

# The Best Way To Avoid Probate

Dear Len & Rosie,

I have heard conflicting information about trusts vs. wills regarding probate. If you only have a will, does it have to go through probate in California? If so, how long does that process take and how much does the family "lose" to probate?

Charlotte

Dear Charlotte,

Your probate estate will consist of everything you own when you die, that's not in a trust and that hasn't got a surviving joint tenant or pay-on-death beneficiary. It doesn't matter whether or not you have a will. If the gross value of your estate (that is, the total value before debts are subtracted) is more than \$150,000, then your estate must pass through probate in the courts.

Probate is time-consuming and typically takes anywhere from 9 to 15 months, at least. Probate is also expensive. Probate lawyer fees are set by statute as follows:

4% of the first \$100,000

3% of the next \$100,000

2% of the next \$800,000

1% of the amount above \$1,000,000

The lawyer for a \$500,000 estate gets paid \$13,000. If the estate is worth \$1,000,000 the lawyer is paid \$23,000 for exactly the same amount of work. And since the executor or administrator gets the same statutory fee, it's doubled unless your executor waives fees. And this does not count "extraordinary" fees that are routinely approved by the court for "extra" work such as selling your home.

How do you avoid probate? If your estate is worth under \$150,000, then you don't have to do anything to avoid probate. Your heirs can collect your assets 40 days or more after your death with small estate declarations under California Probate Code section 13101. Many banks have their own forms for this, so a lawyer may not be needed at all. Transferring real property of small value is harder. Your heirs will have to have the property appraised by a California Probate Referee and petition the court. But it's still a lot easier, faster, and cheaper than a full-blown probate.

You can avoid probate by holding title to your assets in joint tenancy with your heirs, or by using bank account pay-on-death beneficiary designations. Surviving spouses inheriting an estate can also avoid probate with a Spousal Property Petition. The problem is that joint tenancy can backfire. Your children may decide to take the money and run - it happens sometimes. Also, if your children are on title to your home, you'll have to ask them

permission if you want to sell your home or take out a new loan. Your home could even be subject to the claims of their creditors.

For these reasons, the best way to avoid probate is with a revocable trust. Trust assets are not part of your probate estate and are therefore not subject to probate. A revocable trust is also completely under your control so you will not have to seek your children's approval for what you do with your own property.

Len & Rosie