

What is a probate?

Probate is a court-supervised process of transferring a decedent's property to beneficiaries. Typically, a prospective personal representative petitions the court for authority to administer your estate, the probate court determines validity of any will, appoints the personal representative (called an "executor" if there's a will or "administrator" if there is no will) to manage the estate subject to the supervision of the court and sets the amount of bond unless waived by the will. During probate, the personal representative must inventory the assets, pay debts, taxes and expenses of administration of the estate. After that portion of the probate process is completed, the personal representative must make a report to the court of these activities and petition the court again for authority to distribute the estate to the beneficiaries.

Should you consider avoiding probate?

Avoiding probate, like avoiding taxes, is usually always preferable. Most attorneys and financial professionals would advise avoiding probate and you should consider it for the following reasons. Probate is a public procedure where your debts, assets and your will become part of a public record. The expenses of probate, including the statutory commissions schedule, set forth below, may exceed than the cost of an estate managed and distributed through a living trust. Also, trust distributions usually can be made to beneficiaries quicker although there are provisions for preliminary distributions to beneficiaries before a probate estate has been finally distributed.

In a probate, the personal representative and the attorney for the estate are each entitled to be paid statutory commissions for their work during a probate. These commissions are paid from the estate which would otherwise pass from probate to the beneficiaries. Although these commissions are set by law, commissions can be a significant expense because they are generally based on the gross value of the estate (before debts, taxes and other expenses are paid). The statutory commissions payable for ordinary services to the personal representative and the attorney are calculated as follows:

4% of first \$100,000	\$4,000.00
3% of next \$100,000	\$ 3,000.00
2% of next \$800,000	\$ 16,000.00
1% of next \$9,000,000	\$ 90,000.00

If a decedent dies with a \$1,000,000.00 estate, the statutory commissions for the personal representative and the attorney for ordinary services are \$23,000 (= \$ 4,000.00 + \$3,000.00 +\$16,000.00) each, i.e. \$46,000 total or 4.6% of the gross estate. This may or may not be well earned depending on what work the estate required performed. Additional fees can be requested for extraordinary services like asset sales, litigation matters or any other extra activity and there is no limitation on their amount except they must be just and reasonable.

If there is no need for court supervision of your estate, probate can be a more expensive and slower process for distributing your estate to your beneficiaries. However, if you suspect that there will be disputes after your death, the court

supervising your estate is immediately available to determine such disputes. In addition, your executor or administrator must report to the probate court and account for all financial transactions which must be approved by the court.

What types of property pass outside of probate?

Many types of property routinely pass outside of the probate process. Property can pass outside of probate through beneficiary designations, joint tenancy or a living trust and not be subject to probate. California also allows up to \$150,000 of personal property to pass without probate and there are provisions without limit for vehicles, vessels and mobile homes. There is also a summary petition procedure for transferring any type of property to a surviving spouse without any value limit. If you will your home to someone else, a probate would probably be required unless you place your home in joint tenancy. However, there is also a summary petition procedure whereby up to \$150,000 of real property can be transferred to anyone. However, a summary petition procedure still requires your estate to go to court and to pay legal fees to do so but it is relatively quick compared to a full probate administration. Unless the estate property falls within these provisions, only some of which are mentioned here, the estate must usually be probated, whether there is a will or not, and you should consider the use of a living trust which avoids the delays and expense of probate.

If you own property in other states, your estate could require multiple probates in each one of those states. If your family needs money to live on, they must request a living allowance from the court which could be insufficient or denied.