

Title and Probate

Title companies at times have to deal with properties where the owner has passed away. Due to that fact title companies frequently work with the heirs or devisees of the decedent and/or their attorneys to make certain that their proposed real estate transactions are insurable.

Do you have a plan? Everyone does, whether created by design or by default. Even if you have not made out a will or a trust, you still have a plan – a plan dictated by the laws of the State of California. Making a will is not a way to avoid "probate," the court procedure that changes the legal ownership of your property after your death. Probate makes sure it is your last valid will, appoints the executor named in your will, and supervises the executor's work.

Title companies are frequently asked "while real property is in probate can it be sold?" The answer is yes. It can be sold either at private sale in which the executor of the estate negotiates a transaction with a buyer or at public sale in which the property is sold at public auction.

In these cases one question a title company will ask is if full authority to administer the estate has been granted under the Independent Administration of Estates Act (Probate Code Section 10400 and following), or not. Depending on the answer to that question the title company will request various documentation and information.

Without such documentation, by law the property cannot be transferred.

SAMPLE QUESTIONS A TITLE COMPANY MAY ASK AND HOW IT MIGHT LOOK IN A PRELIMINARY TITLE REPORT.

With respect to the decedent mentioned in the vesting:

Testate: Documentation a title company may ask for with a will.

- (A) If full authority to administer the estate has been granted under the Independent Administration of Estates Act (Probate Code Section 10400 and following):
- I) A copy of Letters of Administration or Letters Testamentary reflecting such authority, certified by the clerk of the court.
 - II) A copy of a Notice of Proposed Action meeting the requirements of Probate Code Section 10585, together with satisfactory evidence that such notice was mailed or personally delivered as required by Probate Code Section 10586.
 - III) Satisfactory evidence that no objection to the Advice of Proposed Action was received by the personal representative prior to the closing of the contemplated transaction. A letter from the attorney for the estate setting forth the date of mailing of the Advice, that the Advice was mailed to all parties entitled to notice thereof, and stating whether or not he or she has any knowledge or any objection to the transaction to which the Advice is directed.
 - IV) Satisfactory evidence that any state or federal estate tax arising by reason of the death of the decedent has been paid.
 - V) Other requirements which the company may impose following its review of the material required herein and other information which the company may require.

Intestate: Documentation a title company may ask for without a will.

- (B) If full authority to administer the estate has not been granted under the Independent Administration of Estates Act (Probate Code Section 10400 and following):
- I) That a certified copy of a final, unappealable order confirming the contemplated transaction be recorded in the public records.
 - II) Satisfactory evidence that any state or federal estate tax arising by reason of the death of the decedent has been paid.
 - III) Other requirements which the company may impose following its review of the material required herein and other information which the company may require.

Probate procedures can be a bit daunting for the average person. Title companies will work with you and your probate attorney to make sure your transaction runs smoothly and closes on time.

When buying, selling, or refinancing your home, request Equity Title to insure that you receive the attention to detail you deserve and the comprehensive protection you need.



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