



# What is Probate?

Probate is the legal process of arranging a person's affairs after they pass away. A representative is appointed through a valid will, or by a judge if there is no will or the will is invalid, to identify, gather, and disperse the decedent's assets. Creditors are then notified and taxes are paid in full before the property can be inherited by the beneficiaries. If there is no will, then the California Probate Court divides the assets according to a legal formula and appoints a representative to handle the probate.

California probate and inheritance lasts anywhere from 6 months to 2 years depending on the complexity of the person's assets.

## ■ Does all property need to go through probate?

No. If the gross value of the estate is under \$100,000, you could file a Petition to Determine Succession to Real Property. This petition is filed 40 days after date of death by all persons who succeed to the property (or entitled to inherit) in the county of residence or where the property is located. These types of matters are set for hearing.

## ■ What makes a will invalid?

A will is deemed invalid by the California Probate Court when it appears that the person was coerced or mentally incapacitated when appointing who receives their inheritance. It can also be void when enforcing the will would break a contract to leave property by will.

## ■ What inheritance does the surviving spouse receive?

In California, the surviving spouse receives half of the community property. The deceased spouse may leave the other half to whomever he chooses. Exceptions may allow the surviving spouse to receive any additional property.

## Required Forms for Filing a Probate of Estate

- **Form DE-111** Petition for Probate and all attachments
- Original Will (if applicable)
- **Form DE-121** Notice of Petition to Administer Estate
- **Form DE-147** Duties and Liabilities of Personal Representative
- **Form DE-135** Proof of Holographic Instrument (if applicable)
- **Form DE-131** Proof of Subscribing Witness (if applicable)

These forms are downloadable at:

[http://www.sdcourt.ca.gov/portal/page?\\_pageid=55,1530173&\\_dad=portal&\\_schema=PORTAL](http://www.sdcourt.ca.gov/portal/page?_pageid=55,1530173&_dad=portal&_schema=PORTAL)

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