

MATSUMURA LAW FIRM

Wills, Trusts, Probate
And Estate Planning

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estate planning today

How Does Probate Work? :

What is Probate and Why You Should Plan to Avoid It

In over-simplified terms, probate is the process of transferring assets from a deceased person's name to his or her heirs. This newsletter provides a brief outline of the probate process, as well as a few reasons why you might wish to do estate planning to avoid probate.

The Probate Process. Commonly, a deceased person dies intestate—i.e., without a will. [YOU SHOULD KNOW THAT A WILL REQUIRES PROBATE.](#) There-

mentary” are issued. The “letters” prove that the executor can act on behalf of the estate. The “letters” can be taken to banks, realtors, stockbrokers, etc. to prove that the executor has proper authority.

The executor next gathers asset information and files an Inventory and Appraisal with the court. This document itemizes the probate assets and their fair market values (FMVs) as of the decedent's death. Probate referees and other independent appraisers are involved in determining FMVs.

The probate estate is kept open for at least four months so that any creditors have time to claim against the estate.

After four months pass, and if there are no disputes or claims outstanding, the executor can petition the court for distribution of assets. After the distribution, the executor's main duties are complete. This is probate in a very simplified nutshell.

NOW, why would you want to avoid probate? A few reasons are as follows:

Probate is A Public Process.

Probate is a court proceeding, so any information disclosed as part of the probate is public record. As a result, the whole world has access to all of the asset and distribution information disclosed as part of the probate. This means that anyone can find out what assets are distributed to which benefici-

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Besides Being Public, Probate is Expensive and Time-Consuming

fore, the with a will, the first step in probate is filing a “petition” with the court to request (1) the will be approved as valid; and (2) an executor be appointed to manage the probate estate. (The executor is normally designated in the will.) A hearing date is set for the judge to hear and hopefully, grant, the petition.

Before the hearing date, notice of the petition is published in the decedent's local newspaper. The publication informs creditors and heirs of the probate so they can take steps to protect their interests in the estate.

Until an executor is appointed, the deceased person's assets are essentially *frozen* because no one can yet act on behalf of the estate.

After the hearing, and after the executor is appointed, “*letters testa-*

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How Does Probate Work? (continued)

aries of the estate. Many people want to avoid probate to keep their affairs private.

Probate is expensive. Besides being exposed to the world, the probate process is expensive. It involves fees to attorneys, accountants, appraisers, executors and court costs. Probate costs can amount to roughly 8% to 10% of the value of the probate estate. This means that a person who passed away owning \$200,000 in property can have probate costs of about \$18,000. This cost is much higher than would be required for the administration of a living trust for an

creditors to file protective claims against the estate. Probate is also time-consuming because it is court-supervised and the court system is overburdened. As a result, there are delays for matters to get heard by the probate judge. Any disputes by creditors or among beneficiaries draw the process out further. In the meantime, the beneficiaries of the estate must wait to receive their inheritances.

Even “simple” estates are subject to probate. Contrary to popular thought, even “simple” estates might require probate. *If you have assets with a gross value of \$100,000, your estate will require probate unless you affirmatively plan to avoid it.* This

“A simple estate of \$100,000 in gross value is subject to probate.”

estate valued at the same amount. Avoiding probate means that more of an estate goes to children or favorite charities rather than to courts and related probate parties.

Probate is Time Consuming.

A “simple” probate estate can take at least eight or nine months to complete. If the probate is complicated, it is not unusual for the process to take over one year or perhaps several years to conclude. Part of the delay in probate is due to the requirement that the probate estate be open for at least four months to allow any

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About Me

I graduated cum laude from the University of the Pacific in Stockton, California with a Bachelor’s in Science (B.S.) degree in Business Administration. I received my law degree (J.D.) from King Hall School of Law at U.C. Davis, and was admitted to the California State Bar in 1993. I completed my Masters in Taxation (LL.M.) with honors at Golden Gate University in San Francisco in 1998.



means that a person owning “typical” assets (i.e., a modest house and maybe some bank accounts) has an estate that is subject to probate. Since the \$100,000 figure is a gross amount, the amount of debts does not matter in determining whether an estate will require probate.

You can plan to avoid probate with a **living trust** or other means of estate planning. Generally, avoiding probate means reducing administrative burden and costs to your loved ones. ✱

I have practiced exclusively in the area of estate planning, probate and trust administration for approximately ten years.

I assist clients of all wealth levels. My goal is that you understand and are comfortable with all of your estate planning documents.

In my non-working hours, I support Pacific & Cal Athletics (Go Bears!, the SF Giants, the Sacramento Kings, and sometimes play tennis!