

# California Probate: An Overview | Nolo.com



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In California, probate isn't a particularly onerous process, and there are several legal shortcuts that let many families avoid probate court altogether after a loved one dies. But probate in California can have one big drawback: extremely high attorney fees.

## Will Probate Be Necessary?

Probate isn't always necessary. If the deceased person owned assets in joint tenancy with someone else, or as survivorship community property with his or her spouse, or in a living trust, those assets won't need to go through probate. The same is true for assets held in a revocable living trust and accounts for which a payable-on-death beneficiary has been named. (For a rundown of common probate-avoidance techniques, see our articles on "[How to Avoid Probate](#).")

Assets inherited by the surviving spouse or registered domestic partner can also be transferred with a streamlined procedure, using a document called a Spousal (or Domestic Partner) Property Petition. The probate court is involved, but the process is simple and quick. There is no limit on the value of property that can be transferred this way.

Other assets may not need to go through probate, either. If the total value of the probate estate (the assets that can't be transferred to inheritors in one of those other ways) is small enough, probate won't be necessary. Currently, the cap is \$150,000. Inheritors can claim the assets with a simple sworn statement (affidavit) or can go through a streamlined summary probate process.

(For more information, see "[Probate Shortcuts in California](#).")

## The Basic Probate Process

If probate is necessary, someone must come forward to start the process. If there's a will, the executor named in the will should get the ball rolling. If there's no will, or the person named to serve as executor isn't available, then usually a family member asks the court to be appointed as the "administrator" of the estate. It's the same job.

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The executor's job will probably last six months to a year. First, the executor files the will, along with a document called "Petition for Probate," with the probate court in the county where the deceased person lived. There is a filing fee of about \$400; some counties charge a bit more. Some other forms may need to be filed as well, and formal notices given to interested parties. The will, if there is one, must be shown to be valid; usually this is done by having the witnesses sign a sworn statement that's submitted to the court. When everything is in order, the court issues "Letters Testamentary" or "Letters of Administration," appointing an executor and granting that person authority over estate assets.

Once the executor has this authority, the process of gathering the deceased person's assets can begin. It's also the time for the executor to get organized, set up a filing system so that benefits and bills aren't overlooked, apply for a taxpayer ID number for the estate, and open an estate bank account. The executor will need to compile, and file with the court, an inventory and appraisal of all probate property.

If all this sounds overwhelming, remember that it doesn't all have to be done at once. It does involve a lot of paperwork (and usually, phone calls), but most well-organized and conscientious people can handle it. And the executor can always get help, from family members or from an attorney who understands the process and can serve as a guide.

Most probates in California are handled under the state's Independent Administration of Estates Act, which lets the executor take care of most matters without having to get permission from the probate court. (Cal. Probate Code § 10400 and following.) The executor can usually sell estate property, pay taxes, and approve or reject claims from creditors without court supervision. Certain other acts—for example, selling real estate—require court approval.

During the probate, it's the executor's job to keep all assets safe. For example, a house must be insured and maintained; heirlooms must be safeguarded from theft or damage. The executor is also responsible for filing tax returns for the deceased person and for the estate.

In California, creditors have four months to come forward with their claims. Many estates don't receive any formal claims from creditors; instead, the executor simply pays outstanding bills (for expenses of the final illness, for example). If there isn't enough money to pay valid claims, however, state law sets out the order in which claims are to be paid from estate assets.

Finally, when all bills and taxes have been paid, the executor asks the court to close the estate. That's when the executor can distribute all the estate assets to the people who inherit them.

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## Probate Attorney Fees in California

In most states, lawyers charge by the hour or collect a flat fee for probate work. Not so in California. It's one of only a few states that let lawyers charge a "statutory fee"—an amount that is a percentage of the value of the assets that go through probate. The percentages are set out in state statutes. (Cal. Probate Code §§ 10810, 10811.)

Here are the current rates:

- 4% of the first \$100,000 of the gross value of the probate estate
- 3% of the next \$100,000
- 2% of the next \$800,000
- 1% of the next \$9 million
- .5% of the next \$15 million

In practice, this means that probate lawyers' fees can be very high in relation to the amount of actual work done. Probate is usually a matter of filing papers; there's no trial and there may be no court appearances at all. So let's say your probate estate contains a \$600,000 house you own in your name alone, plus some bank and brokerage accounts and a car. The total value is \$900,000. The attorney's statutory fee would be \$21,000—for very little paperwork.

But wait, what if there's still \$200,000 to pay on the mortgage, reducing your equity to \$400,000? The attorney's fee would still be \$21,000—it's based on the gross amount of the probate assets, not what you actually own.

California lawyers don't have to charge this way—they can bill by the hour or charge a flat fee. They do it because the statutory fees are such a good deal for them. And the fees are only for ordinary work—if there's something "extraordinary," the lawyer can ask for a bigger fee.

## Is a Lawyer Necessary?

Unless people are fighting over the estate, probate is largely a matter of paperwork. In California, the paperwork is mostly fill-in-the-blank forms published by the state's Judicial Council. All those forms are available for free in the "[Forms & Rules](#)" section of the California Judicial Council website.

Still, having forms and knowing what to do with them are different things. For more than 25 years, the single best source of guidance for conducting a probate court proceeding without a lawyer (or for reference if you do hire a lawyer) is [How to Probate an Estate in California](#), by Julia Nissley. It takes executors through the whole process and provides step-by-step instructions for all forms.

Many executors find that with the right information, they can handle a California probate themselves, as long as there are no unusual complications—for example, a fight over inheritance, more debts than assets and uncertainty about who to pay, or an ongoing business.

For more on California estate planning issues, see our section on [California Estate Planning](#).

