LOSS OF LIFE

This resource provides an overview of some legal issues individuals may face after a disaster. This material was drafted in January 2025 and we cannot guarantee that all information is current. This resource will not answer all of your questions. It is designed to set out some of the issues you may have to consider, to help you understand the basics about each issue, and to point you in the right direction for help. Much of the information is general, and you may need to contact legal aid organizations or federal, state, city, or county officials to obtain more specific information and advice. This resource was prepared by various law firms, legal aid organizations, and other nonprofit organizations as a free resource. Although the authors hope that it will be helpful by providing background material, we cannot warrant that it is accurate or complete, particularly since circumstances may change. It is not intended to constitute legal advice and should not be relied on as legal advice. Readers should seek tailored advice from their own legal counsel. If you cannot afford to hire a lawyer, you can contact (888) 382- 3406 for referral to a nonprofit legal aid organization.

GENERAL SUPPORT AND RESOURCES

Suffering the loss of a loved one is one of the most difficult experiences we face, and one only made more difficult when the loss occurs in the tragic and unexpected circumstances of a disaster. This resource contains general information to help those coping with the loss of a friend or a family member.

I'm suffering emotionally due to the loss of loved ones in the disaster. Is there anywhere I can turn to for help?

It is not unusual to have symptoms of anxiety, distress, or depression after a major disaster, especially when you have lost friends or family. If you need someone to talk to, you can call the Disaster Distress Helpline at (800) 985-5990. This national hotline is always available and is dedicated to providing immediate crisis counseling for people who are experiencing emotional distress related to any disaster. The hotline is toll-free and multilingual. If you would rather text, you can also connect to a trained crisis counselor by texting TalkWithUs to 66746. For assistance in Spanish, call (800) 985-5990 and press 2, or text Hablanos to 66746. All services are confidential.

A close family member passed away, but I have no financial resources to cover the costs of their burial. Are there funds available to assist me?

There may be. Under certain circumstances, the Federal Emergency Management Agency (FEMA) Individual and Households Program (IHP) may provide assistance to help with funeral and related costs for an immediate family member whose death is attributed to a major disaster. The FEMA website contains details regarding covered costs and eligibility criteria, *https://www.disasterassistance.gov/get-assistance/forms-of-assistance/4473*. California's State Supplemental Grant Program (SSGP) may supplement eligible costs not already covered by FEMA IHP, including funeral or burial expenses. FEMA automatically transmits information to the California SSGP if an individual exhausts their FEMA IHP assistance. Therefore, an individual must complete the FEMA IHP application to be eligible for California SSGP funds.

If your deceased family member was a veteran, or an immediate family member of a veteran, certain burial benefits may be available. Benefits are provided by the U.S. Department of Veterans Affairs (VA) and depend on factors related to the veteran's service record. The following website contains general information about these benefits and provides links where you can find the relevant criteria, *https://www.cem.va.gov/cem/burial_benefits/*.

Finally, you or another family member may be eligible for a one-time payment of $255 from the Social Security Administration. The response to the next question contains additional information regarding potential Social Security benefits.

My spouse is deceased, and we relied on their social security payments for living expenses. What do I do now?

You should let the Social Security Administration know as soon as possible when a family member dies. Under certain circumstances, a surviving family member may be eligible to collect Social Security benefits that were earned by the deceased. For more information, you can contact the Social Security Administration at *https://www.ssa.gov/* or by calling (800) 772-1213 (TTY (800) 325-0778). The Social Security Administration answers calls from 8:00 a.m. – 5:30 p.m. and has automated information available 24 hours a day, seven days a week. The Social Security Administration's website also contains additional information on this topic, *https://www.ssa.gov/benefits/survivors/*.

PROPERTY TRANSFERS; WILLS AND PROBATE

This section provides a general description *based on California law*, but there may be some variations if the rules of another state apply to your situation. The rules regarding property transfers at death vary between states. In general, the

relevant rules will be those of the state in which the person who died (the decedent) usually resided at the time of death, even if they died in another state. But, in some cases, the rules of other states where the decedent owned assets may also be relevant, particularly when real estate is involved. In addition, special rules not discussed below may apply in certain circumstances, such as where spouses pass away at nearly the same time or where a missing person is presumed dead. The following is an outline of some provisions of California law and is not legal advice for any particular matter or facts. Accordingly, it is advisable to consult an attorney or seek assistance from a legal aid organization.

Who will get ownership of my deceased loved one's assets?

There are three main ways that property can pass from someone who died to their beneficiaries:

1. Transfer on Death

Certain types of assets will pass automatically by contract or law regardless of the existence or content of a will.

- Jointly owned (joint tenancy) assets pass on the death of one of the owners to the surviving joint owner(s). A common example are homes titled as "husband and wife with right of survivorship" or explicitly referencing "joint tenants" on the deed filed with the county recorder's office. **There are very specific requirements to form a joint tenancy, especially when real estate is involved. Any changes to title held in joint tenancy made during the life of the joint tenants could end up removing the other owner's survivorship rights under joint tenancy laws, possibly requiring probate after death.**
- Certain other assets, such as life insurance proceeds and retirement plan benefits, pass by contract to beneficiaries designated by the owner. This can help avoid probate proceedings, as California law does not consider such assets to be part of the probate estate. In some cases, these assets may even be protected from claims by the decedent's creditors.
  Assets held in a revocable living trust are disposed of in accordance with the trust instrument following the death of the person who established the trust. The creator of the trust is typically called the "settlor" or the "trustor," and in most cases, they nominate themselves as the initial "trustee," who must manage the trust for the benefit of the beneficiaries (again, usually also the creator of the trust). After the creator's death, responsibility and control of the trust usually passes to a named "successor trustee" who must carry out the final terms of the trust. If the deceased had a trust, then you should review the terms of the trust and consult legal counsel as needed. Although revocable trusts are designed to avoid probate court, this is not always the case, and it is important to promptly meet with an attorney, as there are immediate duties imposed on a successor trustee that require quick action (for example, notice of death under Probate Code § 16061.7). Certain state agencies may also need to be notified of the death.

2. Simplified Procedures to Transfer an Estate

Even if your situation has few non-probate transfers as described above, you may not need to go to probate court to obtain title to property belonging to a dead person. If you have the legal right to inherit personal property (such as money in a bank account or stocks) *and* the estate is worth $184,500 or less, you might NOT have to go to court because there is a simplified process you can use to transfer the property to your name.

If the total value of these assets is $184,500 or less and 40 days have passed since the death, you can transfer personal property by writing an affidavit and following these five steps:

1. Fill out the Affidavit.
2. Attach (to the affidavit):
   a. A certified copy of the death certificate of the person who died.
   b. Proof that the person who died owned the property (like a bank passbook, storage receipt, stock certificate).
   c. Proof of your identity (like a driver's license or passport).
   d. An Inventory and Appraisal form of all real property owned by the decedent in California. You will need to get this form signed by a probate referee and the form is available at: *https://www.courts.ca.gov/documents/de160.pdf*
      i. If there is no real property, then you do not need this form.
3. Have the affidavit notarized. Note: this is not a legal requirement, but it is often requested by financial institutions.
4. If there are other people set to inherit the property, they MUST also sign the affidavit to demonstrate all beneficiaries agree to the distribution.
5. To have the property transferred to you, give the affidavit to the person, company, or bank currently holding the property. Note: make sure the case is not already in probate court. If it is, you cannot use the affidavit process unless the personal representative of the estate agrees in writing to let you do so.

The affidavit is a form that you can get from most banks and lawyers. A sample you may be able to use to guide you is at: *https://www.courts.ca.gov/documents/Affidavit_personal_property.pdf*

- For a complete list of assets that count against the $184,500 limit, see California Probate Code section 13050: *https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PROB&sectionNum=13050*
- The value of the property is based on what it was worth on the date of death, not what the property is worth now.
- This process CANNOT be used for real property, like a house or land. Talk to a lawyer for help to determine whether you may be able to use another simplified procedure to transfer real property. While there is a simplified affidavit procedure for real property, it only applies to property of very small value (e.g. unimproved land), so a formal probate proceeding is often required if the decedent dies while holding title to a house.
- If there are any known unsecured creditors of the decedent, this process should not be used unless all the creditor's claims have been settled or otherwise discharged. Many affidavit forms require making a statement under penalty of perjury that the estate has no unsecured creditors. Creditors have broad authority and power under California law to go after assets even when they have been distributed, which could open yourself or others up to liability.
- For more information about the simple probate process, visit: *https://www.courts.ca.gov/10440.htm*.

*The $184,500 threshold applies to decedents who died in California on or after April 1, 2022. California law requires this amount to be adjusted every three years based on a set formula, with April 1, 2025 to be the next adjustment date. Therefore, it is important to check the State Court's self-help website (or consult with an attorney) to confirm the current applicable threshold amount.

3. Formal Probate

If the first two categories do not apply, then the assets owned by the person who died at the time of their death will likely make up that person's "estate" and will pass to that person's successors through a formal probate process. Generally, the succession process depends on whether the decedent left a will. A person who died without a will is said to have died "intestate."

- If a person dies with a valid will, their estate will be distributed according to the will, subject to any overriding state laws, such as community property (California is a community property state) and any relevant statutes designed to preserve heirship for omitted children or spouses.
- If a person died intestate (without a will), the decedent's estate will be distributed according to the intestacy laws of the state where the decedent resided, or possibly the state where the assets are located if they are located in another state (which most commonly happens with real estate). Generally, an intestate decedent's spouse and children, parents, and then siblings will receive the assets in order, but every state has different rules governing intestate succession.

To start a formal probate, you must file a Petition for Probate, form DE-111, available at: *https://www.courts.ca.gov/documents/de111.pdf*

- Petition for Probate of Will and for Letters Testamentary (if there was a will)
- Petition for Letters of Administration (if there was not a will/intestate)

Virtually all California counties use a "probate notes" system. Under this system, a staff attorney for the court reviews the petition and identifies potential issues with it. These "notes" are then published to the court's website anywhere from several weeks to days before the hearing. Most counties require the notes to be "cleared" by filing a written supplement a certain amount of time before the hearing itself (for example, Los Angeles County requires supplements to be filed no later than 3 court days before the hearing). If probate notes aren't cleared in time before the hearing, judges will often continue the hearing to a later date. Depending on the county's probate backlog, failure to regularly review and clear probate notes could delay estate proceedings by weeks or even months. Therefore, it is important to closely review all local and state court rules, and to consult with an attorney when needed. If an attorney is hired to represent the estate, their ordinary fees are fixed by law as a percentage of the estate, and they may be entitled to "extraordinary" compensation in special circumstances, although a court must review and approve all fees.

To learn more about starting a formal probate, visit: *https://www.courts.ca.gov/42629.htm*.

My loved one left a will. What do I need to do?

A will usually names an "executor," that is, the person responsible for administering the estate. If no executor is named (or no executor is willing or able to serve), the probate court will appoint someone to administer the estate. Regardless of whether the person in charge is an "executor" or "administrator," under California probate law, they are commonly referred to as a "personal representative." The personal representative's job is to collect the decedent's assets, pay the decedent's debts (such as taxes, bills, loans, and expenses of administering the estate), and distribute any remaining assets according to the provisions of the will and relevant state statutes.

The personal representative typically files a petition for probate with the appropriate state court, along with the original will and death certificate, and obtains letters testamentary (documents issued by the probate court to authorize the executor to take control of the estate). The petition for probate must contain pertinent information about the decedent and their family, debts, and assets. This filing usually must be done in the court of the county where the decedent resided (even if they died in a different county), and it must be filed promptly (generally within 30 days) after the personal representative becomes aware of the death. Before the probate can be formally opened, the personal representative must also publish notice of the death and estate proceedings in a local newspaper in the city where the decedent resided at the time of death. The petition required for California courts is at *http://www.courts.ca.gov/documents/de111.pdf*. Because a petition for probate is a proceeding involving the court system, the executor typically engages a lawyer or contacts a legal aid organization to assist with the filing of the petition and the administration of the decedent's estate.

In California, in addition to an executor, any person who was given custody of the decedent's original will while the decedent was living is technically required, within 30 days of becoming aware of the decedent's death, to deliver the will to the court of the county in which the decedent resided and mail a copy of the will to the named executor (or to a named beneficiary if the executor's whereabouts are not known), unless a petition for probate has already been filed as described above. Other states may impose a similar requirement.

Once the letters testamentary have been granted by the court, the personal representative may pay the decedent's debts and final expenses. After all debts and expenses have been paid, the personal representative will divide and distribute the remaining assets to the beneficiaries of the decedent's estate. Before the court discharges the personal representative, they usually require a formal accounting to be filed with the court for approval, although it is possible to avoid this if all the beneficiaries provide written consent.

Self-help resources regarding probate court in California, include: "Steps to Take if the Case Belongs in Probate Court," visit *http://www.courts.ca.gov/8865.htm*, and websites for the Superior Court in the relevant county.

What if I know that my loved one left a will, but I cannot find it?

There are several places to check for a decedent's will. First, if you know the lawyer who prepared the will, you can ask the lawyer whether they kept the original, or at least a copy. You can also check with the local probate court in case the will was filed with the local court. Another place to check is the County Recorder's office, because some people record their wills in the public record.

In certain cases, a copy of a will can be probated if the original cannot be found. If the will is lost, you may be able to prove the contents of the will in probate court depending on the requirements of state law regarding lost wills.

My loved one did not leave a will or no will can be found. What do I need to do?

If there is no will or no will can be found, an administrator of the decedent's estate has to be appointed by the probate court to pay the decedent's debts and distribute the remaining assets to the beneficiaries based on the rules of intestate succession. The appointed administrator will generally be selected in the following order (assuming the potential administrator is competent and is at least 18 years old):

- the decedent's spouse or domestic partner;
- one or more of the decedent's children;
- one or more of the decedent's grandchildren;
- one or more of the decedent's other issue (descendants);
- either or both of the decedent's parents;
- one or more of the decedent's siblings;
- one or more of the issue of the decedent's siblings;
- one or more of the decedent's grandparents; or
- one or more of the issue of the decedent's grandparents.

The California rules list a number of other potential administrators in the event none of the above persons are appointed. If necessary, the administrator may be an heir of the estate who is not related to the decedent, or may be one or more creditors of the estate.

The proposed administrator must file a petition for letters of administration in the appropriate state court along with a death certificate. Similar to the petition for probate, this petition lists pertinent information about the decedent and their family and assets. Once the probate court grants the letters of administration, the administrator may begin paying the decedent's debts and making the proper distributions to the beneficiaries of the estate in accordance with the laws of intestacy.

GUARDIANSHIPS OF MINORS AND INCOMPETENT ADULTS

I know a child who lost their only parent or both parents in the disaster. Under the parent's will, I am supposed to become the caretaker of the child. What steps do I need to take to become the child's legal guardian?

A guardian is a non-parent to whom the court gives authority to take responsibility for the care of a child. If the parent's will specified you as the child's guardian, you must complete guardianship proceedings in the appropriate California county. For more information, see the Guardianship Pamphlet for the Guardianships of Children in the Probate Court at *http://www.courts.ca.gov/documents/gc205.pdf*. The petition for appointment of a guardian is available at *http://www.courts.ca.gov/documents/gc210p.pdf* and *http://www.courts.ca.gov/documents/gc210.pdf*. The other documents required when filing a guardianship are usually listed on the court's website under the Probate Division, including any local court forms that may be required. The proper venue for beginning a guardianship proceeding is either the county where the child lives, or another county if such county is in the best interests of the child. The parent's will must be admitted to probate. California courts have Self-Help Centers to provide legal information and assistance on issues, such as guardianships, to people who do not have attorneys. You can find the Self-Help Center in your county here: *https://www.courts.ca.gov/selfhelp-selfhelpcenters.htm*. Several legal aid organizations also provide free advice on guardianships to low-income individuals.

The deceased parent did not specify another person to care for their child. What do I do if I want to become the child's legal guardian?

If you are currently taking care of a child and have the ability and desire to take responsibility for the child, you can petition the court to be appointed as the child's guardian. A guardianship appointment may be permanent or temporary and generally expires when the child reaches the age of 18.

A petition for guardianship is filed in the state court in the county where the child resides, or another county if such county is in the best interests of the child. The court clerk will provide the necessary legal forms. If the court appoints you as guardian, you will receive letters of guardianship which you will need to enroll the child in school, for hospital emergencies, and similar matters. Letters of guardianship are only valid in the state where they are issued.

Because guardianship involves a court assignment of responsibilities, you should consult an attorney or legal aid organization before proceeding to petition for it. Other potential alternatives to guardianship, not covered here, are adoptions and custody arrangements. In California, a caregiver can also complete a Caregiver's Authorization Affidavit to enroll a child in school and authorize certain types of medical care without a guardianship. A fillable Caregiver's Authorization Affidavit is available at *http://www.courts.ca.gov/documents/caregiver.pdf*.

What if the child of deceased parents inherits a sum of money or receives funds from an organization?

Funds received by a child through inheritance or award will be administered by a guardian of the child's estate. The child's assets or income must be invested as directed by the court for the child's benefit. The court will require the guardian to secure the assets in a way that ensures compliance with rules of the court and laws regarding the investment of a child's assets. If there are assets, the best scenario may be for the child's guardian to be appointed as the guardian of the child's estate as well, although in some cases a child may have different guardians for their person and their estate. Usually, the funds are turned over to the child on the child's 18th birthday, at which time the guardianship typically ends. Courts might require a guardian of an estate to deposit the funds into a "blocked" account at an institution with FDIC insurance or IntraFi Network Deposits. Or, courts might require a guardian to post bond in an amount that reflects the total value of the estate (plus reasonable cost for recovery). The guardian of the estate must be prepared to fully account for every last cent of the child's assets. If a non-guardian has an existing legal responsibility to support the child, that person cannot rely on the guardianship funds to make up the difference (for example: a child's biological parent retains custody and care over the child, but they nominate another person to manage the child's inheritance). For more information, see the Judicial Branch of California's resource page on guardianship, which is available at *http://www.courts.ca.gov/1212.htm*.

What if I am responsible for the care of a child who has received funds and I need to spend money on the child's behalf?

With the permission of the court, as guardian of the child's property, you may pay certain expenses on behalf of the child using funds held by you on the child's behalf. The court will decide each request based on the best interests of the child. You must petition the court for approval of each expense in advance, or, if the court deems it appropriate, you may be able to obtain a monthly stipend for regular expenses. While courts approve spending on a case-by-case basis, typically approved expenses include education, medical, and other support costs. This approval process is most frequently done in relation to a blocked account, for which there are specific mandatory court forms to use. See *https://www.courts.ca.gov/documents/mc357.pdf* for the Petition to Withdraw Funds from Blocked Account, and *https://www.courts.ca.gov/documents/mc358.pdf* for the corresponding Order.

What if I now have to take care of an adult who is incompetent? Is a guardianship appropriate in that circumstance?

A similar protective proceeding—known as a conservatorship—may be appropriate for an incompetent adult or an adult who is unable to care for their personal needs or property. You can file a petition to become a conservator of an adult and their property in the court of the county where the incompetent adult resides. Again, because this involves judicial proceedings, you should consult with an attorney or legal aid organization before proceeding. Starting a conservatorship process requires preparing a large set of filings with substantial evidence upfront, including a specific court-mandated capacity declaration form completed by a licensed physician. Recent statewide reforms have led courts to apply far more scrutiny to conservatorship matters than before. If the adult already has a valid Durable Power of Attorney in place, a conservatorship of the estate might not be necessary. If the adult already has a valid Advance Healthcare Directive in place, a conservatorship of the person might not be necessary. In the absence of one (or both) of these powers of attorney, a conservatorship of the person and/or estate may be warranted, especially if there is no less-restrictive remedy available.

TAXES FOR MISSING OR DECEASED FAMILY MEMBERS

Should federal income tax returns be filed on behalf of my missing relatives?

If your missing relative has not been officially declared dead, you should consult a professional tax advisor about filing their returns. If a death certificate has not been issued, filing regular tax returns may be required on the missing person's behalf. You can also call the IRS for assistance: (800) 829-1040.

Should federal and California income tax returns be filed on behalf of my deceased relatives? If so, when?

Final returns (IRS Form 1040 and FTB Form 540) should be filed for the year of death and for any prior years for which required returns were not filed before death. If not filing a joint return, a final federal and California income tax return should be filed by the court-appointed executor, the "personal representative," or another administrator of the estate of the decedent, appointed by the court. The word "**DECEASED**," the name of the deceased, and the date of death should be written across the top of the return. If it is a joint return, the name and address of the decedent and the surviving spouse should be written in the name and address space. If it is not a joint return, the name of the decedent should be written in the name space and the name and address of the estate administrator or another person filing the return should be written in the remaining space. Generally, the final income tax return for a decedent who was a calendar-year taxpayer is due on April 15 of the year following their death. Income tax returns may also be required on behalf of the estate of the decedent. It is advisable to consult an accountant, tax lawyer, or other tax advisor with regard to these issues.

Can I file a joint tax return with my missing or deceased spouse?

Yes, unless you remarry before the end of the year of your spouse's death. If filing a joint return with your missing or deceased spouse, you should indicate at the top of the return that you are doing so. Consult an accountant, tax lawyer, or other tax advisor for additional information.

Should a federal or California estate tax return be filed? If so, when and by whom?

Most relatively simple estates (*e.g.*, consisting of cash, publicly traded securities, small amounts of other easily valued assets, and no special deductions or elections or jointly held property) with a total value of approximately $13,990,000 or less and a date of death in 2025 do not require the filing of a federal estate tax return. (For this purpose, the value of lifetime taxable gifts made by a decedent during or after 1977 is treated as part of the estate.). This estate tax threshold is officially set to decrease at the end of 2025 to $5,000,000 per individual, but experts predict this decrease to be either postponed or cancelled by Congress in the coming years.

The determination of whether a federal estate tax return must be filed can nevertheless be complicated, and you should consult a professional tax advisor regarding the need for this return. In some cases, filing an estate tax return may be advisable, even if not required, in order to make certain favorable elections. In general, a federal estate tax return (Form 706) must be filed within nine months after the date of death in order to be timely. Extensions for filing can be sought, but any expected taxes due should be paid on time to avoid interest and penalty charges. Federal estate tax returns should generally be filed by the person administering the decedent's estate.

There is no requirement to file a California estate tax return for deceased individuals with a date of death in 2025.

Are life insurance proceeds taxable?

Generally, life insurance proceeds are not subject to California or federal income tax when paid to beneficiaries, but they may be subject to estate tax in certain instances. While uncommon for individuals and families without wealth in excess of $10 million, the taxation of life insurance proceeds is complex, and consulting a professional tax advisor regarding this matter is encouraged.