

Case Studies

All of the below Case Studies are matters that our firm has personally handled. Names have been changed and identifying details omitted.

Case Study Number 1: Competing Petition for Probate & Petition for Removal/Surcharge:

Joyce was successfully named Administrator of her mother's estate without an attorney. The primary asset was her mother's home. Joyce wanted to fix up her mother's home to sell it and maximize the value of the estate. The renovations took several years, and the beneficiaries (Joyce's siblings) eventually got tired of waiting. So, one of the siblings hired an attorney and filed a competing Petition for Probate nominating himself as the Administrator, a Petition to "surcharge" (reduce) Joyce's share, and a Petition to remove Joyce as Administrator. At that point, Joyce decided to hire our firm to represent her. Through direct negotiation with the sibling's attorney, we were able to successfully resolve the matter in Joyce's favor. The sibling dropped his Petition and we finalized the sale of the property and filed a Petition for Final Distribution to authorize distribution of the estate. Joyce's share was not surcharged, and she was not removed as Administrator. Throughout the process, we maintained communication with all beneficiaries to ensure that they felt confident in our client's ability to close the matter and distribute the funds as soon as possible.

Case Study No. 2: Special Administration, Competing Petition for Probate & 2 Will Contests

Lindsay's sister Betty died with a Will that named Lindsay as Executor of her Will. The Will named Lindsay as the sole beneficiary to Betty's Estate. Betty and Lindsay had a brother named Bill. Bill had a son named George.

Lindsay filed a Petition for Probate in pro per (without and attorney) to have herself named as Executor of the Estate. At the hearing date for the Petition, Lindsay's brother Bill showed up with his attorney, and told the Judge they planned to file an Objection to the Petition. The Judge spoke with all parties in attendance and decided to continue the hearing. He advised Lindsay that she should hire an experienced probate litigation attorney. Lindsay took the Judge's advice, met with several attorneys, and hired our firm to represent her.

Shortly thereafter, Bill filed an Objection to Lindsay's Petition for Probate, a Competing Petition for Probate nominating himself as Administrator of the Estate, and a Will Contest alleging that the will submitted by Lindsay was invalid.

Meanwhile, Lindsay had been in the middle of fixing up Betty's home for sale. Mortgage and other expenses came due, and Lindsay had no access to Betty's funds or rights to sell the condo. To move forward, Lindsay needed the property authority – ie Letters of Administration issued by the Court.

We worked with the attorney for Bill (and thus Bill himself) to come to an agreement to have Lindsay appointed as *Special* Administrator of the Estate, so that Lindsay could manage the assets and proceed with the sale of the home while the litigation was resolved.

Around the same time, Bill's son George filed a second Will Contest. His contest supported intestate succession but opposed his father Bill as Administrator of the Estate. Bill seemingly had nothing to gain from his Will Contest as he did not stand to inherit either way, but nevertheless Lindsay had to deal with it.

We remained in communication with both parties and their respective attorneys, and continued to facilitate potential settlement talks, while moving forward with Discovery in preparation for trial. Before diving too deeply into the discovery and trial preparation process (and the high cost it entailed), we were able to successfully facilitate a settlement agreement with both Bill and his son George. In the end, our client was successful in two ways – she inherited the majority of her sister's estate, pursuant to her sister's wishes, and avoided having the estate – and her family – decimated by trial and attorney fees.

Case Study 3: Will Contest and Conservatorship for Foreign Beneficiary

In this matter, the attorney who filed the Will Contest asked for our client, a professional fiduciary, to be the administrator of the estate while the litigation was resolved. It is not uncommon for parties to bring in a neutral third party to administer a contested estate. Oftentimes, the Judge is more likely to appoint a neutral when there is a fight over who should administer an estate.

The case was a straightforward Will Contest. A man died with no family in the country. One party put forward a Will the man had done several years before his death, and another party put forward a Will that the man had done just prior to his death.

Because the second Will was done so close to the man's death, the first party alleged there was undue influence over the man and he could not have had the requisite capacity to draft a Will so close to his death, given the medical circumstances. Neither party were relations. The man's only relation was his elderly mother, who lacked capacity and was under a foreign equivalent of a Conservatorship.

We worked with both parties throughout the process to ensure that all the decedent's assets were accounted for, his home was sold for the best possible price, and neither party felt favored over the other. Additionally, we set up a Conservatorship for the foreign relative who lacked the capacity to consent to the proceedings. Eventually the parties were ordered to mediation. At mediation, it was our role to facilitate the negotiations and provide detailed information about the assets contained in the estate. The parties reached a settlement at that time, which included a percentage of the estate being set aside for the man's conserved mother who lived abroad. The settlement was made an Order of the Court, and we, along with our client the fiduciary, were able to finalize the estate and distribute the funds to the beneficiaries.

Case Study Number 4: Out of State Administrator of the Estate

It is not uncommon that a family member who lives outside of California to call us regarding the estate of a loved one who lived in California. If there is no Will or Trust, and that person has priority to act as Administrator of the Estate, he or she can successfully administer the estate without physically coming to California. Most out of state Administrators will choose to come at least one time for various reasons, but it can in fact be avoided completely.

This case study highlights our most recently closed probate with an out of state Administrator.

Our client's brother died unexpectedly at his home. The brother had no estate planning documents and owned a valuable Bay Area property. Our client, Tim, was his brother's only living legal heir, but was also devastated by his brother's sudden death. Because Tim's grief and his duties to his young family across the country, he did not want to come to California if possible.

As such, we found a realtor that had the resources to completely clean out the brother's property and prepare it for sale (at a reasonable cost) without Tim's physical participation. We filed for a Special Administration of the Estate, so that the issues

surrounding the brother's property could be resolved in a swift manner. A Special Administration allowed our client to become Administrator of the Estate within less than two weeks of hiring our firm.

The realtor successfully sold the property, and the estate had funds within just a few months. The Estate was successfully opened and closed within the year, and our Client was able to avoid travel to California.

There are countless more examples of probate cases our firm has handled – from the simplest – 1 beneficiary, one asset, and uncontested - to the most complex – 10 + properties, 100 vehicles, multiple accounts, and hotly litigated Will Contests. We've represented Administrators, executors, and beneficiaries alike, and have seen probates from every angle, including the court's.

If you have a Probate Matter in California, don't hesitate to reach out to our firm and we will see what we can do to assist.

Our main office number is 925-322-1795, email us at: info@talbotlawpc.com