NAVIGATING THE CALIFORNIA PROBATE PROCESS

A Step-by-Step Guide

Ange & Associates

ANGE AND ASSOCIATES

WHAT IS CALIFORNIA PROBATE?

- Probate is a court-supervised legal process to settle a deceased person's estate and transfer their property to the correct beneficiaries or heirs.
- The process ensures that the decedent's debts and taxes are paid before assets are distributed.
- An estate must go through probate even if there is a valid will.

Key Terms:

Decedent: The person who has died.

Estate: The property owned by the decedent at the time of death.

Executor: The person named in a will to manage the estate.

Administrator: The court-appointed person to manage the estate if there is no will.

Beneficiary/Heir: The person or people who inherit the estate.

IS PROBATE ALWAYS NECESSARY?

- Probate is generally required if the decedent's assets that need to go through the process are valued at more than **$184,500**.

Assets that go through probate include:

- Property held solely in the decedent's name, such as bank accounts and real estate.
- The decedent's share of assets held as "tenants in common".
- Valuables like jewelry or artwork without a beneficiary designation.

Assets that avoid probate:

- Property held in a living trust.
- Assets co-owned as "joint tenancy".
- Life insurance policies and retirement accounts with a named beneficiary.
- Accounts with a "payable on death" (POD) or "transfer on death" (TOD) designation.

THE PROBATE PROCESS: MAIN STAGES

Phase 1: Opening the Case

- Filing a petition with the court to open the probate case.
- Providing legal notice to all interested parties.
- A court hearing to appoint a personal representative.

Phase 2: Administering the Estate

- Gathering and inventorying all assets of the estate.
- Appraising non-cash assets, often using a court-appointed referee.
- Paying debts, taxes, and other administrative expenses.

Phase 3: Closing the Estate

- Filing a final accounting with the court.
- Distributing the remaining assets to beneficiaries or heirs.
- Getting a court order to officially close the estate.

STEP 1: FILE PETITION AND PROVIDE NOTICE

- The named executor or an interested party files a Petition for Probate (Form DE-111) with the Superior Court in the county where the decedent lived.
- This includes lodging the original will with the court clerk within 30 days of death, if one exists.
- A Notice of Petition to Administer Estate (Form DE-121) is published in a local newspaper and mailed to all heirs and beneficiaries.
- The court schedules a hearing, typically 30 to 45 days after the petition is filed.

STEP 2: COURT HEARING AND APPOINTMENT

- At the court hearing, a judge will review the petition and any objections.
- If no issues exist, the judge issues Letters Testamentary (for an executor named in a will) or Letters of Administration (for an administrator if there is no will).
- These "Letters" give the personal representative the legal authority to manage the estate.
- The court may require the personal representative to post a surety bond, which acts as insurance for the estate.

STEP 3: ESTATE ADMINISTRATION

- **Inventory and Appraisal**: Gather all assets and have non-cash assets appraised by a court-appointed probate referee.
- **Asset Management**: Secure and manage the estate's property, including opening an estate bank account.
- **Pay Debts**: Notify creditors and pay all valid debts and bills using estate funds.
- **Pay Taxes**: File the decedent's final income tax return and any necessary estate tax returns.
- **Communication**: Keep beneficiaries reasonably informed about the progress of the estate.

STEP 4: FINAL DISTRIBUTION AND CLOSING

- After debts and taxes are paid, the personal representative files a final report and petition for distribution with the court.
- Beneficiaries are notified and can review the accounting.
- If approved, the court issues an order for final distribution.
- Assets are distributed, and receipts are filed with the court.
- The court issues a final order discharging the personal representative from their duties, and the estate is officially closed.

THE TIMELINE: HOW LONG DOES PROBATE TAKE?

- A typical California probate case takes about **9 to 18 months,** but can take longer.
- Factors that can cause delays include:
  - Will contests or beneficiary disputes.
  - Complex or numerous assets.
  - Federal estate tax returns (can extend the timeline to 18 months).
  - Court backlogs.
  - Difficulty locating heirs or assets.

HOW CAN WE HELP YOU?

- As experienced agents, we will:
  - Prepare your home
  - Market and list your home
  - Manage the selling process
  - Streamline the process by handling tasks like appraisals, coordinating with contractors, and navigating the unique paperwork and sensitivities involved in a probate sale.

THE SELLING PROCESS

- Selling price must be within 90% of probate referee's appraised value
- 10% customary court deposit
- Publish the home for sale
- Accept an offer
- report of sale and petition for order confirming sale
- Notice to buyer, beneficiaries, and interested parties
- Court hearing date to confirm sale and over bidding process
- Court order
- Close escrow

The Probate Process Timeline

START

File Petition for Probate

Notice of 1st Court Hearing Date Published in Newspaper

5-6 WEEKS

Hearing Date

2 MONTHS

Within 120 Days of Letters

- Gather Assets
- File Inventory & Appraisal Form
- Notice to Creditors
- Allowance/Rejection of Creditors Claim

Within 90 Days of Letters

Send Notice to

- Franchise Tax Board
- Dept of Health Care Services
- Victims Compensation Board

Real Estate Transaction:

Full Authority - IAEA

- Sign Listing Agreement
- Probate Purchase Agreement
- Open Escrow
- Notice of Proposed Action-15 Days
- Estate EIN #
- Open Estate Bank ACCT
- Draw Loan Docs
- Close Escrow

★ Letters Issued by Court

★ Order for Probate

- Duties & Liabilities of PR
- Issue Bond

6 MONTHS

Taxes-

- Prop 58 & 193
- Capital Gain
- Estate Taxes- Form 706

Real Estate Transaction:

Limited Authority - IAEA

- Selling Price Must be Within 90% of Probate Referee's Appraised Value
- 10% Customary Court Deposit
- Publish in Newspaper for Sale
- Accept an Offer
- Report of Sale & Petition for Order Confirming Sale
- Notice to Buyer, Beneficiaries, Interested Parties
- Court Hearing Date to Confirm Sale & Over Bidding Process
- Court Order
- Close Escrow

Petition for Final Distribution (Accounting)

Court Hearing

END 12 MONTHS

- Receipt on Distribution
- Ex Parte Petition for Discharge
- Case Closed

KEY TAKEAWAYS

- Probate is a court-supervised process for distributing a decedent's estate.
- A will does not avoid probate in California, but assets in a living trust or with beneficiary designations can.
- The personal representative has a fiduciary duty to manage the estate properly.
- The process can be lengthy and complex, with a typical timeline of 9 to 18 months.
- It is a public process, making information about the estate available to the public.
- Consulting a probate attorney is often advisable to navigate the complexities.
- Ange & Associates will be committed to you every step of the way.

THE PROBATE PROCESS

SIMPLIFYING THE JOURNEY

01 **Start**

File Petition for Probate

Notice of 1st Court Hearing Date Published in Newspaper

02 **5-6 Weeks**

Hearing Date

03 **2 Months within 90 Days of Letters**

- Letters Issued by court
- Order for Probate
- Duties & Liabilities of PR
- Issue Bond

Send Notice To

- Franchise Text Board
- Dept. of Health Care Services
- Victims Compensation Board

04 **6 Months Within 120 days of Lettters**

- Gather Assets
- File Inventory & Appraisal Form
- Notice to Creditors
- Allowance/ Rejection of Creditors

Taxes

- Prop 58 & 193
- Capital Gain
- Estate Taxes
- Form 706)

TEN STEPS TO *SOLD*

SIMPLIFYING THE JOURNEY

05 **Listing Launch & Going Live:**

Your home's listing goes live on the Multiple Listing Service (MLS) and popular online platforms like Zillow and Realtor.com, making it visible to a wide range of buyers.

06 **Showings & Open Houses:**

Buyers and their agents will schedule showings to view your home. You might also hold open houses to allow potential buyers to drop in and explore.

07 **Receive Offers:**

Potential buyers will present their offers, detailing their suggested purchase price along with any additional terms. This process allows sellers to evaluate not just the price, but also the conditions, ensuring they choose the best overall option for their needs.

08 **Negotiate & Accept:**

You and your agent will review offers, negotiate with buyers (potentially with counteroffers), and ultimately accept the offer that best meets your needs.

09 **Inspections & Appraisals:**

The buyer usually performs a home inspection to spot potential issues, while the lender orders an appraisal to verify the home's value for financing. Findings from both may lead to further negotiations or credits.

10 **Closing Day:**

Your last step! You will complete all required paperwork to finalize the sale, transfer ownership of the property to the buyer, and receive your proceeds. Once everything is signed and sealed, you can celebrate the successful completion of the sale. Congratulations!

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