

## How Do I Avoid Probate (and What Is It Anyway)? A Palo Alto Probate Attorney Answers

Posted by Janet Brewer on Thu, Apr 07, 2011 @ 09:50 PM



### Q: I've heard that I should avoid probate, but I don't even know what it is?!

“Probate” comes from one of those Latin words that lawyers love to use. Basically it means “to prove.” When you leave a will, someone has to [prove to a court](#) that the will is valid. But it's possible to sidestep probate by [putting your estate into a living trust](#).

### Q: Planning ahead is ideal, but what if that doesn't happen?

A: Unfortunately, people avoid [planning their estates](#) for a variety of reasons. If a California resident owns real estate or has assets worth more than \$100,000 and dies without having those assets in a living trust, it will probably be necessary to [probate the estate](#).

An experienced [probate attorney](#) can help you decide if a probate is necessary or if you can use an alternate procedure instead. If it is necessary to initiate a probate proceeding, your attorney can prepare all of the required court documents and make all of the necessary court appearances.

If the entire estate (including real estate) totals less than \$100,000, your attorney can prepare a Small Estate Affidavit that may make probate proceedings unnecessary.

If the estate has more real estate or more personal property than that amount, [probate](#) is necessary, even where there is a will. In fact, a will has no legal effect until it is approved by the Probate Court (“admitted to Probate”).

### Q: Should I also avoid intestate succession? Or what is that?

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If you do not have an [estate plan](#) in place at the time of your death, the state distributes your property according to the laws of intestacy. These laws vary by state. In California:

- If you are married, your spouse receives all of the "community property"
- If you are married and have one child, your spouse receives 1/2 of your "separate property" estate and your child receives the other half (at age 18)
- If you are married and have more than one child, your spouse receives 1/3 of your "separate property" estate and your children receive the other 2/3 (at age 18)

**Q: I don't want to deal with my family members - can you?**

A: Despite people's best intentions, families often fight when someone dies. Probate and related proceedings often end up in disputes, including contests of wills and trusts, construction (interpretation) of wills and trusts, disputed ownership, claims for debts or services rendered, division of personal property, proceedings to retrieve assets from individuals who received them improperly, and other areas too numerous to list.

In those instances where family members don't all get along, and I am hired for [probate legal services](#), I can act as a buffer. If a contest arises, I try to settle it to my clients' satisfaction.

**Learn more**

If you are interested in legal services, you can learn more at this site about my [services](#) and [background](#) -- or [download additional resources](#)