# ELIGIBILITY FOR EX PARTE PROBATE COURT PETITIONS
# (June 2022 revision)

This document sets the general guidelines for me preparing and filing an ex parte (i.e. no formal hearing) petition in one of the following Probate Courts:

Santa Clara County
San Mateo County
Contra Costa County

There are various types of petitions dealing with trusts in California that may be brought in the Probate Court.

A Probate Code Section 850 "Heggstad" petition permits the Probate Court to declare that real and/or personal property in a person's name is property owned by the person's trust, even if the title to such property is not in the name of the trust. Such a petition is typically filed after the death or incapacity of the original owner of the property who created the trust.

A Probate Code Section 15403 or Section 15409 trust modification petition permits an irrevocable trust to be modified by the beneficiaries of the trust after the death of the creator of the trust. Such a petition is often filed by a surviving spouse and/or beneficiaries of a trust who do not wish to force the division of trust property into two or more separate trusts (i.e. the "A-B trust division.) Such petitions may also be filed to modify distribution terms of the trust, add in provisions to obtain tax benefits, or other modifications. This is a typical Probate Code Section 15403 petition.

Probate Code Section 15409 may be used to modify an existing irrevocable trust by one or more beneficiaries of the trust, where not all beneficiaries consent to the modification, where there are "changed circumstances" not foreseen by the original creator of the trust. If the requested changes do not interfere with a stated purpose of the trust or the interests of a non-consenting beneficiary, then a modification may be granted under Probate Code Section 15409.

A Spousal Property Petition to have community property of a deceased spouse confirmed to a surviving spouse as community property of the surviving spouse

Petitions may also be brought for other reasons dealing the administration and affairs of a trust.

**Eligibility for Ex Parte petition** If all the following conditions are met, the petition can be filed ex parte, which means that a formal hearing date is not needed.

1. **For all petitions:** All beneficiaries of the trust must consent to the petition and waive notice of any hearing on the petition.
2. **For all petitions:** There cannot be any known individuals who would object to the petition even if they have no right to object under the law! (applies to all types of petitions)
3. **For Heggstad and Spousal Property Petitions:** If there are disinherited heirs and/or possible intestate heirs of the deceased original owner of the trust, they must also consent to the petition and waive notice of any hearing on the petition. Intestate heirs are individuals who would inherit from the deceased original owner of the trust. It does not matter if they are disinherited by a Will or the trust, as the Probate Court believes they are entitled to notice of the petition. If they do not consent, waive notice and consent to venue, an ex parte petition cannot be heard by the Court. This is true even if they are explicitly disinherited by the Will and/or trust.

**Fees:** Current fees (as of April 2022) are as follows:

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| Probate Code Section 850 Heggstad petition | $6,000.00 |
| Probate Code Section 15430/15409 petitions | $6,500.00 |
| Spousal Property Petition (to confirm community property to a surviving spouse | $5,000.00 |
| Other unspecified petitions dealing with trusts | Minimum $6,500.00 |

The above fees cover the drafting and filing of the petition, including the filing fees and cost of obtaining one (1) certified copy of the resulting court order. Additional certified copies of court orders are $50.00 each.

**Special Additional Fees for Certain Beneficiaries:** If a beneficiary of the trust is a minor (i.e. under the age of 18 years), incapacitated, or missing, it will be necessary for the Probate Court to appoint an attorney known as a Guardian Ad Litem ("GAL"). The GAL is appointed to represent the interests of each minor, incapacitated or missing beneficiary of the trust in reference to the petition.

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| Additional Fee for Guardian Ad Litem Petition (one petition can cover multiple beneficiaries) | $2,000.00 |

**Process:** To proceed with engaging my services to handle your petition, you need to complete the additional trust petition worksheets provided with this Eligibility document.

Once I receive those documents, I will prepare an Engagement Letter and submit it to you through DocuSign. I will also either wait for a check from you made payable to the "Robert P. Bergman Attorney Trust Account" or provide you with an electronic invoice through Lawpay.com where you can pay through credit card or e-check through your bank, also deposited into my trust account noted above. Please let me know if you intend to pay by credit card, as the fee will have to be invoiced in two or more invoices.

Once the Engagement Letter and payment are received, I will draft the petition and then distribute it to all petitioners and your local attorney, if any, for review and comment.

Once the petition has been put into its final form, it will be circulated to all petitioners, beneficiaries and other interested parties for signature through DocuSign. Then the appropriate further processing will take place:

**For San Mateo County, when the Probate Clerk's Office is open,** the petition paperwork can be presented directly to the Probate Court for consideration, and certified orders may generally be obtained the same day instead of the several months needed for a noticed hearing. Order(s) will then be sent by me using Priority Mail wherever you direct.

**For Santa Clara County,** the petition paperwork is filed electronically and then takes about 4-6 weeks to be processed by the Clerk's Office and the Court instead of the several months needed for a noticed hearing. Once the order is signed, certified order(s) are obtained by me and then sent by Priority Mail wherever you direct. If the matter is "Urgent," the petition can be filed directly with the Court, and may only take about one week for an order. This would only apply to Heggstad petitions, if eligible.

**For Contra Costa County,** the petition paperwork is presented directly to the Probate Examiner's Office for consideration, and certified orders may sometimes be obtained a few days later by returning to the Examiner's Office after the order is signed and hand filing the Order with the Clerk's Office. Order(s) will then be sent by me using Priority Mail wherever you direct