

The California Probate Paralegal

SECOND EDITION

Dianna L. Noyes



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Table of Contents

Introduction	xiii
Chapter One · Introduction to Probate, Estate Planning and Administration	3
Probate, Estate Planning, and Estate Administration in California	3
The Paralegal's Role in Probate and Estate Planning	4
Ethics and the Paralegal	5
Other Malpractice Concerns	7
Confidentiality	9
Ethical Wall	10
The Paralegal's Role	10
Probate Code and Other Relevant California Codes	11
The Paralegal's Role	13
What is Probate?	15
History	15
United States Probate Laws	16
Testate and Intestate Succession Defined	16
Testate Succession	16
Intestate Succession	16
Probate Code § 240	18
Probate Code § 6240	19
Community Property	22
Surviving Spouse	22
Effect of Dissolutions on Probate	25
Divorced But No New Will	25
Failure to Provide for Wife and/or Children	26
Posthumously Conceived Child	26
Spousal Property Petition	26
Distribution of Intestate Estate	27
Escheat	27
Ancillary Probate	27
Fiduciary	28
Key Terms	28
Chapter Two · Estate Planning	29
Succession Planning	29
Military Testamentary Instrument	30
Probate Avoidance	30
Wills	32

Requirements of a Valid Will	32
Holographic Will	32
Statutory Will	33
Pour-Over Will	34
Attestation and Witnesses	34
Codicil	35
Preparation of Wills	36
Execution of the Will	39
Typical Will Preparation	41
Key Terms	43
Chapter Three · Wills	45
Specific Will Provisions	45
Identification of Testator	45
Pour-Over Wills Related to Trusts	47
Obligation to Pay Debt and/or Taxes	47
Reference to Contract in Testator's Will	47
Distribution of Property	47
Naming of Executor	49
Defining the Executor's Powers	51
Period of Time for Executor to Act	52
Children—Definition and Guardianship Provisions	52
Trust for Children	53
No-Contest Clauses	54
Boilerplate Language	54
Simultaneous Death	55
Rule Against Perpetuities	55
Self-Proving Affidavit, Attestation, Signature of Witnesses	56
Research and Interesting Wills in History	56
Key Terms	56
Chapter Four · Probating an Estate	59
Probating an Estate	59
Probating the Will	59
Probating an Intestate Estate	61
Testate Distribution	66
Retaining an Attorney	67
Formal Probate Proceedings	69
Administrator or Personal Representative	70
Preparing the Petition and Lodging the Will	70
Other Documents Submitted with Petition for Probate	73
Citation	74
Waiver of Bond/Purchase of Bond	74
The Hearing and Notice Requirements	75
Preparation of Judicial Council Forms	78
Key Terms	78
Chapter Five · Probate Process Continued	101
Probate—Part II	101

Request for Special Notice	102
Appointment of Probate Referee	102
Inventory and Appraisal	104
Creditor's Claims	106
Payment of Creditor's Claims	109
Payment of Medi-Cal Liens	110
Sale of Property	111
Overseeing the Estate During Administration	112
Petition for Final Distribution	113
Preparing the Petition for Final Distribution	115
Statutory Attorney and Executor Fees	117
Statutory Attorney and Executor Fees	117
Extraordinary Fees	119
Special Considerations When Preparing the Petition for Final Distribution	120
Hearing on Petition for Final Distribution	120
Order for Final Distribution	121
Distribution to Heirs/Beneficiaries	121
Preparation of Judicial Council Forms	122
Key Terms	122
Chapter Six · Transfer of Property Without Estate Administration	143
Community Property, Surviving Spouse, Domestic Partner, Joint Tenancy	144
Community Property	145
Separate Property	146
Types of Ownership	146
Joint Tenancy	147
Basis	148
Petition to Determine Succession to Real Property	148
Small Estates Set-Aside	149
Transfer of Small Estates Without Administration	150
Spousal Property Petition	151
Information Regarding Property Transfers	154
Real Property	154
Motor Vehicles	154
Mobile Homes	155
Bank, Savings & CD Accounts	155
Stocks and Bonds	155
Mutual Funds and Money Market Accounts	156
Savings and Treasury Bonds	157
Other Personal Property	157
Preparation of Judicial Council Forms	157
Key Terms	157
Chapter Seven · Trusts	165
Inter Vivos or Living Trusts	165
Trust Administration Overview	166
Attorney and Executor Fees	166
Confidentiality	167
Reduce Taxes	168

Flexibility	168
Protection from Creditors	168
Distribution to Beneficiaries Is Expedited	168
Grantor, Settlor, Trustor, Trustee	169
Irrevocable Trust	170
Revocable Trust	171
Advantages of a Revocable Trust	171
Protection from Federal Estate Taxes	173
Custodial Accounts	173
Ability to Amend Trust	174
Types of Trusts	174
Revocable Life Insurance Trust	175
Other Estate Planning	176
Pour-Over Wills	176
Creating a Trust	177
The Nuts and Bolts of the Trust (Mandatory and/or Boilerplate Language)	179
Trustee Powers	185
Discretionary Provisions	185
Revocation and Amendment	186
Taxes	186
Provisions for Distribution of the Trust Estate	187
Outright Distribution to Beneficiaries	189
Distribution of Specific Items of Property	189
Distribution with Tax Planning	190
Disclaimer Trust	191
Separate Share Trust	191
Special Needs Trust	191
Spendthrift Trust Provisions	192
The Conclusion	192
Transfers of Property and Other Documents	192
Key Terms	193
Chapter Eight · Collateral Documents	195
Certified Abstract	195
Assignment of Property	196
Transmutation Agreement	196
Revocation of Trust	197
Other Collateral Documents	198
Funding Trusts	198
Real Property	199
Financial Institutions	201
Motor Vehicles, Etc.	202
Stocks and Bonds	202
Mutual Funds	203
Insurance & Annuities	203
Retirement Accounts	203
Mobile Homes	203
Promissory Notes	204
Trust Amendments and Restatements	204

Conclusion	205
Key Terms	205
Chapter Nine · Powers of Attorney	207
Powers of Attorney	207
Limited or Specific Power of Attorney	207
Durable Powers of Attorney	209
Naming of Agent/Attorney-in-Fact	209
Springing Powers	210
Durable Powers of Attorney and Advance Health Care Directives	212
Durable Power of Attorney for Health Care	212
Advance Health Care Directive	213
Importance of Advance Health Care Directives	214
Key Terms	216
Chapter Ten · Trust Administration	217
Acceptance to Appointment of Trustee	218
Beginning the Administration Process	219
Trustee Powers	220
Making Distributions	221
Trust Accountings	223
Compensation	223
Winding up the Simple Estate Administration	224
Complex Estate Administration	226
Property Not Transferred into the Trust	226
Federal Tax Consequences and Wealth Transfers	226
Federal Estate Tax Consequences	227
Applicable Exclusion Amount	227
Federal Gift Tax	228
Distributions and Creation of Sub-Trusts	229
Marital Deduction Trust	229
Bypass Trusts	229
Charitable Deductions and Charitable Remainder Trusts	230
Creating and Funding Subtrusts	230
Funding the Sub-Trusts	230
Generation Skipping Transfer Tax (GST)	231
Federal Estate Tax Returns	232
Trusts with Specific and/or Unequal Distributions and/or Distributions to Charitable Organizations or Others	233
Creation of Children's, Grandchildren's or Special Needs Trusts	234
Final Distributions and Termination of the Complex Trust	235
Final Accounting	235
Petition for Instructions	235
Property Located in Another State	237
Key Terms	238
Chapter Eleven · Guardianships and Conservatorships	239
Guardianship	240
Guardian Ad Litem	241

Judicial Council Forms (Guardian Ad Litem)	242
Guardian of the Person and the Estate	242
Petition for Guardianship (Person and/or Estate)	243
Judicial Council Forms	243
Other Applicable Forms	244
Conservatorship	244
Judicial Council Forms	250
Conservatorship Process	250
Limited Conservatorship	251
Preparing the Petition for Appointment of Probate Conservator	255
Other Considerations	258
Key Terms	258
Chapter Twelve · Other Issues Affecting Probate and Estate Planning	259
Effects of Homicide or Elder Abuse	259
Health Care Surrogacy (PC § 4711)	261
Public Administrator (PC§§ 7600–7666)	264
Priority for Appointment of Administrator (PC§§ 8460–8469)	267
Federal “Uniform” Statutes	269
Uniform Testamentary Additions to Trust Act (PC§§ 6300–6303)	269
Uniform International Wills Act (PC §§ 6380–6390)	270
Uniform Principal and Income Act (PC§§ 16320–16347)	272
Uniform Prudent Management of Institutional Funds Act (PC§§ 18500–18509)	273
Effects of a Registered Domestic Partnership	278
Termination of Domestic Partnership/Revocation of Bequests	278
Hospital and Health Care Facility Visitation Rights (H&S Code § 1261)	278
Taxes and Definitions	278
Marital Deduction	283
Charitable Gifts	285
California Inheritance Tax	285
Key Terms	286
Appendices	
1A Table of Consanguinity	289
1B Distribution Charts	290
2A Probate Intake Form	292
3A Sample Will	295
3B Shores Will (Signed)	301
4A Client Fact Sheet (Completed)	307
4B Verification	310
4C Proof of Subscribing Witness (DE-131)	311
4D Waiver of Bond	312
5A Probate Accounting Spreadsheets	313
5B Petition for Final Distribution	317
5C Waiver of Notice	324
5D Receipt	325

5E	Order for Final Distribution	326
5F	Ex Parte Petition for Discharge	329
6A	Affidavit — Death of Spouse	330
6B	Death of Property Owner Assessor	331
6C	Preliminary Change of Ownership Form	333
6D	Declaration for Collection of Compensation Owed to Spouse	335
6E	Affidavit — Death of Joint Tenant	336
6F	Declaration under Probate Code §13100, et seq	337
6G	Spousal Property Petition Attachments	339
7A	Federal Estate Tax Exemption Chart	343
7B	Annual Exclusion Chart	344
7C	Disclaimer Requirements	345
8A	Assignment to Trust	346
8B	Trust Transfer Deed	349
8B	Trust Transfer Deed continued	350
9A	Durable Power of Attorney—Powers	351
9B	Durable Power of Attorney—Care & Control of Person	359
9C	Durable Power of Attorney—Incidental Provisions	361
9D	Durable Power of Attorney—Health Care Powers	366
10A	Trustee Accounting Spreadsheet	370
10B	Petition for Instructions	372
Glossary		377
Index		393

Introduction

Probate and estate planning is an area of the law that affects almost every individual. You cannot say that about most other areas of law. Most of us will go through life without being sued or having to sue anyone. Some, but not all, of us will come into contact with the family court either through divorce or a child custody matter. The vast majority of us, however, will have a family member who has died or will die. Moreover, we will all eventually die and need to have our property passed on to our heirs.

From a personal perspective, each of you should learn something of value from this text that will be useful in your own life. One of the most important personal insights you should gain is that each of us needs to plan for our own death or possible incapacity. From a professional perspective, as a paralegal, I hope you will find this area of law interesting and challenging.

This book will cover the various types of documents a paralegal might be involved in drafting in a typical probate and estate planning practice. Such documents include, but are not limited to, Wills, Trusts, Powers of Attorney, and Advance Health Care Directives. As a paralegal student or entry level paralegal, you will become familiar with the various forms of complex estate planning such as revocable and irrevocable trusts and the many documents that accompany such estate planning techniques. The paralegal student will also learn the various mechanisms for transferring property upon death with and without probate administration.

The text provides practical applications to the basic probate process by providing samples of completed Judicial Council forms required by the California courts. Practical skills, terminology, and discussions of various "real world" applications are provided to assist the paralegal in developing knowledge and skills. Concepts will be discussed. Examples and assignments will be provided so that the student will have a better understanding of how the concept is applied in the legal environment. The student will also learn how to properly manage files and documents, as well as keep accurate timelines and calendar deadlines that are critical to the probate process.

Probate also covers the areas of guardianship and conservatorship. These topics will also be addressed in this text as they are governed, for the most part, by the California Probate Code. In most California Counties, these cases are heard within the probate court system.

There is much terminology utilized in this area of practice, which will be a primary focus of the text. The book is written in a logical manner and therefore terminology will be included as it applies to a particular section. The Glossary at the end of the book will also contain the definitions found in the various chapters, as well as many other definitions and will be in alphabetical order.

This book is written for the paralegal student and entry level paralegal. There are many complex estate planning and probate issues that will not be addressed in this text. Such issues are best learned through advanced seminars and hands-on experience in the

law office environment. However, with the basic knowledge and understanding of the topics presented in this book, a paralegal will be ready to take on more complex matters as they become more experienced and knowledgeable.

Probate and estate planning are constantly changing. Changes in California law include Registered Domestic Partners within most of the probate code sections particularly as they relate to the transfer of property held by two persons who have registered with the State of California as Domestic Partners. Most recently the California Supreme Court ruled that individuals of the same sex could marry. It will be likely that some modifications will need to be made to the Probate Code and other related statutes to include language that reflects this ruling. Additionally, both state and federal tax laws may also affect the transfer of property as well as whether the decedent's estate will incur any taxes. These topics will be addressed so that the paralegal has a basic knowledge of how these issues relate to the estate administration process.

Depending upon the complexity of the estate, it may take several years to bring the matter to a conclusion and make a final distribution. Clients and attorneys find that paralegals will be able to keep track of the various statutes, local rules, time-lines, and details throughout this often-lengthy period. The paralegal will be able to continue to work on the administrative tasks, while the attorney can continue to secure new clients, attend hearings, as well as work on complex matters requiring his or her expertise.

A probate and estate planning paralegal will find this work very interesting and rewarding. Some students will take quickly to this area of practice, while others will want to get as far away from it as possible. The probate paralegal must be able to be empathetic while remaining detail-oriented. An organized paralegal with excellent communication and writing skills will excel in this area of practice. Probate and estate administration are well suited to paralegal skills and will reduce the costs to the client.

A probate paralegal should be able to work well with clients as well as be able to work well with the legal team. He or she should also be able to work well with appraisers, actuaries, accountants, court personnel, and others who will be providing services related to the client's finances.

A paralegal working in this area of practice should have a good basic knowledge of finances. Many of the tasks and information acquired will relate to the client's assets. A working knowledge of valuations, appraisals, taxes and other financial areas are a plus. It is not imperative to be an accountant, but it certainly is a benefit to know how to prepare a balance sheet, what is profit or gain, and what is a loss.

This area of practice is "people-oriented." Often a client will come to the office as a result of a traumatic experience, such as the death of a family member. The client will want someone who shows empathy, understanding, and sincerity. Planning for one's own death or incapacity is also difficult for most people. The paralegal will often be the client's link to the firm as the case progresses. The client often comes to ask to speak with the paralegal each time he or she calls. Clients will rely greatly on the paralegal, not only for his or her procedural knowledge and for expertise, but because they feel, they have built a relationship with the paralegal. A wise paralegal will take care that the client does not become too attached to him or her. The paralegal must also make sure not to give advice to the client and commit the Unauthorized Practice of Law (UPL). This is often a very fine line. The paralegal will also need to take care that the client does not monopolize his or her time. As the paralegal comes to know the client and the client finds the paralegal to be kind and empathetic, he or she may call the office constantly. There will be times that the paralegal will have to diplomatically let the client know that he or she cannot spend time conversing with the client. Probate and estate planning

clients often are not paying an hourly rate and therefore do not see the cost of the time being spent on the matter. In the event it becomes a problem, the attorney needs to be advised of the situation.

Probate and estate planning are interesting and challenging. There are many other types of laws that interact with this area of practice. A paralegal working in this area of law will come into contact with various business entities, contracts, family law issues, finances, and taxes. There may even be some civil issues that relate, if for example, a decedent died in an automobile accident caused by another person, or died at work as the result of an industrial accident. Rarely are two estates exactly the same. This area of law is multi-faceted and can be very rewarding for a paralegal choosing to work in this field of the profession.

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