

Can Creditors Force a California Successor Trustee to Sell Assets?

By Janet Brewer

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I frequently answer questions on other sites about estate planning, wills, trusts, and probate law. Here is one question I recently answered.

Q: Can creditors force me to sell dad's assets to pay off his debts? Specifically:

- Can the bank holding the mortgage force me to sell his car and give them the money?'
- Can the credit card companies that he owes force me to sell his car to pay off his debt?

A: If your father's "probate estate" -- that is, the assets that do not have beneficiaries named on them or are not held in his trust -- are worth less than \$100,000 then you can transfer title to yourself by using the "small estates affidavit".

The California DMV has its own small estate affidavit. As you will see when you read the affidavit, you are required to "indemnify" anyone who transfers property to you against all claims. That means that if a credit card company sues to get the car or the proceeds from its sale after the DMV has transferred it to you, you are agreeing that you will "assume" responsibility for the debt.

So, yes, it is possible that the credit card companies can force you to sell the car to pay off the debts. The mortgage company may or may not be able to do the same thing... in California, the answer depends on whether the mortgage loan was:

- "Recourse" - meaning that the borrower is personally liable for repayment, or
- "Non-recourse" - meaning that the borrower does not have any personal liability.

By law in California, the loan your father took out to purchase the house originally was "non-recourse". If he refinanced, though, the loan is probably (but not necessarily) a "recourse" loan.

Getting legal help

Talk with a Bay Area attorney experienced in fiduciary counseling to determine what's right for your situation. I am a board certified estate planning and probate attorney specializing in asset protection for Palo Alto -area clients, and the surrounding areas -- and can help you develop the best strategy.



Request services using a convenient form here at our [site](#) or learn more about our [asset protection legal services](#), [probate services](#), and [fiduciary counseling](#) »