

## **The Perils With Probate**

**Ask anyone who has had to go through the probate experience what it was like and probably 9 out of 10 times you will hear a groan and then complaints about delays and costs. The probate process is no fun! However, if you do not have your property in a living trust, your property will have to go through a formal probate in order to be transferred to your heirs and this is true even if you have a will.**

## **Probate Procedures and Delays**

**In order to probate an estate, a number of legal documents must be prepared and approved by the court. The procedure is set in the California Probate Code and requires that numerous petitions, notices and orders be filed and approved by the judge. A formal probate requires that a notice of the probate be published in a newspaper three times before the initial hearing date. Also, notice must be mailed to all heirs, beneficiaries, alternate executors, as well as any person who are disinherited in the will. An inventory and appraisal must be prepared and a probate referee appointed to review the amounts declared and/or make his own appraisals of value. If assets are to be sold by the estate, often approval from the judge for the sales amount must be obtained.**

## **The Costs of Probate**

**In addition to the documents and notice requirements that are set by law, the costs of probate are also set by law. First of all, there will be the costs of filing the matter with the court called a filing fee which is \$350.00 and if other petitions are required there might be other filing fees of up to \$350.00 for those additional petitions. Additionally, all probated estates will need to pay for the services of a “probate referee” who will prepare an estimate of the value of the estate’s property and his fee can be hundreds of dollars or more depending on the size of the estate.**

**The attorneys’ fees are set by the law too. For the ordinary services an attorney in a probate will render the fees are based on the value of the estate set as follows:**

- 4% of the first \$100,000**
- 3% of the next \$100,000**
- 2% of the next \$800,000**
- 1% of the next \$9,000,000**
- ½ of 1% of the next \$15,000,000.**

**So the regular attorneys’ fees for an estate of just \$1,000,000 is \$23,000 and could be more if the probate required more work than what is considered normal.**

## **Trust vs. Probate**

**When a trust is established during a person's lifetime to pass property down to heirs and most of the person's assets are owned by the trust, that person's assets avoid probate. The delays, costs, and public notices are avoided. Although the successor trustee (who acts like an executor) will likely need the services of an attorney and a CPA to transfer the assets to the heirs when the person who established the trust dies, the costs and delays are much less than those associated with probate.**

**If your assets are already in a trust, please pass this information onto someone you know who does not have a trust.**

**© Jane K. Penhaligen  
Law Office of Jane K. Penhaligen  
jpenhaligen@jpenhaligenlaw.com  
(925) 746-7113**