

## CALIFORNIA PROBATE, FACT AND FICTION

*By Christopher W. Newton*

Many people ask, what is probate? In short, probate is the court supervised process by which a person's estate is administered after their passing to ensure that debts and taxes are properly paid and the estate assets are distributed either by operation of law or by the terms of a Will.

When is a probate required?

In general, probate is required, where a person owns assets individually, and not in a revocable living trust, nor in joint tenancy with right of survivorship with another person such as a spouse.

Also, retirement assets such as an individual retirement account or 401(k) plan will avoid probate if death beneficiaries are named to receive such accounts after the plan participant's death. For smaller estates under \$100,000 California law also provides some summary non-probate procedures that may be applied in certain circumstances to avoid probate.

Does a Will avoid probate? The answer is no.

A Will still requires probate administration in most circumstances.

Probate involves a tax, right? Wrong. There are probate fees and costs, but taxes apply independently of the probate administration process. Both the probate attorney and the executor or administrator of the estate are entitled to fees set by state law that represent a percentage of the gross estate value.

Additional fees may apply if the probate work performed is beyond the scope that the statutory fee covers. In addition, there are court filing fees to be paid as well as a statutory fee to the court-appointed probate referee who appraises a portion of the estate. The probate process may take months or even years to complete depending on the complexity of the estate.

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