

## Probate and Estate Sales

Personal representatives involved in Probate and Estate proceedings need expert advice to make sure that all the legal requirements of the Probate Code are met and therefore should rely on the advice of a qualified probate attorney.

In addition, the personal representative will need an expert in the field of probate real estate – someone who can see that the top price with the most benefit to the estate is received, and that the sale is handled efficiently and quickly.

John Spiller is a successful and experienced probate realtor in the San Francisco Bay Area. John understands the stress that many families undergo during a probate sale. He not only attends to the details of the transaction, but also works closely with the client to answer their questions and make sure they are emotionally, financially and intellectually committed—that they feel well-informed and confident that they're making a good decision.

John offers a full range of services including obtaining copies of necessary documents, such as deeds and title reports. He will also coordinate inspections and obtain bids from recommended service providers including:

- Estate Liquidators;
- Cleaners;
- Haulers;
- Contractors;
- And many other support services

Contact John at (650) 483-8815 for a free market evaluation. He will help you establish value and provide you with a detailed sales action plan and a complete seller's net proceeds sheet.

### John Spiller

Your Probate Real Estate Specialist

1377 El Camino Real, Menlo Park, CA 94025

Cell (650) 483-8815

[jspiller@cbtnorcal.com](mailto:jspiller@cbtnorcal.com)

[www.jspiller.com](http://www.jspiller.com)



# Understanding Probate and Estate Sales

## What is a Probate Sale?

Estate administration provides for the sale of real estate and personal property owned by a person who is:

- Incapable of managing either his or her own personal needs for food, clothing and medical care; or his or her own financial affairs (A Conservatorship);
- A child under the age of 18 (A Guardianship);
- Or deceased (A Trustee Sale or Probate Sale).

The majority of these sales are referred to as "Probate" and are generally supervised by the probate court within the jurisdiction of the county where the real estate is located.

## What is a Personal Representative?

A personal representative is the person or entity who administers the property through a sale. A personal representative is either:

- An executor (or executrix) named in a will to administer the estate;
- An administrator (administratrix) appointed by the court when there is no will, when the will does not name an executor or when the named executor is unwilling to serve.
- A conservator, such as a family member or professional fiduciary, appointed by the court to care for a person or their estate;
- A guardian for a minor under 18;
- Or a trustee, generally named in a will.

The court generally appoints each of these representatives.

## Duties of the Personal Representative:

The personal representative collects the assets and pays the debts in such a way that that the conservatee or minor receives maximum benefit, or the heirs of the deceased (beneficiaries) receive the maximum inheritance.

## Reasons for Selling Property:

There are several reasons why a personal representative may find it necessary to sell real property in an estate:

- To pay for debts, bequests, family allowance, expenses of administration, taxes or for the care of a conservatee.
- The Will directs the property to be sold.
- The property is a financial drain on the estate.
- Character of the property (its not easily distributed to more than one person)
- Dissension among heirs.
- Condition of the real estate market.

### The Two Types of Probate Sales:

There are two types of probate sales that personal representatives should be familiar with:

1. Sales requiring Court Confirmation – Certain types of sales, including guardianships, conservatorships and trusts, require appraisal and approval by the probate court. The goal of the court proceeding is to protect the interests of all beneficiaries. These sales take longer than standard sales due to the additional court process.

The representative of the estate, with court permission, may grant an exclusive right to sell the property for a period not to exceed 90 days. Acceptance of an offer by the estate representative is subject to probate court confirmation.

An offer to purchase must be for a price which is not less than 90 percent of the property's appraised value. When an offer is accepted, subject to court confirmation, the representative will petition the court to confirm the sale. When the court has set the matter for hearing, any interested person may bid at the time of the hearing.

To open the bidding, there must be an increase over the original bid of at least five percent of the original bid plus \$500. Once the bidding has been opened, the court in its discretion may permit the bidding to continue on lesser raises until it declares a bid to be the highest and best obtainable. The sale then will be confirmed by the court to the maker of that bid. Ordinarily after court confirmation of a sale, normal escrow procedures are used to consummate the transaction on the terms and conditions approved by the court.

2. Sales without Court Confirmation – If the personal representative has been granted full administrative powers under the Independent Administration of Estates Act (IAEA), court confirmation may not be required. These sales are closer to the timing of a regular real estate transaction. The executor-administrator, however, is exempt from disclosure, unlike an ordinary sale. All heirs must be notified in writing of the sale, and would have 15 days to object to the sale. If this occurs, the sale would most likely need to go to court for confirmation.

### **Important Probate Websites**

San Francisco County Probate Court:  
[www.sfsuperiorcourt.org](http://www.sfsuperiorcourt.org)

Santa Clara County Probate Court:  
[www.scscourt.org](http://www.scscourt.org)

Alameda County Probate Court:  
[www.acgov.org](http://www.acgov.org)

San Mateo County:  
[www.co.sanmateo.ca.us](http://www.co.sanmateo.ca.us)

Other Important Court Information:  
CA Bar Association (Legal Info, Attorney Records) –<http://www.calbar.ca.gov>  
CA Rules of the Court - [www.courtinfo.ca.gov](http://www.courtinfo.ca.gov)  
Court Forms - [www.courtinfo.ca.gov](http://www.courtinfo.ca.gov) Local court forms

If you want to learn more about probate sales or would like a list of important probate websites call John at (650) 483-8815 or email [jspiller@cbnorcal.com](mailto:jspiller@cbnorcal.com)