

ELIGIBILITY FOR UNCONTESTED EX PARTE PROBATE COURT PETITIONS

(September 2026 revision)

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

Santa Clara County, San Mateo County, or 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 or payable to the person’s estate 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 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, include Asset Protection for an inheritance, provide for a Supplemental Needs Trust for a disabled beneficiary, 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.

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 and other interested parties must consent to the petition and waive notice of any hearing on the petition. A consultation can help determine just who exactly is an interested party whose input must be solicited for an ex parte 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 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 fixed fees (as of September 2026), subject to change without notice are as follows:

Probate Code Section 850 Heggstad petition	\$6,500.00
Probate Code Section 15430/15409 petitions	\$6,500.00
Other unspecified petitions dealing with trusts	Minimum \$6,500.00

The above fees cover the drafting and filing of the petition, including attorney's fees, 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.

Fee for Guardian Ad Litem Petition (for first one beneficiary)	\$2,000.00
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Fee for each additional Guardian Ad Litem Petition (one per additional minor child, incapacitated, or missing beneficiary)	\$1,200.00
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In some cases, it may be possible for a parent to represent the interests of a minor child, including unborn children under Probate Code Section 15804. However, that it is not possible if there is a modification of an existing trust that's being requested of the court.

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 request that advance payment be in the form of a check made payable to “Robert P. Bergman,” which I will hold undeposited in your file pending resolution of the petition. I request that payment may be

If you prefer to have funds go directly into my attorney's trust account, I will 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:

AS OF SEPTEMBER , 2026 (SUBJECT TO CHANGE WITHOUT NOTICE)

For San Mateo County, when the Probate Clerk’s Office is open, the petition paperwork can be filed directly and presented to the Probate Court for consideration that same morning, and certified orders may generally be obtained the same day. Order(s) will then be sent by mail wherever you direct.

For Santa Clara County, the petition paperwork is filed electronically and then takes about 7-10 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 mail wherever you direct.

For Contra Costa County, the petition paperwork is presented directly to the Probate Examiner’s Office for consideration by the Court, and certified orders may sometimes be obtained the same day provided the petition is considered “urgent” by the Court. The grounds for urgency have to be spelled out in the petition, and if the Court does not consider it to be urgent, it will be set for a noticed hearing a couple of months out. Order(s) will then be sent by mail wherever you direct.