



FILE PETITION FOR PROBATE



HEARING DATE

START

5-6 WEEKS

2 MONTHS




6 MONTHS

END 12 MONTHS



NOTICE OF 1ST COURT HEARING DATE PUBLISHED IN NEWSPAPER

WITHIN 120 DAYS OF LETTERS -

1. GATHER ASSETS 
2. FILE INVENTORY & APPRAISAL FORM 
3. NOTICE TO CREDITORS 
4. ALLOWANCE/REJECTION OF CREDITORS CLAIM

WITHIN 90 DAYS OF LETTERS

- SEND NOTICE TO
1. FRANCHISE TAX BOARD
 2. DEPT OF HEALTH CARE SERVICES
 3. VICTIMS COMPENSATION BOARD

the PROBATE PROCESS

TAXES -

- PROP 58 & 193
- CAPITAL GAIN
- ESTATE TAXES - FORM 706



PETITION FOR FINAL DISTRIBUTION (ACCOUNTING)



COURT HEARING



REAL ESTATE TRANSACTION: **AUTHORITY - IAEA**

- SIGN LISTING AGREEMENT
- PROBATE PURCHASE AGREEMENT
- OPEN ESCROW
- NOTICE OF PROPOSED ACTION-15 DAYS
- ESTATE EIN #
- OPEN ESTATE BANK ACCT
- DRAW LOAN DOCS
- CLOSE ESCROW

FULL



REAL ESTATE TRANSACTION: **AUTHORITY - IAEA**

- SELLING PRICE MUST BE WITHIN 90% OF PROBATE REFEREE'S APPRAISED VALUE
- 10% CUSTOMARY COURT DEPOSIT
- PUBLISH IN NEWSPAPER FOR SALE
- ACCEPT AN OFFER
- REPORT OF SALE & PETITION FOR ORDER CONFIRMING SALE
- NOTICE TO BUYER, BENEFICIARIES, INTERESTED PARTIES
- COURT HEARING DATE TO CONFIRM SALE & OVER BIDDING PROCESS
- COURT ORDER
- CLOSE ESCROW

LIMITED

★ LETTERS ISSUED BY COURT

★ ORDER FOR PROBATE

- DUTIES & LIABILITIES OF PR
- ISSUE BOND



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- File the "**Probate Petition**" at the courthouse (this is the start of the probate process)
 - Notice of the first court hearing date published in the newspaper of general circulation in the decedent's resident city and notice mailed to all heirs and named beneficiaries (this happens immediately after the filing of the Probate Petition)
 - First court hearing date is held (this takes place approximately 5 weeks after filing the Probate Petition)
 - Issued **Bond**-- if ordered by the judge (this is essentially insurance for the estate in the event of mismanagement by the personal representative)
 - "**Duties and Liabilities of Personal Representative**" is filed with the court.
 - "**Order for Probate**" signed by the judge appointing the Personal Representative (this is approximately 60 days after filing the Probate Petition)
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- "**Letters**" are issued by the court--this is the golden ticket, the passport for the personal representative to conduct business on behalf of the estate (this is approximately 60 days after filing the Probate Petition)
 - Personal Representative (PR) gathers all assets and inventories for safe keeping (PR can begin to close escrow depending on whether full **Authority** or Limited Authority was granted by the court)
 - "**Notice to Creditors**" form sent to all reasonably known creditors (creditors have 4 months to file their claim with the court)
 - Real estate properties are sold if necessary (3rd to 4th month after the Probate Petition is filed, if Full Authority is granted under the IAEA)

- Litigation of any issues or disputes among heirs/creditors related to the estate.
- **"Inventory & Appraisal"** form filed with the court (4th to 6th month)(appraisal is done by a Probate Referee).
- If Limited Authority is granted by the court, then the court **Confirmation** process is necessary to sell any real estate.
- **"Change in Ownership Statement Death of Real Property Owner"** Form filed with the County Recorder (4th to 6th month)
- **"Claim for Reassessment Exclusion for Transfer between Parent and Child"** Form filed with the County Recorder (4th to 6th month)
- Debts are paid (4th to 8th month)(e.g., **Med-Cal** is reimbursed, credit card debt is paid)
- Taxes paid (6th to 12th month)
- Petition for Final Distribution is filed (8th to 12th month)
- **Second court hearing date**(9th to 12th month)
- Order signed by the judge allowing distribution to heirs (9th to 12th month)
- **Final Distribution** to heirs/beneficiaries (9th to 12th month)
- **Case closed**(10th to 12th month)

California probate is nothing more than a title clearing process. The state judge appoints the personal representative, the personal representative collects all the assets, pays all the valid debts from the assets collected and distributes the money to the rightfully heirs. This whole process is supervised by a state judge and usually takes about one year to complete.

Who can be the Personal Representative?

If there is a will naming an individual to be the personal representative then the court will appoint that individual to be the executor of the estate. If there is no will, then the surviving spouse, children, parents, relatives or creditors can petition the court to appointment themselves to be the administrator of the estate. The executor or administrator's duties are the same. If there is a dispute as to who should be appointed as the personal representative, then the California Probate Code establishes a rule of priority as to who should be appointed.

Which Assets are Subject to Probate?

Not all assets need to go through the probate process in order to pass to the heirs. For example, 401K accounts, IRAs, life insurance and other types of retirement accounts usually do not need to be probated because these types of assets have designated beneficiaries. Likewise, real estate properties that are held as joint tenancy, community property with right of survivorship or held in a living trust do not need to be probated. Once the potential assets that need to be probated are identified and the gross value exceeds \$166,250 then a probate is mandatory. If a house is held in the deceased parent's name then most likely a probate will be needed. If the decedent does not own a home but has cash in the bank exceeding \$166,250 then a probate is needed. All assets passing to a surviving spouse do not need to be probated but rather a spousal petition can be filed. A spousal petition process takes about two months, whereas, the probate petition process takes about one year.

Closing the Estate

The probate administration begins when the judge appoints the personal representative (PR), which is signified by the court issuing a form called "Letters". The PR can now sell the applicable assets (such as the house) to pay off all the debts and taxes. After the estate assets have been appraised and liquidated, the estate can petition the court's permission to distribute the money to the heirs, pay the personal representative's fee and the probate attorney's fee, and file the appropriate paperwork to release the personal representative from any further duties and liabilities.