

California Probate Guide

Mina N. Sirkin

California Board Certified Specialist

Probate Lawyer Los Angeles

Sirkin Law Group, P.C.

21550 Oxnard St. #300

Woodland Hills, CA 91367

818-340-4479

Email: Msirkin@SirkinLaw.com

<http://LosAngelesProbateLawyer.com>

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What happens if you die without a will in California?

- In California, if you die without a will, you are said to have died intestate.
- California has a set of default rules for who gets the estate if there is no will.
- Generally, as to community property, the surviving spouse gets 100% of the community property if there is no will in California.
- As to separate property, the children and spouse share it depending on whether there are any children, and the number of children.

The Default Estate Plan in California - No will

Community Property: 100% to Spouse or Domestic Partner, if any.

Separate Property:

If there are no children, the spouse gets it.

If there are children, $\frac{1}{2}$ to spouse, and $\frac{1}{2}$ if only one child. If more than one child, then $\frac{1}{3}$ to spouse and $\frac{2}{3}$ split among the children.

What is the Cost of Probate Administration in Los Angeles

- Generally, there are several categories of fees and costs.
- Statutory Fees and for Personal Representative and for the Attorney for the Personal Representative
- Extra-ordinary Fees for Personal Representative and his/her lawyer.
- Bond (if not waived)
- Filing Fees for Petitions
- Probate Referee's Appraisal Fees
- Miscellaneous Costs of Letters and Certified Orders

What happens to the will after a person dies in California?

- The executor of the original will is to lodge the will with the California Probate Court where the decedent resided within 30 days after it is discovered.
- If the original will cannot be found, but a true copy exists, the executor can ask the court to admit it as a lost will, under certain conditions.
- The will becomes the instructions of the deceased which is followed by the court to distribute the assets and property of the decedent.

Translation of California Statutory Fees

Estate Size	Statutory Fees for Each Personal Representative and his/her attorney
\$100,000	\$4,000
\$200,000	\$7,000
\$500,000	\$13,000
\$800,000	\$19,000
\$1,000,000	\$23,000
\$2,000,000	\$33,000
\$3,000,000	\$43,000

How long does it take to close probate in California?

- A nice probate without any litigation in Los Angeles can take about a year.
- Most California cases take somewhere between 1-2 years to complete.
- Complications can happen when there are undiscovered assets or assets which have escheated to the State of California or other states.

What if there is not enough money to pay cash gifts in a will in California?

- Cash gifts usually get paid first before the residue.
- Cash gifts also bear a statutory interest starting with a year after the date of decedent's death.
- If there is no residue, and the cash gifts exceed the size of the estate, the cash gifts get reduced (called abated).

What happens if the deceased left more than one will in California?

- If the decedent left more than one will, generally, there is a presumption that the last one governs, unless:
- You can show there was fraud, duress, mistake, undue influence, or lack of capacity at the time of execution of the will.
- In that case, there will be a will contest and the court will set the case for a trial as to which will is valid.

What are the best ways to prevent gold diggers from getting to your trust assets?

- Preventing undue influence can be effectuated by:
- Naming a Professional Fiduciary as Successor Trustee
- Setting up an automatic change in the trustee to a professional, once trustor reaches a particular age
- Creating an Exclusive Method of Revocation for the Trust.
- Creating an Exclusive Method of withdrawal and transfer of property from the Trust.

Probate Resources in Los Angeles County California

- The Court's Website: <http://LaCourt.org>
- Probate Notes:
<http://www.lacourt.org/ProbateNotes/ui/main.aspx>
- Probate Case Summary:
<http://www.lacourt.org/casesummary2/ui/index.aspx?casetype=probate>
- Sirkin Law Group's, Los Angeles Probate Office:
<http://sirkinlaw.com/index.html>

About Mina Sirkin, Los Angeles Probate Lawyer

- Mina N. Sirkin has been practicing probate law in Los Angeles County since 1992.
- Ms. Sirkin is a Board Certified Specialist in Probate, Estate Planning, and Trust Law in California.
- Frequent Media Expert on Estate and Conservatorship Cases in Los Angeles
- Appeared on CNN, CNBC, Inside Edition, RollingStone.com, KCET, NPR News

How can we help attorneys out side of California with Probate of California assets?

- When a decedent dies and resides out of state, out side of California, the probate of the estate must start in the state of residence.
- When decedent died out of state, but leaves property in California, we can help the executor and his or attorney, start an ancillary probate in California.
- Ancillary probate is a local probate in California, when the decedent died out side of California but with assets in Ca. Call Attorney Mina Sirkin 818.340.4479 for help.