



Alternatives to Probate

WHAT YOU SHOULD KNOW
BEFORE FILING A PROBATE CASE

THE
WERNER LAW
 F I R M

Introduction

Our firm regularly helps people deal with the loss of a loved one, and the inevitable legal questions that follow regarding how to deal with their assets and debts.

If you find yourself in such a situation, my goal in writing this is to educate you so that you are better equipped to make informed decisions moving forward. This stuff can be confusing. Banks and other financial institutions sometimes give misleading information. The information available online (mostly through attorney websites), is usually limited and generic. If you or family members are grieving, it is usually far from the best time to put yourself through law school 101. That being said, you do not need to figure this stuff out on your own.

The unique and interesting thing about probate matters is that there can be two or even three different ways to accomplish the same thing. Understand that you almost always have the option to file a normal probate case to deal with an issue. It will get the job done, but it may not be the best way.

That is why I am writing this. While probate is sometimes unavoidable, there may be a more efficient, more cost-effective, and quicker way for you to get the job done. These alternatives might end up saving the heirs thousands or even tens of thousands of dollars.

I have summarized these alternatives for you in this book. If you ever have any questions about these alternatives or whether your situation might qualify, please feel free to contact our office. We are happy to help.

The Werner Law Firm

A handwritten signature in black ink, appearing to read "Troy Werner". The signature is fluid and cursive, with a large, sweeping initial "T" and "W".

Troy Werner, Esq.

THE BASICS

Probate is the process through which you can get legal authority to deal with the assets and debts of a loved one. It can be a long and expensive process, and sometimes it is the only way. That being said, there are alternatives to probate in just about every state across the U.S. These alternatives are usually faster and more cost-efficient.

It is important to speak with an attorney before taking action, as probate and probate procedures can prove to be a maze. Employees at banks and financial institutions will often demand “letters of administration” or “letters testamentary” before they are willing to do anything or provide any information. These may sound like simple things to get, but they are not (at least not in California). These are formal probate documents issued by a judge in Probate court after a probate case is opened.

Financial institutions often make people feel like probate is a must. The reality is, these bank employees did not go to law school. They often receive minimal training on probate procedures and defer simply to what they were told by their supervisors. It might make their job easier if you went through probate, but it does not make yours.

If your deceased loved one simply had life insurance, bank accounts, or other accounts on which beneficiaries were named, then probate may not be necessary as the named beneficiaries would be able to claim those accounts without going through probate court. It would be a simple matter of providing a death certificate to those financial institutions, and filling out the forms that they provide.

Probate becomes a question when you start to hit a roadblock in dealing with certain assets: a bank is not giving you access, or the realtor you want to hire to sell a property is telling you that probate is necessary. Probate is essentially a process that you go through to get authority to deal with these assets or to transfer ownership of these assets.

That being said, there may be alternatives to probate that are available to you to accomplish these goals. If you are running into a roadblock in dealing with certain assets, here are some useful probate alternatives that might apply that we can help guide you through.

SMALL ESTATE PROBATE TRANSFER OF PERSONAL PROPERTY

If the value of the estate assets are under \$150,000, and there is no real property (a home or land) in the estate, then we may be able to do a small estate affidavit under Probate Code Section 13100, et seq., to deal with the assets. For example, if a loved one had \$100,000 in a bank account on which no beneficiary is named, and that was the only asset in the estate, our firm could prepare and have the heirs sign an affidavit directing the bank to release the funds to the heirs. No probate case would need to be filed to get these funds.

This is usually a straightforward process. It also works for many uncashed checks that were mailed in the deceased loved one's name. We prepare the affidavit, and the institution should reissue the checks or transfer the assets to the heirs.

That being said, unless we are communicating directly with a legal department, we regularly encounter employees of banks, financial institutions, and other entities that are not familiar with this process. Understand that it is fairly routine for these institutions to ask for letters of administration (documents you would get through a probate case), even when you may be able to use this alternative. This makes it seem as though probate is your only option.

Given this, we routinely send correspondence with our affidavits in an effort to educate the individual at the financial institution on the process, advising them that a probate case is not necessary, and that their failure to comply with the procedure can result in court action. This usually will get the job done.

It is important to note that you do not even have to count everything towards the \$150,000 value. For instance, if there are beneficiaries on a financial account, or a life insurance policy, then that money would not count towards the \$150,000.

HERE IS A GENERAL LIST OF WHAT NOT TO INCLUDE WHEN CALCULATING THE \$150,000:

- Cars, boats or mobile homes.
- Real property outside of California.
- Property held in trust, including a living trust.
- Real or personal property that the person who died owned with someone else (joint tenancy).
- Property that passed directly to the surviving spouse or domestic partner.
- Life insurance, death benefits or other assets not subject to probate that pass directly to the beneficiaries.
- Unpaid salary or other compensation up to \$5,000 owed to the person who died.
- Bank accounts that are owned by multiple persons, including the person who died.

SMALL ESTATE PROBATE TRANSFER OF REAL PROPERTY

When there is real property involved, but the estate is still worth less than \$150,000, we can generally avoid probate by filing a petition with the court. While a petition like this still requires a court hearing, it generally allows us to resolve the process and get the property transferred to the heirs much more quickly and cost effectively than a standard probate case. This process usually takes a few months. The court appoints a professional to do an appraisal of the property to determine its value for purposes of these procedures. For estates with real property worth less than \$50,000, a much simpler affidavit procedure may suffice which would require no court hearings.

SPOUSAL PROPERTY PETITION

Oftentimes, a Husband and Wife will own real property as joint tenants or tenants in common. If property is held in joint tenancy, the surviving person can file a form with the county recorder's office in order to transfer title into their name alone. However, if your spouse passes away and a home is held as tenants in common, then technically you only own one half of the property, and you will be unable to sell the property or refinance without first putting the home entirely in your own name.

As California is a Community Property state, real property acquired during the marriage is generally considered community property. If the deceased spouse did not name an alternate beneficiary by way of will or trust for their share of the community property, then their share of the community property will pass naturally to the spouse by intestate succession. It would be tedious to have to go through a full blown probate simply to transfer such property into a spouse's name, so a procedure was established (spousal property petition) through which a spouse could petition the Court to transfer such property into their name. Such a petition is much quicker and easier than probate.

Bottom line, if a spouse is going to be getting everything, a spousal property petition is usually a good option.

FURTHER CALIFORNIA PROBATE ALTERNATIVES & HEGGSTAD PETITION FILING

Probate and probate procedures are sometimes even required where a trust was created. It is important, in creating a trust, to set it up and properly "fund" it by putting the trust on title to the property. But many people fail to do this.

If real property is not transferred into the name of the trust, then the successor trustee will not be able to control it. They will not be able to sell it as it is likely still in the deceased individual's name.

Sometimes, when property is not placed into the trust, we can file a Heggstad Petition (or California Probate Code 850 Petition), in which we petition the court to recognize that the decedent clearly intended to put the property into the trust (for example, the decedent may have listed the property in a schedule of trust assets in the back of the trust), and to sign a court order recognizing the trust as the owner of the property.

Such a procedure is often much easier, quicker, and more cost-effective than going through probate.

FOR MORE INFORMATION ABOUT STARTING YOUR ESTATE PLAN, SCHEDULE A
FREE INITIAL CONSULTATION WITH THE WERNER LAW FIRM TODAY.

ABOUT THE AUTHOR



Troy Werner has been an indispensable asset to The Werner Law Firm since joining in 2009, providing exceptional legal service to its clients. An Ivy League graduate, he has won numerous awards during his tenure as an attorney, including being recognized with an award as one of the top 40 individuals under 40 in the community. His goal is to help give clients peace of mind in dealing with their individual legal situations. In collaboration with his father/founder of the firm, L. Rob Werner, and backed by the firm's dedicated and experienced team of attorneys and legal professionals, he plans to continue the firm's tradition of excellence well into the future.

Education:

- B.A., University of Pennsylvania – 2007
- J.D., Southwestern School of Law – SCALE Program – 2009