

WHAT IS PROBATE?

‘Probate’ is the name of a court process wherein a judge supervises over the distribution of a deceased person’s estate. Probate is triggered primarily under two circumstances: (i) if a person dies without a valid Will; or (ii) if a person had a valid Will (but not a trust) and their assets equaled or exceeded the probate threshold at the time of death.

Under California law, the current threshold that triggers probate is extremely low – it is merely \$166,250! Note that this is a sum total of all assets of the deceased and it is calculated of ‘gross’ assets and not the ‘net’ value of such estate. In other words, the deceased person’s debts and other liabilities, including mortgage, taxes, legal claims and expenses, do not count towards reducing the total asset value for purposes of determining whether or not probate applies.

Why Should You Avoid Probate?

Probate has the following major drawbacks:

- It is an expensive process. Probate costs are statutorily determined and start at 4% for the first \$100,000 of gross estate. Roughly on a \$1M estate, the total probate cost would be about \$45,000!
- It is time-consuming. Probate could take anywhere between 6 months to 2 years to go through during which time your assets will be locked up in the court process and your family will have to depend on the probate judge for receiving your assets.
- It is a complex, stressful and a formal process.
- Court proceedings are typically a matter of public record, which would mean that the public at large could know who you were, what assets you owned, who got what, what are their identities, etc.
- A probate judge will distribute your assets in a more objective way in conformance with the default rules of California Probate Code and not based on emotional, subjective factors that come into play when individuals distribute their wealth to their family members and other beneficiaries based on their social, religious and cultural values.