

FACT PATTERN

Step Mom visits your office. Her husband, Poor Planner died on April 1, 2024. She has tried to get some money from the brokerage account to pay bills, but they are telling her she needs a letter from an attorney.

Poor Planner was 86 when he died. He had been diagnosed with cancer about a year ago. He was going to have a will done, but he did not get around to it before he died. Step Mom is not worried because he told her several times, she gets everything when he dies. He has two adult children. Adult Son and Adult Daughter. However, he told her he does not want them to have anything. They did not have a good relationship. They never saw him on holiday and didn't even visit him in the hospital. They took their mom's side in the divorce.

Step Mom and Poor Planner have been married for 20 years. They have the following assets:

\$1,000,000.00 Real Property – 1234 Main Street, Martinez, CA 94553 – title in Poor Planner's name only. No mortgage. He got this in the divorce from his first wife.

\$400,000 - IRA Account – no beneficiary listed

\$20,000.00 – Insurance Policy for burial – Beneficiary – Step Mom

\$25,000.00 Joint checking account

\$100,000.00 Savings Account Poor Planners name only

There are medical bills from Kaiser

American Express

Home Depot

PROBATE 101

A HOW TO GUIDE

ACUÑA ❖ REGLI

Estate Planning ❖ Administration ❖ Conservatorship ❖ Inheritance Litigation

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About the Presenters

Tracy S. Regli is a founding partner of ACUÑA ❖ REGLI. Tracy focuses her practice on probate and trust administration, fiduciary representation, conservatorship, and estate litigation. She has assisted many professional fiduciaries, and family members with administering large and small estates throughout California. Tracy is an active member of the Alameda and Contra Costa Bar associations, the Professional Fiduciary Association of California (PFAC). She serves as a board member on the Contra Costa County Bar Association Estate Planning and Probate Section and is court-appointed counsel for proposed conservatees in Contra Costa County.

WHEN IS A PROBATE REQUIRED?

If a decedent dies domiciled in California and their real and personal property exceed \$184,500.

EXCLUSIONS FROM PROBATE

1. Any property held in joint tenancy
2. Property that has a beneficiary or pay on death transferee
3. Vehicles
4. Vessels
5. Manufactured home, mobile home (registered under Part 2 of Health and Safety Code)

IMPORTANT DATES

- ❖ 15 days –
 - ❖ Notice period for probate
 - ❖ Publishing
 - ❖ NOPA

IMPORTANT DATES

❖ 30 days –

❖ Lodge will PC§8200

❖ Failure to do so may waive their rights to
serve

❖ Creditor can deem claim rejected

IMPORTANT DATES

❖ 90 days –

❖ Creditors to act on rejected claim

IMPORTANT DATES

- ❖ 120 days –
 - ❖ Notice to Creditors PC§8800
 - ❖ I & A PC§9051
 - ❖ Spousal Election PC§13502

IMPORTANT DATES

❖ 1 year

❖ SOL for creditors to file claim

❖ Petition for Final Distribution or Status Report PC§ 12200

NON-PROBATE TRANSFERS

- ❖ Pay on Death Accounts
- ❖ Joint Tenancy
- ❖ Spousal Property Petitions
- ❖ Small Estate Affidavits

INTESTACY

❖ A Person who dies without a will

INTESTACY

- ❖ Who can serve as Administrator
 - ❖ Surviving Spouse
 - ❖ Children
 - ❖ Grandchildren
 - ❖ Other Issue
 - ❖ Parents
 - ❖ Brothers and Sisters
 - ❖ Issue of Brothers and Sisters

INTESTACY

- ❖ Who can serve as Administrator
 - ❖ Grandparents
 - ❖ Issue of Grandparents
 - ❖ Children of predeceased spouse or RDP
 - ❖ Other issue of predeceased spouse or RDP
 - ❖ Other next of kin

INTESTACY

- ❖ Who Inherits
 - ❖ Community property
 - ❖ Surviving spouse

INTESTACY

❖ Who Inherits

❖ Separate property

- ❖ Surviving spouse IF no children, parent, brother, sister or issue of deceased brother or sister
- ❖ $\frac{1}{2}$ to surviving spouse when 1 child, parent, brother, sister or issue of deceased sibling
- ❖ $\frac{1}{3}$ surviving spouse when 2 or more children

PROBATE INTAKE

1. Date of Death
2. Domicile at time of death
3. Will or no will
4. Married
5. Children – adults or minors
6. Other relatives if not married and no children
7. Property – Real and Personal

CASE STUDY

Attorney Elle Woods is meeting with client Step Mom regarding the death of her husband, Poor Planner. He died on April 1, 2024. He was 86 years old. He died of cancer. He was diagnosed last year, but never got around to making will.

CASE STUDY

It is not a problem that he did not have a will because she knows as his wife she gets everything. He told her several times that he did not want his miserable brats of children to get anything. They took their mom's side in the divorce and hardly visited him in the 20 years they were married.

CASE STUDY

They have a house he got in the divorce in Martinez. The address is 1234 Main Street, Martinez. It is paid off. They have a joint checking which has about \$25,000. He also has an IRA account with \$1,500,000 that does not have a beneficiary. There is savings account with \$100,000 that he inherited from his mother.

INITIATING A PROBATE

❖ VENUE

- ❖ PC §7051- If the decedent was domiciled in the state at the time of death, the proper county for proceedings concerning administration of decedent's estate is the county in which the decedent was domiciled regardless of where the decedent died

INITIATING A PROBATE

❖ FORMS

- ❖ DE-111 – Petition for Probate
- ❖ DE-147 – Duties and Liabilities
- ❖ DE -150 – Letters
- ❖ DE-140 – Order
- ❖ DE-121 – Notice of Petition to Administer Estate
- ❖ DE – 142 – Waiver of Bond – (optional)

INITIATING A PROBATE

❖ NOTICE – 15 days

- ❖ All persons named in the will
- ❖ All heirs at law
- ❖ All persons named in the Trust
- ❖ Publish in local newspaper

INITIATING A PROBATE

❖ HEARING

- ❖ Check tentative ruling
- ❖ Attend hearing
- ❖ Obtain certified letters

EXECUTOR'S DUTIES AND POWERS

An Executor is charged with the management and control of the estate. They must use ordinary care and diligence. They have the duty to seek court approval for certain tasks. They also have the duty to notify the beneficiaries or heirs of certain actions. The Executor shall take all steps reasonably necessary for the management, protection and preservation of the estate. The Executor shall keep all cash in his or her possession invested in interest-bearing accounts or other investments authorized by law except that necessary for the orderly administration of the estate.

EXECUTOR'S DUTIES AND POWERS

- ❖ If an Executor breaches their duty, they may be liable for:
 - ❖ Loss or depreciation in value
 - ❖ Profits made by personal representative
 - ❖ Any profits that would have accrued

IAEA

❖ Independent Administration of Estate Act

❖ Acts without Court Order

- ❖ Invest money

- ❖ Operate decedents business for up to 6 months

- ❖ Commence and defend litigation

- ❖ Acts without Court Order
 - ❖ Allow, pay, reject or contest any claim (Except Administrator or Attorney)
 - ❖ Compromise or settle any claim
 - ❖ Release uncollectible claims
 - ❖ Pay taxes

IAEA

- ❖ Acts after providing notice
 - ❖ Sale of real property
 - ❖ Dispose of or abandon personal property
 - ❖ Borrow or encumber property of estate
 - ❖ Preliminary distributions

IAEA

- ❖ Requires Court Approval
 - ❖ Investment in Securities
 - ❖ Continuation of business after 6 months
 - ❖ Borrow money
 - ❖ Settle claim against personal representative of their attorney
 - ❖ Pursue wrongful death claim

- ❖ Requires Court Approval
 - ❖ Compensation for PR or their attorney
 - ❖ Settlement of accounts
 - ❖ Sale of the property to the PR or their attorney

ADMINISTRATION OF THE ESTATE

- ❖ Obtain EIN
- ❖ Marshall assets and get date of death statements
- ❖ Notice to Creditors
 - ❖ FTB
 - ❖ Allowance of Rejection of Claims

ADMINISTRATION OF THE ESTATE

- ❖ Inventory and Appraisal
 - ❖ Attachment 1
 - ❖ Attachment 2
 - ❖ Notice of Death of Real Property Owner
 - ❖ Increasing bond- CRC – 7.204
 - ❖ Letter to Probate Referee

ADMINISTRATION OF THE ESTATE

- ❖ Sale of Real Property
 - ❖ Notice of Proposed Action
 - ❖ Report and Confirmation of Sale
 - ❖ 90% of appraised value
 - ❖ Reappraisal for Sale

ADMINISTRATION OF THE ESTATE

❖ Petition for Final Distribution

- ❖ Accounting

- ❖ Waiver of Account

- ❖ Reserve

 - ❖ Income Taxes

 - ❖ Property Taxes

- ❖ File Receipts

ADMINISTRATION OF THE ESTATE

❖ Final Discharge

- ❖ Ex-parte petition for final discharge and order

Questions?
