

IS PROBATE ALWAYS REQUIRED IN CALIFORNIA?

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Probate is a legal process. The probate court handles estate matters, and the court would supervise the distribution of property that is considered to be probate property.

However, certain types of property transfers are not subject to the probate process.



When you are putting your estate plan together, you should understand some facts about estate administration. Everything does not fall into place automatically. There is a legal structure, and asset transfers are subject to laws that govern estate matters.

If you are in direct personal possession of property at the time of your passing, even if you have a last will, the property would become probate property initially. The executor or personal representative would directly handle the business of the estate, but the overall administration would be supervised by the probate court.

In California, an estate must go through the full probate process if the probate property exceeds \$150,000 in value.

Probate is not inherently negative, and it provides oversight, but this supervision is not always going to benefit the rightful heirs to the estate. The probate process is time consuming, and inheritances cannot be distributed until after the court has closed the estate.

How time consuming is it? If there are no complications at all, and property can be liquidated quickly, the process may run its course in nine months to a year in most areas.

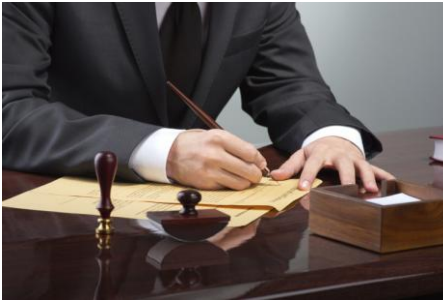
In addition to the time consumption, probate can also be quite expensive, especially in California. As money is being spent during probate, the amount that will be left to distribute among the heirs is being reduced.



There are some property transfers that are not subject to the probate process. Let's look at some of them.

Insurance Policy Proceeds

When you take out an insurance policy on your life, you name a beneficiary. After your death, the insurance company will remit the proceeds to the beneficiary directly. The probate court would not be involved in this transfer.



Property Held in Joint Tenancy

If you own property, you have the ability to add a co-owner to the title or deed. In legal parlance, the person that you add as the co-owner would become a joint tenant.



The joint tenant would own half of the property immediately, so this would be a source of concern. This portion of the property could be attached if the joint tenant was to run into legal or financial problems.



Plus, selling the property could become quite problematic, because you would no longer own all of the property.

In spite of these drawbacks, if you die first, the joint tenant would inherit the entirety of the property outside of probate.



Payable on Death Accounts

You could add a beneficiary when you open an account at a bank or a brokerage. This type of account is called a payable on death or transfer on death account.

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Medicaid (Medi-Cal in California) is a government funded program that provide financial assistance for seniors that need help paying for healthcare services such as a nursing home. People must meet certain criteria in order to receive Medicaid. In some cases, trying to meet eligibility for Medicaid can leave a person with nothing, often having to deplete their net worth, or give assets away in order to qualify for Medicaid. But with a little Medicaid Planning, you can use this government benefit and still retain your estate.

While you are living, the beneficiary would not have access to the funds in the account. After your passing, the beneficiary would inherit anything that may be left in the account, and probate would not be a factor.

Revocable Living Trusts

Some asset transfers organically take place outside of the probate process. However, it is possible to proactively implement probate avoidance strategies. One probate avoidance tool that is commonly used is the revocable living trust.

You could convey property that would otherwise be probate property into the trust. The trustee that you name in the trust declaration would follow your instructions after your passing. Assets would be distributed to the beneficiaries outside of probate.

Summary

Probate is a legal process. The probate court handles estate matters, and the court would supervise the distribution of property that is considered to be probate property.

However, certain types of property transfers are not subject to the probate process.

While probate provides certain protections, it is a time-consuming process, and it can also be quite costly. As a result, people who understand the facts often implement probate avoidance strategies.

ABOUT THE AUTHOR

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Roy Litherland has been providing legal services in Santa Clara and Santa Cruz Counties continuously since 1975.

Roy has an undergraduate degree in accounting from Indiana State University, and a Juris Doctor degree from Indiana University, where he graduated cum laude. In law school he was a recipient of the Dean Faust Award and received awards and honors in income taxation and estate and gift taxation.

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There are various different ways to facilitate asset transfers outside of probate, but revocable living trusts are very useful for a wide range of people. Property that is contained within this type of trust would be subject to the probate process if it was not in the trust.

If you would like to learn more about estate administration, probate, and probate avoidance, schedule a consultation with a licensed estate planning attorney.

References

Forbes

<http://www.forbes.com/sites/janetnovack/2012/10/14/the-forbes-guide-to-estate-planning/>

Cornell University Law School Legal Information Institute

<http://webserver.rilin.state.ri.us/Statutes/TITLE33/INDEX.HTM>