



# UNDERSTANDING PROBATE

FAQ'S



Whether or not you have created a will or trust, you will still have a plan which has been dictated by the laws of the state in which you reside. Making a will is not a way to avoid “probate,” the legal state which administers your estate after your death. Probate is necessary to validate your will, and appoint the executor named in your will and supervises the executor’s work. Here are some helpful facts that will assist the executor and family:

- ?** I have a will that distributes the decedent’s estate to me. Is that all that is needed?  
**A:** No. The will must be admitted to probate and the estate of the decedent must be “probated.”
- ?** What does “probate” actually mean?  
**A:** Generally, a probate is a court proceeding that administers the estate of the individual.
- ?** What is the purpose of “estate administration?”  
**A:** There are typically five purposes, many of which have subsets to them:
- To determine that the decedent is in fact dead
  - To establish the validity of the will
  - To identify the heirs and devisees of the decedent
  - To settle any claims that creditors may have against the estate of the decedent
  - To distribute the property
- ?** What is the Public Administrator?  
**A:** The Public Administrator serves as a fiduciary capacity to provide professional estate management services to county residents who dies without someone able to handle their affairs. The powers of the Public Administrator are mandated by the Probate Code of the State of California.

- ?** What is the difference between “Testate” and “Intestate?”  
**A:** “Testate” means that he/she died leaving a will. “Intestate” means that they died without leaving a will.
- ?** What are the differences between an executor and an administrator?  
**A:** An “executor” carries out the instructions and requests set forth in the decedent’s will. An “administrator” is appointed by the court to manage the estate of a decedent who dies intestate.

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What are the steps to a normal uncontested probate?

**A:** The basics steps are as follows:

## Death of the decedent

- The will is delivered to the executor or Court Clerk
- A petition is filed for the Probate of Will or Letters of Administration
- A hearing is held on the petition
- Letters of Administration are issued by the Court
- Notice to creditors is given
- Inventory and appraisement of the estate is made by an independent probate appraiser
- File Federal estate tax return. Return states “No Tax Due” or specifies an amount due
- Final accounting and petition for distribution
- Final decree of distribution
- Discharge of personal representative



While real property is “in probate” can it be sold?

**A:** Yes. It can be sold either at private sale, in which the executor of the estate negotiates a transaction with a buyer, or at public sale in which the property is sold at public auction.



If there is no will, how is the property of the estate distributed?

**A:** Sections 6400 through 6414 of the California Probate Code addresses intestate succession and distributions. The process of intestate distributions is quite complex, therefore one should specifically discuss intestate distributions with his or her legal advisor.



For more information contact your Ticor Title representative!

