

Probate Listings

When is a probate necessary?

Generally, if the title holder has passed away it is very likely the property will have to go through probate to be sold *when*: 1) title was not held in joint tenancy 2) title was not held in a trust *or* 3) there was no Revocable Transfer on Death Deed recorded. This is true even if there is a will! The client must decide in consultation with their attorney whether the property must be probated.

Which C.A.R. forms are legally necessary when taking a probate listing? Here are the recommended C.A.R. forms:

- Your listing agreement of choice - such as the Residential Listing Agreement (Form RLA)
- Probate Listing Addendum and Advisory (Form PLA and the automatically attached Form PA)
- The Disclosure Regarding Real Estate Agency Relationships (Form AD)

The Fair Housing and Discrimination Advisory and the Possible Representation of More than One Buyer or Seller are prechecked forms and are attached automatically. There are also many other risk management forms that can be added. Check Forms Advisor.

Who signs the listing agreement?

The personal representative who has been appointed by the court, typically either as the executor or administrator. This will require issuance of letters testamentary. If a decedent's relative wants to sign a listing agreement, the agent should verify the relative's authority to do so.

On the listing agreement above the signature lines check the box for "Entity Sellers" and fill in the information below. The Representative Capacity Signature Disclosure form (RCSD) is no longer necessary.

What is the maximum listing period for an exclusive probate listing?

Exclusive probate listings are limited to an initial period of 90 days (See C.A.R.'s Probate Listing Addendum) but may be extended for additional 90-day periods. Such listings and extensions require court approval unless the personal representative has "full authority" under the Independent Administration of Estates Act. Shorter listing periods are okay, but the total listing period altogether cannot exceed 270 days.

What is the maximum commission permitted in a probate?

Local court rules vary, but this amount usually ranges around 5%-6%, absent special circumstances. This amount can be determined by contacting the clerk of the probate court of the county in which the estate is being administered. C.A.R.'s Probate Listing Addendum caps commissions based on limits imposed by the probate court or the California Probate Code. Judges retain discretion in probate court to set commissions as "reasonable."