

HOW CAN I GET A COPY OF A WILL?

Bring a certified or informational copy of the person's death certificate to the Probate Department and request copies. There is a fee for the copies.

WHERE CAN I GET ADVICE ON WHAT I NEED TO DO?

Contact a qualified probate attorney to review your specific situation and to advise you whether a probate is necessary. An attorney can give you detailed instructions as to how to change title to assets and collect benefits, and assist in preparing any documents you may need. Most important, an attorney can represent you in court if a probate is necessary, and make sure you do not violate your fiduciary duty to the beneficiaries. You are strongly urged to consult with a private attorney to evaluate your specific case before proceeding.

You may contact the Ventura County Bar Association Referral Program at (805) 650-7599 to arrange a 30-minute, private consultation with a probate attorney for a small fee.

Juvenile Justice Center
4353 Vineyard Avenue
Oxnard, CA 93036

(805) 289-8820



WHAT IS PROBATE?

SUPERIOR COURT



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COUNTY OF VENTURA

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TRANSFERRING PROPERTY WHEN SOMEONE DIES

Losing a loved one is a sad and difficult time for most people. Often times one is also faced with how to transfer or inherit property from someone who has died.

An insurance agent or bank personnel may tell you that you need “letters” from the court to do this. What they neglect to tell you is that “letters” are not simply a one-page document that can be handed out by the court in one day.

“Letters” as defined in Probate Code Section 52(a) relating to a personal representative, means *letters testamentary, letters of administration, letters of administration with the will annexed, or letters of special administration.*

Letters are issues to that personal representative after a Petition for Probate proceeding has been filed with the court and all the necessary steps for additional documents and service have been met as required by the Probate Code.

WHAT IS PROBATE?

Probate is a proceeding in which an *executor* (if there is a will) or an *administrator* (if there is no will) is appointed by the court as personal representative to collect the assets, pay

the debts and expenses, and then distribute the remainder of the *estate* to the *beneficiaries* (those who are entitled to inherit), all under the supervision of the court. The entire proceeding will take from approximately 9 months to 1 ½ years from the time of filing to the final distribution.

DO I NEED AN ATTORNEY?

Because a probate is a court proceeding with specific procedures and rules that must be followed, and because the executor or administrator owes a *fiduciary duty*, which is the highest duty the law recognizes, it is strongly recommended that the executor/administrator be represented by an attorney. Failure to pay debts of the estate could cause the executor/administrator to face personal liability to creditors.

Also, failure to properly handle a probate could result in clouds on title to real estate, or adverse tax consequences, causing a great expense to correct it later. The fees for the attorney are statutory; that is, they are set by law, must be approved by the court, and are based on the size of the estate, so that consumer protection is afforded by law.

DO I HAVE TO GO TO COURT TO INHERIT PROPERTY FROM SOMEONE WHO DIES?

Not always. If you have the legal right to inherit personal property, like money in a

bank account or stocks, the entire estate is worth \$150,000 or less, and there is no real property (land) in the estate, you may not have to go to court. There is a simplified process that can sometimes be used to transfer the property to your name. This process generally cannot be used for real property, like a house. The Affidavit Procedure For Collection or Transfer of Personal Property can be found in the Probate Code under Section 13100. Check with a qualified probate attorney as to whether this procedure is appropriate.

LODGING A WILL WITH THE COURT

When someone dies and that person left a will, the will must be *lodged* (deposited) with the court. The person who has possession of the will is required under Probate Code Section 8200 to bring the will to the court clerk’s office where it is kept secure for possible attachment to a probate petition, should one later be filed. There is a fee for lodging the will.

HOW CAN I FIND OUT IF SOMEONE HAS STARTED A PROBATE CASE?

You can search on the Ventura Superior Court website(www.ventura.courts.ca.gov) under *Case Inquiry* to see if a case has been filed. Search by the deceased person’s name.