

MANAGING SOMEONE'S ESTATE

This information in these pages is meant to offer readers a preview of the activities involved in settling a decedent's estate in California. The information contained within was collected from various self-help books and websites regarding probates in California. **This is NOT a 'how to' guide and is by no means complete nor should it be substituted for professional legal advice or more comprehensive materials on the subject. We highly recommend meeting with an Attorney before taking any action.**

The intent of this information is to provide insight into what can be a complicated process. In our experience, offering an overview of the events, can help relieve some of the anxiety people may experience in such situations. The information may also assist in formulating questions about the process when discussing the matter with other people that are either involved in settling the estate or managing it altogether.

We are neither attorneys nor qualified to dispense legal advice regarding probates in any State. We believe the information in the following pages to be correct, but cannot guarantee its accuracy or validity. Please consult a legal professional or do your own investigation prior to taking action on any issue referred to within this document.

Some of the sources used to compile this booklet include, but are not limited to the following:

- ♦ 'How to Probate an Estate in California' (How to Probate An Estate in California) by Julia P. Nissley; Printed by Nolo Press
- ♦ 'Probate in California' (Paperback) by Milton Berry Scott
- ♦ 'When Someone Dies in California' by Amelia E. Pohl & Bruce A. Feder
- ♦ www.scservice.org/probate/prop/FrequentlyAskedQuestions2.htm
- ♦ www.co.sanmateo.ca.us/smc/departament/da/printable/0,,14094689_14132030_685739912,00.html
- ♦ www.sanmateocourt.org/director.php?filename=./localrules/index.html

MANAGING SOMEONE'S ESTATE



The following 4 pages describe the different activities involved in settling someone's estate in California. We do not recommend going through this process without consulting an Attorney.

WAYS ESTATES ARE PROBATED

Probate is a court proceeding to either prove a Will or verify that the estate is distributed according to California's default inheritance rules. Real Property typically refers to a home or land. Personal property can be anything tangible (furniture, jewelry, or car) or intangible items like royalties, stocks or bonds. The objective of Probate is to complete the following:

1. *Collect all of the deceased's assets*
2. *Pay all debts: expenses, loans, taxes, etc.*
3. *Completely distribute the remaining assets to the entitled people*

WHEN PROBATE IS 'NOT' REQUIRED

- If the decedent had his entire estate in a Trust
- If the decedent's entire estate is Willed to a surviving spouse, the spouse can request the court to have all property be turned over to them without a probate regardless of value
- If the 'Gross' value of the decedent's estate is less than \$100,000.

WHEN PROBATE IS REQUIRED

- If the person died with a 'Gross' estate valued over \$100,000 and there's no surviving spouse.



DETAILS ABOUT PROBATE

- Probate will take from 8 to 24 months depending on the complexity of the estate and agreement between the beneficiaries. It typically takes around 14 months in San Mateo County.
 - ♦ If the Will named an executor, the court will likely appoint the Executor as the 'Personal Representative' to settle the estate. If no Executor is mentioned, then the court will likely appoint one of the Beneficiaries.
 - ♦ The Administrator may need to post a bond to insure they will not abscond with the estate's assets.
- If the person died without a Will (Intestate), then the Court will appoint an Administrator. Heirs may petition to be Administrators. There are strict guidelines regarding how proceeds are to be distributed and the fees that can be charged to the estate to settle affairs.
- The decedent must have been a California resident for his estate to be settled under California Law.
- Some assets like retirement plans, insurance policies and homestead allowances maybe exempt from creditors if the estate was low on assets, but high in debt— speak to an Attorney if this applies to you.
- If the decedent's 'Gross' estate is valued below \$100,000, filing an affidavit in the county where the property is located should suffice to transfer title to the property; real property must be worth less than \$20,000.
- In any death, several death certificates (10-12) will be needed to settle the estate. A Funeral Director can order them or they can be requested from the Office of Vital Statistics (916) 858-5553.
- For Probate purposes, a 'Gross' estate is calculated using the current value of all property belonging to the estate—debts are not subtracted. However, many assets can bypass probate and are not included in the 'Gross' estate. These include, but are not limited to, real property held as 'Joint Tenants', pensions plans, accounts with named living beneficiaries (life insurance, banks accounts, IRAs), community property that passes to a surviving spouse, Trusts, and real estate outside of California—an Attorney can sort this out.

We highly recommend seeking Legal and/or Accounting advice before taking any action

MANAGING SOMEONE'S ESTATE

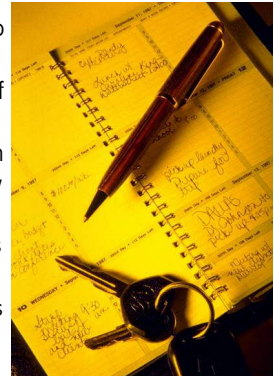
AUTHORITY TO SETTLE THE ESTATE

- In a Probate case, the court will issue 'Letters of Testamentary' to give either the Personal Representative (Executor) or Administrator authority to act on the deceased's behalf to transfer funds, sell assets and later distribute assets to the beneficiaries.
- If a Trust was in place, then certified copies of the trust will be needed to prove the person is authorized to take specific actions.
- Sometimes you can have a hybrid situation where the decedent failed to include all of their property in the Trust. Then some property maybe be settled through the Trust while others through Probate.
- The Administrator or Personal Representative is allowed to charge the Estate for their time and costs. There are strict guidelines regarding fees that can be charged to the estate.



PROBATE

- A court appointed Probate Referee will appraise all real & personal property.
- Record all debts (mortgage, credit cards, leases, personal loans, etc.). This information will be need to determine the net estate's value
- Known creditors will be served a notice of Probate; they will have 4-months to reply after the 'Letters of Administration' are issued.
- A checking account should be created specifically for settling the estate. This will also require the creation of a Tax ID number for the purpose of settling the estate. The decedent's cash accounts are not frozen by Probate, these funds should be available to administer to the estate.
- All other liquid assets need to be in interest bearing accounts. Don't mix personal funds with estate funds & keep very detailed records.
- The Administrator can seek to have an Estate Attorney assist them through the process; these legal fees can be billed to the decedent's estate.
- All 'Heirs' need to be notified of the Probate, even if they are not mentioned in a Will. Heirs are family members that typically inherit if no Will exists. Beneficiaries are inheritors that are specifically named in a Will or Trust



ACTIONS TO TAKE

ESTATE VALUE ASSESSMENT

- If the estate's debts exceed its assets, you should seek legal assistance on creditor payment priority.
- There needs to be an accounting of the estate's existing assets vs. the items mentioned in either the Will or Trust. Sometimes these documents are not up to date and decisions on correct dispensation are required.
- There has to be a clear understanding of the title method and how much of the estate's property was owned by the deceased. Sometimes property is co-owned or spouses have rights to partial possession due to contributions they made to purchase the property.



SURVIVOR BENEFITS

If the Decedent was survived by a spouse or minor child, benefits may be available from the following sources:

- VA - Call (800) 827-1000 for more information
- Government employee, Call (888) 767-6738
- Homestead protection for Real Estate
- Life Insurance
- Social Security www.ssa.gov
- Private Pensions
- Current Employer

We highly recommend seeking Legal and/or Accounting advice before taking any action

MANAGING SOMEONE'S ESTATE

ACTIONS TO TAKE (con't)

MAIL & NOTIFY

Assuming you're the Administrator, have the decedent's mail forwarded to your home. Notify the following institutions of the decedent's death. Some institutions will want a death certificate and verification of 'Letters of Testamentary' or an Affidavit (for estates below \$100,000) before they allow you to view account information, cancel, transfer or alter anything on the account.



- Banks
- Credit Card Companies
- Brokerages
- Pension Funds
- IRS
- Social Security
- Medicare/Medi-Cal
- Auto Insurance
- Health Insurance Carriers
- DMV
- Doctors
- Disability Benefits
- Other Insurances
- Private Pensions
- Social Security (800) 772-1213
- Home Insurance
- If the decedent was sole owner of a corporation, then notify the Secretary of State (916) 653-2318
- File a death certificate in each county that the decedent owned real property
- If there were Case workers or Social Workers involved with the decedent, notify them about the person's death.

PAY & CANCEL THE FOLLOWING

- Clubs memberships
- Entertainment, Newspapers, Magazines, etc.
- Credit Cards— inquire if they had credit card insurance that could pay the balance upon their death
- Once title transfers to any real estate, cancel the home insurance, any services and notify all utilities of the title transfer.



OTHER ACTIONS TO TAKE

- File an Income Tax return for the deceased with both with the IRS and the State for the year they passed away
- If the decedent owned property jointly with someone else, (real estate, automobile, bank accounts), then the decedent's name will need to be removed from title or the account.
- If the decedent was someone you named as a beneficiary in things like your own life insurance policies, a Will or Trust, Bank or Security accounts, Pension Plans, etc.— remember to update these at a later date.
- To discover if the decedent had any abandoned assets, call the State Comptroller (800) 992-4647.
- Return all Social Security checks issued for the month or any time after the decedent's death.

IF THE DECEDENT OWNED OR RENTED A HOME



IF THE DECEDENT OWNED PROPERTY: Verify the following are paid

- Mortgage
- Property Taxes
- HOA Fees
- Home Insurance
- Leased items in the home
- Security systems & services
- Utilities: water, gas, electricity & Garbage
- Gardner's, housekeepers, pool people, etc.
- If real property is to be sold, verify if you have full authority from the court to make decisions or if court approval is required
- Fifteen days prior to the sale of real property, a notice needs to be sent to all affected parties

IF THE DECEDENT'S PROPERTY IS CURRENTLY VACANT

- Cancel Internet Services
- Cancel Phone & TV Service
- Install light timers and other security devices
- Consider re-keying locks
- Consider getting a home inspection to determine safety & maintenance issues
- Consider hiring or keeping services like gardeners, pool people, security services, housekeepers, etc.

We highly recommend seeking Legal and/or Accounting advice before taking any action

Mark Martinho
Vabrato Broker-Owner
650.346.1595



Mark@Vabrato.com
www.Vabrato.com
1005 Edgewood Rd.
Redwood City CA 94062

MANAGING SOMEONE'S ESTATE

IF THE DECEDENT WAS RENTING

- Notify the Landlord
- Cancel Internet Services
- Cancel Phone, TV Services
- Cancel Renters insurance
- Cancel other utilities in their name
- Cancel lease if possible or cancel renting

MEDI-CAL

- Important note. If the decedent was receiving Medi-Cal benefits, the State can demand reimbursement from the decedent's estate for the services they provided. Try to account for this expense when assessing the value of the decedent's estate.
- If the decedent was receiving Medi-Cal, the Director of Health Services needs to be notified within 90 days of the death.

*Director of Health Services / Estate Recovery Section
MS4720
PO BOX 997425
Sacramento, CA 93899-7425*



MEDICAL

- Notify Doctors
- Look for unpaid medical bills
- Notify Therapists
- Cancel Medical Prescriptions

INSURANCE

- Verify that home and auto insurance are paid up until those items are either passed on or sold.
- If you do not know if the decedent had life insurance, then write the American Council of Life Insurance and they will ask the top 100 insurance companies for you. Write to:

*Policy Search ACLI
1000 Pennsylvania Avenue, NW
Washington, DC 20004*

- If the decedent had private health insurance or was covered under someone else's policy, verify the insurance company was notified of the death and what bills they will cover.
- If a living spouse or minor child was covered by the decedent's private health insurance, arrange for new health insurance. Employers with 20+ employees typically have to offer a spouse or minor children the same health plan for 3 years, but they may not offer it for the same price.
- If the decedent was insured under Medicare, find out what bills will be covered. www.medicare.gov

ESTATE TAXES

- For Estate Tax purposes, the IRS redefines 'Gross' estate—in this case it includes all assets. Assets named in Trusts, or owned under 'Joint Tenancy' are now included in the estate's value.
- If the decedent owned a Life insurance policy, it's value is part of the taxed estate
- If all assets are left to a surviving spouse, then no estate taxes will be due.
- If a 'Joint Tenancy' was not with a spouse, the IRS will assume the decedent owned it 100% for tax purposes. The estate will need to prove to the IRS otherwise.
- The IRS will tax the estate based on the 'net' value (assets minus debts), but if the 'Gross' value exceeds the IRS cut-off for a given year, then estate taxes need to be filed.
- Estate taxes due will be roughly 47% of any 'net' value exceeding the Tax Free cut-off for that given year.
- There are no estate taxes due in California unless part of the decedent's estate was inherited tax-free from a spouse who died prior to 1982.

IRS Estate Tax Cut-offs	
Year	Tax Free Cut-off
2006-2008	\$2M
2009	\$3.5M
2010	Unknown



We highly recommend seeking Legal and/or Accounting advice before taking any action

Mark Martinho
Vabrato Broker-Owner
650.346.1595



Mark@Vabrato.com
www.Vabrato.com
1005 Edgewood Rd.
Redwood City CA 94062