

FREQUENTLY ASKED QUESTIONS

What happens if someone objects to the will?

An objection to a will, also known as a “will contest” is a fairly common occurrence during the probate proceedings and can be incredibly costly to litigate.

In order to contest a will, one has to have legal “standing” to raise objections. This usually occurs when, for example children are to receive disproportionate shares under the Will, or when distribution schemes change from a prior will to a later will. In addition to disputes over the tangible distributions, Will contests can be a quarrel over the person designated to serve as Executor.

Does probate administer all property of the deceased?

Probate is primarily a process through which title is transferred from the name of the deceased to the names of the beneficiaries.

Certain types of assets are what is called “non-probate assets” do not go through probate. These include:

- Property in which you own title as “joint tenants with right of survivorship”. Such property passes to the co-owners by operation of law and do not go through probate.
- Retirement accounts such as IRA and 401(k) accounts where there are designated beneficiaries.
- Life insurance policies.
- Bank accounts with “pay on death” (POD) designations or “in trust for” designations.
- Property owned by a living trust. Legal title to such property passes to successor trustees without having to go through probate.

Do I get paid for serving as an executor?

Executors are reimbursed for all legitimate out-of-pocket expenses incurred in the process of management and distribution of the deceased estate. In addition, you may be entitled to statutory fees, which vary from location to location and on the size of the probate estate. The executor has to fulfill his or her fiduciary duties on behalf of the estate with the highest degree of integrity and can be held liable for mismanagement of estate assets in his or her care. It is

advised that the executor retain an attorney and an accountant to advise and assist him with his or her duties.

How much does probate cost? How long does it take?

The cost and duration of probate can vary substantially depending on a number of factors such as the value and complexity of the estate, the existence of a Will and the location of real property owned by the estate. Will contests or disputes with alleged creditors over the debts of the estate can also add significant cost and delay. Common expenses of an estate include executor's fees, attorney's fees, accounting fees, court fees, appraisal costs, and surety bonds. These typically add up to 2% to 7% of the total estate value. Most estates are settled through probate in about 9 to 18 months, assuming there is no litigation involved.

The California Probate Process

Probate is the court-supervised legal process through which a decedent's assets are collected, his or her debts are paid and then the remaining assets are distributed to the decedent's heirs or beneficiaries.

The California probate process is a time consuming and very expensive venture to undertake. A typical probate lasts at least 9 months to a year. A complicated estate can take more than a year to complete. California probate fees are statutorily set and are based on the fair market value of the probate estate.

The probate fees under California Probate Code section 10810 are as follows:

- Four percent on the first one hundred thousand dollars (\$100,000)
- Three percent on the next one hundred thousand dollars (\$100,000)
- Two percent on the next eight hundred thousand dollars (\$800,000)
- One percent on the next nine million dollars (\$9,000,000)
- One-half of 1 percent on the next fifteen million dollars (\$15,000,000)
- For all amounts above twenty-five million dollars (\$25,000,000), a reasonable amount to be determined by the court.