

PROBATE PROCEEDINGS

A probate proceeding is used to establish that a Will is genuine and valid, and to transfer a decedent's assets after death to heirs or beneficiaries. A **Decedent** is a person who has died with or without a Will. A **Will** is a document that tells how the decedent wants his or her property (*estate*) distributed after death. A **Decedent's Estate** is all real and/or personal property owned by the decedent on the date of death. **Real Property** is property in buildings and land. **Personal Property** is temporary or moveable, such as jewelry, clothing, keepsakes, or automobiles.

❖ HEIRS AND BENEFICIARIES

Intestate means to die without leaving a Will. **Intestate Succession** determines the order of those who inherit property of the decedent who died without leaving a Will. Intestacy law is governed by the Probate Code. An **Heir** is a person who inherits when there is no Will. **Testate** means to die leaving a Will. A **Beneficiary** is a person who inherits under the terms of a Will.

❖ FORMAL PROBATE ESTATES

If the estate exceeds the amounts listed in Judicial Council form DE-300, Maximum Values for Small Estate Set-Aside & Disposition of Estate without Administration formal probate must be opened by filing one of the following:

- A Petition for Letters Testamentary

- A Petition for Letters of Administration with Will Annexed
- A Petition for Letters of Administration

All forms needed to open probate are available at the Probate Clerk's Office in The B.F. Sisk Courthouse located at 1130 "O" Street, 3rd Floor, Room 300.



❖ SMALLER ESTATES

There are several ways to transfer property at death, some of which do not require a formal probate.

- See Judicial Council Form DE-300 – Maximum Values for Small Estate Set-Aside & Disposition of Estate without Administration.

❖ SPOUSAL PROPERTY PETITION

A surviving spouse may use a Spousal Property Petition instead of a formal probate proceeding to:

- Confirm community property

- Determine community or separate property passing to the surviving spouse

❖ CUSTODIAN OF THE WILL

In formal probate proceedings, the custodian of decedent's Will must, within 30 days after decedent's death, deposit the original Will with the Probate Clerk's Office in the county in which the decedent resided. A **Custodian of the Will** is the person who has possession of the will at the time of the decedent's death. A copy of the Will should be sent to the person named in the Will as the executor. An **Executor** is a person nominated in the Will and appointed by the court to carry out the wishes of a decedent, as set forth in the decedent's Will. A custodian who fails to comply with this requirement is liable for all damages caused by failing to present the Will.

❖ IF THERE IS NO WILL

If there is no Will and a formal probate is necessary, an **Administrator** is appointed as estate representative according to a certain order of priority. The surviving spouse of the decedent has first priority. If the person having priority does not want to serve, that person can file a document with the court. The person declining service can nominate someone else to be appointed.

❖ PREPARING AND FILING COURT DOCUMENTS

All court forms and documents should be typed or printed using blue-black or black ink. Filing a petition with the Probate Clerk in The B.F. Sisk Courthouse states the probate proceeding.

❖ SETTING A HEARING DATE FOR PROBATE

When a petition for probate is filed, the Probate Clerk will assign a hearing date. The petitioner must give notice of the hearing to all parties interested in the estate.

❖ PROBATE CALENDAR NOTE

After a petition is filed, a Court Probate Examiner reviews it before the hearing to see if it conforms to the procedural requirements set forth in the Probate Code. The Probate Examiner's notes are available for review before or after the hearing through the court's website. For access to the Probate Examiner's Notes:

- ➔ <http://www.fresno.courts.ca.gov/>
- ➔ Select "Divisions"
- ➔ Click "Probate"
- ➔ Click the blue "Examiner's Notes" box in the center of the page.
- ➔ Type in your case number and search

FRESNO COUNTY SUPERIOR COURT RESOURCES

Probate Clerk's Department Information:

B.F. Sisk Courthouse
1130 "O" Street
3RD Floor – Room 300
Fresno, CA 93724
(559)457-1888
www.fresno.courts.ca.gov

Probate Courtroom Information:

B.F. Sisk Courthouse
1130 "O" Street
3RD Floor – Department 303
Fresno, CA 93724

Law Library Information:

Main Court House
1100 Van Ness
6th Floor – Room 600
Fresno, CA 93724
(559)600-2227

Attorney Referral and Information Service:

1221 Van Ness Ave
Suite 300
Fresno, CA 93721
(559)264-0137

Fresno County Probate Referee Information:

Steven D. Diebert
California Probate Referee
2037 W. Bullard, PMB #349
Fresno, CA 93711-1200
(559)431-7486

Rick P. Smith
California Probate Referee
7638 N. Ingram, Suite 201
Fresno, CA 93711
(559)435-6005

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Superior Court of California



County of Fresno

"Fostering Court-Community Relationships"