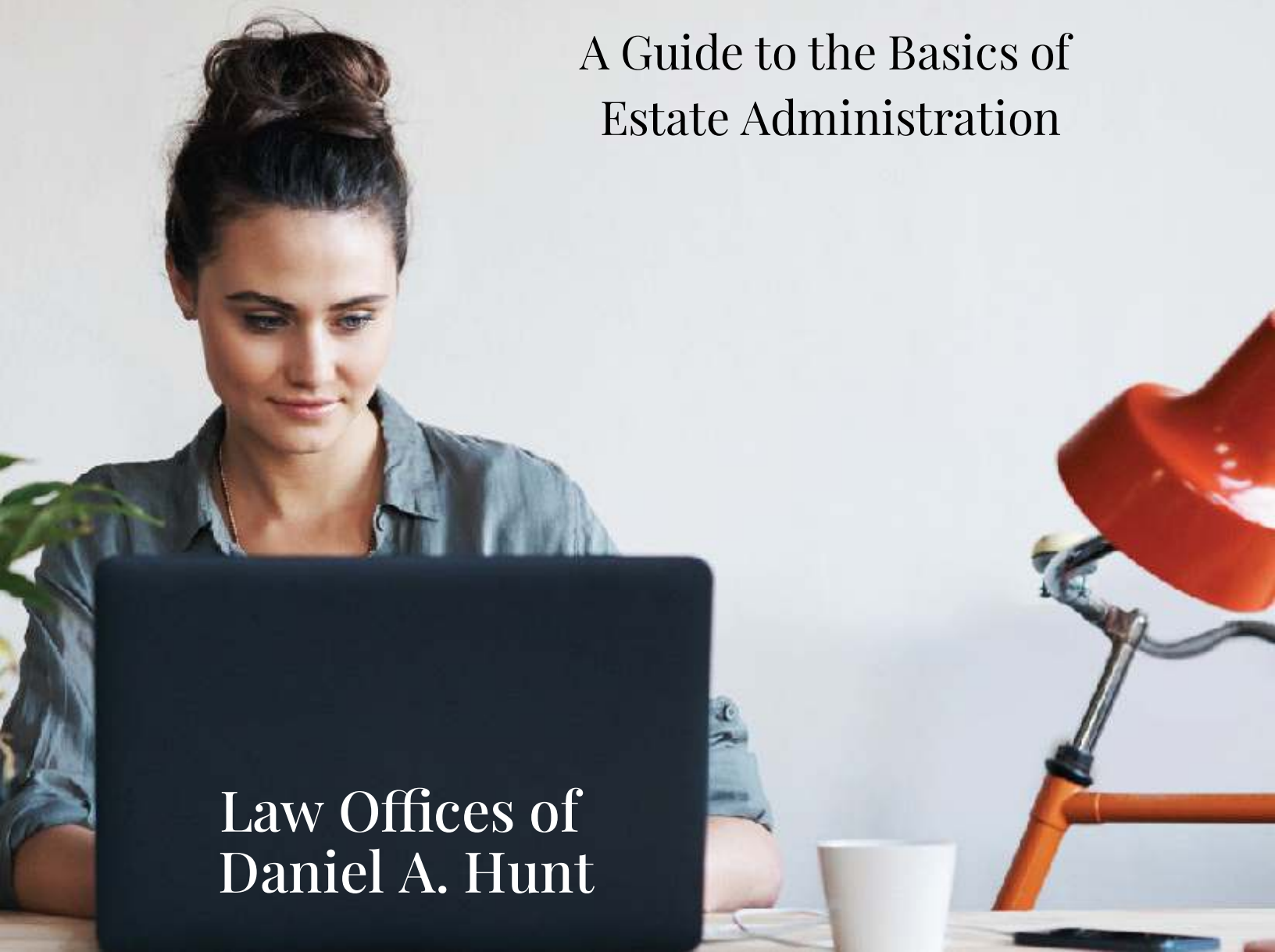
PROBATE ESSENTIALS

A Guide to the Basics of Estate Administration



Law Offices of
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Introduction: What is Probate?

When a loved one dies without a will in place, with ONLY a will in place (no revocable living trust), or with valuable assets left outside of a living trust, the estate will likely need to be administered by the California Probate Court. But what exactly is probate?

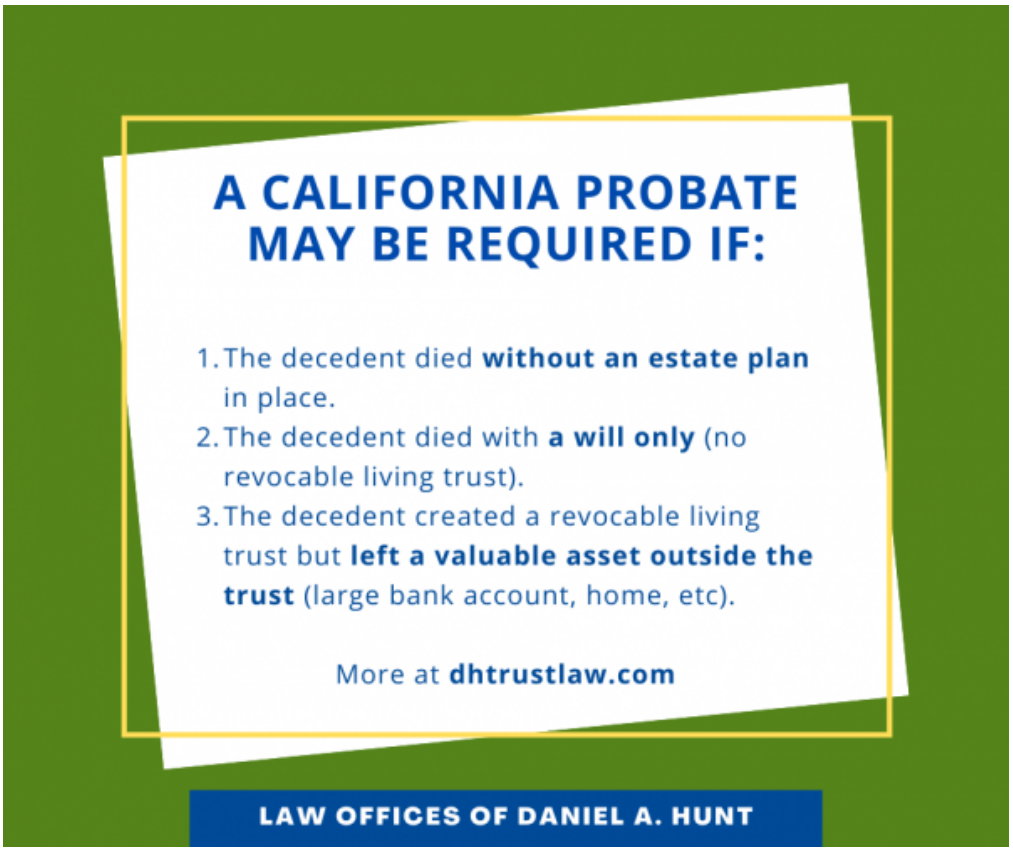
Probate is the legal process in which a deceased person's estate is settled and distributed to their heirs.

In our firm's many years of guiding clients through the California probate process, we've learned it can be overwhelming and complex. It's also a LONG journey - one that often lasts 9-18 months or more.

We've found that education is power. The more educated a Personal Representative is about the probate process, the faster and easier their experience tends to be. That's why we created this Probate Essentials eBook - to offer estate Personal Representatives an overview of the whole process while also breaking down each step, one chapter at a time.

If questions arise as you read, feel free to contact the experienced probate attorneys at the Law Offices of Daniel A. Hunt for expert legal counsel, so you can complete your probate matter as quickly and painlessly as possible.

Do You Need to Open a Probate?



"Do I need to open a California probate?" For those whose loved one has recently died, this is a common question. Probate is when the court supervises the processes that transfer the legal title of property from the estate of the person who has died (the "decedent") to their beneficiaries. But probate is not always necessary after every death.

Determining how to administer an estate post-death depends on the size of the estate, how the assets were titled, and what estate planning documents the decedent created before they died.

5 Situations Where a California Probate Can Be Avoided

You likely will not need to open a California Probate in the following five scenarios:

1. The estate is worth less than the cut-off amount.

If the estate or asset qualifies as a "small estate", you may not need to open a full probate matter. If the estate or asset is worth less than $166,250 (including real property) or the sole asset is a piece of real estate worth less than $55,425, you can probably avoid probate with a small estate affidavit. Consult an experienced probate lawyer for help determining the best strategy.

2. Your spouse has died and your assets were all "community property."

Since California is a "community property state", this means that the widowed spouse has a "right of survivorship". "Community Property with Right of Survivorship" means that when the first spouse or partner dies, the couple's property automatically belongs to the survivor. The surviving spouse will not need to open a full probate.

3. The decedent owned all assets in joint tenancy with someone else.

If all of the estate assets are titled in joint tenancy with another person, such as a partner or child, the joint tenant will inherit those properties at the decedent's passing. However, if the surviving tenant does not add a beneficiary or another joint tenant to the asset, a probate may be triggered when they pass away.

4. The decedent created a revocable living trust and transferred all estate assets of value into the trust.

A revocable living trust avoids a California Probate and will be administered privately by the successor trustee.

5. The decedent's only assets are retirement accounts or life insurance.

Retirement accounts and life insurance policies are paid out upon the owner's death to the designated beneficiary. They do not pass through the Probate Court system, unless no beneficiary is designated on record for the asset.

When to Open a California Probate

While some families may be able to avoid probate due to estate size or estate planning, you likely will need to open a California probate under the following 3 circumstances:

1. The decedent died with no estate plan at all in place.

When a person dies without ever creating a Last Will & Testament, this is called dying "intestate". Assuming none of the previously described exceptions apply, someone (usually a family member) will need to petition the Probate Court to be appointed as the estate's "personal representative" or "administrator". This individual will handle the estate administration and ultimately distribute the assets to the decedent's heirs.

2. The decedent died with only a will (no trust).

While a revocable living trust avoids probate, a Last Will & Testament does not. The executor named in the will must lodge an original copy of the decedent's will with the Probate Court and initiate the process. Once the probate is complete and the judge grants permission, the executor will distribute estate assets as outlined in the will. The whole process often takes 10-18 months or more in California.

3. The decedent created a revocable living trust but failed to properly transfer a valuable asset into it.

Even with the best of intentions, sometimes assets are inadvertently left outside of a trust. Maybe the settlor never got around to changing the title on a large bank account. Maybe they refinanced their home and the house never got put back into the trust after the loan company took it out to complete the refi. If an asset is left outside of the trust that exceeds the cut-off amount, the successor trustee may need to administer the trust AND open a probate.

3 Cheaper, Faster Alternatives to Probate

In California, when a loved one dies with or without a will, or with assets left outside of a trust, the family may need to open a formal probate proceeding with the court. However, depending on the circumstances, a full probate may not be the only option.

Here are three cheaper, faster alternatives to probate: a Small Estate Affidavit, a Spousal Property Petition, and a Petition under Probate Code Section 850 (aka Heggstad Petition). These alternatives may offer a cheaper and faster way to close the estate than a full probate proceeding if they match your needs.

Probate Alternative #1: Small Estate Affidavit

Small estates can often avoid probate with a Small Estate Affidavit. What's considered a "small estate" in California? In 2021, a small estate is defined as:

- An estate that includes less than $166,250 in personal and real property OR
- An estate that includes only real property worth less than $55,425.

If the estate contains no real property and the whole value of the personal property (including cash assets) is under the $166,250 threshold, then the estate's personal representative can use a Small Estate Affidavit to claim the property without a court proceeding. If the estate does include real property, then the personal representative will need to file a Small Estate Affidavit with the Probate Court and attend a hearing for court approval of the Small Estate Affidavit.

Assets can be distributed under a Small Estate Affidavit after 40 days have lapsed since the decedent's passing. Compare that with waiting 9-18 months of waiting required in an average California probate before assets can be distributed!

Besides being faster, Small Estate Affidavits also cost less than probate. Costs include a $45 filing fee; a probate referee fee of .1% of the appraised value of the assets; and an attorney fee of around $500-$1,000.

Probate Alternative #2: Spousal Property Petition

After one spouse dies, a California Probate Code 13650 Spousal Property Petition can sometimes help the surviving spouse clear title to any assets that were titled in the decedent's name alone, (and not in joint tenancy). It can also clear title to real property that was held as community property but without the key phrase "with right of survivorship".

In general, this petition will:

- Describe any property already passing to the surviving spouse
- Propose that the assets in question also pass to the surviving spouse as community property
- Lay out facts supporting this proposition
- Identify heirs who are entitled to notice
- Provide a copy of any written agreement between the spouses pertaining to the property
- Provide a copy of the will (if any)

A Spousal Property Petition can be used for:

- Both community and separate property
- Both decedents who created a will and those who didn't
- The whole estate or only part. Cost varies based on the amount of work and number of heirs. An average spousal property petition runs around $2,000 plus the court filing fee ($435 in 2021)

Probate Alternative #3: 850 Petition (aka Heggstad Petition)

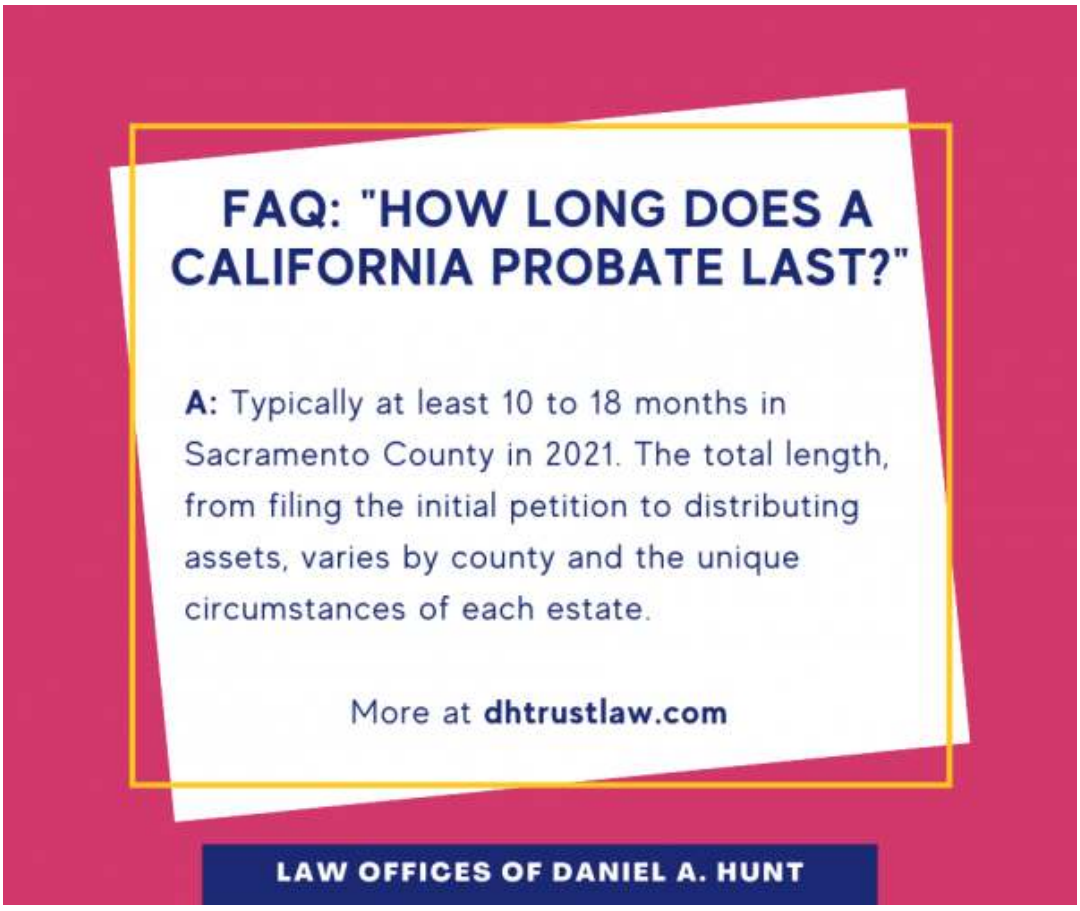
A Probate Code 850 Petition offers a third alternative to a full probate court proceeding when a decedent failed to properly transfer a sizable asset into a trust, like real property or a bank or investment account. This petition is also known as a Heggstad Petition, named after the landmark 1993 case Estate of Heggstad.

In this case, Halvard L. Heggstad had neglected to transfer his part ownership in a piece of real estate into his revocable living trust. He did, however, list the property on his trust's Schedule A. The court found that the decedent showed sufficient intent to include this property in his trust. The judge ruled that the property should be included in the trust estate and not go to the decedent's wife (who he had married shortly before his death).

Today, if a large asset is left outside of a trust, an experienced probate attorney may be able to file a Heggstad petition with the local Probate Court and request that the asset be included in the trust estate. If the court grants the petition, you'll save significant time and money compared with a full-blown probate proceeding. The cost for a Heggstad petition includes a filing fee ($435 in 2021) plus around $2,500-4,000 in attorney's fees.

Finding the best strategy for your unique circumstances requires knowledge of the law and experience working with the probate court. We recommend seeking legal counsel from a skilled probate lawyer who can guide you to the best fit for your personal situation.

Overview of a Typical Probate Timeline



If you need to open a California Probate after the death of a loved one, you may want to know how long the whole process will take. While the timeline for a typical California Probate varies based on the county, most follow a similar pattern. Here's an example of a typical California probate timeline.

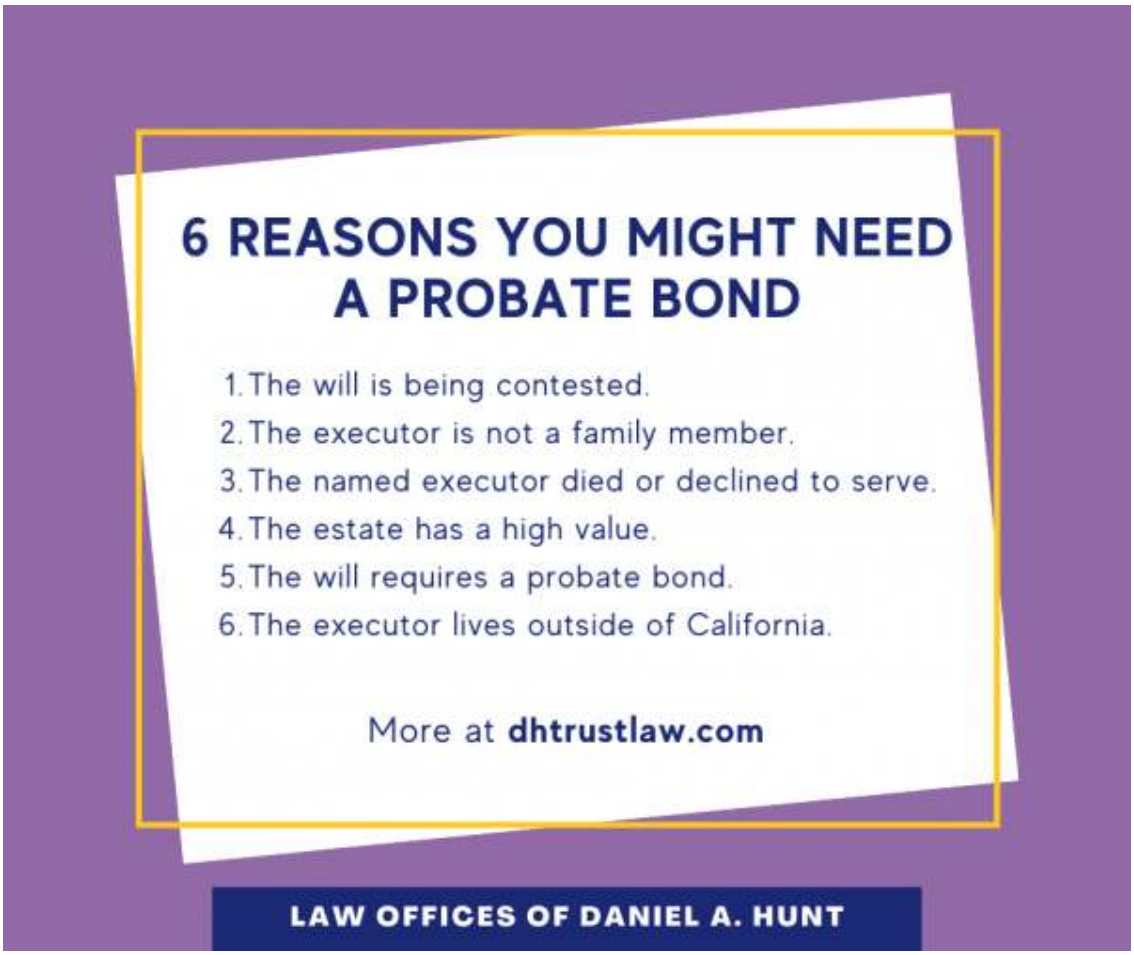
1. **Meet with a probate attorney to discuss your case.**
2. **File your Probate Petition.** About 2-3 weeks after you've hired a probate attorney, they will draft and file a Probate Petition at the Probate Court in the county where the decedent was a resident. You'll also need to file a document called "Duties and Liabilities of Personal Representative" with the court. This acknowledges that you'll adhere to your duties in this role.
3. **Publish and Mail Notices.** Immediately after filing your petition, your probate attorney will publish a notice of the initial court hearing date. This notice will appear in a newspaper of general circulation in the city where the decedent lived. They will also mail a notice to all heirs and any beneficiaries named in their will (if they created one).
4. **Initial court hearing.** You and your probate attorney will attend the initial court hearing at the courthouse where the petition was filed. At your hearing, the judge will sign an "Order for Probate" appointing you as the personal representative of the estate. When will the hearing take place? The time frame depends on the county. For example, in June of 2021 in Sacramento County, this hearing takes places 16-20 weeks after filing the Probate Petition.
5. **Bond Issued.** If the judge orders you to obtain a bond, you'll need to secure one. This is basically insurance to protect the estate against the risk of mismanagement by the executor/personal representative.

6. **Court issues "Letters of Administration".** This document authorizes the personal representative to act on behalf of the estate. If your bond was in place at the hearing or no bond was required, you should receive these at the initial hearing. Once you receive Letters of Administration, you will be able to show them to any financial institutions in order to begin the work of estate administration.
7. **Collect and inventory assets.** After taking an inventory of all estate assets, the personal representative should begin to liquidate personal property (including bank or investment accounts), meaning convert them into cash that can later be distributed to the heirs/beneficiaries.
8. **Send "Notice to Creditors" to any known creditors.** Creditors have 4 months to file any claims with the court. Your probate attorney can help you respond to any existing creditor claims. This can get tricky, as not all claims have the same priority under the Probate Code. You'll want an experienced probate attorney to help you handle creditors.
9. **Sell real property.** The personal representative may sell real property assets if necessary, as long as "full authority" has been granted by the court. If the court only granted you "limited authority," then the court must confirm any sale of real estate.
10. **File "Inventory & Appraisal" (I&A) with the court.** A probate referee will complete an appraisal of the estate within 90 days of receiving your letters.

11. **If the decedent owned real property, file a "Change in Ownership Statement– Death of Real Property Owner" with the County Recorder.** This form lets the county know that the owner of a piece of real estate has died and informs them of the new owner. This happens 4-6 months after filing the petition.
12. **Pay final income taxes.** This happens 6-12 months after filing the petition. Your CPA can help you file a short-year income tax return if appropriate, so you don't have to wait out the year in order to close the estate.
13. **File a "Petition for Final Distribution" with the court**. This indicates that all debts have been handled, all required steps have been taken, and you are ready to close the estate and distribute the assets. This happens 8-16 months after filing the petition.
14. **Final court hearing.** You and your probate attorney appear in court. If all goes well, the judge will give you a signed order allowing you to distribute assets to the heirs. This happens 10-18 months after filing the initial petition.

The total length of each probate varies based on many variables, including how backlogged the court system is in that particular county at the time. Overall, you can expect to spend at least 10 to 18 months in probate, from filing the original petition to distributing estate assets.

What is a Probate Bond?



Understanding probate bonds is an important part of the probate process. If you're involved in a California probate, you may have heard that some executors or administrators are required to set up a probate bond. But what is a probate bond, when is it required, and how much does it cost?

What is a Probate Bond?

A probate insurance bond (also known as a fiduciary bond) is a type of surety bond held by the personal representative for the estate to insure them as they perform all of their fiduciary duties as outlined in the California Probate Code .

A probate bond protects the estate's beneficiaries and/or heirs from any mistakes (intentional or unintentional) the personal representative of the estate might make in their role. Unfortunately, some executors or administrators fail to observe their fiduciary duties, which results in monetary damages for the heirs or beneficiaries. If the estate beneficiaries receive a judgment against the personal representative, the beneficiaries can then make a claim against the bond for compensation.

If the claim is valid, the surety bond company that issued the bond will initially provide financial compensation to the beneficiaries. However, the personal representative will then be responsible for reimbursing the bond company for any payments they had to make.

Who Needs a Probate Bond?

Here are some common reasons why a bond might be required:

1. The decedent's will is being contested by family members or another party.
2. The executor/administrator is not a family member of the decedent.
3. The original executor named in the will has died or declined to serve, causing another person to be appointed in this role.

4. The estate has a high value. The larger the estate, the higher the risk to the beneficiaries if the executor mismanages the administration.
5. The will requires them to do so. Some wills have language requiring the executor to obtain a bond. Other wills waive the bond, especially if the testator (will creator) trusts their executor implicitly or if the executor is also the sole estate beneficiary.
6. The executor lives outside of the state.

The court does not require a bond in every probate. A judge may waive the bond requirement if:

1. They perceive a low risk of executor/administrator misconduct.
2. There is a provision in the will that waives the bond requirement.
3. All the heirs are adults and all consent to waiving the bond requirement.

If the judge requires the executor or administrator to take out a bond, they must do so before the court will issue a necessary document called “Order and Letters”. The “Letters” prove the personal representative’s authority to collect assets from financial institutions, sell real property, and generally act on behalf of the estate.

Cost of a Probate Bond

Many factors pertaining to the executor or administrator affect the cost of obtaining a probate bond, including their:

- Credit score (High credit score = lower risk)
- Relationship to the deceased (Family member = lower risk than an unrelated person)

- Occupation (Greater financial security = lower risk)
- Personal Assets (Greater financial security = lower risk)
- Previous bond claim history (Clean bond record = lower risk)
- Criminal record (Clean criminal record = lower risk)
- Experience level (An experienced estate executor or administrator = lower risk)

The higher the risk level of the principal (insured person), the higher the cost of the bond. The cost of the bond is also influenced by the size of the estate. Fortunately, the principal is only required to pay a percentage of the total bond in order to be bonded, not the full amount. In Sacramento, a typical range for a bond per year is $1,000 – $3,000.

If you need to secure a probate bond, we recommend Bond Services. Our office has worked with them for many years with positive results.

What is Inventory & Appraisal?

If you're the Personal Representative in a probate estate, you must file a document called Inventory and Appraisal with the court within four months of receiving Letters of Administration. Inventory and Appraisal is a single document that lists all of the estate's assets and appraises the value of those assets.

The purpose of the Inventory and Appraisal is to determine the value of the decedents' assets at the date of their death. Ultimately, the appraisal values set forth in the Inventory and Appraisal will set the base values for determining the statutory fees to be paid at the end of the probate matter.

What to Include in the Inventory

The Inventory and Appraisal form provides an overall estate value, while the attachment forms provide an itemized list of the estate assets.

The Inventory should include all of the decedent's assets, such as real property; cash, checking, savings, and investment accounts; household furniture; jewelry; collectibles such as coin collections, antiques, and record collections; business interests, and any other assets.

Describe each item in detail so that it can be properly identified and appraised, including account numbers, legal descriptions, license numbers, etc. Be sure to clearly designate each item as the decedent's separate property or the decedent's one-half interest as community property of the decedent and their surviving spouse.

The Inventory and Appraisal form requires two attachments: Attachment 1 and Attachment 2.

Assets Appraised by the Personal Representative

As Personal Representative, you will appraise the items on Attachment 1, as outlined in Probate Code section 8901. These include cash assets, such as:

- Money and other cash items issued on or before the date of the decedent's death.
- Checks issued after the date of the decedent's death such as checks for wages earned before death, refund checks (like tax and utility refunds or Medicare, medical insurance, and other health care reimbursements and payments).
- Accounts in financial institutions.
- Cash deposits and money market mutual funds, including brokerage cash accounts.
- Proceeds of life and accident insurance policies and retirement plans and annuities payable on death in lump sum amounts.

For each item, list the dollar value as of the decedent's date of death.

Assets Appraised by the Probate Referee

Attachment 2 will list non-cash assets where value may be harder to determine which must be appraised by the probate referee. Probate referees are qualified appraisers who have passed rigorous requirements and been appointed by the California State Controller's Office.

Assets to be appraised by the probate referee include:

- Real property
- Stocks, bonds, mutual funds, and other securities
- Tangible personal property such as automobiles
- Household furniture and furnishings (can be listed collectively rather than individually)
- Partnership and business interests

Include a blank space after each of these items so they can be appraised and completed by the probate referee. The probate referee should return the completed Inventory & Appraisal with the asset values within 60 days (unless they request additional information from you).

After the probate referee has signed Attachment 2, you must file the Inventory and Appraisal and two attachments with the probate court.

Assets Appraised by an Independent Expert

Probate Code section 8904 states that the personal representative can elect to have an independent expert appraise a "unique, artistic, unusual, or special item of tangible personal property". To do this, make a notation on Attachment 2 that the item will be appraised separately. Within 5 days of the inventory's delivery, the probate referee may petition for a court determination of whether the item qualifies as "unique, artistic, unusual, or special".

However, be careful with making this request. If the petition fails and the court determines the petition wasn't justified, you may need to pay the probate referee's attorney fees.

Partial, Amended, and Supplemental Inventories

If you are able to list all of the estate assets on one Inventory and Appraisal form, write "Final" at the top of the form.

If you know that some assets are still missing after four months of receiving Letters, file an Inventory & Appraisal and write "Partial" at the top of the form. Later, when the last of the assets have been inventoried, you can file a "Final" Inventory.

If you file a "Final" Inventory and later discover additional estate assets, you should file a "Supplemental" Inventory with those assets.

If you discover that any of the items listed on a previous Inventory were incorrect (such as an account number or legal description), file a "Corrected" Inventory to fix the error.

Paying the Probate Referee

Be aware that probate referees do charge a fee for their service. In California, the statutory fee is one-tenth of 1% (.001) of the total assets they appraise. This fee only applies to assets listed on Attachment 2 (non-cash assets). The probate referee can also charge for mileage. The minimum probate referee fee is $75 and the maximum fee is $10,000.

If the only estate asset is real estate and the beneficiaries wish to keep this asset, they will either need to pay the probate referee themselves or consider selling the real property to pay for this fee and other fees involved in the probate (including the statutory fees paid to the attorney and the personal representative). Also, keep in mind, if you have to submit additional assets to the referee to amend or supplement an appraisal, the referee may charge an additional fee for the valuation of those assets.

Understanding Your Powers as a Personal Representative

If you've been appointed as Personal Representative in a probate matter, it's important to understand what powers you have under the Independent Administration of Estates Act (IAEA). Differentiating between full and limited authority under IAEA will help you determine how to deal with any real property included in the estate.

What is the Independent Administration of Estates Act (IAEA)?

Passed in 1987, the Independent Administration of Estates Act (IAEA) outlines actions a Personal Representative can take to administer an estate without court supervision. Authority to administer the estate under the IAEA can be granted by:

- The decedent's will; or
- The court upon petition by the Personal Representative.

Often when the Personal Representative files their opening petition at the beginning of the probate, their petition includes a request for full authority under the IAEA. However, you can file a petition requesting these powers at any time during the probate process.

The court may deny IAEA powers if:

- An interested party object to the petition with "good cause"; or
- The decedent created a will that specifically denies the executor these powers.

If the petition is denied, the court may grant the Personal Representative limited authority under the IAEA.

Full Authority vs. Limited Authority

Full authority granted under the IAEA rules allows you as the Personal Representative to do any of the following real estate-related tasks without court supervision (as outlined in

the California Probate Code sections 10550-10564), once you give a proposed notice of the action to the heirs/beneficiaries (as outlined in the California Probate Code sections 10511-10517):

- Sell or exchange real property
- Grant an option to purchase real property
- Act on claims against the estate
- Pay taxes, assessments, and expenses incurred in the administration of the estate

If the court only grants you limited authority, all of the actions listed above require court supervision and approval. Court approval may also be required if you or your attorney are the principal performing any of these tasks. For example, if you are the buyer purchasing the decedent's home, this action may require court approval.

What is a Notice of Proposed Action?

Even when granted full authority under the IAEA, a Personal Representative does not have unlimited power. You still need to seek permission to sell real property with a document called "Notice of Proposed Action." This notice should be sent to any person or entity who has an interest in the proposed sale or may be affected by it. The exception would be if that person had waived their right to this notice in writing.

According to California Probate Code section 10581, the notice should be sent to:

- Everyone named in the decedent's will;
- Each known heir if the decedent died intestate (without a will);

- Any other interested persons requesting notice, like creditors or beneficiaries of a trust; and
- The Attorney General, if any portion of the property is to go to the State.

The Notice of Proposed Action must include all of the following information:

- Your name and mailing address;
- The name and telephone number of the person to contact for additional information;
- A reasonably specific description of the action to be taken, including a description of the property and the terms of the sale, exchange, or granting of an option to purchase property (price and amount or method of calculating any brokerage commissions); and
- The date on or after which the proposed action will occur.

How to Send a Notice of Proposed Action

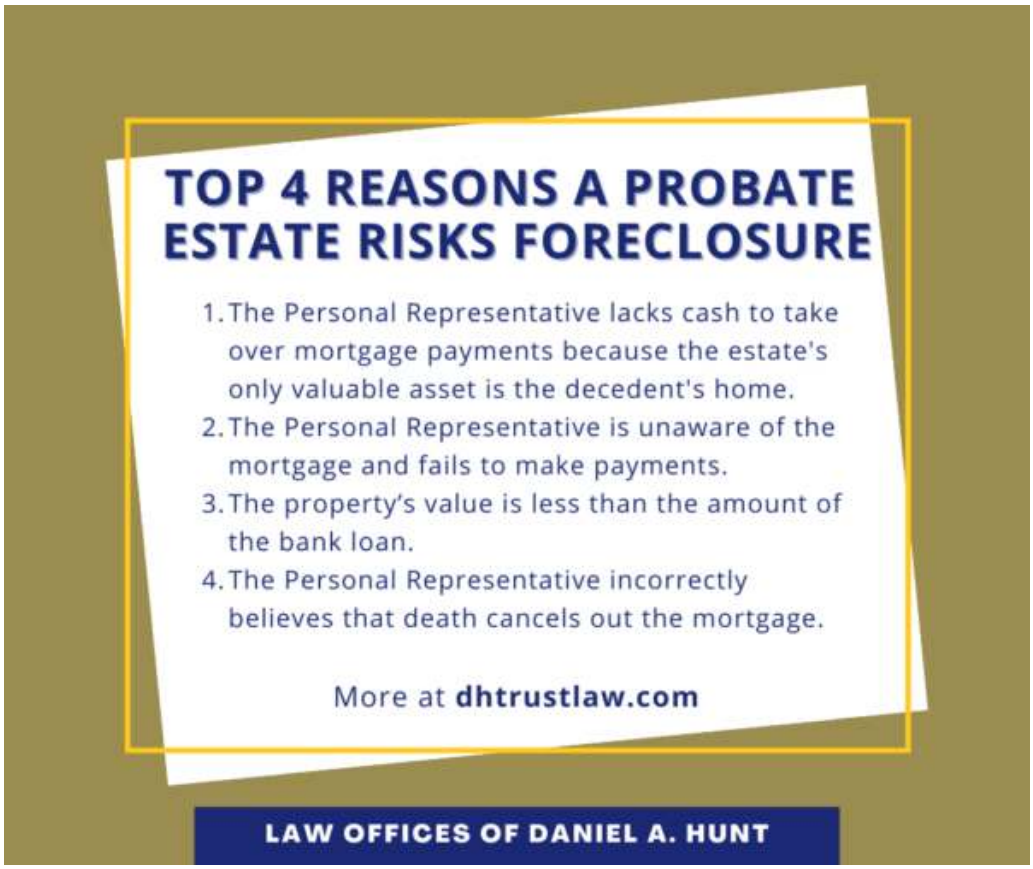
At least 15 days before the date of the proposed action, the Notice of Proposed Action must be mailed or personally delivered to everyone entitled to receive it. If you're not sure how to contact any of these individuals, mail the notice to their last known address. Send the notices via first class mail.

Advantages of Using IAEA Powers

While a personal representative who has been granted full authority to administer the estate under the IAEA is not required to do so, there are advantages to using these powers.

Real estate sales under the IAEA are faster than court-supervised sales, which allows you to pay estate expenses as they occur.

How to Handle Foreclosures in a Probate Estate



If you're the Personal Representative in a probate estate and the decedent owned real property, you may be wondering how to handle foreclosure in probate. In this blog post, we'll cover why probate estates sometimes risk foreclosure, how to prevent foreclosure, and how to handle a Notice of Default as Personal Representative.

Why Are Probate Estates At Risk for Foreclosure?

An estate may default on a decedent's mortgage for any of the following reasons:

1. The estate's only valuable asset is the real property and the Personal Representative lacks the cash to take over the mortgage payments.
2. The Personal Representative is unaware of the mortgage and fails to make payments.
3. The property's value is less than the amount of the bank loan.
4. The Personal Representative incorrectly believes that death cancels out the mortgage. California law does not erase a mortgage upon the owner's death, nor does it allow you to delay mortgage payments until the property is sold. If mortgage payments aren't made in a timely manner, the lender can foreclose on the property.

How to Prevent Foreclosure in Probate

Early prevention is the best approach to preventing foreclosure. Be sure to keep all secured loans current during the estate administration. If any real estate is subject to a mortgage, first consult with your probate lawyer on the best course of action.

Then, as Personal Representative, you should immediately write to the lender, provide your mailing address, notify them of the decedent's death, and explain what you plan to do with the property. Clear communication reduces the risk of foreclosure.

Be sure to document this information by sending communications via Certified Mail. This may be important later down the line if you need to stop the foreclosure.

If you can prove that you provided the lender with your contact information and the lender failed to properly notify you of the foreclosure, this may be one way to buy yourself some time to sell the property before foreclosure.

If the estate is insolvent and cannot afford to pay the mortgage, but there is equity in the property, tell this to the lender and let them know you are preparing the property for sale. If you tell them early on in the estate administration, they may be willing to give you extra time to sell the house.

If there is no equity in the property, ask the bank if they will accept a deed to the house instead of foreclosing or inquire about a short sale on the property. An experienced probate attorney can help you find the best strategy given your unique circumstances.

What If You Receive a Notice of Foreclosure?

If you as Personal Representative receive a Notice of Default from the lender, here are some of your options.

1. Contact the lender, find the person with the authority to stop the foreclosure, and ask for more time. The sooner in the probate process you do this, the better your odds of success.

2. If the lender is unwilling to cooperate, seek to enjoin (or prevent) the foreclosure. You may be able to succeed by arguing that the lender failed to send proper notice to you of the foreclosure sale. This would force the lender to begin the foreclosure process over again and buy you more time.
3. You may wish to consider borrowing funds from another lender until the property can be sold. Be aware that due to the risk, the interest on such a loan will likely be high. The personal representative could also take out a personal loan, but do note that this makes you personally liable for the debt.

How to Distribute Real Estate Sale Proceeds

If you are able to buy enough time to sell the property, you must distribute the sale proceeds in the following order:

1. Estate administration expenses related to the administration of the property (including statutory probate fees for the executor and attorney and funds set aside until there is a court order to distribute them);
2. Paying expenses of the sale;
3. Paying and satisfying the amount secured by the lien on the property sold (if required under the terms of the sale);
4. After paying all of the above, if there is any money remaining, it goes to the estate.

Handling a foreclosure in a probate estate can be stressful and difficult, but not always impossible. Remember that the earlier you address this issue, the better your odds of success.

How to Handle Creditors in a Probate Estate

If you're the Personal Representative of the estate in a probate matter, you should know that death does not automatically eliminate the decedent's debts. If you want to understand how to handle creditors in probate, you must learn how to properly notice creditors, respond to creditor claims, and negotiate with creditors.

Common Estate Creditors

Common estate creditors include the US government (the California Franchise Tax Board, the IRS, and the California Department of Health Services) and both secured and unsecured debt.

Secured debts are attached to collateral which the lender can seize, sell, and use to pay back the debt if the borrower defaults on payments. Real estate mortgages and car loans are examples of secured debt.

Unsecured debt lacks collateral, like credit card debt and student loan debt. Unsecured debt is a lower priority creditor in an estate administration.

Which Debts Take Priority in Probate?

The Personal Representative must pay off estate debts in a specific order under California Probate Code Section 11420. This statute lays out the order in which estate debts must be paid:

1. All expenses related to the estate administration.
2. Obligations secured by a mortgage, deed of trust, or another lien.
3. Funeral expenses.
4. Medical expenses related to last illness or death.
5. Family allowance (for family members who relied on the decedent for support).
6. Wage claims (unpaid wages to any employees).
7. All other debts, including unsecured debts.

How to Send Notice to Estate Creditors

The Personal Representative has a duty to notify any "known or reasonably ascertainable creditors of the decedent" concerning the decedent's death.

Probate Code 9053 explains, "A personal representative has a duty to make reasonably diligent efforts to identify reasonably ascertainable creditors of the decedent." However, you will not be held liable for failing to notice estate creditors unless you do so "in bad faith" (intentionally) and the creditor complies with a number of steps outlined in the above Probate Code section.

Requirements for Creditors to Make a Claim

Under Probate Code Section 9100, creditors must file a claim either:

1. Within 4 months of the Personal Representative receiving Letters of Administration from the court; or
2. Within 60 days of the creditor receiving a notice of administration from the Personal Representative.

In order for their claim to be valid, the creditor must file the claim with the Court and serve a copy of the claim on the Personal Representative with the relevant written instrument attached, per Probate Code section 9150.

How to Respond to Creditor Claims

The Personal Representative must respond to all claims in writing. You can allow or reject the claim in whole or in part. You must file the allowance or rejection (form DE-174) with the court clerk and send a notice to the creditor with a copy of the allowance or rejection.

Note that if the Personal Representative does not have powers under the Independent Administration of Estates Act (IAEA), , the court will have to approve or reject creditor claims. This is also true if the Personal Representative or their attorney is a creditor of the decedent.

Probate Code Section 9254 holds that a rejection can be contested, but the burden of proof falls to the contestant. The exception is if the Personal Representative acted under the IAEA to reject the claim, in which case the burden of proof falls to you.

How to Negotiate with Estate Creditors

If the estate has funds to pay the debts and creditors have filed a claim, you may wish to negotiate the debts to preserve the maximum amount for the heirs or beneficiaries. The first step to negotiating with creditors is to verify that the debt is authentic. Not all apparent debts are equally valid. Confirm that the supposed claim wasn't previously paid by the decedent before their death. Sometimes companies don't keep perfectly accurate records. Fraud does happen occasionally when false claims are made, so be careful to ensure that all claims are accurate.

Next, prepare a settlement offer, which is the maximum amount the estate can afford to pay the creditor. Contact the creditor and present the settlement offer as Personal Representative of the estate. Once you reach an agreement, request the settlement offer in writing.

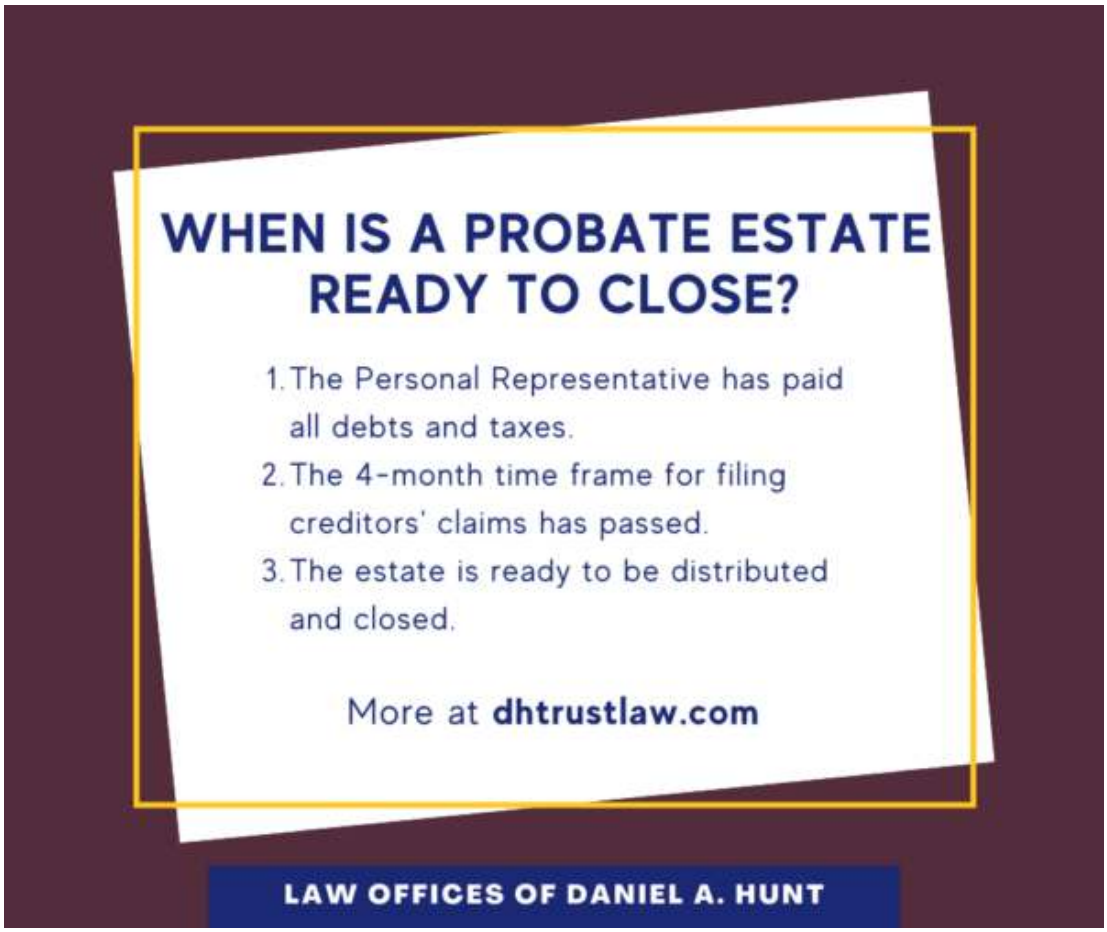
Once received, send the payment via certified mail along with a copy of the written agreement. Remember to request a return receipt so you have proof of delivery. Keep a copy of the payment and settlement for your records in case the creditor or a collection agency claims the debt was never paid.

Insolvent Estates

If the estate's debts are greater than its assets, it is said to be " insolvent". If insolvent, not all debtors are going to be paid back in full. Where an estate is insolvent the court requires that all creditors who have filed a valid claim will get paid under a pro-rata division of the estate assets.

There are many factors to consider when handling creditors in a probate matter. If you're the Personal Representative of an estate with significant debts, you should consider hiring an experienced probate lawyer. They can help you observe all deadlines, meet the legal requirements under the Probate Code, and negotiate with creditors.

How to Close a Probate Estate



As an estate administration nears completion, it's critical for the Personal Representative to understand how to close a probate estate. The Personal Representative must complete specific steps to close the probate estate, including filing a Final Account, Report, and Petition for Final Distribution; setting the petition for hearing; giving notice of the hearing; and obtaining a court order approving the final distribution.

Filing a Final Account and Petition for Distribution

As the Personal Representative, you can file a Final Account, Report, and Petition for Distribution when:

- You've paid all debts and taxes
- The 4-month time frame for filing creditors' claims has passed
- The estate is ready to be distributed and closed

Ideally, you should be ready to file this petition within one year of receiving Letters of Administration (or 18 months if you need to file a federal estate tax return). If the estate cannot meet this deadline, you must file a report on the status of the estate instead. An experienced probate lawyer can help you file the necessary paperwork and meet all of your deadlines.

The Petition for Final Distribution is prepared in legal pleading format. It generally includes three parts:

1. An accounting (unless waivers have been signed by everyone entitled to distribution).
2. A report of administration, including a complete summary of the actions you have taken in your role to administer the estate.
3. A petition asking the court to approve the accounting (if filed), approve the distribution of the estate assets, and approve any fees to be paid to the Personal Representative or their attorney. The formula for fee calculation can be found in Probate Code Section 10810.

After you file these documents, the court will set the date for the final probate hearing.

Filing a Judgement of Final Distribution

When you file your Petition for Final Distribution with the court, you should also submit a Judgment of Final Distribution. This is required to be filed at least 10 days prior to the hearing. The Judgment should list every asset in detail as you did on your Inventory and Appraisal. It should outline specifically which heirs and beneficiaries will receive which property from the estate and in what amount.

After the order is approved and signed by the judge, obtain at least one certified copy for your records. If the estate included real property, you'll also need to record this Order with the County Recorder.

Preparing for the Final Probate Hearing

After filing the Final Petition and receiving a court date for the final hearing, you must give notice of the hearing to all interested people. Here's how to give notice properly:

1. Fill out the front side and top half of the backside of the Notice of Hearing, Form DE-120.
2. Have someone who is not a party in the matter, mail or personally deliver the Notice of Hearing form to each person who is entitled to receive notice at least 15 days before the hearing date and include a copy of the petition. Have the person who mailed the Notice of Hearing sign the Proof of Service by Mail on the reverse side of the form.

3. File the original Notice of Hearing with the completed Proof of Service by Mail with the Probate Filing Clerk. You only need to file the Notice of Hearing and do not need to file it with the copy of the Petition being attached.

At the final hearing, the Judge will review your documents and hopefully approve the distribution. At that point, you can make distributions to the beneficiaries or heirs of the estate.

Obtaining and Filing Receipts

After you distribute the assets to the heirs or beneficiaries, you need to obtain a receipt from each person who receives estate property. Each receipt should be filed with the court prior to filing a petition for final discharge.

For anyone who received real property, the recording of the Order with the County Recorder is considered the receipt for that property.

Releasing Yourself From Liability

After you've complied with the terms of the Judgment of Final Distribution and filed the appropriate receipts, the court will make an order discharging you from any future liability. After discharge, you should notify the Internal Revenue Service and the Franchise Tax Board that you're no longer acting as a fiduciary for the estate.

5 Probate Pitfalls to Avoid

The probate process is complex and riddled with pitfalls. If you're like most Personal Representatives, you may be administering an estate for the first time. Based on our firm's many years of experience navigating the Probate Court, here are 5 probate pitfalls to avoid.

Pitfall #1: Procrastinating or ignoring key deadlines.

When a loved one passes away, the sheer amount of work to be done can feel overwhelming. While the estate doesn't need to be administered immediately after death, procrastination is not wise either.

Once the decedent has been laid to rest and any funeral/memorial service has passed, it's important to start and pursue the probate process in a timely manner. An experienced probate attorney can help you observe your duties and meet all deadlines throughout the process.

What happens if you ignore or miss probate deadlines? First, this negligence results in a probate process that takes MUCH longer than it should. The Probate Court encourages probate matters to be completed within one year of the decedent's death. If the Personal Representative can't meet that time frame, they must file a status report explaining the situation.

Another danger? The longer the administration, the higher the risk of the beneficiaries or heirs getting frustrated and seeking to sue and replace you. The best remedy for all of these issues? Hiring a trustworthy attorney who will help you observe your fiduciary duties with efficiency and skill.

Pitfall #2: Not keeping the beneficiaries/heirs in the loop.

The Personal Representative has a duty under the Probate Code to communicate reasonably well with the beneficiaries and heirs. We encourage our clients to communicate clearly and frequently with those who are entitled to information concerning the estate.

When beneficiaries and heirs are kept in the dark, they may become anxious and frustrated. They may seek their own legal counsel to represent their interests and potentially sue or remove the uncommunicative Personal Representative. Avoid this situation by sending out appropriate notices and regular updates to all those who are entitled to receive them.

Pitfall #3: Keeping sloppy or inaccurate records.

When the time comes to present an accounting of your actions as Personal Representative, accurate records will be crucial for preparing an accounting that adds up. If your accounting reflects missing funds, that may raise a red flag and create suspicion. If you want your numbers to add up correctly in the end, it's helpful to keep careful records from day one.

Keeping accurate, thorough records proves that you observed all of your fiduciary duties. If any accusations of misconduct should ever arise, these records will vindicate you by demonstrating your innocence.

Pitfall #4: Distributing assets prematurely.

As Personal Representative, your job is to inventory the estate assets. When you're ready to close the estate, you'll file a Petition for Final Distribution with the court. **Assets should only be distributed to the heirs or beneficiaries after the court has approved this petition at the final hearing.**

What happens if you distribute estate assets prematurely? You may find yourself personally liable for these actions or needing to track the assets down to get them back. This is a major liability and hassle for you. Avoid it by distributing nothing until the appropriate time at the conclusion of the probate process.

Pitfall #5: Trying to DIY a probate estate.

A fair number of our clients are Personal Representatives who come to us for help fixing an estate administration they have completely bungled. While a few savvy folks may be able to successfully administer a very simple estate on their own, many people eventually realize they are in way over their heads. Probates can get incredibly messy!

Which makes more sense: Finding a probate lawyer at some point down the line to fix your mistakes and hopefully prevent you from getting sued? Or hiring an experienced probate lawyer at the beginning to keep you on track and get it done efficiently? We believe that if a job is worth doing, it's worth doing right!

Conclusion

If you've found this eBook informative, check out all of the free educational resources on our website: dhtrustlaw.com.

If you have any questions about probate or would like to schedule a no-cost consultation with one of our attorneys, feel free to contact the Law Offices of Daniel A. Hunt.

Any questions? Contact us.

Ready to get started on an estate administration? Our experienced probate attorneys stand ready to guide you through the whole process. Our firm strives to be helpful, efficient, knowledgeable, accountable, and honest with every client we serve.

Please feel free to contact the Law Offices of Daniel A. Hunt and claim your no-cost initial consultation!

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