

Independent Administration of Estates Act

Living Trust
&
Estate Planning

Q. In a case involving the passing of an owner to real property, what are title practices in transactions involving the "Independent Administration of Estates Act?"

A. Our title practice regarding transactions employing the California "Independent Administration of Estates Act" is as follows:

1) Probate must be filed and must be marked for "Full Authority" on the "Letters" issued by the Court.

Please note that the term "Full Authority" allows sale of property Only if notice procedures have been followed, and No objections have been made. If only "Limited Authority" has been granted, then they would have No authority to sell property.

2) A certified copy of the "Letters Testamentary" issued by the courts is required prior to closing for recording along with the Deed executed by the party named in the "Letters".

3) "Notice of Proposed Action" must be given by the personal representative at least 15 days prior to heirs, devisees and those who filed a "Request for Notice". The proposed action can include a sale, encumbrance, lease, etc.

4) If a "Waiver of Notice of Proposed Action" is signed, or a "Consent" is signed waiving notice, then a formal notice need not be given.

5) Once notice is given, and No objections are filed prior to the scheduled date of the proposed action, then the personal representative may proceed and take the proposed action.

6) Standard title practice is to require a letter from Counsel for the Estate that: a) The procedures required for the "Independent Administration of Estates Act" were followed, and b) That there were No objections received.

The link below, found on the CLTA website, further discusses IAEA issues.

<http://www.clta.org/documents/legal-2000.pdf>

The "Independent Administration of Estates Act" is to be distinguished from the Summary Administration Procedures found under Estates of Decedents:

Governing Small Estate Set Aside (Probate 6600 -6615);

Affidavit Procedure for Collection or Transfer of Personal Property (Probate 13100-13115);

Court Order Determining Succession to Real Property (Probate 13150-13157);

Affidavit Procedure for Real Property of Small Value (Probate 13200-13209);

Passage to Property of Surviving Spouse Without Administration (Probate 13500-13606);

Confirmation of Property to Surviving Spouse (Probate 13650-13660).

For further review, it is good to access local Court Rules and updated legislative changes including links such as:

http://www.sccscourt.org/court_divisions/probate/probate_rules/probate_rule5.shtml#A

<http://www.leginfo.ca.gov/calaw.html>

The links above are to the Statutes of Ca and to the specific rules and procedures of the Probate Court in Santa Clara County. Refer to the appropriate court rules that pertain to your jurisdiction for specific local requirements.

Source: CLTA Manual & Review of Statutes



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