

STARTING A PROBATE OR OBTAINING LETTERS OF ADMINISTRATION

NOTE: These instructions provide the basic information you need to start a general probate case. These instructions do not provide legal advice or take the place of consulting with a lawyer. The forms can be found at www.courts.ca.gov or as indicated.

REQUIREMENTS TO FILE IN CALIFORNIA

Decedent lived in CA when he/she died

Decedent did not have a valid trust

Decedent died owning more than \$150,000 worth of assets

KEY WORDS/ PHRASES

Decedent

the person who died

Administrator

the person the COURT appointed to be responsible for the Probate

Legal Representative

the person the COURT appointed to be responsible for the Probate

Letters of Administration

court document signed by the Judge confirming the appointment of an administrator or representative

Heirs

relatives that by law will receive a portion of decedent's estate

Estate

the real and personal property owned by the decedent at the time of death

FORMS:

DE-111, Petition for Probate

DE-121, Notice of Petition to Administer Estate

PRO010, Probate Case Cover Sheet

WHAT IS PROBATE?

Probate is the Court Supervised process of collecting the decedent's assets, paying those that are owed money to and distributing what is left to their heirs. Usually, if the decedent died ***without a valid trust***, lived in California when they died, and owned real property (house or vacant land), or other assets totaling \$150,000 or more, then a probate must be completed to transfer the property to their heirs or beneficiaries.

Letters of Administration is the form that the Judge signs confirming that he has given that person legal authority to represent the estate. Sometimes the bank will require this form before releasing funds.

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However, Letters of Administration are not needed when the decedent died owning less than \$150,000 in assets. If this is the case, the heirs may complete a small estate affidavit. These can be obtained in the Probate filing room or from your local financial institution.

HOW LONG DOES IT TAKE TO COMPLETE PROBATE?

Probate can take anywhere from 6 months to several years to complete.

COMPLETING THE PETITION FOR PROBATE, DE-111

Write your name and address in the top left box. In the box that reads "Estate of," write the name of the decedent. Leave the box that reads case number, hearing date, Dept, blank. You will get this information when you file your paperwork with the Probate filing window.

Check the appropriate box next to **PETITION FOR:**

- Probate of Will and for Letters Testamentary-** if the decedent had a Will to be offered for probate and the person seeking to be appointed administrator is named in the Will.
- Probate of Will and for Letters of Administration with Will Annexed-** if the decedent had a Will to be offered for probate but the person seeking to be appointed the administrator is **not** named in the Will.
- Letters of Administration-** if the decedent died without a Will.
- Letters of Special Administration-** if you are seeking to preserve the decedent's assets before a permanent administrator can be appointed or you are asking for a particular power (example- to represent the estate in civil litigation, to collect certain assets or manage a particular part of the decedent's estate).
 - **With general powers-** general powers allow a special administrator to sell real property or reject creditor's claims
- Authorization to Administer Under the Independent Administration of Estates Act-** This box is often checked. Do not check this box if you have a Will that prevents one from performing under this act or if you are asking for 'Special Administration.'
 - **Limited authority-** means more Court supervision. With limited authority a representative must have a court order to sell property or borrow money from the estate. The bond amount shall be the value of cash on hand in the estate.
 - **Full authority -** means acting with less court supervision. You may sell real property or borrow money but must notify the heirs first. Heirs may object to your proposed action. In order to act with full authority you need to be bonded for the full value of the estate. *Do not check 'limited authority' if you would like full authority. Leave this box blank.*

Next, complete the form by checking the appropriate box or filling in the requested information. The following sections are those that may be difficult to answer without explanation. The information that follows may be helpful.

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1. **Publication-** publication is required when filing for Letters of Administration. You either may arrange for publication with a newspaper in the Courthouse by marking publication requested or arrange for publication in a newspaper located outside of the Courthouse.

2. **Character and estimated value of the property.-** this section must be completed.
 - Personal property-**write the total resale value of furniture, clothing, cars, etc. owned by the decedent at the time of death. Personal property also includes cash.
 - Annual gross income from real property-**If decedent owned rental property, write the yearly amount of rental income received by the decedent.
 - Annual gross income from personal property-** This includes the yearly income received from the sale or exchange of personal property.
 - The gross fair market value of real property-** Estimate the fair market value of decedent's home.
 - Encumbrances-** Write the full amount of the mortgage on the property or the amount of any other loan, lien, claim, or financial interest in the property that would prevent it from passing free and clear.
 - Net Value of Real Property-** Subtract the encumbrances from the fair market value and write on line (6).
 - Don't forget to add line (6) to line (3).**

3. **Waiver of Bond.** Section 3.d. concerns waiving bond. If any of the statements in 3d apply please mark them.

4. **Intestacy.** Section 3.e.concerns intestacy. If decedent died *without* a will, he died intestate. If this is true, check this box. If decedent had a will that is to be attached to the petition and probated, then check (2) and write the date.

5. **Appointment of Personal Representative.-** Section 3.f. concerns appointment of representatives. If you are probating a will check the appropriate box under 3. f. (1). Executor is the person named in a will. If you are not probating a will, check the appropriate box under 3.f. (2). If you are seeking to be appointed as the special administrator check 3.f. (3).

6. **Heirs.** Section 5 and 6 concerns living relatives and next of kin. Everyone must complete 5. Complete 6, if the decedent died and was not survived by a spouse and kids *or* if the decedent died survived by only a spouse (check only a or b).

Complete the remainder of the form. Date, print and sign your name in two places on the bottom of page 4.

Once you have completed this form, copy it and turn it into the filing window in Room 429 along with 1) the Probate Case Cover Sheet and 2) the original and copy of the will, if there is one and 3) your filing fee of \$435 or a Request for Fee Waiver, FW-001 and FW-003.

You may contact the Los Angeles County Bar Association at (213) 243-1525 for attorney referrals.

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