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Should I start a probate or use a Petition to Determine Succession to transfer a home?

As of April 2025, a primary residence appraised at under \$750,000 can be transferred to heirs after someone dies using a streamlined process in instead of a full probate. (California Assembly Bill 2016 (2024) https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202320240AB2016), amending California Probate Code Sections 13150-13152 (https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PROB&division=8.&title=&part=1.&chapter=4.&article=).) This process is called a "Petition to Determine Succession to Primary Residence."

Related: <u>Guide and Forms for Succession to Primary Residence (Under \$750,000)</u> (https://saclaw.org/resource_library/petition-to-determine-succession-to-real-property-under-750000/)

This petition can be used if:

- The home's market value is less than \$750,000
- The house was the person's main home

This petition is a simpler and quicker option than a traditional probate case. But you can file a traditional full probate if you choose. Some reasons might be:

- If you use this petition, **you become liable for the decedent's unsecured debt** (credit cards, medical debts, personal loans, court judgments), up to the amount of your share of the home's equity. The creditors can sue you for up to a year after the person's death (even if the statute of limitations would otherwise run out after the death).
 - In a full probate, this is handled with court supervision and has shorter deadlines for creditors to file a claim. The debts still need to be paid, even if that means the home must be sold, but you are not personally liable, and you will eventually receive your share free and clear. Clearing up these debts is one reason probate cases take so long.
- Any mortgage or other liens remain on the property, and the mortgage lender may treat the death as a
 transfer entitling it to full payment immediately. Transfers to successors-in-interest may not trigger this
 acceleration. In addition, in some circumstances successors-in-interest may be entitled to assume the
 existing loan (subject to credit check) or opt for foreclosure prevention tools such as short sales. It may
 be easier to convince a lender that you qualify for this treatment with the standard Letters of
 Administration from a probate case than with this new process.
- You may need to refinance or sell to prevent foreclosure. In addition to Letters of Administration, a probate case may give you more time to make arrangements for before the foreclosure.
- This informal proceeding may be more likely to be challenged by people who believe they are entitled to
 inherit, such as omitted heirs. You may end up needing to pay back the value of the home to someone
 who wins such a claim. A full probate case usually resolves these issues without the delay and expense
 of a new case.
- Because this is a new procedure and it is not overseen by a judge, title companies may be reluctant to

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issue insurance. If so, selling the property or getting a new loan may be very difficult.

A full probate can avoid or address these problems more effectively than this petition.