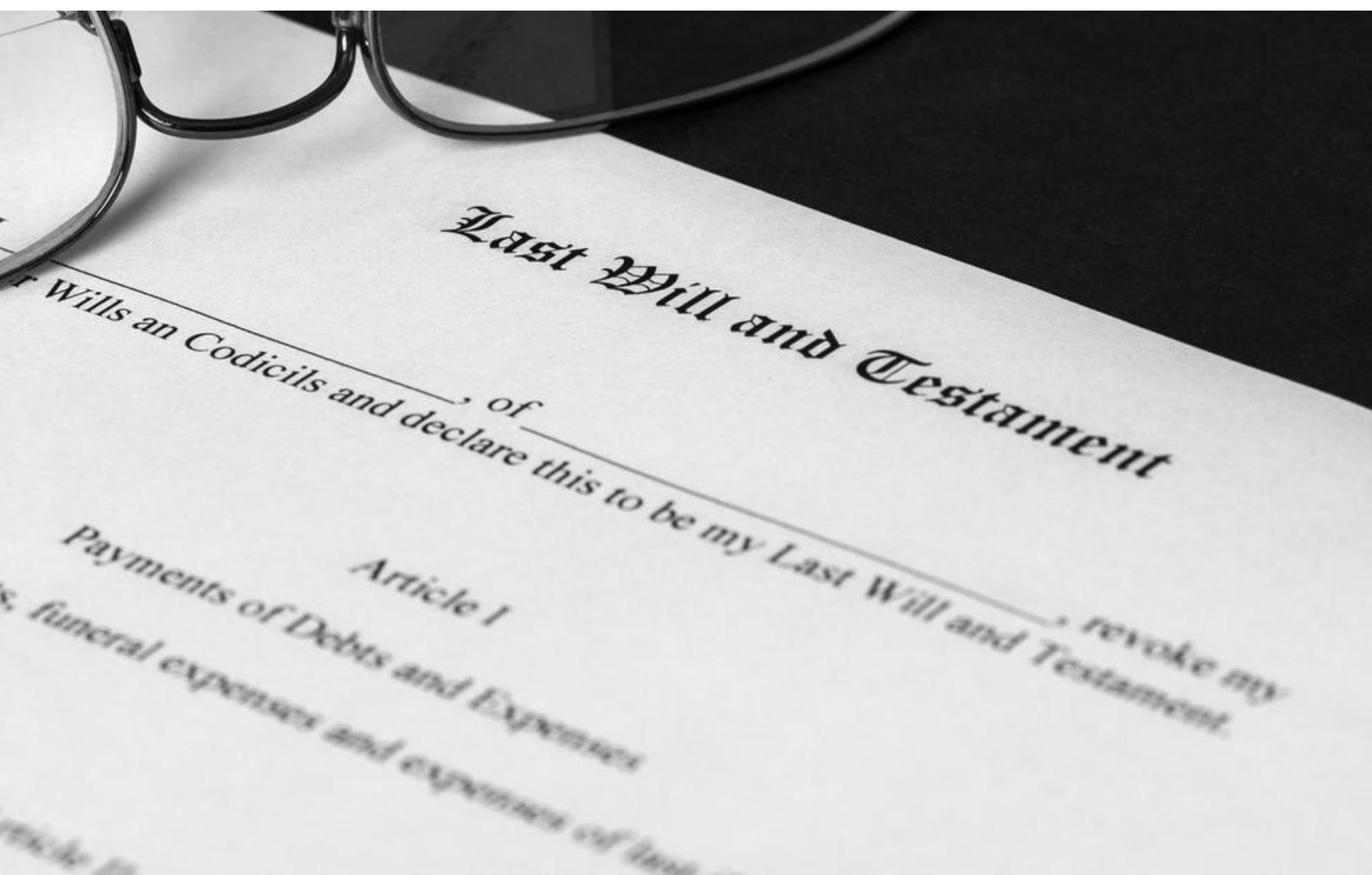


# WHAT IS CALIFORNIA PROBATE?

*“The process of probate can come into play during the administration of an estate. This process is not inherently negative, but there are some drawbacks that can make things difficult for the surviving family members.”*



If you have created a last will to state your final wishes, you have left instructions, but someone has to follow these instructions. This would be the executor of your estate. The executor will handle the business of the estate after your passing.

You may imagine the executor acting independently, but in reality, assets cannot be distributed to the heirs until the probate court has closed the estate. The executor must admit the will to probate after your passing, and the court will supervise the administration of the estate.

During probate the court will examine the will to make sure that it is valid, and that it is in fact the last will that was created. Interested parties could contest the will if they had legitimate arguments.

Assuming everything is in order, the executor will handle the business of the estate. Final debts must be paid, including taxes, so creditors must be notified. Financial institutions must also be notified, and accounts must be closed.

Government agencies (such as these Social Security Administration) need to be aware of your death, and they must be contacted as well.

The assets must ultimately be identified, inventoried, and prepared for distribution to the heirs to the estate in accordance with your wishes. Depending on the nature of the property in question, this can be easier said than done.

Property appraisals may be called for, and liquidation can enter the picture so that the value of assets can be spread among multiple different heirs. It can be somewhat complicated to sell property at fair prices in a timely manner, so this

can be challenging for the executor.

Ultimately, if everything goes well, the court will close the estate and allow the executor to distribute assets to the heirs.

## **Further Considerations**

The process of probate is in place to provide oversight, and it protects certain interested parties. However, depending on the circumstances, it may not be entirely positive for the heirs to the estate.

When you read all of the above you may get the impression that probate can take a good deal of time to run its course. This is true, and remember, the surviving family members do not receive their inheritances until after the estate has been probated and closed by the court.

Exactly how long will probate take? It all depends on the situation. If things go very smoothly, and there is not a great deal of complicated property liquidation involved, an estate may be probated in perhaps nine months to a year in most areas.

On the one hand, this may not sound like an extraordinarily long period of time. However, on the other hand, no one wants to wait for a year to receive a rightful inheritance. Plus, there could be inheritors who were depending on the decedent for support, so this time lag could cause genuine hardships.

The second negative that we should point out is the matter of money. The

probate process is not free by any means. There are innumerable expenses that could present themselves, including the executor's fee, legal costs, accounting charges, appraisal expenses, court costs, and liquidation charges.

When you add in miscellaneous expenses, the value of the estate can be shaved down considerably during probate. The money spent during probate is essentially coming out of the pockets of the inheritors.

Thirdly, probate records are available to anyone who is interested. As a result, there is a loss of privacy, and this can be disconcerting at best. At worst, "too much information" could cause trouble within the family.

## **Summary**

The process of probate can come into play during the administration of an estate. This process is not inherently negative, but there are some drawbacks that can make things difficult for the surviving family members.

It is possible to be proactive about the implementation of strategies that would facilitate probate avoidance. There are a number of different ways to proceed toward this end, and the optimal course of action will depend upon the circumstances.

If you would like to learn more about probate and the probate avoidance strategies that exist, get in touch with a licensed estate planning attorney to schedule a consultation.

## References

Los Angeles Superior Court

<http://www.lacourt.org/division/probate/probate.aspx>

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<http://webserver.rilin.state.ri.us/Statutes/TITLE33/INDEX.HTM>

## About the Author



Attorney Caprice L. Collins is a top rated Harvard Law School graduate. She has 34 years of legal experience with a successful law practice devoted exclusively to Estate/Business Planning and Trust Administration. Attorney Collins is a well-respected keynote speaker on Wills, Living Trusts, Estate Planning, Business Planning and Trust Administration. She has appeared on California's Real Estate Radio Station KTLK AM 1150 as a legal expert on Estate Planning and Living Trusts among many other notable media appearances.

Attorney Collins has substantial experience in Estate Planning for high net worth individuals using Family Limited Partnerships and other business entities to provide Asset Protection to their families. She has assisted organizations in their fundraising efforts by authorizing articles for their publications and conducting free seminars to their donors on advance Estate Planning Strategies such as Charitable Remainder Trusts, Family Living Partnerships, Irrevocable Life Insurance Trusts and Qualified Personal Residence Trusts. She also provides FREE Seminars on Living Trusts, Asset Protection and Business Planning to civic, faith-based, professional and business organizations.

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