

# UNDERSTANDING PROBATE



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**P**robate is the court procedure that dictates changes in legal ownership after a homeowner's passing. Simply having a Last Will and Testament is not a way to avoid probate. Probate is actually the legal process that ensures the will is both valid, and executed according to the homeowner's wishes. Probate appoints the executor named in your will, and supervises their work to make sure everything is carried out as planned.

Even if no will is in place, probate will still determine legal ownership of the property in accordance with state laws.

Here are answers to some of the most common questions you may have about probate.

## **What do I do if a will distributes someone's estate to me after their death?**

The will must be submitted to a probate court so that the estate of the decedent may be probated.

## **What is the purpose of estate administration?**

- To determine that the decedent is, in fact, deceased
- To establish the will's validity
- To identify any heirs and/or devisees of the decedent
- To settle any claims against the estate brought on by creditors
- To distribute the property

## **Who is the Public Administrator and what to they do?**

A public administrator is the person or entity appointed by the State to act in a similar fashion as the executor when there is no final will or next-of-kin.

## **What is the difference between "Testate" and "Intestate"?**

If someone passed "testate", it means they died while having a will in place. If a person dies "intestate", they passed without having a will in place.

## **Can a property be sold while it's in probate?**

Yes. A property in probate may be sold through either a private sale negotiated by the executor of the estate, or at a public sale where the real property is auctioned.

## **How can you avoid your estate going to probate in the event of your passing in California?**

In California, you can establish a **living trust** to avoid probate for virtually any asset you own, including real estate, bank accounts, vehicles, and more. You need to draw up a trust document, naming someone to take over as trustee after your death (also known as a successor trustee). Then you **must** transfer title of your property to yourself as the trustee of the trust. Once all that's done, the property will be controlled by the terms of the trust. At your death, your successor trustee will be able to transfer it to the trust beneficiaries without probate court proceedings.

You may also avoid probate through **Joint Tenancy** ownership. Under joint tenancy, the surviving owner maintains the "right of survivorship". For example, if a husband and wife own their property and are vested as joint tenants, if one spouse passes, the property automatically passes to the surviving spouse through their right of survivorship without involving probate. California also allows for **Community Property with Right of Survivorship**. California is a community property state, so spouses and domestic partners all property aquired during the marriage jointly unless they specifically take steps to keep it separate. If spouses and registered domestic partners hold title to a real property as community property with right of survivorship, it automaically passes to the surviving partner or spouse upon the other's passing.

The last way to avoid probate in California is to sign and record a **Transfer-on-Death Deed**. These deeds are also sometimes known as "beneficiary deeds". You sign and record the deed now, but it doesn't take effect until your death. These are revocable at any time. The named beneficiary has no rights to the property until your death.

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