

## What is Probate?

Written by Lucky  
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With all the recent news about what will happen with estate taxes, the process of probate has come up quite a bit. Sometimes probate is mentioned in a low-key, matter-of-fact kind of way; at other times it is presented as something scary, and to be avoided at all costs. We know our readers have seen the term often enough, but under the circumstances we thought it a good idea to go back to basics, and have a discussion of exactly what is probate, and what's all the fuss?

Probate is the process by which the court identifies the assets of a person who has died, and facilitates the distribution of those assets and transfer of title to the persons entitled to them. It sounds like it should be simple, but even in the best of circumstances there are procedures that must be followed to the letter, and the actual process (depending on the size of the estate and the laws of the state in which the property is being probated) can take anywhere from 6 months to a few years.

You may wonder why probate can take so long, especially if the deceased person has left a will making their wishes clear. A good will can certainly make the process easier, but even with a will, there are certain steps that must be followed to complete the probate process, some of which can be very time consuming. Some of these steps include:

- The appointment of an executor or personal representative
- Verification of the will
- Taking an inventory of assets belonging to the deceased
- Giving notice to creditors
- Paying valid claims against the estate
- Preparing and paying taxes
- Notifying beneficiaries
- Distributing the assets to the beneficiaries or heirs

If you think that just reading the above paragraph takes your breath away, imagine the confusion of having to actually go through all of those steps—and possibly more!

Whether or not your estate will eventually be subject to a lengthy or expensive probate often depends on a number of factors: the size of your estate, how your assets are held, and how cooperative your next of kin may be. But one way to increase your chances of avoiding probate

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is to have clear (and clearly valid) estate planning documents which are designed to do just that. This would usually mean a revocable living trust. If however, your assets are valued at less than \$100,000 at your death, then in California there is a simplified procedure to avoid probate even if you do not have a revocable living trust and provided that your designated beneficiaries or heirs cooperate with one another. There are other ways to avoid probate by titling assets in a certain way, but these alternatives are usually only effective in limited circumstances and often create other problems. These include: joint tenancy, Pay On Death ("POD") and Transfer of Death ("TOD").

If you are concerned about probate, or would like to know more about how you can protect your assets and help your loved ones avoid a lengthy probate, [contact our office](#) —or a qualified estate planning attorney in your home state—to discuss your options.