

Cost of Attorney Fees to Probate a Will in California

California has a two-tiered attorney fee structure in probate court, statutory fees and extraordinary fees. As explained by Mark W. Bidwell, a nattorney in CA.

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California, attorney fees for ordinary services provided in probate court are set by law and are referred to as statutory fees. The amount of statutory fees depends on the dollar amount of assets in the decedent's estate. The statutory amount does not include extraordinary legal services in a

California probate court. Statutory fees and extraordinary fees require a court order for payment and are paid at the conclusion of the probate case.



Court file in probate court

[California statutory fees for ordinary services in probate court](#) are calculated as a percentage of the appraised value of the estate property as of the date of death. This amount is adjusted for any increase from the gain on sale of an asset and reduced from the loss on the sale of an asset. If the asset is sold in probate court, the reality is the appraised value does not matter, instead the actual sales proceeds are used to determine attorney fees.

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California statutory fees are for ordinary services and are calculated as a percentage of the appraised value as of the date of death adjusted for the sales price of any property sold.”

Mark W. Bidwell

Mortgages or other debt obligations are not considered in computing the fee base. Disbursements for debts or expenses are also not factored into the calculation. At first

this this may appear as counter intuitive or not fair. One would think the attorney's fees should have a relation to the amount the heirs receive.

A simplistic example is a home with an appraised valued of one-million dollars (\$1,000,000). The

formula for calculating the fee is as follows: 4% of the first one hundred thousand dollars (\$100,000), plus; 3% of the next one hundred thousand dollars (\$100,000), plus; 2% of the next eight hundred thousand dollars (\$800,000). Total attorney fees under California law are twenty-three thousand dollars (\$23,000.)

If decedent had no debt whatsoever, the attorney is paid twenty-three thousand (\$23,000) and the heirs receive the remainder of nine hundred seventy-seven thousand dollars (\$977,000). This appears reasonable.

However, if the decedent had a nine hundred fifty thousand dollars (\$950,000) mortgage on the property, the attorney still receives twenty-three thousand dollars (\$23,000). But the heirs receive only twenty-seven thousand dollars (\$27,000) of value. This may seem unfair, but the amount of work involved for the attorney is the same regardless of the amount of debt. In fact, debt ridden estates tend to require much more work.

Statutory fees are set by statute and even if requested by the heirs, the Court has no discretion to reduce the amount of fees. Although the attorney for the estate is entitled to the statutory percentage as a fee, the client can negotiate with the attorney for a reduced fee.

The attorney may request the probate court for order for payment of extraordinary services. These services may include: the [sale of California real property in probate court](#); litigation of claims against the estate; tax matters and will contests. The court has the discretion to approve, reduce or deny an attorney's request for extraordinary fees. The courts take a hard look at these fees and demand support and reasonableness.

California has a two-tiered attorney fee structure in probate court, statutory fees and extraordinary fees. California statutory fees are for ordinary services and are calculated as a percentage of the appraised value of the estate property as of the date of death adjusted for the sales price of any property sold. The attorney may request fees for extraordinary services. These include: sales of real property, litigation of claims against the estate; tax matters and will contests.

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