

CAN NORTHERN CALIFORNIA PROBATE BE AVOIDED?

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The process of estate planning is often misunderstood, because people don't take the time to do the appropriate research. Since many people put the entire matter on the back burner, they go forward with the understanding that they can create a last will at some point, and assets will magically fall into the hands of their loved ones.

In reality, things are not as simple as they may seem to be on the surface when you use a last will. Someone has to handle the estate administration tasks after you are gone. This would be the executor, and you name an executor when you create the will.

If you fail to name an executor in your last will, the estate would be forced to appoint a personal representative to handle the estate administration tasks.

You may assume that the executor can follow the instructions in the will and start to distribute assets to the heirs that are named in the will right after your passing. In reality, things are much more complicated than that.



We practice law in the state of California. In California, if the value of the estate exceeds \$150,000, the full probate process typically will enter the picture. The executor or personal representative would be required to admit the will to probate after your passing.

In and of itself, this is not inherently negative, but it does not always bode well for the heirs to the estate. Probate is something that is not going to run its course overnight, and the heirs do not receive their inheritance while the process is unfolding.

How long will the process of probate take? The answer is that it all depends on the complexity of the case in question. If things run smoothly, and there is not a great deal of complicated debt and property to be liquidated, the process may be



completed in just around a year.

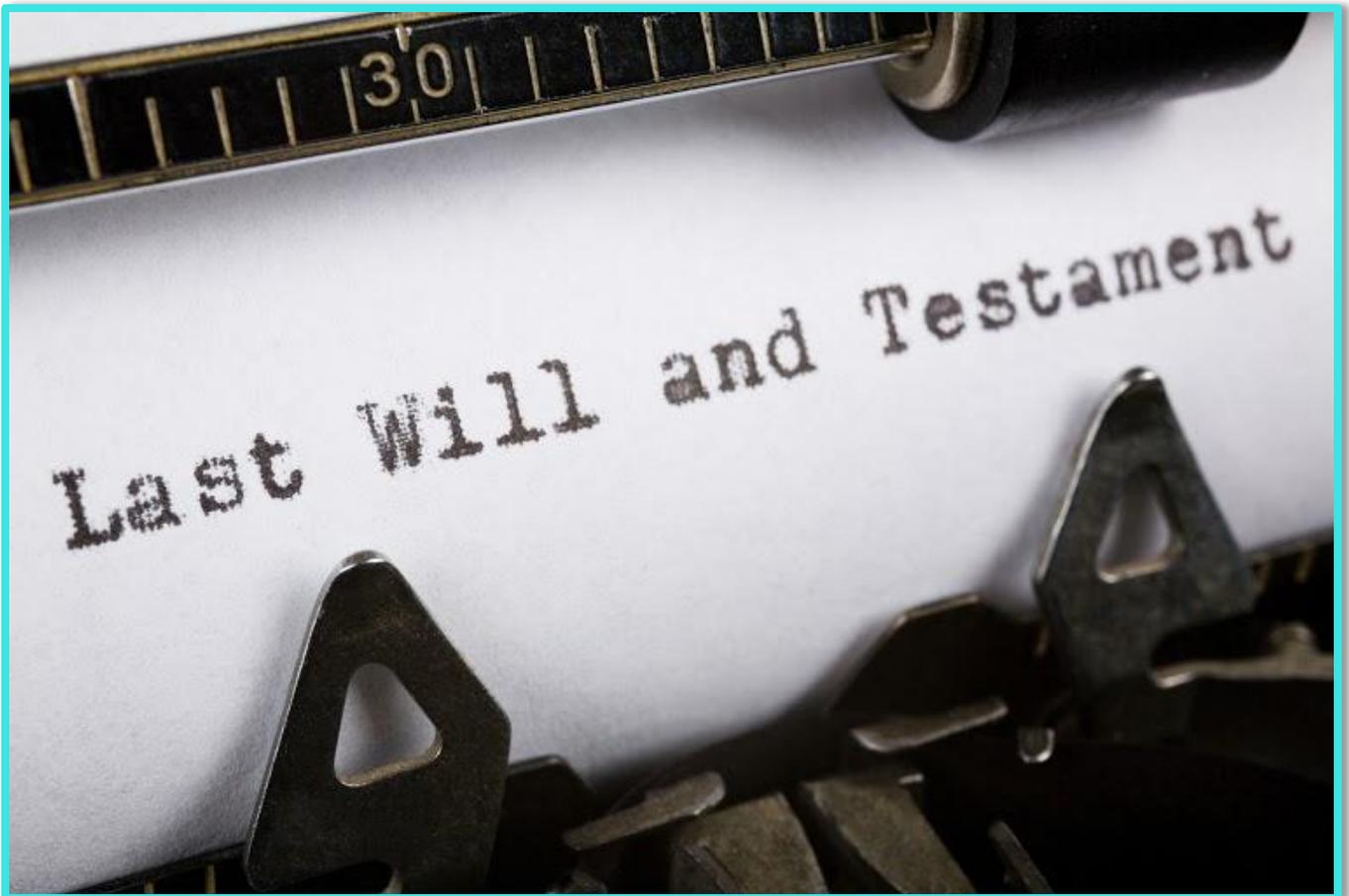
Under more complicated circumstances, it can take considerably longer.

The time consumption is not the only drawback that your heirs may encounter when the probate process is

underway. There are considerable expenses that can accumulate during probate, including court costs, attorney fees, accounting expenses, appraisal costs, liquidation charges, and other miscellaneous costs. These expenditures can significantly reduce the value of the estate before the heirs receive their inheritances.

There is yet another pitfall that can be quite disconcerting to some people. Probate records are available to the general public. As a result, anyone who wants to find out how you planned your estate can access these records to get a bird's eye view.

Everyone prefers privacy, but there can be more direct concerns. There could be interested parties who are not happy with the way you distributed your assets. This could include members of the family, and the information could cause acrimony among your loved ones.



AVOIDING PROBATE

If you are thinking that the probate process does not sound very appealing, you are not alone. People often seek out avenues that facilitate asset transfers outside of probate when they hear about these drawbacks.

It is possible to be proactive about the implementation of probate avoidance strategies. There are various different ways that you can get assets into the



hands of your loved ones outside of probate.

One very commonly utilized probate avoidance tool is the revocable living trust. With this type of trust, you retain control of the assets while you are living. After you die, the trustee that you name in the trust agreement would

be able to distribute assets to the beneficiaries in accordance with your wishes, and the probate court would not be involved.

SUMMARY

Probate can be described as the legal process of estate administration. It provides oversight, but it can be time-consuming and expensive. The process is also a public proceeding that strips you of privacy.

There are things that you can do when you are planning your estate to avoid the process of probate. The ideal way to proceed will depend upon the specific circumstances.

If you would like to learn more about probate and the probate avoidance strategies that are often implemented, take a moment to set up a consultation with a licensed estate planning attorney.



About the Author



Timothy P. Murphy

Timothy P. Murphy is an estate planning and elder law attorney whose practice emphasizes helping people to build, preserve and pass on their wealth. He works with his clients to accomplish their goals while avoiding unnecessary court proceedings and minimizing or eliminating exposure to death taxes. Mr. Murphy also assists families facing the myriad of problems associated with dealing with a loved one's declining health and rising needs for care. He has practiced law in the Sacramento area for over 32 years, first with a large firm, and then with his own firm since 1987.

Tim has written a regular column on legal issues for Senior Magazine. He also was a regular featured guest on the Money Experts radio program heard locally on KFBK (AM 1530). Tim has been featured in the Sacramento Bee, Sacramento Business Journal, Sacramento Magazine, Comstock's Magazine and other publications on estate planning and related topics. He also assisted local Channel 3 (KCRA) in an investigative report on the trust mill problem in the Sacramento area and was featured on Channel 10 (KXTV) in its series on personal financial planning.

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