
- All of the assets consist of community property that is to be transferred to the surviving spouse.

Real estate located outside of California is subject to the jurisdiction of the state or nation in which the real estate is located, and does not pass through a California probate.

If the assets do not fall into any of these exceptions, then a formal California Probate will be necessary. For a formal Probate, attorneys' fees are set by statute as a percentage of the gross value of the Probate Estate, according to the following schedule:

- 4% of the first \$100,000
- 3% of the next \$100,000
- 2% of the next \$800,000
- 1% of the next \$9,000,000.
- ½% of the next \$15,000,000.

Conclusion of a formal Probate usually takes from a year or more from the date papers are first filed, and may take much longer if complications arise or the proceedings are delayed.

For simplified Probate procedures, the attorneys' fees are determined by agreement with the attorney. Conclusion of a simplified Probate is usually much quicker than a formal Probate.

This article is only intended as a brief overview of the Probate process. To schedule an appointment or for more information, please call or send an e-mail.