



# UNDERSTANDING PROBATE & YOUR TITLE TRANSACTION



Everyone has a will or plan, whether created or by default. Even if you have not made out a will or a trust, you still have a plan - a plan dictated by the laws of the state where you reside upon your death. Probate makes sure it is your last valid will, appoints the executor named in your will and supervises the executor's work.

**Q. What does "probate" actually mean?**

- A.** Without probate, no one has the power to sell the property because the owner is deceased. The probate process provides title/escrow with the appropriate party who has been authorized to sell the property.

**Q. While real property is "in probate," can it be sold?**

- A.** Yes. Prior to the probate case being filed and letters being issued, no one has the authority to act on behalf of the estate. Escrow would not be able to accept contract and title cannot insure the property until proper orders from the probate case have been produced.

**Q. What documentation will a title company require to close a probate transaction?**

- A.** Generally, Lawyers Title will require the following documentation in the matter of the estate of a deceased person:
1. A certified copy of the Final Decree of Distribution; or
  2. A certified copy of the Order Confirming Sale and the

original Executor's Deed; or

3. A certified copy of the Letters of Administration or Letters Testamentary, naming the party or parties empowered to act under the Independent Administration of Estates Act, together with:
  - A.** A letter from the probate attorney stating that a copy of the Notice of Proposed Action has been sent to all parties required to receive notice pursuant to the Probate Code, and that the 15 Day Objection Period has expired with no objection to the Notice of Proposed Action; or
  - B.** A copy of the Notice of Proposed Action and copies of waivers of the Notice of Proposed Action; and
  - C.** A letter from the probate attorney stating that there are no Federal Estate Taxes due, or approval by the Underwriting Department of an agreement for the payment of any estate taxes when due.



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## Q. What is the purpose of “estate administration”?

- A. Generally, there are five purposes, many of which have subsets to them:
1. To determine that the decedent is in fact dead,
  2. To establish the validity of the will,
  3. To establish a personal representative of the estate who will represent the estate as the seller of any property to be sold and to establish what authority this executor/administrator actually has
  4. To identify the heirs and devisees of the decedent,
  5. To settle any claims that creditors may have against the estate of the decedent, and
  6. To distribute the property.

## Q. What is the difference between “Testate” & “Intestate”?

- A. In a testate matter, the estate plan will determine who represents the estate as the seller. In an intestate matter, the succession law determines who represents the estate. This is crucial for escrow/title to determine who signs documentation for the sale of the property.



## Q. What are the steps to a normal uncontested probate?

- A. Generally speaking they are as follows:
1. Death of the decedent.
  2. The will is delivered to the executor or Court Clerk.
  3. A petition is filed for the Probate of Will or Letters of Administration.
  4. A hearing is held on the petition.
  5. Letters of Administration are issued by the Court.
  6. Notice to creditors is given.
  7. Inventory and appraisal of the estate is made by an independent probate appraiser.
  8. The sale of real property can occur. Title insurance can be issued and escrow can close in accordance with the type of probate case being completed as long as proper documentation from the case is provided to the title/escrow company.
  9. File Federal estate tax return. Return states “No Tax Due” or specifies an amount due.
  10. Final accounting and petition for distribution.
  11. Final decree of distribution.
  12. Discharge of personal representative.

## Q. If there is no will, how is the property of the estate distributed?

- A. Sections 6400 through 6414 of the California Probate Code addresses intestate succession and the distributions. The probate codes also indicate who will be authorized and in what order of progression to represent the estate for transferring real property. The title insurance policy and the escrow’s ability to close the transaction are based on the succession to the property. The method and manner of intestate distributions is quite complex and therefore one should specifically discuss intestate distributions with their legal advisor.

*Please check with your state or local land title association for applicable laws. Information deemed reliable, but not guaranteed.*