Source: Estate Planning/California Probate Workflow Manual Revised/Contents

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Preface

This Workflow Manual is intended to promote more efficient law practice, to encourage more effective use of law office staff, and to develop lawyer-legal assistant teams. It is not meant to state the definitive procedure in decedent estate administration. Obviously, a single set of procedures cannot satisfy the requirements of all law offices or meet the demands of all probate proceedings. This manual is designed, however, to permit its users to incorporate local rules and practice, as well as personal practice habits, into the law firm's probate procedures and can serve as a model for workflow manuals in other areas of the law. It is essential that the lawyer and the legal assistant periodically review and update the manual.

A key to office efficiency is analysis of day-to-day office workflow. In probate law, many steps now handled by attorneys can be delegated to nonlawyers in the office. This manual is geared toward processing probate matters by those nonlawyers. Copious cross-references are made to the substantive discussions in 1, 2 California Decedent Estate Practice (Cal CEB 1986) (cited throughout as DEP), and the manual is closely tied to the forms and procedures in those books. This manual may also be adapted for use as a training guide for new lawyers or nonlawyers. It does not require the legal assistants to wade through legalese, jurisprudential texts, cases, and notes to learn what they are supposed to do. Deliberate emphasis is placed on matters that may plague a new lawyer or a nonlawyer facing a probate file for the first time.

The completely revised manual was written in 1989 by Valerie J. Merritt of Kindel & Anderson, Woodland Hills. Charles A. Collier, Jr., of Irell & Manella, Los Angeles, and Nancy Baird, a freelance probate paralegal in the San Francisco Bay Area, acted as consultants. All performed extraordinary service, and CEB wishes to express its heartfelt thanks. The biography of each is stated on the Acknowledgments page.

Legal editing was performed by Christopher D. Dworin, CEB Research Attorney, who also made the changes reflecting Probate Code revisions effective July 1, 1989. The first edition of this manual, on which the current manual is based, was conceived and planned by Herbert Gross, our Assistant Director and Managing Research Attorney, and Victor L. Chuan, CEB Attorney, with the cooperation and encouragement of Hugh L. Macneil and the probate department of O'Melveny & Myers, Los Angeles. Consultation, comments, forms, and other materials for that first edition were also contributed by the following attorneys:

Robert W. Anderson, Pasadena; Luther J. Avery and Alan D. Bonapart, of Bancroft, Avery & McAlister, San Francisco; Philip M. Madden, San Francisco; and Robert A. Schlesinger, of Schlesinger, Schlecht & McCullough, Palm Springs.

In addition, the original manual received the support of Willard M. Bushman, Director of Education, Oregon State Bar, and Paul D. Schultz, of Hibbard, Jacobs, Caldwell & Canning, Oregon City, Oregon, Editor of the Oregon Probate Manual, and valuable consultation was given by Ivy W. Person, President, Lillian K. Imlach, Chairman, Standing Committee of Legal Assistants, and Patricia Brady, of California Legal Secretaries, Inc.; Constance Mauk, Correspondence Secretary, National Association of Legal Secretaries (International); and the following Legal Assistants: Anna Gainsley, Sacramento; Eleanor F. Gettman, San Francisco; Shirley A. Mathews, Costa Mesa; Melba McGinnis, Los Angeles; Christine Morphopoulos, San Francisco; Judith Murphy, San Francisco; Gloria Noren, Oakland; Rhoda V. Polley, San Diego; Ruth A. Small, San Bernardino; and Dorothy Stefanelli, Fresno.

We acknowledge with special thanks the contributions to the revised edition of this manual (prior to the 1989 major rewriting) of Paul N. Frimmer, of Irell & Manella, Los Angeles; Dennis J. Gould, of Crosby, Heafey, Roach & May, Oakland; Harold I. Boucher, of Pillsbury, Madison & Sutro, San Francisco; Robert A. Schlesinger, of Schlesinger & Fitzgerald, Palm Springs; Ann E. Stodden, Probate Commissioner and Supervising Probate Attorney, Los Angeles County; The Honorable David C. Lee, Judge of the Superior Court, Alameda County, and former Alameda County Probate Commissioner; Nancy Baird, freelance probate paralegal, San Francisco; and Richard B. Stevens, CEB Research Attorney.

This manual is intended to promote efficient probate practice. Certain probate requirements, procedural steps, and practice hints may have been overlooked. Because we plan to supplement the manual on a regular basis, you have an

opportunity to suggest corrections and additions. If you know something we did not include, or if we erred, share your knowledge with other California lawyers.

In addition, CEB wishes to thank the following people, who in 1985 contributed time and manuscript to our initial effort to update this publication: Terrence J. Kinsman, Los Angeles; Marita J. Marshall of Bronson, Bronson & McKinnon, San Francisco; Peter L. Muhs of Cooper, White & Cooper, San Francisco; Julian L. Peabody, San Francisco; Richard L. Stack of Darling, Hall & Rae, Los Angeles; and Bruce S. Ross of Morrison & Foerster, Los Angeles.

CEB wishes to thank Judge David M. Schacter, Los Angeles Superior Court, Burbank, and Steven Saito, Probate Attorney, Los Angeles Superior Court, who contributed to the 1999 and 2000 updates.

AUGUST 2010 UPDATE

CEB wishes to thank the author of the 2010 update, David J. Elefant, Attorney at Law, Walnut Creek. Valuable consultation was provided by Bart J. Schenone of Schenone & Peck, Hayward.

CEB Attorney Editor Janette Tom and Legal Editors Kate Sheppard and Christine Day contributed to this title. Administrative support was provided by Kenya Denman and Nila Kanzaria. Linda Marousek handled copyediting and production. Kathryn Te Selle updated the index. Composition was performed by CEB's Electronic Publishing staff.

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Acknowledgments

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Consultants to the August 1989 complete revision:

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NANCY J. BAIRD has been a freelance probate legal assistant for attorneys in the San Francisco Bay Area since 1977. Formerly a probate paralegal with Pillsbury, Madison & Sutro, San Francisco, and Trust Officer, Bishop Trust, Honolulu, she has been a frequent consultant for CEB on estate planning and probate publications.

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Selected Developments

August 2010 Update

References to the new California Decedent Estate Practice (2d ed Cal CEB 2009) have been updated throughout.

The uniform probate filing fee was increased from $350 to $355. Govt C §70658(a). The fee applies to various petitions and applications filed in probate proceedings, including the first petition for letters of administration or letters testamentary and specified petitions or applications filed by the personal representative after letters have been issued, including court papers relating to allowance of compensation, settlement of accounts, and sale or exchange of estate property, and preliminary and final distributions have been eliminated. Govt C §70658. Filing fees for papers concerning small estate set-asides (Govt C §70656) have been increased from $200 to $205. In an apparent oversight, filing fees for various petitions, applications, and objections or other opposition concerning the internal affairs of trusts created by court order and special letters of administration in Govt C §70657.5 remain unchanged at $200. See §§1.31, 7.16A, 18.31.

The discussion of publication practices has been revised. See §5.17.

Sections were added on notice to state agencies (§10.23A) and notice to the Director of Health Care Services (§12.11A).

The California Supreme Court held that the creation of a life estate in real property held in a revocable trust on the death of the settlor is a change in ownership. The court noted that the settlor transferred not just a life estate, but the entire fee interest in the property to the life beneficiary and remainder beneficiaries of the trust on her death. *Steinhart v County of Los Angeles* (2010) 47 C4th 1298, 104 CR3d 195. See §11.19A.

The Claim for Reassessment Exclusion for Transfer From Grandparent to Grandchild (BOE-58-G) form has been revised. See §11.24.

Absent further legislation, for estates of persons who die after December 31, 2009, and before January 1, 2011, the federal estate tax and generation-skipping transfer (GST) taxes have been repealed by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA-2001) (Pub L 107-16, 115 Stat 38). IRC §§2210, 2664. For the period during which the estate tax is repealed, the personal representative must file an information return for large transfers, *i.e.,* if the decedent's property has a fair market value that exceeds $1.3 million or if property was acquired by the decedent within 3 years of death. IRC §6018. A return must also be filed to allocate basis adjustments. IRC §§1022, 6018. See §14.8.

Discussion of secured loans was added to §16.2.

Amendments to Cal Rules of Ct 7.703, effective July 1, 2010, regarding use of paralegals in the performance of extraordinary services, are reflected in revised §19.10D.

Forms in chapters 15 (Statutory Protections for Family Members: Family Allowance and Exempt and Homestead Property), 16 (Estate Management Issues: Borrowing Money, Title Disputes, Executory Contracts, Testamentary Options, Petitions for Instructions), 18 (Accounting, Report, and Final Distribution), 19 (Compensation), 20 (Transfer of Assets and Discharge of Representative), and 21 (Ancillary Administration) have been revised. A Petition by Personal Representative for Relief From Will Provision for Compensation and Order Granting Relief were added in §§19.2-19.2A.

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Cutoff Dates and CEB Citation

Cutoff Dates

We completed legal editing and analysis of authorities cited in this publication as of June 1, 2010, and monitored developments through June 23, 2010.

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I. INTRODUCTION

§1.1 A. Facilitating Administration of Estates

The administration of a decedent's estate is the process of transferring the decedent's assets to the persons or institutions entitled to receive them. In this process, the attorney's function is to counsel the survivors, determine the appropriate procedures to follow, and, with the aid of the legal assistant and secretary, carry out those procedures.

The three main functions of administration are:

Collection of assets: To protect the interests of those who take either under the will or as heirs or those who may have a claim against the estate by providing for systematic collection by the personal representative of the decedent's real and personal property, as well as debts owed to the decedent.

Payment of debts and taxes: To allow creditors to present their claims within a prescribed period, so that liabilities of the estate are promptly determined with relative certainty. Creditors may assert their rights, and claims may be rejected by the personal representative or the court. During estate administration, the representative also determines state and federal taxes due (whether accrued but unpaid during the decedent's lifetime, or due because of death).

Distribution of estate: To determine the persons entitled to receive the decedent's property, and to distribute that property. Under California law, title to the decedent's property vests in his or her beneficiaries at the time of death, subject to possession by the personal representative and control by the court for purposes of administration. See Prob C §7000. The decree of distribution provides record evidence of title to the property.

A successful practice in estate administration depends on sound office management, including standardization of office procedures and efficient use of personnel. Many steps in a probate proceeding can be handled by nonlawyers in the office. It is more expensive for the probate attorney to supervise step-by-step details of administration than to have a qualified legal assistant do it. See §1.10 for a description of tasks that may be performed by nonlawyers in the office.

A single set of procedures can neither fill the requirements of all law offices nor meet the demands of all probate proceedings. This manual suggests office procedures to delegate routine work in probate practice. It may be adapted as a training guide to instruct new legal assistants; not all the practical aids and procedures outlined will be new to the experienced legal assistant. Deliberate emphasis is placed on matters that may plague the legal assistant facing a probate file for the first time.

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§1.2 B. Organization of Manuals, Instructions, and Forms

Because these manuals are intended to be procedural aids, and not legal treatises on estate administration law and practice, they contain no substantial discussions of governing statutes or cases, but instead provide specific references to the following books (and their current supplements) for those discussions:

- California Decedent Estate Practice (2d ed Cal CEB 2009).
- California Will Drafting (3d ed Cal CEB 1992).

In addition, it is recommended that the following resource materials be available to the attorney and to the nonlawyer staff who handle probate matters:

- California Probate Code Annotated to CEB Publications (Cal CEB Annual) (published yearly).
- A current copy of the Probate Rules adopted by the Judicial Council in Cal Rules of Ct 7.1-7.1063 that apply to all actions and proceedings to which the Probate Code applies.
- California Local Probate Rules (Cal CEB Annual) ("CEB Local Rules").
- California Judicial Council Forms Manual (Cal CEB 1981) (updated twice yearly).
- SmartLaser 2000, Decedent Estate Forms (Cal CEB Software).
- A current copy of the Probate Policy Memorandum or Manual for each county in which the attorney practices.

Those books listed above that are followed by an abbreviation of the title will be referred to in this manual by that abbreviation.

These manuals contain two types of forms. The first type has been designed to help routinize office procedures for administering estates and communicating with clients and includes memoranda, sample letters, checklists, and tables for recording information. Some of these forms are on separate pages and may be photocopied directly from the manuals for office use (see, *e.g.,* §1.6); others may serve as models for retyping (see §1.8). The second type is intended and designed to be filed in court proceedings: Judicial Council forms and attorney-drafted forms. Judicial Council forms are forms promulgated by the California Judicial Council (see, *e.g.,* §5.7). The Judicial Council has adopted most probate forms for mandatory use. Some of the attorney-drafted forms are set off on separate pages from the rest of the text (see §5.13).

The word "INSTRUCTIONS" precedes most forms to be prepared. See, *e.g.,* §1.5. Here and elsewhere the legal assistant is cautioned to check the latest local rules and practices.

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§1.3 C. Terminology

Some of the terms used in these manuals are a shortened version of the formal term. The following is a list of those terms:

(1) "Letters" is used for "Letters Testamentary," "Letters of Administration," "Letters of Administration With Will Annexed," and "Letters of Special Administration." See Prob C §52.

(2) "Petition for probate" refers to the form used to begin the administration process, whether it is for "Petition for Probate of Will and for Letters Testamentary," "Petition for Probate of Will and for Letters of Administration With Will Annexed," "Petition for Letters of Administration," or "Petition for Letters of Special Administration."

(3) "Representative" or "personal representative" refers to an executor, administrator, administrator with will annexed, special administrator, successor personal representative, public administrator acting under Prob C §7660, or anyone who performs substantially similar functions under the laws of another jurisdiction governing the decedent's estate. See Prob C §58(a).

(4) "General personal representative" is a personal representative other than a special administrator not authorized to act as a general representative under Prob C §8545. See Prob C §58(b).

(5) "Inventory" refers to the "Inventory and Appraisal" filed on behalf of the estate.

"Probate" and "estate administration" are used interchangeably throughout these manuals.

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II. STAFFING

§1.4 A. Opening the File

The attorney or legal assistant should follow the firm's normal procedure for opening a new file.

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Source: Estate Planning/California Probate Workflow Manual Revised/1 Managing and Processing Probate Workflow/ §1.5 B. Form: Probate Assignment Memorandum

§1.5 B. Form: Probate Assignment Memorandum

INSTRUCTIONS: This office memo may be adapted to help supervise routine office work, or it may be used as a guide in training new employees.

The assignment should be precise. For example, the associate might be asked to check whether the decedent had any life insurance policies, codicils, or secret bank accounts abroad. The assistant may be asked to obtain instructions from the member or department of the firm in charge of a specialized field such as tax or real estate.

Date _ _ _ _ _ _ _ _ _ _ _ _ _ _
Estate of

_ _ _ _ _ _ _ _ _ _ _ _ _ _
Court case no. _ _ _ _ _ _ _ _
Office file no. _ _ _ _ _ _ _ _

TO:

FROM:

RE: _ _[*e.g., Petition for Probate of Will*]**_ _**

ASSIGNMENT: Please take the actions checked below:

[ ] File attached.

[ ] Set for hearing on _ _[*date*]**_ _.**

[ ] Obtain _ _ _ certified copy(ies) of attached _ _ _ _ _ _.

[ ] Conform attached office copy with original on file.

[ ] Record the attached in _.

[ ]_ _[*Other matters, e.g., prepare §§8.5, 8.7, 8.14*]**_ _.**

BEFORE: _ _[*e.g., next Friday*]**_ _.**

REMARKS: _____

RETURN TO: _____

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Source: Estate Planning/California Probate Workflow Manual Revised/1 Managing and Processing Probate Workflow/ §1.6 C. Form: Probate Estate Record

§1.6 C. Form: Probate Estate Record

PROBATE ESTATE RECORD

Special notice to_ _[*name(s) and address(es)*]_ _
Date of death
_ _ _ _ _ _ _ _ _ _ _ _ _
Place of death
_ _ _ _ _ _ _ _ _ _ _ _ _
Residence
_ _ _ _ _ _ _ _ _ _ _ _ _ _ _

Estate of _____ Office file no. _____

Est. value: Real prop. $_____ Personal prop. $_____

Court case no. _____ Representative _____

Soc. Sec. no. _____ Tax I.D. no. _____

Referred by _____

Related proceedings (e.g., conservatorship) _____

_____

SPECIAL EXPERTS NEEDED: Tax atty? ___ CPA? ___ Other? ___

Decedent's accountant:_____

Address: _____

Telephone:_____

_____

WILL _ _[*date*]_ _ **CODICIL(S)** _ _[*date(s)*]_ _

Pwr/IAEA? ___ Pwr/Sale? ___ Pwr/Lease? ___ Trust? ___

Pwr/Appt? ___ BOND waived? ___ Amount $ _____

Special provisions? _____

Was decedent a conservator? _____

_____

PROPERTY INTERESTS (provide pertinent information for each type of interest listed (see, *e.g.,* (a))

(a) Safe-deposit box? ____

(b) Joint tenancy property

Real property located at _ _[*address*]_ _**; value: $**_ _ _ _ _ _

Affidavit of death of joint tenant recorded on _ _[*date*]_ _ **in** _ _ _ _ _ _ **County, No.** _ _[*recording information*]_ _

Bank account at _ _[*name of institution*]_ _**; balance: $**_ _ _ _ _ _

Stock (identify) value: $_ _ _ _ _ _

(c) Community property held in joint tenancy form or as community property with right of survivorship

(d) Life estates

(e) Totten trusts

Bank account at _ _[*name of institution*]_ _; balance: $_ _ _ _ _ _

(f) Life insurance on decedent's life

Name of policy; beneficiary; proceeds: $_ _ _ _ _ _

(g) U.S. savings bonds

(h) Employee benefits

Beneficiary _ _[*name*]_ _ ; type of benefit_ _ _ _ _ _; amount: $_ _ _ _ _ _

(i) IRAs, Roth IRAs

(j) Annuities

(k) Social Security benefits

(l) Custodianship, guardianship, conservatorship

(m) Trust

SUMMARY PROCEEDINGS:

Collection of small estate by declaration (Prob C §§13000-13210)? ___

Setting aside small estate (Prob C §§6600-6615)? ___

Property passing to surviving spouse/registered domestic partner? ___

NOTICE OF PETITION FOR ADMINISTRATION: Filed on _ _ _ _ _ _ _ _ _ _ _ _

Notice mailed? ___ Published? ___ Publication Dates:
_ _,_ _,_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _

Hearing date _____

Hearing time _____ Department _____

LETTERS:

General? ___ Special? ___ Special w/ general's pwrs? ___

Pwr under IAEA? ___ Date issued _____

Bond waived? ___ Bond amount _____

ANCILLARY PROBATE: _ _[*location*]_ _

CREDITORS:

Notice mailed? ___

No claims? ___

Claims approved by the representative and court and paid (list in attachment)

Rejected claims and dates of notices of rejection (list in attachment)

Litigation against estate on rejected claims? Yes _ _ _ _ No _ _ _ _

Other liabilities (list in attachment)

All publishing bills paid? Yes _ _ _ _ No _ _ _ _

INVENTORY AND APPRAISAL (list all partial, final, supplemental, and corrected)

Inventory	Date Filed	Value
_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _	_ _ _ _ _ _ _ _ _ _	_ _ _ _ _ _ _ _
_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _	_ _ _ _ _ _ _ _ _ _	_ _ _ _ _ _ _ _
	Total Value:	$_ _ _ _ _ _ _ _

ASSETS: In trustee acct? ___

Tangible or perishable? ___

PRELIMINARY TAX MATTERS

Taxpayer identification number (IRS Form SS-4): _ _ _ _ _ _

Notice of Fiduciary Relationship (IRS Form 56) filed on _ _[*date*]**_ _**

INCOME TAX (see California Decedent Estate Practice, chap 33 (2d ed Cal CEB 2009)):

Estate's tax year: _ _[*month*]**_ _**

Notice of fiduciary capacity given? Yes _ _ _ _ No _ _ _ _

Who prepares returns? _____

First returns due? _____

Decedent's final federal income tax return filed on:_____

Decedent's final state income tax return filed on_____

Estate's income tax return for _ _[*year(s)*]**_ _ filed on_____**

Notice to Franchise Tax Board (Prob C §9202(c)) given on _____

Franchise Tax Board clearance for certain distributions to nonresident beneficiaries filed on

Name of Nonresident	Address
_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _	_ _
_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _	_ _

FEDERAL ESTATE TAX (see Decedent Estate Prac, chap 34):

None ___ IRS Form 706 due on _____

Who prepares returns? _____

Discharge of representative from personal liability for federal estate tax received? Yes _ _ _ _ No _ _ _ _

If there is a will, is estate tax to be prorated or chargeable to residuary estate? Prorated _ _ _ _ Chargeable _ _ _ _

OTHER TAX DECISIONS MADE:

Disclaimer? _____

Request Prompt Assessment? _____

Election to take deductions on estate tax versus income tax return?

Any special elections to be made? _____

FAMILY ALLOWANCE: Order of _ _[*date*]_ _

Amount per month $_____ Ends _ _[*date*]_ _

Total paid: $_ _ _ _ _ _

Chargeable to principal or income? _ _ _ _ _ _

Recipients _____

HOMESTEADS AND EXEMPT PROPERTY

Homestead set-aside? Yes _ _ _ _ No _ _ _ _

Exempt property set-aside? Yes _ _ _ _ No _ _ _ _

ACCOUNTS: Interim? ___ Final? ___ Waived? ___

FEES AND COMMISSIONS:

Personal representative's statutory commission $_ _ _ _ _ _ Waived? ___

Personal representative's extraordinary commission: $_ _ _ _ _ _

Attorney's statutory fee: $_ _ _ _ _ _ Waived? ___

Attorney's extraordinary fee: $_ _ _ _ _ _

Compensation paid on account? Yes _ _ _ _ No _ _ _ _

Date of Payment	Payee	Amount
_ _ _ _ _ _ _ _ _ _ _ _	_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _	_ _ _ _ _ _ _ _ _ _
_ _ _ _ _ _ _ _ _ _ _ _	_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _	_ _ _ _ _ _ _ _ _ _

CHRONOLOGICAL CHECKLIST

DATE OF DEATH: _____

Period	Action	Date by which action must be taken
W/in 30 days	Lodge will with court; mail copy to nominated executor	_____
W/in 90 days	Notify Director of Health Services if decedent had state health care aid or was surviving spouse of person who had state health care aid (Prob C §215)	_____
W/in 9 months	File disclaimers and estate tax returns and pay estate taxes (IRS Form 706; Cal ET-1)	_____
DATE LETTERS ISSUED: _____		
Promptly	Notice of Fiduciary Relationship (IRS Form 56); Application for Tax I.D. no. (IRS Form SS-4)	_____
W/in 2 months	Preliminary distribution allowed	_____
W/in 90 days after letters issued	Notice of death to Director of Health Care Services (Prob C §9202(a))	_____
W/in 90 days after letters issued	Notice of death to Director of California Victim Compensation and Government Claims Board (Prob C §9202(b))	_____
W/in 90 days after letters issued	Notice of administration of estate to Franchise Tax Board (Prob C §9202(c))	_____
W/in 4 months	Inventory and Appraisal filed	_____
W/in 120 days after will admitted	Filing of will contest	_____
W/in 4 months after letters issued or, if later, w/in 30 days after representative first has knowledge of a creditor	Notice of administration sent to known or reasonably ascertainable creditors (Prob C §9050); preliminary distribution allowed	_____
W/in 4 months after letters issued or 60 days after notice of administration sent to creditors	Creditor's claims filed (see Prob C §§9100-9104 for provisions extending time)	_____
W/in 4 months after letters issued	Election to administer community property under Prob C §13502	_____
W/in 1 year or 18 months after letters issued	Status report or petition for final distribution (Prob C §12200)	_____
W/in 16 months after letters issued	Deadline for creditor to petition to determine liability of personal representative for failure to give notice	_____

	(Prob C §9053)	
Before estate is closed	**Notice of administration sent to late-discovered creditors**	**_____**
MISCELLANEOUS DATES		
April 15	**Decedent's final income tax returns due**	**April 15, _____**
W/in 3½ months after tax year	**Fiduciary income tax returns due**	**_____**

CHECKLIST FOR CLOSING

_ _ Claims approved and paid?

_ _ Final report and/or account waived or heard and approved?

_ _ Decree recorded as necessary?

_ _ Assets transferred, receipts filed?

_ _ Bonding company contacted to exonerate bond?

_ _ Notice of termination of fiduciary relationship?

_ _ Representative discharged, if advisable?

_ _ Estate tax recovered under IRC §2207A?

NOTICES

The following is a list of persons who are to be sent probate notices.

Type: A = all notices; S = special notice; O = other (add remarks):

As persons listed lose their entitlement to notice, cross off their names and note reason (*e.g.,* distribution made). Do not delete names unless certain that those persons are no longer affected by any proceedings or are not otherwise entitled to notice. When in doubt, continue to provide notice.

Type	**Name and Address**
_ _ _ _ _ _	_ _
_ _ _ _ _ _	_ _

Remarks:

_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _

§1.7 D. Communicating With Client and Interested Persons

One of the major problems in probate practice is keeping the personal representative and beneficiaries informed of the estate's status and the progress of administration proceedings. In processing each probate, emphasis should be placed on communication among attorneys, legal assistants, representatives, and beneficiaries.

A standard memorandum (with space for inserting additional information) helps to keep the representative informed. See §1.8. On instructing the representative of fiduciary duties, see §10.3. On the responsibilities of the representative in estate accounting, see §3.7.

Initiating communication with the representative and persons interested in the estate often imposes dual responsibilities in the law office. In routine matters the legal assistant reminds the lawyer to write or call, but for other matters the lawyer must determine when to initiate communication. In this way, lack of communication can be minimized.

For further discussion of initiating correspondence, see California Decedent Estate Practice, chap 10 (2d ed Cal CEB 2009), and see Decedent Estate Prac §1.43 on complaints and disagreements.

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Source: Estate Planning/California Probate Workflow Manual Revised/1 Managing and Processing Probate Workflow/ §1.8 E. Form: Memorandum or Cover Note to Personal Representative

§1.8 E. Form: Memorandum or Cover Note to Personal Representative

INSTRUCTIONS: Many communication problems can be avoided by an advance explanation of probate procedure to the client and the decedent's family. A standard memorandum may be used to notify the representative of any petition's hearing date and whether he or she must attend.

When beneficiaries are advised of their bequests, they should be told of the need for delay in payment and that the attorney will answer any questions they might have concerning the estate's progress.

_ _[*date*]_ _
Estate of

_ _ _ _ _ _ _ _ _ _ _ _ _
Court case no. _ _ _ _ _ _ _ _
Office file no. _ _ _ _ _ _ _ _

Subject: _ _ _ _ _ _ _ _ _ _

Dear _ _ _ _ _ _ _ _ _ _ _:

We are sending you the enclosed _ _[*specify*]_ _, with a copy for your file. Please review the documents carefully and, if correct, _ _[*e.g., complete two copies at the places checked and sign and return both copies to me in the enclosed stamped, self-addressed envelope*]_ _**.**

_ _[*Your presence at the hearing _ _[will/will not*]_ _ *be necessary*]_ _**.**

Your prompt attention and cooperation will expedite the estate administration. If you have any questions, please call me. I will be glad to assist you in any way I can.

Yours truly,

__[*Signature of attorney*]__
_ _[*Typed name*]_ _

Enclosures

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Source: Estate Planning/California Probate Workflow Manual Revised/1 Managing and Processing Probate Workflow/ §1.9 F. Form: Basic Estate Information

§1.9 F. Form: Basic Estate Information

INSTRUCTIONS: This is one of the basic probate documents that the attorney and legal assistant should have at hand. Other key documents are the probate estate record (see §1.6), the master checklist (see §1.13), the record of assignment (see §1.5), and any other information sheets essential to a particular office. On estate financial information, see §3.6.

BASIC ESTATE INFORMATION

1. Full Name or Names of Decedent: _____

   Also known as: _____

   a. Address at time of death: _____

   b. Location of property: _____

   _____

   _____

   c. Business address at time of death: _____

   d. Out-of-state residence (place and duration of stay): _____

   _____

   _____

2. Date and Place of Birth (or date and place of naturalization): _____

   _____

3. Date and Place of Death (city, county, and state):_____ ,

   _____

4. Marital/Domestic Partnership and Family Information

   a. Name of spouse/domestic partner: _____

   b. Date and place of marriage/declaration of domestic partnership:_____

   _____

   c. Status of spouse/domestic partner (living, deceased, conservatee): _____

   d. Children (name and birthplace; if any children legally adopted, attach copy of adoption decree):

   (1) Children: _____

   _____

   (2) Children of deceased children: _____

   _____

   (3) Other relatives of nearest degree, if no children or issue of deceased children:

   _____

   e. Prior marriages, if any, of decedent. In each case provide the following:

   (1) Name of former spouse: _____

   (2) Date and court in which marriage terminated; name and number of case, if known:

   _____

   (3) Attorney of record: _____

   (4) Location of copy of dissolution judgment: _____

   (5a) Children by former marriage; name and birthdate of each and whether adopted by decedent's subsequent spouse; place of residence of children, if not with decedent:

   _____

   _____

   (5b) Other relatives of nearest degree of former spouse, if predeceased:

_____

_____

_____

(6) If marriage ended by death of spouse, date and place of death:

_____

5. Nonmarital "Marvin" Relationships:

   a. Name of partner: _____

   b. Inclusive dates of relationship: _____

   _____

   c. Partner making any claim? _____

   d. Oral property agreements? _____

   Terms: _____

   _____

   _____

   _____

   e. If there are written property agreements, attach copies.

6. Personal Representative(s), Including Alternates and Successors (name(s), address(es), telephone number(s), social security number(s), and driver's license number(s)):

   _____

   _____

   _____

7.__ Location of Will (original): _____

8. Witnesses to Will (names, current addresses, and availability; if unavailable and will not self-proving, obtain exemplars of signatures):

   _____

   _____

   _____

9. Heirs and Beneficiaries (name, age, relationship, address, and telephone number)

   a. Beneficiaries of will or intestate heirs:

   _____

   _____

   _____

   b. Intestate heirs who are not beneficiaries, including heirs of predeceased spouse, if applicable:

   _____

   _____

   _____

   _____

10. Written notice received from representative of child, within four months of issuance of death certificate or entry of judgment, that decedent had genetic material available for posthumous conception:_____

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Source: Estate Planning/California Probate Workflow Manual Revised/1 Managing and Processing Probate Workflow/ §1.10 G. The Probate Team

§1.10 G. The Probate Team

Experienced practitioners consider a good basic probate team to consist of the attorney, a legal assistant, and a secretary. See California Decedent Estate Practice, chap 24 (2d ed Cal CEB 2009) for further discussion. The master checklist in §1.13 can be photocopied and filled in by the attorney to serve as a guide for each person on the probate team as to who bears responsibility for which actions. The attorney can insert the appropriate code by each entry: A = attorney; L = legal assistant; S = secretary; R = personal representative; E = expert (the attorney must designate the member of the team who is responsible for making sure that the expert is engaged to assist the team).

The following sample list contains some of the matters dealt with in administering an estate, together with an indication of which member of the team might be the best person to perform the task. In some instances, the question of who the best person is may depend on the complexity of the task and will vary from case to case.

_ _ _ L	Preparing initial court documents
_ _ _ L	Preparing notice of administration to be sent to creditors
_ _ _ S	Preparing notices of hearings and proofs of service
_ _ _ L	Preparing accountings and estimate of cash requirements
_ _ _ S	(if straightforward; otherwise, L) Maintaining books and records (including characterization of assets and debts)
_ _ _ L	Preparing application for appointment of referee or petition to waive appointment
_ _ _ L	Preparing inventory and appraisal
_ _ _ A	Preparing letter to referee on valuation issues
_ _ _ A or L	Preparing preliminary and final distributions
_ _ _ A or L	Preparing tax returns (*e.g.,* estate and income tax returns)
_ _ _ S	Maintaining estate record and calendars and reviewing checklists
_ _ _ A or L	Drafting petitions and orders (depending on complexity)
_ _ _ S	Maintaining files
_ _ _ L	Transferring assets into and out of the estate
_ _ _ R	Paying debts and expenses
_ _ _ A and L	Obtaining estate information (at initial client meeting or in subsequent communications with client)
_ _ _ S	Canceling memberships and subscriptions
_ _ _ A or L	Obtaining asset appraisals
_ _ _ A or L	Reviewing insurance policies and determining benefits
_ _ _ L	Preparing documents on and transferring joint tenancy property

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§1.11 III. ORGANIZATION AND MAINTENANCE OF PROBATE FILES

The needs of the law office, the demands of the particular estate, and the preference of the attorney will determine the filing system used. Law firms with several members commonly establish a central file room with an index maintained by a clerk. The index should provide a record of each file, enabling the attorney or assistant to locate any file at any time. Using a file clerk allows the attorneys, assistants, and legal secretaries to focus on more specialized work.

Subfiles are strongly recommended for probate matters. If extraordinary services are rendered, it is useful to open a subfile for billing purposes to segregate the time as well as to have one for recordkeeping purposes. It can make the petition for fees much easier to prepare. For recordkeeping purposes within the main file, it is very useful to have a court folder that contains only those documents actually on file with the court. It is also very useful to have correspondence, tax, and accounting information kept in separate folders. The more complicated the estate, the more need there will be for an organized filing system.

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IV. DEADLINES

§1.12 A. Calendars

The chronological and master checklists (see §§1.6, 1.13) indicate that the administration of an estate is a step-by-step process of strict adherence to deadlines. Each step in the process must be performed on or before certain dates according to statute. Deadlines and other important dates can be based on the decedent's date of death, the date that letters were issued, the date when other court documents were filed, or the date chosen for the decedent's tax year. Because these important dates will differ for each estate, it is not reasonable to rely on memory for all impending deadlines; a deadline reminder system is essential.

At the beginning of probate, the attorney should advise the legal assistant or docket clerk of crucial deadline dates. The legal assistant can compute these and obtain the attorney's approval. Once the system is set up, the office employee responsible for reminding the attorney of commitments can circulate a weekly calendar to all lawyers in the office or make individual reminders. The assistant may use any other system he or she prefers (subject to approval by the attorney) to enter deadlines on the attorney's calendar if a more elaborate deadline or docket control system is unnecessary.

The assistant can use the master checklist in §1.13 or a similar calendar chart for reminders of next steps without specific direction from the attorney in charge. See also the chronological checklist that is part of the Probate Estate Record in §1.6.

For further discussion of calendaring, see California Decedent Estate Practice §1.45 (2d ed Cal CEB 2009).

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§1.13 B. Form: Master Checklist

INSTRUCTIONS: This checklist can serve as a reference to the experienced practitioner (attorney, legal assistant, or secretary); as a guide to the inexperienced lawyer, assistant, or secretary; or as an informational guide to the client. Although most factors considered before and during estate administration are noted, the master checklist is not exhaustive.

The columns "Date due," "To be done by," and "Date done" are designed to allow tracking of the probate workflow. To avoid misunderstanding in the office regarding work distribution, the probate workload can be divided between the attorney and the nonlegal staff by marking each probate step "A" (indicating that the matter will be handled by the attorney), "L" (that it will be done by the legal assistant), "S" (that it will be done by the legal secretary), or "E" (that it will be done by an outside expert as determined by the attorney).

The due date for each step should be determined and placed in the appropriate column as soon as possible. Initially, this need only be done for the first steps in the proceeding (*e.g.,* those relating to appointment of a representative) and for steps that should be completed by a definite date (*e.g.,* estate tax proceedings). Others may be filled in as they become pertinent (*e.g.,* sales of property).

If many probates are being handled, duplicate master checklists of all estates can be kept in a looseleaf binder so that all estates may be reviewed periodically.

Estate of

_ _ _ _ _ _ _ _ _ _ _ _ _
Court case no. _ _ _ _ _ _ _ _
Office file no. _ _ _ _ _ _ _ _

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PROBATE STEPS AND DATES

(See also §1.6, Probate Estate Record)

Estate of _____ Date of death

Representative (name, address, telephone no.) _____

_____

Office file no. _____ Superior Court Prob. No. (county) __

A = Attorney L = Legal Assistant S = Secretary E = Expert

	Date due	*To be done by A/L/S/E*	*Date done*
A. BEGINNING PROBATE PROCEEDINGS 1. Immediate Arrangements (chap 2) Care of perishable or depreciating property (§§13.25-13.26)			
Search for burial instructions or will (§§2.5, 2.9)			
Determine whether special administrator needed (§§2.30, 7.44)			
Make sufficient copies of original will (§2.6)			
Obtain certified copies of death certificate (§§2.6-2.7)			
Locate witnesses to will if will not self-proving (§§7.32-7.34)			
Consider cancellation of magazine and newspaper subscriptions			
Consider notifying post office to forward decedent's mail to personal representative			
Consider prompt surrender of rented real or personal property			
Cancel credit cards			

Consider adequacy of public liability and property damage insurance carried by decedent, and have personal representative added as an insured			
Notify Social Security Administration and any pension administrators of death and need to discontinue payments			
Death benefits (§§4.20-4.21)			
2. Interview With Client (chap 3)			
Review client's file (§1.9)			
Prepare probate estate record (§1.6)			
3. Obtain Estate Information			
Obtain list of all bank and brokerage accounts that stand in decedent's name alone, in joint tenancy, or in common with someone else (§§10.5-10.6)			
Consider contacting banks for bank accounts and safe-deposit boxes (§10.7)			
Real estate owned by decedent: get copies of deeds, descriptions, and names of tenants (§10.13)			
Debts owed to decedent (§10.17)			
Automobiles owned by decedent: consider immediate disposal of automobile if not specifically bequeathed (Prob C §§10252, 10259); ascertain whether debt owed on automobile (§6.7)			
Boats, planes, mobilehomes (§§6.8-6.8A)			
Checks payable to decedent uncashed at time of death			
Checks by decedent payable to others uncashed at time of death			
Cash in decedent's possession at time of death			
Club memberships			
Social security benefits:			
Accrued for account of decedent			
Accrued for account of survivors			
Estates in which decedent has an interest (§10.19)			
Trusts of which decedent was a beneficiary			
Fiduciary capacities of decedent, *e.g.,* executor, administrator, trustee, guardian, custodian			
Possible causes of action that survived decedent's death (*e.g.,* personal injury or contract cases)			
Personal papers searched for leads for further assets			
Obtain copies of decedent's California and federal income and gift tax returns for prior years			
Other assets			
B. PETITION AND LETTERS			

1. Determine Appropriate Petition (chap 7)			
TESTATE DECEDENTS			
See procedural guide (§7.10)			
Prepare petition for probate of will and letters testamentary (§§7.11-7.23) or letters of administration with will annexed (§7.43)			
INTESTATE DECEDENTS			
See procedural guide (§7.10)			
Prepare petition for letters of administration (§7.11)			
ALL DECEDENTS			
Consider independent administration (chap 9)			
Consider set-asides of small estate, or to surviving spouse (chap 6)			
Prepare notice of petition to administer estate			
File petition			
File notice of petition to administer estate			
Calendar hearing date			
Publish notice of petition to administer estate			
Mail Notice of Petition to Administer Estate to heirs and beneficiaries, and to nonpetitioning executors if testate			
Affidavit of publication filed			
Prepare and file affidavit of mailing			
Prepare and file declaration of diligent search for persons whose addresses are unknown (§5.11B)			
Mail information letter to proposed representative (§10.3)			
SPECIAL ADMINISTRATION (§§7.44-7.48)			
See procedural guide (§7.10)			
SUCCESSOR REPRESENTATIVE (§7.50)			
2. Before Hearing			
Prepare order appointing probate referee (Prob C §§8900-8903; §11.4) if required by county where estate administered			
Obtain bond or deposit (Prob C §§8480-8488; chap 8)			
Ascertain whether notice given as required (chap 5) and proof of publication filed			
File acknowledgment of receipt of statement of duties and liabilities of personal representative (see Prob C §8404; §§7.37-7.39)			
TESTATE DECEDENTS			
Prepare order admitting will to probate, appointing executor or administrator with will annexed (§7.41)			
Prepare letters testamentary, or of administration with will annexed (Prob C §8405; Fin C §1587;			

§7.42)			
INTESTATE DECEDENTS Prepare order appointing administrator and setting amount of bond (Prob C §§301, 8480; §7.41)			
Prepare letters of administration (Prob C §8405)			
3. Day of Hearing Will admitted; personal representative appointed; order signed			
Obtain _ _ _ certified copies of will, if needed			
Acknowledgment of receipt of statement of duties and liabilities for personal representatives (other than trust companies and public administrators) filed with court (§7.39)			
Bond filed (chap 8)			
Letters issued			
Obtain _ _ _ certified copies of letters			
Probate referee appointed (§11.4)			
Put name and address of referee in probate estate record (§1.6)			
4. Fiduciary Notice and Employer Number Apply for employer identification number if necessary (Form SS-4)			
Prepare notification that representative is acting in fiduciary capacity (IRS Form 56, IRC §6903; Franchise Tax Board, Rev & T C §19512); file with IRS and Franchise Tax Board			
5. Plan for Prompt Administration Petition for final distribution must be filed within one year after issuance of letters (18 months if federal estate tax return is required); otherwise status report required (Prob C §12200; §18.4)			
C. CONFERENCE WITH REPRESENTATIVE FOLLOWING APPOINTMENT 1. Consider Obtaining Waiver of Commissions If personal representative has irrevocably decided to waive commissions, obtain written waiver (Rev Rul 66-167, 1966-1 Cum Bull 20; §19.3)			
Continue process begun in A3 above			
2. Consider Disclaimers of Testamentary Interests (§10.20; California Estate Planning, chap 27 (Cal CEB 2002))			
3. Settling Decedent's Affairs Consider necessity of obtaining appraisals of unique personal property, *e.g.,* fine art, valuable furniture, books, jewelry (Prob C §8904)			
Consider necessity for administration in another jurisdiction (ancillary administrations, or summary proceeding in another state) (chap 21)			
Outstanding debts of decedent; ascertain whether discount can be taken if promptly paid			

Pay real and personal property taxes			
Arrange for estate bank account			
Ascertain whether any executory contracts to be performed			
Locate and inventory property owned by decedent			
Contact banks and stock brokers			
Corporations whose stock owned by decedent notified of death and address to which to send dividends and other correspondence; review buy-sell agreement, if applicable			
Partnership interests of decedent; notify surviving partners; review partnership agreement			
D. PROPERTY NOT SUBJECT TO ADMINISTRATION (chaps 4, 6)			
1. Joint Tenancy Real Property (§§4.5-4.8)			
Determine whether to terminate the joint tenancy or treat it as community property			
Determine whether affidavit or spousal property petition to be used			
Determine whether decedent's marriage to joint tenant has been dissolved or annulled (§§4.3A, 4.7)			
Prepare affidavit or declaration			
Have affidavit or declaration signed; attach death certificate; record with county recorder			
Prepare petition; attach photocopy of deed (§§6.16-6.19)			
Have petition signed			
Prepare order; file with clerk, with copy for certification; record certified copy with county clerk			
2. Joint Tenancy Bank Accounts (§4.10)			
Determine whether decedent's marriage to joint tenant has been dissolved or annulled (§§4.3A, 4.7)			
Transfer to survivor			
3. Joint Tenancy Stock (§4.11)			
Determine whether decedent's marriage to joint tenant has been dissolved or annulled (§§4.3A, 4.7)			
Have survivors sign stock power and obtain signature guaranty (§§20.4-20.9)			
Obtain affidavit of domicile; certified copy of death certificate			
Send to transfer agent to transfer to survivor			
Consider having bank or broker handle			
4. Insurance (§§4.18-4.19)			
Obtain policies and ascertain whether proceeds payable to estate or to named beneficiaries (if payable to estate, include in estate assets)			

Have applications for payment of insurance proceeds obtained, completed, and filed; certified copies of death certificate will be required			
Ask insurers to provide copies of Form 712 to attach to federal estate tax return			
5. Other Assets With Designated Beneficiaries (*e.g.,* retirement benefits) Contact decedent's employer to determine whether benefits exist and who beneficiary is (see §4.23)			
Determine whether decedent's marriage to designated beneficiary has been dissolved or annulled (§§4.3A, 4.7)			
6. Small Estate Set-Aside (§§6.12-6.15) Prepare petition for set-aside			
Obtain and file inventory and appraisal			
Prepare and mail notice of hearing			
Prepare and file order			
Record certified copy of order in each county with real property			
7. Set-Aside to Surviving Spouse (§§6.16-6.19) Prepare spousal property petition			
Prepare and mail notice of hearing			
Prepare and obtain spousal property order			
If real property, record certified copy of order in each county with real property			
8. Collection of Personal Property by Affidavit (§§6.3-6.11) Prepare affidavit			
Attach certified death certificate, will (if any), evidence of ownership, and inventory and appraisal if real property in California			
If automobile, use DMV form and bring pink slip, registration, money for fees, etc.			
If salary of decedent payable to surviving spouse, prepare declaration (§6.11)			
9. Affidavit to Collect Real Property of Small Value (§§6.24-6.25) Obtain inventory and appraisal (to show under $20,000)			
Prepare affidavit and attach death certificate, inventory and appraisal, and will (if any)			
File in appropriate superior court			
Record certified copy in each county where property located			
10. Determining Succession to Real Property of Small Estate (under $100,000) (§§6.20-6.23) Obtain inventory and appraisal			
Prepare petition and attach inventory and will (if any)			

Prepare and mail notice of hearing			
Prepare and obtain order			
Record certified copy of order in each county with property			
11. Property Claimed by Another (§§16.4-16.9)			
Petition to transfer property (no adversary issues)			
Petition for order conveying property (third party contests)			
Notice hearing			
Prepare order directing conveyance			
E. PROCEEDINGS AFTER APPOINTMENT			
1. Creditors' Claims (chap 12)			
See procedural guide (§12.3)			
NOTICE			
Notify potential creditors by sending notice of administration to all creditors known or reasonably ascertainable by representative as soon as possible (§§12.5-12.9)			
Mail Notice of Administration of Estate to Franchise Tax Board (§12.11C)			
Notify Director of Health Services of decedent's death if decedent had state health care aid or was surviving spouse of person who had state health care aid (§12.11A)			
FILING CLAIMS (§§12.10-12.17)			
Calendar last day for filing claims (later of 4 months after letters issued or 60 days after notice of administration sent)			
Request for claim sent to appropriate governmental agencies (Prob C §9201)			
List claims filed			
ALLOWANCE AND APPROVAL (§§12.19-12.20)			
Send copy of all claims to representative for examination and determination to allow or reject			
On representative's allowance, submit to court for approval and filing (if no IAEA)			
Send notice of approval to creditor			
Submit any claim of representative or representative's attorney to court for approval, including all supporting documentation			
COMPROMISE OF CLAIMS (§12.26)			
REJECTION OF CLAIMS (§§12.22-12.24)			
Prepare rejection for representative's signature; send to representative			
Serve notice of rejection on claimant			
File claim with rejection and proof of service of			

notice of rejection			
Calendar last day to file suit on rejected claim			
FAILURE TO GIVE NOTICE (§12.33)			
Calendar 16 months after letters were first issued as last date creditor can petition under Prob C §9053 for representative's liability for failure to give proper notice; 30 days prior, notice of hearing and petition must be served on representative			
2. Cash Requirements (§§10.25-10.27)			
Prepare estimate of cash requirements (debts, taxes, devises, etc.) and forecast dates by which cash for each item must be raised			
Ascertain whether assets should be sold or money borrowed to meet cash requirements (chap 16)			
3. Sales of Property (chap 13)			
REAL PROPERTY (§§13.3-13.18)			
a. Report, notice, and bids			
Communicate with title company; obtain preliminary title report			
Ascertain whether representative has testamentary power of sale; determine whether sale to be through broker listing, private sale, or auction and whether bids to be sealed			
Calendar expiration date of broker's exclusive listing (§13.8)			
Publish notice of sale when representative not proceeding under testamentary power of sale (§§13.9-13.10)			
Posting in lieu of publication if property value not more than $5000 (Prob C §10301)			
Calendar first date sale may be held			
Examine offers to determine whether any are acceptable			
Verify that deposit by buyer conforms to local rules			
b. Return of sale			
Calendar 30 days after acceptance as last day to file petition for confirmation of sale			
Prepare return of sale; submit to representative for signature (§13.13)			
File return of sale			
c. Confirmation			
Prepare notice of hearing for confirmation of sale and file (§13.14)			
Calendar hearing on confirmation			
Mail notice of hearing for confirmation to purchaser, beneficiaries, real estate brokers, nonpetitioning representatives, all persons whose			

interest in estate would be affected, and persons filing requests for special notice			
If notice is by posting under Prob C §10301 (publication not required if property value does not exceed $5000), arrange for posting at least 15 days before hearing, and 5 days before hearing verify that proof of posting has been filed			
File proof of service of notice of hearing (§5.8)			
Notify original bidder and broker of hearing date			
Appear at hearing; if increased bid received, arrange at hearing for deposit by increased bidder (§13.16)			
Prepare order confirming sale and representative's deed (§§13.17-13.18)			
Submit proposed order and deed to title company for approval or comments			
If order approved, submit to court for signature and arrange for obtaining and filing any additional bond required. Obtain certified copy of order			
d. Notice of proposed action			
Complete notice of proposed action			
Mail notice to all interested persons 15 days before sale to be completed			
If any objections received, proceed to seek confirmation of sale by court			
Determine whether to petition for additional bond or blocked bank account			
e. Closing the sale			
Post additional bond, if required			
If deed approved, have representative sign			
Obtain balance of purchase price from purchaser and deliver deed (§13.18)			
If purchaser defaults, determine whether to vacate order and resell (Prob C §10350) or sell to new bidder for same or better price (Prob C §10351)			
If proceedings under Prob C §10350, prepare order and petition vacating order of confirmation, ordering resale, and awarding damages to estate against defaulting purchaser. Give notice as provided in Prob C §§1214 and 1220 and notice and copy of petition to buyers and brokers named in order confirming sale and proceed as provided for sale in first instance (§13.21A)			
If new offer received under Prob C §10351 within 60 days after confirmation order, prepare and file petition and order vacating order of confirmation and order sale to new purchaser			
DEPRECIATING PERSONAL PROPERTY			
a. Order and bill of sale (§§13.24, 13.26)			
Depreciating or perishable property (Prob C §10259); ascertain whether property so classified (§13.25); consider abandonment (Prob C			

§§9780-9788)			
If acceptable offer received, prepare bill of sale and submit to representative for signature (§13.24)			
Deliver bill of sale to purchaser on receipt of purchase price			
b. Return of sale (if no IAEA power or want to get court approval)			
Prepare ex parte petition for approval of sale of perishable or depreciating property and order confirming sale, dispensing with notice, or requiring notice (§13.26)			
c. Confirmation			
If notice dispensed with, obtain waivers of any requests for special notice filed, file return of sale, and submit order of confirmation for signature (§13.26)			
If notice required, prepare notice of hearing (§5.7)			
Calendar return date of hearing			
Serve notice of hearing as required by order; prepare proof of service			
File notice of hearing with proof of service			
Appear at hearing; submit order			
SALES OF OTHER PERSONAL PROPERTY (§§13.19-13.24)			
a. Private sale or auction			
Ascertain whether representative has testamentary power of sale; determine whether sale will be private sale or auction and whether bids will be sealed			
Publish or post notice of sale			
Calendar date sale may be held			
If acceptable bid received (subject to payment of broker's commissions), prepare agreement for commissions and have it signed by representative and broker			
b. Return of sale			
Calendar 30 days after acceptance as last day for filing return of sale			
Prepare return of sale; have representative sign it			
File return of sale			
c. Confirmation			
Prepare and file notice of hearing for confirmation of sale			
Calendar hearing on confirmation			
Mail notice of hearing for confirmation to all persons interested in the estate, including those requesting special notice, and arrange for posting at least 15 days before hearing			

Five days before hearing ascertain that proof of posting has been filed			
File proof of service of notice of hearing			
Notify original bidder and any broker of date of hearing			
Appear at hearing; if increased bid received, arrange for deposit at hearing by increased bidder			
Prepare order confirming sale and bill of sale			
Submit order to court			
Arrange for representative's signature to bill of sale			
Obtain balance of purchase price from purchaser and deliver bill of sale			
d. Default If purchaser defaults, determine whether to vacate and resell (Prob C §10350) or sell to new bidder for same or better price (Prob C §10351)			
If proceeding under Prob C §10350, prepare petition and order to vacate order of confirmation, to resell, and to award damages to the estate against the defaulting purchaser. Give notice as provided in Prob C §1220 (see also Prob C §1214) and notice and a copy of the petition to the buyers and brokers named in the order confirming sale; proceed as provided for sale of property in the first instance			
If new offer received within 60 days after confirmation order, proceed under Prob C §10351, prepare petition and order vacating order of confirmation and ordering sale to new purchaser; give notice as provided in Prob C §1220 (see also Prob C §1214) and notice and a copy of the petition to the buyers and brokers named in the order confirming sale			
e. Notice of proposed action Complete notice of proposed action			
Mail notice to all interested persons 15 days before sale to be completed			
If any objections received, proceed to seek confirmation			
Determine whether to petition for additional bond			
SECURITIES (Prob C §§10200-10202; §§13.27-13.28) Prepare petition for authority to sell securities and order; obtain waiver of notice by any persons filing requests for special notice (§13.28)			
Submit petition to representative for signature			
Arrange for sale of securities			
4. Borrowing Money (§§16.1-16.3) Prepare petition for authority to borrow money (§16.2)			
Hearing (§16.2)			

Order authorizing representative to borrow money (§16.3)			
5. Continuing Business (§10.18)			
F. INVENTORY AND APPRAISAL (chap 11)			
1. Procedural Guide (§11.2)			
2. Probate Referee (§11.4)			
3. Preparation of Inventory (§§11.8-11.15)			
Calendar date inventory due (4 months after date of representative's appointment)			
Determine whether independent appraisals are justified or required by referee			
Consider submitting additional information to referee, including independent appraisals			
Prepare cover letter with details about assets for referee			
File original inventory (and one copy if required by county assessor) (Prob C §8800)			
File partial inventory if all assets are not initially determined			
File supplemental inventory if additional assets are discovered after a final inventory has been filed			
File corrected inventory to delete assets or correct description of assets			
4. File Change in Ownership Statement (Rev & T C §480)			
File in any county in which real property included in inventory and appraisal is located (§§11.20-11.21)			
G. TAX MATTERS (chap 14)			
1. Federal and State Income Tax Returns (California Decedent Estate Practice, chap 33 (2d ed Cal CEB 2009))			
Fiduciary notice and employer ID number; see B4 above			
JOINT OR SEPARATE RETURNS			
Determine whether tax payable and joint or separate returns are to be filed for decedent and spouse for year of death (IRC §§6012, 6013(a)(2)-(3), (b)(1)-(2), (d)(1)(B), (d)(2); Reg §§1.6012-1—1.6012-5, 1.6013-1—1.6013-4)			
FINAL RETURNS			
Prepare and file final state and federal income tax returns			
For calendar-year taxpayers, return due April 15 after year of death			
For fiscal-year taxpayers, return due 15th day of 4th calendar month after end of fiscal year (IRC §6072(a))			
Determine whether extension necessary (IRC §§6072, 6081(a); Rev & T C §18566)			
ESTATE RETURNS			

Determine whether estate should be on calendar or fiscal year basis for income tax purposes (IRC §441; Rev & T C §17551)			
File federal fiduciary income tax return (IRC §§6012, 6072)			
File California fiduciary income tax return (Rev & T C §§18505, 18566)			
ESTIMATED TAXES If estate has not been closed by 2 years after decedent's death, quarterly estimated tax payments must be made (IRC §6654(*l*))			
PAYMENT Consider filing requests for prompt assessment (IRC §6501(d); Rev & T C §19517)			
Claim for refund: Form 1310 for income taxes; Form 843 for other taxes			
FRANCHISE TAX BOARD CERTIFICATE If estate over $1,000,000 and over $250,000 is distributable cumulatively to nonresident beneficiaries, obtain Franchise Tax Board certificate (Rev & T C §19513; 18 Cal Code Regs §19513) and file before date of hearing of final distribution			
2. Gift Tax Obtain copies of decedent's state and federal gift tax returns for prior years			
Determine whether additional returns required; if so, prepare and file			
3. Federal Estate Tax Fiduciary notice and employer ID number (Form SS-4); see B4 above			
FORM 706 File estate tax return Form 706 9 months after date of decedent's death (IRC §6075) (File an information return relating to large transfers at death for estates of decedents dying in 2010; see IRC §6018.)			
File election and agreement to value farm and business real property under IRC §2032A within time for filing Form 706			
File for extension of time to file return if necessary (IRC §6081(a); Reg §20.6081-1):			
Property includable (IRC §§2033-2044)			
Consider disclaimers of interest in estate of other decedent within 9 months after date of death to avoid tax (Prob C §§279, 295; Reg §25.2511-1(c); IRC §§2045, 2518; §10.20)			
PAYMENT Extension (IRC §6161) (Note interest accrues beginning 9 months after date of death)			
Installments (IRC §6166)			

Requesting prompt assessment (IRC §6501) and discharge from personal liability for tax (IRC §2204). See Decedent Estate Prac, chaps 33 and 34.			
Proration (Prob C §§20100-20225)			
On discharge of personal representative, send notice to IRS (IRS Form 56) and Franchise Tax Board			
Recovery under IRC §2207A			
4. Property Taxes			
Pay real property taxes			
File change in ownership statements for real property. See §§11.20-11.22.			
File form to claim parent-child/grandparent-grandchild transfer exclusion within 3 years of date of death or before the property is transferred to a third person or within 6 months of mailing of notice of supplemental or escape assessment (Rev & T C §63.1), including certification that transferor will not file claim to transfer base year value of property to replacement dwelling (Rev & T C §63.1(d)(1)(B)) or file late claim (Rev & T C §63.1(e)(2)). See Decedent Estate Prac, chap 32. See also §11.20.			
5. Other Death Taxes			
Other states, if ancillary			
If real property in other states, death taxes may be due to the other state—investigate need			
Prepare and file appropriate forms in relevant states			
Pay taxes as required			
Generation-skipping transfer taxes			
Allocate decedent's unused and unallocated exemption			
If generation-skipping transfer over exemption amount, file appropriate returns and pay tax			
H. FAMILY ALLOWANCE, EXEMPTIONS, AND HOMESTEADS (chap 15)			
1. Family Allowance (Prob C §§6540-6545; §§15.2-15.10)			
Determine persons entitled to apply for family allowance (Prob C §6540)			
Prepare petition and order (Prob C §6541)			
Ascertain whether notice is required (Prob C §§6541, 1220, 1214):			
If so, prepare and mail notice			
Ascertain whether hearing is required (Prob C §6541):			
If so, calendar date of hearing			
Advise recipient of order			
Record payments received			

Calendar date 1 month before end of allowance			
Modification (Prob C §6541): Prepare and file petition			
Notice as for original notice			
Order			
Continuance or renewal: proceed as on original application			
Termination by court order			
2. Setting Aside Exempt Property or Homestead (§§15.11-15.19) Ascertain persons entitled to exempt property and need			
Statutory provisions (Prob C §§6510-6528)			
Prepare petition for order setting apart: Exempt personal property (Prob C §6510)			
Probate homestead (Prob C §§6520-6528)			
Notice (Prob C §§1214, 1220, 6511, 6525): Prepare notice of hearing and file with petition			
Calendar hearing date			
Serve notice of hearing as provided in Prob C §1220 (see also Prob C §1214)			
Prepare and file proof of service before hearing			
Prepare order setting aside exempt property: Appear at hearing and submit order			
Arrange for delivery of property			
I. ANCILLARY ADMINISTRATION (chap 21) Collection of personal property by non-California representative under Prob C §§13100-13116 (Prob C §§12570-12572) (For collection of California resident decedent's out-of-state property, see Decedent Estate Prac §13.63)			
Probate of foreign will (Prob C §§12510-12542; §§21.3-21.8): Petition for probate of foreign will and letters (§21.10)			
Order admitting foreign will to probate and for letters (§21.11)			
Petition for distribution of assets to foreign representative (§21.12):			
Order approving final account and judgment of distribution to foreign representative (§21.13)			
Distribution of assets to foreign representative (Prob C §§11621, 11640, 12540-12541; §21.12)			
J. PRELIMINARY DISTRIBUTION (chap 17) Petition for preliminary distribution (§§17.2, 17.8-17.10)			
Notice of hearing (§17.7)			
Order for preliminary distribution (§17.10)			

Bond of distributee on preliminary distribution (Prob C §11622; §17.11)			
Receipt of distributee (§17.12)			
K. ACCOUNT, REPORT, AND FINAL DISTRIBUTION (chap 18)			
Note: Petition for final distribution must be filed, or the reason given for failure to do so (along with request that administration be extended), within one year after issuance of letters (18 months if estate tax return required) (§18.4)			
1. Review File to Determine Whether Estate Ready to Be Closed (§18.28)			
2. Prepare Final Account, Report, and Petition for Final Distribution			
Prepare estate account (or get waivers of account) (§§18.13-18.27, 18.31-18.32)			
Prepare final account and petition for distribution (§§18.12, 18.29)			
See procedural guide (§18.3):			
Notice of hearing (§18.34)			
Prepare supplemental account for any receipts or disbursements after final account (§§18.35-18.35A)			
Prepare order settling final account and ordering distribution; submit to representative (§§18.35B-18.36)			
Appear at hearing; submit supplemental account and order			
Prepare receipts for distribution under court order; arrange for distribution and signature of receipts by distributees (§20.20)			
3. Compensation (chap 19)			
Statutory (§§19.6-19.8)			
Extraordinary (§§19.9-19.16)			
4. Transfer of Assets in Distribution			
Transfer of estate securities (§§20.3-20.15):			
Stock transfer chart (§20.5)			
Affidavit of domicile (§20.8)			
Sister-state transfer tax? (§20.7)			
Power of attorney and assignment (§20.9)			
Signature guaranty (§§20.4, 20.8)			
Letter to transfer agent (§20.11)			
Transfer of real property (§20.16)			
Tangible personal property by physical delivery (§20.18)			
Receipt on distribution (§20.20)			
Statement of recording information for real property (§20.20)			
5. Discharge of Representative			

File declaration and order of final discharge (§§20.21-20.22)			
Send copy of order to surety for discharge of bond and obtain refund of premium for any year beyond first year (chap 8)			
Send copy of order to IRS and Franchise Tax Board with appropriate form (IRS Form 56) or letter if notice of fiduciary relations previously sent (chap 14)			
L. CLOSING PROBATE ESTATE FILE (§20.24)			

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V. PREPARING AND FILING PROBATE DOCUMENTS AND FORMS

§1.14 A. Requirements and Instructions

If instructions are clear and specific, probate forms may be prepared even by an inexperienced employee. The California Judicial Council has prescribed a number of probate forms for mandatory use in California courts and some probate courts have adopted their own preprinted forms and information sheets. The latest requirements of the particular superior court should always be checked before a document is prepared to ensure that the most current version of a required form is used. See §§1.15-1.16.

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§1.14A B. Definitions of Pleadings

In probate proceedings, there are different notice, signature, and verification requirements for pleadings, amended pleadings, amendments to pleadings, and supplements to pleadings. Therefore, it is necessary to be aware of the definitions of each type of documents. See Cal Rules of Ct 7.3(2)-(5):

- A "pleading" refers to a contest, answer, petition, application, objection, response, statement of interest, report, or account filed in any Probate Code proceeding.
- An "amended pleading" is a pleading that completely restates and supersedes the pleading it amends.
- An "amendment to a pleading" is a pleading that modifies another pleading and alleges facts or requests relief materially different from the modified pleading. It must be read in conjunction with the modified pleading.
- A "supplement to a pleading" or "supplement" modifies a pleading without alleging different facts or requesting relief that is materially different from the modified pleading. It merely adds information or corrects omissions.

On signature requirements for the various types of pleadings, see §1.20A; on verification requirements, see §§1.21-1.21A. On notice requirements for each of these pleadings, see §5.23A.

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C. Preprinted Forms

1. Judicial Council Forms

§1.15 a. Use of Judicial Council Forms

The Judicial Council has approved various forms to be used in probate matters. The forms were not made mandatory under Govt C §68511. However, the Judicial Council has adopted most probate forms for mandatory use. Cal Rules of Ct 1.31. The probate forms listed in the chart in §1.16 have been approved by the Judicial Council.

A Judicial Council form must be used for an amended pleading if a Judicial Council form was used for the original pleading. The word "amended" should be added to the caption. A Judicial Council form may not be used for an amendment to a pleading, nor may it be used for a supplement to a pleading. Cal Rules of Ct 7.104(a)(3), (b)(2). For definitions of these types of pleadings, see §1.14A.

Most of the Judicial Council forms reproduced in these manuals can be photocopied in the size required for filing with the courts from the California Judicial Council Forms Manual (Cal CEB 1981) (updated twice yearly). Many Judicial Council forms are printed on both sides. The person photocopying a two-sided form must be certain that the copy is made so that the printing on the back begins at the bottom of the page. Cal Rules of Ct 2.134(b). This practice allows the reader of the court file (in which documents are fastened at the top) to lift the page and continue reading the form without disassembling the pages. However, forms that are printed on both sides may be reproduced only on one side—that is, two single-sided pages instead of a one-page, two-sided form. Cal Rules of Ct 2.134(a).

Courts that participate in the California case management system (CCMS), a statewide software application for superior courts, may generate certain mandatory Judicial Council form orders electronically and modify them as long as the orders are substantially equivalent in language and appearance to the paper copy. Cal Rules of Ct 7.101.5 (effective until January 1, 2012). One such order is the Order for Probate (Judicial Council Form DE-140).

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Source: Estate Planning/California Probate Workflow Manual Revised/1 Managing and Processing Probate Workflow/ §1.16 b. Chart: Judicial Council Forms for Probate Proceedings

§1.16 b. Chart: Judicial Council Forms for Probate Proceedings

Name of Form	No. of Form	Revision Date	Probate Workflow Manual Reference	Decedent Estate Practice 2d Reference
Petition for Probate	DE-111*	3/1/2008	§§7.11, 21.10	§7.49
Notice of Hearing—Decedent's Estate or Trust; Clerk's Certificate of Posting, Proof of Service by Mail	DE-120*	7/1/2005	§5.7	§§6.11-6.12
Attachment to Notice of Hearing Proof of Service by Mail (Probate—Decedents' Estates)	DE-120 (MA)	7/1/2005		
Proof of Personal Service of Notice of Hearing —Decedent's Estate or Trust	DE-120 (P)	7/1/2005	§5.9	§6.14
Attachment to Notice of Hearing Proof of Personal Service (Probate—Decedents' Estates)	DE-120 (PA)	7/1/2005		
Notice of Petition to Administer Estate; Proof of Service by Mail	DE-121*	1/1/2006	§7.26	§7.82
Attachment to Notice of Petition to Administer Estate—Proof of Service by Mail (Probate—Decedents' Estates)	DE-121 (MA)	1/1/2006		
Citation—Probate; Proof of Service [same as GC-322]	DE-122*	1/1/2006	§5.22	§6.26
Summons (Probate)	DE-125*	1/1/1998	§5.23	§6.25
Proof of Subscribing Witness	DE-131*	1/1/1998	§7.33	§7.60
Proof of Holographic Instrument	DE-135*	1/1/1998	§7.36	§7.62
Order for Probate	DE-140*	1/1/1998	§§7.41, 21.11	§7.95
Duties and Liabilities of Personal Representative and Acknowledgment of Receipt	DE-147*	1/1/2002	§7.38	§7.75
Confidential Supplement to Duties and Liabilities of Personal Representative	DE-147S*	1/1/2001	§7.39	§7.76
Letters (Testamentary, of Administration, etc.)	DE-150*	1/1/1998	§7.42	§7.97
Request for Special Notice [same as GC-035]	DE-154*	1/1/1998	§5.24A	§6.33
Notice of Administration to Creditors	DE-157*	1/1/1998	§12.9	§14.13
Inventory and Appraisal [same as GC-040]	DE-160*	1/1/2007	§11.9	§13.67
Inventory and Appraisal Attachment [same as GC-041]	DE-161*	1/1/1998	§11.10	§13.67
Notice of Proposed Action (Objection—Consent)	DE-165*	1/1/1998	§9.16	§15.27
Waiver of Notice of Proposed Action (and Revocation of Waiver)	DE-166*	1/1/1998	§9.20	§15.28
Creditor's Claim	DE-172*	1/1/1998	§12.16	§14.37
Allowance or Rejection of Creditor's Claim	DE-174*	1/1/2009	§12.20	§14.58
Order Prescribing Notice (Probate) [same as GC-022]	DE-200*	1/1/1998	§5.6A	§6.43
Spousal/Domestic Partner Property Petition	DE-221*	1/1/2005	§6.17	§4.62

Spousal/Domestic Partner Property Order	DE-226*	1/1/2005	§6.19	§4.66
Report of Sale and Petition for Order Confirming Sale of Real Property [same as GC-060]	DE-260*	1/1/2006	§13.13	§18.70
Order Confirming Sale of Real Property [same as GC-065]	DE-265*	1/1/2006	§13.17	§18.79
Ex Parte Petition for Authority to Sell Securities and Order [same as GC-070]	DE-270*	1/1/1998	§13.28	§18.100
Ex Parte Petition for Approval of Sale of Personal Property and Order [same as GC-075]	DE-275*	1/1/1998	§13.26	§18.108
Ex Parte Petition for Final Discharge and Order	DE-295	1/1/2006	§20.22	§32.83
Affidavit re Real Property of Small Value ($20,000 or Less)	DE-305*	7/1/2008	§6.25	§3.50
Petition to Determine Succession to Real Property (Estates $100,000 or Less)	DE-310*	1/1/1998	§6.21	§3.41
Order Determining Succession to Real Property (Estates $100,000 or Less)	DE-315*	1/1/2003	§6.23	§3.44
Petition for Appointment of Guardian Ad Litem	DE-350*	1/1/2008		

*Adopted for mandatory use in all courts

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§1.17 2. Use of Local Printed Probate Forms

Some courts either recommend or require the use of their own printed probate forms. These forms are for a specific use only, should not be altered substantially, and may be accompanied only by the attachments requested on the form. If a particular printed form cannot be used without substantial alteration, the attorney should prepare one using the printed form as a guide. The practitioner should always check local rules and probate policy memorandums of the particular county to learn whether the county uses its own forms. If strict compliance is required, matters on forms not conforming to the local requirements may not be heard.

When the court requires or prefers the use of its printed form, ample copies should be obtained from the county clerk's office for the firm's files. When official forms are not available, forms in this book may be adapted to local requirements.

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D. Forms and Documents Drafted in the Law Office

§1.18 1. Format Rules

California Rules of Court govern the format of probate documents. Generally, papers, as defined in Cal Rules of Ct 2.3(2), must be typewritten, printed, or photocopied in not smaller than 12 point on opaque, unglazed white paper of standard quality not less than 20-lb. weight, 8½ by 11 (letter size). Cal Rules of Ct 2.103-2.104. Only one side of the page may be used. Cal Rules of Ct 2.102. The lines may be either double spaced or 1½ line spaced and must be consecutively numbered. Real property descriptions may be single spaced. Cal Rules of Ct 2.108. The pages of the documents must be consecutively numbered at the bottom, bound together at the top, and prepunched with two normal-sized holes, centered 2½ inches apart, and 5/8 inches from the top of the paper. Cal Rules of Ct 2.109, 2.113, 2.115. Each paper filed with the court, except for exhibits, must have a footer in the bottom margin of each page below the page number, divided from the rest of the document by a printed line. The footer should contain the title of the paper, *e.g.,* "Complaint" or "XYZ Corp.'s Motion for Summary Judgment," and must be in at least 10-point type. Cal Rules of Ct 2.110.

Recycled paper is required for all original papers filed with the court and for all copies of papers, documents, and exhibits, including those served on other parties. Cal Rules of Ct 2.101.

The format of the first page is particularly important (see Cal Rules of Ct 2.111); a sample is shown in §1.20. It is suggested that, in addition to numbering each allegation in a document, a descriptive heading should be used to highlight and pinpoint the allegation, particularly in long documents.

Any additions, deletions, or interlineations to the paper must be initialed by the clerk or judge at the time of filing. Cal Rules of Ct 2.116. All copies served must conform to the original as filed, including line numbering, pagination, additions, deletions, and interlineations. Cal Rules of Ct 2.117.

The county clerk will not accept attorney-drafted documents unless they comply with Cal Rules of Ct 2.100-2.117, although, for good cause shown, the court may make an exception. Cal Rules of Ct 2.118. The clerk may not, however, reject a paper for filing solely because it is handwritten or because the handwriting is not in blue or black ink. Cal Rules of Ct 2.118(a).

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§1.19 2. Word-Processing Suggestions

There should be no word-processing errors in the final document based on the draft or the lawyer's instructions. Great care must also be taken in preparing probate forms. The forms should be proofread. If the typist finds it difficult to determine how to fill out a particular blank space, he or she should not hesitate to ask someone in the office who knows.

Probate attorneys and examiners and the probate court staff must examine a great number of papers filed daily. Improperly prepared papers detected at the filing window will be rejected; if the error is detected by the probate court staff, relief may be denied or a continuance may be necessary. If not detected, the defects will become a part of the official court records. Curing defects can be costly and may jeopardize the attorney's professional standing.

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Source: Estate Planning/California Probate Workflow Manual Revised/1 Managing and Processing Probate Workflow/ §1.20 E. Form: First Page

§1.20 E. Form: First Page

INSTRUCTIONS: The attorney named represents the party on whose behalf the paper is presented. Office address or, if none, residence address may be used. Cal Rules of Ct 2.111(1). Including the fax number or e-mail address is optional and does not constitute consent to service by fax or e-mail. Cal Rules of Ct 2.111(1).

The title of the estate on the initial petition for letters, the letters themselves, orders, and distributions should include every name under which the decedent held a record title to real or personal property, in order to identify the decedent with the assets on transfer or distribution. For example, John B. Doe, aka J.B. Doe, J. Doe. The decedent's most commonly used name should be placed first. For other pleadings, it may be simpler to use only one name for the decedent, because it can be cumbersome to state all the names in every pleading. If it is later discovered that there are other names by which the decedent was known, the title may be amended on an ex parte petition and order. Subsequent papers should then bear the title as amended. See §7.46.

Documents presented for filing in a pending probate matter must bear the court file number. Cal Rules of Ct 2.111(5). Below the number of the case, the nature of the paper and the character of the action or proceeding must be included. Cal Rules of Ct 2.111(6).

The name of the judge and department, if any, should appear below the nature of the paper or the character of the action. Cal Rules of Ct 2.111(7). If the case will be heard by a referee appointed under CCP §638 or §639, the word "Referee:" and the name of the referee must appear below the nature of the paper or the character of the action. Cal Rules of Ct 2.111(8).

The proper designation of the nature and character of the pleading entered below the number of the action is crucial, because this caption is used for notice and court-computer calendaring and, if the caption is deficient, the court may not grant relief (*e.g.,* extraordinary fees).

_ _[*Name of attorney; State Bar number*]_ _
_ _[*Address*]_ _
_ _[*Telephone number*]_ _
_ _[*Fax number*]_ _
_ _[*E-mail address*]_ _
Attorneys for the Personal Representative

[Leave this area blank]

SUPERIOR COURT OF CALIFORNIA
COUNTY OF _ _ _ _ _ _ _ _ _ _ _
[*In San Francisco the title should read*
"CITY AND COUNTY OF SAN FRANCISCO"]

Estate of _ _[*name*]_ _, **deceased**	)	**No.** _ _ _ _ _ _
	)	_ _[*NATURE OF PAPER AND CHARACTER OF ACTION*]_ _
	)	_ _[*Referee:* _ _[*name of referee*]_ _]_ _
_____	)	

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§1.20A F. Signature of Pleadings

A pleading under the Probate Code must be in writing and must be signed by all persons joining in it. Cal Rules of Ct 7.103(a).

An attorney may sign a pleading for a person who is out of the county, or who is otherwise unable to sign, unless the person is the appointed fiduciary in the proceeding or is seeking to become one. Cal Rules of Ct 7.103(c).

All persons required to sign a pleading must sign an amended pleading, as well as an amendment to a pleading. Cal Rules of Ct 7.104(a)(1). A supplement to a pleading must be signed by one of the parties who were required to sign the original pleading, although the court has discretion to accept a supplement to a pleading signed by the attorney for the party, when the information in the supplement is particularly within the attorney's knowledge. Cal Rules of Ct 7.104(b)(1).

For the definitions of these various types of pleadings, see §1.14A. For verification requirements, see §1.21.

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G. Verification of Pleadings

§1.21 1. Purpose of Verification

In an uncontested probate proceeding, an affidavit or verified petition must be received as evidence. Prob C §1022. A probate matter can thus be heard and determined without an appearance by the attorney or client if allowed by local rules. If no appearance is made and the declaration is defective, there is no evidence before the court. The Probate Code requires generally that petitions, reports, accounts, objections, and responses filed under the Probate Code be verified (Prob C §1021), while the Rules of Court require that all pleadings under the Probate Code be verified. Cal Rules of Ct 7.103(b). On the definition of pleadings, see §1.14A. If two or more persons join in a pleading, any one of them may verify it. Cal Rules of Ct 7.103(b).

If a person (other than a fiduciary appointed in the proceeding, such as the representative) who must verify a document is out of the county or is otherwise unable to sign, his or her attorney may sign and verify the document. Prob C §1023; Cal Rules of Ct 7.103(c).

The form in §1.22 may be executed anywhere (California, sister state, or foreign country). The declaration must be dated; otherwise, it is defective and worthless for evidence and proof. CCP §2015.5.

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§1.21A 2. Verification of Amended or Supplemented Pleadings

One of the persons required to verify a pleading must verify an amended pleading. Cal Rules of Ct 7.104(a)(1). Similarly, one of the persons required to verify a pleading must verify an amendment to the pleading. Cal Rules of Ct 7.104(a)(2).

One of the persons who was required to verify a pleading must verify a supplement to the pleading. Cal Rules of Ct 7.104(b)(1). The court, however, has discretion to accept for filing a supplement to a pleading signed under penalty of perjury by the attorney for the party offering it. See §1.20A.

On the definitions of these various types of pleadings, see §1.14A.

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§1.22 3. Form: Verification by Declaration (Individual and Corporate Trustee)

[*Use one of the following alternatives*]

[*Alternative 1: individual*]

I, _ _[*name*]_ _, the petitioner in this matter, declare that I have read the petition and know its contents, which are true of my own knowledge except for those matters stated on my information and belief, and as to those matters I believe the petition to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _ _[*date*]_ _, at _ _[*place*]_ _.

__[*Signature*]__
_ _[*Typed name*]_ _
Petitioner

[*Alternative 2: Corporate fiduciary*]

I, the undersigned, say:

I am _ _[*e.g., a trust officer*]_ _ of _ _[*name of corporate trustee*]_ _, the _ _[*executor/administrator/(etc.)*]_ _ of the _ _[*will/estate*]_ _ of _ _[*name*]_ _, deceased. This _ _[*e.g., account and report and petition*]_ _ is true of my own knowledge, except for those matters stated on my information and belief, and as to those matters I believe the petition to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on _ _[*date*]_ _, at _ _[*place*]_ _.

__[*Signature of petitioner*]__
_ _[*Typed name of petitioner*]_ _
_ _[*Typed name of corporate trustee*]_ _
Petitioner

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§1.23 4. Verification by Affidavit

Because verification by declaration is now available both within and outside California (see §1.22), the more cumbersome verification by affidavit is rarely used. If it is necessary to use the affidavit procedure, CCP §§2013-2015.

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§1.24 H. Exhibits and Attachments

Particular care should be taken to attach all documents referred to in papers to be filed. Throughout this manual the word attachment is used instead of exhibit. Some attorneys, however, prefer the word exhibit. A common error in probate filing procedures is that an attachment alluded to as attached and incorporated in the document by such language as "a copy of which is attached, marked Attachment _ _, and is incorporated herein by reference" is not, in fact, attached. Some courts may allow an attorney-signed amendment to provide a missing attachment. The county clerk's office is without authority to add attachments after the document has been filed. However, some courts at the hearing may amend a pleading on its face, *e.g.,* correct the bond amount, or change a wrongly checked box. These cures should not be relied on, however, because not all courts will allow them. An omission of this sort can cause inconvenience, delay, and extra expense. For example, Judicial Council Form DE-131, Proof of Subscribing Witness, requires that a photocopy of the will be attached. If the form is filed without the copy, a new form will have to be filed, complete with a new declaration, attaching a photocopy of the will.

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§1.25 I. Common Forms and Form Files

It is valuable for the law office to maintain a current, numbered, and indexed file of all forms used by the attorneys, legal assistant, and secretary involved in estate administration work. Some examples of frequently used form letters are to probate referees to forward inventory papers, a request to the Internal Revenue Service for an early audit and release from personal liability (see California Decedent Estate Practice §33.4 (2d ed Cal CEB 2009)), requests for requirements for stock transfers, tax transmittal letters, and letters detailing the administration of a decedent's estate (see, *e.g.,* §§3.3, 10.3, 10.27).

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VI. PROBATE COURT ADMINISTRATION

§1.26 A. Probate Code, Rules of Court, and Local Rules and Policies

The administration of a decedent's estate is subject to the control of the superior court sitting in probate under provisions of the California Probate Code. The passage of Prob C §800 eliminated the concept of the probate court as a court of "limited jurisdiction," because the code section expressly states the court sitting in probate has the same power and authority as any other superior court. Most superior courts issue probate rules, policy memoranda, or manuals to establish uniform procedures in probate practice. These rules and policies differ from county to county, and are often amended. Therefore it is essential for the attorney, legal assistant, or legal secretary to maintain a file with copies of local rules. These rules are reprinted yearly in CEB Local Probate Rules. Familiarity with local rules and policies expedites the handling of probate matters.

The clerk of each superior court must make available for public examination a complete set of current local rules of all courts or delegate that responsibility to the county law library. Cal Rules of Ct 10.613. Many unwritten rules and policies have been established through long usage. Attorneys who practice in the probate court must be thoroughly familiar with the current probate rules and policies; regardless of form, probate rules and policies have the force and effect of court rules and are binding on attorneys. See §1.2 for a list of source materials that attorneys and assistants should have.

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B. Probate Commissioners

§1.27 1. General Duties

The probate commissioner, or any other officer of the court authorized to perform the commissioner's duties, assists the court in handling probate proceedings. Under the specific powers and duties delegated by the appointing court, the probate commissioner examines (in some jurisdictions with the assistance of probate attorneys, examiners, and others) all probate files and proceedings and then advises the court on their disposition.

Local rules, written and unwritten, must be consulted for the practices in a specific county. Commissioners' duties vary; *e.g.,* in Los Angeles County the commissioners (including both court and probate commissioners) relieve the judges of many routine duties and often sit as judges pro tempore.

The probate commissioner's office gives general information about the form and content of papers required or authorized to be filed in court. They will not, however, generally provide information that is readily available in well-known treatises, annotated statutes, or the local Probate Policy Memorandum or Manual. Specific information is given in some counties, such as Los Angeles County, when the approval of the Probate Attorney's office is often a prerequisite to approval by the judge. In prescribed instances, the probate commissioner may sign ex parte orders and approve motions otherwise requiring the judge's signature. The court commissioner is authorized to take and approve bonds and undertakings, and to examine the sureties on bonds when exception is made to their sufficiency.

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§1.28 2. Probate Attorneys Assisting Commissioners

In a few counties, large staffs are necessary to process the volume of probate matters filed. To illustrate the functions of these staffs, the Probate Attorney's Office of Los Angeles County is described below. This description applies only to Los Angeles County, and the procedures of each county must be ascertained.

The Probate Attorney's Office of Los Angeles County is headed by a Probate Commissioner and an assistant who is also a Probate Commissioner. The Probate Commissioner is the liaison between the probate office and the court. The Probate Commissioners assist the probate judge when requested and also sit as judge pro tempore and sign numerous ex parte petitions. The Probate Commissioner's assistant examines ex parte petitions, (*e.g.,* for sales of stock, appointment of special administrators or guardians, or temporary conservators) and initials those found to be in order. These petitions are then presented to the probate judge. In addition to checking calendars, the assistant performs the Probate Commissioner's duties in the Commissioner's absence in connection with the department's administration.

The Probate Attorneys prepare the court calendars each week. Generally, the Probate Attorney screens all probate papers filed with the court to verify conformity to code requirements and local policies. If questions are raised by a petition, the Probate Attorney notes them in the calendar notes, or the calendar is marked "Judge to Determine" (JTD) (in Los Angeles County, standard abbreviations are used). Calendar notes are mailed to the attorney of record. Self-addressed, stamped envelopes must be attached to petitions so that notes may be mailed to attorneys. The notes are also made available to the public by telephone two days before the hearing of a petition. If the fee is paid ahead of time and the correct form is completed, notes may be faxed to the attorney.

The attorney or the legal assistant should check the calendar notes as soon as they are received in the mail to learn what notes and recommendations have been made by the Probate Attorney so that necessary explanations or corrections can be supplied. If the notes are not received, or if clarification is required, the Probate Attorney's office can be called two days before the scheduled hearing date.

If a petition is not approved, attorneys are told which problems still exist and whether they can be cleared by the Probate Attorney or require an appearance before the judge. If the notes can be cleared with the Probate Attorney, the probate attorney is available for conference two court days before the hearing.

In the Central District, the Probate Attorney's notes are usually typed on the court calendar in red and black (additions or deletions to the notes are normally in red or black pen). Black notes indicate satisfactory items, and red notes underlined in black also indicate that the matter has been cleared. The judge must determine items left in red. The easiest way to deal with these notes is from top to bottom. Because the notice and jurisdictional problems usually appear at the top of the notes, these matters should be resolved before testimony and evidence are taken on the petition itself.

In petitions requesting multiple relief, such as for final account, fees, extraordinary fees, instructions, and distribution, the notes might indicate, *e.g.,* "JTD extra fees ($1000) and instructions re distribution to pretermitted heirs o/w [otherwise] account approved, statutory fees and commissions ($500 each) and distribution as requested O.K."

The Probate Attorney also examines attorney orders regarding matters on the calendar and initials the orders that the judge must sign.

The Supervising Probate Judge is responsible for the operation of the Probate Attorney's Office; directions to staff members are subject to the approval of the Supervising Probate Judge.

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§1.29 C. Court Clerk's Probate Division

The court clerk's office in most counties is divided into three main divisions: civil, probate, and criminal. The probate division keeps and processes records of all proceedings for the administration of decedent estates. The probate division also handles the records of guardianship, conservatorship, trust, and related miscellaneous conservatorship proceedings for the protection of minors, conservatees, trusts, trust beneficiaries, or other interested persons. As petitions are filed, they are checked for technical sufficiency and set for hearing. The clerk files and records all documents presented, prepares the calendar, keeps a record of each decision, prepares the formal orders in some counties, and prepares transcripts and certified copies of records.

In many cases the clerks will answer telephone inquiries. This practice, however, varies from county to county. Generally, telephone inquiries must be limited to subjects that can be answered instantly. Confidential information is not given over the telephone.

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VII. DOCUMENT FILING PROCEDURES, FEES, AND CORRESPONDENCE

§1.30 A. Document Filing Procedures

Papers and records to be filed in a probate proceeding in a superior court are filed with the court clerk, by mail addressed to the Clerk of the Court, or in person. See below on filing by mail. Documents to be filed must consist of original pages. Cal Rules of Ct 2.113. Filings in branch courts may require an extra copy of the pleading for transmission to the main or central branch. Additional requirements vary among the counties. On presentation for filing, the "first paper" is given a number that all subsequent papers in the proceeding will bear; the clerk marks all papers with the date of the filing and his or her name, title, or authority. See Govt C §69846.5. The clerk also performs such statutory duties as posting notices and registering, indexing, and filing the papers received. At the time of filing, the clerk determines the filing fees due at that time. Consult a current schedule of fees before any filing.

The court clerk will also stamp copies of court documents with the filing date, name of the court, his or her name, and the word "filed." The practitioner should be certain to keep for his or her records a stamped copy of each filed court document.

Filing by mail: Papers and records may be filed with the clerk by mail under the following conditions:

(1) All required papers and documents must be complete and in proper form for filing, including orders signed by a judge;

(2) A check for the exact amount of filing fees and charges (if any) must be attached;

(3) A self-addressed envelope with sufficient postage must be supplied when copies are to be returned; and

(4) A cover letter should list the enclosed papers and tell the clerk what the attorney wants the clerk to do with them (*e.g.,* file the originals, stamp and return the copies in the envelope provided).

Some county clerks (including Los Angeles County) do not issue receipts for documents filed. If a copy endorsed with the date of filing is desired, a stamped, self-addressed envelope must be provided for its return.

If an original will is included with the mailed papers and records, the envelope should be mailed certified, return receipt requested.

All petitions must be filed with the clerk before they can be considered by the probate court or the probate commissioner. Enclosing a self-addressed, stamped envelope frequently expedites return of any documents. Some counties may refuse to return documents requested by mail unless such an envelope is enclosed with the request.

For specific filing procedures for a particular type of document, see the discussion in this book relating to that document.

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§1.31 B. Fees

Court fees and costs are payable in advance to the court clerk. Because the various court fees and costs are subject to change, the legal assistant or the secretary in charge of processing the probate file should keep an up-to-date schedule of the filing and certification fees and costs.

Probate filing fees are covered in Govt C §§70650, 70656-70659; miscellaneous costs, including photocopying, certification, and authentication, are covered in Govt C §§26831-26837, 26839, 70620, 70629. Under Govt C §70650, the uniform filing fee for the first petition for letters of administration or letters testamentary, or the first petition for special letters with general powers is $355. For discussion of obtaining a refund of filing fees for an estate commenced on or after August 18, 2003 and before January 1, 2008, see §18.31.

A $355 fee is required for the first objections to probate of a will or codicil, or the first petition for revocation of probate of a will, and for subsequent petitions or objections in the same proceeding by a person other than the original petitioner or contestant. Govt C §§70650(b)-(d), 70651. The uniform filing fee for the first petition for special letters of administration without the powers of a general personal representative is $200. Govt C §§70650(b), 70657.5(a)(3).

After letters are issued, a $355 fee also applies to filing or objecting to the following (Govt C §70658(a)):

- Petition for order concerning the sale, lease, encumbrance, grant of an option, purchase, conveyance, or exchange of property.
- Petition for an order settling a fiduciary's account.
- Petition for an order authorizing, instructing, or directing a fiduciary, or approving or confirming acts of a fiduciary.
- Petition for an order concerning payment of compensation or expenses of an attorney.
- Petition for an order concerning payment of compensation or expenses of a fiduciary.
- Petition for an order surcharging or removing a fiduciary.
- Petition for an order transferring or authorizing transfer of property of an estate to a fiduciary in another jurisdiction.
- Petition for an order allowing a fiduciary's request to resign.
- Petition for an order adjudicating a claim to property under Prob C §§850-859.

PRACTICE TIP: Some of these multiple filing fees may be unavoidable, but counsel should consider whether the benefits of nonessential petitions and applications for things like preliminary distributions or settlement of interim accounts, not to mention allowance of compensation for the personal representative or attorney, are worth the additional cost in fees to the estate.

NOTE: In some courts, an additional filing fee may be imposed for amended pleadings or amendments to pleadings. Local rules should be consulted and local practice determined.

Fees for different services provided by the clerk of the court, *e.g.,* filing and certification fees, should be paid with separate checks. Although these fees are collected by the same office in some counties, in others they are collected in more than one location.

Refunds of overpayments may be obtained from the probate division where the payment was made. The attorney or assistant should check with the particular county for procedures to follow to obtain the refund, such as filling out a Claim for Refund form (the procedure in Los Angeles County).

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§1.32 C. Correspondence About Court Records

All correspondence about court records should be directed to the county clerk. Correspondence about a court's actions should be directed to the court. In larger counties, correspondence with a branch court should be addressed to that office.

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§1.33 D. Probate Registers of Actions

Registers of actions are chronological records of every matter before the court, entered by division according to the date of commencement. They are also chronological records of each proceeding in an action. Registers of actions are bound separately for each of the three main divisions of the clerk's office.

To use the register one must know either the date on which the action commenced or its number. Registers of actions are available for public inspection in the clerk's office.

Information about the registers of actions or index will generally be given over the telephone, although that is not true of every county. General procedural information is given at the public counter; difficult procedural problems may be discussed with the person on duty. The files are open to public inspection but no information from them is given over the telephone. As a general rule, in counties having district or branch offices, calls may also be made to the individual district or branch office for the register of actions entries of that branch only.

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VIII. CALENDARS AND HEARINGS

§1.34 A. Calendaring Petitions and Hearing Dates

In most counties, the filing clerk assigns hearing dates to all probate petitions to ensure that necessary clerical notices are given and that there is no overcrowding of probate calendars. If a particular date (or day of the week) is desired, the request should be made when presenting the pleading for filing.

Usually a hearing date on a petition is set for 3 or 4 weeks after the filing date, but some courts will set the date as early as 2 days beyond the minimum notice period. This can create notice problems if the petition was filed by mail. Orders shortening time, if authorized by the code, may set a lesser time for hearing; some petitions, however, such as a petition for administration of an estate of a person missing for more than 5 years, might be set 3 months after first publication of notice. When filing a petition requiring a longer than usual notice period, alert the clerk to the notice requirements to make sure that an appropriate hearing date is set.

The probate calendar clerk uses information from the caption of the petition to set the hearing date, prepare the calendar, and post notices to comply with Prob C §1230. Thus, the caption should indicate the nature of the petition and the relief requested.

The day of the week on which the probate calendars are heard may be obtained from the particular department or district office. Contact information for most courts can be found at the official California courts website at http://www.courtinfo.ca.gov/courts/trial.

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Source: Estate Planning/California Probate Workflow Manual Revised/1 Managing and Processing Probate Workflow/ §1.35 B. Chart: Calendar Abbreviations

§1.35 B. Chart: Calendar Abbreviations

Most counties have not adopted standard calendar abbreviations. The following abbreviations are used on daily calendar notes in Los Angeles County (Los Angeles Ct R 10.32, App A):

Acct	account
Admin	administrator
Admin CTA	administrator with will annexed
Aff	affidavit
A.O.	attorney order
Apprl	appraisal
ARA	account, report, acts
Auth	authority/authorize
Bene	beneficiary
Cite	citation
Cod	codicil
Consee	conservatee
Consr	conservator
Cont	continue
C/P	community property
CRC	California Rules of Court, Title 7 (Probate)
DCFS	Department of Children and Family Services
D/D	date of death
Decd	decedent, deceased
DHS	Department of Health Services
Dist	distribution
DOB	date of birth
DSS	Director of Social Services
DWOP	deny without prejudice
Ex	extraordinary
Extr	executor
FBO	for benefit of
FMV	fair market value
GAL	guardian ad litem
Gdn	guardian
Gdnship	guardianship
Holo	holographic
IAEA	Independent Administration of Estates Act
I & A	inventory & appraisal
ITF	in trust for
J/T	joint tenancy

JTD	judge to determine
Juris	jurisdiction
LASC Ch 10	Los Angeles Superior Court Rules, Chapter 10
Ltd	limited
Ltrs	letters
MO	minute order
Ntc	notice
NTE	not to exceed
Objs	objections
Objr	objector
O/C	off calendar
OTR	ordered to return
o/w	otherwise
PA	public administrator
P & E	person and estate
Pers rep	personal representative
Petnr	petitioner
Prob C	Probate Code
P/P	personal property
Pub	publication
PVP	Probate Volunteer Panel attorney
R/A	request of attorney
Reapprl	reappraisal
RFA	recommended for approval
R/P	real property
RP	responding party
S/P	separate property
Spec Admin	special administrator
Spec Ntc/copy	special notice & copy
Stat	statutory
Succ	successor
Supp req	supplement required
Tee	trustee
Temp	temporary
Tr	trust
T/T	take testimony
VA	Veterans Administration

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§1.36 C. Appearance and Proceedings Without Appearance

Some proceedings require a court appearance and testimony on the matters alleged in the petition being heard; other matters may be granted without an appearance by the attorney. On hearing and determination of a verified petition without appearance by attorney or client, see §1.21. Many courts set a specific time or day on which matters will be heard without an appearance and in such cases, the attorney can telephone a person (*e.g.,* the Probate Secretary) designated by the local court for information on whether a matter has been approved, continued, or placed on the appearance calendar. If approved, the signed order is then usually available in the county clerk's office after a certain time on the hearing day. The attorney should consult the specific county's local rules on the procedure.

If an appearance is necessary, the attorney should appear in court on the day of the hearing. The attorney should check with the department clerk for instructions or suggestions.

Procedures vary from county to county, but the following description of a probate court session gives a general idea of what occurs in probate courts throughout the state.

When court convenes, the clerk, at the judge's direction, announces matters that have been approved and will be granted in the absence of objection. Following the approved call, the clerk may read the list of matters that have been continued to another hearing date. The clerk then asks whether any priorities have been requested by attorneys who are also engaged in other courts and, if so, the calendar numbers of their probate cases and the location and date of their appearances in the other courts. These matters are heard in calendar order at the beginning of the calendar. Some courts will hear contested matters at the beginning of the calendar to determine scheduling of settlement conferences and future hearings; other courts hear these matters only in the course of the normal calendar.

When the case is called, the attorney brings the client forward and seats the witness in the witness box. The attorney states his or her name, the witness's name (and title, if any), and whether the attorney and witness have been sworn. At the opening of court the parties are usually sworn as a group, although this varies from county to county. The attorney hands the judge the file, if it was obtained ahead of time; in some courts, the judge retains the court's file. The judge then finds the document or petition calendared for that day and, looking at the notes, proceeds to question the attorney or the witnesses concerning the testimony needed. The judge will usually have read the petition and the request before taking testimony and will prefer a presentation confined to the essential aspects of the matter.

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§1.37 IX. RULINGS AND ORDERS

The court makes its ruling on the minute sheet provided. The following is an example of the petitions and notes on a typical Los Angeles probate calendar:

123 - P789101 PETERSON, MICHAEL S - DECD

FINAL ACCT FEES EXTRA FEES & DIST - TR

Petitioner (s) : FIRST NATL BK - EXTR

Attorney (s) : C WILLIAMS

Rep and Rec OK Inc tax cert filed
Creditor claim of Dr. Jones (750.) paid OK re corrected claim filed
JTD ex fees - extr re (2500.) and atty (1000.)
O/W Acct, bal of stat fees (3285.38) each, closing reserv (100.) and dist
Lien on Trust for taxes OK

approved approved

In most counties, certain orders are prepared by the attorneys, and others by clerks. Although the probate filing clerk collects a fee for clerk orders, the judge may change a matter to an attorney order, so the preparer of the order should be verified before or during the hearing. Some counties require orders to be prepared and presented to the court within a prescribed period before a hearing. Other counties will not accept the order until after the hearing. The probate policy memorandum or the clerk can provide the attorney or assistant with this information.

Orders with continuing dates should show the date of commencement and dates of the effective period.

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2

Immediate Arrangements

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- N. [§2.27] Consider Tax Matters
- O. [§2.28] Determine Whether Decedent's Debts Should Be Paid Before Probate
- P. [§2.29] Consider Possibility of Will Contest
- Q. [§2.30] Determine Need for Special Administrator
- R. [§2.31] Determine Need for Ancillary Administration
- S. [§2.32] Locate Beneficiaries

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§2.1 I. GENERAL INSTRUCTIONS

The attorney and the legal assistant should act immediately after learning of a death to locate the will. The attorney's professional responsibility in estate administration is to oversee the termination of the decedent's property interests, the fulfillment of the estate's legal responsibilities, and the disposition of the decedent's assets in a legally correct and timely manner. At the same time, the attorney may wish to offer assistance to the decedent's family in making arrangements following death. The details to which the attorney must attend will depend, among other things, on (1) whether the attorney will represent the estate and the personal representative or one of the beneficiaries, (2) the attorney's prior relationship with the decedent or the family, (3) the ability of family members or business associates to manage the estate and handle the procedures for transferring title, and (4) the nature of the decedent's assets and liabilities.

Whatever the attorney's involvement with arrangements immediately following a death, the attorney should be aware of the effects of the death of a person on the ability of family and associates to make decisions and arrangements, to deal with details, and to begin the administration of the estate immediately following a death. See California Decedent Estate Practice, chap 1 (2d ed Cal CEB 2009) for discussion of the effects of grief, loss, and anger on the individual's memory, ability to respond to requests, ability to listen, and ability to perform even routine tasks.

This chapter is a basic checklist of the determinations that should be made and factors that should be considered before formal administration begins. Many of the decisions that are made at this early stage will be reexamined later in formal administration and will be carried out at that later time. For this reason, the discussion in this chapter includes references to later chapters of this manual for procedures and forms to use to obtain the desired results. When both the decision or determination and the action should be taken before administration begins, however, forms are provided in this chapter.

The organization of this chapter reflects the general course of steps to take and matters to determine before formal administration of an estate begins. In practice, some or all of these matters and procedures will occur in an order different from the order in which they are presented here. All the procedures and concerns discussed in this chapter that are relevant to any particular estate should be dealt with as close together in time, and as early, as is possible.

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II. ARRANGEMENTS IMMEDIATELY FOLLOWING DEATH

A. Disposition of Remains

§2.2 1. Coroner's Inquest

Under specific circumstances, the coroner may inquire into the causes of death. Govt C §27491. If this occurs, the probate attorney may have to explain the legal reasons for the inquest to the family and represent the family at the inquest. The legal assistant can help by arranging for the transfer of the body from the coroner to the funeral director and for the release of the decedent's personal effects. Within 90 days after the inquest, the coroner must deliver any money or other property found on the body to the decedent's legal representatives. Govt C §27465. On the operations of the coroner's office generally, see Govt C §§27460-27520.

The funeral home will normally arrange a transfer from the coroner of the remains to the funeral home, and the personal effects to the personal representative.

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Source: Estate Planning/California Probate Workflow Manual Revised/2 Immediate Arrangements/§2.3 2. Autopsy and Disposition of Body

§2.3 2. Autopsy and Disposition of Body

Immediately on notification of the death, the legal assistant should check the will file for instructions regarding an autopsy and ascertain whether any of the entitled relatives have requested an autopsy in writing. However, the coroner can order an autopsy without the family's consent when in his or her judgment it is the appropriate means of ascertaining the cause of death.

An autopsy may be performed:

- (1) If the decedent has authorized an autopsy in the will (regardless of its validity or when admitted to probate) or in another written instrument; or
- (2) On the receipt of a written or verbal authorization from any of the following: the surviving spouse or registered domestic partner; a surviving child, parent, or sibling; other person who has acquired the right to control the disposition of the remains; or a public administrator, coroner, or other authorized public officer. Health & S C §7113.

NOTE: Verbal authorization is not sufficient if the physician knew that the decedent, at the time of death, belonged to a religion, church, or denomination that relies solely on prayer to heal disease. Health & S C §7113.

If an autopsy has not already been performed, the coroner must perform an autopsy on a written request by the surviving spouse or registered domestic partner or, if none, by a surviving child or parent or, if none, by the decedent's next of kin. Govt C §27520(a). If an autopsy has already been performed, the coroner may perform an autopsy requested by persons specified in Govt C §27520(b). The cost is borne by the person requesting the autopsy. Govt C §27520(c).

The attorney may have to explain to the grieving relatives that the coroner is required to cooperate with organ procurement organizations to maximize implementation of the Uniform Anatomical Gift Act (Health & S C §§7150-7151.40; see §2.4) by assisting in the removal and disposition of organs and tissues from a body in the coroner's custody unless the coroner determines that removal of the organs will interfere with an investigation or autopsy. Govt C §§27491.44-27491.45.

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§2.4 3. Anatomical Gifts

Immediately on notification of the death, the legal assistant should check the will file for anatomical gifts (see §2.9). The decedent may have made this gift by a provision in the will, by filling out the Department of Motor Vehicles (DMV) application for an original or renewal of a driver's license or identification card, through the Donate Life California Organ and Tissue Donor Registry website (http://www.donatelifecalifornia.org), or through a durable power of attorney for health care.

The DMV must provide applicants for a driver's license or a personal identification card with information on organ and tissue donation; the front of the DMV application for an original or renewal of a driver's license or identification card contains a space to give consent to be an organ and tissue donor. Veh C §§12811(b), 13005(b). This form is a legal document under the Uniform Anatomical Gift Act (Health & S C §§7150-7151.40) and is binding after the donor's death even if the donor's next of kin objects to the donation (except for donors under age 18, the legal guardian can make the final decision). Veh C §§12811(b)(8).

If the gift is made by will, the gift should be noted conspicuously on the file. If the file indicates that a gift was made, the attorney should contact members of the family immediately so that proper arrangements can be made before other plans are made (such as plans for funeral services).

Institutions that receive anatomical gifts often provide standard donor forms. A copy of the form should be kept at the top of the decedent's probate documents file. The decedent's personal physician or a close relative may also have copies of the form.

Under the Uniform Anatomical Gift Act (Health & S C §§7150-7151.40), any person who is at least 18 years of age, an emancipated minor, an individual who is between 15 and 18 years of age who has the written consent of a parent or guardian, or the agent of the donor who has express authorization to make an anatomical gift may give all or part of his or her body for purposes of transplantation, therapy, education, or research. Health & S C §7150.15. In addition to the decedent, the persons listed in Health & S C §7150.40 may also make a gift of all or part of the decedent's body, unless the decedent has made an unrevoked refusal to make an anatomical gift (Health & S C §7150.30(d)). Except for the parent of an unemancipated minor, a person other than the donor may not amend or revoke an anatomical gift made by the donor. Health & S C §7150.35. For further discussion of anatomical gifts, see California Decedent Estate Practice §§1.8-1.15 (2d ed Cal CEB 2009).

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Source: Estate Planning/California Probate Workflow Manual Revised/2 Immediate Arrangements/§2.5 4. Funeral Arrangements

§2.5 4. Funeral Arrangements

The legal assistant should check the client's file and the will to see whether the decedent gave written instructions regarding disposition of the body, the location and conditions of interment, and arrangements for funeral goods and services to be provided. It is very important that the final will be found because the decedent may have expressed a different intent for funeral arrangements than in an earlier will. See §2.9 on searching for the will. If there are instructions, the decedent's family should be advised.

Those entitled to control disposition of the remains under Health & S C §7100 or designated under Health & S C §7100.1 must faithfully carry out the decedent's funeral directions, provided the directions clearly and completely set forth the decedent's instructions. Health & S C §7100.1. Arrangements for payment of disposition and funeral goods and services through trusts, insurance, commitments by others, or any other effective and binding method must be made. Health & S C §7100.1(a). If the arrangements for payment are insufficient, the decedent's wishes must be carried out only to the extent the decedent has sufficient assets to do so, unless the person(s) who otherwise have the right to control disposition agree to assume the cost. Health & S C §7100.1(b). Instructions in a will must be carried out immediately even if the will is invalid in other respects or is not offered or admitted to probate until a later date. Health & S C §7100.1(c).

If a dispute arises among family members about funeral arrangements, the attorney or legal assistant should encourage settlement by agreement. But if agreement seems unlikely, the attorney or assistant might explain that, under Health & S C §7100, the following persons, in the order named, have a right to dispose of the decedent's remains (subject to the decedent's own written wishes):

- An agent under a power of attorney for health care under Prob C §§4600-4805 (Health & S C §7100(a)(1));
- A competent surviving spouse (Health & S C §7100(a)(2)) or registered domestic partner (see Fam C §297.5);
- A sole surviving competent adult child or, if there is more than one, the majority of the surviving competent adult children of the decedent (however, less than a majority of the surviving competent adult children shall have the right if they used reasonable efforts to give notice to all other surviving competent adult children and are unaware of opposition by the majority of all surviving competent adult children) (Health & S C §7100(a)(3));
- The surviving competent parent or parents of the decedent (however, if a competent parent is absent, the remaining competent parent shall have the right after reasonable efforts were unsuccessful in locating the absent competent parent (Health & S C §7100(a)(4));
- The sole surviving competent adult sibling or, if there is more than one, the majority of the surviving competent adult siblings (however, less than a majority of the surviving competent adult siblings have the right if they used reasonable efforts to notify all other surviving competent adult siblings and are unaware of any opposition by the majority of all surviving competent adult siblings) (Health & S C §7100(a)(5));
- A surviving competent adult person or persons in the next degrees of kinship (see App A for tables of consanguinity and relationships) or, if there is more than one, the majority of the surviving persons of the same degree of kinship (however, less than a majority shall have the right if they used reasonable efforts to give notice to all other surviving persons of the same degree of kinship and are unaware of opposition of a majority of all surviving competent adults of the same degree of kinship) (Health & S C §7100(a)(6)); and
- A public administrator, when the decedent has enough assets (Health & S C §7100(a)(7)).

Right of control under Health & S C §7100 generally carries with it the duty of interment and liability for reasonable interment costs. An exception is made for an agent under a power of attorney for health care. The agent is liable for interment costs only when the agent (1) specifically agrees to pay them or (2) in the absence of an agreement, makes decisions concerning disposition that incur costs, in which case the agent is liable only for resulting reasonable costs to the extent that the estate or other appropriate fund is insufficient to pay them. Health & S C §7100(a)(1).

If the person who has the right to control disposition has been charged with first or second degree murder or voluntary manslaughter in connection with the decedent's death and the funeral director or cemetery authority know about the charges, the right to control disposition passes to the next of kin in the order provided under Health & S C §7100(a). Health & S C §7100(b)(1). If the charges are dropped or if the person is acquitted, the person's right of control is restored. Health & S C §7100(b)(2).

The legal assistant or the attorney should determine whether the decedent made funeral arrangements, signed a contract for this purpose, and paid the required fee; the extent of the arrangements should be ascertained. If the office

has a copy of the contract, it should be kept on or near the top of the file with a notation describing the location of the original. The decedent's family should be notified promptly of the advance funeral arrangements. For further discussion of funeral contracts, see California Decedent Estate Practice §1.17 (2d ed Cal CEB 2009); for a brief discussion of fraternal or military funerals, see Decedent Estate Prac §1.20.

On request of the family, the legal assistant may assist with the funeral arrangements. The assistant should be familiar with Health & S C §8342, which provides that a casket cannot be required for cremation.

If the decedent died as a result of injuries for which workers' compensation applies, the employer is liable for payment of reasonable burial expenses. See California Workers' Compensation Practice, chap 7 (4th ed Cal CEB 2000); Lab C §4701.

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B. Death Certificates

§2.6 1. Certified Copies

Certified death certificates are needed for many purposes, including filing insurance claims, recording affidavits of death of joint tenant, and transferring securities. An autopsy or coroner's inquest can delay issuance of a final death certificate, but a preliminary certificate can be obtained to avoid delay in matters for which proof of the cause of death is not relevant.

The probable number of certificates needed should be determined as soon as possible. Generally, at least five copies should be obtained, but the number needed can be much higher. On request, most mortuaries will obtain certified copies and add the cost to their bill or creditor's claim. This is usually the simplest and quickest way to obtain death certificates. If additional copies of the death certificate are needed at a later date, they can be obtained from local officials in the county where the decedent died. The National Center for Health Statistics' publication titled "Where to Write for Vital Records" is available on the Centers for Disease Control and Prevention website at http://www.cdc.gov/nchs/w2w.htm.

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Source: Estate Planning/California Probate Workflow Manual Revised/2 Immediate Arrangements/§2.7 2. Form: Letter Requesting Death Certificate

§2.7 2. Form: Letter Requesting Death Certificate

_ _[*date*]_ _
Estate of _ _ _ _ _ _ _ _ _ _,
deceased

Dear Sir/Madam:

Please send us _ _ _ certified copies of the death certificate of _ _ _ _ _, who died on _ _[*date*]_ _, in _ _[*county in California/other state or country*]_ _.

Enclosed is a check for $_ _ _ _ _ _ to cover the costs of these copies. Thank you for your assistance.

Very truly yours,

__[*Signature of attorney or legal assistant*]__
_ _[*Typed name*]_ _

Enclosure

Copies: Original for mailing; office copies.
Comment: See general instructions in §2.6. In Los Angeles County, use the Bureau of Vital Statistics form.

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§2.8 3. Where to Write for Vital Records (National Center for Health Statistics)

Print

Introduction

As part of its mission to provide access to data and information relating to the health of the Nation, the National Center for Health Statistics produces a number of publications containing reference and statistical materials. The purpose of this publication is solely to provide information about individual vital records maintained only on file in State or local vital statistics offices.

An official certificate of every birth, death, marriage, and divorce should be on file in the locality where the event occurred. The Federal Government does not maintain files or indexes of these records. These records are filed permanently either in a State vital statistics office or in a city, county, or other local office.

To obtain a certified copy of any of the certificates, write or go to the vital statistics office in the State or area where the event occurred. Addresses and fees are given for each event in the State or area concerned.

To ensure that you receive an accurate record for your request and that your request is filled expeditiously, please follow the steps outlined below for the information in which you are interested:

- Write to the appropriate office to have your request filled.
- Under the appropriate office, information has been included for birth and death records concerning whether the State will accept checks or money orders and to whom they should be made payable. This same information would apply when marriage and divorce records are available from the State office. However, it is impossible for us to list fees and addresses for all county offices where marriage and divorce records may be obtained.
- For all certified copies requested, make check or money order payable for the correct amount for the number of copies you want to obtain. Cash is not recommended because the office cannot refund cash lost in transit.
- Because all fees are subject to change, a telephone number has been included in the information for each State for use in verifying the current fee.
- States have provided their home page address for obtaining current information.
- Type or print all names and addresses in the letter.
- Give the following facts when writing for birth or death records:

    1. Full name of person whose record is being requested.
    2. Sex.
    3. Parents' names, including maiden name of mother.
    4. Month, day, and year of birth or death.
    5. Place of birth or death (city or town, county, and State; and name of hospital, if known).
    6. Purpose for which copy is needed.
    7. Relationship to person whose record is being requested.

- Give the following facts when writing for marriage records:

    1. Full names of bride and groom.
    2. Month, day, and year of marriage.
    3. Place of marriage (city or town, county, and State).
    4. Purpose for which copy is needed.
    5. Relationship to persons whose record is being requested.

- Give the following facts when writing for divorce records:

    1. Full names of husband and wife.
    2. Date of divorce or annulment.
    3. Place of divorce or annulment.
    4. Type of final decree.
    5. Purpose for which copy is needed.
    6. Relationship to persons whose record is being requested

Print

Alabama

Place of event	Cost of copy	Address	Remarks
Birth or Death	$12.00	Alabama Vital Records State Department of Public Health P.O. Box 5625 Montgomery, AL 36103-5625	State office has records since January 1908. Additional copies ordered at the same time are $4.00 each. Personal check or money order should be made payable to **Vital Records**. To verify current fees, the telephone number is (334) 206-5418. This will be a recorded message. Information on how to obtain certified copies is also available via the Internet at http://adph.org/vitalrecords.
Marriage	$12.00	Same as Birth or Death	State office has records since August 1936. Additional copies ordered at the same time are $4.00 each.
	Varies	See remarks	For marriages prior to August 1936, contact Probate Court in county where license was issued.
Divorce	$12.00	Same as Birth or Death	State office has records since January 1950. Additional copies ordered at the same time are $4.00 each.
	Varies	See remarks	For divorces prior to 1950, contact Clerk of Circuit Court in county where divorce was granted.

Alaska

Place of event	Cost of copy	Address	Remarks
Birth or Death	$20.00	Bureau of Vital Statistics Department of Health and Social Services 5441 Commercial Boulevard Juneau, AK 99801	State office has records since January 1913. Personal check or money order should be made payable to **Bureau of Vital Statistics**. To verify current fees, the telephone number is (907) 465-3391. This will be a recorded message. Information on how to obtain certified copies is also available via the Internet at http://www.hss.state.ak.us/dph/bvs/. **ALL REQUESTS MUST INCLUDE A COPY OF A PICTURE ID OF THE APPLICANT**. Enlarge the copy and lighten it as much as possible to be sure that it is clear and readable when sent to the Bureau. Signature under the copied ID is also required.
Heirloom Birth	$45.00	Same as Birth or Death	Two different heirloom birth certificates by Alaskan artists are available. Friends and relatives may order gift certificates for persons entitled to order the record. The heirloom certificates as well as instructions and order forms may be viewed via the Internet at http:www.hss.state.ak.us/dph/bvs/.
Marriage	$20.00	Same as Birth or Death	State office has records since 1953.
Heirloom Marriage	$55.00	Same as Birth or Death	Three different heirloom marriage certificates are available. Friends and relatives may order gift certificates for persons entitled to order the record. The heirloom certificates as well as instructions and order forms may be viewed via the Internet at http:www.hss.state.ak.us/dph/bvs/.
Divorce	$20.00	Same as Birth or Death	State office has records since 1950.
	Varies	See remarks	Clerk of Superior Court in judicial district where divorce was granted. Juneau and Ketchikan (First District), Nome (Second District), Anchorage (Third District), Fairbanks (Fourth District).

Print

American Samoa

Place of event	Cost of copy	Address	Remarks
Birth or Death Amendments	$5.00 $7.00	American Samoa Government Governor's Officelth Registrar of Vital Records Office Pago Pago, AS 96799	Registrar has records since 1900. Money order should be made payable to **ASG Treasurer**. Personal checks are not accepted. To verify current fees, the telephone numbers are: Office of Vital Records (684) 633-1406; Health Information Office, Health and Vital Statistics (684) 633-4606/2262. Personal identification required before record will be sent.
Marriage Marriage License	$5.00 $10.00	Same as Birth or Death	
Divorce	$5.00	High Court of American Samoa American Samoa Government Pago Pago, AS 96799	

Arizona

Place of event	Cost of copy	Address	Remarks
Birth Death	$10.00 $10.00	Office of Vital Records Arizona Department of Health Services P.O. Box 3887 Phoenix, AZ 85030-3887	State office has records since July 1909 and abstracts of records filed in counties before then. Birth certificates cost $10.00 (certified computer copies). Some county offices in Arizona are able to provide certified copies of birth and death certificates. Please go to http://www.azdhs.gov for a listing of county offices. The State Office of Vital Records does not accept personal checks. A money order or cashiers check should be made payable to **Office of Vital Records**. To verify current fees, the telephone number is (602) 364-1300. This will be a recorded message. Information on how to obtain certified copies is also available via the Internet at http://www/azdhs.gov. Applicants must submit a copy of picture identification or have their request notarized.
Marriage	Varies	See remarks	Clerk of Superior Court in county where license was issued.
Divorce	Varies	See remarks	Clerk of Superior Court in county where divorce was granted.

Print

Arkansas

Place of event	Cost of copy	Address	Remarks
Birth Death	$12.00 $10.00	Vital Records H-44 4815 West Markham Little Rock, AR 72205	State office has records since February 1914 and some original Little Rock and Fort Smith records from 1881. Additional copies of the same birth record requested at the same time are $10.00 each. Additional copies of the same death record requested at the same time are $8.00 each. Personal check or money order should be made payable to **Arkansas Department of Health**. To verify current fees, the telephone number is (501) 661-2174. This will be a recorded message. Information on how to obtain certified copies is also available via the Internet at http://www.healthyarkansas.com.
Marriage	$10.00	Same as Birth or Death	Coupons since 1917. Additional copies of the same marriage record, when requested at the same time, are $10.00 each.
Marriage (County)	Varies	Same as Birth or Death	A full certified copy may be obtained from County Clerk in county where license was issued. A certified copy of a marriage coupon may be obtained from the state. It is an extract (short version) and it is a "legal" certificate.
Divorce	$10.00	Same as Birth or Death	Coupons since 1923. Additional copies of the same marriage record, when requested at the same time, are $10.00 each.
	Varies	See remarks	Full certified copy may be obtained from Circuit or Chancery Clerk in county where divorce was granted.

California

Place of event	Cost of copy	Address	Remarks
Birth Death Fetal Death	$14.00 $12.00 $ 9.00	Office of Vital Records CA Department of Public Health MS: 5103 P.O. Box 997410 Sacramento, CA 95899-7410	The State office has records since July 1905. For earlier records, contact the County Recorder in the county where the event occurred. A personal check or money order should be made payable to **Office of Vital Records**. To verify current fees, the telephone number is (916) 445-2684. This will be a recorded message. Information on how to obtain certified copies is also available via the Internet at http://www.cdph.ca.gov/certlic/birthdeathmar/. **BIRTH AND DEATH RECORDS:** In order to obtain a Certified Copy, you MUST complete the sworn statement included with the certificate application form, sign the statement under penalty of perjury, and your sworn statement must be notarized. If your request indicates that you want a Certified Copy but does not include a notarized statement sworn under penalty of perjury, the request will be rejected as incomplete and returned to you without being processed.

Print

Marriage (State)	$13.00	Same as Birth or Death	State office only has indexes for public marriage certificates that occurred from 1949-1986 and 1998-1999, and the processing times can take up to 2-3 years. For any other years or for confidential marriages, contact the County Recorder in the county where the event occurred. Information on how to obtain a marriage certificate is also available via the Internet at http://www.cdph.ca.gov/certlic/birthdeathmar/Pages/CertifiedCopiesofMarriageandDivorceRecords.aspx.
Marriage (County)	Varies	See remarks	Contact the County Recorder in the county where the license was issued. Contact information is available via the Internet at http://www.cdph.ca.gov/certlic/birthdeathmar/Pages/CountyRecorderOffice.aspx.
Divorce	$13.00	Same as Birth or Death	Fee is for search and identification of county where certified copy can be obtained (years 1962 thru June 1984 only). For all other years or for a copy of the decree, write to Superior Court in county where event occurred. Certified copies of decrees are not available from State Health Department.
	Varies	See remarks	Clerk of Superior Court in county where divorce was granted.

Canal Zone

(Effective December 1, 1999)

Place of event	Cost of copy	Address	Remarks
Birth or Death	$30.00	Vital Records Section Passport Services U.S. Department of State 1111 19th Street NW Suite 510 Washington, DC 20522-1705	Records available from May 1904 to September 1979. Additional copies of the same record requested at the same time are $20.00 each. Personal check or money order must be signed, dated and made payable to **U.S. Department of State**. Remittance must be payable in U.S. dollars through a U.S. Bank. No credit cards or cash accepted. Telephone or facsimile requests are not accepted. To verify current fees, the telephone number is (202) 955-0307. A signed and notarized written request must be submitted along with a copy of the requester's valid photo identification.
Marriage	$30.00	Same as Birth or Death	Records available from May 1904 to September 1979.

Colorado

Place of event	Cost of copy	Address	Remarks
Birth Death	$17.75 $17.00	Vital Records Section CO Department of Public Health and Environment 4300 Cherry Creek Drive South HSVRD-VS-A1 Denver, CO 80246-1530	State office has birth records since 1910 and death records since 1900. Additional copies of the same record ordered at the same time are $10.00 each. Personal check or money order should be made payable to **Vital Records Section**. To verify current fees, the telephone number is (303) 692-2200. This will be a recorded message. Information on how to obtain certified copies is also available via the Internet at http:www.cdphe.state.co.us/certs/index.html.

			A request for a birth or death record must be accompanied by a photo copy of the requestor's identification before processing.
Marriage	See remarks	Same as Birth or Death	Certified copies are not available from State Health Department. Fee for verification is $17.00.
	Varies	See remarks	Copies available from County Clerk in county where license was issued.
Divorce	See remarks	Same as Birth or Death	Certified copies are not available from State Health Department. Fee for verification is $17.00.
	Varies	See remarks	Copies available from Clerk of District Court in county where divorce was granted.

Connecticut

Place of event	**Cost of copy**	**Address**	**Remarks**
State issued: Birth	$15.00	Dept. of Public Health 410 Capitol Ave, MS #11 VRS Hartford, CT 06134	Request for certified copies may be submitted to the vital records office in the city/town where the person was born, or where the mother lived at the time of the birth. Requests for certified copies may also be submitted to the State Vital Records Office. A copy of a photographic identification must be submitted with any request for a birth certificate. The identification must be a valid, government issued document. If this is not available, you may submit photocopies of two other forms of identification. If State issued certified copy, a personal check or money order should be made payable to the **Treasurer, State of Connecticut**. Or, a personal check or money order made payable to the proper town or city where the event occurred. For additional information, please contact CT Department of Public Health Customer Service Representative at 860-509-7897 or visit the CT Department of Public Health website at http://www.ct.us/PB/HISR/Vital Records. The following website provides the address and contact information for the own/cities in the state of Connecticut: http://www.ct.gov/dph/lib/dph/hisr/ODF/CT_TownCityClerks.pdf Requests for certified copies of a marriage or civil union certificate may be submitted to the city/town where the marriage or civil union ceremony took place, to a town in which either of the parties resided at the time of the marriage or civil union took place, or to the State Vital Records Office.
Death	$10.00	Same as Birth	
Marriage	$10.00	Same as Birth	
Civil Union	$10.00	Same as Birth	
City/Town issued: Birth	$10.00	See remarks	
Death	$10.00	See remarks	
Marriage	$10.00	See remarks	
Civil Union	$10.00	See remarks	
Dissolution of Marriage or Civil Union		See remarks	Applicant must contact Clerk of Superior Court where the dissolution of marriage/civil union was granted. The State Office of Vital Records does not have dissolution decrees and cannot issue certified copies.

Print

Delaware

Place of event	Cost of copy	Address	Remarks
Birth Death	$10.00 $12.00	Office of Vital Statistics Division of Public Health 417 Federal Street Dover, DE 19901	State office has death records since 1969 and birth records since 1937. For previous years, write to Archives Hall of Records, Dover, DE 19901. A photo identification is **REQUIRED** for all transactions. If submitting by mail, a copy of **ID IS REQUIRED**. Personal check or money order should be made payable to **Office of Vital Statistics**. To verify current fees, the telephone number is (302) 744-4549. Information on how to obtain certified copies is also available via the Internet at http://www.dhss.delaware.gov/dhss/dph/ss/vitalstats.html.
Marriage	$25.00	Same as Birth or Death	Records since 1969.
Divorce	$10.00	Same as Birth or Death	Records since 1935. Inquiries will be forwarded to appropriate office. Certified copies are not available from the Office of Vital Statistics.
		See remarks	Prothonotary in county where divorce was granted up to 1975. For divorces granted after 1975 the parties concerned should contact Family Court in county where divorce was granted.

District of Columbia

Place of event	Cost of copy	Address	Remarks
Birth (short form) Birth (long form) Death	$18.00 $23.00 $18.00	Vital Records Division 825 North Capitol Street NE 1st Floor Washington, DC 20002	Office has birth and death records since August 1874. Personal check or money order should be made payable **to DC Treasurer**. A copy of a government issued picture identification must accompany each request. To verify current fees and obtain general information, the telephone number (202) 671-5000. This will be a recorded message. Information on how to obtain certified copies is also available via the Internet at http://www.dchealth.dc.gov.
Marriage	$10.00	DC Superior Court 500 Indiana Avenue, NW Room 4485 Washington, DC 20001	Marriage information telephone number: 202-874-4840.
Divorce	$6.50	DC Superior Court 500 Indiana Avenue, NW Room 4335 Washington, DC 20001	Records since September 16, 1956. Divorce information telephone number: 202-879-1261.
Divorce	Varies	Clerk, U.S. District Court for the District of Columbia Washington, DC 20001	Records before September 16, 1956.

Print

Florida

Place of event	Cost of copy	Address	Remarks
Birth Death	$9.00 $5.00	Department of Health Bureau of Vital Statistics P.O. Box 210 1217 Pearl Street (Zip 32202) Jacksonville, FL 32231-0042	State office has some birth records dating back to April 1865. The majority of records date from January 1917. (If the exact date is unknown, the fee is $9.00 (births) or $5.00 (deaths) for the first year searched and $2.00 for each additional year up to a maximum of $50.00. Fee includes one certification of record if found or statement stating record not on file.) Additional copies are $4.00 each when requested at the same time. Personal check or money order should be made payable to **Bureau of Vital Statistics**. To verify current fees, the telephone number is (904) 359-6900. This will be a recorded message. Information on how to obtain certified copies is also available via the Internet at http://www.doh.state.fl.us/Planning_eval/Vital_Statistics/index.html. All letters or applications for birth or death records must include the signature and relationship/ eligibility stated, and a copy of a valid **PICTURE ID** (Driver's License, Passport, Military ID, or State Identification card) of the applicant. Birth records and cause-of-death information in Florida are confidential by law. Please visit our website for information on eligibility.
Marriage	$5.00	Same as Birth or Death	Records since June 6, 1927. (If the exact date is unknown, the fee is $5.00 for the first year searched and $2.00 for each additional year up to a maximum of $50.00. Fee includes one copy of record if found or certified statement stating record not on file.) Additional copies are $4.00 each when requested at the same time.
Divorce	$5.00	Same as Birth or Death	Records since June 6, 1927. If the exact date is unknown, the fee is $5.00 for the first year searched and $2.00 for each additional year up to a maximum of $50.00. Fee includes one copy of record if found or certified statement stating record not on file.) Additional copies are $4.00 each when requested at the same time.

Georgia

Place of event	Cost of copy	Address	Remarks
Birth or Death	$10.00	Vital Records 2600 Skyland Drive, NE Atlanta, GA 30319-3640	State office has records since January 1919. For earlier records in Atlanta or Savannah or other cities or counties, write to the Vital Records Office in county where event occurred. Additional copies of same record ordered at same time are $5.00. Certified check or money order should be made payable to **Vital Records**. Personal checks are not accepted. To verify current fees, the telephone number is (404) 679-4702. This is a recorded message. Information on how to obtain certified copies is also available via the Internet at http://www.state.ga.us/programs/vitalrecords. The requestor must provide a photocopy of a valid photo ID.

Marriage	$10.00	Same as Birth or Death	Centralized State records since June 9, 1952. Certified copies of marriage documents up to 1996 are issued at State office. Inquiries about marriages occurring before June 9, 1952, will be forwarded to appropriate Probate Judge in county where license was issued. The state office does not record marriage licenses or applications after July 1, 1997.
Marriage (County)	Varies	See remarks	Probate Judge in county where license was issued. See "County Directories" at http://www.sos.state.ga.us/cgi-bin/OfficialDirectoryIndex.asp for information about how to contact probate courts.
Divorce (State)	$2.00 for certification plus $0.50 per page	See remarks	Centralized State records since June 9, 1952. Certified copies are not issued at State office. Inquiries will be forwarded to appropriate Clerk of Superior Court in county where divorce was granted. See "County Directories" at http://www.sos.state.ga.us/cgi-bin/OfficialDirectoryIndex.asp for information about how to contact clerks of superior court.

Guam

Place of event	Cost of copy	Address	Remarks
Birth or Death	$5.00	Office of Vital Statistics P.O. Box 2816 Hagatna, Guam 96932	Office has records since October 16, 1901. Money order should be made payable to **Treasurer of Guam**. Personal checks are not accepted. To verify current fees, the telephone number is 671-735-7292.
Marriage	$5.00	Same as Birth or Death	
Divorce	Varies	Clerk, Superior Court of Guam Guam Judicial Center 120 West O'Brian Drive Hagatna, Guam 96910	

Hawaii

Place of event	Cost of copy	Address	Remarks
Birth or Death	$10.00	State Department of Health Office of Health Status Monitoring Issurance/Vital Statistics Section P.O. Box 3378 Honolulu, HI 96801	State office has records since 1853. Additional copies ordered at the same time are $4.00 each. Cashiers check, certified check, or money order should be made payable to **State Department of Health.** Personal checks are not accepted. To verify current fees, the telephone number is (808) 586-4533. This is a recorded message. Information on how to obtain certified copies is also available via the Internet at http://www.hawaii.gov/health/vital-records.
Marriage	$10.00	Same as Birth or Death	
Divorce	$10.00	Same as Birth or Death	Records since July 1951.
	Varies	See remarks	Circuit Court in county where divorce was granted.

Idaho

Place of event	Cost of copy	Address	Remarks
Birth	$13.00	Vital Records Unit	The state office has records since July 1911. Also, some birth records before 1911. For records from 1907 to 1911, write to the County Recorder in the county where the event occurred. Birth records at the state office are legally confidential for 100 years and death records are legally confidential for 50 years.
Death	$13.00 Computer generated	Bureau of Vital Records and Health Statistics P.O. Box 83720 Boise, ID 83720-0036	
Birth	$18.00		
Death	$18.00 Photostatic copy		
			Personal check or money order should be made payable to **Idaho Vital Records**. To verify current fees, the telephone number is (208) 334-5988. This is a recorded message. Information on how to obtain certified copies is also available via the Internet at http://www.healthandwelfare.idaho.gov.
			Applicants must provide a clear and readable copy of both sides of their current driver's license or other current government issued identification with signature. If this is not available, the applicant must either provide a clear and readable copy of both sides of two other forms of current identification with a signature or have their request notarized.
Marriage	$13.00 Computer generated	Same as Birth or Death	The state office has records since May 1947. Earlier records are with the County Recorder in the county where the license was issued. Records at the state office are legally confidential for 50 years.
	$18.00 Photostatic copy		Personal check or money order should be made payable to **Idaho Vital Records**. To verify current fees, the telephone number is (208) 334-5988. This is a recorded message. Information on how to obtain certified copies is also available via the Internet at http://www.healthandwelfare.idaho.gov.
			Applicants must provide a clear and readable copy of both sides of their current driver's license or other current government issued identification with signature. If this is not available, the applicant must either provide a clear and readable copy of both sides of two other forms of current identification with a signature or have their request notarized.
	Varies	See remarks	County Recorder in county where license was issued.
Divorce (Computer generated)	$13.00	Same as Birth or Death	The state office has records since May 1947. Only a Certificate of Divorce is available from 1950 to present. Records prior to May 1947 are with the Clerk of the Court in the county where the divorce was granted. Records at the state office are legally confidential for 50 years.
(Photostatic copy)	$18.00		Personal check or money order should be made payable to **Idaho Vital Records**. To verify current fees, the telephone number is (208) 334-5988. This is a recorded message. Information on how to obtain certified copies is also available via the Internet at http://www.healthandwelfare.idaho.gov.

Continue

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§2.8 3. Where to Write for Vital Records (National Center for Health Statistics) (Part 2)

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			Applicants must provide a clear and readable copy of both sides of their current driver's license or other current government issued identification with signature. If this is not available, the applicant must either provide a clear and readable copy of both sides of two other forms of current identification with a signature or have their request notarized
	Varies	See remarks	A full certified copy of the divorce decree is available from the Clerk of the Court in the county where the divorce was granted.

Illinois

Place of event	Cost of copy	Address	Remarks
Birth	$15.00 certified copy $10.00 certification	Division of Vital Records Illinois Department of Public Health 605 West Jefferson Street Springfield, IL 62702-5097	State office has records since January 1916. For earlier records and for copies of State records since January 1916, write to County Clerk in county where event occurred (county fees vary). Genealogical (uncertified) copies are available from the State for death records 20 years or older for $10.00. Additional genealogical copies of the same record ordered at the same time are $2.00 each. The fee for a full certified copy is $17.00. Additional certified copies of the same record ordered at the same time are $2.00 each. Personal check or money orders should be made payable to **Illinois Department of Public Health**. To verify current fees, the telephone number is (217) 782-6553. This will be a recorded message. Information on how to obtain certified copies is also available via the Internet at http://www.idph.state.il.us.
Death	$17.00 certified copy $10.00 genealogical copy		
Marriage	$5.00	Same as Birth or Death	Marriage Index since January 1962. Selected items may be verified (fee $5.00). Certified copies are NOT available from State office. For certified copies, write to the County Clerk in county where license was issued.
Divorce	$5.00	Same as Birth or Death	Divorce Index since January 1962. Selected items may be verified (fee $5.00). Certified copies are NOT available from State office. For certified copies, write to the Clerk of Circuit Court in county where divorce was granted.

Indiana

Place of event	Cost of copy	Address	Remarks
Birth Death	$10.00 $8.00	Vital Records Indiana State Department of Health P.O. Box 7125 Indianapolis, IN 46206-7125	State office has birth since October 1907 and death records since January 1900. Additional copies of the same birth or death record ordered at the same time are $4.00 each. For earlier records, write to Health Officer in city or county where event occurred. Personal check or money order should be made payable to **Indiana State Department of Health**. To verify current fees, the telephone number is (317) 233-2700. Information on how to obtain certified copies is also available via the Internet at http://www.in.gov/isdh/index.htm. Applicant must provide a photocopy of a valid identification with picture and signature along with the application.

Marriage	See remarks	Same as Birth or Death	Index for marriages since 1958. Certified copies are available from County Clerk of Court or Clerk of Superior Court in the county where event occurred.
	Varies	See remarks	Clerk of Circuit Court or Clerk of Superior Court in county where license was issued.
Divorce	Varies	See remarks	County Clerk in county where divorce was granted.

Iowa

Place of event	Cost of copy	Address	Remarks
Birth or Death	$15.00	Iowa Department of Public Health Bureau of Vital Records Lucas Office Building 1st Floor 321 East 12th Street Des Moines, IA 50319-0075	State office has records since July 1880. Personal check or money order should be made payable to **Iowa Department of Public Health**. To verify current fees, the telephone number is (515) 281-4944. This will be a recorded message. Information on how to obtain certified copies is also available via the Internet at http://www.idph.state.ia.us/. Applicants for all records must provide a photo identification when applying in person. Written applications must include a clear photo copy of a current government issued ID and applicant's notarized signature.
Marriage	$15.00	Same as Birth or Death	State office has records since July 1880.
Divorce	See remarks	Same as Birth or Death	Brief statistical record only since 1906. Inquiries will be forwarded to appropriate office. Certified copies are not available from State Health Department.
	$6.00	See remarks	Clerk of District Court in county where divorce was granted.

Kansas

Place of event	Cost of copy	Address	Remarks
Birth Death	$12.00 $13.00	Office of Vital Statistics Curtis State Office Building 1000 SW Jackson Street Suite 120 Topeka, Kansas 66612-2221	State office has records since July 1911. For earlier records, write to County Clerk in county where event occurred. Additional copies of the same birth record ordered at the same time are $7.00 each and the same death record ordered at the same time is $8.00. Personal check or money order should be made payable to **Vital Statistics**. To verify current fees, the telephone number is (785) 296-1400. This will be a recorded message with the option to speak with a Customer Service Representative. Information on how to obtain certified copies is also available via the Internet at http://www.kdheks.gov/vital. The applicant **MUST** include a copy of a photo ID and a handwritten signature with the request.
Marriage	$12.00	Same as Birth or Death	State office has records since May 1913. Additional copies of the same record ordered at the same time are $7.00 each.
	Varies	See remarks	Write to: District Judge in county where license was issued.
Divorce	$12.00	Same as Birth or Death	State office has records since July 1951. Additional copies of the same record ordered at the same time are $7.00 each.
	Varies	See remarks	Write to: Clerk of District Court in county where divorce was granted.

Kentucky

Place of event	Cost of copy	Address	Remarks
Birth Death	$10.00 $6.00	Office of Vital Statistics Department for Public Health Cabinet for Health and Family Services 275 East Main Street 1E-A Frankfort, KY 40621-0001	State office has records since January 1911. Personal check or money order should be made payable to **Kentucky State Treasurer**. To verify current fees, the telephone number is (502) 564-4212. Information on how to obtain certified copies is also available via the Internet at http://chfs.ky.gov/dph/vital/.
Stillbirth	$6.00	Same as Birth or Death	State office has records since January 1911. Personal check or money order should be made payable to **Kentucky State Treasurer**. To verify current fees, the telephone number is (502) 564-4212. Information on how to obtain certified copies is also available via the Internet at http://chfs.ky.gov/dph/vital/.
Marriage	$6.00	Same as Birth and Death	Records since June 1958.
	Varies	See remarks	Clerk of County Court in county where license was issued.
Divorce	$6.00	Same as Birth or Death	Records since June 1958.
	Varies	See remarks	Clerk of Circuit Court in county where decree was issued.

Louisiana

Place of event	Cost of copy	Address	Remarks
Birth (long form) Birth (short form) Death	$15.50 $9.50 $7.50	Office of Public Health Vital Records Registry P.O. Box 60630 New Orleans, LA 70160	State office has birth records for 100 years past date of birth and deaths records for 50 years past the date of death. To obtain current information on who may obtain a record, how to submit a request and an official request form, click on at http://www.dhh.louisiana.gov/offices/?ID=252. Older records are available through the Louisiana State Archives, P.O. Box 94125, Baton Rouge, LA 70804.
Marriage Orleans Parish Only	$5.50	Same as Birth or Death	To obtain current information on how to submit a request for a certified copy of Orleans Parish marriage record less than 50 years old and a request form, click on http://www.dhh.louisiana.gov/offices/?ID=252. Certified copies for other parishes are issued by Clerk of Court in the parish were the marriage license was issued. Marriage records over 50 years are stored by the Louisiana State Archives, P.O. Box 94125, Baton Rouge, LA 70804.
Other Parishes	Varies	See remarks	Certified copies are issued by Clerk of Court in the parish were the marriage license was issued.
Divorce All Parishes	Varies	See remarks	Certified copies are issued by Clerk of Court in the parish where the divorce was granted.

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Maine

Place of event	Cost of copy	Address	Remarks
Birth or Death	Certified $15.00 Non-Certified $10.00	Vital Records Maine Department of Health Human Services 244 Water Street #11 State House Station Augusta, ME 04333-0011	State office has records since 1923. Records for 1892 1922 are available at the Maine State Archives (207) 287-5795. For earlier records, write to the municipality where the event occurred. Additional copies of same record ordered at same time are S6.00 each. Personal check or money order should be made payable to **Treasurer, State of Maine**. To verify current fees, the telephone number is (207) 287-3181. This will be a recorded message. Information on how to obtain certified copies is also available via the Internet at http://www.state.me.us.
Marriage	$15.00	Same as Birth or Death	Same as Birth or Death.
Divorce	$15.00	Same as Birth or Death	Same as Birth or Death.
Divorce	Varies	See remarks	Clerk of District Court in judicial division where divorce was granted.

Maryland

Place of event	Cost of copy	Address	Remarks
Birth or Death	$12.00	Division of Vital Records Department of Health and Mental Hygiene 6550 Reisterstown Road P.O. Box 68760 Baltimore, MD 21215-0020	State office has records since August 1898. Records for City of Baltimore are available from January 1875. Fee for Commemorative Birth Certificate is $30.00. For genealogical studies, you must apply through the Maryland State Archives, 350 Rowe Blvd., Annapolis, MD 21401, (410) 260-6400. Personal check or money order should be made payable to **Division of Vital Records**. To verify current fees, the telephone number to contact is (410) 764-3038. This will be a recorded message. Information on how to obtain certified copies is also available via the Internet at http://www.vsa.state.md.us
Marriage (State, county)	$12.00	Same as Birth or Death	Records since January 1990. Clerk of Circuit Court in county where license was issued or Clerk of Court of Common Pleas of Baltimore City (for licenses issued in City of Baltimore).
Divorce (State, county) Verification only	12.00	Same as Birth or Death	Records since January 1992. Certified divorce decrees may be obtained through the Clerk of Circuit Court in the city/county where the divorce was granted. Some items may be verified.

Massachusetts

Place of event	Cost of copy	Address	Remarks
Birth or Death	$18.00 (In person) $28.00 (Mail request) $3.00 (State Archives)	Registry of Vital Records and Statistics 150 Mount Vernon Street 1st Floor Dorchester, MA 02125-3105	State office has no records previous to 1916. For earlier records, write to The Massachusetts Archives at Columbia Point, 220 Morrissey Boulevard, Boston, MA 02125 (617) 727-2816. Personal check or money order should be made payable to **Commonwealth of Massachusetts**. To verify current fees, the telephone number is (617) 740-2600. This will be a recorded message. Information on how to obtain certified copies is also available via the Internet at http://www.state.ma.us/dph/bhsrc/rvr/vrcopies.htm

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Marriage	Same as Birth or Death	Same as Birth or Death	Records since 1916.
Divorce	No Fee	Same as Birth or Death	Index only since 1952. Inquirer will be directed where to send request. Certified copies are not available from State office.
Divorce	Varies	See remarks	Registrar of Probate Court in county where divorce was granted.

Michigan

Place of event	Cost of copy	Address	Remarks
Birth or Death	$26.00	Vital Records Request P.O. Box 30721 Lansing, MI 48909	State office has records of births and deaths that occurred and were filed with the state since 1867. Some of the records (especially pre-1906 births and pre-1897 deaths) were not filed with the state. Personal check or money order should be made payable to **State of Michigan**. Fees are $26.00 for the search and first certified copy of any birth, death, marriage, divorce or Affidavit of Parentage. Exception is Senior Citizen ($7.00) requesting their own birth record. Additional copies of any record are $12.00 each. To verify current fees, the telephone number is (517) 335-8656. This will be a recorded message. To speak to a customer service representative, the telephone number is (517) 335-8666. Information on how to obtain certified copies is also available via the Internet at http://www.michigan.gov/mdch. Michigan birth records are restricted documents and are available only to eligible individuals. A photocopy of an eligible individual's photo identification (state driver's license, state personal ID card, Military ID, etc.) is required to be sent in, along with the application and appropriate fee. Copies of records may also be obtained from the County Clerk in county where event occurred. Fees vary from county to county. Records of Detroit births occurring since 1893 and deaths since 1897 may be obtained from the city of Detroit Health Department.
Marriage	$26.00	Same as Birth or Death	Records since 1867. Some marriages (especially pre-1926) were not filed with the state.
	Varies	See remarks	County Clerk in county where license was issued.
Divorce	$26.00	Same as Birth or Death	Records since 1897. Some divorces (especially pre-1924) were not filed with the state.
	Varies	See remarks	County Clerk in county where divorce was granted.

Minnesota

Place of event	Cost of copy	Address	Remarks
Birth Death	$16.00 $13.00	Office of the State Registrar MN Department of Health P.O. Box 64882 St. Paul, MN 55164	Office of the State Registrar has birth records on file from January 1900 to current and death records on file from January 1908 to current. Copies of earlier records may be obtained from Local Registrar in county where event occurred. Personal check or money order should be made payable to **Minnesota Department of Health**. To verify current fees, the telephone number is (651) 201-5970. This will be a recorded message. Information on how to obtain certified copies is also available via the Internet at http://www.health.state.mn.us.

Marriage	See remarks		Marriage records are not recorded at the state level.
	$9.00	See remarks	Local Registrar in county where license was issued. Additional copies of the marriage record when ordered at the same time are $2.00 each.
Divorce	See remarks		Divorce records are not recorded at the state level.
	$10.00	See remarks	Court Administrator in county where divorce was granted.

Mississippi

Place of event	Cost of copy	Address	Remarks
Birth and Death	$15..00	Mississippi Vital Records State Department of Health P.O. Box 1700 Jackson, MS 39215-1700	State office has records since November 1, 1912. Additional copies of same record ordered at the same time are $5.00 each. Personal check , bank or postal money order or bank cashier's check are accepted and should be made payable to **Mississippi State Department of Health.** A copy of a valid photo ID for the applicant is required. To verify current fees, the telephone number is (601) 576-7981. A recorded message may be reached on (601) 576-7450. Information on how to obtain certified copies is also available via the Internet at http://www.msdh.state.ms.us.
Marriage	$15.00	Same as Birth or Death	Statistical records only from January 1, 1926 to July 1, 1938, and since January 1942. Additional copies of the same record ordered at the same time are $5.00.
	$5.00	See remarks	Circuit Clerk in county where license was issued.
Divorce	See remarks	Same as Birth or Death	Records since January 1926. Certified copies are not available from State office. Index search only available at $15.00 for each 5-year increment. Book and page number for county record provided.
Divorce	Varies	See remarks	Chancery Clerk in county where divorce was granted.

Missouri

Place of event	Cost of copy	Address	Remarks
Birth Death	$15.00 $13.00	Missouri Department of Health and Senior Services Bureau of Vital Records 930 Wildwood P.O. Box 570 Jefferson City, MO 65102-0570	State office has records since January 1910. Certified copies of most Missouri birth and death records are also available from local county health department or the St. Louis City or Kansas City Health Departments. For details, please contact these offices directly. If event occurred in St. Louis (City), St. Louis County, or Kansas City before 1910, write to the City or County Health Department. Copies of these records are $15.00 each. Additional copies of the same death record ordered at the same time are $10.00 each. Personal check or money order should be made payable to **Missouri Department of Health and Senior Services**. Please include a legal size self-addressed stamped envelope. To verify current fees on birth and death records, the telephone number is (573) 751-6387. This will be a recorded message. Information on how to obtain certified copies is also available via the Internet at http://www.dhss.mo.gov.

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Marriage	Varies	See remarks	Recorder of Deeds in county where license was issued.
Divorce	Varies	See remarks	Clerk of Circuit Court in county where divorce was granted.

Montana

Place of event	Cost of copy	Address	Remarks
Birth or Death	$12.00	Office of Vital Statistics MT Dept of Public Health and Human Services 111 N Sanders, Rm. 209 P.O. Box 4210 Helena, MT 59604	State office has records since late 1907. Additional copies of the same record requested at the same time are $5.00. Photocopy of picture ID and signature required. Personal check or money order should be made payable to **Montana Vital Records**. To verify current fees, the telephone number is 1-(888) 877-1946. This will be a recorded message. Information on how to obtain certified copies is also available via the Internet at http://www.dphhs.state.mt.us.
Marriage	See remarks	Same as Birth or Death	Records since July 1943. Some items may be verified. Inquiries will be forwarded to appropriate office. Apply to county where license was issued if known. Certified copies are not available from State office.
	Varies	See remarks	Clerk of District Court in county where license was issued.
Divorce	See remarks	Same as Birth or Death	Records since July 1943 . Some items may be verified. Inquiries will be forwarded to appropriate office. Apply to court where divorce was granted if known. Certified copies are not available from State office.
	Varies	See remarks	Clerk of District Court in county where divorce was granted.

Nebraska

Place of event	Cost of copy	Address	Remarks
Birth Death	$12.00 $11.00	Vital Records 1033 O Street, Suite 130 P.O. Box 95065 Lincoln, NE 68509-5065	State office has records since late 1904. If birth or death occurred before then, write the State office for information. Personal check or money order should be made payable to **Vital Records**. To verify current fees, the telephone number is (402) 471-2871. This will be a recorded message. Information on how to obtain certified copies is also available via the Internet at http://www.hhss.ne.gov/vitalrecords All requests must include a photocopy of the requestor's government issued photo identification.
Marriage	$11.00	Same as Birth or Death	Records since January 1909.
	Varies	See remarks	County Court in county where license was issued.
Divorce	$11.00	Same as Birth or Death	Records since January 1909.
	Varies	See remarks	Clerk of District Court in county where divorce was granted.

Print

Nevada

Place of event	Cost of copy	Address	Remarks
Birth Death	$13.00 $10.00	Office of Vital Records and Statistics Capitol Complex 410 Technology Way Suite 104 Carson City, NV 89706	State office has records since July 1911. For earlier records, write to County Recorder in county where event occurred. Personal check or money order should be made payable to **Office of Vital Records and Statistics**. To verify current fees, the telephone number is (775) 684-4280. This will be a recorded message. Information on how to obtain certified copies is also available via the Internet at http://health.nv.gov/VS.htm. The applicant MUST include a copy of a photo ID with the request.
Marriage	See remarks	Same as Birth or Death	Indexes since January 1968. Certified copies are not available from State Health Department. Inquiries will be forwarded to appropriate office.
	Varies	See remarks	County Recorder in county where license was issued.
Divorce	See remarks	Same as Birth or Death	Indexes since January 1968. Certified copies are not available from State Health Department. Inquiries will be forwarded to appropriate office.
	Varies	See remarks	County Clerk in county where divorce was granted.

New Hampshire

Place of event	Cost of copy	Address	Remarks
Birth or Death	$12.00	Division of Vital Records Administration Archives Building 71 South Fruit Street Concord, NH 03301-2410	State office has records since 1640. Copies of records may be obtained from State office or from City or Town Clerk in place where event occurred or the license was registered. Recent records (birth since 1988, death since 1990, and marriage since 1989) may be obtained from ANY City or Town running the Vital Records Automated software called NHVRIN. Additional copies ordered at the same time are $8.00 each. Personal check or money order should be made payable to **Treasurer, State of New Hampshire**. To verify current fees, the telephone number is (603) 271-4654. This will be a recorded message. Information on how to obtain certified copies is also available via the Internet at http://www.sos.nh.gov/vitalrecords.
Marriage	$12.00	Same as Birth or Death	Records since 1808.
	$12.00	See remarks	Town Clerk in town where license was issued.
Divorce	$12.00	Same as Birth or Death	Records since 1808.
	Varies	See remarks	Clerk of Superior Court in the county where divorce was granted.

New Jersey

Place of event	Cost of copy	Address	Remarks
Birth, Death, Marriage, Civil Union or Domestic Partnership (State)	$25.00	See remarks	The State Bureau of Vital Statistics and Registration maintains records from 1901 to present. All requests must include a copy of the requestor's valid identification, payment of the appropriate fee and proof of relationship to the individual listed on the vital record, if ordering a certified copy. The State or local Registrar may issue a certified copy of a vital record only to persons who establish themselves as the subject of the vital record, the subject's parent, legal guardian or legal representative, spouse, child, grandchild or sibling, if of legal age, to a State or Federal agency for official purposes, pursuant to court order or under other emergent circumstances as determined by the Commissioner. All other applicants will be issued a Certification that state the document is not for identification or legal purposes. Additional copies of the same record ordered at the same time are $2.00 each. Please visit the New Jersey Vital Statistics website for the most up to date information regarding ordering options and information. The website address is www.state.nj.us/health/vital or call toll-free at 1-866-649-8726.
Birth, Marriage, or Death	$10.00	New Jersey State Archives 225 West State Street P.O. Box 307 Trenton, NJ 08625-0307	The New Jersey State Archives searches vital records from May 1, 1848 to December 31, 1900 only. Personal check or money order should be made payable to **New Jersey General Treasury**. The general information telephone number is (609) 292-6260.
Divorce	$10.00	Clerk of the Superior Court Superior Court of NJ Public Information Center 171 Jersey Street P.O. Box 967 Trenton, NJ 08625-0967	The fee is for a certified Blue Seal copy. Make check payable to **Clerk of the Superior Court**.

New Mexico

Place of event	Cost of copy	Address	Remarks
Birth Death	$10.00 $5.00	NM Vital Records P.O. Box 26110 Santa Fe, NM 87502	State office has records since 1920 and delayed records since 1880. Personal check or money order should be made payable to **NM Vital Records**. To verify current fees, the telephone number is 1-866-534-0051. This will be a recorded message. Information on how to obtain certified copies is also available via the Internet at http://www.VitalRecordsNM.org
Marriage	Varies	See remarks	County Clerk in county where license was issued.
Divorce	Varies	See remarks	Clerk of Superior Court where divorce was granted.

New York

(except New York City)

Place of event	Cost of copy	Address	Remarks
Birth or Death	$30.00	Certification Unit Vital Records Section 2nd Floor 800 North Pearl Street Menands, NY 12204	State office has records since 1881. For records before 1914 in Albany, Buffalo, and Yonkers, or before 1880 in any other city, write to Registrar of Vital Statistics in city where event occurred. For the rest of the State, except New York City, write to State office. Personal check or money order should be made payable to **New York State Department of Health**. Payment of mail order copies submitted from foreign countries must be made by a check drawn on a United States bank or by an international money order. To verify current fees, the telephone number is (518) 474-3075. This will be a recorded message. Information on how to obtain certified copies is also available via the Internet at http://www.health.state.ny.us. For all types of State and local issued copies, the applicant is required to provide government issued photo identification.
Marriage	$30.00	Same as Birth or Death	Records from 1880 to present.
	$10.00	See remarks	For records from 1880–1907 and licenses issued in the cities of Albany, Buffalo, or Yonkers, apply to Albany: City Clerk, City Hall, Albany, NY 12207; Buffalo: City Clerk, City Hall, Buffalo, NY 14202; Yonkers: Registrar of Vital Statistics, Health Center Building, Yonkers, NY 10701.
Divorce	$30.00	Same as Birth or Death	Records since January 1963.
	Varies	See remarks	County Clerk in county where divorce was granted.

New York City

Place of event	Cost of copy	Address	Remarks
Birth or Death	$15.00	Office of Vital Records NYC Department of Health and Mental Hygiene 125 Worth St., CN4, Rm. 133 New York, NY 10013-4090	Office has birth records since 1910 and death records since 1949 for those occurring in the boroughs of Manhattan, Brooklyn, Bronx, Queens, and Staten Island. For birth records prior to 1910 and death records prior to 1949, write to Archives Division, Department of Records and Information Services, 31 Chambers Street, New York, NY 10007. You may also visit their website at http://www.nyc.gov/html/records/html/vitalrecords/home.shtml. There are strict identification requirements and several methods for ordering records. For information on how to obtain a birth record including applications for copies and corrections go to http://www.nyc.gov/html/doh html/vr/vrbappl.shtml. For death record information and applications go to http://www.nyc.gov/html/doh/html/vr/vrdappl.shtml. A 24-hour automated telephone system is also available that provides detailed information. The number is (212) 788-4520.

Continue

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§2.8 3. Where to Write for Vital Records (National Center for Health Statistics) (Part 3)

Print

Marriage Manhattan Borough	$10.00	City Clerk's Office Centre Street Room 252 South Municipal Building New York, NY 1007	Marriage Record Requests in Person: Marriage records from 1996 to present can be obtained in person from any office of the New York City Clerk. Marriage records from 1930 to 1955 can be obtained solely in the Manhattan Office. For additional information go to http://nycmarriagebureau.com/MarriageBureau/index.htm?RecordRoom.htm.
Bronx Borough	$10.00	City Clerk's Office 1780 Grand Concourse Bronx, NY 10457	
Brooklyn Borough	$10.00	City Clerk's Office Municipal Building New York, NY 10007	Marriage Record Requests by Mail: To obtain a Marriage Record by mail, please call the main office at (212) 669-8090 to request a form or to download the Marriage Record mail request form go to http://nycmarriagebureau.com/MarriageBureau/MailRequestForm.htm
Queens Borough	$10.00	City Clerk's Office 120-55 Queens Boulevard Kew Gardens, NY 11424	
Staten Island Borough (no longer called Richmond)	$10.00	City Clerk's Office Staten Island Borough Hall Staten Island, NY 10301	Please mail all Marriage Record Requests to the following address: Office of the City Clerk Municipal Building 1 Centre Street, Room 252 South New York, New York 10007

North Carolina

Place of event	Cost of copy	Address	Remarks
Birth or Death	$15.00	NC Vital Records 1903 Mail Service Center Raleigh, NC 27699-1903	The Register of Deeds in the county where the birth or death occurred can provide copies of birth and death certificates upon request. State office has birth records since October 1913 and death records since January 1, 1930. Business or certified check, or money order should be made payable to NC Vital Records. To verify current fees, the telephone number is (919) 733-3000. Information on how to obtain certified copies is also available via the Internet at http://vitalrecords.dhhs.state.nc.us/vr/index.html.
Marriage (County)	$15.00	Addresses for NC Register of Deeds Offices	Records since 1962. Contact the Register of Deeds in county where marriage license was obtained or the State Office of Vital Records in Raleigh.
Divorce	$15.00	Same as Birth or Death	Records since January 1958. Contact the Register of Deeds in county where the divorce occurred or the State Office of Vital Records in Raleigh.

North Dakota

Place of event	Cost of copy	Address	Remarks
Birth Death	$7.00 $5.00	ND Dept. of Health Division of Vital Records 600 East Boulevard Avenue Dept. 301 Bismarck, ND 58505-0200	State office has some birth records since 1870 and some death records since July 1893. Birth years from 1870 to 1920 are incomplete. Death years from 1894 to 1920 are incomplete. Additional copies of birth records are $4.00 each and death records are $2.00 each. Copies are generally processed in 5-7 working days after request is received. Personal check or money order should be made payable to **ND Dept. of Health**. To verify current fees, the telephone number is (701) 328-2360. This is an automated attendant with a recorded message. Information on how to obtain certified copies is also available via the Internet at http://www.ndhealth.gov/vital/order.htm.

Marriage	Varies	The following link provides county contact information regarding certified copies of marriage records: http://www.ndhealth.gov/vital/marriage.htm	As of January 1, 2008, the ND Department of Health no longer issues certified copies of marriage records.
Divorce	Varies	The following link provides county contact information regarding certified copies of marriage records: http://www.ndhealth.gov/vital/divorce.htm	Certified copies are not available from the ND Department of Health.

Northern Mariana Islands

Place of event	Cost of copy	Address	Remarks
Birth Death	$20.00 $25.00	Vital Statistics Office Division of Public Health P.O. Box 500409 Saipan, MP 96950	Office has records for birth and death since 1946. Money order or Bank Cashiers Check should be made payable to **CNMI Treasurer**. To verify current fees, call (670) 236-8717-8 or fax (670) 236-8700. E-mail address is dphstat1@pticim.com
Marriage	$10.00	Same as Birth or Death	Money order or Bank Cashiers Check should be made payable to **CNMI Treasurer**. To verify current fees, call (670) 236-8717-8 or fax (670) 236-8700. E-mail address is dphstat1@pticim.com
Divorce	$0.50 per page for Divorce Decree plus $2.50 for certification	Same as Birth or Death	Office has records for divorce since 1960.

Ohio

Place of event	Cost of copy	Address	Remarks
Birth or Death	$16.50	Vital Statistics Ohio Department of Health 246 North High Street 1st Floor Columbus, OH 43216	State office has birth records since December 20, 1908. For earlier birth and death records, write to the Probate Court in the county where the event occurred. The State Office has death records that occurred from 1954 to the present. Death records that occurred December 20, 1908–December 31, 1954, can be obtained from the Ohio Historical Society, Archives Library Division, 1982 Velma Avenue, Columbus, OH 43211-2497. A searchable index to records from 1913 to 1944 is also available via the Internet at http://www.ohiohistory.org. Personal check or money order should be made payable to **Treasury, State of Ohio**. To verify current fees, the telephone number is (614) 466-2531. This will be a recorded message. Information on how to obtain certified copies is also available via the Internet at http://www.odh.ohio.gov/vitalstatistics/vitalstats.aspx.
Marriage	See remarks	Same as Birth or Death	Records since September 1949. All items may be verified. Certified copies are not available from State Health Department. Inquiries will be referred to appropriate office.

	Varies	See remarks	Probate Judge in county where license was issued.
Divorce	See remarks	Same as Birth or Death	Records since September 1949. All items may be verified. Certified copies are not available from State Health Department. Inquiries will be forwarded to appropriate office.
	Varies	See remarks	Clerk of Court of Common Pleas in county where divorce was granted.

Oklahoma

Place of event	Cost of copy	Address	Remarks
Birth	$15.00	Vital Records Service State Department of Health 1000 Northeast 10th Street Oklahoma City, OK 73117	State office has records since October 1908. Personal check or money order should be made payable to **Vital Records Service**. To verify current fees, the telephone number is (405) 271-4040. This will be a recorded message. Information on how to obtain certified copies is also available via the Internet at at http://vr.health.ok.gov. A copy of a current legal photo ID from the applicant is required for all applications, as well as a completed application and appropriate fees.
Death	$15.00		
Marriage	Varies	See remarks	Clerk of Court in county where license was issued.
Divorce	Varies	See remarks	Clerk of Court in county where divorce was granted.

Oregon

Place of event	Cost of copy	Address	Remarks
Birth or Death	$20.00	Oregon Vital Records P.O. Box 14050 Portland, OR 97293-0050	State vital records office has birth and death records starting from 1903. Oregon State Archives has birth records for the City of Portland from 1864 to 1902 and statewide delayed birth records from 1845 to 1902; City of Portland death records from 1862 to 1902 and statewide death records from 1903 to 1955/ Additional copies of the same record ordered at the same time are $15.00 each. Personal check or money order should be made payable to **DHS/Vital Records**. To verify current fees, the telephone number is (971) 673-1190. This will be a recorded message. Information on how to obtain certified copies is also available via the Internet at http://www.ohd.hr.state.or.us.
		Oregon State Archives 800 Summer Street, NE Salem, OR 97310	The telephone number for the Oregon State Archives is (503) 373-0701 and the fax number is (503) 373-0953. Information on how to obtain copies is also available via the internet at http://arcweb.sos.state.or.us/reference.html.
Heirloom Birth	$45.00	Same as Birth or Death	Presentation style calligraphy certificate suitable for framing.
Marriage	$20.00	Same as Birth or Death	Records since January 1910.
	Varies	See remarks	County Clerk in county where license was issued. County Clerks also have some records before 1906. Some older county records have been transferred to the Oregon State Archives, 800 Summer Street NE, Salem, OR 97310
Divorce	$20.00	Same as Birth or Death	Records since 1925.
(Certificates Only)	Varies	See remarks	County Circuit Court Clerk in county where divorce was granted. County Clerks also have some records before 1925.

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Pennsylvania

Place of event	Cost of copy	Address	Remarks
Birth	$10.00	Division of Vital Records ATTN: Birth Unit 101 South Mercer Street Room 401 P.O. Box 1528 New Castle, PA 16103	State office has records since January 1906. All requests must be submitted on an application form, which requires the signature of the individual requesting record and a legible copy of his/her valid government issued photo ID that verifies name and mailing address of the individual requesting the record. Application forms, eligibility requirements, fees, and additional information, including how to apply online or by fax with a credit is available via the Internet http://www.health.state.pa.us/vitalrecords. The telephone number is (724) 656-3100. This will be a recorded message. Pennsylvania birth or records prior to 1906 can be accessed through the courthouse in the county were the person was born or died. A list of court houses is available via the Internet at http://www.health.state.pa.us/vitalrecords.
Death	$9.00	Division of Vital Records ATTN: Death Unit 101 South Mercer Street Room 401 P.O. Box 1528 New Castle, PA 16103	
Marriage	Varies		Make application to the Marriage License Clerks, County Court House, in county where license was issued. A list of court houses is available via the Internet at http://www.health.state.pa.us/vitalrecords.
Divorce	Varies		Make application to the Prothonotary, Court House, in county seat of county where divorce was granted. A list of court houses is available via the Internet at http://www.health.state.pa.us/vitalrecords.

Puerto Rico

Place of event	Cost of copy	Address	Remarks
Birth or Death	$5.00	Department of Health Demographic Registry P.O. Box 11854 Fernández Juncos Station San Juan, PR 00910	Central office has records since June 21, 1931. Copies of earlier records may be obtained by writing to local Registrar (Registrador Demografico) in municipality where event occurred. Additional copies ordered at the same time by the same person are $4.00 each. Information on how to obtain certified copies is also available via the Internet at http://www.prfaa.com/services.asp?id=44. Money order should be made payable to **Secretary of the Treasury**. Personal checks are not accepted. To verify current fees, the telephone number is (787) 767-9120.
Marriage	$5.00	Same as Birth or Death	All applications must be accompanied by a photocopy of a recent, valid IDENTIFICATION OF APPLICANT.
Divorce	$2.00	Same as Birth or Death	
		See remarks	Superior Court where divorce was granted.

Print

Rhode Island

Place of event	Cost of copy	Address	Remarks
Birth or Death	$20.00	RI Department of Health Office of Vital Records Room 101 3 Capitol Hill Providence, RI 02908-5097	State office keeps birth and marriage records for 100 years and keeps death records for 50 years. In general, copies can be obtained from the State office, the city/town clerk where the event occurred or the city of residence at the time of the occurrence. Additional copies of the same record ordered at the same time are $15.00 each. Information for city/town addresses are available via the Internet at: http://www.health.ri.gov/chic/vital/clerks.php. For earlier records, write to the city/town clerk where the event occurred or to the Rhode Island State Archives, 337 Westminster Street, Providence, RI 02903. Personal check or money order should be made payable to **Rhode Island General Treasurer**. To verify current fees, the telephone number is (401) 222-2811. This will be a recorded message. Information on how to obtain certified copies is also available via the Internet at http://www.health.ri.gov. All requests must be accompanied by a photocopy of the applicant's government-issued picture identification, e.g., driver's license.
Marriage	$20.00	Same as Birth or Death	
Divorce	$3.00	Clerk of Family Court 1 Dorrance Plaza Providence, RI 02903	

South Carolina

Place of event	Cost of copy	Address	Remarks
Birth or Death	$12.00	Office of Vital Records SCDHEC 2600 Bull Street Columbia, SC 29201	State office has records since January 1915. City of Charleston births from 1877 and deaths from 1821 are on file at Charleston County Health Department. Ledger entries of Florence City births and deaths from 1895 to 1914 are on file at Florence County Health Department. Ledger entries of Newberry City births and deaths from the late 1800's are on file at Newberry County Health Department. These are the only early records obtainable. Additional copies of the same birth records ordered at the same time of certification are $3.00. Anyone requesting a vital record must submit a photocopy of their valid identification. Acceptable method of payment is a money order or cashier's check made payable to **SCDHEC**. To verify current fees, the telephone number is (803) 898-3630. Information on how to obtain certified copies is also available via the Internet at http://www.scdhec.net/vr.
Marriage	$12.00	Same as Birth or Death	Records since July 1950.
	Varies	See remarks	Records prior to July 1950. Probate Judge in county where license was issued.
Divorce	$12.00	Same as Birth or Death	Records since July 1962.
	Varies	See remarks	Records since April 1949. Clerk of Court in county where petition was filed.

South Dakota

Place of event	Cost of copy	Address	Remarks
Birth or Death	$15.00	Vital Records State Department of Health 207 E Missouri Ave, Ste 1-A Pierre, SD 57501	State office has records filed after July 1905. Anyone requesting a vital record must submit a photocopy of their identification. Personal check or money order should be made payable to **South Dakota Department of Health**. To verify current fees, the telephone number is (605) 773-4961. Information on how to obtain certified copies is also available via the Internet at http://vitalrecords.sd.gov.
Marriage	$15.00	Same as Birth or Death	Records since July 1905. Marriages can also be obtained from the County Register of Deeds where the marriage occurred.
Divorce	$15.00	Same as Birth or Death	Records since July 1905. Divorces can also be obtained from the Clerk of Courts in the county where the divorce was granted.

Tennessee

Place of event	Cost of copy	Address	Remarks
Birth (long form) Birth (short form) Death	$15.00 $8.00 $7.00	Tennessee Vital Records Central Services Building 4215th Avenue, North Nashville, TN 37247	State office has birth records for entire State since January 1914, for Nashville since June 1881, for Knoxville since July 1881, and for Chattanooga since January 1882. Birth enumeration records by school district are available for July 1908 through June 1912. Birth records more than 100 years old are maintained by Tennessee Library and Archives, Archives Division, Nashville, Tennessee 37243-0312. Additional copies of the same birth, marriage, or divorce record, requested at the same time, are $5.00 each. Vital Records office keeps death records for 50 years; older records are maintained by Tennessee Library and Archives, Archives Division, Nashville, Tennessee 37243-0312. A photocopy of a government issued form of identification which includes the requestor's signature, must accompany the request. Personal check or money order should be made payable to **Tennessee Vital Records**. To verify current fees, the telephone number is (615) 741-1763. Information on how to obtain certified copies is also available via the Internet at http://health.state.tn.us/vr/.
Marriage	$15.00	Same as Birth or Death	Vital Records Office keeps marriage records for 50 years. Older records are maintained by Tennessee Library and Archives, Archives Division, Nashville, TN 37243-0312.
	Varies	See remarks	County Clerk in county where license was issued.
Divorce	$15.00	Same as Birth or Death	Vital Records Office keeps divorce records for 50 years. Older records are maintained by Tennessee Library and Archives, Archives Division, Nashville, TN 37243-0312.
	Varies	See remarks	Clerk of Court in county where divorce was granted.

Print

Texas

Place of event	Cost of copy	Address	Remarks
Birth Death	$22.00 $20.00	Bureau of Vital Statistics Texas Department of Health P.O. Box 12040 Austin, TX 78711-2040	State office has birth and death records since 1903. Additional copies of the birth record ordered at same time are $22.00 each. Additional copies of the death record ordered at the same time are $3.00 each. Request for certified copies can be made via the internet, with a credit card, through Texas Online at www.texasonline.com. Credit card payments can also be made via fax by completing the Expedited Application for Birth and Death Record (http://www.dshs.state.tx.us/vs/reqproc/forms/vs142.2.doc) and faxing it to the number on the application. Texas Online and Fax Application requests will be processed within 10 to 15 business days. Mail-in requests must be made by personal check or money order made payable to **Vital Statistics Unit**. To verify current fees, the telephone number is (512) 458-7111. This is a recorded message. Information on how to obtain certified copies is also available via the Internet at http://www.dshs.state.tx.us/vs.
Marriage	See remarks		Records since January 1966. Certified copies are not available from State office. Fee for search and verification of essential facts of marriage is $20.00 each. Request for marriage verification can be made via the internet, with a credit card, through Texas Online at www.texasonline.com. Marriage verification requests may also be sent vial mail and paid with a credit card, check or money order by completing the Mail Application for Marriage and Divorce Verification (http://www.dshs.state.tx.us/vs/reqproc/forms/vs142.9.doc). Personal checks or money orders should be made payable to **Vital Statistics Unit.**
	Varies	See remarks	County Clerk in county where license was issued. Texas County contact information can be found at http://localoffices.texasvsu.org
Divorce	See remarks		Records since January 1968. Certified copies are not available from State office. Fee for search and verification of essential facts of divorce is $20.00 each. Request for divorce verification can be made via the internet, with a credit card, through Texas Online at www.texasonline.com. Divorce verification requests may also be sent via mail and paid with a credit card, check or money order by completing the Mail Application for Marriage and Divorce Verification (http://www.dshs.state.tx.us/vs/reqproc/forms/vs142.9.doc). Personal checks or money orders should be made payable to **Vital Statistics Unit.**
	Varies	See remarks	Clerk of District Court in county where divorce was granted. Texas District Clerk contact information can be found at http://localoffices.texasvsu.org.

Print

Utah

Place of event	Cost of copy	Address	Remarks
Birth Death	$15.00 $13.00	Office of Vital Records and Statistics Utah Department of Health 288 North 1460 West P.O. Box 141012 Salt Lake City, UT 84114-1012	State office has records since 1905. Identification is now required for the purchase of a Utah Birth Certificate. Mailed request must include an enlarged and easily identifiable photocopy of the back and front of your identification. If no proofs are enclosed, your application will be returned. For a list of acceptable identification see our website at http://www.health.utah.gov/vitalrecords. Additional copies, when requested at the same time, are $8.00 each. Personal check or money order should be made payable to **Vital Records**. To verify current fees, the telephone number is (801) 538-6105. This is a recorded message. Information on how to obtain certified copies is also available via the Internet at http://www.health.utah.gov/vitalrecords.
Marriage	$9.00	Same as Birth or Death	State office has records since 1978. Only short form certified copies are available.
	Varies	See remarks	County Clerk in county where license was issued.
Divorce	$9.00	Same as Birth or Death	State office has records since 1978. Only short form certified copies are available.
	Varies	See remarks	County Clerk in county where divorce was granted.

Vermont

Place of event	Cost of copy	Address	Remarks
Birth or Death	$10.00	VT Department of Health Vital Records Section P. O. Box 70 108 Cherry Street Burlington, VT 05402-0070	State office has records for the most recent five years. Personal check or money order should be made payable to **Vermont Department of Health**. To verify current fees, the telephone number is (802) 863-7275. This will be a recorded message. Information on how to obtain certified copies is also available via the Internet at http://www.healthvermont.gov/research/records/vital_records.aspx.
Birth, Death, Marriage or Divorce	$10.00	Vermont Secretary of State State Archives and Records Administration 1078 US Route 2, Middlesex Montpelier, VT 05633-7701	Records more than five years old (as early as 1760). Personal check or money order should be made payable to Vermont Secretary of State. To verify current fees, the telephone number is (802) 828-3286.
	$10.00	See remarks	Town or City Clerk of town/city where birth or death occurred.
Marriage	$10.00	Same as Birth or Death	State office has records for the most recent 5 years.
	$10.00	See remarks	Town or City Clerk in town/city where license was issued.
Divorce	$10.00	Same as Birth or Death	State office has records for the most recent 5 years.
	$10.00	See remarks	Family court in county where divorce was granted.

Print

Virginia

Place of event	Cost of copy	Address	Remarks
Birth or Death	$12.00	Division of Vital Records P.O. Box 1000 Richmond, VA 23218-1000	State office has records from January 1853 to December 1896 and since June 14, 1912. Only the cities of Hampton, Newport News and Norfolk have records between 1896 and June 14, 1912. Personal check or money order should be made payable to **State Health Department**. To verify current fees, the telephone number is (804) 662-6200. This is a recorded message. Information on how to obtain certified copies is also available via the Internet at http://www.vdh.virginia.gov/. Anyone requesting a vital record must submit a photocopy of their identification.
Marriage	$12.00	Same as Birth or Death	Records since January 1853.
	Varies	See remarks	Clerk of Court in county or city where license was issued.
Divorce	$12.00	Same as Birth or Death	Records since January 1918.
	Varies	See remarks	Clerk of Court in county or city where divorce was granted.

Virgin Islands

Place of event	Cost of copy	Address	Remarks
Birth or Death St. Croix	$15.00 (Mail request) $12.00 (In person)	Department of Health Vital Statistics Charles Harwood Memorial Hospital St. Croix, VI 00820	Registrar has birth and death records on file since 1840.
St. Thomas and St. John	$15.00 (Mail request) $12.00 (In person)	Department of Health Vital Statistics Knud Hansen Complex St. Thomas, VI 00802	Registrar has birth records on file since July 1906 and death records since January 1906. Money order for birth and death records should be made payable to **Department of Health**. Personal checks are not accepted. To verify current fees, the telephone number is (340) 774-9000 ext. 4685 or 4686.
Marriage	See remarks	Bureau of Vital Records and Statistical Services Virgin Islands Department of Health Charlotte Amalie St. Thomas, VI 00801	Certified copies are not available. Inquiries will be forwarded to the appropriate office.
St. Croix	$2.00	Chief Deputy Clerk Family Division Territorial Court of the Virgin Islands P.O. Box 929 Christiansted St. Croix, VI 00820	
St. Thomas and St. John	$2.00	Clerk of the Territorial Court of the Virgin Islands Family Division P.O. Box 70 Charlotte Amalie St. Croix, VI 00801	

Print

Divorce	See remarks	Same as Marriage	Certified copies are not available. Inquiries will be forwarded to appropriate office.
St. Croix	$5.00	Same as Marriage	Money order for marriage and divorce records should be made payable to Territorial Court of the Virgin Islands. Personal checks are not accepted.
St. Thomas and St. John	$5.00	Same as Marriage	

Washington

Place of event	Cost of copy	Address	Remarks
Birth or Death	$20.00	Department of Health Center for Health Statistics P.O. Box 9709 Olympia, WA 98507-9709	Must have exact information for births. State office has records since July 1907. For King, Pierce, and Spokane counties copies may also be obtained from county health departments. County Auditor of county of birth has registered births prior to July 1907. Personal check or money order should be made payable to **Department of Health**. To verify current fees, the telephone number is (360) 236-4300. Information on how to obtain certified copies is also available via the Internet at http://www.doh.wa.gov.
Marriage	$20.00	Same as Birth or Death	State office has records since January 1968.
	Varies	See remarks	County Auditor in county where license was issued.
Divorce	$20.00	Same as Birth or Death	State office has records since January 1968.
	Varies	See remarks	County Clerk in county where divorce was granted.

West Virginia

Place of event	Cost of copy	Address	Remarks
Birth or Death	$12.00	Vital Registration Office Room 165 350 Capitol Street Charleston, WV 25301-3701	State office has records since January 1917. For earlier records, write to Clerk of County Court in county where event occurred. Personal check or money order should be made payable to **Vital Registration**. To verify current fees, the telephone number is (304) 558-2931. Information on how to obtain certified copies is also available via the Internet at http://www.wvdhhr.org.
Marriage	$12.00	Same as Birth or Death	Records since 1921. Certified copies available from 1964.
	Varies	See remarks	County Clerk in county where license was issued.
Divorce	See remarks	Same as Birth or Death	Index since 1968. Some items may be verified (fee $5.00). Certified copies are not available from State office.
	Varies	See remarks	Clerk of Circuit Court, Chancery Side, in county where divorce was granted.

Wisconsin

Place of event	Cost of copy	Address	Remarks
Birth Death	$20.00 $20.00	WI Vital Records Office 1 West Wilson Street P.O. Box 309 Madison, WI 53701-0309	State Office has scattered records earlier than 1857. Records before October 1, 1907, are very incomplete. Additional copies of the same record ordered at the same time are $3.00 each. Personal check or money order should be made payable to **State of Wisconsin Vital Records**. A stamped, self-addressed business size (#10) envelope should be included with the request. To verify current fees, the telephone number is (608) 266-1371. This will be a recorded message. Information on how to obtain certified copies is also available via the Internet at http://www.dhfs.state.wi.us/vitalrecords.
Marriage	$20.00	Same as Birth or Death	Records since April 1836. Records before October 1, 1907, are very incomplete and cannot be searched without a county of marriage. Additional copies of the same record ordered at the same time are $3.00 each.
Divorce	$20.00	Same as Birth or Death	Records since October 1907. Additional copies of the same record ordered at the same time are $3.00 each.

Wyoming

Place of event	Cost of copy	Address	Remarks
Birth Death	$13.00 $10.00	Vital Records Services Hathaway Building Cheyenne, WY 82002	State office has records since July 1909. Personal check or money order should be made payable to **Vital Records Services**. To verify current fees, the telephone number is (307) 777-7591. Information on how to obtain certified copies is also available via the Internet at http://wdh.state.wy.us/vital_records.
Marriage	$13.00	Same as Birth or Death	Records since May 1941.
	Varies	See remarks	County Clerk in county where license was issued.
Divorce	$13.00	Same as Birth or Death	Records since May 1941.
	Varies	See remarks	Clerk of District Court where divorce took place.

Print

Foreign, high-seas, or Panama Canal Zone births and deaths and certificates of citizenship

Birth records of persons born in foreign countries who are U.S. citizens at birth

The birth of a child abroad to U.S. citizen parent(s) should be reported to the nearest U.S. Consulate or Embassy as soon after the birth as possible. To do this, the child's parent or legal guardian should file an Application for Consular Report of Birth Abroad of a Citizen of the United States of America (Form FS-240). This form may also be used to apply for a Social Security Number for the child. A $65.00 fee is charged for reporting the birth.

The application must be supported by evidence to establish the child's U.S. citizenship. Usually, the following documents are needed:

1. the child's foreign birth certificate;
2. evidence of the U.S. citizenship of the parent(s) such as a certified copy of a birth certificate, U.S. passport, or Certificate of Naturalization or Citizenship;
3. evidence of the parents' marriage, if applicable; and
4. affidavit(s) of the physical presence of the parent(s) in the United States.

Each document should be certified as a true copy of the original by the registrar of the office that issued the document. Other documents may be needed in some cases. Contact the nearest U.S. Embassy or Consulate for details on what evidence is needed.

When the application is approved, a Consular Report of Birth Abroad of a Citizen of the United States of America (Form FS-240) is given to the applicant. This document, known as the Consular Report of Birth, has the same value as proof of citizenship as the Certificate of Citizenship issued by the Immigration and Naturalization Service.

A Consular Report of Birth can be prepared only at a U.S. Embassy or Consulate overseas, and only if the person who is the subject of the report is under 18 years of age when the application is made. A person residing abroad who is now 18 years of age or over, and whose claim to U.S. citizenship has never been documented, should contact the nearest U.S. Embassy or Consulate for assistance in registering as a U.S. citizen.

As of November 1, 1990, the U.S. Department of State no longer issues multiple copies of the Consular Report of Birth. However, a replacement Consular Report of Birth may be issued if the original document is lost or mutilated. The U.S. Department of State also issues certified copies of the Certification of Report of Birth (DS-1350), which contains the same information as on the Consular Report of Birth. The DS-1350 serves most needs and can be issued in multiple copies. Documents are issued only to the subject of the Consular Report of Birth, the subject's parents or legal guardian. Effective September 1, 2003, all requests must be notarized to include a picture ID.

To request copies of the DS-1350 or a replacement FS-240, write to Passport Services, Vital Records Section, U.S. Department of State, 1111 19th Street NW, Suite 510, Washington, DC 20522-1705. Please include the following items:

1. the full name of the child at birth (and any adoptive name);
2. the date and place of birth;
3. the names of the parents;
4. the serial number of the FS-240 (if the FS-240 was issued after November 1, 1990);
5. any available passport information;
6. the signature of the requestor and the requestor's relationship to the subject;
7. a check or money order for $30.00 for the FS-240, $30.00 for the first DS-1350 and $20.00 for each additional issued at the same time per document requested, made payable to the U.S. Department of State. Remittance must be payable in U.S. dollars through a U.S. Bank. Do Not Send Cash;
8. if applying for a replacement FS-240, a notarized affidavit by the subject, parent, or legal representative that states the name, date and place of birth of the subject, and the whereabouts of the original FS-240.

To obtain a Consular Report of Birth in a new name, send a written request and fees as noted above, the original (or replacement) Consular Report of Birth, or if not available, a

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notarized affidavit about its whereabouts. Also, send a certified copy of the court order or final adoption decree which identifies the child and shows the change of name with the request. If the name has been changed informally, submit public records and affidavits that show the change of name.

Birth records of alien children adopted by U.S. citizens

Birth certifications for alien children adopted by U.S. citizens and lawfully admitted to the United States may be obtained from the Immigration and Naturalization Service (INS) if the birth information is on file. (Address can be found in a telephone directory.) To obtain the birth data, it is necessary to provide the Immigration Office with proof of adoption or legitimation.

Certificate of citizenship

Persons who were born abroad and later naturalized as U.S. citizens or who were born in a foreign country to a U.S. citizen (parent or parents) may apply for a Certificate of Citizenship pursuant to the provisions of Section 341 of the Immigration and Nationality Act. Application can be made for this document in the United States at the nearest office of the Bureau of Citizenship and Immigration Services in the Department of Homeland Security. Upon approval, a Certification of Citizenship will be issued for the person if proof of citizenship is submitted and the person is within the United States. The decision whether to apply for a Certificate of Citizenship is optional; its possession is not mandatory because a valid U.S. passport or a Form FS-240 has the same evidentiary status.

Death records of U.S. citizens who die in foreign countries

The death of a U.S. citizen in a foreign country may be reported to the nearest U.S. consular office. If reported, and a copy of the local death certificate and evidence of U.S. citizenship are presented, the consul prepares the official *Report of the Death of an American Citizen Abroad*" (Form DS-2060, formerly OF-180). A copy of the Report of Death is then filed permanently in the U.S. Department of State (see exceptions below).

To obtain a copy of a report filed in 1975 or after, write to Passport Services, Vital Records Section, U.S. Department of State, Washington, DC 20522-1705. The fee for a copy is $30.00 for the first copy, $20.00 for each additional copy. Please include a notarized request to include picture ID. Fee may be subject to change.

Reports of Death filed before 1975 are maintained by the National Archives and Records Service, Diplomatic Records Branch, Washington, DC 20408. Requests for such records should be sent directly to that office.

Reports of deaths of persons serving in the Armed Forces of the United States (Army, Navy, Marines, Air Force, or Coast
Guard) or civilian employees of the Department of Defense are not maintained by the U.S. Department of State. In these cases, requests for copies of records should be sent to the National Personnel Records Center (Military Personnel Records), 9700 Page Ave., St. Louis, Missouri 63132-5100.

Records of birth and death occurring on vessels or aircraft on the high seas

When a birth or death occurs on the high seas, whether in an aircraft or on a vessel, the record is usually filed at the next port of call.

1. If the vessel or aircraft docked or landed at a foreign port, requests for copies of the record may be made to the U.S. Department of State, Washington, DC 20522–1705.

2. If the first port of entry was in the United States, write to the registration authority in the city where the vessel or aircraft docked or landed in the United States.
3. If the vessel was of U.S. registry, contact the local authorities at the port of entry and/or search the vessel logs at the U.S. Coast Guard Facility at the vessel's final port of call for that voyage.

Records maintained by foreign Countries

Most, but not all, foreign countries record births and deaths. It is not possible to list in this

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publication all foreign vital records offices, the charges they make for copies of records, or the information they may require to locate a record. However, most foreign countries will provide certifications of births and deaths occurring within their boundaries.

Persons who need a copy of a foreign birth or death record should contact the Embassy or the nearest Consulate in the U.S. of the country in which the death occurred. Addresses and telephone numbers for these offices are listed in the U.S. Department of State Publication 7846, *Foreign Consular Offices in the United States,* which is available in many local libraries. Copies of this publication may also be purchased from the U.S. Government Printing Office, Washington, DC 20402.

If the Embassy or Consulate is unable to provide assistance, U.S. citizens may obtain assistance by writing to the Office of Overseas Citizens Services, U.S. Department of State, Washington, DC 20520-4818. Aliens residing in the United States may be able to obtain assistance through the Embassy or Consulate of their country of nationality.

Records of birth, death, or marriage in the Panama Canal Zone for U.S. citizens and foreign nationals

From 1904 until September 30, 1979, the Canal Zone Government registered all civil acts of birth, death and marriage in the Canal Zone for U.S. citizens and foreign nationals. Since 1979, the Panama Canal Commission has issued certified copies of these documents in response to requests from the public. On December 31, 1999, the Panama Canal Commission will no longer exist. On December 1, 1999, those records were transferred to Passport Services in the U.S. Department of State, which will provide the certification service just as it does for similar records issued by U.S. Embassies and Consulates abroad.

From 1904 until September 30, 1979, the Canal Zone Government registered all civil acts of birth, death and marriage in the Canal Zone for U.S. citizens and foreign nationals. Since 1979, the Panama Canal Commission has issued certified copies of these documents in response to requests from the public. On December 31, 1999, the Panama Canal Commission will no longer exist. On December 1, 1999, those records were transferred to Passport Services in the U.S. Department of State, which will provide the certification service just as it does for similar records issued by U.S. Embassies and Consulates abroad.

To request copies, write to Vital Records Section, Passport Services, U.S. Department of State, 1111 19th Street NW, Suite 510, Washington, DC 20522-1705. Please include a notarized request to include picture ID the following items for birth, death, or marriage:

1. the full name of subject at the time of event:
2. month, day and year of event;
3. place of event (city and country)
4. parents' names, date and place of birth, and nationality for birth record;
5. any available U.S. passport information;
6. signature of the requestor, parent or guardian, or legal representative;
7. requestor address and telephone number;
8. a check or money order for $30.00 and $20.00 for each additional copy issued at the same time, made payable to U.S. Department of State. Remittance must be payable in U.S. dollars through a U.S. bank. Do not send cash.

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C. Locate Will

§2.9 1. Conduct a Search

One of the attorney's first responsibilities after being notified of a client's death is to locate the decedent's will. Locating the will may be urgent if funeral or burial instructions are contained in the will or if anatomical gifts or the authority to conduct an autopsy are granted in the will. See §§2.2-2.5. Counsel should ascertain whether there is a durable power of attorney for health care for anatomical provisions and funeral arrangements.

Usually, the attorney or family members know whether the decedent left a will; the will may be in the attorney's office or the client's will file may include a note about where the decedent intended to store the will. Even when a will is known to exist, however, a search for codicils and subsequent wills is still necessary.

Either a member of the decedent's family or the attorney or another appropriate person should inquire of the decedent's employer, close personal friends, and any others who are likely to know of the location of a will or to have possession of a will or codicil. Inquiry should also be made of banks in which the decedent had an account, or any other business or personal connection, to ascertain the existence of a safe-deposit box, because wills are often kept there.

All safe-deposit boxes to which the decedent had access should be opened to search for the most recent will and codicils. If a box is held in the decedent's sole name, the financial institution will refuse access unless the person seeking access has (1) the key to the box, (2) proof of the decedent's death, and (3) proof of his or her identity. Prob C §331(b). Only wills, trust instruments, and burial instructions can be removed from the box before letters are issued. After letters are issued, the personal representative may return for the remaining contents; see chap 10. Prob C §331(d)-(f). If the person seeking access does not have a key to the safe-deposit box, the person must obtain letters from the court to gain access. Cal L Rev'n Comm'n Comment to Prob C §331.

The California Secretary of State maintains an international will registry for wills executed under Prob C §§6380-6390 (in compliance with international requirements). If it is possible that the decedent executed an international will that has not been located, the legal assistant should check the Secretary of State's records to ascertain whether a will has been filed with that registry by sending a certified copy of the death certificate with the written request to:

Attn: Secretary of State
Special Filings Unit
P.O. Box 942877
Sacramento, CA 94277—001
(Telephone: (916) 653-3984)

There is no charge for ascertaining whether a will is on file, but if copies are desired, a check payable to the Secretary of State, in a nominal amount "not over $_ _ _ _ _ _" should be enclosed to cover per page copy fees and the separate fee for certification of the copy.

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§2.10 2. Intestate Decedents

If no will can be located, the decedent died intestate. Intestate succession to California property for decedents who die after 1984 is governed by Prob C §§6400-6414, 6450-6455. Except for arrangements specifically relating to wills (such as locating witnesses), all of the immediate arrangements that must be made if the decedent died with a will must also be made if the decedent died intestate. The beginning of proceedings for administration of the decedent's estate when there is no will is similar to the beginning of proceedings to probate a will. See chap 7 on beginning proceedings to administer an estate. See §2.13 and California Decedent Estate Practice §§7.14-7.18 (2d ed Cal CEB 2009) for discussion of how to determine the petitioner in administration proceedings when the decedent died intestate.

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Source: Estate Planning/California Probate Workflow Manual Revised/2 Immediate Arrangements/§2.11 D. Deliver Will to Court

§2.11 D. Deliver Will to Court

Within 30 days after receipt of notice of a testator's death, the custodian of the will must deliver it to the clerk of the superior court of the county having jurisdiction of the estate and mail a copy to the executor named in the will. The custodian who fails to deliver the will within the statutory period is responsible for all damages resulting from that failure. Prob C §8200.

Even when later wills are known to exist, if the assistant finds a will on file, it should be filed with the county clerk for safekeeping. A later document may be invalid or successfully challenged and the earlier will may be the valid will. If it is known that another attorney has prepared a later will, that attorney should be notified that an earlier will was filed.

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III. ARRANGEMENTS BEFORE ADMINISTRATION

A. Identify Petitioners to Serve as Personal Representatives

§2.12 1. Testate Decedents

The person, corporation, or association named in the will to administer the estate is the executor. See California Decedent Estate Practice §§7.8-7.12 (2d ed Cal CEB 2009) on who may be named as executor. There may be more than one executor and successor executors may be named in the will. If willing and able to act, each person or corporation named as executor or coexecutor must be appointed by the court and issued letters of authority to act on behalf of the estate.

If the person or corporation named in the will declines to act or cannot perform the duties of executor and no successor executor is nominated in the will, the estate is administered by an administrator with will annexed, who is appointed by the court and is issued letters. See Prob C §§8441, 8461 for priorities in appointment of administrator with will annexed; see Decedent Estate Prac §7.13 for discussion of statutory requirements and priorities of potential appointees. See Decedent Estate Prac §7.19 for special considerations affecting executors and administrators with will annexed who are not California residents.

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§2.13 2. Intestate Decedents

Persons who serve as administrators of the estates of decedents who die without wills must have the same qualifications as executors and must be residents of the United States. Prob C §8402.

See California Decedent Estate Practice §§7.14-7.18 (2d ed Cal CEB 2009) for discussion of identification of administrators and priority of appointment, and see Decedent Estate Prac §7.19 for special considerations affecting administrators who are not California residents.

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Source: Estate Planning/California Probate Workflow Manual Revised/2 Immediate Arrangements/§2.14 B. Deciding Whether to Accept Employment

§2.14 B. Deciding Whether to Accept Employment

Before agreeing to represent a prospective personal representative, the attorney should determine whether, for any reason, the attorney's full and fair representation of the representative would be inhibited. An obvious example is presented when the attorney or another member of the firm has agreed to represent one of the beneficiaries of the estate who intends to contest the will that the prospective personal representative will offer for probate.

It is important to comply with the firm's usual procedures for identifying and dealing with actual or potential conflicts of interest or other circumstances that would impair representation of the client, before the attorney becomes significantly involved in the administration of the estate.

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§2.15 C. Arrange Interviews

As soon as possible after the death, the attorney should determine the personal representatives who are able and willing to administer the estate (see §§2.9, 2.11) and identify family members or close friends who may be able to provide information about the estate and estate assets. The assistant should set up as many interviews as necessary to gather information and to establish an effective relationship with the nominee personal representatives. For discussion and forms for information gathering to use during interviews, see chap 3. Much of the information that will be needed to make the determinations described in the following sections will be obtained through those interviews.

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Source: Estate Planning/California Probate Workflow Manual Revised/2 Immediate Arrangements/§2.16 D. Characterize Estate Assets

§2.16 D. Characterize Estate Assets

It is important that the attorney act quickly to characterize estate assets for proper administration of the estate and for tax-reporting purposes. See discussion in California Decedent Estate Practice, chap 34 (2d ed Cal CEB 2009). The Estate Financial Information checklist in §3.6 may be used to keep a record of that characterization.

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Source: Estate Planning/California Probate Workflow Manual Revised/2 Immediate Arrangements/§2.17 E. Ascertain Whether Decedent's Causes of Action Survive Death

§2.17 E. Ascertain Whether Decedent's Causes of Action Survive Death

The attorney or assistant should ascertain, by consulting family members and reviewing the decedent's personal records, whether the decedent was a party to a cause of action before his or her death. It may also be advisable to check the court index in the county of the decedent's residence. The attorney must ascertain whether the cause of action survives the death and whether it must be prosecuted or defended by the decedent's personal representative. The general rule is that all causes of action survive death. CCP §377.20. For discussion of exceptions to this rule, particularly relating to the death of a party to dissolution proceedings, see California Decedent Estate Practice §29.28 (2d ed Cal CEB 2009).

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§2.18 F. Review Decedent's Insurance Coverage of Estate Assets

The attorney or legal assistant should gather information about the decedent's automobile insurance, homeowner insurance, and other insurance coverage of estate assets immediately after the death. The attorney should determine whether the existing coverage is adequate or should be increased to protect estate assets and the representative. If necessary, additional coverage should be obtained as soon as possible. The decedent's insurers should be informed of his or her death. If the estate will be probated (see §2.20), the policies should be endorsed to add the personal representative as the named insured. See California Decedent Estate Practice §10.21 (2d ed Cal CEB 2009) for discussion.

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Source: Estate Planning/California Probate Workflow Manual Revised/2 Immediate Arrangements/§2.19 G. Deciding Whether to Initiate Proceedings to Establish Simultaneous Death

§2.19 G. Deciding Whether to Initiate Proceedings to Establish Simultaneous Death

The attorney should decide whether, in the circumstances of the death, a petition should be filed under Prob C §§230-234 to determine the decedent's survival or the survival of another person who died apparently simultaneously with the decedent. Note that for decedents dying without a will that effectively disposes of all of his or her estate, a person who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent. Prob C §6403. For further discussion and forms for establishing simultaneous death, see California Decedent Estate Practice, chap 8 (2d ed Cal CEB 2009).

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Source: Estate Planning/California Probate Workflow Manual Revised/2 Immediate Arrangements/§2.20 H. Determine Need for Probate

§2.20 H. Determine Need for Probate

The attorney must determine whether it is necessary to initiate a probate proceeding. Probate is not required to transfer the following types of assets:

(a) Joint tenancy assets (see generally §§4.5-4.12);

(b) Community and separate property assets passing to a surviving spouse or registered domestic partner (Fam C §297.5) (see §§6.16-6.19);

(c) Assets held in trust with a designated beneficiary (*e.g.,* inter vivos trusts, testamentary trusts, Totten trusts) (see §§4.27-4.30A);

(d) Life insurance on the decedent's life designating a beneficiary other than the estate (see §§4.18-4.19);

(e) Retirement plans designating beneficiary other than the estate (*e.g.,* pension plans, profit-sharing plans, Keogh plans, IRAs) (see §4.23);

(f) Life estates (see §§4.13-4.14); and

(g) U.S. savings bonds (see §§4.15-4.17).

For additional factors on which that decision is based, see California Decedent Estate Practice §1.39 (2d ed Cal CEB 2009).

Information on which to base this determination may be gathered by the attorney or the assistant on the form provided in §3.6.

Even if it is determined that a probate proceeding is not legally required, it may be desirable to initiate probate proceedings if those proceedings would accomplish other purposes, such as protecting beneficiaries against the decedent's creditors (see Decedent Estate Prac, chap 14) or securing income tax benefits (see Decedent Estate Prac, chaps 2 and 33).

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§2.21 I. Ascertain Decedent's Domicile

The decedent's state and county of domicile at the date of death must be ascertained in order to decide where the estate should be probated. See Prob C §7051; §7.17. For discussion of ascertaining domicile of California and nondomiciliary decedents, see California Decedent Estate Practice §§7.20-7.22 (2d ed Cal CEB 2009).

If the decedent's place of domicile is in doubt, the legal assistant should check the voter registration records in those places where the decedent may have been domiciled. Other indications include the address used on income tax returns and statements of intent made in letters to family and friends.

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J. Locate Evidence to Prove the Will (Unless Self-Proving)

§2.22 1. Locate Witnesses

An uncontested will that contains an affidavit by the subscribing witnesses that the will was executed in all particulars as required by law, and is signed by the witnesses under penalty of perjury, satisfies the requirements for proving an uncontested will and is a "self-proving" will. Prob C §8220; CCP §2015.5. If the will is self-proving, it is not necessary to locate subscribing witnesses to prove the will. See §7.32 for discussion. See also California Decedent Estate Practice §§7.59-7.60 (2d ed Cal CEB 2009). For examples of attestation clauses that comply with the statutory requirements for self-proving wills, see California Will Drafting §36.16 (3d ed Cal CEB 1992).

The attorney should first determine whether it will be necessary to obtain a proof of subscribing witness. See Decedent Estate Prac §§7.59-7.60. If it is necessary, the legal assistant should prepare a Judicial Council Proof of Subscribing Witness form to be signed by the witness and by the attorney. See §§7.32-7.33.

If the will is not self-proving and if witnesses to the will cannot be found, the attorney or the legal assistant should inquire of the decedent's friends and family (1) whether anyone other than subscribing witnesses were present when the will was signed and witnessed and (2) who among them could verify the decedent's handwriting or the handwriting of any of the witnesses. As soon as possible, steps necessary to locate those persons should be taken.

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§2.23 2. Lost, Destroyed, or Unavailable Wills

Anyone who is interested in the estate is authorized to petition the court to have the will proved, even if the will is lost, destroyed, outside state jurisdiction, or in the possession of another. Prob C §8000. The petition for probate of a lost or destroyed will must summarize the testamentary provisions. Prob C §8223. See §§7.49-7.50 for further discussion.

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Source: Estate Planning/California Probate Workflow Manual Revised/2 Immediate Arrangements/§2.24 K. Arrange to Continue Decedent's Business

§2.24 K. Arrange to Continue Decedent's Business

As soon as possible after death, the attorney and the prospective personal representative should take any action necessary to protect and preserve a business that is part of the estate, including petitioning the court for the appointment of a special administrator to conduct the business until probate administration begins. See Prob C §§8540-8547. See also §§2.30, 7.41-7.45 on appointment of a special administrator.

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§2.25 L. Initiate Procedures to Collect Benefits

The attorney and assistant should ascertain which benefits are due to the estate and to other beneficiaries as a result of the decedent's death (see §3.3 for a form for information gathering). Benefits accruing as a result of death may include: state disability insurance (SDI) payments; retirement or disability income from federal social security or as a fringe benefit of the decedent's employment; funeral and death benefits from social security, Department of Veterans Affairs, or employment agreements; medical expenses from group insurance; group life and disability income benefits; and workers' compensation claims. See California Decedent Estate Practice, chap 2 (2d ed Cal CEB 2009) for discussion of death benefits. See chap 4 for procedures for collection of property not subject to probate administration.

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Source: Estate Planning/California Probate Workflow Manual Revised/2 Immediate Arrangements/§2.26 M. Determine Cash Needs; Prepare Estimate

§2.26 M. Determine Cash Needs; Prepare Estimate

The attorney will find it advisable to estimate the cash needs of the estate as soon as possible and in as much detail as possible, so that arrangements can be made to sell assets or to borrow money, if these actions will be necessary to meet the cash needs of the estate. An early assessment of needs will affect the decision on whether to seek appointment of a special administrator. See §§10.25-10.27.

Information on which to base this estimate will be found in the forms provided in §§3.8-3.10. A form for estimating cash needs is provided in §10.25. This early estimate should be prepared for the file and should be discussed with the prospective personal representative. When formal administration begins and more information is available, the attorney may wish to review the estimate and to specifically advise the representative about steps to take. For further discussion and forms, see chaps 10 (initial duties, cash needs) and 16 (sales of assets, borrowing money). See also California Decedent Estate Practice, chap 10 (2d ed Cal CEB 2009) on assembling estate assets and estimating cash needs, Decedent Estate Prac, chap 18 on sales of assets, and Decedent Estate Prac, chap 21 on borrowing money.

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Source: Estate Planning/California Probate Workflow Manual Revised/2 Immediate Arrangements/§2.27 N. Consider Tax Matters

§2.27 N. Consider Tax Matters

As soon as possible, the attorney should consider and advise the prospective personal representative about planning for tax matters. See California Decedent Estate Practice, chap 10 (2d ed Cal CEB 2009). The attorney or legal assistant should immediately calendar all known tax deadlines, such as the dates the decedent's income tax returns are due, and the date the federal and any state death taxes and returns are due.

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Source: Estate Planning/California Probate Workflow Manual Revised/2 Immediate Arrangements/§2.28 O. Determine Whether Decedent's Debts Should Be Paid Before Probate

§2.28 O. Determine Whether Decedent's Debts Should Be Paid Before Probate

The attorney should consult with the prospective personal representative about whether any of the decedent's creditors should be paid before appointment and before formal administration of the estate begins. For further discussion, see California Decedent Estate Practice, chap 10 (2d ed Cal CEB 2009).

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Source: Estate Planning/California Probate Workflow Manual Revised/2 Immediate Arrangements/§2.29 P. Consider Possibility of Will Contest

§2.29 P. Consider Possibility of Will Contest

The attorney should be aware of any potential grounds for a will contest and, to the extent possible, of individuals who may be planning to file a will contest. For discussion of planning considerations, see California Decedent Estate Practice, chap 26 (2d ed Cal CEB 2009).

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Source: Estate Planning/California Probate Workflow Manual Revised/2 Immediate Arrangements/§2.30 Q. Determine Need for Special Administrator

§2.30 Q. Determine Need for Special Administrator

The attorney should determine whether circumstances exist that require or recommend the appointment of a special administrator. See California Decedent Estate Practice §10.31 (2d ed Cal CEB 2009). These might include a need to preserve assets, continue the decedent's business, deal with urgent cash needs, make decisions or complete contracts with pending deadlines, or deal with any number of important matters that cannot await the hearing on the petition for letters.

For detailed discussion of grounds for appointment and obligations of a special administrator, see Decedent Estate Prac §§7.27-7.45. For forms and procedures for appointment, see chap 7.

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Source: Estate Planning/California Probate Workflow Manual Revised/2 Immediate Arrangements/§2.31 R. Determine Need for Ancillary Administration

§2.31 R. Determine Need for Ancillary Administration

The attorney must determine whether the decedent owned assets in a state or country other than the state of his or her domicile at the date of death. See §3.3 for forms for information gathering; see California Decedent Estate Practice §§11.3-11.5 (2d ed Cal CEB 2009) for discussion of determining domicile of California decedents. If the decedent owned assets in another state or country, the attorney must consider whether ancillary administration in the other jurisdiction should be initiated.

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Source: Estate Planning/California Probate Workflow Manual Revised/2 Immediate Arrangements/§2.32 S. Locate Beneficiaries

§2.32 S. Locate Beneficiaries

The petition for probate must include the names, ages, addresses (including county), and relationship to the decedent of the heirs and devisees of the decedent, as far as these persons are known to the petitioner for probate. Prob C §8002. These persons are known collectively as beneficiaries. See Prob C §24. Beneficiaries are interested parties who must be given notice of probate proceedings.

The attorney or assistant should prepare a list of all persons named in the will, whether they are living or deceased. See §1.6 (Probate Estate Record).

To determine the heirs if the decedent died without leaving a will (or if the attorney has determined that the will is clearly invalid), it may be necessary or desirable to construct a "family tree" to serve as a checklist of the persons who must be named in the petition. See Prob C §§6400-6413, 6450-6455, for the intestate succession rules for persons dying after 1984; see App A, Table of Consanguinity.

NOTE: The decedent's heirs may include posthumously conceived children who are in utero within 2 years of issuance of the decedent's death certificate (or entry of judgment determining the fact of decedent's death, whichever occurs first) if the decedent expressly authorized the posthumous conception of a child. If the personal representative receives notice or has actual knowledge within 4 months after issuance of the decedent's death certificate (or entry of judgment) that the decedent's genetic material is available for purposes of posthumous conception (and the personal representative has not received written notice that the person designated by the decedent does not intend to use the material for the posthumous conception of a child of the decedent), the personal representative may not make a distribution of property until 2 years after issuance of the decedent's death certificate (or entry of judgment)_unless the birth of a child of the decedent conceived after death will not have any effect on the proposed distribution. Fam C §7611(f); Prob C §§249.5-249.8.

If it is uncertain whether a person is a beneficiary (for example, because the court must determine questions about the person's relationship to the decedent or the person's identity as a devisee), it is good practice to include the person in the list and to name that person in the petition. This practice will give the person whose status is in doubt notice of the probate and allow him or her to protect whatever interest he or she has in the estate. Contingent beneficiaries should also be included in the list and in the petition. Whether details of the will or the estate should be communicated to the beneficiaries at this time depends on the wishes of the prospective personal representative and possibly on the wishes of the family and the attorney's discretion. The family should be advised, however, that the will is a public document and that anyone can discover its contents once the petition for probate is on file.

If the decedent is survived by a spouse, a California registered domestic partner, or other close family members, locating the decedent's beneficiaries could be simple. If the decedent is not survived by one of these, it may be necessary to begin a search for these persons as soon as possible after death so that when it is time to petition the court for administration of the estate, the petition will not be delayed because the beneficiaries cannot be located.

The search must be done using "reasonably diligent efforts" to find heirs and beneficiaries, including checking (see, *e.g.,* Cal Rules of Ct 7.52(a)):

- With decedent's relatives, friends, acquaintances, employers, and former employers;
- City and telephone directories and directory assistance;
- Internet directories;
- Department of Motor Vehicles registration;
- Last known address; and
- Real and personal property index in assessor's office in the county of the person's last known address.

NOTE: Although many courts' local probate rules suggest searching voter registration roles, Govt C §6254.4 and Elec C §2194 no longer permit a home address to be obtained by searching the voter rolls.

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3

Gathering and Maintaining Information

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I. GATHERING INFORMATION

§3.1 A. General Instructions

The keys to successful probate interviewing are patience and the ability to sympathize with people who are suffering from bereavement. See California Decedent Estate Practice, chap 1 (2d ed Cal CEB 2009) for discussion of the effects of grief and loss on survivors. Interviews conducted before formal probate administration can be used both to gather information and to begin to instruct family members and prospective personal representatives about the administration process.

Deathbed interviews are not uncommon; the basic estate information checklist in §1.9 may be used for deathbed interviews. Informal discussions may take place after a death, but as soon as possible after accepting employment (see §2.14), the attorney and the legal assistant should arrange for at least one formal after-death interview, usually with a member of the decedent's family and with the prospective personal representative of the estate. Many of the actions described in chap 2 (Immediate Arrangements) will depend on information gathered in the interviews.

If the decedent's will was drafted by an attorney in the office, the will file usually contains basic estate information that was used to prepare the will and any other estate documents, such as living trusts. The checklist in §1.9 can be used to identify changes in the estate since the will was prepared and to update basic information about the estate that was gathered when the estate plan was made. If the decedent was not a client of the office, the checklist in §1.9 can be used to gather information either before or during the first formal interview.

To determine how to proceed (for example, whether by joint tenancy termination, community property set-aside, probate, or a combination of the three), the attorney must have accurate information about the value of the assets and obligations of the estate, the separate or community property nature of those assets and obligations, and the manner in which title is held. See §2.16 for discussion. If the office files do not contain this information, it should be gathered either before or during the first formal interview. The preliminary inventory and financial schedule in §3.6 can be used for this purpose. This form is designed to enable the attorney or assistant to gather information and to assemble it in a manner that can be used in preparing the estate inventory. See chap 11 (Inventory and Appraisal).

In addition to eliciting information about the estate from the representative or survivors, the attorney should take possession of and examine all the decedent's legal papers as soon as possible. The attorney should not rely solely on the memories of the prospective personal representative or the surviving spouse or domestic partner or other family members for detailed information about the decedent's estate. It is impossible to characterize the assets and obligations of the estate without referring to documents of title, contracts, and other legal documents. Experienced practitioners consider the practice of securing and examining the decedent's legal documents essential to the proper supervision and control of individual representatives, necessary for the collection of assets, and generally necessary for the administration of the estate to proceed promptly and properly. A sample request for the decedent's legal documents, in the form of a memorandum, is provided in §3.3.

More than one interview may be necessary and, if the interview process does not yield enough facts, the legal assistant may have to do some detective work or employ an investigator to gather the needed information. When information is obtained from several sources, the record should indicate the source so that any discrepancies can be reconciled later. It may be helpful to tape interviews (the date, time, and location of a taped interview should be recorded before the interview begins).

Because each interview presents an opportunity to instruct and direct as well as to gather information, the attorney and assistant will be able to describe and explain the general purposes of administration and duties of the personal representative early in the process, preparing the survivors and the prospective representative for their roles in completing that process. See §10.3 for a detailed description of the representative's duties. To indicate to the prospective representative and to the family members or other survivors the attorney's confidence in the legal assistant and the joint nature of their work in the administration of the estate, the attorney should introduce the assistant at the initial interview and he or she should be present throughout that interview. Thereafter, in the administration of the estate, it should be possible for either the attorney or the assistant to conduct interviews with these parties, depending on the nature of the matters to be discussed.

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Source: Estate Planning/California Probate Workflow Manual Revised/3 Gathering and Maintaining Information/§3.2 B. Sample Form: Appointment Letter

§3.2 B. Sample Form: Appointment Letter

INSTRUCTIONS: The attorney and the legal assistant should meet with the prospective personal representative; the attorney should inform the assistant of the family members or other survivors with whom the attorney and assistant should meet. The assistant may make appointments with those persons by telephone. This form letter may be used and adapted to (1) confirm interview appointments and (2) transmit the estate information checklist (see §1.9), the request for the decedent's legal documents (see §3.3), or the preliminary inventory and financial schedule (see §3.6) before the interview.

Copies: Original to client or survivor; office copies.

_ _[*date*]_ _
Estate of _ _ _ _ _ _ _ _ _ _
Court case no. _ _ _ _ _ _
Office file no. _ _ _ _ _ _

_ _[*Name and address*]_ _

Dear _ _[*name*]_ _:

You may be unfamiliar with probate proceedings. This letter suggests some preliminary steps that will help us proceed efficiently and quickly, with your cooperation.

Getting all the facts needed to administer the estate is usually the greatest probate problem faced by the survivors and their attorney. We need all available information so that the beneficiaries will know the extent of the estate, we can prepare the necessary documents, and the assets can be distributed to the proper persons.

To begin to gather the proper information and act on it, we need to meet with you and we also need to examine all the decedent's legal papers and documents. To assist you to begin to assemble the necessary information and documents, we have enclosed with this letter _ _[*a basic estate information checklist/and/a request for the decedent's legal documents/and/a preliminary inventory and financial schedule*]_ _. All items may not apply to this estate, but you should begin now to obtain as much information as possible. Do not be discouraged by the amount of information that we need or your inability to locate some items.

Please bring the information requested to your appointment with us at _ _ _ _ _.m. on _ _[*day of week and date*]_ _. At that time we will discuss the probate process in more detail and address issues raised by the information you have been able to assemble.

If you have any questions about this request, please contact us. We look forward to working closely with you.

Very truly yours,

__[*Signature*]__
_ _[*Typed name of attorney*]_ _

Enclosures

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Source: Estate Planning/California Probate Workflow Manual Revised/3 Gathering and Maintaining Information/§3.3 C. Sample Memorandum: Request for Decedent's Legal Documents

§3.3 C. Sample Memorandum: Request for Decedent's Legal Documents

INSTRUCTIONS: The following form may be used to request delivery of the decedent's legal papers. The request for documents may be attached to an appointment letter and mailed to the survivor or prospective representative before the first formal interview (see §3.1; for cover letter, see §3.2) or given to appropriate parties at earlier meetings (see §2.15). If the attorney already has certain information in the estate planning file for the decedent, the form should be modified to reflect that fact. Some attorneys prefer to keep detailed records of the documents provided and the disposition of those documents. See §3.4.

Additional requests for information may be necessary if the representative does not have information available the first time, or if some information provided by the representative is inaccurate or incomplete. The request may also uncover documents and papers that had been filed away.

Copies: Original to client or survivor; office copies.

_ _[*date*]_ _
Estate of _ _ _ _ _ _ _ _ _ _
Court case no. _ _ _ _ _ _
Office file no. _ _ _ _ _ _

REQUEST FOR INFORMATION

	Date Furnished	Original (O) or Copy (C)	Returned to Client
PERSONAL PAPERS			
___ Marriage certificate	_____	_____	_____
___ Dissolution certificate(s)	_____	_____	_____
___ Declaration of domestic partnership	_____	_____	_____
___ Termination of domestic partnership notice	_____	_____	_____
___ Citizenship papers	_____	_____	_____
___ Birth certificates	_____	_____	_____
___ Wills and codicils	_____	_____	_____
___ Trusts and amendments	_____	_____	_____
___ Military service records	_____	_____	_____
___Social security and pension papers	_____	_____	_____
___ Employment records and contracts	_____	_____	_____
REAL PROPERTY RECORDS			
___ Deeds	_____	_____	_____
___ Loans receivable, trust deeds, or other security	_____	_____	_____
___ Loans payable	_____	_____	_____
___ Property tax receipts	_____	_____	_____
___ Leases	_____	_____	_____
___ Deposit receipts and sales records	_____	_____	_____
___ Homeowner and liability insurance policies	_____	_____	_____
PERSONAL PROPERTY RECORDS			
___ Inventory (*e.g.,* of library collection)	_____	_____	_____

___ Bills of sale (*e.g.,* of jewelry)	_____	_____	_____
___ Appraisal report (*e.g.,* of furs or jewelry)	_____	_____	_____
___ Property insurance policies	_____	_____	_____
___ Automobile purchase agreements	_____	_____	_____
___ Automobile ownership certificates (pink slips)	_____	_____	_____
___ Warehouse or storage receipts (furs, paintings, rare books, etc.)	_____	_____	_____
___ Other papers	_____	_____	_____
FINANCIAL DATA			
___ California and federal tax returns for last 5 years	_____	_____	_____
___ California and federal gift tax returns	_____	_____	_____
___ Bank statements and cancelled checks	_____	_____	_____
___ Stock and bond certificates	_____	_____	_____
___ Investment records	_____	_____	_____
___ Broker's statements	_____	_____	_____
___ Other financial papers	_____	_____	_____
___ Annuities	_____	_____	_____
BUSINESS DOCUMENTS			
___ Court papers	_____	_____	_____
___ Agreements/ Contracts	_____	_____	_____
___ Pledges and guaranties	_____	_____	_____
___ Partnership agreements	_____	_____	_____
___ Corporate documents	_____	_____	_____
___ Fiduciary papers (trustee, guardian, executor, administrator)	_____	_____	_____
___ Club membership certificates	_____	_____	_____
___ Franchises	_____	_____	_____
___ Copyrights and patents	_____	_____	_____
DOCUMENTS SHOWING DEATH BENEFITS			
___ Life insurance policies	_____	_____	_____
___ Annuities	_____	_____	_____
___ Employer or other death benefits	_____	_____	_____
MISCELLANEOUS			
___ Reconveyances	_____	_____	_____
___ Others (specify)	_____	_____	_____

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§3.4 D. Index of Decedent's Legal Documents

The assistant may use the form in §3.3 to keep a record of the documents provided by the beneficiaries or the prospective personal representative during the course of administration of the estate. The papers and documents should be identified individually whenever possible. For example, under Financial Data: Bank and savings and loan accounts deposit books, the accounts should be listed separately, not as "all bank statements in your possession." Similarly, savings account information should be separate from checking account information. The request form is a convenient way for the law office and the representative to keep track of the papers. The index provides a convenient record of when documents are furnished, whether originals or copies were obtained, and when documents are returned to the client.

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Source: Estate Planning/California Probate Workflow Manual Revised/3 Gathering and Maintaining Information/§3.5 E. Checklist: Disposition of Documents and Papers Forwarded by Representative

§3.5 E. Checklist: Disposition of Documents and Papers Forwarded by Representative

INSTRUCTIONS: After documents and papers obtained from the representative have been examined by the attorney or the legal assistant, each may be checked off in the following manner:

- **Return to representative with an appropriate cover note. Proper notation should be made on the Request for Documents and Information.**
- **If important papers are returned to the representative in person, prepare an appropriate receipt for him or her to sign. Attach the receipt to the original request.**
- **When papers are returned by mail, use registered or certified mail.**
- **File and keep in office until further instructions. Original estate papers and documents such as deeds should not be punched or stapled together. Keep important papers and documents in separate folders or envelopes identified properly on the outside. Note their location on request sheet so that filed papers and documents may be easily found.**
- **Store in a safe place.**
- **In the law office safe or vault.**
- **In the estate safe-deposit box.**
- **Other disposition.**

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Source: Estate Planning/California Probate Workflow Manual Revised/3 Gathering and Maintaining Information/§3.6 F. Form: Preliminary Inventory and Financial Schedule

§3.6 F. Form: Preliminary Inventory and Financial Schedule

INSTRUCTIONS: The prospective personal representative should be provided with a copy of this schedule as soon as possible after the decedent's death. The representative should be asked to fill out the schedule as fully as possible and return the completed schedule to the attorney at the time of the first interview. The legal assistant or secretary will make sure that a photocopy is returned to the representative at the meeting. The representative can record new information about the estate on the copy and provide the attorney with photocopies of the updated schedule from time to time.

This financial schedule should be adapted to reflect each estate; it can be expanded or reduced as necessary. It is recommended that a separate page be provided for each category in the schedule, to enable the representative to update the schedule easily and to use the schedule as a permanent record of the estate. After administration has begun, this schedule can be used to prepare the estate inventory.

The federal estate tax return (Form 706) schedules may be used to collect and organize financial data.

For further considerations in the use of this schedule, see California Decedent Estate Practice §§13.36-13.60 (2d ed Cal CEB 2009).

Copies: Original for representative; office copies.

PRELIMINARY INVENTORY AND FINANCIAL SCHEDULE
ESTATE OF _ _ _ _ _ _ _ _ _ _

Record of _ _[*name of representative*]_ _
Social Security No. _ _ _ _ _ _ _ _ _
Date of Death _ _ _ _ _ _ _ _ _ _ _ _
Court case no. _ _ _ _ _ _ _ _ _ _ _ _

A. Cash and Uncashed Checks

1. Cash in decedent's possession at date of death $_____

2. Checks payable to decedent uncashed at date of death

Payor	Amount
_____	$_____
_____	$_____

B. Bank and Savings and Loan Accounts

1. Savings Accounts

Institution and Location	In name of	Balance
_____	_____	$_____
_____	_____	$_____

2. Commercial Accounts

Institution and Location	In name of	Balance
_____	_____	$_____
_____	_____	$_____

Outstanding Checks

Check No.	Date	Payee	Amount
_____	_____	_____	$_____
_____	_____	_____	$_____

3. Certificates of Deposit

Institution and	In name of	Balance	Maturity Date

Location			
_____	_____	$_____	_____
_____	_____	$_____	_____

4. Market-Rate or Similar Accounts

Institution and Location	In name of	Balance
_____	_____	$_____
_____	_____	$_____

C. Real Estate

Address	In name of	Use (residence, leased, etc.)
_____	_____	_____
_____	_____	_____

D. Securities

1. Stocks

Company	In name of	Number and Type of Shares	Certificate Number
_____	_____	_____	_____
_____	_____	_____	_____

2. Bonds

Company	In name of	Description	Bond No.	Amount
_____	_____	_____	_____	$_____
_____	_____	_____	_____	$_____

3. U.S. Bonds

U.S. Bonds Series	In name of	Bond No.	Issue Date	Amount
_____	_____	_____	_____	$_____
_____	_____	_____	_____	$_____

E. Insurance

1. Life Insurance

a. On Decedent's Life

Company	Beneficiary	Policy No.	Owner	Amount
_____	_____	_____	_____	$_____
_____	_____	_____	_____	$_____

b. On Decedent's Spouse's/Domestic Partner's Life

Company	Beneficiary	Policy No.	Owner	Amount
_____	_____	_____	_____	$_____
_____	_____	_____	_____	$_____

2. Liability Insurance

Company	Property Covered	Type of Insurance	Amount
_____	_____	_____	$_____
_____	_____	_____	$_____

F. Partnerships

Partnership Name	General Partner Name	Partner Address	Units Owned	Cost Basis	Estimated Fair Cash Value

_____	_____	_____	_____	____	$_____
_____	_____	_____	_____	____	$_____

G. Miscellaneous

1. Employee Benefits

a. Salary due from _ _ _ _ _ _ _ for period of _ _ _ _ _ _ _ _, to _ _ _ _ _ _ _ _ $_ _ _ _ _ _ _

b. Insurance and pension benefits $_ _ _ _ _ _ _

2. Social Security Benefits

a. Funeral benefits $_ _ _ _ _ _ _

b. Survivor benefits $_ _ _ _ _ _ _

3. Miscellaneous Personal Property, *e.g.,* jewelry, household furniture (list)

_____

_____

4. Automobiles

Make	Model	Year	VIN	To Whom Registered
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

5. Refunds and Rebates Due Decedent

Source	Amount
_____	$_____
_____	$_____

H. Gifts Made Before Death

Date	To Whom Made	Address	Description of Property	Value
_____	_____	_____	_____	$_____
_____	_____	_____	_____	$_____

I. Claims Against Estate

1. Expenses of Last Illness

	Name and Address	Amount	Date Claim Approved	Date Paid
Doctor	_____	$_____	_____	_____
Hospital	_____	$_____	_____	_____
Ambulance	_____	$_____	_____	_____
Other	_____	$_____	_____	_____

2. Funeral

a. Funeral director $_ _ _ _ _ _ _ _

b. Burial plot $_ _ _ _ _ _ _ _

3. Debts of Decedent

Creditors' Names and Addresses	Amount Owed
_____	$_____
_____	$_____

4. Taxes

Taxing Entity	Amount	Date Due	Date Paid
_____	$_____	_____	_____
_____	$_____	_____	_____

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II. RECORDKEEPING

§3.7 A. Maintaining Estate Records

The noncorporate representative should be instructed to keep accurate and complete records of every transaction throughout administration of the estate. Some representatives will need detailed guidance from the attorney or some other qualified person. In some instances, the representative may retain an accountant to do the recordkeeping (see §18.8 on deductibility of accountant's fees); in others, the representative may be able to do this personally. Depending on the experience and capabilities of the representative and depending on the practice of the law firm, the representative may maintain a record or account book and merely record all receipts and disbursements. See §3.8 for sample form. If this method is used, someone in the attorney's office (usually a secretary or legal assistant) prepares the more detailed record of receipts and disbursements shown in §3.9. A representative who is more sophisticated in business matters may wish to keep more detailed records. In either situation, the attorney or someone under the attorney's direction should review the representative's records periodically (even if maintained by an accountant) so that action may be taken early during administration, if necessary, to correct errors or clarify misunderstandings.

Every personal representative is responsible for the entire estate of the decedent that comes into the representative's possession and for all income, issues, and profits of the estate. The representative may be required at any time during administration to file a verified account of the estate's condition with the probate court. See Prob C §§1060-1064, 10900-10954.

It may be less expensive and time consuming for the attorney's staff to maintain the records rather than attempting to unravel the representative's financial records at the end of administration. However, because this is the representative's function, many attorneys consider it improper for the attorney to assume it.

Spreadsheet software packages developed for computers can be very effective for this type of recordkeeping because they can keep a running total of disbursements and receipts and therefore provide instant access to the cash position at all times. They are also useful for keeping track of receipts from a single source, particularly interest and dividends for tax-preparation purposes. See §§3.8-3.9.

If the records are kept by the law firm, it may be appropriate for the legal assistant or secretary to maintain them. The person experienced in estate administration is more likely to recognize issues that may lead to problems. In addition, the legal assistant's or secretary's familiarity with the transactions will be helpful in preparing the estate's accounting and tax returns.

The discussion and forms in §§3.8-3.9 illustrate a method of recordkeeping that can be maintained by the representative or in the attorney's office. It can be adapted and expanded for more complex estates.

In addition to keeping records of cash receipts and disbursements, it is important to maintain a record of estate assets. See §3.10.

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Source: Estate Planning/California Probate Workflow Manual Revised/3 Gathering and Maintaining Information/ B. Recordkeeping Forms/§3.8 1. Form: Account Book

B. Recordkeeping Forms

§3.8 1. Form: Account Book

INSTRUCTIONS: If the representative keeps an accurate record of receipts and disbursements on this form, the attorney's office can complete the forms in chap 18. The entries should be detailed and complete so that it is not necessary to constantly refer to the actual receipts and checks to complete the cash receipts and disbursements records. Either the original or a copy of this account should be sent to the attorney regularly, so that any erroneous acts of the representative can be detected as soon as possible. See §3.1 on giving instructions to the representative. One appropriate procedure would be to give copies of the following forms to the representative with instructions to keep the forms in a three-ring binder to be supplied by the law office or purchased by the representative. This notebook could then be used for maintaining other estate information and may aid the representative in keeping more accurate records. The representative can be instructed to start a new list after each accounting.

CASH RECEIPTS

Enter on these pages all cash receipts of every description, including proceeds of sales of assets listed in the inventory in chronological order. These pages and the record of cash receipts and cash disbursements constitute a complete record of all your cash transactions. The total of your receipts, less the total of your disbursements, should always equal the cash balance in your hands. Each page should be consecutively numbered and kept in order. If bank or other statements are received indicating that interest has been credited to the estate's account, that interest amount should be entered in the same way as other receipts.

Date	From Whom and for What	Amount	
	Cash on hand or in banks at time of your appointment (Same amount as in inventory, excluding accrued but unpaid interest)		
Total receipts this page:		$	

CASH RECEIPTS (Continued)

Date	From Whom and for What	Amount	
	Total carried forward from previous page		
	TOTAL RECEIPTS: (Add all amounts listed on this page, including the amount carried forward from previous page)		

CASH DISBURSEMENTS

Enter on these pages all money disbursements, whether by check or in cash, of every description from the estate's account(s). Disbursements should be made only from the estate's account(s). If a bank statement is received indicating that a bank charge has been levied on an estate account (such as a monthly fee), that amount should be entered below as well.

Date	Check Number	To Whom and for What	Amount	

		Total disbursements this page:		

CASH DISBURSEMENTS (Continued)

Date	Check Number	To Whom and for What	Amount	
		Total carried forward from previous page:		

TOTAL DISBURSEMENTS: (Add all amounts listed on this page, including the amount carried forward from previous page)		

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Source: Estate Planning/California Probate Workflow Manual Revised/3 Gathering and Maintaining Information/§3.9 2. Form: Attorneys' Record of Cash Receipts and Disbursements

§3.9 2. Form: Attorneys' Record of Cash Receipts and Disbursements

The attorney can use the account book kept by the representative (see §3.8) as the source of information for the estate's accounting and for estate and income tax returns.

The following forms may be photocopied and kept in the estate file, or in a separate three-ring binder. For each estate the pages of these forms should be numbered consecutively.

CASH RECEIPTS **Page ___ of __**

Date 2_ _ _	From Whom Rec'd Description	A Amount	B Bank Deposit	C1 Interest	C2 Dividend	C3 Rent	C4 Income Included in Inventory	D Payments on Note Principal	E Sales of Assets	F Principal and Inventory Items
Totals carried forward from page ____:		_____	_____	_____	_____	_____	_____	_____	_____	_____

Page ___ of __

Date 2_ _ _	From Whom Rec'd Description	A Amount	B Bank Deposit	C1 Interest	C2 Dividend	C3 Rent	C4 Income Included in Inventory	D Payments on Note Principal	E Sales of Assets	F Principal and Inventory Items
		_____	_____	_____	_____	_____	_____	_____	_____	_____
Totals (including amounts carried over from previous page):		_____ _____	_____ _____	_____ _____	_____ _____	_____ _____	_____ _____	_____ _____	_____ _____	_____ _____

CASH DISBURSEMENTS **page ___ of __**

						Expenses of Real Property				
Date 2_ _ _	**Payee and Purpose**	**Check No.**	**Amount 1**	**Administration Expenses 2**	**Claims 3**	**Interest 4**	**Taxes 5**	**Other 6**	**Miscellaneous 7**	**Principal 8**
Totals carried forward from page ____		_____	_____	_____	_____	_____	_____	_____	_____	_____
Totals (including amounts carried over from previous page):		_____ _____	_____ _____	_____ _____	_____ _____	_____ _____	_____ _____	_____ _____	_____ _____	_____ _____

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Source: Estate Planning/California Probate Workflow Manual Revised/3 Gathering and Maintaining Information/§3.10 3. Form: Records of Assets

§3.10 3. Form: Records of Assets

In addition to the records of cash receipts and disbursements, the representative should maintain a record of assets.

INSTRUCTIONS: The following are sample forms for two of the types of property most likely to be held by the estate—stocks and real property. A separate page for each stock and for each property is recommended. These forms are designed to be used either by the representative or by the attorney's staff.

In the following form for keeping a record of a stock, the recordkeeper should note the following: (1) In the header material, "Exchange" refers to the stock exchange on which the shares are traded; enter NYSE or ASE or OTC, etc., as appropriate; (2) "CUSIP No." should be filled in, if available, because it may help in valuation or may be required on the federal estate tax return; and (3) "Holder" refers to the person or institution that holds the actual share certificates. If the attorney holds them, the blank could be filled in with "ofc. safe" for example. Under the heading "Stock Split," the notation (_/_) refers to the ratio of the split. A 2-for-1 split would be entered as (2/1). A reverse 1-for-2 split would be entered as (1/2). To guard against errors, after any share split or sale of shares, the columns under "Shares Now Held" should be filled in.

STOCKS Page ___ of __

Name:_____ Exchange: _____ Broker: _____

Holder:_____ # of shares at death: _____ $/share: _____

Inventory value:_____ CUSIP No.: _____

Remarks:_____
_____
_____

DIVIDEND	STOCK SPLIT	SALE	SHARES NOW HELD	REMARKS
(Amount/ Date)	(__/__)/Date	(__/__)/Comm'n/ Date	#/Value/ Value Date	

INSTRUCTIONS: In the header material of the following form for keeping track of real property, after "Type" a brief description should be inserted, such as "SFR" (for single-family residence), "3 ac. unimpr." (for a 3-acre unimproved parcel) or "4-plex" (for a four-unit apartment). The "Value at val. date" entry should be the value given in the inventory or, if acquired after death, the cost. The "Taxes due" entry should note the dates on which property or other taxes are due. "Lender" refers to the lender holding the deed of trust or the mortgage. In the body of the form, the date should be filled in for any entry and the check number entered for any payment by check from an estate account. The heading "Util" refers to utilities paid. The heading "Mortg" refers to the payment on the mortgage or deed of trust. The heading "Ins" refers to insurance on the property. The heading "Imp" refers to improvements. The heading "Rent" refers to rental or lease payments received by the estate. Whenever any repairs or improvements are made to the property, details should be noted in the "Remarks" column.

REAL PROPERTY Page ___ of __

Address:_____

Type:_____ Value at val. date: _____

Taxes due:_____

Name:_____ Exchange: _____ Broker: _____

Lender:_____ Insurer: _____

Property Mgr.:_____ Address: _____

Tel: (_____)_____ Remarks: _____

_____

_____

Date	Check #	Util	Mortg	Ins	Taxes	Repairs	Imp	Rent	Remarks

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4

Property Not Subject to Probate Administration

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Source: Estate Planning/California Probate Workflow Manual Revised/4 Property Not Subject to Probate Administration/ §4.1 I. GENERAL INSTRUCTIONS

§4.1 I. GENERAL INSTRUCTIONS

Many property interests may be transferred without a probate proceeding. Nonprobate property interests may be characterized in five ways by focusing on the beneficiary or the transferee:

(a) The surviving spouse's or registered domestic partner's interest in property held by the decedent and a surviving spouse or registered domestic partner as community property; see California Decedent Estate Practice, chap 4 (2d ed Cal CEB 2009).

(b) Property interests held by or passing to a transferee determined by form of title, such as joint tenancy interests, life estates, multiple party accounts, and United States savings bonds; see generally Decedent Estate Prac §§2.2-2.59, 2.77-2.82;

(c) Property interests passing to a transferee determined by contract, such as life insurance proceeds, retirement benefits, and other death benefits (including annuities and certain partnership interests); see generally Decedent Estate Prac §§2.60-2.76, 2.83;

(d) Statutory benefits, such as social security, veterans' benefits, or workers' compensation (Decedent Estate Prac §§2.89-2.94); and

(e) Property interests passing to a transferee determined by a trust instrument, including trusts established by the decedent, property held by the decedent as a fiduciary, and Totten trusts; see generally Decedent Estate Prac §§2.84-2.88, 2.95-2.100.

NOTE: Effective January 1, 2005, property owned by registered domestic partners whether acquired before or after that date is treated the same as property of married couples, with the date of registration deemed to be the date of marriage, and a registered domestic partner has the "same rights, protections and benefits" and is "subject to the same responsibilities, obligations and duties" as a spouse. Fam C §297.5. For domestic partnerships registered before January 1, 2005, however, premarital agreements executed before June 30, 2005, that meet specified conditions are enforceable under Fam C §§1600-1620. Presumably the practical aspects of estate administration for decedents with surviving registered domestic partners will become clearer as the Judicial Council continues to revise the probate forms. However, this discussion assumes that the treatment of these decedents for state law purposes will be the same in all respects as the treatment of decedents with surviving spouses. In this chapter, references to a "domestic partner" mean a registered domestic partner.

Although an asset may not be subject to formal probate administration, the asset may still be subject to the rights of the decedent's creditors, estate tax liability may be imposed on nonprobate property or on the transferee, and it is usually necessary to follow specific procedures to have record title transferred to the beneficiary and to collect the asset.

If the surviving spouse or domestic partner is not the transferee of nonprobate property, it is most important that the attorney determine whether the property is or may be community property or separate property. See Decedent Estate Prac §§4.1-4.18 for discussion.

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§4.2 II. ATTORNEY'S ROLE IN COLLECTING PROPERTY NOT SUBJECT TO PROBATE ADMINISTRATION

The personal representative's attorney is usually responsible for preparing the federal and California estate tax returns and for reviewing creditors' claims. If the attorney is responsible for the estate tax returns, the attorney must collect information about all assets of the decedent, whether or not subject to probate administration. If the estate is not large enough to cover all creditors' claims, the attorney must examine creditors' rights to any nonprobate property, because it will affect actions taken by the representative. See, *e.g.,* Prob C §§19000-19403.

The extent of the attorney's role in collecting assets not subject to probate administration, and in advising the recipients of those assets, depends on the following:

- Whether there is a probate administration of the estate and
- Whether there are written agreements between the attorney and the recipients of nonprobate assets governing the attorney's additional services.

Services rendered by the attorney in transferring assets to recipients other than the estate or its beneficiaries are not services to the estate. Those services may be charged to the recipient, but before rendering them, the attorney must discuss and agree on the fee for services with the recipient. See Bus & P C §6148. See chap 19 on statutory attorneys' compensation, extraordinary compensation, and fee arrangements. See also Fee Agreement Forms Manual, chap 8 (2d ed Cal CEB 2007). Some attorneys prefer not to charge recipients of nonprobate assets for these services if the collection procedures are routine and require little time or effort of the attorney or the assistant.

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III. COMMUNITY PROPERTY

§4.3 A. Property Passing to Spouse or Domestic Partner

The surviving spouse's or domestic partner's interest in community property and quasi-community property is not subject to probate, although he or she can elect to have that property probated or transferred to a trustee without probate. See Prob C §13502, Fam C §297.5(c). See chap 6 (Summary Administration) if the surviving spouse or domestic partner chooses not to elect probate. Administration is required for property passing under the will or by intestate succession to someone other than the surviving spouse or domestic partner, to a trust created under the will, or to the surviving spouse or domestic partner as a qualified ownership interest under the terms of the will. Prob C §13501. See generally California Decedent Estate Practice §§4.41-4.47 (2d ed Cal CEB 2009).

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Source: Estate Planning/California Probate Workflow Manual Revised/4 Property Not Subject to Probate Administration/ §4.3A B. Property Passing to Former Spouse or Domestic Partner (Prob C §§5600-5604)

§4.3A B. Property Passing to Former Spouse or Domestic Partner (Prob C §§5600-5604)

Certain property transfers to a transferor's former spouse or domestic partner will fail if, at the time of death, the former spouse or domestic partner is no longer the transferor's surviving spouse or domestic partner, because the marriage has been dissolved or annulled. Prob C §5600(a); Fam C §297.5.

A nonprobate transfer to a transferor's former spouse or domestic partner, in an instrument executed before or during the marriage, will fail if the former spouse or domestic partner is not the transferor's surviving spouse or domestic partner at the time of death because the marriage has been dissolved or annulled. Prob C §5600(a). See Prob C §78 for definition of "surviving spouse." That definition includes a surviving domestic partner under Fam C §297.5(c). See also Prob C §37 for a definition of "domestic partner." Note that a legal separation judgment that does not terminate the status of husband and wife is not a dissolution for purposes of §5600. An instrument making a nonprobate transfer that fails because of Prob C §5600 is treated as if the former spouse or domestic partner died before the transferor. Prob C §5600(c).

NOTE: Although Prob C §5600(e) includes pension and employee benefit plans in its definition of "nonprobate transfers" to former spouses that will fail, it will not apply to pension, profit-sharing, or retirement plans subject to ERISA. See *Egelhoff v Egelhoff* (2001) 532 US 141, 149 L Ed 2d 264, 121 S Ct 1322 (similar Washington state statute is expressly preempted by ERISA and is unenforceable).

A joint tenancy between the decedent and a former spouse or domestic partner, created before or during the marriage, is severed if the former spouse or domestic partner is not the transferor's surviving spouse or domestic partner (see Prob C §78) at the time of death because the marriage has been dissolved or annulled or the partnership has been terminated. Prob C §5601(a). As with nonprobate transfers, a judgment of legal separation is not a dissolution for purposes of §5601.

For further discussion, see California Decedent Estate Practice §4.39 (2d ed Cal CEB 2009).

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Source: Estate Planning/California Probate Workflow Manual Revised/4 Property Not Subject to Probate Administration/ §4.4 IV. CHECKLIST: IDENTIFYING AND COLLECTING PROPERTY NOT SUBJECT TO PROBATE ADMINISTRATION

§4.4 IV. CHECKLIST: IDENTIFYING AND COLLECTING PROPERTY NOT SUBJECT TO PROBATE ADMINISTRATION

INSTRUCTIONS: The left-hand blank of the following checklist should be checked off by the attorney or the legal assistant if it is possible that a particular action will be necessary, or the attorney can indicate whether the action is to be taken by the attorney ("A"), the legal assistant ("L"), or the secretary ("S"). In the right-hand blank, the date by which the action should be accomplished should be inserted.

NONPROBATE PROPERTY CHECKLIST

	ACTION	DATE
___	**A. Joint tenancy**	_____
___	**1. Identify potential problems**	_____
___	**a. Was property community property held in joint tenancy form? (see §4.12)**	_____
___	**b. If so, should property be confirmed to surviving spouse or domestic partner under Prob C §§13500-13660? (see §6.16)**	_____
___	**c. If death certificate not readily available, consider initiating proceedings to establish fact of death (see §4.8)**	_____
___	**d. Was decedent's marriage to or domestic partnership with joint tenant dissolved or annulled? (see §§4.3A, 4.7)**	_____
___	**2. Terminate joint tenancies**	_____
___	**a. Real property**	_____
___	**i. Consider obtaining preliminary title report (see §4.5)**	_____
___	**ii. Prepare affidavit of surviving joint tenant (see §4.14)**	_____
___	**iii. Record affidavit and death certificate (see §4.7)**	_____
___	**iv. If affidavit procedure cannot be used, initiate proceedings to establish fact of death (see §4.8)**	_____
___	**v. File change of ownership statements (see §§4.5, 11.20) and Parent-Child Transfer Exclusion (see §§11.20A, 11.23) if applicable**	_____
___	**b. Automobiles (see §4.9)—Submit ownership certificate that has been signed by surviving owner, registration card, pollution control compliance certificate, and death certificate to DMV if decedent not grandparent, parent, sibling, child, grandchild, or spouse/domestic partner of transferee**	_____
___	**c. Bank accounts (see §4.10)—Present passbook and certified copy of death certificate to bank**	_____
___	**d. Stocks and bonds (see §4.11)**	_____
___	**B. Community property held in joint tenancy form (see §4.12)**	_____
___	**C. Community property with right of survivorship (see §4.12)**	_____
___	**D. Terminate life estates (see §4.13)**	_____
___	**1. Prepare affidavit of surviving life tenant (see §4.14)**	_____
___	**2. Record affidavit and certified copy of death certificate (see §4.7)**	_____

___ **3. If affidavit procedure cannot be used, initiate proceeding to establish fact of death (see §4.8)** _____

___ **4. File change of ownership statements (see §4.13)** _____

___ **E. United States savings bonds and notes (see §4.15) (Consider redemption or reissuance; see §4.16)** _____

___ **1. To have bonds or notes reissued (see §4.17)** _____

___ **a. Surrender bonds or notes with proper endorsement** _____

___ **b. Submit certified copy of death certificate** _____

___ **c. Have survivor execute IRS Form PD F4000** _____

___ **2. To have bonds or notes redeemed (see §4.17)** _____

___ **a. Co-owner redeems by surrendering bonds or notes with proper endorsement** _____

___ **b. Beneficiary redeems by surrendering bonds or notes with proper endorsement and submitting certified copy of death certificate** _____

___ **F. Life insurance (see §4.18)** _____

___ **1. Examine life insurance policies** _____

___ **a. Identify benefits** _____

___ **b. Identify beneficiaries** _____

___ **c. Write to each life insurance company for a full list of all policies in effect in which decedent had an interest (see §4.19)** _____

___ **2. Act for representative** _____

___ **a. Obtain two copies of IRS Form 712 from insurance company for each policy in which decedent was insured or decedent owned a policy on the life of another (see §4.18)** _____

___ **b. Collect proceeds if estate or representative is beneficiary** _____

___ **c. Insert amounts of proceeds paid, including dividends accrued to the date of death, deductions for policy loans, etc. in Estate Financial Schedule (see §3.6)** _____

___ **3. Act for beneficiary—Beneficiary collects proceeds by submitting company's claim form and certified copy of death certificate (see §4.19)** _____

___ **G. Annuities—Beneficiary collects by submitting company's claim form and certified copy of death certificate (see §4.22)** _____

___ **H. Retirement benefits—Contact decedent's employer to determine whether benefits exist and who beneficiary is (see §4.23)** _____

___ **1. Was decedent's marriage to designated beneficiary dissolved or annulled? (see §4.3A)** _____

___ **2. Was decedent's domestic partnership with designated beneficiary dissolved or annulled? (see §4.3A)** _____

___ **I. Workers' Compensation Benefits—Take steps to collect death benefit and money for funeral and burial expenses (see §4.24)** _____

___ **J. Social security benefits—Beneficiary submits Social Security Administration application and certified copy of death certificate (see §4.26)** _____

___ **K. Trust** _____

___	**1. Review trust instrument (including any amendments) of which decedent was trustee, settlor, or beneficiary (see §§4.27-4.29)**	_____
___	**2. Identify any inconsistencies between trust and will provisions (see California Decedent Estate Practice §28.25 (2d ed Cal CEB 2009))**	_____
___	**3. Consider petitioning for instructions to resolve any inconsistencies (see §§16.17-16.19)**	_____
___	**4. Identify successors in interest**	_____
___	**5. If trust terminates, transfer property to beneficiaries**	_____
___	**6. File change of ownership statements for real property owned by decedent at time of death (see §§4.28, 11.20) and Parent-Child Transfer Exclusion (see §§11.20A, 11.23), if applicable**	_____
___	**7. If decedent was trustee, have successor trustee appointed (see §4.28)**	_____
___	**8. Prepare Affidavit of Death of Settlor/Trustee (see California Trust Administration §§13.62A-13.62B (2d ed Cal CEB 2001))**	_____
___	**9. Make certain accounting is prepared, if one is required (see §4.28)**	_____
___	**10. If decedent was beneficiary, determine whether decedent possessed any taxable power of appointment (see Decedent Estate Prac, chap 34)**	_____
___	**L. Custodianship, guardianship, conservatorship (see Decedent Estate Prac §§2.95-2.100)**	_____
___	**1. If decedent was custodian under California Uniform Transfers to Minors Act (CUTMA) (see Decedent Estate Prac §§2.98-2.99)**	_____
___	**a. Determine whether successor custodian was designated**	_____
___	**b. If no designated successor, petition court for appointment of one**	_____
___	**c. Prepare accounting, if necessary**	_____
___	**d. Deliver custodianship property to successor**	_____
___	**2. If decedent was conservator or guardian (see Decedent Estate Prac §2.100)**	_____
___	**a. Notify court of death**	_____
___	**b. Prepare final account**	_____
___	**M. Multiple-party accounts (including joint accounts, Totten trusts, and P.O.D. account)—transfer with passbook, if any, and certified copy of death certificate (see §4.30)**	_____
___	**N. Securities registered in beneficiary form (see §4.30A)**	_____

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§4.5 V. TERMINATING JOINT TENANCY PROPERTY

The decedent may have owned real and personal property in joint tenancy. Joint tenancy is a form of ownership in which two or more people hold title in equal shares and, on the death of any one of them, the decedent's ownership interest terminates and automatically passes to the remaining owners in equal shares. See generally California Decedent Estate Practice §§2.2-2.3 (2d ed Cal CEB 2009). For a joint tenancy between the decedent and a former spouse or domestic partner, created before or during the marriage, see §§4.3A, 4.7. Property held in joint tenancy is not subject to probate. Despite the joint tenancy title, it may be appropriate for the property to be administered as part of the probate estate or be the subject of a spousal/domestic partnership property petition. If such a choice is not made, the attorney and the legal assistant must often concern themselves with it for other reasons. First, it is often necessary to take action to confirm the ownership of the property in the hands of the surviving joint tenants by transferring title. Second, even though that property is not subject to probate, it may be subject to estate taxation. Therefore, if the estate is subject to estate tax, the property must be appraised and its value included in the estate tax returns.

Joint tenancy assets are not subject to decedent's creditors' claims. If the probate estate is sufficient to cover all creditors' claims, there is no conflict between creditors' rights and the transfer of property not subject to administration. On creditors' claims, see chap 12.

The attorney should examine the deed to ascertain whether the property was in fact held in true joint tenancy. If there is any possibility that the decedent may have severed the joint tenancy or otherwise disposed of his or her interest in the property, the attorney should consider getting a preliminary title report. See Decedent Estate Prac §§2.4-2.12.

The representative must file a change of ownership statement with the county recorder or assessor of each county in which, at the time of death, the decedent owned real property. Rev & T C §480(b). For property that is not subject to probate proceedings, the statement must be filed within 150 days after the date of death.

The following sections discuss the methods for transferring title to joint tenancy property from the decedent to the surviving joint tenants. Accounting for joint tenancy property in the estate tax returns is discussed in chap 14.

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§4.6 A. Termination by Affidavit

Termination of a joint tenancy interest in real property by affidavit is the simplest method, and the most often used. The more cumbersome procedure of establishing the fact of death (see §4.8) is normally used only if a death certificate cannot be quickly obtained, or if an unusual problem arises. See Prob C §§210-212. No court proceedings are required for termination by affidavit.

The attorney or legal assistant must obtain the following documents to terminate by affidavit:

(1) A certified copy of the death certificate;

(2) An affidavit executed by the surviving joint tenant; and

(3) A copy of the deed by which the property was acquired by the joint tenant, as recorded.

For further discussion of the affidavit procedure, see California Decedent Estate Practice §§2.14-2.15 (2d ed Cal CEB 2009).

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§4.6A B. Affidavit of Death of Joint Tenant

It is preferable for the legal assistant to obtain copies of a form affidavit from a local title company. These forms are usually available without charge. The advantage of using a title company's standard form is that it is recognized as an adequate affidavit. On future transfer of the property, the title company will readily rely on it. If a form created in the attorney's office is used instead, the title company may need to review the affidavit, perhaps delaying a closing. For an attorney-drafted form taken from California Decedent Estate Practice §2.16 (2d ed Cal CEB 2009) that may be used to transfer title to the surviving joint tenant, see §4.7.

The legal assistant should attach the certified copy of the death certificate to the executed affidavit and record the affidavit in the county or counties in which the real property is situated as soon after the date of death as possible. The surviving joint tenant should be advised to keep the recorded original affidavit with the attached death certificate in a safe place.

If there is no surviving joint tenant (due to the death of all joint tenants before execution of the affidavit), the affidavit may be executed by a person other than a surviving joint tenant. This then clears title in favor of the last to die so it can be properly inventoried as an asset of that decedent's estate.

Probate Code §5601 automatically severs a joint tenancy between a decedent and a decedent's former spouse or domestic partner if their marriage or domestic partnership has been dissolved or annulled at the time of the decedent's death. Consequently, title insurance companies or county recorder's offices may require the affidavit of death to include a statement that the joint tenancy has not been severed under Prob C §5601(a) because (1) the joint tenants were married or registered at the time of death or (2) an exception under Prob C §5601(b) applies to a surviving former spouse or domestic partner. See §4.3A.

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Source: Estate Planning/California Probate Workflow Manual Revised/4 Property Not Subject to Probate Administration/ §4.7 C. Form: Affidavit of Death of Joint Tenant

§4.7 C. Form: Affidavit of Death of Joint Tenant

AFFIDAVIT OF DEATH OF JOINT TENANT

STATE OF CALIFORNIA

COUNTY OF _ _ _ _ _ _ _ _ _ _

I, _ _[*name of affiant (i.e., surviving joint tenant*]**_ _, being duly sworn, say:**

I am 18 years of age or over. The decedent described in the attached certified copy of the Certificate of Death is the same person as _ _[*name of decedent*]**_ _ who is named as one of the parties in the deed dated _ _**[*date*]**_ _, executed by _ _**[*name of grantor*]**_ _ to _ _**[*name of decedent*]**_ _ and the undersigned, as joint tenants, recorded on _ _**[*date*]**_ _, in _ _**[*e.g., Book _ _, page _ _*]**_ _ of the Official Records of _ _ _ _ _ _ County, California, covering the property situated in _ _**[*name of city*]**_ _, _ _ _ _ _ _ County, California, described as follows:**

_ _[*Provide legal description*]**_ _.**

[*If applicable, add the following option*]

[*Option: Joint tenancy has not been severed*]

The joint tenancy has not been severed under Probate Code §5601, because _ _[*the joint tenants were _ _*[*married/registered domestic partners*]**_ _** *at the time of death/the joint tenants are former spouses and the following exception under Probate Code §5601(b) applies:* ***_ _[e.g., there is clear and convincing evidence that the decedent intended to preserve the joint tenancy in favor of the former spouse]_ _]_ _.***

[*Continue*]

Date: _ _ _ _ _ _ __[*Signature*]__
_ _[*Typed name*]_ _
Affiant

State of California, County of _____

Subscribed and sworn to (or affirmed) before me on this _ _[*number*]**_ _ day of _ _**[*month*]**_ _, 20_ _, by _ _**[*name(s)*]**_ _, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.**

__[*Signature of officer*]__ [*Officer's Seal*]

Copies: Original for recording; one copy for each surviving joint tenant; office copies.

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Source: Estate Planning/California Probate Workflow Manual Revised/4 Property Not Subject to Probate Administration/ §4.8 D. Termination of Joint Tenancy by Establishing Fact of Death

§4.8 D. Termination of Joint Tenancy by Establishing Fact of Death

If a death certificate cannot be obtained, or if there is an unusual problem in using the affidavit procedure, the joint tenancy should be terminated by a proceeding to establish the fact of death. The proceeding can also be used to terminate a legal life estate when the life tenant dies. See §4.14; California Decedent Estate Practice §2.21 (2d ed Cal CEB 2009). For discussion of how to file, and appropriate forms, see Decedent Estate Prac §§2.17-2.23.

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VI. TRANSFER OF JOINT TENANCY PERSONAL PROPERTY

§4.9 A. Automobiles

The attorney should review the ownership certificate and verify that the vehicle was owned in joint tenancy. Under Veh C §4150.5(a), vehicles registered in the names of two or more persons using the word "or" creates a joint tenancy. Under Veh C §4150.5(c), registration as "X and Y as joint tenants" also creates a joint tenancy. However, an unsigned DMV printout showing that an automobile previously registered in decedent's name alone had been re-registered in the names of the decedent and the surviving spouse is insufficient to transfer an interest in an automobile under Fam C §852 (transmutation). *Estate of Bibb* (2001) 87 CA4th 461, 104 CR2d 415. See California Decedent Estate Practice §§2.55-2.59 (2d ed Cal CEB 2009).

The legal assistant should have the surviving owner bring the following items:

- A certified copy of the death certificate;
- The ownership certificate;
- The registration; and
- A certificate of compliance with the pollution control laws (obtainable for a fee at authorized service stations or automobile agencies).

The owner should execute the ownership certificate in the appropriate places, and all these documents must be submitted to the Department of Motor Vehicles. If the surviving owner is a member of an automobile club, the surviving owner may submit those documents to that organization, which will issue a temporary ownership certificate and will send the documents to the Department of Motor Vehicles for issuance of a new ownership certificate.

An automobile not owned in joint tenancy can still be transferred outside of probate if it is owned in beneficiary form, which is a transfer-on-death form of ownership, similar to a bank pay-on-death account. (Veh C §5910.5). See §4.31. This new form of ownership is also available for other vessels (Veh C §9916.5), manufactured homes, mobilehomes, commercial coaches, truck campers, and floating homes (Health & S C §§18080.2, 18102.2, 18102.3). See §4.31.

For transferring ownership of vehicles not held in joint tenancy or beneficiary form, when probate administration is not otherwise required, see §§6.7-6.7B. See also §§6.8 (other vessels) and 6.8A (manufactured homes, mobilehomes, *etc.*).

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§4.10 B. Bank Accounts

The attorney should ascertain whether the account was held in joint tenancy. The account may be a joint tenancy account because of the stated ownership on the account documents or through the operation of the California Multiple-Party Accounts Law. See §4.30 and California Decedent Estate Practice §§2.46-2.54 (2d ed Cal CEB 2009) for discussion of that law. If so, the joint tenancy can be terminated and the funds obtained by the surviving joint tenant by presenting the lending institution with a certified copy of the decedent's death certificate, and the savings passbook or a check drawn for the amount of the balance in the account.

However, a joint tenancy between the decedent and a former spouse or domestic partner, created before or during the marriage or partnership, is severed if the former spouse or domestic partner is not the transferor's surviving spouse or domestic partner (see Prob C §78) at the time of death because the marriage or partnership has been dissolved, annulled, or terminated. Prob C §5601(a).

See Decedent Estate Prac §2.98 if the account is a custodial account for a minor or Decedent Estate Prac §2.49 if the account is a Totten trust.

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§4.11 C. Stocks and Bonds

The attorney should examine the stock certificates to verify that they were held in joint tenancy. To have the stock reregistered in the name of the surviving joint tenant, the legal assistant should assemble the following:

- The certificates;
- A stock power executed by the surviving joint tenant with a signature guarantee (obtained from national bank or securities broker; person executing stock power must go to bank or broker to have signature guaranteed); and
- A certified copy of the death certificate.

Securities may be transferred by dealing with each transfer agent individually or by using the services of a broker. Unless the attorney's office is very efficient, the latter is usually quicker and less expensive.

For further discussion of transfer of securities, see generally §20.12 and California Decedent Estate Practice §§32.28-32.50 (2d ed Cal CEB 2009).

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§4.12 VII. COMMUNITY PROPERTY HELD IN JOINT TENANCY FORM

Generally, an asset may not be held in joint tenancy and as community property simultaneously. See California Decedent Estate Practice §§4.3-4.7 (2d ed Cal CEB 2009). The law governing whether property held by a surviving spouse or domestic partner that appears to have been held in joint tenancy with the deceased spouse or domestic partner was actually community property is complex. Whether property was community or joint tenancy property cannot be ascertained merely by examining the deed or other ownership certificate. An attorney must examine the relevant evidence and determine how to proceed. See generally Decedent Estate Prac §§4.8-4.13. If the surviving joint tenant is a former spouse or domestic partner as provided in Prob C §5601, see §4.3A.

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Source: Estate Planning/California Probate Workflow Manual Revised/4 Property Not Subject to Probate Administration/ §4.12A VIII. COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP

§4.12A VIII. COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP

Effective July 1, 2001, California adopted a form of ownership of real property called "community property with right of survivorship." The transfer document must expressly declare that the property is community property with right of survivorship. Property owned in this form apparently retains all the features of community property (including receipt of a new basis on death for both halves, at least with respect to community property of spouses under IRC §1014 and possibly with respect to community property of domestic partners for California income tax purposes (see California Decedent Estate Practice §4.5 (2d ed Cal CEB 2009)) or eligibility for allocation of aggregate basis increase for both halves under IRC §1022 for decedents dying in 2010) except that the property passes on death to the survivor, without administration, in the same manner as joint tenancy property. See CC §682.1. See Decedent Estate Prac §4.7.

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IX. LIFE ESTATES

§4.13 A. Terminating Life Estates in Real Property

Record title to real property in which the decedent held a life estate may be cleared in a manner similar to the procedures for terminating a joint tenancy interest in real property described in §§4.6-4.12. The same considerations apply. Unlike affidavits to clear title to a joint tenancy, there is no satisfactory title company form. An attorney-drafted affidavit may take the form reproduced in the following section.

The representative also must file a change of ownership statement with the county recorder or assessor of each county in which, at the time of death, the decedent owned real property. Rev & T C §480(b). For property that is not subject to probate proceedings, the statement must be filed within 150 days after the date of death.

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§4.14 B. Form: Affidavit of Death of Life Tenant

AFFIDAVIT OF DEATH OF LIFE TENANT

STATE OF CALIFORNIA

COUNTY OF _ _ _ _ _ _ _ _ _ _

I, _ _[*name of affiant, i.e., remainder beneficiary*]**_ _, being duly sworn, say:**

I am 18 years of age or over. The decedent described in the attached certified copy of the Certificate of Death is the same person as _ _[*name of decedent*]**_ _ who is named as the holder of a life estate in the deed dated _ _**[*date*]**_ _, executed by _ _**[*name of grantor*]**_ _ to _ _**[*name of deceased life tenant*]**_ _ for life, with remainder to _ _**[*name of remainder beneficiary*]**_ _, recorded on _ _**[*date*]**_ _, in _ _**[*e.g., Book _ _, page _ _*]**_ _ of the Official Records of _ _ _ _ _ _ County, California, covering the property in _ _**[*name of city*]**_ _, _ _ _ _ _ _ County, California, described as follows:**

_ _[*Provide legal description*]_ _.

Date: _ _ _ _ _ _ __[*Signature*]__
_ _[*Typed name*]_ _
Affiant

STATE OF CALIFORNIA)
COUNTY OF _ _[*name of county*]**_ _) ss**
)

Subscribed and sworn to (or affirmed) before me on this _ _[*number*]**_ _ day of _ _**[*month*]**_ _, 20_ _, by _ _**[*name(s)*]**_ _, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.**

__[*Signature of officer*]__ [*Officer's seal*]

Comment: If an affidavit cannot be used, a petition to establish the fact of death should be filed.

For further discussion of clearing title to life estates in real property, see California Decedent Estate Practice §§2.33-2.35 (2d ed Cal CEB 2009).

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X. UNITED STATES SAVINGS BONDS OR NOTES

§4.15 A. Form of Ownership

The attorney or assistant should examine the decedent's United States savings bonds or notes to determine the form in which the bonds are owned and registered. The form in which United States savings bonds are owned and registered determines both the ultimate beneficiary or beneficiaries of the bonds and whether or not the bonds are subject to probate administration.

United States savings bonds that are registered for ownership in either of the following ways are not subject to probate administration on the death of one of the co-owners or registered owners because title passes to the surviving co-owner or beneficiary by operation of law:

(1) Bonds registered in co-ownership form ("John Jones or Jim Jones"; "Sam Smith or Sally Smith"); and

(2) Bonds registered in beneficiary form ("John Jones P.O.D. [payable on death] to Sally Jones").

When that surviving co-owner or beneficiary dies, however, those co-ownership and beneficiary bonds are subject to probate administration in that second decedent's estate. Savings bonds that are registered to the decedent alone are also subject to probate administration.

For further discussion, see California Decedent Estate Practice §§2.77-2.83 (2d ed Cal CEB 2009).

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Source: Estate Planning/California Probate Workflow Manual Revised/4 Property Not Subject to Probate Administration/ B. Redeeming or Reissuing Bonds/§4.16 1. Decision to Redeem or Reissue

B. Redeeming or Reissuing Bonds

§4.16 1. Decision to Redeem or Reissue

The surviving co-owner or beneficiary must decide whether to redeem the bonds or have them reissued. Because that decision has tax consequences, the attorney or other tax advisor should assist him or her in making that decision. See California Decedent Estate Practice §§2.80-2.81 (2d ed Cal CEB 2009) for discussion of redemption, reissuance, and tax consequences.

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§4.17 2. Procedure for Redeeming and Reissuing Bonds

Official forms and information about redeeming and reissuing United States savings bonds are on the website of the Bureau of Public Debt, Department of the Treasury, at http://www.treasurydirect.gov. The Federal Reserve Bank and all major commercial banking institutions will also provide forms and information.

To redeem a beneficiary bond, the beneficiary should endorse the bond and present it to the Federal Reserve Bank or to a major commercial banking institution with a certified copy of the death certificate.

To redeem a co-ownership bond, the survivor should endorse the bond and present it to the Federal Reserve Bank or major commercial banking institution. A death certificate need not be presented, because the bond was payable to either co-owner during their lifetimes.

To reissue United States bonds in the name of the surviving co-owner or beneficiary (or in any other registration form), the survivor or beneficiary must endorse the bond and present it to the Federal Reserve Bank or major commercial banking institution with the following:

(a) A certified copy of the registered owner or co-owner's death certificate;

(b) A completed, signed copy of Request to Reissue United Sates Savings Bond (Treasury Form PD F 4000), after the signature has been certified by a certifying officer (certifying officers are located at post offices and at most national banking institutions). If the bonds are to be reissued to the estate, Request by Fiduciary for Distribution of United States Treasury Securities (Treasury Form PD 1455) should be used instead.

Because the Federal Reserve Bank and most commercial banking institutions are willing to provide both forms and advice and assistance to surviving co-owners and beneficiaries in completing the necessary forms, many attorneys simply provide copies of the death certificate to beneficiaries and surviving co-owners as necessary and advise them to go to a local Federal Reserve Bank or to a major commercial banking institution to redeem or reissue United States bonds, without further assistance from the attorney's office.

For discussion of the potential rights of the decedent's creditors to the decedent's United States bonds, see California Decedent Estate Practice §2.82 (2d ed Cal CEB 2009).

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XI. LIFE INSURANCE

§4.18 A. Examining Policies and Ascertaining Benefits

The proceeds of life insurance policies owned by the decedent are not subject to probate administration if they are payable to a named beneficiary rather than to the estate or to the personal representative of the estate. The proceeds of life insurance policies owned by the decedent on the life of another person who did not survive the decedent are subject to probate administration if they are payable to the decedent, to the estate, or to the personal representative of the estate. If the decedent owned life insurance policies on the life of another person who survived the decedent, those policies are assets of the estate, subject to probate administration. See California Decedent Estate Practice §§2.60-2.65 (2d ed Cal CEB 2009) for further discussion.

The attorney should examine all life insurance policies carefully to ascertain the nature and extent of benefits. See Decedent Estate Prac §2.60 on examining the policy.

The attorney for the estate has no obligation to help other beneficiaries collect insurance proceeds. If the estate is large enough to require the filing of an estate tax return, some attorneys prefer to collect life insurance proceeds and forward them to named beneficiaries, because proceeds of decedent-owned life insurance must be reported on the estate tax return whether or not those proceeds are subject to probate administration. This practice enables the attorney and the assistant to keep accurate records and to secure IRS Form 712, which must be filed with the estate tax return. An attorney who renders services in collecting life policy proceeds payable to beneficiaries other than the estate may wish to charge those beneficiaries for the service. If so, a written fee agreement between the attorney and the beneficiaries is required. Other attorneys rely on the beneficiaries to claim the proceeds and obtain Form 712 for them.

For a detailed discussion of life insurance, see California Estate Planning, chap 19 (Cal CEB 2002).

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§4.19 B. Form: Letter to Request Insurance Claim Form

INSTRUCTIONS: Because each insurance company uses its own claim form, the legal assistant should contact the death claims office. The procedures vary from a telephone call to a local office to a formal request at the company's home office.

When the claim form is received, it should be prepared by the legal assistant, signed by the claimant, and returned to the insurance company along with a certified copy of the death certificate.

Copies: Original to each life insurance company; one copy for each client; office copies.

_ _[*date*]_ _

_ _[*Name of insurance company*]_ _
_ _[*Address*]_ _
Attn: Death Claims Dept.

Re: Life Insurance Policy #_ _ _ _ _ _

Gentlemen:

_ _[*Name of decedent*]_ _**, insured with your company under life insurance policy #_ _ _ _ _ _ _, and policy #_ _ _ _ _ _ _, died on** _ _[*date*]_ _**;** _ _[*e.g., name of spouse*]_ _**, a client of this firm, is the beneficiary.** _ _[*His/Her*]_ _ **address is _ _ _ _ _

Source: Estate Planning/California Probate Workflow Manual Revised/4 Property Not Subject to Probate Administration/ §4.20 XII. DEATH BENEFITS AND RETIREMENT BENEFITS

§4.20 XII. DEATH BENEFITS AND RETIREMENT BENEFITS

Death benefits payable to a designated beneficiary rather than to the decedent's estate or to a personal representative are not subject to probate administration, regardless of whether the benefits are paid under statute or contract. These include employee retirement programs, IRA or Keogh plans, deferred compensation benefits, annuities, and veterans' benefits.

No single procedure to obtain death benefits will apply to all different forms of benefits. The legal assistant should contact the administrator of the plan under which benefits are payable (or the organization responsible for paying the benefits) and inquire as to the correct procedure to follow. Most organizations require that their own claim form be used. The legal assistant may adapt the form in §4.21 to write to any agency.

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§4.21 A. Form: Letter of Request

INSTRUCTIONS: The following letter should be filled in and sent to the administrator of any plan or agency (or the organization obligated to pay the benefits) that may be obligated to pay death benefits to the decedent, the estate, or the beneficiaries of the decedent. If the decedent had a particular identification number that would help in identifying him or her to the addressee (*e.g.,* a social security number, an employee identification number, or an account number), include that number in the letter. Enclose a self-addressed stamped envelope.

Copies: Original for mailing; copy for client; office copies.

_ _[*Address of agency*]_ _

Re: Death benefits of _ _ _ _ _ _ _ _ _ _ _, Deceased

Our office file no. _ _ _ _ _ _ _ _

Court case no. _ _ _ _ _ _ _ _ _

Dear Sirs,

We represent the personal representative of the estate of _ _[*include all names by which decedent was known*]_ _**, who died on** _ _[*date*]_ _**.**

The following identifying number may assist you in tracking down your records:

_ _[*Insert identifying number of decedent or account along with brief note of what the number represents (i.e., social security number)*]_ _**.**

We are informed that the decedent's estate or beneficiaries may be entitled to benefits or assets held by you as a result of the decedent's death. Please check your records to determine whether this is true, and, if so, please let us know the amount of the benefits or assets and who is entitled to receive them.

Please send us a claim form or instructions on how to claim those benefits or assets.

A self-addressed stamped return envelope is enclosed for your convenience.

Very truly yours,

__[*Signature of attorney*]__
_ _[*Typed name*]_ _

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Source: Estate Planning/California Probate Workflow Manual Revised/4 Property Not Subject to Probate Administration/ §4.22 B. Annuities

§4.22 B. Annuities

Annuity policies should be reviewed by the attorney. Some terminate with deaths, some have a minimum payment period ("term certain") or a survivorship provision, and others contain death benefits. The beneficiary of an annuity policy that did not terminate may usually collect benefits by writing to the insurance company for a copy of its claim form and then submitting that form to the insurance company along with a certified copy of the death certificate. For a detailed discussion of annuities, see California Estate Planning, chap 20 (Cal CEB 2002).

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Source: Estate Planning/California Probate Workflow Manual Revised/4 Property Not Subject to Probate Administration/ §4.23 C. Retirement Benefits

§4.23 C. Retirement Benefits

If the decedent was employed or self-employed, the attorney or legal assistant should inquire whether his or her beneficiary was entitled to any benefits under a profit-sharing plan, pension fund, IRA, Keogh plan, or other retirement program. Benefits may be payable even if the decedent was not retired at the time he or she died. See California Estate Planning, chap 21 (Cal CEB 2002).

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Source: Estate Planning/California Probate Workflow Manual Revised/4 Property Not Subject to Probate Administration/ §4.24 D. Workers' Compensation Benefits

§4.24 D. Workers' Compensation Benefits

Death benefits payable under workers' compensation laws are not includable in the gross estate for estate tax purposes. The attorney or legal assistant may assist the beneficiaries of the workers' compensation death benefit in collecting the benefit. See California Decedent Estate Practice §2.89 (2d ed Cal CEB 2009); California Workers' Compensation Practice, chap 4 (4th ed Cal CEB 2000).

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E. Social Security Benefits

§4.25 1. Lump-Sum Benefit

A lump-sum death benefit is payable to certain beneficiaries of a decedent who was insured under social security. The legal assistant should telephone or write to the nearest office of the Social Security Administration to request their special form for claiming this benefit—Form SSA-1724. That form should be completed and returned to the local district office along with a certified copy of the death certificate and any other required documentation. The benefit cannot exceed $255 and must be claimed within two years after the decedent's death (although extensions may be obtained).

For further discussion, see California Decedent Estate Practice §§2.90-2.94 (2d ed Cal CEB 2009).

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§4.26 2. Survivor's Benefits

Certain members of the decedent's family (see California Decedent Estate Practice §2.93 (2d ed Cal CEB 2009)) may be entitled to survivor's benefits under the Social Security Act (42 USC §§301-1397mm). The legal assistant should contact the local district office (not the administrative offices) of the Social Security Administration to obtain the forms and information about the benefits that are payable. He or she should have the decedent's identification number available. When the forms have been filled out, a certified copy of the death certificate should be presented along with the completed application form. It usually is necessary to include certified copies of the documents indicating that the survivors have standing to claim (*e.g.,* birth certificates of children or marriage certificate of a spouse). Having the beneficiary go to the social security office in person with the documents may expedite the payment of benefits. For further discussion of these benefits, see Decedent Estate Prac §§2.90-2.94.

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XIII. OTHER NONPROBATE TRANSFERS

A. Trusts

§4.27 1. Living Trust Created by Decedent

Property contained in a living trust (also known as an inter vivos trust) created by the decedent is not included in the decedent-settlor's probate estate unless the property reverts to the settlor's estate on his or her death. See California Decedent Estate Practice §2.95 (2d ed Cal CEB 2009).

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§4.28 2. Decedent as Trustee

If the attorney represents the trust and if the decedent was the sole trustee or a co-trustee, the attorney should act to appoint the successor trustee, either in accordance with the procedure in the trust document or by petitioning a court with jurisdiction (trusts funded by court order must require a court order appointing any successor trustee). If an accounting is required of the decedent's acts as trustee, the attorney should prepare it. Thereafter, title should be transferred to the successor trustee (if necessary).

Beginning January 1, 2005, trustees of trusts funded by court order with more than $20,000 in total assets, including trusts created by substituted judgment (Prob C §§2580-2586), trusts created to administer property of disabled spouses and domestic partners (Prob C §§3100-3154), and trusts created to receive litigation proceeds for minors and disabled persons (Prob C §§3600-3612), will be required to file formal accounts under Prob C §§1060-1064 unless the court otherwise orders for good cause shown. Cal Rules of Ct 7.903(c)-(d). The court order creating the trust must provide that the trust is subject to the continuing jurisdiction of the court and may (but need not) provide that the trust is subject to court supervision. Cal Rules of Ct 7.903(b).

The attorney representing the successor trustee has a duty to file the change of ownership statements required by Rev & T C §480(b), to reflect the change in beneficial ownership of real property held in the trust. For property that is not subject to probate proceedings, the statement must be filed within 150 days after the date of death.

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§4.29 3. Representation of Successor Beneficiary

The attorney who represents a beneficiary should examine the provisions of the trust instrument to determine the nature and extent of the beneficiary's interest and rights. The attorney should notify the trustee in writing of the decedent's death and request that the trustee comply with the trust provisions that apply to the attorney's client.

For more detail on the various issues involved with trusts, see California Decedent Estate Practice §§2.48-2.88 (2d ed Cal CEB 2009).

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§4.30 B. Multiple-Party Accounts

The California Multiple-Party Accounts Law (Prob C §§5100-5407) provides that beneficial ownership of money in certain accounts (defined in Prob C §5122) at financial institutions passes automatically on death directly to the named beneficiary and is not subject to administration in the decedent's estate. The three types of accounts that qualify under those provisions are joint accounts, Totten trust accounts, and a form of account designated a "P.O.D. account." See Prob C §§5139-5140, 5203 for definitions of what constitutes a P.O.D. (payable on death) account. For further discussion of multiple-party accounts, see California Decedent Estate Practice §§2.46-3.54 (2d ed Cal CEB 2009). For discussion of P.O.D. or T.O.D. (transfer on death) securities, see §4.30A.

The attorney should ascertain whether any of the decedent's accounts was a multiple-party account. Transfer of funds from a Totten trust or P.O.D. account may be accomplished in the same manner as the transfer of a joint tenancy bank account, described in §4.10.

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§4.30A C. Securities Registered in Beneficiary Form

The beneficiary of a security registered in beneficiary form may have the security transferred on the death of the registered owner or the last to die of multiple owners, without probate or estate administration. Prob C §§5500-5512 (Uniform TOD Security Registration Act). Registration in beneficiary form is shown by the words "transfer on death" or "pay on death" or the abbreviations "TOD" or "POD" following the registered owner's name and before the beneficiary's name. Prob C §5505.

In general, transfers of securities registered in beneficiary form are similar to transfers of pay on death (POD) bank accounts and Totten trusts. See Prob C §§5100-5407. For further discussion of the Uniform TOD Security Registration Act, see California Decedent Estate Practice §§2.72-2.75 (2d ed Cal CEB 2009).

NOTE: Each TOD account agreement form (and the standard account agreement if the TOD account agreement is not a stand-alone agreement) should be reviewed, because the procedures for claiming the account assets on death will be different for each securities firm.

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Source: Estate Planning/California Probate Workflow Manual Revised/4 Property Not Subject to Probate Administration/ §4.31 D. Automobiles, Other Vessels--Transfer on Death Registration

§4.31 D. Automobiles, Other Vessels—Transfer on Death Registration

An automobile not owned in joint tenancy can still be transferred outside of probate if it is owned in beneficiary form (transfer-on-death ownership). Veh C §5910.5. This form of ownership includes one owner and a direction to transfer ownership of the automobile to one designated beneficiary on the owner's death. Veh C §4150.7. See California Decedent Estate Practice §§2.55-2.59 (2d ed Cal CEB 2009). The surviving beneficiary may have ownership of the vehicle transferred by presenting the DMV with the following:

- The ownership certificate and registration card, if available;
- A declaration under penalty of perjury stating the date and place of the decedent's death, that the decedent left no other property requiring probate administration, that no probate proceeding is being or has been conducted in California, that there are no creditors of the decedent or, if there are, that they have been paid in full or the claims have been otherwise discharged, and that the declarant is entitled to the automobile as the designated beneficiary; and
- A certified copy of the death certificate if required by the department. Veh C §5910.5(e).

If the surviving beneficiary wishes to sell the automobile, there is no need to transfer ownership into his or her name first. Veh C §5910.5(f).

Other vessels (Veh C §9916.5), manufactured homes, mobilehomes, commercial coaches, truck campers, and floating homes (Health & S C §§18080.2, 18102.2, 18102.3) held in beneficiary form may be transferred using similar procedures.

For transfer of vehicles not held in joint tenancy or beneficiary form without probate, see §6.7; for transfer of boats and other vessels not held in joint tenancy or beneficiary form without probate, see §6.8; for transfer of manufactured homes, mobilehomes, commercial coaches, truck campers, and floating homes not held in joint tenancy or beneficiary form without probate, see §6.8A.

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5

Notices and Hearings

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§5.1 I. GENERAL INSTRUCTIONS; USE OF JUDICIAL COUNCIL FORMS

To enable those with an interest in the estate to assert their rights, a reasonable method of giving initial notice of administration is required. See §5.6. Following initial notice of a petition to administer the estate (which must be published according to the requirements of Prob C §8121 to give the court jurisdiction over the estate; see §§7.25-7.26), there are many stages in estate administration in which notice requirements are fixed by statute. See §5.2. Probate notice requirements and procedural rules of general applicability (Prob C §§1200-1265; Cal Rules of Ct 7.50-7.55) are discussed in this chapter. Notice requirements and procedural rules relating to particular probate matters are discussed as they arise elsewhere in this manual.

When a request for special notice is properly filed and served on the attorney for the representative, specific notice requirements automatically go into effect. Special notice may be requested of any petition filed in an estate proceeding, an inventory and appraisal (or objection thereto), a representative's account, or a report of status of administration. Or special notice may be requested generally of all matters described in Prob C §1250(c). See §§5.23-5.27. Also, when the court considers the prescribed statutory notice insufficient under the circumstances, it may require whatever additional notice it deems proper. Prob C §1202.

The probate estate record is the logical place to note names and telephone numbers of those individuals. See §1.6.

PRACTICE TIP: When it is unclear whether a person should be sent notice, it is usually the better practice to send the notice to avoid the possibility that the hearing will have to be postponed or that the whole proceeding will have to begin again because jurisdiction has not been obtained.

Concerning notices and hearings, see generally see California Decedent Estate Practice, chap 6 (2d ed Cal CEB 2009).

A chart in §5.3 summarizes statutory notice requirements.

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§5.2 II. GENERAL STATUTORY NOTICE PROVISIONS

The notice provisions of Prob C §§1200-1265 apply to all probate matters unless otherwise provided by the statute governing a particular proceeding.

The general provisions of Prob C §§1200-1211 apply to all notices except as otherwise specifically provided. These provisions are as follows:

- Notice need not be sent to a petitioner or to one who joins in the petition. Prob C §1201.
- The court may require additional notice or a longer notice period. Prob C §1202.
- The court may shorten time for giving a notice of hearing. The court may not shorten the time for publication of notice of hearing. Prob C §1203.
- A person (including a guardian ad litem, guardian, conservator, trustee, or other fiduciary) may waive notice by a writing signed by the person or his or her attorney and filed in the action. Prob C §1204.
- Unless otherwise ordered by the court, no further notice is required of a continued or postponed hearing. Prob C §1205.
- When notice must be given to heirs and devisees, notice must be given to all heirs or devisees known to the petitioner before the notice is sent. Notice must be given to anyone named in the petition for letters of administration or petition for probate, but it need not be given to more remote heirs. Notice need not be given to anyone whose interest has already been satisfied. Prob C §1206.
- Notices that must be sent to heirs or a class of devisees need not be sent to anyone who may belong to that group because of a possible parent-child relationship between a stepchild and stepparent or a foster child and foster parent, unless the person giving notice has knowledge of facts that lead to a reasonable belief that the parent-child relationship exists. Prob C §1207.
- If notice must be given to a trust or trustee, notice to trust beneficiaries is not required unless the sole trustee is also the personal representative or when no trustee has been appointed. Prob C §1208.
- Notices that must be given to the State of California or to the Attorney General should be mailed to the Attorney General at the Sacramento office. Prob C §1209.
- Service on a person who has a guardian or conservator residing in California may be made on the guardian or conservator instead. Prob C §1210.
- The required form of notice of hearing is stated in Prob C §1211; the Notice of Hearing—Decedent's Estate or Trust (Probate—Decedents' Estates) (Judicial Council Form DE-120) is reprinted in §5.7 and must be used except to give notice of the petition to administer the estate. For that petition, Notice of Petition to Administer Estate (Judicial Council Form DE-121) must be used. See §7.26.
- The procedure for giving notice when the person's address is unknown is stated in Prob C §1212. See also Cal Rules of Ct 7.52.
- A surety must be mailed notice by the petitioner or moving party when its insured is subject to a surcharge petition, an objection to an accounting, a petition for suspension or removal, or a motion by the fiduciary's attorney to withdraw from representation. Prob C §1213.

The legal assistant or secretary should have a "service list" for each probate estate. This list consists of the names and addresses of everyone who is entitled to receive notice of hearings or other proceedings. It should be added to as requests for special notice are received and subtracted from as persons cease to have an interest (*e.g.,* removing heirs of a testate estate after probate, specific devisees who have received their devise, or those who have withdrawn their request for special notice). It should also be revised as change of address notices are received. If the firm has a word processing system, the list can be easily modified and yet readily available in a format in which it can easily be used as an attachment to a proof of service form.

See §5.11 on notice by mail, §5.14 on notice by posting, and §§5.15-5.18 on notice by publication.

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Source: Estate Planning/California Probate Workflow Manual Revised/5 Notices and Hearings/§5.3 III. CHART: STATUTORY METHODS OF NOTICE

§5.3 III. CHART: STATUTORY METHODS OF NOTICE

In the following chart, an x indicates the method of notice prescribed in the statute. Unless otherwise indicated, numbers refer to particular sections of the Probate Code.

Mailing and posting requirements are generally prescribed by Prob C §§1220 and 1230, respectively. In the *Mail* column, if the Probate Code section specifies mailing, an x has been inserted. If notice must be mailed under Prob C §1220, a reference to that section has been inserted. Special notice requirements that are specified in another Probate Code section are given in the Comment column, except that special notice requirements that could be imposed by the court under Prob C §1202 or under local court rules are not noted.

To exercise the powers specified in Prob C §§10510-10519, the personal representative with independent administration authority must mail a notice of proposed action under Prob C §§10580-10592. When these powers are included in this chart, they are denoted by an asterisk (*). The exercise of other powers, specified in Prob C §§10530-10538, requires a notice of proposed action only under some circumstances. When these powers are included in this chart, they are denoted by a dagger (†).

Requirements for publication and service of citation are indicated with an x, with references to relevant authority, in the columns titled *Publication* and *Citation*.

STATUTORY METHODS OF NOTICE

	Prob C §	Publication	Mail[1]	Citation	Comment
ACCOUNTS AND ACCOUNTING					
Notice by personal representative:					
Settlement of current or final account, if separate from petition for distribution (for account included in petition for preliminary or final distribution, see DISTRIBUTION)	11000		x1220		Mailing 15 days before hearing to those specified in Prob C §1220 and to known affected devisees, heirs, persons who requested special notice under Prob C §1250, State, if escheat forthcoming, and creditors with allowed or approved but wholly or partly unpaid claims, if estate is insolvent.
Partial allowance of compensation to representative or estate attorney	10830		x1220		Mailing 15 days before hearing to those specified in Prob C §1220 and to known affected devisees, heirs, persons who requested special notice under Prob C §1250, and State, if escheat forthcoming.
Report of status of administration	12201		x1220		
Notice to personal representative:					
Failure to account	11051		x		Citation issued on court order must be served and returned.
Notice by trustee					
Settlement of account	17203		x		Mailing 30 days before hearing to trustees, beneficiaries entitled to notice, and, if a charitable trust, to Attorney General. Prob C §17203(a). Personal service on any person other than a trustee or beneficiary, whose right, title, or interest affected by petition who would not otherwise receive notice under §17203(a). Prob C §17203(b).
ALLOCATION OF DEBTS	11443		x1220		Mailing 15 days before hearing to those specified in Prob C §1220, together with copy of petition and order to show cause, if any.
ANNUITY					
Purchase annuity granted in will	9733		x1220		
ARBITRATION					
Agreement to arbitrate dispute	9621		x1220		Mailing 15 days before hearing to those specified in Prob C §1220.

BOND			
Application for reduction of bond	8484	x1220	
*BORROW MONEY			
*Authority to borrow money, refinance, and encumber property	9803	x1220	
BUSINESS, continued operation of (see CONTINUING BUSINESS)			
CLAIMS (see also CREDITORS)			
Allowing claim filed after filing period	9103	x1220	
Compromise claim or action by or against decedent, personal representative, or estate	9831, 9837(c)	x1220	Application may also include request for extension, renewal, or modification of debt; Prob C §9830(a)(2).
Compromise relating to real property	9832, 9837(c)	x1220	
Compromise in excess of $25,000	9833, 9837(c)	x1220	
Compromise estate's claim against personal representative	9834, 9837(c)	x1220	
Compromise claim for wrongful death	9835, 9837(c)	x1220	
By spouse for community property debts	11443	x1220	Mailing 15 days before hearing to those specified in Prob C §1220, together with copy of petition and order to show cause, if any.
Claim for property deposited with county treasurer (see CCP §§1355, 1444)	11854	x	Court may order service of petition on Attorney General.
Claimant cannot be found	11428		May be granted ex parte.
*Claim by third party to title or interest in property to which decedent had title or possession	851	x1220	Notice of hearing and a copy of petition must be served at least 30 days before the date set for hearing on the personal representative and anyone claiming an interest in, or having title to or possession of, the property (Prob C §851(a)); 15 days' notice of hearing must be given to known affected devisees and heirs, as provided in Prob C §1220, together with a copy of the petition (Prob C §851(b)). A party who asserts a real property claim may record a notice of pendency of action under CCP §405.20. See Prob C §1004.
COMMUNITY OR QUASI-COMMUNITY PROPERTY, claim to	13541		Surviving spouse or personal representative has full power to sell, lease, mortgage, or otherwise deal with community or quasi-community real property after 40 days from spouse's death unless one who claims an interest in property records a notice of claim thereto under Prob C §13541.
COMMUNITY, QUASI-COMMUNITY, OR SEPARATE PROPERTY, confirmation of			
If administration proceedings pending	13655(a)	x1220	Mailing 15 days before hearing to those specified in Prob C §1220 and to nonpetitioning personal representatives, devisees, known heirs, persons interested in any devisee trust of which petitioner is trustee, those who have requested special notice or who have given notice of appearance, and Attorney General if the will contains certain charitable trusts or gifts.
COMPENSATION	10830-10831	x1220	Mailing 15 days before hearing to those

Compensation of representative and attorney					specified in Prob C §1220 and to known affected devisees, heirs, those who requested special notice under Prob C §1250, and State, if escheat forthcoming.
Compensation for extraordinary services: payment before final distribution	10832		X1220		As above under Prob C §§10830-10831 or as prescribed by court.
CONTINUING BUSINESS					
† Authority to continue business other than partnership	9760		x1220		
† Authority to continue partnership	9762		x1220		Notice must also be mailed to surviving general partners.
CONTRACT					
*Conveyance to complete	851		x1220		Notice of hearing and a copy of petition must be served at least 30 days before the date set for hearing on the personal representative and anyone claiming an interest in, or having title to or possession of, the property (Prob C §851(a)); 15 days' notice of hearing must be given to others as provided in Prob C §1220, including a copy of the petition to known affected devisees and heirs (Prob C §851(b)).
CONVEYANCE OR DEDICATION					
*Estate real property	9901		x1220		
CREDITORS					
Notice to known creditors	9050-9054	x8100, 8120-8125	x		Within 4 months after letters issued, personal representative must give notice as provided in Prob C §1215 to known or reasonably ascertainable creditors. Form of required notice is in Prob C §9052. In addition, notice of opening administration must also be published under Prob C §8120. Prob C §9050(b).
Notice to creditor not served	9053				Notice of petition to determine liability of personal representative for failure to give creditor notice must be served as provided in CCP §§413.10-417.40 at least 30 days before hearing.
*DEED, to accept in lieu, or mortgage	9850		x1220		
DELIVERY OF PROPERTY					
To foreign representative	12540		x1220, 11601		Notice must be mailed under Prob C §1220 as required in Prob C §11601.
DEPOSIT OF ESTATE FUNDS	9703				Court may prescribe notice.
DISCOVERY OF CONCEALED PROPERTY					
Examination of witnesses	8870		x	x	Court prescribes issuance of citation; 15 days' notice must be mailed to nonpetitioning personal representatives and persons who requested special notice.
Estate discovery of property held by a third party	851		x1220		Notice of hearing and a copy of petition must be served at least 30 days before the date set for hearing on the personal representative and anyone claiming an interest in, or having title to or possession of, the property (Prob C §851(a)); 15 days' notice of hearing must be given to others as provided in Prob C §1220, including a copy of the petition to known affected devisees and heirs (Prob C §851(b)). A party who asserts a real property claim may record a notice of pendency of action under CCP §405.20. See Prob C §1004.
DISTRIBUTION					
(In independent administration					

situations, see INDEPENDENT ADMINISTRATION OF ESTATES)					
Preliminary and final	11601		x1220		Mailing 15 days before hearing to those specified in Prob C §1220 and to known affected devisees and heirs, persons who requested special notice under Prob C §1250, State if escheat forthcoming, and Controller if beneficiary unknown or cannot be found.
EASEMENT, dedication of	9901		x1220		
EMBEZZLEMENT					
Concealment, fraudulent disposition of estate property	8870		x	x	Court prescribes issuance of citation; 15 days' notice must be mailed to nonpetitioning personal representatives and persons who requested special notice.
ESTABLISHING DEATH OF MISSING PERSONS (see MISSING PERSONS)					
ESTABLISHING FACT OF DEATH					
To establish and report fact of death	203		x1220		May be granted ex parte if no opposition expected. See Prob C §203(b).
To establish simultaneous death or order of death	233		x1220		Mailing 15 days before hearing to personal representative, heirs, and devisees of each decedent, and to persons requesting special notice or giving notice of appearance.
EXECUTORS AND ADMINISTRATORS					
Petition and qualification, see chap 7 (see also PETITION FOR LETTERS/ PROBATE)					
Removal or suspension and revocation of letters; claim of prior right	8500, 8503			x	Citation issued on court order. Notice of petition to suspend or remove personal representative must be mailed to surety who filed court bond. Prob C §1213.
Joint representatives, death or disability of one; issuance of amended letters	8521				Court may grant ex parte.
Discharge: no property received	12251		x1220		
Suspension for waste	9614				Court prescribes notice. Notice of petition to suspend or remove personal representative must be mailed to surety who filed court bond. Prob C §1213.
FAMILY ALLOWANCE	6541		x1220		May be granted ex parte before inventory filed; if allowance is granted under Prob C §6540(b), notice must be mailed to those specified in Prob C §1220 and to known affected heirs and devisees and those who requested special notice under Prob C §1250. Prob C §6541(c).
HEIRSHIP					
To determine interest in estate	11701		x1220		Notice as required by Prob C §1220, plus notice under §1220 to known heirs and devisees whose interests are affected, and State if escheat forthcoming.
HOMESTEAD					
To set apart homestead or exempt personal property	6525		x1220		Notice as required by Prob C §1220, plus notice under §1220 to known heirs and devisees whose interests are affected by the petition.
INDEPENDENT ADMINISTRATION OF ESTATES					
Requested in petition for	10451(a)	x8100, 8120-8125	x8100-8113		Same notice as petition for appointment.

probate					
Requested by separate petition	10451(b)		x1220		Mailing 15 days before hearing to those specified in Prob C §1220, all known affected heirs and devisees, those who requested special notice, and each personal representative named in will.
Taking action without court supervision	10580-10592				For actions listed in Prob C §§10510-10519 and for which notice is required under Prob C §§10530-10538, 15 days' notice of proposed action must be given to known affected heirs and devisees, those who requested special notice, and State, if escheat forthcoming. See Prob C §10581. Prob C §§1215-1216 apply to this notice.
Preliminary distribution	11623		x1220		
INSTRUCTIONS, petition for	9611(b)		x1220		
INVENTORY AND APPRAISAL					
Filing Inventory and Appraisal	8803				No notice unless request for special notice.
Objection to appraisal	8906		x1220		Mailing as required in Prob C §1220, together with copy of objection.
Waiver of appraisal by probate referee	8903		x1220		Mailing 15 days before hearing, with copy of petition and proposed inventory and appraisal, to those specified in Prob C §1220, known affected heirs and devisees, Attorney General if escheat forthcoming, and probate referee if one has been designated.
INVESTMENT OF ESTATE FUNDS					
† In state or federal securities	9731		x1220		
† Investment as provided in will	9732		x1220		Mailing 15 days before hearing to those specified in Prob C §1220, and notice and copy of petition to known devisees of property and trustees affected, if any. If trustee has not yet accepted trust, nominee is entitled to notice. Prob C §9732(c).
To exercise option rights	9734		x1220		
† LEASE	9944	x10300	x1220		Probate Code §10300 notice not required if will authorizes lease of property. Notice under Prob C §1220 to known heirs and devisees whose interests would be affected is required if lease is longer than 10 years. Posting of notice also required as provided in Prob C §1230.
LETTERS OF ADMINISTRATION (see generally PETITION FOR PROBATE)					
Removal of personal representative	8500-8503			x	Citation by court. See Prob C §8500(b). Notice of petition to suspend or remove personal representative must be mailed to surety who filed court bond. Prob C §1213.
MISSING PERSONS					
Appointment of conservator for estate of missing person	1847	Govt C §6061	x		Service to last address of conservatee, 15 days before hearing, and to all persons entitled under Prob C §1822; publication under Govt C §6061; court may require additional notice under Prob C §1202.
Letters of administration or probate of will of missing person	12405	8100, 8120-8125	x		Service and publication same as for administration of estates except service also required by registered mail to missing person at last known address.
Appearance of missing person after appointment of personal representative	12408		x1220, 11701		Petition may be filed under Prob C §11700 but time limitations of §11700 do not apply. Notice as required by Prob C §1220, plus notice under §1220 to known heirs and devisees

				whose interests are affected, and State if escheat forthcoming.
Establish fact of death of missing person	12407		x	Same as for administration of estates.
NONRESIDENTS' ESTATES				
Deliver property to foreign representative	12540		x1220, 11601	Notice under Prob C §1220 as required under Prob C §11601.
PARTIAL SATISFACTION OR RECONVEYANCE	9851		x1220	
PARTITION	11952		x1220	Notice as provided in Prob C §1220 to personal representative and to persons entitled to distribution of undivided interests.
PERSONAL PROPERTY (see also REAL OR PERSONAL PROPERTY)				If the will authorizes or directs the sale of property, notice of sale is optional. Prob C §10252(b).
† Notice of sale (except for securities and perishable property, and property sold for family allowance).	10250-10255	x		Notice by posting and/or publication, under Govt C §6063a, and by mail; court may shorten notice to 5 days under Prob C §10251, in which case notice must be posted and/or published under Govt C §6061. If will authorizes or directs sale of property, notice of sale is optional. Prob C §10252(a)-(b). Petition for confirmation requires notice under Prob C §10260.
*Abandonment of tangible personal property not specifically devised	9782, 9785-9786		x9782(c)	Notice by mail 10 days or personally 5 days before disposition to all known affected heirs and devisees, to those requesting special notice, and to State if escheat forthcoming.
Sale of property that is perishable, depreciating, incurring loss or expense, or is directed to be sold under will, or sold for family allowance	10252			May be sold without notice.
Sale of securities or subscription rights	10200, 10202		x1220	Posting under Prob C §1230 also required. Court may prescribe shorter notice or dispense with notice. Prob C §10200(d). Prob C §§10200(e), 10202 specify when notice unnecessary. Notice of proposed action not required for sale under independent administration for certain sales. Prob C §10537(b).
Sale of personal property on credit	10258		x1220	Mailing 15 days before hearing to those specified in Prob C §1220 and known affected heirs and devisees and posting under Prob C §1230 (if less than 25% to be paid when sold or if security interest not taken to secure unpaid balance).
Confirmation of sale	10260		x1220	Return of sale and petition for confirmation must be made within 30 days after sale, or purchaser may petition. Mailing under Prob C §1220 and posting under Prob C §1230. Confirmation not required for sales of perishable property, securities, subscription rights, or property needed to pay family allowance. Prob C §§10200-10202, 10259, 10260(a).
Purchase of securities or commodities sold short by decedent	9735		x1220	Notice not required if maximum purchase price is fixed or if securities or commodities will be sold on an established exchange.
PETITION FOR PROBATE				
Petition for probate and for appointment of executor; petition for probate and for appointment of administrator with will annexed; petition for probate of foreign will; or petition for letters of	8003, 12512	8100, 8120-8125	8110-8113	Notice at least 15 days before hearing, served personally or by mail on known heirs, devisees, nonpetitioning executors, alternative executors, and, if a charitable gift, on Attorney General at least 15 days before hearing. It includes a notice to creditors and must be published in a newspaper of general circulation (Govt C

administration				§6000) in city where decedent had property or resided at death. See Prob C §8121(a) for timing. See also §7.26. For probate of foreign will, the notice provisions are the same as for other wills. Prob C §12530.
PROCEDURES NOT GOVERNED BY STATUTE				
Instructions or confirmation	9611, 9613		x1220	
REAL PROPERTY (see also REAL OR PERSONAL PROPERTY)				
*Acceptance by representative of deed in lieu of foreclosure	9850		x1220	
Authority to lease:				
Monthly tenancy or monthly rent not more than $5000 and term not more than 1 year	9941			No court order required, but it may be requested under Prob C §§9943-9947.
† Monthly rent more than $5000 or term exceeds 1 year but not more than 10 years	9944	x10300	x1220	Posting required under Prob C §1230. Publication under Prob C §10300 unless will authorizes or directs lease or sale.
† Term exceeds 10 years	9944	x10300	x1220	Mailing 15 days before hearing to those specified in Prob C §1220 and known affected heirs and devisees. Posting required under Prob C §1230. Publication under Prob C §10300 unless will authorizes lease or sale.
Sale				
*Notice of sale	10300-10304	Govt C §6063a		If property appraised at $5000 or less, posting may be substituted for publication. Prob C §10301. Court may shorten notice of private sale to no less than 5 days under Prob C §10302, in which case notice must be published under Govt C §6061. Notice not required if will directs or authorizes sale.
Confirmation of sale	10308		x1220	Return of sale must be made within 30 days after sale, or purchaser may petition. Notice as provided in Prob C §1220 to persons designated in that section and to purchasers named in petition. Posting required under Prob C §1230.
		x	x	
*Convey or dedicate to governmental agency	9901		x1220	
*Convey easement	9901		x1220	
*Option for purchase of real property	9963		x1220	Mailing 15 days before hearing to those specified in Prob C §1220, and to known affected heirs and devisees. Posting required under Prob C §1230.
REAL OR PERSONAL PROPERTY				
*Claim by third party to title or interest in property to which decedent had title or possession	851		x1220	Notice of hearing and a copy of petition must be served at least 30 days before date set for hearing on personal representative and anyone claiming an interest in, or having title to or possession of, the property (Prob C §851(a)); 15 days' notice of hearing must be given to others as provided in Prob C §1220, including a copy of the petition to known affected devisees and heirs (Prob C §851(b)). A party who asserts a real property claim may record a notice of pendency of action under CCP §405.20. See Prob C §1004.
*Claim by decedent to property, title or possession of which is held by another	851		x1220	Same as above.

*Complete contract executed by decedent to convey or transfer property	851		x1220		Same as above.
*Exchange	9922		x1220		Notice may be shortened or dispensed with for exchange of securities. Prob C §9922(b).
*Option to purchase given by will	9981		x1220		
Partial satisfaction or partial reconveyance by representative	9851		x1220		Court order not required if partial satisfaction or partial reconveyance is under terms of mortgage or deed of trust. Prob C §9851(c).
*Resale after buyer's failure to complete	10350-10351	x	x		Resale on similar notice as original sale unless return of sale is filed within 60 days and prior order vacated. Notice as provided in Prob C §1220 to persons designated in that section and to buyers and brokers named in order confirming sale.
To partition among heirs or devisees before distribution	11952		x1220		Notice as provided in Prob C §1220 to personal representative and to persons entitled to distribution of undivided interests.
To require personal representative to sell	10001		x1220	x	Citation to be served on personal representative at least 5 days before hearing.
REMOVAL OF PERSONAL PROPERTY					
From California, by foreign representative	12570				If gross value of decedent's California property does not exceed $100,000 and 40 days have elapsed since death, foreign representative may use affidavit procedures of Prob C §§13100-13116. Prob C §13100.
REQUEST FOR SPECIAL NOTICE	1250-1252				Serve on personal representative, trustee, or their attorney, and file written request with clerk with written admission or proof of service.
REVOCATION OF PROBATE	8271				Service of summons to persons named in Prob C §8110. Prob C §§8250, 8271(b).
SET ASIDE ESTATE					
Estate less than $20,000 net value	6602, 6607	x	x		Manner of service depends on whether petition is filed before, with, or after petition for estate administration.
Estate less than $100,000 gross value	13151, 13153		x1220		Mailing 15 days before hearing to persons named in petition under Prob C §13152.
SURVIVORSHIP PETITION	233, 6403		x1220		Mailing 15 days before hearing to personal representatives, devisees, heirs of each decedent, and anyone requesting special notice.
TRUSTS					
Accounting by trustee (see ACCOUNTS AND ACCOUNTING)					
Amend trust to qualify for charitable estate tax deduction	17203-17205		x		30 days' notice by mail to trustees, beneficiaries entitled to notice, and Attorney General. Prob C §17203(a). Personal service on any person, other than a trustee or beneficiary, whose right, title, or interest is affected by petition and who would not otherwise receive notice under §17203(a). Prob C §17203(b).
Appointment of trustee to fill vacancy	17100, 17105		x1220		Notice specified in Prob C §§17100, 17105.
Exercise of powers not expressly conferred	17100, 17105		x1220		Notice specified in Prob C §§17100, 17105.
Removal of trustee	17100, 17105		x1220		Notice specified in Prob C §§17100, 17105.
Transfer of assets to domiciliary trustee in other state	17203, 17403		x		30 days' notice by mail to all persons named in petition; if charitable trust, 30 days' notice to Attorney General. Prob C §17203(a). Personal

			service on any person, other than a trustee or beneficiary, whose right, title, or interest is affected by petition and who would not otherwise receive notice under §17203(a). Prob C §17203(b).
Transfer of jurisdiction to another California county	17203	x	30 days' notice to trustees, beneficiaries, and Attorney General in some circumstances. Prob C §17203(a). Personal service on any person, other than a trustee or beneficiary, whose right, title, or interest is affected by petition and who would not otherwise receive notice under §17203(a). Prob C §17203(b).
When beneficiary requests special notice	17204	x	No special form of service specified; treated like any other request for special notice. Proof of service must be filed when request is filed. Copies of petition and account need not be attached unless specifically requested.
When interested person requests special notice for purposes of petition re compensation under §17200(b)(9)	17204(b)(1)		Request for special notice must be accompanied by verified statement of person's interest.
When interested person requests special notice for purposes of petition under §17200(b)(2), (4)-(6), (8), (12), (16), (20)-(21)	17204(b)(2)		An interested person (*i.e.,* a creditor; §17204(c)) must petition for order for special notice. Petition must include a verified statement of creditor's interest and be served on trustee or trustee's attorney by personal delivery or under Prob C §1215. Petition may be made ex parte.
WILL CONTESTS	8250		Service of summons to persons named in Prob C §8110.

1 If service by mail is proper, personal service is also proper. Prob C §1216.

* Actions included in this chart that require notice are denoted by this symbol in the chart.

† Actions requiring notice only in some circumstances, when included in this chart, are denoted by this symbol.

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§5.4 IV. LOCAL RULES

Local practices vary regarding who prepares the notice of hearing, attends to the mailing and publication, and prepares and files the proof of mailing and publication. Two common methods are:

(1) The attorney for the petitioner prepares the notice, mails it, prepares and delivers it to the newspaper for publication, and files proof of publication.

(2) The clerk prepares the notice (in some counties the petitioner must furnish stamped, addressed envelopes), mails it, prepares and files proof of mailing, and delivers notice to the newspaper, which prepares and files proof of publication.

There are many possible variations of these two methods. Local practice should be ascertained in each case. See California Local Probate Rules (Cal CEB Annual).

If the attorney or legal assistant is to mail the notice, he or she should send it to the county clerk's office for issuance in ample time for the clerk to return conformed copies to the attorney for mailing. It is not good practice for counsel to mail copies of the notice before they are filed and issued by the county clerk. This often causes confusion, especially when the day and time of hearing are changed at the clerk's office, which results in a lack of jurisdiction unless the matter is corrected at least ten days before the new date and time.

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Source: Estate Planning/California Probate Workflow Manual Revised/5 Notices and Hearings/§5.5 V. CHART: LOCAL REQUIREMENTS ON NOTICE [Deleted]

§5.5 V. CHART: LOCAL REQUIREMENTS ON NOTICE [Deleted]

This section has been deleted.

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VI. HOW TO GIVE NOTICE

§5.6 A. Application for Order Prescribing Notice

Under Prob C §1202 the probate court has authority to require additional notice. If the attorney determines that the court is likely to require additional notice, he or she can apply for an order prescribing notice when the matter is first set for hearing, or can send out notice that is greater than required and point out this fact to the court by proper filing of a proof of mailing. Local rules should be consulted. See §5.4.

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Source: Estate Planning/California Probate Workflow Manual Revised/5 Notices and Hearings/§5.6A B. Form: Order Prescribing Notice (Probate) (Judicial Council Form DE-200/GC-022)

§5.6A B. Form: Order Prescribing Notice (Probate) (Judicial Council Form DE-200/GC-022)

INSTRUCTIONS: See general instructions in §5.1.

Copies: Original with affidavit of mailing to file with clerk; one copy for each person to be served, together with a copy of the notice of hearing; copy for client; office copies.

Print

DE-200, GC-022

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, state bar number, and address)*: TELEPHONE AND FAX NOS.:	*FOR COURT USE ONLY*
ATTORNEY FOR *(Name)*:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
☐ ESTATE OF ☐ GUARDIANSHIP OF ☐ CONSERVATORSHIP OF *(Name)*: ☐ DECEDENT ☐ MINOR ☐ CONSERVATEE	
ORDER PRESCRIBING NOTICE (PROBATE)	CASE NUMBER:

THE COURT ORDERS

1. The time and place of hearing* on the petition for
   a. ☐ compensation on account (Prob. Code, §§ 8547(d), 10830)
   b. ☐ authority to continue decedent's business (Prob. Code, §§ 9760-9763)
   c. ☐ order vacating order confirming sale (Prob. Code, §§ 10350, 10351)
   d. ☐ court authorization for medical treatment (Prob. Code, §§ 2357(c), 3201)
   e. ☐ appointment of a limited conservator (Prob. Code, § 1822)
   f. ☐ other *(specify)*:

   (hearing) is set for

Date:	Time:	Dept.:	Room:

   Address of court: ☐ same as noted above ☐ other *(specify)*:

2. Petitioner shall cause notice of the hearing to be
   a. ☐ served at least *(specify)*: days before hearing personally upon *(name)*:
   b. ☐ mailed at least *(specify)*: days before hearing, in the manner prescribed by Probate Code section 1215
      to the persons ☐ listed below ☐ listed on Attachment 2b.

Name	Address

   c. ☐ *(for limited conservatorship only)* mailed to the regional center identified in Probate Code section 1827.5.

Date:

JUDGE OF THE SUPERIOR COURT

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

* This form is not sufficient as *Notice of Hearing*.

Form Approved by the Judicial Council of California
DE-200, GC-022 [Rev. January 1,1998]
Form Adopted for Mandatory Use

ORDER PRESCRIBING NOTICE (Probate)

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Source: Estate Planning/California Probate Workflow Manual Revised/5 Notices and Hearings/§5.7 C. Form: Notice of Hearing--Decedent's Estate or Trust (Judicial Council Form DE-120)

§5.7 C. Form: Notice of Hearing—Decedent's Estate or Trust (Judicial Council Form DE-120)

INSTRUCTIONS: See general instructions in §5.1. This Judicial Council form should generally be used for any notice of hearing. It is not used if the Notice of Petition to Administer Estate (Judicial Council Form DE-121) (see §7.26) is used, if the notice is to be sent to known creditors, or if the court has issued a citation.

The notice of hearing for any pleading in a proceeding under the Probate Code must state the complete title of the pleading. Cal Rules of Ct 7.50. Pleading is defined in Cal Rules of Ct 7.3(2) as any contest, answer, petition, application, objection, response, statement of interest, report, or account filed in a proceeding under the Probate Code.

Local practices vary greatly. In some counties the attorney chooses the time for hearing; in others the clerk indicates a date over the phone; in still others the petition and notice are mailed in and filled out by the clerk and copies are returned to the attorneys for mailing. A separate declaration of mailing will then be filed. See §5.5. Prepare the form according to local practice.

This form can be used for any probate purpose by reciting the name of the petition. For form of memorandum to the county clerk on notice of hearing, see §5.18.

The Clerk's Certificate of Posting and Proof of Service by Mail is on the reverse side of the Notice of Hearing. The proof of service should be filled in by the legal secretary or assistant who mailed the notice. See §5.13 for another form of proof of service by mail.

Copies: Original for filing; copy for each person to be served; copy for posting (if required); office copies. For copy information on notice of hearing for petition to administer estate, see §7.26.

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(Optional):* E-MAIL ADDRESS *(Optional):* ATTORNEY FOR *(Name):*	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
☐ ESTATE OF *(Name):* ☐ IN THE MATTER OF *(Name):* ☐ DECEDENT ☐ TRUST ☐ OTHER	
NOTICE OF HEARING—DECEDENT'S ESTATE OR TRUST	CASE NUMBER:

This notice is required by law.
This notice does not require you to appear in court, but you may attend the hearing if you wish.

1. NOTICE is given that *(name):*
   (representative capacity, if any):
   has filed *(specify):**

2. You may refer to the filed documents for more information. *(Some documents filed with the court are confidential.)*

3. A HEARING on the matter will be held as follows:

a. Date:	Time:	Dept.:	Room:

b. Address of court ☐ shown above ☐ is *(specify):*

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available upon request if at least 5 days notice is provided. Contact the clerk's office for *Request for Accommodations by Persons With Disabilities and Order* (form MC-410). (Civil Code section 54.8.)

* Do **not** use this form to give notice of a petition to administer estate (see Prob. Code, § 8100 and form DE-121) or notice of a hearing in a guardianship or conservatorship (see Prob. Code, §§ 1511 and 1822 and form GC-020).

Form Adopted for Mandatory Use
Judicial Council of California
DE-120 [Rev. July 1, 2005]

NOTICE OF HEARING—DECEDENT'S ESTATE OR TRUST
(Probate—Decedents' Estates)

Probate Code §§ 851, 1211, 1215, 1216, 1230, 17100
www.courtinfo.ca.gov

Print

☐ ESTATE OF *(Name):* ☐ IN THE MATTER OF *(Name):* ☐ DECEDENT ☐ TRUST ☐ OTHER	CASE NUMBER:

CLERK'S CERTIFICATE OF POSTING

1. I certify that I am not a party to this cause.
2. A copy of the foregoing *Notice of Hearing—Decedent's Estate or Trust*
   a. was posted at *(address):*

   b. was posted on *(date):*

Date: Clerk, by _____, Deputy

PROOF OF SERVICE BY MAIL *

1. I am over the age of 18 and not a party to this cause. I am a resident of or employed in the county where the mailing occurred.
2. My residence or business address is *(specify):*

3. I served the foregoing *Notice of Hearing—Decedent's Estate or Trust* on each person named below by enclosing a copy in an envelope addressed as shown below AND
   a. ☐ **depositing** the sealed envelope on the date and at the place shown in item 4 with the United States Postal Service with the postage fully prepaid.
   b. ☐ **placing** the envelope for collection and mailing on the date and at the place shown in item 4 following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
4. a. Date mailed: b. Place mailed *(city, state):*

5. ☐ I served with the *Notice of Hearing—Decedent's Estate or Trust* a copy of the petition or other document referred to in the Notice.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

(SIGNATURE OF PERSON COMPLETING THIS FORM)

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

	Name of person served	Address *(number, street, city, state, and zip code)*
1.		
2.		
3.		
4.		

☐ Continued on an attachment. *(You may use* Attachment to Notice of Hearing Proof of Service by Mail, *form DE-120(MA)/GC-020(MA), for this purpose.)*

* Do not use this form for proof of personal service. You may use form DE-120(P) to prove personal service of this Notice.

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§5.8 D. Proof of Service

Proof of service should be filed long enough before the hearing to allow the probate commissioner, examiner, probate attorney, or clerk to report to the court that proper notice has been given. The clerk will post notice, if required, but the certificate of posting is prepared in the law office for the clerk's signature. A form of clerk's certificate of posting is on the back of the Notice of Hearing—Decedent's Estate or Trust (Judicial Council Form DE-120). See §5.9. Local practice and the applicable statutes should be checked. If a copy of the petition or other document must be served with the notice of hearing, proof of service should include both. The proof of service should list all persons on whom service has been made.

Service of notice of hearing by mail is proved by using the form provided on page 2 of the Notice of Hearing—Decedent's Estate or Trust (Probate—Decedents' Estates) (Judicial Council Form DE-120) (see §5.7). See California Decedent Estate Practice §§6.12, 6.23-6.27 (2d ed Cal CEB 2009). The Attachment to Notice of Hearing Proof of Service by Mail (Probate—Decedents' Estates and Guardianships and Conservatorships) (Judicial Council Form DE-120(MA)) may be used if the space on page 2 of form DE-120 is insufficient to list each person to whom notice was mailed.

Personal delivery also may be used whenever service by mail is required. Prob C §§1215(a), 1216-1217. If the Notice of Hearing is personally delivered, Judicial Council Form DE-120(P) (Proof of Personal Service of Notice of Hearing—Decedent's Estate or Trust) (see §5.9) *or* a declaration of personal service (see §5.20) should be completed instead of the proof of service of mailing on the back of form DE-120 (see §5.7). If Judicial Council Form DE-120(P) is insufficient to list all the persons personally served by personal delivery, additional persons may be listed on Attachment to Notice of Hearing Proof of Personal Service (Judicial Council Form DE-120(PA)).

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Source: Estate Planning/California Probate Workflow Manual Revised/5 Notices and Hearings/§5.9 1. Form: Proof of Personal Service of Notice of Hearing--Decedent's Estate or Trust (Judicial Council Form DE-120(P))

§5.9 1. Form: Proof of Personal Service of Notice of Hearing—Decedent's Estate or Trust (Judicial Council Form DE-120(P))

Print

DE-120(P)

☐ ESTATE OF *(Name):* ☐ IN THE MATTER OF *(Name):* ☐ DECEDENT ☐ TRUST ☐ OTHER	CASE NUMBER:

PROOF OF PERSONAL SERVICE OF NOTICE OF HEARING—DECEDENT'S ESTATE OR TRUST

(Attach a separate completed and signed copy of this form or other proof of personal service to Notice of Hearing—Decedent's Estate or Trust *for each person who personally served a copy of the Notice.)*

1. I am over the age of 18 and not a party to this cause.
2. I served the attached *Notice of Hearing—Decedent's Estate or Trust* by personally delivering a copy to each person listed below at the address and on the date and time indicated below.
3. ☐ I served with the attached *Notice of Hearing—Decedent's Estate or Trust* a copy of the petition or other document referred to in the Notice.
4. I am *(check all that apply):*
   a. ☐ not a registered California process server.
   b. ☐ a California sheriff or marshal.
   c. ☐ a registered California process server.
   d. ☐ an employee or independent contractor of a registered California process server.
   e. ☐ exempt from registration (Bus. & Prof. Code, § 22350(b)).
5. My name, address, telephone number, and, if applicable, county of registration and number, are *(specify):*

NAME OF EACH PERSON PERSONALLY SERVED, ADDRESS WHERE SERVED, AND DATE AND TIME SERVICE WAS MADE

	Name	Address where served *(number, street, city, and state)*	Date and time service made
1.			Date: _____ Time: _____
2.			Date: _____ Time: _____
3.			Date: _____ Time: _____
4.			Date: _____ Time: _____
5.			Date: _____ Time: _____
6.			Date: _____ Time: _____

☐ List of names and addresses of persons personally served by the undersigned continued on an attachment.
(You may use Attachment to Notice of Hearing Proof of Personal Service, *form DE-120(PA)/GC-020(PA), for this purpose.)*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

▶ _____
(SIGNATURE)

(For California sheriff or marshal use only)
I certify that the foregoing is true and correct

Date:

▶ _____
(SIGNATURE)

Form Approved for Optional Use
Judicial Council of California
DE-120(P) [New July 1, 2005]

PROOF OF PERSONAL SERVICE OF NOTICE OF HEARING—DECEDENT'S ESTATE OR TRUST
(Probate—Decedents' Estates)

Probate Code, §§ 851, 1216, 1264
www.courtinfo.ca.gov

Copies: Original filed with the clerk before hearing; office copies.

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Source: Estate Planning/California Probate Workflow Manual Revised/5 Notices and Hearings/§5.10 2. Form: Notice and Acknowledgment of Receipt--Civil (Judicial Council Form POS-015)

§5.10 2. Form: Notice and Acknowledgment of Receipt—Civil (Judicial Council Form POS-015)

INSTRUCTIONS: If the person being served is willing to acknowledge that he or she has been served with the documents, a notice and acknowledgment of receipt may be used instead of a proof of service. If the Judicial Council form reprinted below is used, it should be altered to identify the appropriate documents.

Copies: Original to court file; copy for service on other party's attorney or on other party if unrepresented; office copies.

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(Optional):* E-MAIL ADDRESS *(Optional):* ATTORNEY FOR *(Name):*	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	
NOTICE AND ACKNOWLEDGMENT OF RECEIPT—CIVIL	CASE NUMBER:

TO *(insert name of party being served):* _____

NOTICE

The summons and other documents identified below are being served pursuant to section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it within 20 days from the date of mailing shown below may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.

If you are being served on behalf of a corporation, an unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. If you return this form to the sender, service of a summons is deemed complete on the day you sign the acknowledgment of receipt below.

Date of mailing:

_____ ▶ _____

(TYPE OR PRINT NAME) (SIGNATURE OF SENDER—MUST NOT BE A PARTY IN THIS CASE)

ACKNOWLEDGMENT OF RECEIPT

This acknowledges receipt of ***(to be completed by sender before mailing)***:

1. ☐ A copy of the summons and of the complaint.
2. ☐ Other *(specify):*

(To be completed by recipient):

Date this form is signed:

_____ ▶ _____

(TYPE OR PRINT YOUR NAME AND NAME OF ENTITY, IF ANY, ON WHOSE BEHALF THIS FORM IS SIGNED) (SIGNATURE OF PERSON ACKNOWLEDGING RECEIPT, WITH TITLE IF ACKNOWLEDGMENT IS MADE ON BEHALF OF ANOTHER PERSON OR ENTITY)

Form Adopted for Mandatory Use
Judicial Council of California
POS-015 [Rev. January 1, 2005]

NOTICE AND ACKNOWLEDGMENT OF RECEIPT — CIVIL

Code of Civil Procedure,
§§ 415.30, 417.10
www.courtinfo.ca.gov

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§5.11 E. Service by Mail

Service of notice by mail is the most frequently used method of giving notice in probate proceedings. Either service by mail or personal delivery is required whenever a statute requires notice but does not specify a method. Prob C §1217. Personal delivery may be used whenever service by mail is required. Prob C §§1215(a), 1216, 1217. Mail must be sent postage prepaid, first class (including certified, registered, and express mail) if the addressee is in the United States, or air mail if the addressee is outside the United States. Prob C §1215(b). The mail must be sent through the United States Postal Service—private companies should not be used. Prob C §1215(c).

Mailing is complete on the date the notice is deposited in the mail; mailing does not extend the notice period. Prob C §1215(e). Personal delivery is complete when the notice has been personally delivered to the person who is to receive it. Prob C §1216(b).

Unless the statute or court provides otherwise, notice of hearing must be given at least 15 days before the time originally set for hearing. Prob C §1220(a)(1). Unless the section requiring notice states otherwise, notice must be sent to the personal representative (if not the petitioner), and all persons who have filed a request for special notice under Prob C §1250. Prob C §§1220-1221. If notice or some other paper is required or permitted to be mailed, delivered, served or given to a person who is represented by an attorney, the notice or other papers must *also* be mailed to the attorney, unless a request for special notice provides otherwise. Prob C §1214; Cal Rules of Ct 7.51(b). Section 1220 does not affect any requirement that special notice be given, but the court for good cause may dispense with the notice otherwise required under §1220. Prob C §1220(b)-(c).

Notice should be mailed individually and directly to the person required to be given notice at the person's residence or place of business. Cal Rules of Ct 7.51(a)(1). If notice is required for more than one person in the same household, notice must be sent separately to each person. Cal Rules of Ct 7.51(a)(3). With certain exceptions for children under age 12 (see Prob C §1460.1), notice to a minor must be sent directly to the minor, with a separate copy of the notice to the minor's legal custodian (unless the minor is under the age of 12 and the court determines that Prob C §1460.1 requirements have been fulfilled). Cal Rules of Ct 7.51(d). Notice mailed to someone in care of another person is insufficient unless the person entitled to notice is an adult and has directed the notifying party, in writing, to send the notice in care of the second person. Cal Rules of Ct 7.51(a)(2). On notice requirements when the person's address is unknown, see §5.11B.

Whether the attorney or the clerk attends to the mailing of notice varies from county to county. See §5.4 on local rules. For a form of proof of mailing, see §5.13.

The notice must be accompanied by an unsigned mailing affidavit, or a notation of the date and place of mailing must be made on the notice itself. CCP §1013(b). See California Decedent Estate Practice §§6.6-6.9 (2d ed Cal CEB 2009).

Because the operative language of the Proof of Service by Mail is in the past tense, a technical problem arises for declarants who wish to mail copies after the clerk has filed the original and endorsed the copies: To sign the declaration before filing and mailing the notice is technically perjury, but to delay signing until endorsed copies have been mailed may incur the clerk's disfavor. If the declarant wishes to remain on friendly terms with the clerk and avoid the technical taint of perjury, the separate proof of mailing shown in §5.13 should be used. It is, however, permissible to mail unendorsed copies of the notice.

In some counties, the clerk will mail the enclosed notice if counsel provides a stamped envelope.

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§5.11A 1. Notice Required When a Beneficiary Dies

When a beneficiary of the decedent's estate dies after the decedent, and the beneficiary has survived for the period required by the decedent's will, notice must be sent to the beneficiary's personal representative. If the beneficiary has no personal representative, notice must be sent to his or her beneficiaries or other persons entitled to succeed to his or her interest in the decedent's estate. Cal Rules of Ct 7.51(e)(1).

If a beneficiary has died before the decedent or fails to survive the decedent for the period required by the decedent's will, notice must be sent to the substitute beneficiaries named in the decedent's will. Cal Rules of Ct 7.51(e)(2). If there are no substitute beneficiaries, notice must be sent as follows:

- If the predeceased beneficiary is a "transferee" under Prob C §21110(c) (*i.e.*, kindred of the transferor or of his or her spouse), notice must be sent to the beneficiary's issue (determined under Prob C §240) and to the decedent's residuary beneficiaries, or, if there are no residuary provisions in the will, to the decedent's heirs.
- If the predeceased beneficiary is not a "transferee" under §21110(c), notice must be sent to the decedent's residuary beneficiaries or to the decedent's heirs if there are no residuary provisions in the will.

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Source: Estate Planning/California Probate Workflow Manual Revised/5 Notices and Hearings/§5.11B 2. Notice When Person's Address Unknown

§5.11B 2. Notice When Person's Address Unknown

If no address is known for the person entitled to notice, notice must be given as the court may require in the manner provided in CCP §413.30. Prob C §1212.

Before the court may order an alternative form of notice or dispense with notice, the petitioner must file a declaration of diligent search with the court. Cal Rules of Ct 7.52(a). The declaration must state (Cal Rules of Ct 7.52(a)(1)-(3)):

- The name of the person;
- The person's last known address and the approximate date he or she last resided there;
- An explanation of why the person's address cannot be obtained; and
- A description of efforts made to locate the person, including:
- Inquiry of relatives, friends, and employers of both the person entitled to notice and the decedent;
- Review of appropriate telephone directories and directory assistance; and
- A search of indexes in the recorder's and assessor's offices of the county where the person was last known or believed to reside.

PRACTICE TIP: Internet search sites frequently search all telephone directories nationwide and are helpful in locating a person. It may be helpful to use a process server, who may be more familiar than law firm staff are with the available databases. Some courts will accept Internet searches as sufficient due diligence. Check first with the court.

If a person entitled to notice cannot be located after a diligent search, the court may prescribe the method of giving notice, or it may dispense with notice. Cal Rules of Ct 7.52(c).

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Source: Estate Planning/California Probate Workflow Manual Revised/5 Notices and Hearings/§5.12 3. County Seats in California

§5.12 3. County Seats in California

The following is a list of the county seats of each California county. Provisions that required mailing to the county seat have been deleted from the Probate Code, and mailing notice to a person at a county seat is an impermissible manner of giving notice. Cal Rules of Ct 7.52(b). This list is provided in the event that counsel needs to contact a county clerk or other government official.

County	*County Seat*
Alameda	Oakland
Alpine	Markleeville
Amador	Jackson
Butte	Oroville
Calaveras	San Andreas
Colusa	Colusa
Contra Costa	Martinez
Del Norte	Crescent City
El Dorado	Placerville
Fresno	Fresno
Glenn	Willows
Humboldt	Eureka
Imperial	El Centro
Inyo	Independence
Kern	Bakersfield
Kings	Hanford
Lake	Lakeport
Lassen	Susanville
Los Angeles	Los Angeles
Madera	Madera
Marin	San Rafael
Mariposa	Mariposa
Mendocino	Ukiah
Merced	Merced
Modoc	Alturas
Mono	Bridgeport
Monterey	Salinas
Napa	Napa
Nevada	Nevada City
Orange	Orange
Placer	Auburn
Plumas	Quincy
Riverside	Riverside
Sacramento	Sacramento
San Benito	Hollister
San Bernardino	San Bernardino

San Diego	San Diego
San Francisco	San Francisco
San Joaquin	Stockton
San Luis Obispo	San Luis Obispo
San Mateo	Redwood City
Santa Barbara	Santa Barbara
Santa Clara	San Jose
Santa Cruz	Santa Cruz
Shasta	Redding
Sierra	Downieville
Siskiyou	Yreka
Solano	Fairfield
Sonoma	Santa Rosa
Stanislaus	Modesto
Sutter	Yuba City
Tehama	Red Bluff
Trinity	Weaverville
Tulare	Visalia
Tuolumne	Sonora
Ventura	Ventura
Yolo	Woodland
Yuba	Marysville

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Source: Estate Planning/California Probate Workflow Manual Revised/5 Notices and Hearings/§5.13 4. Form: Declaration of Service by Mail

§5.13 4. Form: Declaration of Service by Mail

INSTRUCTIONS: The following form may be used as a proof of service by mail for all matters other than those for which a Judicial Council form incorporates a form of service by mail. See §5.8. As a practical matter, it will be used most often for service of responsive or supplemental pleadings such as objections and declarations. This form should not be used for a Notice of Petition to Administer Estate (Judicial Council Form DE-121) or in place of the usual Notice of Hearing-Decedent's Estate or Trust (Judicial Council Form DE-120). The Judicial Council form of notice contains optional language for use when the form is deposited in the office mail collection box. The form below may be modified to use that language.

Copies: Original to be attached to a copy of notice of hearing or other appropriate document and filed with the clerk before hearing; office copies.

[*Title of court*]

[*Title of case*]

No. _ _ _ _ _ _

DECLARATION OF SERVICE BY MAIL OF _ _[*specify document*]**_ _ FOR _ _ _ _ _ _ _ (PROB C §1261; CCP §1013a(1))**

Hearing date: _ _ _ _
Time: _ _ _ _
Dep't: _ _ _ _

I, _ _ _ _ _ _, say:

I am a citizen of the United States and am _ _[*a resident of/employed in*]**_ _ the County of _ _ _ _ _ _, California, in which the described mailing occurred. I am, and was at the time of the mailing, over 18 years of age and am not a party to this cause.**

My _ _[*business/residence*]**_ _ address is _.**

I served the attached _ _[*specify document*]**_ _ by placing a true copy in a separate, sealed envelope**

[*Add one of the following alternatives*]

[*Alternative 1: Place of residence is set forth in petition*]

addressed to each person whose name and address is listed below and depositing the envelope in the United States mail with the postage fully prepaid. The deposit was made on _ _[*date*]**_ _, at _ _**[*city*]**_ _, California.**

_ _[*List names and addresses of nonpetitioning representative and of persons who have filed requests for special notice or who gave notice of appearance*]**_ _.**

[*Alternative 2: Place of residence not set forth in petition*]

addressed to _ _ _ _ _ _, California, the county seat of the county where the proceedings referred to are pending.

[*Continue*]

There is a delivery service by United States mail at each place addressed, or regular communication by United States mail between the place of mailing and each place addressed.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Date: _ _ _ _ _ _

__[*Signature*]**__**
_ _[*Typed name*]**_ _**

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§5.14 F. Posting

Probate Code sections occasionally require that notice of a hearing be posted. See the chart of statutory notices of hearing in §5.3. Posting is done by the court clerk at least 15 days before the hearing date at the courthouse of the county where the proceedings are pending. If the place of hearing is not at the county seat, then the notice may be posted at the building where the court is held. Prob C §1230. In addition to the time and place of the hearing, the posted notice must include the names of the estate and the petitioner and a statement on the nature of the petition, referring to the petition for further particulars.

The Judicial Council form for Notice of Hearing (Judicial Council Form DE-120) reprinted in §5.7 includes a form for clerk's certificate of posting on the reverse side (page 2).

Many counties charge a fee for posting of notice. Check with the local clerk, and be sure that the fee is paid promptly to ensure that the clerk timely posts notice.

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Source: Estate Planning/California Probate Workflow Manual Revised/5 Notices and Hearings/ G. Publication/§5.15 1. Requirements

G. Publication

§5.15 1. Requirements

Publication of notice is required for some proceedings under the Probate Code—most notably, the petition for administration of a decedent's estate. See the chart of statutory notices of hearing in §5.3.

The Probate Code does not contain general provisions that govern the specifics of publication. Individual Probate Code sections may specify publication requirements (see, *e.g.,* Prob C §8121) or may incorporate the publication requirements of other sections of the Probate Code or the Government Code. A court or local rules may also require publication in some circumstances; but a power of sale clause in a will may excuse the publication requirements that would otherwise apply.

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§5.16 2. Chart: Notice by Publication

Probate Code §	Action	Publication Required by
8003	Petition for probate of will and/or appointment of personal representative	Prob C §8121: Three times with at least 5 days intervening between first and last publication dates; first publication at least 15 days before hearing.
9944(b)	Petition for authority to lease (unless will authorizes lease)	Govt C §6063a: See below.
10250	Sale of personal property (unless time of notice has been shortened)	Govt C §6063a: Three times in at least 10 days, notice to be published once a week or oftener, with at least 5 days between the first and last publication dates. Publication is to be completed, in the case of private sale, before day specified in notice as day on or after which sale is to be made; if public auction sale, publication to be completed before day of auction.
10251	Sale of personal property, if court issues order shortening time of notice	Govt C §6061: Notice of not less than 5 days (Prob C §10251); one publication.
10300	Sale of real property (unless time of notice has been shortened)	Govt C §6063a: See above.
10302	Sale of real property, if court issues order shortening time of notice	Govt C §6061: Notice of not less than 5 days (Prob C §10302); one publication.
12405	Appointment of representative for missing person	Same publication as for administration of decedent's estate. See above (Prob C §8121).

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Source: Estate Planning/California Probate Workflow Manual Revised/5 Notices and Hearings/§5.17 3. Memorandum to Newspaper for Publication

§5.17 3. Memorandum to Newspaper for Publication

Local practices vary greatly. Generally, the attorney sends a letter to the newspaper (or contacts the newspaper by fax, phone, or e-mail) requesting publication of the notice of hearing for the particular court hearing. See sample letter in §5.18. In some counties, an extra copy of the petition or notice is delivered to the court for the newspaper, but little more need be done by the attorney's office. In other counties, the attorney must make all arrangements; the newspaper and the court play no role. The legal assistant should call the local newspapers to ascertain what procedures to follow.

PRACTICE TIP: The legal assistant should review the publisher's proof of the notice of hearing of the petition for administration to make sure that it does not contain errors and should make sure that publication is completed as required (see §5.16); you cannot assume that the newspaper is going to do it correctly. Under local rules in many counties, if publication is defective the matter will be taken off calendar and new notice of hearing and publication will be required. See *e.g.,* Marin Ct R 5.13(A)(4); Santa Cruz Ct R 4.2.06(b).

Generally, the newspaper prepares and files the affidavit of publication (Prob C §8124) and delivers an endorsed, filed copy to the attorney. Counsel should call the local newspaper to determine its procedures.

PRACTICE TIP: Even in counties where the newspaper files the affidavit of publication, the attorney must make sure that the newspaper has filed it and given the attorney the endorsed, filed copy; if the affidavit is not filed with the court, the petition will not be heard.

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Source: Estate Planning/California Probate Workflow Manual Revised/5 Notices and Hearings/§5.18 4. Form: Memorandum to Newspaper for Publication

§5.18 4. Form: Memorandum to Newspaper for Publication

MEMORANDUM
from

_ _[*Firm name and address*]_ _

_ _[*Date*]_ _

TO: _ _[*Name and address of newspaper for publication*]_ _

RE: Estate of _ _[*name*]_ _**, Decedent**

_ _[*Name of county*]_ _ **Superior Court Case Number** _ _[*insert case number*]_ _

[*Add one of the following alternatives*]

[*Alternative 1: Newspaper will obtain Notice of Hearing*]

We enclose a copy of our memorandum dated _ _[*date*]_ _**, to the Clerk of the Court of** _ _[*county*]_ _ **County. Please secure from the Clerk of the Court a copy of the notice of hearing of petition for** _ _[*insert full title of petition*]_ _ **in the above matter and publish the Notice of Hearing. As soon as the first publication has been made, please send us** _ _[*number*]_ _ **copies of the printed notice.**

[*Alternative 2: Law office will obtain Notice of Hearing*]

We enclose a copy of our memorandum dated _ _[*date*]_ _**, to the Clerk of the Court of** _ _[*county*]_ _ **County, and the Notice of Hearing of petition for** _ _[*insert full title of petition*]_ _ **in the above matter. Please publish the notice of hearing. As soon as the first publication has been made, please send us** _ _[*number*]_ _ **copies of the printed notice.**

[*Continue*]

When publication has been completed, please file your affidavit of publication with the Clerk of the Court of _ _[*county*]_ _ **County and send us an endorsed copy of the affidavit.**

Thank you. Please address all communications concerning this matter to the attention of the undersigned.

_ _[*Firm name*]_ _
By __[*Signature*]__
_ _[*Typed name*]_ _

Enclosures: _ _[*Specify*]_ _

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H. Personal Service

§5.19 1. Requirements

Personal service is not generally required by the Probate Code. When personal service is required by a specific Probate Code provision, the proceedings are often more akin to civil litigation, and service must be provided in the same manner as service of a summons in a civil action (CCP §§413.10-417.40). Personal service is required in a number of different contexts in decedents' estate proceedings, including the following:

- Service of a citation (Prob C §1242; see §5.21 and Citation—Probate (Judicial Council Form DE-122/GC-322), reproduced in §5.22);
- Claim to specific property filed by or against a third party (Prob C §851(a); see California Decedent Estate Practice, chap 27 (2d ed Cal CEB 2009));
- Will contest (Prob C §§8250; see Decedent Estate Prac, chap 26);
- Petition for revocation of probate (Prob C §8271; see Decedent Estate Prac, chap 26);
- Creditor's petition to determine liability of personal representative (Prob C §9053; see Decedent Estate Prac, chap 14); and
- Petition to apportion expenses of administration of encumbered property (Prob C §10361.6).

For a detailed discussion of personal service, see Decedent Estate Prac §§6.21-6.23; California Civil Procedure Before Trial, chap 17 (4th ed Cal CEB 2004).

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§5.20 2. Proof of Personal Service

The Probate Code does not specifically address the form to be used for proof of service when personal service is required. However, CCP §417.10(f), applicable to Probate Code proceedings under Prob C §1000, requires that all proofs of personal service made in California be made on a form adopted by the Judicial Council. The Judicial Council forms for Citation—Probate (DE-122/GC-322) and Summons (Probate) (Judicial Council Form DE-125), reproduced at §5.22 and §5.23, respectively, include a proof of personal service on page 2, for the three manners of personal service described in CCP §§415.10 (personal delivery), 415.20 (leaving copies and mailing), and 415.30 (mailing and acknowledgment of receipt). Use of these forms is mandatory.

When service is by mailing and acknowledgment of receipt (CCP §415.30), two copies of the Notice and Acknowledgment of Receipt—Civil (Judicial Council Form POS-015) (see §5.10) and a return envelope, postage prepaid and addressed to the serving party, must be enclosed with the copy of the document being served. CCP §415.30(a). Judicial Council Form POS-015 should be included even though it is specifically referred to only on page 2 of Judicial Council Form DE-122/GC-322 but not on page 2 of Judicial Council Form DE-125. The lawyer for an interested party is more likely than the interested party to acknowledge service.

NOTE: The forms used to prove personal service must be distinguished from the form used to prove personal delivery of a Notice of Hearing—Decedent's Estate or Trust (Judicial Council Form DE-120). For the latter, see Proof of Personal Service of Notice of Hearing—Decedent's Estate or Trust (Judicial Council Form DE-120(P)). See §§5.8-5.9.

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Source: Estate Planning/California Probate Workflow Manual Revised/5 Notices and Hearings/ I. Citation/§5.21 1. Requirements

I. Citation

§5.21 1. Requirements

When personal jurisdiction is needed in a probate proceeding, the statute governing the proceeding may require that a citation be served instead of a summons. See Prob C §§8500, 8870, 10001, 11051. Service of a citation is made in the same manner as service of summons under CCP §§413.10-417.40. Prob C §1242.

The citation is issued by the court clerk on the application of any party, and it must contain the title of the proceeding, a brief statement of the nature of the proceeding, and a direction that the person cited appear at the time and place specified. Prob C §§1240-1241.

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Source: Estate Planning/California Probate Workflow Manual Revised/5 Notices and Hearings/§5.22 2. Form: Citation--Probate (Judicial Council Form DE-122/GC-322)

§5.22 2. Form: Citation—Probate (Judicial Council Form DE-122/GC-322)

INSTRUCTIONS: A copy of the citation is served on the cited person. The citation form contains a Proof of Service form on the back, which is to be filled out by the person who served it, and the original citation (together with the proof of service) is then filed with the clerk.

Copies: One copy to person served, one copy to client; office copies.

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(Optional):* E-MAIL ADDRESS *(Optional):* ATTORNEY FOR *(Name):*	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
☐ ESTATE OR TRUST ☐ CONSERVATORSHIP ☐ GUARDIANSHIP ☐ OTHER OF *(Name)*: ☐ DECEDENT ☐ CONSERVATEE ☐ MINOR ☐ OTHER	
CITATION—PROBATE*	CASE NUMBER:

1. **TO** *(name)*:
2. **You are hereby cited and required to appear at a hearing in this court on**

a. Date:	Time:	Dept.:	Room:

b. Address of court: ☐ same as noted above ☐ other *(specify)*:

3. At this hearing you are required to give any legal reason why the relief requested in the verified petition attached to and served with this citation, and filed with this court, should not be granted.

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available upon request if at least 5 days notice is provided. Contact the clerk's office for *Request for Accommodations by Persons With Disabilities and Order* (form MC-410). (Civil Code section 54.8.)

Date:

Clerk, by _____, Deputy

(SEAL)	**NOTICE TO THE PERSON SERVED:** You are served a. ☐ as an individual. b. ☐ as the person cited under the fictitious name of *(specify)*: c. ☐ On behalf of *(specify)*: under ☐ Code Civ. Proc., § 416.10 (corporation) ☐ Code Civ. Proc., § 416.20 (defunct corporation) ☐ Code Civ. Proc., § 416.40 (association or partnership) ☐ Code Civ. Proc., § 416.60 (minor) ☐ Code Civ. Proc., § 416.90 (individual) ☐ other *(specify)*: d. by personal delivery on *(date)*:

*** For use in all proceedings under the Probate Code EXCEPT to start a conservatorship. Use *Citation for Conservatorship* (form GC-320) for that purpose.**

Form Adopted for Mandatory Use
Judicial Council of California
DE-122/GC-322
[Rev. January 1, 2006]

CITATION—PROBATE
(Probate—Decedents' Estates and Guardianships and Conservatorships)

Probate Code, §§1240, 1241, 1242
www.courtinfo.ca.gov

Print

☐ ESTATE OR TRUST ☐ CONSERVATORSHIP ☐ GUARDIANSHIP ☐ OTHER OF *(NAME)*:	CASE NUMBER:

PROOF OF SERVICE

1. At the time of service I was at least 18 years of age and not a party to this action, and **I served copies** of the *Citation—Probate* and the following documents *(specify)*:

2. a. Party served *(specify name of party as shown on the documents served)*:

   b. Person served: (1) ☐ party in item 2a (2) ☐ other *(specify name and title or relationship to the party named in item 2a)*:

   c. Address *(specify)*:

3. I served the party named in item 2
   a. ☐ **by personally delivering** the copies (1) on *(date)*: (2) at *(time)*:
   b. ☐ **by leaving** the copies with or in the presence of *(name and title or relationship to person indicated in item 2b)*:
      (1) ☐ **(business)** a person at least 18 years of age apparently in charge at the office or usual place of business of the person served. I informed him or her of the general nature of the papers.
      (2) ☐ **(residence)** a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the person served. I informed him or her of the general nature of the papers.
      (3) on *(date)*: (4) at *(time)*:
      (5) ☐ A **declaration of diligence** is attached. *(Substituted service on natural person, minor, conservatee, or political candidate.)*
   c. ☐ **by mailing** the copies to the person served, addressed as shown in item 2c, by first-class mail, postage prepaid,
      (1) on *(date)*: (2) from *(city)*:
      (3) ☐ with two copies of the *Notice and Acknowledgment of Receipt—Civil* and a postage-paid return envelope addressed to me. *(Attach completed* Notice and Acknowledgment of Receipt—Civil *(form POS-015.))*
      (4) ☐ to an address outside California with return receipt requested. *(Attach completed return receipt.)*
   d. ☐ **other** *(specify other manner of service and authorizing code section)*:

4. The "Notice to the Person Served" (on the citation) was completed as follows:
   a. ☐ as an individual defendant.
   b. ☐ as the person sued under the fictitious name of *(specify)*:
   c. ☐ On behalf of *(specify)*:
      under ☐ Code Civ. Proc., § 416.10 (corporation)
      ☐ Code Civ. Proc., § 416.20 (defunct corporation)
      ☐ Code Civ. Proc., § 416.40 (association or partnership)
      ☐ Code Civ. Proc., § 416.60 (minor)
      ☐ Code Civ. Proc., § 416.90 (individual)
      ☐ other *(specify)*:

5. a. Person serving *(name, address, and telephone number)*:
   b. ☐ **Fee** for service: $
   c. ☐ Not a registered California process server.
   d. ☐ Exempt from registration under Business and Professions Code, § 22350(b).
   e. ☐ Registered California process server.
      (1) ☐ Employee or independent contractor
      (2) Registration no. *(specify)*:
      (3) County *(specify)*:
      (4) Expiration *(date)*:

6. ☐ **I declare** under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
7. ☐ **I am a California sheriff or marshal** and I certify that the foregoing is true and correct.

Date:

▶ _____
(SIGNATURE OF PERSON SERVING)

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Source: Estate Planning/California Probate Workflow Manual Revised/5 Notices and Hearings/§5.23 J. Form: Summons (Probate) (Judicial Council Form DE-125)

§5.23 J. Form: Summons (Probate) (Judicial Council Form DE-125)

Print

DE-125

SUMMONS
(CITACION JUDICIAL)

PROBATE (JUICIO TESTAMENTARIO)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO: ***(Aviso a)***

FROM: ***(De)***

ESTATE OF: ***(Herencia de)***

A court proceeding has been started which may affect your interests in the estate. Read the document delivered with this *Summons*.	***La corte ha comenzado a tramitar una acción judicial testamentaria que puede afectar sus intereses sucesorios. Lea el documento enviado con esta citación judicial.***
You have *30 CALENDAR DAYS* after this summons is served on you to file at this court a typewritten response if you want to be heard by the court.	***Después de que le entreguen esta citación usted tiene un plazo de* 30 DIAS CALENDARIOS *para presentar en esta corte una respuesta escrita a máquina, si desea una audiencia ante la corte.***
A letter or phone call will not protect you. Your typewritten response must be in proper legal form if you want the court to consider it.	***Una carta o una llamada telefónica no le ofrecerá protección; su respuesta escrita a máquina tiene que cumplir con las formalidades legales apropiadas si usted quiere que la corte considere su caso.***
If you do not file your response on time, you may lose your right to participate in the proceeding or present your evidence. You will not receive another warning from the court.	***Si usted no presenta su respuesta a tiempo, puede perder su derecho a participar en el proceso juicial o a presentar sus pruebas. Usted no recibirá notificación adicional por parte de la corte.***
There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book) .	***Existen otros requisitos legales. Es posible que usted quiera llamar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de referencia de abogados o a una oficina de ayuda legal (vea el directorio telefónico).***

The name and address of the COURT is: *(El nombre y dirección de la CORTE es)*

CASE NUMBER: *(Número del caso)*

The name, address, and telephone number of the filing party's attorney, or the party without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del accionante, o del accionante que no tiene abogado, es)

DATE: *(Fecha)* Clerk, by *(Actuario)* _____, Deputy *(Delegado)*

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

a. ☐ as an individual.
b. ☐ on behalf of *(specify)*:
under: ☐ Code Civ. Proc., § 416.10 (corporation)
☐ Code Civ. Proc., § 416.20 (defunct corporation)
☐ Code Civ. Proc., § 416.40 (association or partnership)
☐ Code Civ. Proc., § 416.60 (minor)
☐ Code Civ. Proc., § 416.70 (conservatee)
☐ Code Civ. Proc., § 416.90 (individual)
☐ other *(specify)*:
c. ☐ by personal delivery on *(date)*:
(Proof of Service on reverse)

Form Approved by the Judicial Council of California
DE-125 [Rev. January 1, 1998]
Form Adopted for Mandatory Use

SUMMONS (Probate)

Probate Code, §§ 8250, 8271

Print

ESTATE OF *(Name)*: DECEDENT	CASE NUMBER:

PROOF OF SERVICE

1. At the time of service I was at least 18 years of age and not a party to this action, and **I served copies** of the *(specify documents)*:

2. a. Party served *(specify name of party as shown on the documents served)*:

   b. Person served: ☐ party in item 2a ☐ other *(specify name and title or relationship to the party named in item 2a)*:

   c. Address:

3. I served the party named in item 2
   a. ☐ **by personally delivering** the copies (1) on *(date)*: (2) at *(time)*:
   b. ☐ **by leaving** the copies with or in the presence of *(name and title or relationship to person indicated in item 2b)*:
      (1) ☐ **(business)** a person at least 18 years of age apparently in charge at the office or usual place of business of the person served. I informed him or her of the general nature of the papers.
      (2) ☐ **(home)** a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the person served. I informed him or her of the general nature of the papers.
      (3) on *(date)*: (4) at *(time)*:
      (5) ☐ A **declaration of diligence** is attached. *(Substituted service on natural person, minor, conservatee, or candidate.)*
   c. ☐ **by mailing** the copies to the person served, addressed as shown in item 2c, by first-class mail, postage prepaid,
      (1) on *(date)*: (2) from *(city)*:
      (3) ☐ with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. *(Attach completed form.)*
      (4) ☐ to an address outside California with return receipt requested. *(Attach completed form.)*
   d. ☐ **by causing copies to be mailed**. A declaration of mailing is attached.
   e. ☐ **other** *(specify other manner of service and authorizing code section)*:

4. The "Notice to the Person Served" (on the *Summons*) was completed as follows:
   a. ☐ as an individual defendant.
   b. ☐ as the person sued under the fictitious name of *(specify)*:
   c. ☐ on behalf of *(specify)*:
      under: ☐ Code Civ. Proc., § 416.10 (corporation)
      ☐ Code Civ. Proc., § 416.20 (defunct corporation)
      ☐ Code Civ. Proc., § 416.40 (association or partnership)
      ☐ Code Civ. Proc., § 416.60 (minor)
      ☐ Code Civ. Proc., § 416.70 (conservatee)
      ☐ Code Civ. Proc., § 416.90 (individual)
      ☐ other *(specify)*:

5. **Person serving** *(name, address, and telephone number)*:
   a. **Fee** for service: $
   b. ☐ Not a registered California process server.
   c. ☐ Exempt from registration under Business & Professions Code, § 22350(b).
   d. ☐ Registered California process server.
      (1) ☐ Employee or independent contractor
      (2) Registration No. *(specify)*:
      (3) County *(specify)*:
      (4) Expiration *(date)*:

6. ☐ **I declare** under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
7. ☐ **I am a California sheriff or marshal** and I certify that the foregoing is true and correct.

Date:

▶ _____
(SIGNATURE)

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§5.23A K. Notice Requirements for Amended or Supplemented Pleadings

An amended pleading or an amendment to a pleading requires the same notice of hearing as the pleading it amends. Cal Rules of Ct 7.53(a).

A supplement to a pleading does not require additional notice, but a copy of the supplement must be served if service of the original pleading was required, unless waived by the court. Cal Rules of Ct 7.53(b).

For definitions of the various types of pleadings, see §1.14A.

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Source: Estate Planning/California Probate Workflow Manual Revised/5 Notices and Hearings/ VII. SPECIAL NOTICE/ §5.24 A. Request for Special Notice

VII. SPECIAL NOTICE

§5.24 A. Request for Special Notice

When a request for special notice has been filed with the attorney or with the clerk, the legal assistant should make a note in the front of the estate file of the name, address, and any particulars about those actions for which the person has requested special notice. This information should be placed in the Probate Estate Record (see §1.6). Before any notice is sent, the legal assistant should first check the file to ascertain whether anyone is entitled to special notice.

Requests for special notices are discussed more thoroughly in California Decedent Estate Practice §§6.30-6.39 (2d ed Cal CEB 2009).

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Source: Estate Planning/California Probate Workflow Manual Revised/5 Notices and Hearings/§5.24A B. Form: Request for Special Notice (Judicial Council Form DE-154)

§5.24A B. Form: Request for Special Notice (Judicial Council Form DE-154)

Print

DE-154, GC-035

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, state bar number, and address)*: TELEPHONE AND FAX NOS.:	*FOR COURT USE ONLY*
ATTORNEY FOR *(Name)*:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
MATTER OF *(NAME)*: ☐ DECEDENT ☐ CONSERVATEE ☐ MINOR ☐ TRUST	
REQUEST FOR SPECIAL NOTICE	CASE NUMBER:

1. a. ☐ I am a person interested in this proceeding.
   b. ☐ I am the attorney for a person interested in this proceeding *(specify name of interested person)*:

2. I REQUEST SPECIAL NOTICE of *(complete only a or b)*
   a. ☐ the following matters *(check applicable boxes)*:
      (1) ☐ **all matters** for which special notice may be requested *(Do not check boxes (2)-(8).)*
      (2) ☐ inventories and appraisals of property, including supplements
      (3) ☐ accountings
      (4) ☐ reports of the status of administration
      (5) ☐ objections to an appraisal
      (6) ☐ petitions for the sale of property
      (7) ☐ *Spousal Property Petition* (form DE-221) (Prob. Code, § 13650)
      (8) ☐ other petitions: ☐ all petitions ☐ the following petitions *(specify)*:

   b. ☐ the following matters *(specify)*:

3. SEND THE NOTICES to
   a. ☐ the interested person at the following address *(specify)*:

   b. ☐ the attorney at the following address *(specify)*:

Date:

. . . . . (TYPE OR PRINT NAME)

▶ _____ (SIGNATURE)

☐ Attorney for person requesting special notice *(client's name)*:

(Continued on reverse)

Form Approved by the Judicial Council of California
DE-154, GC-035 [Rev. January 1, 1998]
Form Adopted for Mandatory Use

REQUEST FOR SPECIAL NOTICE (Probate)

Probate Code, §§ 1250, 2700(c), 17204

Print

MATTER OF *(Name)*:	CASE NUMBER:

NOTE: A formal proof of service or a written admission of service must accompany this *Request for Special Notice* when it is filed with the court.

You must have your request served on either the personal representative, conservator, guardian, or trustee, or his or her attorney, or obtain a signed *Admission of Service (see below)*.

PROOF OF SERVICE BY MAIL

1. I am over the age of 18 and not a party to this cause. I am a resident of or employed in the county where the mailing occurred.
2. My residence or business address is *(specify)*:

3. I served the foregoing *Request for Special Notice* on each person named below by enclosing a copy in an envelope addressed as shown below AND
   a. ☐ **depositing** the sealed envelope with the United States Postal Service with the postage fully prepaid.
   b. ☐ **placing** the envelope for collection and mailing on the date and at the place shown in item 4 following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

4. a. Date of deposit: b. Place of deposit *(city and state)*:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

. . . . . ▶ _____

(TYPE OR PRINT NAME) (SIGNATURE OF DECLARANT)

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

☐ List of names and addresses continued in attachment.

ADMISSION OF SERVICE

1. I am the ☐ personal representative, conservator, guardian, or trustee ☐ the attorney.

2. I ACKNOWLEDGE that I was served a copy of the foregoing *Request for Special Notice*.

Date:

. . . . . ▶ _____

(TYPE OR PRINT NAME) (SIGNATURE)

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Source: Estate Planning/California Probate Workflow Manual Revised/5 Notices and Hearings/§5.25 C. Recitals in Ex Parte Petitions

§5.25 C. Recitals in Ex Parte Petitions

An application for ex parte relief must identify all persons who have requested special notice, and it must allege that special notice has been given to or waived by each person who has requested it. Proof of service to the persons requesting special notice or a written waiver from each person must be filed with the application. Prob C §1220(b)-(c); Cal Rules of Ct 7.55(b)-(c). If no one has requested special notice, the application should contain a statement to that effect. See California Decedent Estate Practice §6.35 (2d ed Cal CEB 2009).

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§5.26 D. Waiver or Withdrawal of Request for Special Notice

If special notice of the hearing of an application within the purview of Prob C §§1250-1252 has not been sent to a person requesting it, the hearing must be continued or reset due to insufficient notice. That delay can be avoided if the person entitled to special notice is willing to waive notice on the specific petition. Notice may be waived by a writing signed by the person or the person's attorney and filed in the proceeding. Prob C §1204. The form in §5.27 may be used for that purpose, either as an endorsement on the petition or in a separate document. The waiver should be limited to a specific application; otherwise, it may be considered a general waiver or a withdrawal of the request.

Sometimes a request for special notice is made by a person who has only a temporary interest in the estate, such as a creditor who has presented or filed a claim and been paid. Such special notices may become a nuisance. If a person does not voluntarily withdraw the request for special notice after all reasons for giving notice have ceased to exist, he or she should be asked to withdraw it or, alternatively, counsel could move (after due notice) to have the notice stricken. The form (see §5.28) should be signed by the principal, rather than by the attorney, and should be filed with the court clerk.

The legal assistant should consult with the attorney before requesting that any person waive special notice or withdraw the request for special notice. If one who had requested special notice withdraws the request, a note should be made at the beginning of the file to that effect. See California Decedent Estate Practice §§6.36-6.38 (2d ed Cal CEB 2009).

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§5.27 1. Form: Waiver of Special Notice

[*Title of court*]

Estate of _ _[*name*]_ _**,**	)	**No.** _ _ _ _ _ _
	)	**WAIVER OF SPECIAL NOTICE**
Decedent	)	**OF**
	)	**PETITION FOR**
	)	_ __ _[*specify*]_ _
	)	**(PROBATE CODE §1204)**
_____	)	
		Hearing date:
		Time:
		Department:

_ _[*Name*]_ _**, who has filed a request for special notice under Probate Code §1250, hereby waives special notice of the time and place of the hearing on the petition for** _ _[*describe petition, report, account, etc.*]_ _**.**

Date: _ _ _ _ _ _ __[*Signature*]__
_ _[*Typed name*]_ _

Copies: Original for filing; copy for attorney for representative or person filing; office copies.

Comment: The waiver may also be signed by the attorney of the person requesting special notice.

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Source: Estate Planning/California Probate Workflow Manual Revised/5 Notices and Hearings/§5.28 2. Form: Withdrawal of Request for Special Notice

§5.28 2. Form: Withdrawal of Request for Special Notice

[*Title of court*]

Estate of _ _[*name*]_ _,	)	**No.** _ _ _ _ _ _
	)	
Decedent	)	**WITHDRAWAL OF REQUEST**
	)	**FOR**
	)	**SPECIAL NOTICE**
	)	**(PROBATE CODE §1251)**
_____	)	

_ _[*Name*]_ _**, who has filed a Request for Special Notice under Probate Code §1250, hereby withdraws and cancels the request for special notice for any further proceedings in the above-titled estate.**

Date: _ _ _ _ _ _ __[*Signature*]__
_ _[*Typed name*]_ _

Copies: Original for filing; copy for attorney for representative or person filing; office copies.

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Source: Estate Planning/California Probate Workflow Manual Revised/5 Notices and Hearings/§5.29 VIII. NOTICE OF PROPOSED ACTION

§5.29 VIII. NOTICE OF PROPOSED ACTION

The representative who has authority to proceed under the Independent Administration of Estates Act (Prob C §§10400-10592) must give a notice of certain actions he or she proposes to take, known as a notice of proposed action. For further discussion and forms, see §§9.12-9.27.

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IX. HEARING AND PROBATE RULINGS

§5.30 A. Rules of Procedure

See California Decedent Estate Practice §§25.69-25.93 (2d ed Cal CEB 2009) on which rules of procedure apply to probate proceedings.

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§5.31 B. Recording

The legal assistant should bear in mind that certified copies of certain court orders must be obtained and recorded. Orders setting apart homesteads, confirming sales or distribution of real property, or otherwise affecting the title of real property must be recorded in each county in which any part of the land lies; when recorded, the copies impart constructive notice of their contents. See Prob C §7263. If the property lies on or close to the county border, it is good practice to record the document in the neighboring county as well. Recording fees are generally not high, and the possibility that a property might lie partially in another county warrants the extra precaution.

There are also special provisions for recording in other probate proceedings, *e.g.,* Prob C §210 (establishing death).

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Source: Estate Planning/California Probate Workflow Manual Revised/5 Notices and Hearings/§5.32 C. Hearing Checklist

§5.32 C. Hearing Checklist

INSTRUCTIONS: This checklist should be used when a probate petition is filed for approval, whether or not a hearing is required. It may be adapted to local requirements. In no. 3, "RFA" means recommended for approval, following the usage of the Los Angeles County Court probate departments. See §1.35.

HEARING CHECKLIST

Office file no. _ _ _ _

Estate of _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ Petitioner _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _

Petition _

Hearing: _ _[*date and time*]_ _ **Dept.** _ _ _ _ _ _ _ _

	General Instructions		Attorney's Instructions
1. Filing			
___	**File petition with court with self-addressed envelope, check for filing fee and for clerk order fee, and include extra self-addressed envelope if clerk order.**	___	**Also file _____**
___	**Clerk order, if applicable.**	___	**Attorney to prepare order.**
		___	**Secretary or legal assistant to draft order.**
2. Hearing date received			
___	**Enter on hearing list or calendar.**		
___	**Serve notice by mail on usual service list.**		
___	**Serve special notice on those who requested it. See §5.23.**		**Serve additional notice by mail or personal service on _____**
___	**Inform client by cover letter of hearing date. See §5.33. Inform whether client should appear.**		**_____**
___	**Make sure any proofs of publication or posting are on file.**		
3. Calendar notes			
___	**Calendar notes received.**		**_____**
___	**If RFA, submit original of order to court. If not RFA, try to clear notes with probate attorney.**		**_____ _____ _____ _____**
___	**Submit original order.**		
___	**Follow up if clerk order not received in 10 days.**		
4. After order signed			
___	**Conform all copies of order.**		**_____**
___	**Order ___ plain copies.**		**_____**
___	**Order ___ certified copies; enclose check.**		**_____**

___ **Bill client for fees shown in order, if any; prepare draft bill for costs and submit to attorney.**

___ **Record order in _____ County**

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Source: Estate Planning/California Probate Workflow Manual Revised/5 Notices and Hearings/§5.33 D. Form: Memorandum to Clerk of Court Submitting Prepared Order

§5.33 D. Form: Memorandum to Clerk of Court Submitting Prepared Order

INSTRUCTIONS: Although in many counties the proposed order should be submitted before the hearing date, in others it may not be submitted until the hearing date or later. Check current local rules in California Local Probate Rules (Cal CEB Annual) for more specific requirements.

Copies: Original to clerk of court; office copies.

_ _[*date*]_ _
Estate of _ _ _ _ _ _ _ _ _
Court case no. _ _ _ _ _
Office file no. _ _ _ _ _

TO: Clerk of _ _ _ _ _ _ _ _ _ County

Attention: _ _ _ _ _ _ _ _ _ _ _

FROM: _ _ _ _ _ _ _ _ _ _ _ _ _ _ _

Enclosed are_____

_____

The hearing on this matter is set for _ _[*time, date, department*]_ _.

We would like to submit this matter on the verified petition and would appreciate your presenting the original of the enclosed to the Judge sitting in probate on the date of the hearing.

When the original has been signed, please file it and:

[ ] Conform all the enclosed copies and return them to us in the enclosed envelope.

[ ] Please certify _ _ _ _ copy(ies).

[ ] Check _ _[*not to exceed/for*]_ _, $_ _ _ _ _ _ enclosed.

_ _[*If you wish further information on this matter, or if the Judge will require the presence of the petitioner or an attorney from this office at the hearing, please telephone the undersigned collect at _ _ _ _ _ _.*]

Very truly yours,

__[*Signature of attorney*]__
_ _[*Typed name*]_ _

Enclosures

Comment: In smaller counties the court may notify the attorney if an appearance is required; in most counties, however the attorney must check the tentative ruling.

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Source: Estate Planning/California Probate Workflow Manual Revised/5 Notices and Hearings/§5.34 E. Form: Cover Note to Representative Regarding Hearing

§5.34 E. Form: Cover Note to Representative Regarding Hearing

INSTRUCTIONS: This cover note may be adapted to the particular petition and hearing. The note should state whether the representative must appear at the hearing.

Copies: Original to personal representative; office copies.

_ _[*date*]_ _
Estate of _ _ _ _ _ _ _ _ _ _
Court case no. _ _ _ _ _
Office file no. _ _ _ _ _

Re: _ _ _ _ _ _ _ _

Dear _ _ _ _ _ _ _ _:

I am enclosing a notice of the hearing for your petition for _ _[*e.g., probate of the will of the above-named decedent and for the appointment of an executor*]_ _**.** _ _[*I am also enclosing a copy of the decedent's will*]_ _**.**

Please note that the hearing is set for _ _[*date, time, Dept. _ _ _, and address of superior court*]_ _**. You** _ _[*are/are not*]_ _ **required to be present.**

_ _[*E.g., I shall meet you outside the courtroom at 9:30 a.m.*]_ _**.**

Very truly yours,

__[*Signature of attorney*]__
_ _[*Typed name*]_ _

Enclosure

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6

Summary Administration

I. [§6.1] GENERAL INSTRUCTIONS

II. [§6.2] CHART: COMPARISON OF ALTERNATIVE METHODS

III. COLLECTION OF CALIFORNIA PERSONAL PROPERTY UNDER PROB C §§13100-13116
- A. [§6.3] Statutory Requirements
- B. [§6.4] Valuation and Limitations
- C. [§6.5] Collection by Declaration
- D. [§6.6] Declaration Under Prob C §13101
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- A. [§6.7] Automobiles and Other Vehicles
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- B. [§6.8] Boats and Other Vessels
- C. [§6.8A] Manufactured Home, Mobilehome, Commercial Coach, Truck Camper, or Floating Home
- D. [§6.8B] Form: Certificate for Transfer Without Probate (Department of Housing and Community Development Form HCD 475-2)

V. [§6.9] OTHER BENEFITS

VI. COLLECTION OF SALARY OR OTHER COMPENSATION BY SURVIVING SPOUSE OR DOMESTIC PARTNER
- A. [§6.10] Collection Under Prob C §§13600-13606
- B. [§6.11] Form: Declaration to Collect Compensation Owed to Deceased Spouse or Registered Domestic Partner (Prob C §§13600-13606)

VII. SETTING ASIDE ESTATES NOT EXCEEDING $20,000 (PROB C §§6600-6615)
- A. [§6.12] Statutory Requirements
- B. [§6.13] Form: Petition to Set Aside and Assign Estate
- C. [§6.14] Notice of Hearing
- D. [§6.15] Form: Order Setting Aside Estate and Assigning Estate

VIII. PROPERTY PASSING TO SURVIVING SPOUSE OR DOMESTIC PARTNER (PROB C §§13500-13660)
- A. [§6.16] Statutory Requirements
- B. [§6.17] Form: Spousal/Domestic Partner Property Petition (Judicial Council Form DE-221)
- C. [§6.18] Notice of Hearing
- D. [§6.19] Form: Spousal/Domestic Partner Property Order (Judicial Council Form DE-226)

IX. DETERMINING SUCCESSION TO REAL PROPERTY OF SMALL ESTATE (PROB C §§13150-13158)
- A. [§6.20] Statutory Requirements
- B. [§6.21] Form: Petition to Determine Succession to Real Property (Estates $100,000 or Less) (Judicial Council Form DE-310)
- C. [§6.22] Notice of Hearing
- D. [§6.23] Form: Order Determining Succession to Real Property (Estates $100,000 or Less) (Judicial Council Form DE-315)

X. AFFIDAVIT PROCEDURE TO TRANSFER REAL PROPERTY OF SMALL VALUE (PROB C §§13200-13210)
- A. [§6.24] Statutory Requirements
- B. [§6.25] Form: Affidavit re Real Property of Small Value ($20,000 or Less) (Judicial Council Form DE-305)

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§6.1 I. GENERAL INSTRUCTIONS

When it is determined that the value of the decedent's estate is small, or that it consists of property passing to the surviving spouse or registered domestic partner (Fam C §297.5; see §6.16), counsel should consider whether summary administration proceedings should be brought rather than formal probate administration. The summary procedures reduce administrative expenses and the time required to transfer the decedent's property to persons entitled to it. There are five methods of summary administration covered on this chart. The chart explains when and how to use them. A sixth method governing procedures by which a spouse or registered domestic partner can obtain up to $5000 (plus cost of living increases) in unpaid earnings of the deceased spouse or registered domestic partner is discussed in §6.10. A brief outline of the substantive law is stated in the following sections. The cross-references in the chart are to sections of California Decedent Estate Practice, chap 3 (2d ed Cal CEB 2009), in which the substantive law is discussed more fully.

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Source: Estate Planning/California Probate Workflow Manual Revised/6 Summary Administration/§6.2 II. CHART: COMPARISON OF ALTERNATIVE METHODS

§6.2 II. CHART: COMPARISON OF ALTERNATIVE METHODS

	Prob C §§13100-13116 (see §§6.3-6.6)	Prob C §§6600-6615 (see §§6.12-6.15)	Prob C §§13500-13660 (see §§6.16-6.19)	Prob C §§13150-13158 (see §§6.20-6.23)	Prob C §§13200-13210 (see §§6.24-6.25)
1. Who may obtain property	Heirs, beneficiaries, or successors as specified in Probate Code; see California Decedent Estate Practice §§3.6, 3.13, 3.16 (2d ed Cal CEB 2009)	Surviving spouse, whether remarried or not, (or registered domestic partner; see §4.1) or minor children; see Decedent Estate Prac §4.83	Surviving spouse (or registered domestic partner; see §4.1); see Decedent Estate Prac §§4.41-4.43	Successor in interest to decedent's real property; see Decedent Estate Prac §3.6	Successor in interest to decedent's real property; see Decedent Estate Prac §§3.48-3.53
2. Decedent's estate to be transferred	Personal property only, including unpaid salary and motor vehicle; see Decedent Estate Prac §§3.25-3.28	Real and personal property; see Decedent Estate Prac §4.83	All decedent's interest in separate, community, and quasi-community property that passes to surviving spouse (or registered domestic partner; see §4.1) outright ($5000 (adjusted annually for cost of living increases) in earnings owed to decedent, unlimited for certain firefighters or peace officers; Prob C §13600(d)-(e)); see Decedent Estate Prac §§4.41-4.43	Real and personal property (but not personal property alone)	Real property
3. Maximum value of estate transferred	$100,000 gross	$20,000 net	No value limitation	$100,000 gross	$20,000 gross
4. Other estate owned by decedent	None in California; but see Decedent Estate Prac §3.11 for salary and sums due from the armed services, and motor vehicle, vessel, manufactured home, mobilehome, truck camper, or commercial coach or floating home exclusion, and Decedent Estate Prac §3.5 for exclusion of life and joint interests, and community and quasi-community property	Not applicable	Not applicable	Total estate in California cannot exceed $100,000 (excluding property described in Prob C §13050; see §6.4)	No other real property in California (other than real property described in Prob C §13050)
5. Is property not subject to probate administration included in 4?	No; see Decedent Estate Prac §3.5	No	No	Yes	Yes
6. Is summary administration available if transferee also receives property not subject to probate administration from decedent?	Yes; see Decedent Estate Prac §§3.5	Yes; see Decedent Estate Prac §4.79	Yes	Yes	Yes
7. Procedure to collect	Submit affidavit or declaration to holder of property; see Decedent Estate Prac §3.18	File petition and obtain court order; see Decedent Estate Prac §§4.83-4.94	File petition and obtain court order; see Decedent Estate Prac §§4.59-4.67. Use affidavit for earnings	File petition and obtain court order	File affidavit along with inventory and appraisal by probate referee; record certified copy

8. Is transferee liable for decedent's debts?	To extent of property received [up to 3 times fair market value plus net income received]; see Decedent Estate Prac §§3.30-3.34	Only for liens at date of death on property received [liable for unsecured debts with limitations]; see Decedent Estate Prac §4.82	Yes, for a proportionate share of the debts chargeable to the separate, community, and quasi-community property, see Decedent Estate Prac §4.69	Yes, to extent of fair market value of property received	Yes, to extent of fair market value of property received

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III. COLLECTION OF CALIFORNIA PERSONAL PROPERTY UNDER PROB C §§13100-13116

§6.3 A. Statutory Requirements

Collection without administration: When the current gross fair market value of the decedent's California estate, including both real and personal property, does not exceed $100,000, the successor of the decedent may collect the decedent's tangible personal property, money, debts owed the decedent, and other intangible personal property by the affidavit procedure described in Prob C §§13100-13116.

Probate Code §13005 makes clear that this affidavit procedure may be used to collect property, such as life insurance and retirement plan benefits, that becomes part of the decedent's estate on the decedent's death. The procedure cannot be used until at least 40 days after the date of the decedent's death. Prob C §13100.

For purposes of this procedure, the successors of a testate decedent are either the sole beneficiary under the will or all the beneficiaries who succeed to a particular item of property (as defined in Prob C §13004). Prob C §13006(a). If the decedent died intestate, the successors are the heirs under Prob C §§6401 and 6402. Prob C §13006(b).

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§6.4 B. Valuation and Limitations

Although the affidavit procedure of Prob C §§13100-13116 may be used if the decedent owned real property in California within the dollar limitations described in §6.3, real property cannot be transferred by this procedure.

The $100,000 limitation does not include a number of different types of property in which the decedent had an interest, including certain multiple-party accounts, vehicles, boats, manufactured homes, mobilehomes, commercial coaches, truck campers, and registered floating homes. Prob C §13050(b). Amounts due the decedent for service in the armed forces of the United States, and up to $5000 of compensation for personal services from any employment (Prob C §13050(c)), joint tenancy property, property in which the decedent had a life or other interest terminable on the decedent's death or that passed to the surviving spouse or registered domestic partner without administration under Prob C §13500; Fam C §297.5, and property held in a revocable trust by the decedent during his or her lifetime (Prob C §13050(a)) are also excluded. Only the decedent's one-half interest in community and quasi-community property is included in determining whether the estate is within the $100,000 limit. See California Decedent Estate Practice §4.81 (2d ed Cal CEB 2009). For more detailed discussion of the assets that are excludable for purposes of computing the size of the decedent's estate, see Decedent Estate Prac §3.5.

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Source: Estate Planning/California Probate Workflow Manual Revised/6 Summary Administration/§6.5 C. Collection by Declaration

§6.5 C. Collection by Declaration

Persons who are entitled to do so may collect assets under Prob C §§13100-13116 by presenting a declaration to the holder of the decedent's property, who must then transfer all evidence of interest or right. See California Decedent Estate Practice §§3.20-3.23 (2d ed Cal CEB 2009).

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§6.6 D. Declaration Under Prob C §13101

The declaration in §6.6A complies with Prob C §13101. No part of it should be omitted without first consulting Prob C §13101 and the attorney. It should be signed by all successors entitled to the particular property sought to be transferred. The property should be fully described. If it consists of securities, the certificate numbers should be stated. Because some recipients will not be familiar with this procedure, copies of Prob C §§13000-13116 should be supplied to the holder along with the declaration. The declaration must be accompanied by a certified copy of the death certificate. Prob C §13101(c). If the estate includes real property, the declaration must be accompanied by an inventory and appraisal of the real property completed by a probate referee. Prob C §13103. If the decedent had a will, it may be advisable to include a copy of the will, even though that is not required.

Probate Code §13104 states very particular requirements for identifying the successor to the holder. A notary public's certificate of acknowledgment identifying the person executing the declaration is reasonable proof of identity. Prob C §13104(e).

If the person executes the declaration in the holder's presence, the holder may rely on any of the following as reasonable proof of identity (Prob C §13104(c)-(d)):

- A written statement under penalty of perjury by a person personally known to the holder affirming the identity of the person signing the declaration;
- A current California identification card or driver's license;
- A current U.S. passport;
- A current out-of-state driver's license or identification card, foreign passport stamped by the INS, or United States armed forces identification card, if it contains a photograph and description of the person, is signed by the person, and bears an identifying number.

If anything other than the notary acknowledgment on the declaration is used for purposes of meeting the identification requirement, the holder must note on the declaration itself a description of the identification provided. Prob C §13104(f).

If the holder of the property would have been entitled to see the decedent's evidence of ownership before transferring the property, that evidence of ownership must be presented to the holder along with the declaration by the successor. If that evidence is not presented, the holder can require a bond, undertaking, or indemnification agreement with the successor. See Prob C §13102. The indemnity clause in paragraph 12 of form 6.6A-1 should be used only if the holder will not otherwise transfer the property.

In summary, the surest method of collecting assets using this declaration is to prepare the declaration, have all the successors sign it before a notary public, and present it to the holder along with a certified copy of the decedent's death certificate, the evidence of ownership, copies of the relevant statutes, and (if there is real property in the estate) a copy of an inventory and appraisal of the real property.

If the property to be transferred is a debt or other obligation secured by a lien on real property (*e.g.,* note secured by deed of trust), and if the instrument creating the lien has been recorded, a declaration under Prob C §§13100-13116 may be used to transfer title, but the additional requirements of Prob C §13106.5 must also be followed.

Probate Code §13106.5 requires the declaration to include (1) the recording reference of the instrument creating the lien, and (2) a notary public's certificate of acknowledgment identifying each person signing the declaration. The declaration is then recorded in the county where the instrument creating the lien has been recorded.

On the effect of furnishing the declaration, see California Decedent Estate Practice §3.26 (2d ed Cal CEB 2009).

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Source: Estate Planning/California Probate Workflow Manual Revised/6 Summary Administration/§6.6A E. Form: Declaration Under Prob C §§13100-13116

§6.6A E. Form: Declaration Under Prob C §§13100-13116

Declaration Under Probate Code §§13100-13116

The undersigned hereby declare(s):

1. _ _[*I/We*]_ _ make this declaration to induce _ _[*holder of property*]_ _ to transfer to _ _[*me/us*]_ _ the property described below under California Probate Code §§13100-13116.

2. _ _[*Name of decedent*]_ _ died at _ _ _ _ _ _, while domiciled in the City of _ _ _ _ _ _, _ _ _ _ _ _ County, California, on _ _[*date*]_ _, leaving _ _[*a/no*]_ _ will.

3. At least 40 days have elapsed since the death of the decedent, as shown in a certified copy of the decedent's death certificate attached to this affidavit or declaration.

[*Add one of the following alternatives*]

[*Alternative 1: No California administration*]

4. No proceeding is now being or has been conducted in California for administration of the decedent's estate.

[*Alternative 2: Consent of personal representative*]

4. The decedent's personal representative has consented in writing to the payment, transfer, or delivery to the declarant of the property described in the declaration. Copies of the written consent and the personal representative's letters are attached hereto.

[*Continue*]

5. The current gross fair market value of the decedent's real and personal property in California, excluding the property described in California Probate Code §13050, does not exceed one hundred thousand dollars ($100,000) and includes the following. _ _[*Describe the property to be transferred with sufficient detail to be identifiable*]_ _.

[*If the estate includes real property located in California, add the following*]

An inventory and appraisal by a California Probate Referee of California real property included in the decedent's estate is attached to this _ _[*declaration/affidavit*]_ _.

[*Continue*]

[*Add one of the following alternatives*]

[*Alternative 1: Undersigned is the successor*]

6. The declarant(s) _ _[*is/are*]_ _ the successor of the decedent (as defined in California Probate Code §13006) to the decedent's interest in the described property.

[*Alternative 2: Undersigned is authorized to act on successor's behalf*]

6. The declarant(s) _ _[*is/are*]_ _ authorized under California Probate Code §13051 to act on behalf of the successor of the decedent (as defined in California Probate Code §13006) with respect to the decedent's interest in the described property.

[*Continue*]

[*Add one of the following alternatives*]

[*Alternative 1: No other person has right to property*]

7. No other person has a superior right to the interest of the decedent in the described property.

[*Alternative 2: Property is an obligation secured by real property under a recorded document*]

7. The property described in paragraph 5 above is an obligation owed to the decedent secured by a lien on real property under a document recorded at _ _[*give recording reference of the document creating the lien*]_ _ of the official records of _ _[*name*]_ _ County, California.

[*Continue*]

8. _ _[*My/Our*]_ _ name(s) and address(es), relationship(s) to the decedent, and age(s) are as follows: _ _[*List*]_ _.

9. The declarant(s) request(s) that the described property be paid, delivered, or transferred to the declarant(s).

[*If applicable, add the following option*]

[*Option: Indemnity clause*]

10. _ _[*I/We jointly and severally*]_ _ **agree to hold** _ _[*name of property holder*]_ _ **free and harmless and indemnify** _ _[*him/her/it*]_ _ **against all liability, claims, demands, loss, damages, costs, and expenses whatsoever that** _ _[*he/she/it*]_ _ **may incur because of the transfer, payment, or delivery to** _ _[*me/us*]_ _ **of the property.**

[*Continue*]

11. The declarant(s) affirm(s) or declare(s) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _ _ _ _ _ _ __[*Signature*]__
_ _[*Typed name*]_ _

_ _[*Verification; see §§1.21-1.22*]_ _

[*If applicable, add the following option*]

[*Option: Property is an obligation secured by real property under a recorded instrument*]

ACKNOWLEDGMENT

State of California)
County of _ _[*name of county*]_ _ **)**

On _ _[*date*]_ _ **before me,** _ _[*name and title of officer*]_ _**, personally appeared** _ _[*name(s)*]_ _**, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.**

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

__[*Signature of officer*]__ [*Officer's seal*]

Copies: Original for party holding property; notarized original to record in each county where a recorded lien exists against real property; copies for each claimant; office copies. All declarants should sign the declaration.

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IV. TRANSFER OF SPECIAL PROPERTY INTERESTS

§6.7 A. Automobiles and Other Vehicles

When registration is not held in joint tenancy (see §4.9) or beneficiary form (see §4.31), the Department of Motor Vehicles (DMV) requires that the Affidavit for Transfer Without Probate (Reg 5) (see §6.7A) and a Statement of Facts (Reg 256) (see §6.7B) be used to transfer ownership of the vehicle to the heirs or beneficiaries of the decedent. (Note that the form can be used for vehicles of any value; there is no dollar limitation.) A certified copy of the death certificate is not presently required.

The DMV form seems to be a curious amalgam of Probate Code and Vehicle Code sections. For example, the form requires a 40-day waiting period as in Prob C §13100 affidavits and the Vehicle Code sections relating to other vessels, but the specific statute governing transfers of vehicles without probate (Veh C §5910) provides for transfer "upon the death of the owner." For further illustration of the confusion, note that the decedent's successor is required by the form to state that he or she "is the heir pursuant to Probate Codes 6401 and 6402" (which are the intestacy rules), but is also given the option of checking a box that states he or she is the beneficiary under the decedent's will. In any event, the form is required by the DMV—no custom-drafted substitutes will be accepted. Because the form is required to be submitted under penalty of perjury, and the date of death and date of submission are both evident from the face of the form, it appears that, as a practical matter, a 40-day wait is necessary.

Along with the form, the successor (or the legal assistant if the transfer is being handled through the law office) must present to the DMV all the following (Veh C §5910):

- Certificate of ownership;
- Registration card, if available (otherwise, a fee will be charged for a duplicate);
- Names and addresses of other heirs and beneficiaries, if required by the DMV; and
- Smog certificate (not required if transfer is to child, grandchild, spouse, sibling, parent, or grandparent (Veh C §4000.1(d)(2)).

The DMV also requires an odometer disclosure statement and the transfer fee. See the DMV website at http://www.dmv.ca.gov/pubs/brochures/howto/htvr2.htm for more information.

AUTHOR'S ADVICE: The attorney should have the client handle transfers of vehicles. There is usually no need for a lawyer to be involved. The transferee's automobile club also may be willing to assist in transferring title.

For further discussion, see California Decedent Estate Practice §10.29 (2d ed Cal CEB 2009).

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§6.7A 1. Form: Affidavit for Transfer Without Probate, California Titled Vehicle or Vessels Only

Print

STATE OF CALIFORNIA DMV DEPARTMENT OF MOTOR VEHICLES

A Public Service Agency

AFFIDAVIT FOR TRANSFER WITHOUT PROBATE CALIFORNIA TITLED VEHICLE OR VESSELS ONLY

VEHICLE OR HULL IDENTIFICATION NO.	VEHICLE LICENSE PLATE NO. OR VESSEL CF NO.
FOR MOTORCYCLES ONLY Engine No.	MAKE OF VEHICLE OR VESSEL BUILDER

The undersigned states that:

_____ the owner of the

above described vehicle or vessel died on _____ ,
DATE

in _____
PLACE OF DEATH

that said decedent left no other property necessitating probate and no probate proceeding is now being or had been conducted in this state for the decedent estate, that there are no creditors of the deceased whose claims remain unsatisfied, that the undersigned is the heir pursuant to Probate Code §§6401 and 6402, bearing the relationship to the decedent of:

- ☐ Sole person or persons who succeeded to the property of the decedent.
- ☐ Conservator or guardian of the property of the sole person or persons who succeeded to the property of the decedent.
- ☐ Beneficiary under the decedent's last will and testament and has the right to have title to the vehicle transferred to his/her name without probate proceedings.
- ☐ Trustee, under trust agreement by the deceased, in which the primary beneficiaries are the next of kin.

Vehicles and vessels may be transferred if 40 days have elapsed since the death of the registered or legal owner and applicant is the heir pursuant to Probate Code §§6401 and 6402.

The person who secures transfer of this vehicle is subject to the provisions of Sections 13109 through 13113 inclusive, of the Probate Code to the same extent as a person to whom transfer of property is made.

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATE	SIGNATURE X
DAYTIME TELEPHONE NO. ( )	PRINT TRUE FULL NAME

REG 5 (REV. 2/2007) WWW

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Source: Estate Planning/California Probate Workflow Manual Revised/6 Summary Administration/§6.7B 2. Form: Statement of Facts

§6.7B 2. Form: Statement of Facts

Print

A Public Service Agency

STATEMENT OF FACTS

Complete the appropriate section(s) in full (including vehicle description) and sign Section H.

LICENSE PLATE/CF NUMBER	VEHICLE/VESSEL ID NUMBER	YEAR/MAKE

A. STATEMENT FOR USE TAX EXEMPTION

This transfer is exempt from use tax because it is a:

☐ Family transfer sold between a parent, child, grandparent, grandchild, spouse, domestic partner, or siblings (if both are minors related by blood or adoption).

☐ Addition or deletion of family member (spouse, domestic partner, parent[s], son/daughter, grandparents, grandchildren).

☐ Gift (does not include vehicles traded between individuals, transfer of contracts or other valuable consideration).

☐ Court Order ☐ Inheritance

NOTE: The Use Tax Exemption cannot be claimed if the vehicle/vessel being transferred was purchased from an otherwise qualifying relative who is engaged in the business of selling the same type of vehicle/vessel.

The current market value is: $_____ .

B. STATEMENT FOR SMOG EXEMPTION

The vehicle does not require a smog certification for transfer of ownership because:

☐ The last smog certification was obtained within the last 90 days.

☐ It is powered by: ☐ electricity ☐ diesel ☐ Other _____.

☐ It is located outside the State of California. (Exception: Nevada and Mexico)

☐ It is being transferred from/between:

- ☐ The parent, grandparent, child, grandchild, brother, sister, spouse, or domestic partner (as defined in Family Code §297) of the transferee.*
- ☐ A sole proprietorship to the proprietor as owner.*
- ☐ Companies whose principal business is leasing vehicles. There is no change in lessee or operator.*
- ☐ Lessor and lessee of vehicle, and no change in the lessee or operator of the vehicle.*
- ☐ Lessor and person who has been lessee's operator of the vehicle for at least one year.*
- ☐ Individual(s) being added as registered owner(s).*

* Does not require smog certification unless Biennial Smog is required.

C. STATEMENT FOR TRANSFER ONLY OR TITLE ONLY

This vehicle has not been used or parked on a street or highway or off-highway. I am applying for a:

☐ **Transfer Only** ☐ **Title Only**

The vehicle is not currently registered. It has not been driven, moved, towed, or left standing on any California public highway to cause registration fees to become due. It was not transported over any California public highway or operated within California to cause off-highway fees to become due. Appropriate registration will be obtained before the vehicle is operated.

D. WINDOW DECAL FOR WHEELCHAIR LIFT OR WHEELCHAIR CARRIER

Enter your Disabled Person License Plate, or Disabled Veteran License Plate, or Permanent Disabled Person Parking Placard number below:

DISABLED PERSON PLATE	DISABLED VETERAN PLATE	PERMANENT DISABLED PERSON PLACARD

The vehicle to which my Window Decal will be affixed is:

LICENSE NUMBER	VEHICLE MAKE	VEHICLE ID NUMBER

Mail to:

NAME

ADDRESS

CITY STATE ZIP

REG 256 (REV. 8/2008) WWW

Print

STATEMENT OF FACTS

Complete the appropriate section(s) in full (including vehicle description) and sign Section H.

LICENSE PLATE/CF NUMBER	VEHICLE/VESSEL ID NUMBER	YEAR/MAKE

E. STATEMENT FOR VEHICLE BODY CHANGE (OWNERSHIP CERTIFICATE REQUIRED)

The current market value of the vehicle or vessel is: $_____ .

Changes were made at a cost of $_____ on this date _____ .

This is what I changed: ***Check all that apply:***

- ☐ Unladen Weight changed because _____ (Public Weighmaster Certificate is required. Exception: Trailers)
- ☐ Motive Power changed from _____ to _____ .
- ☐ Body Type changed from _____ to _____ .
- ☐ Number of Axles changed from _____ to_____ .

F. NAME STATEMENT (OWNERSHIP CERTIFICATE REQUIRED)

Please print

- ☐ I, _____ and _____ are one and the same person.
- ☐ My name is misspelled. Please correct it to: _____
- ☐ I am changing my name from _____ to _____

G. STATEMENT OF FACTS

I, the undersigned, state:

H. APPLICANT'S SIGNATURE

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

PRINTED LAST NAME	FIRST NAME	MIDDLE NAME	DAYTIME PHONE NUMBER
			( )

SIGNATURE DATE

X _____

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Source: Estate Planning/California Probate Workflow Manual Revised/6 Summary Administration/§6.8 B. Boats and Other Vessels

§6.8 B. Boats and Other Vessels

To transfer title to a boat or other vessel registered in California that is not held in joint tenancy (see §4.9) or beneficiary form (see §4.31), the same DMV form in §6.7 may be used. Unlike the procedures for transferring a vehicle under Veh C §5910, for boats and other vessels there is a 40-day waiting period from the death of the owner. Veh C §9916.

Along with the form, the successor (or the legal assistant if the transfer is being handled through the law office) must present to the DMV the following (Veh C §9916):

- Certificate of ownership, if available;
- Certificate of registration, if available;
- Decedent's death certificate, if required by the DMV;
- The names and addresses of other heirs and beneficiaries, if required by the DMV;
- Transfer fees and sales tax, if required.

If a boat or other vessel is registered with the United States Coast Guard, the form in §6.6 should be used and the additional documentation completed as required by that agency.

For further discussion, see California Decedent Estate Practice §§2.56, 32.26 (2d ed Cal CEB 2009).

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Source: Estate Planning/California Probate Workflow Manual Revised/6 Summary Administration/§6.8A C. Manufactured Home, Mobilehome, Commercial Coach, Truck Camper, or Floating Home

§6.8A C. Manufactured Home, Mobilehome, Commercial Coach, Truck Camper, or Floating Home

Similar procedures exist under Health & S C §18102 to transfer title to manufactured homes, mobilehomes, commercial coaches, truck campers, or floating homes that are registered with the Department of Housing and Community Development, Division of Codes and Standards, Registration and Titling Section. The heirs or beneficiaries must present to the Department the following (Health & S C §18102):

- Certificate of title and registration card, if available (or Application for Duplicate Certificate of Title and Application for Duplicate Registration Card);
- A photocopy of the decedent's certified death certificate;
- The names and addresses of other heirs and beneficiaries, if required by the Department; and
- Certificate for Transfer Without Probate (see form in §6.8B), available from the Registration and Titling Section, which satisfies the declaration requirements of §18102.

Other forms that may be required to transfer a manufactured home, mobilehome, etc., can be obtained from the Registration and Titling Section, *e.g.,* "Statement of Facts—Use Tax Exemption" (for manufactured homes, etc., transferred without consideration or received as the result of an inheritance), "Statement of Facts—Smoke Detector," and "Statement of Facts—Designation of Trustee(s)."

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Source: Estate Planning/California Probate Workflow Manual Revised/6 Summary Administration/§6.8B D. Form: Certificate for Transfer Without Probate

§6.8B D. Form: Certificate for Transfer Without Probate

Print

STATE OF CALIFORNIA
BUSINESS, TRANSPORTATION AND HOUSING AGENCY
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF CODES AND STANDARDS
REGISTRATION AND TITLING PROGRAM

CERTIFICATE FOR TRANSFER WITHOUT PROBATE

SECTION I. DESCRIPTION OF UNIT

This unit is a (check one):

☐ Manufactured Home, Mobilehome, Multi-family Manufactured Home ☐ Commercial Modular ☐ Truck Camper ☐ Floating Home

The Decal (License) Number(s) is: _____

The Trade Name is: _____

The Serial Number(s) is: _____

SECTION II. DECEDENT INFORMATION

In compliance with Section 18102 of the California Health and Safety Code, I/We the undersigned hereby state that:

_____
(Name of Decedent)

the owner of the above-described unit died on _____
(Date of Death)

at _____
(Place of Death, City and State or Province and Country, etc.)

That said deceased left no other property necessitating probate and no probate proceeding is now being or has been conducted in this state for the decedent's estate; that said unit has not been by will bequeathed to anyone else; that the undersigned is entitled to the above described unit as either the sole heir or heirs pursuant to 6401 and 6402 of the California Probate Code or as the sole beneficiary or beneficiaries under the decedent's last will, and that no one has a right to the decedent's said unit that is superior to that of the undersigned; that forty (40) days have elapsed since death and that there are no creditors of the deceased whose claims remain unsatisfied.

SECTION III. HEIR OR BENEFICIARY CERTIFICATION

I/We certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____ *(Date)* at _____ *(City)* *(State)*

Signature of each heir or beneficiary	Printed name of each heir or beneficiary
_____	_____
_____	_____
_____	_____
_____	_____

Address _____
Street Address or P.O. Box *City* *State* *Zip*

Statutory requirements appear on the reverse side of this form.

THIS FORM MAY ONLY BE USED TO TRANSFER UNITS TITLED IN CALIFORNIA. UNITS TITLED BY OTHER STATES MUST COMPLY WITH THE PROBATE LAW OF THE STATE, WHICH ISSUED THE TITLE.

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Section 18102 of the California Health and Safety Code had been reproduced (below) for informational purposes regarding the application of law as it pertains to transfers without probate.

18102. (a) If 40 days have elapsed since the death of a registered or legal owner of a manufactured home, mobilehome, commercial modular, truck camper, or floating home registered under this part, without the decedent leaving other property necessitating probate, and irrespective of the value of the manufactured home, mobilehome, commercial modular, truck camper, or floating home, the following person or persons may secure a transfer of registration of the title or interest of the decedent:

(1) The sole person or all of the persons who succeeded to the property of the decedent under Sections 6401 and 6402 of the Probate Code, unless the manufactured home, mobilehome, commercial modular, truck camper, or floating home is, by will, otherwise bequeathed.

(2) The sole beneficiary or all of the beneficiaries who succeeded to the manufactured home, mobilehome, commercial modular, truck camper, or floating home under the will of the decedent, where the manufactured home, mobilehome, commercial modular, truck camper, or floating home is by will so bequeathed.

(b) The person authorized by subdivision (a) may secure a transfer of registration of the title or interest of the decedent upon presenting to the department all of the following:

(1) The appropriate certificate of title and registration card, if available.

(2) A certificate of the heir or beneficiary under penalty of perjury containing the following statements:

(A) The date and place of the decedent's death.

(B) The decedent left no other property necessitating probate and no probate proceeding is now being or has been conducted in this state for the decedent's estate.

(C) The declarant is entitled to the manufactured home, mobilehome, commercial modular, truck camper, or floating either (i) as the sole person or all of the persons who succeeded to the property of the decedent under Sections 6401 and 6402 of the Probate Code if the decedent left no will or (ii) as the beneficiary or beneficiaries under the decedent's last will if the decedent left a will, and no one has a right to the decedent's manufactured home, mobilehome, commercial modular, truck camper, or floating home that is superior to that of the declarant.

(D) There are no unsecured creditors of the decedent or, if there are, the unsecured creditors of the decedent have been paid in full or their claims have been otherwise discharged.

(3) If required by the department, a certificate of the death of the decedent.

(4) If required by the department, the names and addresses of any other heirs or beneficiaries.

(c) If the department is presented with the documents specified in paragraphs (1) and (2) of subdivision (b), no liability shall be incurred by the department or any officer or employee of the department by reason of the transfer of registration of the manufactured home, mobilehome, commercial modular, truck camper, or floating home pursuant to this section. The department or officer or employee of the department may rely in good faith on the statements in the certificate specified in paragraph (2) of subdivision (b) and has no duty to inquire into the truth of any statement in the certificate. The person who secures the transfer of the manufactured home, mobilehome, commercial modular, truck camper, or floating home pursuant to this section is subject to the provisions of Sections 13109 to 13113, inclusive, of the Probate Code to the same extent as a person to whom transfer of property is made under Chapter 3 (commencing with Section 13100) of Part 1 of Division 8 of the Probate Code.

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Source: Estate Planning/California Probate Workflow Manual Revised/6 Summary Administration/§6.9 V. OTHER BENEFITS

§6.9 V. OTHER BENEFITS

The successor may be entitled to collect unemployment, disability, veteran's, or workers' compensation benefits under the Prob C §§13100-13116 procedure.

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VI. COLLECTION OF SALARY OR OTHER COMPENSATION BY SURVIVING SPOUSE OR REGISTERED DOMESTIC PARTNER

§6.10 A. Collection Under Prob C §§13600-13606

The surviving spouse or surviving registered domestic partner (hereafter referred to as domestic partner) (Fam C §297.5(c); see §4.1) may collect salary or other compensation owed by an employer to the deceased spouse or domestic partner for personal services up to an aggregated maximum of $5000 from all employers. See Prob C §§13600-13606. The amount collectable without administration will be adjusted annually to reflect any increase (of at least 1 percent) in the cost of living. Prob C §13600(e). The $5000 limit does not apply to the surviving spouse/domestic partner (or his or her guardian or conservator) of certain firefighters or peace officers. Prob C §13600(d).

To collect these sums, the surviving spouse or domestic partner must present the employer with a declaration such as the one set out in §6.11, along with reasonable proof of his or her identity. Identity may be proved by any of the methods described in Prob C §13104, discussed in §6.6. If the person executing the declaration is the guardian or conservator of the estate of the surviving spouse or domestic partner, he or she must also present the employer with proof satisfactory to the employer, of his or her appointment as the guardian or conservator. Prob C §13601(c).

If money is to be collected from more than one employer, this procedure should be completed with one employer before it is pursued with another. The declaration can be executed either by the surviving spouse or domestic partner or the guardian or conservator of the estate of the surviving spouse or domestic partner. Because this procedure may be unfamiliar to the employer, it is advisable to give the employers copies of Prob C §§13600-13606 with the declaration.

Use of this procedure does not preclude other methods of collecting compensation due the decedent. Prob C §13606. It can, however, provide the surviving spouse or domestic partner with funds until a probate proceeding is begun and a family allowance can be obtained.

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Source: Estate Planning/California Probate Workflow Manual Revised/6 Summary Administration/§6.11 B. Form: Declaration to Collect Compensation Owed to Deceased Spouse or Registered Domestic Partner (Prob C §§13600-13606)

§6.11 B. Form: Declaration to Collect Compensation Owed to Deceased Spouse or Registered Domestic Partner (Prob C §§13600-13606)

DECLARATION TO COLLECT COMPENSATION OWED TO DECEASED _ _[*SPOUSE/REGISTERED DOMESTIC PARTNER*]_ _ (PROBATE CODE §§13600-13606)

The undersigned declares:

1. I make this declaration to induce _ _[*name of employer*]_ _ to transfer to me the money described below under Probate Code §§13600-13606.

2. _ _[*Name of deceased spouse or domestic partner*]_ _ died in _ _[*city, county, and state*]_ _ while a resident of the City of _ _ _ _ _ _, County of _ _ _ _ _ _, California, on or about _ _[*date*]_ _.

[*If appropriate, add*]

Decedent was a _ _[*firefighter/peace officer*]_ _ described in Government Code §22820(a).

[*Continue*]

[*Add one of the following alternatives*]

[*Alternative 1: Declarant is survivor*]

3. The declarant is the surviving _ _[*spouse/registered domestic partner*]_ _ of the decedent.

[*Alternative 2: Declarant is survivor's guardian or conservator*]

3. The declarant is the _ _[*guardian/conservator*]_ _ of the estate of the surviving _ _[*spouse/registered domestic partner*]_ _ of the decedent.

[*Continue*]

4. The surviving _ _[*spouse/registered domestic partner*]_ _ of the decedent is entitled to the earnings of the decedent under the decedent's will or by intestate succession, and no one else has a superior right to the earnings.

5. No proceeding is now being or has been conducted in California for administration of the decedent's estate.

[*Add one of the following alternatives*]

[*Alternative 1: Decedent was not a firefighter or peace officer described in Govt C §22820(a)*]

6. Probate Code §§13600-13605 require that the earnings of the decedent, including compensation for unused vacation, not in excess of five thousand dollars ($5000) net, adjusted to reflect any increase in the cost of living after January 1 of _ _[*immediately preceding year*]_ _, be paid promptly to the declarant.

[*Alternative 2: Decedent was a firefighter or peace officer described in Govt C §22820(a)*]

6. Probate Code §§13600-13605 require that the earnings of the decedent, including compensation for unused vacation, be paid promptly to the declarant.

[*Continue*]

7. _ _[*Except for the request by _ _[name]_ _ to collect the sum of $_ _[amount]_ _ from _ _[name of other employer]_ _]_ _, **[n]either the surviving _ _[***spouse/registered domestic partner***]_ _, nor anyone acting on _ _[***his/her***]_ _ behalf, has a pending request to collect compensation owed by another employer for personal services of the decedent under Probate Code §§13600-13605.**

8. Neither the surviving _ _[*spouse/registered domestic partner***]_ _, nor anyone acting on _ _[***his/her***]_ _ behalf, has collected any compensation owed by an employer for personal services of the decedent under Probate Code §§13600-13605[.]**

[*Add if appropriate*]

except the sum of $_ _[*amount***]_ _, which was collected from _ _[***name of other employer***]_ _.**

[*Continue*]

9. The declarant requests that _ _[*he/she***]_ _ be paid the salary or other compensation owed by you for personal services of the decedent, including compensation for unused vacation, _ _[***not to exceed five thousand dollars ($5000) net, adjusted to reflect any increase in the cost of living after January 1 of _ _[immediately preceding year***]_ _]_ _, _ _[***less the sum of $_ _[amount]_ _, which was previously collected***]_ _.**

[*Continue*]

The declarant affirms or declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _ _ _ _ _ _ __[*Signature*]__
_ _[*Typed name*]_ _

Copies: Original for employer; copy for surviving spouse or registered domestic partner; office copies.

Comment: This declaration may be used when the decedent was survived by a spouse or registered domestic partner (Fam C §297.5) and at the time of his or her death was owed salary or other compensation for personal services by an employer. The declaration complies with Prob C §13601. No part of it should be omitted without first consulting §13601 and the attorney. A maximum of $5000 (adjusted annually for cost of living increases) may be collected using this procedure unless the decedent was a firefighter or peace officer as described in Govt C §22820(a). Prob C §13600(a). See §6.10.

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VII. SETTING ASIDE ESTATES NOT EXCEEDING $20,000 (PROB C §§6600-6615)

§6.12 A. Statutory Requirements

The decedent's personal property (wherever located) and California real property may be set aside to the surviving spouse or registered domestic partner (Fam C §297.5(c); see §4.1) or minor children of the decedent if the net value of all the decedent's personal property, wherever located, and all real property in California (Prob C §6600(a)) at the date of death (less certain exclusions; see California Decedent Estate Practice §4.80 (2d ed Cal CEB 2009)) does not exceed $20,000. Prob C §§6600-6615. This net value is determined by deducting liens, encumbrances, and the value of any probate homestead. Prob C §6602.

Property may be set aside to the surviving spouse or domestic partner even if he or she has remarried or is in a new domestic partnership (however, there is a rebuttable presumption in this situation that the needs of the surviving spouse or domestic partner do not justify setting aside the small estate; Prob C §6609(b)), and whether or not the surviving spouse/domestic partner or minor children have the right to inherit the decedent's estate. The set-aside requested may be in favor of the surviving spouse or domestic partner, the minor child(ren), or one or more of them. See Decedent Estate Prac §§4.79-4.94.

The estate is set aside by the filing of a verified petition for an order to set aside the estate (see §6.13). This petition may be filed by itself, or it may be combined with a petition for probate or for letters of administration. It may be filed before the hearing on those petitions or after the inventory has been filed. Because the net value is reduced by a probate homestead, it may be advisable to file this petition after a hearing to set aside a probate homestead. The petition can be verified by the executor named in the will, the surviving spouse or domestic partner, the guardian of a minor child, the decedent's child who was a minor on the date of the decedent's death, or the personal representative of the estate. Prob C §6606(a).

Before the hearing on the petition is held, the estate representative (or, if none, the petitioner) must file an inventory and appraisal. The court will appoint a probate referee if one has not already been appointed.

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Source: Estate Planning/California Probate Workflow Manual Revised/6 Summary Administration/§6.13 B. Form: Petition to Set Aside and Assign Estate

§6.13 B. Form: Petition to Set Aside and Assign Estate

[*Title of court*]

Estate of _ _[*name*]_ _,	**)**	**No. _ _ _ _ _ _**
	)	**PETITION FOR ORDER**
Decedent	**)**	**TO SET ASIDE ESTATE**
	)	**NOT EXCEEDING $20,000 AND TO**
	)	**ASSIGN ESTATE**
	)	**(Probate Code §6602)**
_____	**)**	
		Hearing date:
		Time:
		Department:

_ _[*Name of petitioner(s)*]_ _ **alleges:**

1. Petitioner(s) _ _[*is/are*]_ _ the _ _[*executor named in decedent's will/spouse or registered domestic partner of the decedent/guardian of decedent's minor child/personal representative of decedent's estate/decedent's adult child who was a minor on the date of decedent's death*]_ _.

2. _ _[*Name of decedent*]_ _ died on _ _[*date*]_ _, and at the time of _ _[*his/her*]_ _ death was domiciled in _ _[*name of county*]_ _ County, California, and left an estate, the net value of which, above all liens and encumbrances at the date of death and the value of any homestead interest set aside from the decedent's estate under Probate Code §6520, but exclusive of all property in which the decedent held a life interest or held as a joint tenant, does not exceed $20,000.

3. Proceedings for administration of the estate _ _[*are/are not*]_ _ pending _ _[*in this court*]_ _.

4. The decedent's estate consists of the following property: _ _[*Describe property and give estimated value*]_ _.

5. Liens and encumbrances on the property at date of death were as follows: _ _[*Describe liens and encumbrances and state amounts*]_ _.

[*If applicable, add one or more of the following options*]

[*Option: Real property located outside of California passed to survivor(s)*]

6. The following real property of decedent located outside of California passed to _ _[*insert name(s) of decedent's surviving spouse, surviving registered domestic partner, minor children, or any one or more of them*]_ _ _ _[*under the decedent's will/by intestate succession*]_ _: _ _[*Describe property*]_ _. The property's estimated value is $_ _[*amount*]_ _.

[*Option: Probate homestead has been set aside*]

[7.] A homestead has been set apart for _ _[*name(s) of spouse/registered domestic partner and/or minor child(ren)*]_ _ from the estate under Probate Code §6520 of the following property: _ _[*Describe property*]_ _.

[*Option: Decedent had joint tenancy/life or other terminable interest asset*]

[8.] Decedent's interest in the following asset(s) terminated at the decedent's death: _ _[*Describe joint tenancy, life, or other terminable interest assets*]_ _.

[*Option: Decedent designated P.O.D. payee or beneficiary multiple-party account*]

[9.] Decedent's interest in the following asset(s) passed to the following surviving part(y/ies): _ _[*Describe P.O.D. or other multiple-party account and the payee or beneficiary*]_ _.

[*Continue*]

[*Add one of the following alternatives*]

[*Alternative 1: Expenses of last illness, funeral, and administrator are paid*]

[10.] All expenses of the last illness, the funeral, and administration _ _[*have been paid/will be paid before the hearing on this petition*]_ _.

[*Alternative 2: Expenses of last illness, funeral, and administration unpaid*]

[10.] The following are unpaid liabilities for expenses of the last illness, funeral charges, and expenses of administration: _ _[*Describe liabilities*]_ _.

[*Continue*]

[11.]_ _[*Name(s) of surviving spouse or surviving registered domestic partner, and/or minor child(ren)*]_ _ _ _[*is/are*]_ _ **entitled to an assignment of the entire estate under the provisions of Probate Code §§6600-6615 as follows: _ _[*State proposed disposition of estate*]_ _. The considerations that justify the requested disposition are the following: _ _[*State facts supporting proposed disposition*]_ _.**

[12.] The names, addresses, ages, and relationships of all heirs and devisees of the decedent are as follows: _ _[*List*]_ _.

WHEREFORE, petitioner prays that the entire estate be set aside and assigned to _ _[*name(s)*]_ _**, the** _ _[*surviving spouse/surviving registered domestic partner/minor child(ren)*]_ _**, as follows:** _ _[*describe proposed distribution*]_ _**; that there be no further proceedings regarding the estate, and that such other relief be granted as the court considers proper.**

Date: _ _ _ _ _ _ __[*Signature*]__
_ _[*Typed name*]_ _
Petitioner

Date: _ _ _ _ _ _ __[*Signature*]__
_ _[*Typed name*]_ _
Attorney(s) for petitioner

[*Verification; see §§1.21-1.22*]

Copies: Original for filing; copy for client; office copies.

Comment: The description of real property in the petition should include a street address, if any, and the legal description taken from a deed or title report.

If the petition is filed after the inventory has been filed, the petition should include a statement to that effect. If the representative of the estate is also the petitioner, this information should also be included.

When the estate is to be set aside for minor children, the petition must be signed by the guardian of the minor children, if the petitioner was someone other than the representative of the estate.

Because notice must be given to all heirs and devisees, the petition should identify them. Finally, the petition must be verified.

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§6.14 C. Notice of Hearing

A notice of the hearing must be mailed under Prob C §1220 at least 15 days before the hearing to each heir, devisee, and nonpetitioning personal representative. Prob C §6607. A copy of the petition must be sent to the surviving spouse or domestic partner, each child, and each devisee who is not petitioning.

If the petition to set aside the estate is filed with a petition for probate or for administration, the hearings will be set at the same time. If the petition for a set-aside is filed before the petition for probate or administration, but the hearing has not been held before the petition for probate or administration has been filed, the hearing on the set-aside will be continued to the time and date set for the hearing on the other petition. Prob C §6607(c).

If the petition for a set-aside is incorporated in the petition for probate or administration, the notice of hearing must include a statement that a request to set aside the estate is included in the petition. See California Decedent Estate Practice §4.88 (2d ed Cal CEB 2009).

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Source: Estate Planning/California Probate Workflow Manual Revised/6 Summary Administration/§6.15 D. Form: Order Setting Aside Estate and Assigning Estate

§6.15 D. Form: Order Setting Aside Estate and Assigning Estate

[*Title of court*]

Estate of _ _[*name*]_ _,	)	**No. _ _ _ _ _ _**
	)	**ORDER SETTING ASIDE AND**
Decedent	)	**ASSIGNING**
	)	**ESTATE**
_____	)	

The verified petition of _ _[*name of petitioner*]_ _ for an order to set aside and assign the entire estate of the decedent to _ _[*him/her/the minor child(ren) of the decedent*]_ _ came on regularly for hearing on _ _[*date*]_ _, at _ _[*time*]_ _, in Department _ _[*number/letter*]_ _. On proof made to the satisfaction of this court, the court finds that notice of the hearing has been given as required by law; all allegations in the petition are true; the decedent died on _ _[*date*]_ _ , and was then domiciled in _ _[*name of county*]_ _ County, California; the decedent left an estate, of which the net value, above all liens and encumbrances at the date of death _ _[*and the value of the probate homestead interest set apart out of the decedent's estate, under Probate Code §6520*]_ _, and exclusive of all property in which the decedent held a life interest or held as a joint tenant, does not exceed the sum of $20,000 as of the date of death; the expenses of the last illness, funeral charges, and expenses of administration have been paid; and _ _[*he/she/they*]_ _ _ _[*is/are*]_ _ entitled to have the entire estate assigned to _ _[*him/her/them*]_ _ under the provisions of Probate Code §§6600-6615.

IT IS ORDERED that the entire estate of the decedent, consisting of the following property, is set aside and assigned to and vested absolutely in _ _[*name of surviving spouse/registered domestic partner or minor child(ren)*]_ _, the surviving _ _[*spouse/registered domestic partner or minor child(ren)*]_ _ of the decedent, in the manner requested in the petition, subject to all liens and encumbrances thereon: _ _[*Describe*]_ _.

IT IS FURTHER ORDERED that, unless any further estate not described above is hereafter discovered, no further proceedings shall be had in the administration of the decedent's estate.

Date: _ _ _ _ _ _

_____
Judge of the Superior Court

Copies: Original for filing; if estate includes real property, obtain one certified copy for each county in which the property lies; office copies.

Comment: If the estate set-aside consists of real property, a certified copy of the order and a PCOR must be recorded in each county where the real property lies, to provide constructive notice to all persons and to clear the record title. The description of property in the petition should include a street address, if any, and the legal description taken from a deed or title report.

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VIII. PROPERTY PASSING TO SURVIVING SPOUSE OR DOMESTIC PARTNER (PROB C §§13500-13660)

§6.16 A. Statutory Requirements

The decedent's interest in property that passes directly to the surviving spouse or registered domestic partner by will or through the laws of intestate succession may be confirmed to the surviving spouse or registered domestic partner (Fam C §297.5(c); hereafter domestic partner) through the summary procedures under Prob C §§13500-13660; Fam C §297.5. These procedures do not apply to property passing to a trust for the benefit of the surviving spouse or domestic partner. Former law limited these procedures to community or quasi-community property, but they now apply to the decedent's separate property as well.

Although no court proceedings are required for this property to pass to the surviving spouse or domestic partner, the confirmation proceedings may be necessary or desirable to clear title to property or clarify which property is subject to administration and which is not. See California Decedent Estate Practice §§4.41-4.47 (2d ed Cal CEB 2009). The surviving spouse or domestic partner may elect not to use the summary proceedings of Prob C §§13500-13660 but may pursue formal probate proceedings instead. In those proceedings, the surviving spouse or domestic partner may also elect to administer his or her half of the community and quasi-community property. See Decedent Estate Prac §§4.44-4.45, 31.21-31.32, 31.111.

This procedure may be used for all or part of the property passing to the surviving spouse or domestic partner. Prob C §13650.

A pecuniary devise to the surviving spouse or domestic partner, or a fractional interest passing to the surviving spouse or registered domestic partner in property the balance of which is subject to administration, may be administered on a noticed petition by the personal representative and a showing of good cause. Prob C §13502.5.

For discussion of the surviving spouse's or registered domestic partner's control over real property, and attorney fees, see Decedent Estate Prac §§4.53-4.57. For discussion of a decedent's debts, see Decedent Estate Prac §§4.19-4.25.

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Source: Estate Planning/California Probate Workflow Manual Revised/6 Summary Administration/§6.17 B. Form: Spousal/Domestic Partner Property Petition (Judicial Council Form DE-221)

§6.17 B. Form: Spousal/Domestic Partner Property Petition (Judicial Council Form DE-221)

A spousal/domestic partner property petition must be filed separately from the petition for probate even if the petitions are filed at the same time. Cal Rules of Ct 7.301. The petitions must be filed under the same case number, however. Cal Rules of Ct 7.301. If a probate proceeding is pending, the petition must be filed in that proceeding; otherwise, it may be filed as a separate proceeding.

If the property is alleged to pass to the surviving spouse or registered domestic partner (Fam C §297.5) under the decedent's will, a copy of the will must be attached to the petition. Prob C §13651(b). The legal assistant should consult with the attorney on whether to include the survivor's share of community property in the proceeding so that title is clarified.

The legal assistant in consultation with the attorney should check local rules to determine what facts must be alleged to support the allegation that the property passes to the surviving spouse or registered domestic partner. The facts may vary depending on whether the decedent died testate or not and the character of the property. See California Decedent Estate Practice §7.70 (2d ed Cal CEB 2009).

Attachment 7-a contains the legal description of the deceased spouses' community and separate property that passes to the surviving spouse or registered domestic partner. The decedent's interest in community property should be shown as a one-half interest (*e.g.,* Community Property: Undivided one-half interest in the following community property assets:); separate property is shown as a 100 percent interest (*e.g.,* Separate Property: A 100 percent interest in the following separate assets:). Attachment 7-b lists only the surviving spouse's or registered domestic partner's half interest in the community property.

The property should be described with particularity. Real property should have a street address, if any, a legal description taken from a deed or title report, and the assessor's parcel number (APN). If the description of the property is based on a written agreement between the decedent and the surviving spouse or registered domestic partner that provides for a nonprorata division of the aggregate value of the community or quasi-community property assets, or both, a copy of the agreement must be attached to the petition. Prob C §13651(c).

The petition must list the relationship to the deceased spouse of each heir or devisee. Prob C §13651(a)(5).

Copies: Original for filing; copy for client; office copies.

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(Optional):* E-MAIL ADDRESS *(Optional):* ATTORNEY FOR *(Name):*	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
ESTATE OF *(Name):* DECEDENT	CASE NUMBER: HEARING DATE:
☐ **SPOUSAL** ☐ **DOMESTIC PARTNER** **PROPERTY PETITION**	DEPT.: TIME:

1. **Petitioner** *(name):* **requests**
   a. ☐ determination of property passing to the surviving spouse or surviving registered domestic partner without administration (Fam. Code, § 297.5, Prob. Code, § 13500).
   b. ☐ confirmation of property belonging to the surviving spouse or surviving registered domestic partner (Fam. Code, § 297.5, Prob. Code, §§ 100, 101).
   c. ☐ immediate appointment of a probate referee.
2. Petitioner is
   a. ☐ surviving spouse of the decedent.
   b. ☐ personal representative of *(name):* , surviving spouse.
   c. ☐ guardian or conservator of the estate of *(name):* , surviving spouse.
   d. ☐ surviving registered domestic partner of the decedent.
   e. ☐ personal representative of *(name):* , surviving registered domestic partner.
   f. ☐ conservator of the estate of *(name):* , surviving registered domestic partner.
3. Decedent died on *(date):*
4. Decedent was
   a. ☐ a resident of the California county named above.
   b. ☐ a nonresident of California and left an estate in the county named above.
   c. ☐ intestate ☐ testate and a copy of the will and any codicil is affixed as Attachment 4c.
   (Attach copies of will and any codicil, a typewritten copy of any handwritten document, and an English translation of any foreign-language document.)
5. a. (*Complete in all cases*) The decedent is survived by
   (1) ☐ no child. ☐ child as follows: ☐ natural or adopted ☐ natural, adopted by a third party.
   (2) ☐ no issue of a predeceased child. ☐ issue of a predeceased child.
   b. Decedent ☐ is ☐ is not survived by a stepchild or foster child or children who would have been adopted by decedent but for a legal barrier. *(See Prob. Code, § 6454.)*
6. (*Complete only if no issue survived the decedent. Check* ***only*** *the* ***first*** *box that applies.)*
   a. ☐ The decedent is survived by a parent or parents who are listed in item 9.
   b. ☐ The decedent is survived by a brother, sister, or issue of a deceased brother or sister, all of whom are listed in item 9.
7. Administration of all or part of the estate is not necessary for the reason that all or a part of the estate is property passing to the surviving spouse or surviving registered domestic partner. The facts upon which petitioner bases the allegation that the property described in Attachments 7a and 7b is property that should pass or be confirmed to the surviving spouse or surviving registered domestic partner are stated in Attachment 7.
   a. ☐ Attachment 7a[1] contains the legal description *(if real property add Assessor's Parcel Number)* of the deceased spouse's or registered domestic partner's property that petitioner requests to be determined as having passed to the surviving spouse or partner from the deceased spouse or partner. This includes any interest in a trade or business name of any unincorporated business or an interest in any unincorporated business that the deceased spouse or partner was operating or managing at the time of death, subject to any written agreement between the deceased spouse or partner and the surviving spouse or partner providing for a non pro rata division of the aggregate value of the community property assets or quasi-community assets, or both.

[1] See Prob. Code, § 13658 for required filing of a list of known creditors of a business and other information in certain instances. If required, include in Attachment 7a.

Form Adopted for Mandatory Use
Judicial Council of California DE-221
[Rev. January 1, 2005]

SPOUSAL OR DOMESTIC PARTNER PROPERTY PETITION
(Probate—Decedents Estates)

Family Code, § 297.5;
Probate Code, § 13650

Print

ESTATE OF *(Name)*: DECEDENT	CASE NUMBER:

7. b. ☐ Attachment 7b contains the legal description *(if real property add Assessor's Parcel Number)* of the community or quasi-community property petitioner requests to be determined as having belonged under Probate Code sections 100 and 101 and Family Code section 297.5 to the surviving spouse or surviving registered domestic partner upon the deceased spouse's or partner's death, subject to any written agreement between the deceased spouse or partner and the surviving spouse or partner providing for a non pro rata division of the aggregate value of the community property assets or quasi-community assets, or both.

8. There ☐ exists ☐ does not exist a written agreement between the deceased spouse or deceased registered domestic partner and the surviving spouse or surviving registered domestic partner providing for a non pro rata division of the aggregate value of the community property assets or quasi-community assets, or both. *(If petitioner bases the description of the property of the deceased spouse or partner passing to the surviving spouse or partner or the property to be confirmed to the surviving spouse or partner, or both, on a written agreement, a copy of the agreement must be attached to this petition as Attachment 8.)*

9. The names, relationships, ages, and residence or mailing addresses so far as known to or reasonably ascertainable by petitioner of (1) all persons named in decedent's will and codicils, whether living or deceased, and (2) all persons checked in items 5 and 6
☐ are listed below ☐ are listed in Attachment 9.

Name and relationship	Age	Residence or mailing address

10. The names and addresses of all persons named as executors in the decedent's will and any codicil or appointed as personal representatives of the decedent's estate ☐ are listed below ☐ are listed in Attachment 10 ☐ none

11. ☐ The petitioner is the trustee of a trust that is a devisee under decedent's will. The names and addresses of all persons interested in the trust who are entitled to notice under Probate Code section 13655(b)(2) are listed in Attachment 11.

12. A petition for probate or for administration of the decedent's estate
   a. ☐ is being filed with this petition.
   b. ☐ was filed on *(date)*:
   c. ☐ has not been filed and is not being filed with this petition.

13. Number of pages attached: _____

Date:

_____ ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF ATTORNEY)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

_____ ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF PETITIONER)

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Source: Estate Planning/California Probate Workflow Manual Revised/6 Summary Administration/§6.18 C. Notice of Hearing

§6.18 C. Notice of Hearing

If proceedings for administration of the deceased spouse's or domestic partner's estate are pending when the spousal/domestic partner property petition is filed, or if the spousal/domestic partner property petition is not filed with a petition for probate or administration, at least 15 days' notice of the hearing must be given, either by mail or personal delivery to the following (Prob C §§1220, 13655):

- Each person listed in Prob C §1220;
- Nonpetitioning personal representatives;
- Devisees and known heirs;
- If a trust is a devisee, then all persons interested in the trust as required by Prob C §13655(a)(2); and
- The California Attorney General if there are or may be certain charitable gifts (see Prob C §13655(b)).

See California Decedent Estate Practice §§4.61-4.63 (2d ed Cal CEB 2009) for further discussion of the hearing.

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Source: Estate Planning/California Probate Workflow Manual Revised/6 Summary Administration/§6.19 D. Form: Spousal/Domestic Partner Property Order (Judicial Council Form DE-226)

§6.19 D. Form: Spousal/Domestic Partner Property Order (Judicial Council Form DE-226)

Print

DE-226

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):* After recording return to: TELEPHONE NO.: FAX NO. *(Optional):* E-MAIL ADDRESS *(Optional):* ATTORNEY FOR *(Name):*	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	*FOR RECORDER'S USE ONLY*
ESTATE OF *(Name):* DECEDENT	CASE NUMBER:
☐ **SPOUSAL** ☐ **DOMESTIC PARTNER PROPERTY ORDER**	*FOR COURT USE ONLY*

1. Date of hearing: Time:
   Dept.: Room:

THE COURT FINDS

2. All notices required by law have been given.
3. Decedent died on *(date):*
   a. ☐ a resident of the California county named above.
   b. ☐ a nonresident of California and left an estate in the county named above.
   c. ☐ intestate. ☐ testate.
4. Decedent's ☐ surviving spouse ☐ surviving registered domestic partner is *(name):*

THE COURT FURTHER FINDS AND ORDERS

5. a. ☐ The property described in Attachment 5a is property passing to the surviving spouse or surviving registered domestic partner named in item 4, and no administration of it is necessary.
   b. ☐ See Attachment 5b for further order(s) respecting transfer of the property to the surviving spouse or surviving registered domestic partner named in item 4.
6. ☐ To protect the interests of the creditors of *(business name):* an unincorporated trade or business, a list of all its known creditors and the amount owed each is on file.
   a. ☐ Within *(specify):* days from this date, the surviving spouse or surviving registered domestic partner named in item 4 shall file an undertaking in the amount of $
   b. ☐ See Attachment 6b for further order(s) protecting the interests of creditors of the business.
7. a. ☐ The property described in Attachment 7a is property that belonged to the surviving spouse or surviving registered domestic partner under Family Code section 297.5 and Probate Code sections 100 and 101, and the surviving spouse's or surviving domestic partner's ownership upon decedent's death is confirmed.
   b. ☐ See Attachment 7b for further order(s) respecting transfer of the property to the surviving spouse or surviving domestic partner.
8. ☐ All property described in the *Spousal or Domestic Partner Property Petition* that is not determined to be property passing to the surviving spouse or surviving registered domestic partner under Probate Code section 13500, or confirmed as belonging to the surviving spouse or surviving registered domestic partner under Probate Code sections 100 and 101, shall be subject to administration in the estate of decedent. ☐ All of such property is described in Attachment 8.
9. ☐ Other *(specify):*

☐ Continued in Attachment 9.

10. Number of pages attached: _____

Date:

JUDICIAL OFFICER

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

Page 1 of 1

Form Adopted for Mandatory Use Judicial Council of California DE-226 [Rev. January 1, 2005]	**SPOUSAL OR DOMESTIC PARTNER PROPERTY ORDER** **(Probate—Decedents Estates)**	Family Code, § 297.5; Probate Code, § 13656

INSTRUCTIONS: The order must be recorded to transfer title to real property. The description of real property attached to the petition should include a street address, if any, the legal description taken from a deed or title report, and the assessor's parcel number (APN). See California Decedent Estate Practice §§4.65-4.66 (2d ed Cal CEB 2009) for further discussion of the order.

Copies: Original for filing; copy for client; office copies.

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IX. DETERMINING SUCCESSION TO REAL PROPERTY OF SMALL ESTATE (PROB C §§13150-13158)

§6.20 A. Statutory Requirements

The simple petition procedure under Prob C §§13150-13158 can be used, under certain circumstances, to transfer the decedent's interest in real property to the successor. The gross value of the decedent's real and personal property in this state cannot exceed $100,000 (excluding property described in Prob C §13050; see §6.4), and 40 days must have elapsed since the death of the decedent. Prob C §13151. The petition must be accompanied by an inventory and appraisal. The appraisal must be done by a probate referee selected by the petitioner (or in some counties by a court-approved rotation system) from those qualified to act in the county where the real property is located. Prob C §13152(b). If the claim to the property is based on the decedent's will, a copy of the will must be attached to the petition. Prob C §13152(c).

This procedure is most useful when:

- The spousal/domestic partner confirmation procedures and the Prob C §§6600-6615 set-aside procedures are unavailable because the successor to the decedent's real property is neither the decedent's surviving spouse or registered domestic partner nor minor child;
- The Prob C §§6600-6615 set-aside procedures cannot be used because the decedent's estate exceeds $20,000; or
- The Prob C §§13200-13210 affidavit procedure cannot be used because the real property is worth more than $20,000 or 6 months have not elapsed since the decedent's death.

This petition procedure may be used to transfer decedent's personal as well as real property to the successor. Prob C §13151. However, when only personal property is involved, the affidavit procedure under Prob C §§13100-13116 must be used. See §§6.3-6.6. The use of this petition procedure, moreover, is no longer conditional on the absence of an estate proceeding. If an estate proceeding is being or has been conducted in this state, the petition must include the personal representative's written consent to use of this procedure. Prob C §13152. For further discussion of procedure see California Decedent Estate Practice, chap 3 (2d ed Cal CEB 2009)).

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Source: Estate Planning/California Probate Workflow Manual Revised/6 Summary Administration/§6.21 B. Form: Petition to Determine Succession to Real Property (Estates $100,000 or Less) (Judicial Council Form DE-310)

§6.21 B. Form: Petition to Determine Succession to Real Property (Estates $100,000 or Less) (Judicial Council Form DE-310)

INSTRUCTIONS: The description of the real property in the petition should include a street address, if any, the legal description taken from a deed or title report, and the APN.

The petition must be accompanied by an inventory and appraisal and, if the claim is based on the decedent's will, a copy of the will. If the decedent's personal representative has consented to use of this petition procedure, a copy of the consent must be attached. Prob C §13152(d).

Copies: Original for filing; copy for client; office copies.

Print

DE-310

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, state bar number, and address)*: TELEPHONE AND FAX NOS.:	*FOR COURT USE ONLY*
ATTORNEY FOR *(Name)*:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
MATTER OF *(Name)*: DECEDENT	
PETITION TO DETERMINE SUCCESSION TO REAL PROPERTY (Estates $100,000 or Less) ☐ **And Personal Property**	CASE NUMBER: HEARING DATE: DEPT.: TIME:

1. Petitioner *(name of each person claiming an interest)*:

   requests a determination that the real property ☐ and personal property described in item 11 is property passing to petitioner and that no administration of decedent's estate is necessary.
2. Decedent *(name)*:
   a. Date of death:
   b. Place of death *(city, state)*:
3. At least 40 days have elapsed since the date of decedent's death.
4. a. ☐ Decedent was a resident of this county at the time of death.
   b. ☐ Decedent was **not** a resident of California at the time of death. Decedent died owning property in this county.
5. Decedent died ☐ intestate ☐ testate and a copy of the will and any codicil is affixed as Attachment 5 or 12a.
6. a. ☐ No proceeding for the administration of decedent's estate is being conducted or has been conducted in California.
   b. ☐ Decedent's personal representative's consent to use the procedure provided by Probate Code section 13150 et seq. is attached as Attachment 6b.
7. Proceedings for the administration of decedent's estate in another jurisdiction
   a. ☐ have **not** been commenced.
   b. ☐ have been commenced ☐ and completed.
   (Specify state, county, court, and case number):
8. The **gross value** of all real and personal property in decedent's estate located in California as shown by the *Inventory and Appraisal* attached to this petition, excluding the property described in Probate Code section 13050 (joint tenancy, property passing to decedent's spouse, etc.), does not exceed $100,000. *(Attach an* Inventory and Appraisal *(form DE-160) as Attachment 8.)*
9. a. The decedent is survived by *(check at least one box in each of items (1)-(3))*
   (1) ☐ spouse ☐ no spouse as follows: ☐ divorced or never married ☐ spouse deceased
   (2) ☐ child as follows: ☐ natural or adopted ☐ natural adopted by a third party ☐ no child
   (3) ☐ issue of a predeceased child ☐ no issue of a predeceased child
   b. Decedent ☐ is ☐ is not survived by a stepchild or foster child or children who would have been adopted by decedent but for a legal barrier. *(See Prob. Code, § 6454.)*
10. *(Complete if decedent was survived by (1) a spouse but no issue (only a or b apply); or (2) no spouse or issue. Check the* ***first*** *box that applies.)*
    a. ☐ Decedent is survived by a parent or parents who are listed in item 14.
    b. ☐ Decedent is survived by a brother, sister, or issue of a deceased brother or sister, all of whom are listed in item 14.
    c. ☐ Decedent is survived by other heirs under Probate Code section 6400 et seq., all of whom also listed in item 14.
    d. ☐ Decedent is survived by no known next of kin.
11. Attachment 11 contains (1) the **legal description** of decedent's real property and its Assessor's Parcel Number (APN) ☐ and personal property in California passing to petitioner and (2) decedent's interest in the property. *(Attach the legal description of the real and personal property and state decedent's interest.)*

(Continued on reverse)

Print

MATTER OF *(Name)*: DECEDENT	CASE NUMBER:

12. Each petitioner is a successor of decedent (as defined in Probate Code section 13006) and a successor to decedent's interest in in the real property ☐ and personal property described in item 11 because each petitioner is
    a. ☐ **(will)** a beneficiary who succeeded to the property under decedent's will.[1]
    b. ☐ **(no will)** a person who succeeded to the property under Probate Code sections 6401 and 6402.
13. The specific property interest claimed by each petitioner in the real property ☐ and personal property described in item 11 ☐ is stated in Attachment 13 ☐ is as follows *(specify)*:
14. The names, relationships, ages, and residence or mailing addresses so far as known to or reasonably ascertainable by petitioner of (1) all persons named or checked in items 1, 9, and 10, (2) all other heirs of decedent, and (3) all devisees of decedent (persons designated in the will to receive any property)
    ☐ are listed below ☐ are listed in Attachment 14.

Name and relationship	Age	Residence or mailing address

15. The names and addresses of all persons named as executors in decedent's will
    ☐ are listed below ☐ are listed in Attachment 15 ☐ none named ☐ no will.
16. ☐ Petitioner is the trustee of a trust that is a devisee under decedent's will. The names and addresses of all persons interested in the trust, as determined in cases of future interests under paragraphs (1), (2), or (3) of subdivision (a) of Probate Code section 15804 are listed in Attachment 16.
17. ☐ Decedent's estate was under a ☐ guardianship ☐ conservatorship at decedent's death. The names and addresses of all persons serving as guardian or conservator ☐ are listed below ☐ are listed in Attachment 17.
18. Number of pages attached: _____

Date:

* (Signature of all petitioners also required (Prob. Code, § 1020).)

▶ _____
(SIGNATURE OF ATTORNEY *)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

. . . . . .
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PETITIONER[2])

. . . . . .
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PETITIONER[2])

[1] See Probate Code section 13152(c) for the requirement that a copy of the will be attached in certain instances. If required, include as Attachment 5 or 12a.

[2] Each person named in item 1 must sign.

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Source: Estate Planning/California Probate Workflow Manual Revised/6 Summary Administration/§6.22 C. Notice of Hearing

§6.22 C. Notice of Hearing

Notice of the hearing on the petition must be given at least 15 days before the hearing by mail under Prob C §1220 or by personal delivery to each person named in the petition. Prob C §13153.

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Source: Estate Planning/California Probate Workflow Manual Revised/6 Summary Administration/§6.23 D. Form: Order Determining Succession to Real Property (Estates $100,000 or Less) (Judicial Council Form DE-315)

§6.23 D. Form: Order Determining Succession to Real Property (Estates $100,000 or Less) (Judicial Council Form DE-315)

Print

DE-315

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, state bar number, and address):*
After recording return to:

TELEPHONE NO.:
FAX NO. *(Optional):*
E-MAIL ADDRESS *(Optional):*
ATTORNEY FOR *(Name):*

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
STREET ADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

MATTER OF *(Name)*:

DECEDENT

FOR RECORDER'S USE ONLY

CASE NUMBER:

FOR COURT USE ONLY

ORDER DETERMINING SUCCESSION TO REAL PROPERTY
(Estates $100,000 or Less)
☐ **And Personal Property**

1. Date of hearing: Time:
   Dept./Room: Judge:

THE COURT FINDS

2. All notices required by law have been given.
3. Decedent died on *(date)*:
   a. ☐ a resident of the California county named above.
   b. ☐ a nonresident of California and left an estate in the county named above.
   c. ☐ intestate ☐ testate.
4. At least 40 days have elapsed since the date of decedent's death.
5. a. ☐ No proceeding for the administration of decedent's estate is being conducted or has been conducted in California.
   b. ☐ Decedent's personal representative has filed a consent to use the procedure provided in Probate Code section 13150 et seq.
6. The gross value of decedent's real and personal property in California, excluding property described in Probate Code section 13050, does not exceed $100,000.
7. Each petitioner is a successor of decedent (as defined in Probate Code section 13006) and a successor to decedent's interest in the real ☐ and personal property described in item 9a because each petitioner is
   a. ☐ **(will)** a beneficiary who succeeded to the property under decedent's will.
   b. ☐ **(no will)** a person who succeeded to the property under Probate Code sections 6401 and 6402.

THE COURT FURTHER FINDS AND ORDERS

8. No administration of decedent's estate is necessary in California.
9. a. The following described real ☐ and personal property is property of decedent passing to each petitioner *(give legal description of real property)*: ☐ described in Attachment 9a.

   b. Each petitioner's **name** and specific property interest ☐ is stated in Attachment 9b ☐ is as follows *(specify)*:

10. ☐ Other *(specify)*:

Date:

JUDGE OF THE SUPERIOR COURT

11. Number of pages attached: ____ ☐ SIGNATURE FOLLOWS LAST ATTACHMENT

Page 1 of 1

Form Adopted for Mandatory Use
Judicial Council of California
DE-315 [Rev. January 1, 2003]

ORDER DETERMINING SUCCESSION TO REAL PROPERTY (Probate)

Probate Code, § 13154

INSTRUCTIONS: The description of property in the order should include a street address, if any, and must include the Assessor's Parcel Number (APN) and the legal description taken from a deed or title report. A preliminary change of ownership report (PCOR) must be filed with each conveyance in the county recorder's office where the property is located and the order should be recorded in the county in which the property lies.

Copies: Original for filing; one certified copy for each county in which the property lies; copy for client; office copies.

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X. AFFIDAVIT PROCEDURE TO TRANSFER REAL PROPERTY OF SMALL VALUE (PROB C §§13200-13210)

§6.24 A. Statutory Requirements

If the decedent dies owning an interest in California real property, the gross value of which is $20,000 or less on the date of death (excluding property described in Prob C §13050; see §6.4), the successor to that property can use an affidavit procedure to transfer it. Prob C §§13200-13210. This procedure can be used for a person who died many years earlier and whose estate was not probated because of its small value. Probate Code §13200 sets out the affidavit requirements. The affidavit must be filed in the superior court of the county of the decedent's domicile at death. If the decedent was not domiciled in California at the time of death, the affidavit must be filed in the superior court of the county where the real property is located. The affidavit cannot be filed until at least 6 months after the decedent's death. Prob C §13200(a). The total fee for filing and issuance of one certified copy is $30. Prob C §13201, Govt C §70626(b)(9).

NOTE: Absent further legislation, this fee is scheduled to be reduced to $20, operative July 1, 2017. Stats 2009, ch 457, §8.

Estate administration is no longer a bar to the availability of this procedure. If an estate proceeding is pending, the affidavit procedure may be used as long as the personal representative consents. Prob C §13210.

For further discussion of this affidavit procedure, see California Decedent Estate Practice §§3.48, 3.51 (2d ed Cal CEB 2009).

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Source: Estate Planning/California Probate Workflow Manual Revised/6 Summary Administration/§6.25 B. Form: Affidavit re Real Property of Small Value ($20,000 or Less) (Judicial Council Form DE-305)

§6.25 B. Form: Affidavit re Real Property of Small Value ($20,000 or Less) (Judicial Council Form DE-305)

Print

DE-305

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address)*:
After recording return to:

TELEPHONE NO.:
FAX NO. *(Optional)*:
E-MAIL ADDRESS *(Optional)*:
ATTORNEY FOR *(Name)*:

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
STREET ADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

MATTER OF *(Name)*:

DECEDENT

FOR RECORDER'S USE ONLY

CASE NUMBER:

FOR COURT USE ONLY

AFFIDAVIT RE REAL PROPERTY OF SMALL VALUE
($20,000 or Less)

1. Decedent *(name)*:
   died on *(date)*:
2. Decedent died at *(city, state)*:
3. At least **six months** have elapsed since the date of death of decedent as shown in the certified copy of decedent's death certificate attached to this affidavit. *(Attach a certified copy of decedent's death certificate.)*
4. a. ☐ Decedent was domiciled in this county at the time of death.
   b. ☐ Decedent was **not** domiciled in California at the time of death. Decedent died owning real property in this county.
5. a. The following is a **legal description** of decedent's real property claimed by the declarants *(copy description from deed or other legal instrument)*:
   ☐ described in an attachment labeled Attachment 5a.

   b. Decedent's interest in this real property is as follows *(specify)*:

6. Each declarant is a successor of decedent (as defined in Probate Code section 13006) and a successor to decedent's interest in the real property described in item 5a, and no other person has a superior right, because each declarant is
   a. ☐ **(will)** a beneficiary who succeeded to the property under decedent's will. *(Attach a copy of the will.)*
   b. ☐ **(no will)** a person who succeeded to the property under Probate Code sections 6401 and 6402.
7. Names and addresses of each guardian or conservator of decedent's estate at date of death
   ☐ none ☐ are as follows* *(specify)*:

8. The **gross value** of all real property in decedent's estate located in California as shown by the *Inventory and Appraisal*, excluding the real property described in Probate Code section 13050 (joint tenancy, property passing to decedent's spouse, etc.), does not exceed $20,000.
9. An *Inventory and Appraisal* of decedent's **real property** in California is attached. The *Inventory and Appraisal* was made by a probate referee appointed for the county in which the property is located. (You *may use Judicial Council form DE-160.)*
10. No proceeding is now being or has been conducted in California for administration of decedent's estate.

* You must have a copy of this affidavit with attachments personally served or mailed to each person named in item 7.

Form Adopted for Mandatory Use
Judicial Council of California
DE-305 [Rev. July 1, 2008]

AFFIDAVIT RE REAL PROPERTY OF SMALL VALUE
(Probate—Decedents' Estates)

Probate Code, § 13200

Print

MATTER OF (Name): DECEDENT	CASE NUMBER:

11. Funeral expenses, expenses of last illness, and all known unsecured debts of the decedent have been paid. *[NOTE: You may be personally liable for decedent's unsecured debts up to the fair market value of the real property and any income you receive from it.]*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF DECLARANT)

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF DECLARANT)

☐ SIGNATURE OF ADDITIONAL DECLARANTS ATTACHED

NOTARY ACKNOWLEDGMENTS *(NOTE: No notary acknowledgment may be affixed as a rider (small strip) to this page. If additional notary acknowledgments are required, they must be attached as 8-1/2- by 11-inch pages.)*

STATE OF CALIFORNIA, COUNTY OF *(specify)*:

On *(date)*: , before me *(name and title)*:

personally appeared *(name(s))*:

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the instrument in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(SIGNATURE OF NOTARY PUBLIC)

(NOTARY SEAL)

STATE OF CALIFORNIA, COUNTY OF *(specify)*:

On *(date)*: , before me *(name and title)*:

personally appeared *(name(s))*:

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the instrument in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(SIGNATURE OF NOTARY PUBLIC)

(NOTARY SEAL)

(SEAL)

CLERK'S CERTIFICATE

I certify that the foregoing, including any attached notary acknowledgments and any attached legal description of the property (but excluding other attachments), is a true and correct copy of the original affidavit on file in my office. *(Certified copies of this affidavit do not include the (1) death certificate, (2) will, or (3) inventory and appraisal. See Probate Code section 13202.)*

Date: Clerk, by _____, Deputy

Copies: Original for filing; one certified copy for each county in which the real property lies; copy for client; office copies.

Comment: The affidavit must include these attachments: (1) a certified copy of the death certificate, (2) a copy of the will if the affiant is claiming under the will and no estate proceeding is pending or has been conducted in California, (3) if necessary, a copy of the personal representative's consent and letters, and (4) an inventory and appraisal of the decedent's real property in this state. Prob C §13200.

On payment of the filing fee (see Govt C §70626), the court clerk will certify one copy of the affidavit for no additional charge. Prob C §13201. See §6.24. That copy should be recorded in the county where the property is located. If the property lies in more than one county, an additional certified copy should be obtained for recordation in each county. Prob C §13202.

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7

Petition for Probate, Letters, and Qualification of Representative

I. PRELIMINARY MATTERS
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- B. [§7.2] Coordinating Probate Steps
- C. [§7.3] Sources of Authority
- D. [§7.4] Chart: Local Rules for Petition for Letters and Qualification **[Deleted]**
- E. [§7.5] Hearing Practices
- F. [§7.6] Common Errors in Petitions for Letters **[Deleted]**
- G. [§7.7] Locating, Copying, and Filing the Will
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G. [§7.55] Administration of Missing Person's Estate
H. [§7.56] Administration of Estates of Absent Federal Personnel

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/ I. PRELIMINARY MATTERS/§7.1 A. General Introduction

I. PRELIMINARY MATTERS

§7.1 A. General Introduction

This chapter discusses the procedures for instituting administration of testate and intestate estates through the qualification of personal representatives. It includes petitions for probate of wills and for letters testamentary, or for letters of administration with the will annexed, and petitions for letters of administration. For discussion of special administration, see §§7.44-7.48. For probate of lost wills, see §§7.52-7.53. On issuance of amended letters to the remaining corepresentatives, see §§7.50-7.51; and on supplementing title to the proceedings, see §7.49. The petition for administration of the estate of a person missing for 5 years is discussed in §7.55.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.2 B. Coordinating Probate Steps

§7.2 B. Coordinating Probate Steps

More than one step in the probate process may be taken simultaneously, depending on the particular probate. For example:

- A spousal/domestic partner property petition may be filed at the same time as the petition for probate.
- When the proceeding for appointment and qualification of the personal representative is initiated, arrangements can also be made to obtain a bond, if required (see §7.16).
- Estate assets can be assembled and managed (see §§1.5-1.9), steps can be taken to begin preparation of the inventory and appraisal (see §§11.2-11.3), and preparation of tax returns and declarations can begin as soon as the character and estimated value of the estate are known (see §1.9).

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.3 C. Sources of Authority

§7.3 C. Sources of Authority

Probate administration is governed by numerous provisions in the Probate Code, by Judicial Council-approved forms and rules of court, by written local rules, and in some counties by unwritten policies and procedures. These local variations plague the experienced and inexperienced legal assistant alike.

Judicial Council-approved forms have standardized some areas of practice among counties. When a Judicial Council probate form exists, its use is almost always mandatory. The forms may be obtained from the clerk of each county's superior court. The forms are also available online from the Judicial Council at http://www.courtinfo.ca.gov/forms. Some of them, like the Petition for Probate (Judicial Council Form DE-111), are fillable. Failure to use the most up-to-date Judicial Council form (even if it is unavailable in the county) will result in the clerk's refusing to file the document. On Judicial Council forms, see §1.15.

The Judicial Council has also adopted probate rules (Cal Rules of Ct 7.1-7.1101) designed to promote uniformity in practice and procedure. Cal Rules of Ct 7.2(b). The rules apply to all actions and proceedings to which the Probate Code applies. Cal Rules of Ct 7.2(a).

The most recent local probate rules must also be examined and followed. See California Local Probate Rules (Cal CEB Annual). Counsel should contact the probate clerk to learn whether the rules have been revised more recently.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.4 D. Chart: Local Rules for Petition for Letters and Qualification [Deleted]

§7.4 D. Chart: Local Rules for Petition for Letters and Qualification [Deleted]

This section has been deleted.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.5 E. Hearing Practices

§7.5 E. Hearing Practices

In proceedings for qualification of personal representatives, some courts require a personal appearance and testimony on matters alleged in the petition. In other counties, the court will accept the verified petition under Prob C §1283 for proof of all matters alleged in it. Prob C §§1022, 8220; CCP §2009.

In most counties, no appearance is necessary for uncontested matters if properly completed forms are on file at the time of hearing. These matters are reviewed and then assigned to an approved or pregranted list. A matter that is not pregranted may be late-granted on a second review of the file if all defects have been cured. See, *e.g.,* Alameda Ct R 7.10; Orange Ct R 601.07; San Francisco Ct R §14.4. Inquiries should be made in advance about prevailing local practice.

NOTE: In some counties, if the petition is not pregranted and no appearance is made, the court may drop the petition from the calendar.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.6 F. Common Errors in Petitions for Letters [Deleted]

§7.6 F. Common Errors in Petitions for Letters [Deleted]

The material in this section has been moved to §7.10A.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.7 G. Locating, Copying, and Filing the Will

§7.7 G. Locating, Copying, and Filing the Will

The last will, if any, controls disposition of the decedent's property. Prob C §7000. It must be proved (Prob C §8220) and presented to the court by petition for probate (Prob C §§8000-8002).

If a will is known to exist or is in the hands of the attorney or executor, there should be few problems. However, if it is unknown whether the decedent had a will, an effort should be made to find one. See §2.9 for methods of locating a will.

NOTE: If the proponent of a subsequently discovered will has received notice of a petition for probate or a petition for letters of administration, Prob C §8226 provides strict filing deadlines for probate of the subsequently discovered will.

The original will should be filed with the county clerk at the same time as the petition for probate, even though it can be filed earlier and held by the clerk for safekeeping. If it has been filed earlier, the clerk should be notified of that fact at the time the petition is filed. If the will refers to a writing that directs disposition of a testator's tangible personal property, the personal representative must file that writing concurrent with the filing of the inventory and appraisal. Prob C §6132(f)(1). See §11.1.

If a will is delivered to the superior court clerk in a county where no probate proceeding is pending, the court may order the will transferred to the superior court clerk in the county where the probate proceeding is pending. A petition to transfer the will may be heard without notice, but may not be granted without proof that a copy of the petition has been mailed to the petitioner and to any persons who have requested special notice in the probate proceeding in the transferee court. Prob C §8203.

The will should not be taken apart or unstapled to make copies, because someone may later charge that the will was tampered with.

Several copies of the will should first be made. Copies are attached to the petition for probate (Prob C §8002(b)(1)), to the proof of subscribing witness form (if any), and to the federal estate tax return (certified copy; Treas Reg §20.6018-4(a)), and are given to each personal representative and counsel. Additional copies are needed for the office files and, if the attorney for the estate so instructs, for each of the beneficiaries. A certified copy is needed if the estate is to be probated in another state. For discussion of ancillary administration, see California Decedent Estate Practice §2.45 (2d ed Cal CEB 2009).

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.8 H. Determining Petitioner and Proposed Personal Representative

§7.8 H. Determining Petitioner and Proposed Personal Representative

Any interested person may at any time after the death of the testator petition the court for appointment of a personal representative or to probate the decedent's will. Prob C §8000. Ordinarily, the petitioner is the proposed personal representative.

Interested persons include the following (Prob C §48):

- An heir devisee, child, spouse, creditor, beneficiary, and any other person who has a property right in or claim against the decedent's estate that may be affected by the proceeding;
- Any person who has priority for appointment as personal representative; and
- A fiduciary representing an interested person.

"Personal representative" is used generically to refer to the executor, administrator, administrator with will annexed, their successors, the public administrator acting under Prob C §7660, or anyone performing substantially the same function under the law of another jurisdiction governing the person's status. Prob C §58(a). See §1.3.

The "executor" is the person, persons, or corporation named in the will to administer the estate. The person or corporation, however, must be appointed by the court and must be issued letters. The "administrator with will annexed" is the person who administers the estate under the provisions of the will when, for whatever reason, the person named in the will cannot perform the duties of executor. For the most part, the administrator's powers are the same as they would be if he or she had been named executor.

If the decedent died intestate, the petition is for letters of administration, and the petitioner is called the administrator. A "special administrator" may be granted full or limited powers. See §7.44. The term "general personal representative" excludes only those special administrators who do not have general powers. Prob C §58(b).

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.8A 1. Executor

§7.8A 1. Executor

Anyone named as executor in the will may serve unless he or she (Prob C §8402):

- is under the age of majority;
- is subject to a conservatorship of the estate or is otherwise incapable of executing, or is unfit to execute, the duties of office; or
- can be shown to have committed acts that would constitute grounds for the removal of the individual as a personal representative, or is shown to be otherwise incapable of executing the duties of office under Prob C §8502.

If, by the terms of the will, it appears that the decedent intended to name a person as executor but did not do so, that person is entitled to letters of administration as if he or she had been named. Prob C §8421.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.8B 2. Administrator

§7.8B 2. Administrator

The competency requirements and the priority of persons entitled to serve as administrator are set forth in Prob C §§8402, 8460-8469. The administrator does not have to be a California resident, but he or she must be a resident of the United States and meet the qualifications required of an executor. Prob C §8402. Some California jurisdictions require a surety if the administrator is not a California resident. The order of priority of persons entitled to letters of administration is set forth in Prob C §8461. Nominations also may be made by anyone qualified to serve as administrator under Prob C §8465.

A corporation or association authorized to conduct the business of a trust company in California (Prob C §83) may be appointed as a personal representative in the same manner as an individual is appointed (Prob C §300), but foreign corporations, except national banking associations with a main or branch office in California or a foreign (other state) state bank that is authorized to conduct a trust business in California, may not (Fin C §§1502-1503).

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.9 I. Other Preliminary Matters

§7.9 I. Other Preliminary Matters

The attorney should first determine whether the will is self-proving. See §2.22. If not, efforts must be made to locate the subscribing witnesses to ensure adequate proof of the will. See §2.22.

The attorney should also determine whether any agreements affect the validity of the will and whether there are any problems with the will itself that might preclude its admission to probate.

Before the petition for probate or administration can be filed, the attorney must also determine who is to be the petitioning executor or administrator, where the petition must be filed, who the heirs and beneficiaries are, and whether to request independent powers of administration. See §§7.8A-7.8B, chap 9 and California Decedent Estate Practice §§7.18-7.19 (2d ed Cal CEB 2009). On appointment of a special administrator (an administrator appointed to take immediate possession and preserve the estate when it is anticipated that there will be a delay in the ordinary administration of the estate), see §§7.44-7.48 and Decedent Estate Prac §§7.27-7.45. To the extent that the procedures for appointment of a special administrator differ from those for appointment of a regular administrator or executor, they will be noted in the following sections.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/ II. PETITIONING FOR PROBATE/§7.10 A. Procedural Guide: Initiating Probate

II. PETITIONING FOR PROBATE

§7.10 A. Procedural Guide: Initiating Probate

The proceedings for probate of will and for letters testamentary, for probate of will and for letters of administration with the will annexed, for petition for letters of administration when there is no will, and for petition for letters of special administration are governed by essentially the same or similar code provisions, and there are few procedural differences among them.

Through long usage, many courts have unwritten but enforceable rules and policies. These local rules should be ascertained before administration is begun. The guide below applies to proceedings for probate of the decedent's will. See §7.43 on petitions for administration, and see §7.44 on the minor differences applicable to special administration.

PROCEDURAL GUIDE

1. Will (and copies, if required by local practice) filed on _ _[*date*]_ _. Prob C §8200.

2. Petition for probate of will and for letters filed on _ _[*date*]_ _. Prob C §§8000-8002; see form in §7.11. Transcripts of holographic wills and codicils must be attached.

3. Notice of petition to administer estate given by petitioner on _ _[*date*]_ _. Prob C §§8100-8113; see form in §7.26.

4. Petition set for hearing on _ _[*date*]_ _, _ _ _m.; Dept. _ _. No less than 15 nor more than 30 days after filing petition, unless petitioner requests up to 45 days. Prob C §8003.

Notice published in _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _.

Dates of publication: _ _ _ _ _ _ _ _ _, _ _ _ _ _ _ _ _ _, _ _ _ _ _ _ _ _ _. See Prob C §8121.

Notices mailed to heirs, devisees, nonpetitioning named executor, and alternative executors on _ _[*date*]_ _ (at least 15 days before hearing). Prob C §8110.

5. Proof of publication of notice of petition to administer estate filed on _ _[*date*]_ _. Prob C §§8121-8125; CCP §§2009, 2015.5.

6. Proof of mailing notice of petition to administer estate filed on _ _[*date*]_ _. Prob C §§8110-8113; CCP §§2009, 2015.5; see reverse of Notice of Petition to Administer Estate. See also §5.13.

7. Proof of subscribing witness filed on _ _[*date*]_ _. Prob C §8220; CCP §§2009, 2015.5; see form in §7.33. Use when will proved by declaration or affidavit and there is no contest.

8. Order for Probate appointing personal representative and fixing bond signed by judge and filed on _ _[*date*]_ _. Prob C §§8005, 8480-8484. See form in §7.41.

9. Application for surety bond and joint control agreement or personal bond prepared on _ _[*date*]_ _, unless waived by will or all heirs. See §8.2. No bond required of trust company. Prob C §301. (If proceedings to deposit assets in lieu of bond under Prob C §8483, see §§8.10-8.13.)

10. Duties and Liabilities of Personal Representative and Acknowledgment of Receipt (Judicial Council Form DE-147) (other than trust companies and public administrators) filed with court. Prob C §8404. See §7.39.

11. Bond filed (unless waived and the court orders no bond needed) on _ _[*date*]_ _. Prob C §§8480-8485; Fin C §1586.

12. Letters filed on _ _[*date*]_ _. Prob C §8405. Oath or affirmation. Prob C §8403; CCP §2015.5; Fin C §1587; see form in §7.42.

See §12.10 on Notice of Administration to Creditors.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.10A B. Common Errors in Petitions for Letters

§7.10A B. Common Errors in Petitions for Letters

The following are among the more frequent reasons for delay in granting petitions for letters:

1. Current Judicial Council form (DE-111) not used.

2. Attempt to nominate an heir who is not qualified for appointment.

3. Judicial Council form not properly completed. Common errors committed by counsel:

- Caption on independent powers not checked (see §7.12)
- Name of petitioner omitted (see §7.14)
- Bond waiver information not included (see §7.16)
- Copy of will and codicil(s) not attached (see §7.7)
- Explanation of reasons original executor(s) will not act not attached (see §7.21)
- Nomination of administrator not attached (see §7.21)
- Residence information about personal representative not checked (see §7.20)
- Statement of decedent's domicile not included (see §7.17)
- Provisions regarding domestic partnership not completed
- Statement of whether decedent is survived by issue of predeceased child not included
- List of all beneficiaries and others entitled to notice of the proceedings not attached (see §7.22)
- Insufficient allegations regarding heirs or beneficiaries (see §7.22)
- List of beneficiaries fails to state predeceased beneficiaries
- List of beneficiaries fails to state their relationships and ages (see §7.22)

NOTE: The existence or nonexistence of all heirs or classes of heirs who might be entitled to share in the distribution of the estate should be specifically alleged. An allegation of a spouse and two children, for instance, is not sufficient. There must be an allegation regarding issue of deceased children, if any, or a specific allegation that there are none. A person named as a beneficiary in a will but subsequently deleted in a codicil should be listed as a possible beneficiary in the petition. If the decedent was a widow or widower, the names, addresses, and relationships of the heirs of the predeceased spouse must be given in the petition. The relationship of intestate heirs should be precisely traced, *e.g.,* John Smith, son of Mary Doe Smith, sister of predeceased spouse. If collateral relationships are difficult to articulate, a chart of the family tree can be quite helpful to the court.

- Petition not properly verified, or verification not dated (see §7.23)
- Attorney failed to execute attorney's certification in Petition

4. Proof of Subscribing Witness (Judicial Council Form DE-131) or Proof of Holographic Instrument (Judicial Council Form DE-135) not completed properly. Common errors committed:

- Copy of will or codicils not attached to proof
- Attorney failed to execute Attorney's Certification
- Proof dated before filing date of will, which is improper
- For holographic will, typewritten copy not attached
- For foreign language will, translation not attached
- Proof not in file

5. Notice of hearing with completed proof of service not on file.

6. Proof of publication of Notice of Petition to Administer Estate (Judicial Council Form DE-121) not in file.

7. Notice of Petition to Administer Estate fails to conform to Petition for Probate regarding request for authority to act under the Independent Administration of Estates Act (IAEA) (Prob C §§10400-10592).

8. When bond will be fixed, insufficient information stated in Petition for Probate for court to determine appropriate bond.

9. Bond for nonresident executors, if required by local court rules, not arranged.

10. Duties and Liabilities of Personal Representative and Acknowledgment of Receipt (Judicial Council Form DE-147) not on file.

11. Order for Probate (Judicial Council Form DE-140) not on file (for counties with nonappearance or pregrant system, as authorized by local rule).

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.11 C. Form: Petition for Probate (Judicial Council Form DE-111)

§7.11 C. Form: Petition for Probate (Judicial Council Form DE-111)

Copies: Original for filing; copy for client; office copies. Optional: One copy to each person who will receive a copy of the notice of hearing of the petition.

Instructions: Use of Petition for Probate (Judicial Council Form DE-111) is mandatory. Cal Rules of Ct 7.101. The form can be adapted to virtually every type of probate or estate administration.

Note that the form anticipates that additional information will be included on attachments keyed to the form. Thus, if the executor is to be a nominee under Prob C §8465, the nomination should accompany the petition as Attachment 3f(1)(c). Unless court rules forbid it, several attachments may be put on one sheet of paper. All attachments should be full-sized sheets; "riders" are unacceptable in some counties. In Los Angeles, all exhibits must be tabbed at the bottom of the page.

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(Optional):* E-MAIL ADDRESS *(Optional):* ATTORNEY FOR *(Name):*	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
ESTATE OF *(Name):* DECEDENT	
PETITION FOR ☐ **Probate of Will and for Letters Testamentary** ☐ **Probate of Will and for Letters of Administration with Will Annexed** ☐ **Letters of Administration** ☐ **Letters of Special Administration** ☐ **with general powers** ☐ **Authorization to Administer Under the Independent Administration of Estates Act** ☐ **with limited authority**	CASE NUMBER: HEARING DATE: DEPT.: TIME:

1. Publication will be in *(specify name of newspaper):*
   a. ☐ Publication requested.
   b. ☐ Publication to be arranged.
2. **Petitioner** *(name each):* **requests that**
   a. ☐ decedent's will and codicils, if any, be admitted to probate.
   b. ☐ *(name):*
      be appointed
      (1) ☐ executor
      (2) ☐ administrator with will annexed
      (3) ☐ administrator
      (4) ☐ special administrator ☐ with general powers
      and Letters issue upon qualification.
   c. ☐ full ☐ limited authority be granted to administer under the Independent Administration of Estates Act.
   d. (1) ☐ bond not be required for the reasons stated in item 3d.
      (2) ☐ $ bond be fixed. The bond will be furnished by an admitted surety insurer or as otherwise provided by law. *(Specify reasons in Attachment 2 if the amount is different from the maximum required by Prob. Code, § 8482.)*
      (3) ☐ $ in deposits in a blocked account be allowed. Receipts will be filed.
      (Specify institution and location):

3. a. Decedent died on *(date):* at *(place):*
      (1) ☐ a resident of the county named above.
      (2) ☐ a nonresident of California and left an estate in the county named above located at *(specify location permitting publication in the newspaper named in item 1):*

   b. Street address, city, and county of decedent's residence at time of death *(specify):*

ESTATE OF *(Name)*: DECEDENT	CASE NUMBER:

3. c. **Character and estimated value of the property of the estate** *(complete in all cases)*:
   (1) Personal property: $
   (2) Annual gross income from
      (a) real property: $
      (b) personal property: $
   (3) **Subtotal** *(add (1) and (2))*: $
   (4) Gross fair market value of real property: $
   (5) (Less) Encumbrances: $( )
   (6) Net value of real property: $
   (7) **Total** *(add (3) and (6))*: $

d. (1) ☐ Will waives bond. ☐ Special administrator is the named executor, and the will waives bond.
   (2) ☐ All beneficiaries are adults and have waived bond, and the will does not require a bond. *(Affix waiver as Attachment 3d(2).)*
   (3) ☐ All heirs at law are adults and have waived bond. *(Affix waiver as Attachment 3d(3).)*
   (4) ☐ Sole personal representative is a corporate fiduciary or an exempt government agency.

e. (1) ☐ Decedent died intestate.
   (2) ☐ Copy of decedent's will dated: ☐ codicil dated *(specify for each)*:
   are affixed as Attachment 3e(2).
   (Include typed copies of handwritten documents and English translations of foreign-language documents.)
   ☐ The will and all codicils are self-proving (Prob. Code, § 8220).

f. **Appointment of personal representative** *(check all applicable boxes)*:
   (1) Appointment of executor or administrator with will annexed:
      (a) ☐ Proposed executor is named as executor in the will and consents to act.
      (b) ☐ No executor is named in the will.
      (c) ☐ Proposed personal representative is a nominee of a person entitled to Letters. *(Affix nomination as Attachment 3f(1)(c).)*
      (d) ☐ Other named executors will not act because of ☐ death ☐ declination ☐ other reasons *(specify)*:

      ☐ Continued in Attachment 3f(1)(d).
   (2) Appointment of administrator:
      (a) ☐ Petitioner is a person entitled to Letters. *(If necessary, explain priority in Attachment 3f(2)(a).)*
      (b) ☐ Petitioner is a nominee of a person entitled to Letters. *(Affix nomination as Attachment 3f(2)(b).)*
      (c) ☐ Petitioner is related to the decedent as *(specify)*:
   (3) ☐ Appointment of special administrator requested. *(Specify grounds and requested powers in Attachment 3f(3).)*

g. Proposed personal representative is a
   (1) ☐ resident of California.
   (2) ☐ nonresident of California *(specify permanent address)*:

   (3) ☐ resident of the United States.
   (4) ☐ nonresident of the United States.

ESTATE OF *(Name)*: DECEDENT	CASE NUMBER:

4. ☐ Decedent's will does not preclude administration of this estate under the Independent Administration of Estates Act.
5. a. Decedent was survived by *(check items (1) or (2), and (3) or (4), and (5) or (6), and (7) or (8))*
   - (1) ☐ spouse.
   - (2) ☐ no spouse as follows:
     - (a) ☐ divorced or never married.
     - (b) ☐ spouse deceased.
   - (3) ☐ registered domestic partner.
   - (4) ☐ no registered domestic partner.
     (See Fam. Code, § 297.5(c); Prob. Code, §§ 37(b), 6401(c), and 6402.)
   - (5) ☐ child as follows:
     - (a) ☐ natural or adopted.
     - (b) ☐ natural adopted by a third party.
   - (6) ☐ no child.
   - (7) ☐ issue of a predeceased child.
   - (8) ☐ no issue of a predeceased child.

   b. Decedent ☐ was ☐ was not survived by a stepchild or foster child or children who would have been adopted by decedent but for a legal barrier. *(See Prob. Code, § 6454.)*
6. *(Complete if decedent was survived by (1) a spouse or registered domestic partner but no issue (only **a** or **b** apply), or (2) no spouse, registered domestic partner, or issue. (Check the **first** box that applies):*
   - a. ☐ Decedent was survived by a parent or parents who are listed in item 8.
   - b. ☐ Decedent was survived by issue of deceased parents, all of whom are listed in item 8.
   - c. ☐ Decedent was survived by a grandparent or grandparents who are listed in item 8.
   - d. ☐ Decedent was survived by issue of grandparents, all of whom are listed in item 8.
   - e. ☐ Decedent was survived by issue of a predeceased spouse, all of whom are listed in item 8.
   - f. ☐ Decedent was survived by next of kin, all of whom are listed in item 8.
   - g. ☐ Decedent was survived by parents of a predeceased spouse or issue of those parents, if both are predeceased, all of whom are listed in item 8.
   - h. ☐ Decedent was survived by no known next of kin.
7. *(Complete only if no spouse or issue survived decedent.)*
   - a. ☐ Decedent had no predeceased spouse.
   - b. ☐ Decedent had a predeceased spouse who
     - (1) ☐ died not more than 15 years before decedent and who owned an interest in **real property** that passed to decedent,
     - (2) ☐ died not more than five years before decedent and who owned **personal property** valued at $10,000 or more that passed to decedent,

       *(If you checked (1) or (2), check only the **first** box that applies):*
       - (a) ☐ Decedent was survived by issue of a predeceased spouse, all of whom are listed in item 8.
       - (b) ☐ Decedent was survived by a parent or parents of the predeceased spouse who are listed in item 8.
       - (c) ☐ Decedent was survived by issue of a parent of the predeceased spouse, all of whom are listed in item 8.
       - (d) ☐ Decedent was survived by next of kin of the decedent, all of whom are listed in item 8.
       - (e) ☐ Decedent was survived by next of kin of the predeceased spouse, all of whom are listed in item 8.
     - (3) ☐ neither (1) nor (2) apply.
8. Listed on the next page are the names, relationships to decedent, ages, and addresses, so far as known to or reasonably ascertainable by petitioner, of (1) all persons mentioned in decedent's will or any codicil, whether living or deceased; (2) all persons named or checked in items 2, 5, 6, and 7; and (3) all beneficiaries of a trust named in decedent's will or any codicil in which the trustee and personal representative are the same person.

Print

DE-111

ESTATE OF *(Name)*: DECEDENT	CASE NUMBER:

8. Name and relationship to decedent | Age | Address

☐ Continued on Attachment 8.

9. Number of pages attached: _____

Date:

(TYPE OR PRINT NAME OF ATTORNEY)

(SIGNATURE OF ATTORNEY)*

* (Signatures of all petitioners are also required. All petitioners must sign, but the petition may be verified by any one of them (Prob. Code, §§ 1020, 1021; Cal. Rules of Court, rule 7.103).)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME OF PETITIONER)

(SIGNATURE OF PETITIONER)

(TYPE OR PRINT NAME OF PETITIONER)

(SIGNATURE OF PETITIONER)

☐ Signatures of additional petitioners follow last attachment.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.12 1. Heading and Caption

§7.12 1. Heading and Caption

Counsel must ascertain which county has jurisdiction over the estate. Probate Code §§7051-7052 specify which county will have jurisdiction and in which county the petition must be filed. The decedent's estate must be administered in the county in which (Prob C §§7051-7052)

- the decedent was domiciled at death (regardless of where the decedent died);
- the nondomiciliary decedent died and left property; or
- if the nondomiciliary decedent died outside of California or did not leave property in the county in which he or she died, then in any California county in which the nondomiciliary decedent left property.

If the petition is being filed in a branch court, both the full name and the address of the branch court must be included.

All known names of the decedent should be included in order to avoid later difficulties with title companies, stock transfer agents, and other third parties. See §7.46 on procedure and form to add names to the title of the estate. The most commonly used name should be stated first, because that name will be the "short form" title of the estate. The less commonly used name should be introduced by "also known as." If the decedent was a married woman the heading should include both her married name and her maiden name, with the name most commonly used stated first. The box designating the type of petition being requested should be checked. If authority is being requested under the Independent Administration of Estates Act, the appropriate box or boxes should be checked.

PRACTICE TIP: In Box 1, the client's name should follow Attorney For, not *e.g.*, the Estate of Jane Doe.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.13 2. Publication (Item 1)

§7.13 2. Publication (Item 1)

Publication of the Notice of Petition to Administer Estate must be made in accordance with Prob C §§8120-8121.

The local newspaper used for publication should be inserted on the first line, and the appropriate box requesting publication should be checked.

NOTE: In some counties, if publication is requested in the petition, newspapers will begin publication without further contact from the attorney. The legal assistant should check with local newspapers and local rules to determine the procedure. See §§5.15-5.18 on publication generally.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.14 3. Petitioner (Items 2a, 2b, 3f, and 3g)

§7.14 3. Petitioner (Items 2a, 2b, 3f, and 3g)

The petition must state name of the petitioner (ordinarily, the proposed personal representative) and the person (or the names of the persons if two or more persons are named or planning to act as co-representatives) for whom letters are sought. See California Decedent Estate Practice §7.52 (2d ed Cal CEB 2009). If an executor normally uses a different name from the name given in the will, the petition should name the petitioner as, *e.g.,* "F. X. Rubenstein, also known as Francis Xavier Rubenstein," or "F. X. Rubenstein, named in the will as Francis Xavier Rubenstein."

If there is a will, box 2a should be checked. In addition, the appropriate box in 2b designating the name and type of representative should be checked. All appropriate boxes in items 3f and 3g should be checked.

PRACTICE TIP: Remember to check the applicable United States residence box, even if the California residence box is already checked.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.15 4. Authority to Administer Under the Independent Administration of Estates Act (Caption, Items 2c and 4)

§7.15 4. Authority to Administer Under the Independent Administration of Estates Act (Caption, Items 2c and 4)

The attorney for the estate must determine whether authority should be requested under the Independent Administration of Estates Act (IAEA), and if so whether that authority is to be full or limited. The appropriate boxes in the caption and in items 2c and 4 should be checked.

With IAEA authority, the personal representative has the flexibility to use independent powers but may still choose to seek court approval of risky actions. If, however, the estate has real property that will not be sold during administration and there is no will or the will does not waive bond, counsel may decide that it is more sensible to avoid a substantial additional bond premium by requesting limited independent powers. See chap 9 for discussion of the IAEA.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.16 5. Bond (Items 2d and 3d) and Character of Property (Item 3c)

§7.16 5. Bond (Items 2d and 3d) and Character of Property (Item 3c)

Once the attorney for the estate has determined whether a bond is required, or whether a blocked account is to be used, the appropriate boxes in items 2d and 3d should be checked, identifying the amount of bond to be fixed and the deposits in blocked accounts (see §8.9). The form requires that the name of the institution and its location be specified. If there is insufficient space on the form itself, counsel should add an attachment in which the property to be deposited and the name and location of the depository institution are identified.

The petition should specify the manner in which the income received from the assets deposited will be used, *i.e.,* whether it will be paid to the petitioner or held by the depository. See §8.10 on deposit of assets in lieu of bond. If no bond is required, the reasons should be shown by checking the appropriate box at item 3d.

The petition must state the character and estimated value of estate property in item 3c. Prob C §8002(a)(4). Property's "character" for purposes of this petition is either "real" or "personal." Because the values given may be used by the court in fixing bond, they should be estimated carefully. If the value has been underestimated, a petition to increase the bond will be necessary if the amount fixed is inadequate. See Cal Rules of Ct 7.204. The amount of bond will vary depending on the use of full or limited powers under the IAEA, the terms of the will, and the existence of a nonresident representative. For further discussion, see chap 8.

NOTE: Even if the will waives bond, the petition must specify the character and estimated value of estate property. Prob C §8002(a)(4). This information is necessary because the court has discretion to require a bond for good cause even when the will waives a bond. Prob C §8481(b); Cal Rules of Ct 7.201(b). In many jurisdictions the local rules (or local practice) require that out-of-state representatives post a bond even when the will has waived it. However, a bond waiver in the will may minimize the *size* of the bond. The court has discretion in fixing the amount of bond. Prob C §8482.

If no bond is required, the reason why should be shown by checking the appropriate box at item 3d. Attach the written waivers required by Prob C §8481(a)(2) from each heir or beneficiary to the verified petition.

Be careful to attach any indicated attachments.

If a deposit of assets is to be made, a form to be used as an attachment to the petition is found in §8.11.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.16A 6. Estimated Value of Estate for Filing Fee Purposes (former Item 3) [Deleted]

§7.16A 6. Estimated Value of Estate for Filing Fee Purposes (former Item 3) [Deleted]

Previously, for purposes of determining the filing fee for estates commenced after August 17, 2003, and before January 1, 2008, the estimated value of the decedent's estate was indicated by checking the appropriate box in former item 3a. For discussion of filing fees, see §1.31; for refund of filing fee for estates commenced after August 17, 2003, and before January 1, 2008, see §18.31.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.17 7. Jurisdictional Facts (Items 3a and 3b)

§7.17 7. Jurisdictional Facts (Items 3a and 3b)

The jurisdictional facts required under Prob C §8005(b)(1) (*i.e.,* date and place of death, domicile or property in state, publication of notice (see also item 1 for publication)) are set forth in items 3a and 3b. Counsel should take care in stating the date and place of death. The date is important for the purposes of fixing the time title passes (Prob C §7000), for determining the deadline for payment of estate taxes (see California Decedent Estate Practice, chap 34 (2d ed Cal CEB 2009)), and for determining the value of assets in the estate when preparing the subsequent inventory and account. The date of death may be ascertained from the death certificate if it is not otherwise certain.

The decedent's domicile at the time of death is described by the street address, city, and county of the domicile. See Prob C §8002(a)(2).

NOTE: Items 3a and 3b are imprecise in requiring information about the decedent's residence address. Although the decedent's residence is usually synonymous with domicile, the decedent's domicile, or the location of real property if the decedent was not a California resident, determines jurisdiction of the court. If there is any question of where the decedent's legal domicile was, the attorney should be consulted. For further discussion of determining domicile, see chaps 11-12.

Whether jurisdiction is based on decedent's domicile or the location of decedent's property, the name of the city is required to ascertain the correct newspaper for publication of notice.

If jurisdiction is based on the location of decedent's property, the petition must state the street address, city, and county of the property. If a nonresident decedent held real property in more than one county, any one of those counties is appropriate for filing.

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§7.18 8. Proof of Intestacy or Proving Will (Item 3e)

Intestacy must be proved. Prob C §§8005(b)(2), 8006(a). It should be alleged by checking item 3e(1), so that in uncontested proceedings the verified petition can be used to prove intestacy at the hearing. Prob C §1022; CCP §2009.

If the decedent had a will and any codicils, the appropriate boxes should be checked and the dates of the will and codicils inserted at the place designated at item 3e. A copy of the will and any codicils are attached to the petition as Attachment 3e(2). They are assigned attachment numbers and are so marked. See §7.7 for discussion of locating, copying, and filing the will.

If the will is self-proving, *i.e.,* the will contains a proper attestation clause executed under penalty of perjury by two competent witnesses (see Prob C §§6240, 8220(b); CCP §2015.5), the box in item 3e(2) stating that the will and all codicils are self-proving should be checked. It is not necessary to include the proof of subscribing witness.

If the will is not self-proving, it may be proved by affidavit or declaration of a witness, and a copy of the will must be attached to such an affidavit. Prob C §§1022, 8220(b); CCP §2009. A separate form, Proof of Subscribing Witness (Judicial Council Form DE-131), must be filled in by one of the attesting witnesses and filed before the hearing. See Prob C §8220. See also §7.33. Proof by one subscribing witness is sufficient. Prob C §8220(a).

If the will is holographic and a photocopy is attached, a typewritten copy must also be included in Attachment 3e(2). It is good practice to type a copy of the will line for line to facilitate comparison of the original with the typed copy, because many holographic wills are barely legible and are poorly punctuated and phrased. If there is any problem with wording, it should be noted on the copy so the court will be alerted to it. When the decedent's will is a holographic will, the Proof of Holographic Instrument (Judicial Council Form DE-135), reproduced in §7.36, must be prepared and filed with the petition.

If the will has already been admitted to probate in another state, Attachment 3e(2) should include an authenticated copy of the order for probate. See California Decedent Estate Practice §§11.20-11.24 (2d ed Cal CEB 2009).

If the decedent's will was in a language other than English, a translation should be attached. Prob C §8002(b)(2). See §7.19.

If the decedent died without a will, the appropriate box in item 3e should be checked.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.19 9. Proving Foreign Language Will

§7.19 9. Proving Foreign Language Will

If the will is in a foreign language, an English translation should be prepared by a competent person for the court's certification. See §7.19A for sample certification form. The certified translation is filed along with the original will. See Prob C §8002(b)(2). If the form in §7.19A is used, the will is attached to the Petition for Probate as Attachment 3e(2)-1, the English translation of the will is Attachment 3e(2)-2, and the certification form as Attachment 3e(2)-3.

Although the certification by the judge (see form in §7.19A) can be added to Attachment 3e(2)-3, it is more likely that the judge will prefer to have a similar statement included as part of the order admitting the will to probate. Note that some counties certify translators and that the translator's certification is followed by the judge's statement that the person is a certified translator.

For discussion of authentication of a foreign will, see California Decedent Estate Practice §7.63 (2d ed Cal CEB 2009).

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.19A 10. Form: Certification of Translation of Foreign Language Will (Attachment 3e(2)-3)

§7.19A 10. Form: Certification of Translation of Foreign Language Will (Attachment 3e(2)-3)

ATTACHMENT 3e(2)-3
CERTIFICATION OF TRANSLATION OF FOREIGN LANGUAGE WILL

I, the undersigned, say:

I am able to read and write _ _[*specify foreign language*]**_ _ and English.**

_ _[*Give a brief statement in support of the alleged proficiency in the foreign language*]_ _.

I have read the will designated Attachment 3e(2)-1 written in _ _[*state foreign language*]**_ _ and have personally translated it into English. Attachment 3e(2)-2 is a true and correct translation of Attachment 3e(2)-1.**

Date: _ _ _ _ _ _ __[*Signature*]__
_ _[*Typed name*]_ _

I certify on the declaration of _ _[*name*]**_ _, that Attachment _ _ _ is a true and correct translation of Attachment _ _ _.**

Date: _ _ _ _ _ _ **_____**
Judge of the Superior Court

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.20 11. Appointment of Personal Representative (Items 3f and 3g)

§7.20 11. Appointment of Personal Representative (Items 3f and 3g)

All appropriate boxes in 3f and 3g should be checked. If a box is checked that requires an attachment, make sure that the appropriate attachment is prepared and attached.

If the proposed personal representative is a nominee of a person entitled to letters, the nomination should be affixed to the petition as Attachment 3f(1)(c) or 3f(2)(b) as appropriate.

If the person named in the will to act as executor will not do so, a written declination should be filed with the petition for probate. See Prob C §8520. It can be filed as a separate pleading, but it is preferable to add it as Attachment 3f(1)(d) to the petition. See §7.21.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.21 12. Form: Declination to Serve as Executor and Nomination (Attachment 3f(1)(d))

§7.21 12. Form: Declination to Serve as Executor and Nomination (Attachment 3f(1)(d))

ATTACHMENT 3(f)(1)(d)
DECLINATION TO SERVE AS EXECUTOR AND NOMINATION

I, the undersigned, state that I am named in the decedent's will as _ _[*the executor/a coexecutor with (e.g., the decedent's spouse)*]_ _ **to administer the decedent's estate. I decline to serve as executor. I nominate** _ _[*name of nominee*]_ _**, whose petition for letters of administration is presented and filed with this form, and request that** _ _[*he/she*]_ _ **be appointed the administrator with will annexed of the estate.** _ _[*This declination is expressly conditioned on* _ _[*name of nominee*]_ _*'s term of service and is withdrawn if* _ _[*name of nominee*]_ _ *shall at any time fail to either serve or continue to serve as executor.*]_ _

Date: _ _ _ _ _ _ __[*Signature*]__
_ _[*Typed name*]_ _

Comment: This form is both a declination and a nomination. If only one purpose is required, the unnecessary language may be deleted. If the declination is conditional on the appointment and continued service of the nominee the optional language should be included.

If the decedent died intestate and the heirs entitled to letters of administration wish to nominate another, the form can be modified. If so, the relationship of the nominating heirs to the decedent should be stated so that it can be ascertained that they were the ones entitled to priority.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.22 13. Names, Ages, and Residences of Heirs and Devisees (Items 5-8)

§7.22 13. Names, Ages, and Residences of Heirs and Devisees (Items 5-8)

The petition must state the "name, age, address and relation to decedent of each heir and devisee of the decedent, so far as known to or reasonably ascertainable by the petitioner." Prob C §8002(a)(3). All persons mentioned in the will or in a codicil should be listed on the petition in item 8, including any who have predeceased the decedent or whose interests are contingent. All executors named in the will should be listed as well, including those who are not joining in the petition and alternate executors. Beneficiaries named in the will who are later deleted in a codicil must still be listed. All heirs as determined by the attorney for the estate should be listed as well. See the tables of consanguinity in App A. See also California Decedent Estate Practice §7.68 (2d ed Cal CEB 2009).

The Judicial Council petition specifies the heirs to be included and states that all persons mentioned in the will or any codicils, whether living or deceased, must be listed in item 8. The requirement that the ages of those named be alleged is apparently to indicate whether they are minors in order to determine whether a guardian may be necessary to receive assets distributed to a minor. The age of majority is 18. Fam C §6501. The ages of adults named may be important later in the administration, but the petition is adequate if it merely states that they are adults.

A beneficiary named in the will who dies before the decedent should be listed in item 8 with the notation that they predeceased the decedent (or else there is a tendency to believe notice to that person was omitted inadvertently). Review local court rules to determine if additional information should be included. For example, some local rules provide that if item 8 includes a spouse or any other person who is deceased as of the date of the petition, the petition should include the person's date of death. See, *e.g.,* Contra Costa Prob Pol Man 302(E). See also Decedent Estate Prac §7.68.

Notice is not required to a successor in interest of the predeceased person unless his or her interest does not lapse on death. See Prob C §21110. In that case notice should be given in the same manner as for a postdeceased beneficiary. If the predeceased beneficiary had no issue, note that fact. For discussion of lapsed gifts, see Decedent Estate Prac §31.86. For discussion of notice when a beneficiary dies, see §5.11A.

A beneficiary or heir who dies after the decedent should also be listed, with the date of death and the name and address of the personal representative or other successor in interest of the heir's or beneficiary's estate. Depending on the will's provisions, the beneficiary's estate may or may not be entitled to distribution, but an intestate heir's interest vests at death and therefore the heir's estate will be entitled to distribution.

All beneficiaries of a trust named in decedent's will or any codicil should be listed in item 8 and given notice if the trustee and the personal representative are the same person or if no trustee has been appointed. Local rules in several counties require notice to trust beneficiaries either when the personal representative is the trustee of the trust, or in all instances. Notice to a minor heir or beneficiary should be addressed to the minor, with additional notice addressed to the legally appointed guardian or, if none, to an adult having legal custody of the minor. If a citizen of a foreign country dies intestate or leaves a will that does not name an executor, or if it appears that property will pass to a citizen of a foreign country, notice must be given to the recognized diplomatic or consular official of the foreign country maintaining an office in the United States. Prob C §8113. If there is a charitable trust or gift without a designated trustee or recipient, the Attorney General of California should be given notice.

If the will contains a class gift, the names of all people in the class should be listed in item 8 with their relationship to decedent. For example, for a gift to "my sister's children," list decedent's sister's children by name and state their relationship as "child of decedent's sister Mary" or "daughter of decedent's sister Mary."

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.23 14. Signature and Verification

§7.23 14. Signature and Verification

A petition for letters must be signed by all petitioners. Prob C §1020. Although all petitioners must sign the petition, only one need sign the declaration on the bottom of the form. Prob C §1021(b)(1); Cal Rules of Ct 7.103. The declaration serves as a verification. See §§1.21-1.22. A declaration (or certification) under penalty of perjury in lieu of an affidavit is permitted by CCP §2015.5 and is recommended because it does not require a notary, whether executed in or outside of California. This is the form of declaration adopted by the Judicial Council.

Local court rules in some counties provide that, if a petition for letters to be issued to two or more executors is filed in which one or more of the named executors for whom letters sought is not the petitioner, a consent to act signed by each nonpetitioning executor for whom letters are sought must be filed with the court.

If the petition is verified by a petitioner and the attorney has presented all other necessary documents to the court before the hearing, in some counties neither the petitioner nor the attorney need appear at the hearing. The attorney should consult the local rules and speak with the Probate Commissioner, examiner, or Probate Attorney, or, if there is none, the clerk of the probate court about the need to appear. See §7.5.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/ D. Notice and Hearing/§7.24 1. Filing and Setting Hearing Date

D. Notice and Hearing

§7.24 1. Filing and Setting Hearing Date

The petition for probate and for letters is an initial pleading and will always require a filing fee. See §1.31. An additional fee may be required for filing the original will.

The petition is set for hearing by the clerk. The hearing date must be not less than 15 nor more than 30 days after the petition has been filed. However, on request by the petitioner made when the petition is filed, the clerk must set the hearing date between 30 and 45 days after the date the petition has been filed. Prob C §8003.

The attorney, legal assistant, or secretary should determine when probate matters will be heard by the court within that period and select the most convenient date for the petitioner and the attorney. If there is an immediate need for letters, the attorney should consider seeking special letters of administration.

Rules of court in most counties provide that, once a matter has been calendared, it cannot be advanced for hearing without an order from the judge, and that, if advanced, new notice must be given.

If the probate court hears probate matters on more than one day each week, counsel will be able to minimize attorney time in court by routinely requesting that all probate matters be set on a particular day of the week.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.25 2. Publication of Notice of Petition to Administer Estate

§7.25 2. Publication of Notice of Petition to Administer Estate

Whenever an estate is to be administered, before the hearing on the petition for probate or administration, a Notice of Petition to Administer Estate must be published at least three times in a newspaper published at least once a week; at least 5 days must intervene between the first and last publication dates, not counting the publication dates; and the first publication date must be at least 15 days before the hearing. Prob C §8121. The Judicial Council form of notice is in §7.26. The requirements of publication are detailed—particularly regarding the type of newspaper in which it must be published. Probate Code §8121 generally requires that the notice be published in a general circulation newspaper in the city where the decedent resided at death or where the decedent's property is located. The legal assistant or secretary should ask the attorney handling the matter which newspaper is appropriate, if there is any doubt. See California Decedent Estate Practice §§7.87-7.90 (2d ed Cal CEB 2009).

Publication and service of the notice is sufficient notice of any instrument offered for probate that is filed with the petition and specifically referred to in it. Any other instrument must be presented in an amended petition and a new notice must be published and served. Cal Rules of Ct 7.54.

Local practice must be ascertained to determine whether the publisher signs and files the affidavit of publication and mails or delivers it to the attorney, or whether someone from the law office must pick it up to sign and file it. See §§5.15-5.18 and 1.40.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.26 3. Form: Notice of Petition to Administer Estate (Judicial Council Form DE-121)

§7.26 3. Form: Notice of Petition to Administer Estate (Judicial Council Form DE-121)

INSTRUCTIONS: It is important to check local practice because the person who prepares the notice, attends to the mailing and publication, and prepares and files the proof of mailing and publication may be the clerk, the attorney, or the newspaper. For example, in some counties, the law office would prepare the caption of the form (leaving the case number blank) and fill in items 1-5. The form would then be submitted to the clerk who would assign a case number and set the hearing date and fill in item 6, but not file the notice. The law office then fills in item 10, gives copies of the notice to the appropriate newspaper (see §7.25), fills in the proof of service on the back of the form, and mails notice to the appropriate recipients as noted in §7.22. In other counties, the newspaper may handle all aspects of the notice.

Copies: Original to be prepared by attorney and filed with the clerk; one copy either mailed or given to newspaper for publication; one copy for each heir, devisee, nonpetitioning executor, and alternative executor named in the will (regardless of whether devise or appointment is purportedly revoked in later instrument) and anyone else listed in item 8 (see §7.22) to be served by mail or personally (Prob C §8110) (omit copy to be published and copy for heirs when, by local practice, newspaper attends the mailing and sends out published notice); one copy to be attached to proof of service in counties where clerk files original notice at the time the hearing is set (omit when, by local practice, newspaper attends to mailing and attaches copy of published notice to its proof of mailing); office copies.

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(Optional):* E-MAIL ADDRESS *(Optional):* ATTORNEY FOR *(Name):*	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
ESTATE OF *(Name):* DECEDENT	
NOTICE OF PETITION TO ADMINISTER ESTATE OF *(Name):*	CASE NUMBER:

1. To all heirs, beneficiaries, creditors, contingent creditors, and persons who may otherwise be interested in the will or estate, or both, of *(specify all names by which the decedent was known):*

2. A **Petition for Probate** has been filed by *(name of petitioner):*
   in the Superior Court of California, County of *(specify):*
3. The Petition for Probate requests that *(name):*
   be appointed as personal representative to administer the estate of the decedent.
4. ☐ The petition requests the decedent's will and codicils, if any, be admitted to probate. The will and any codicils are available for examination in the file kept by the court.
5. ☐ The petition requests authority to administer the estate under the Independent Administration of Estates Act. (This authority will allow the personal representative to take many actions without obtaining court approval. Before taking certain very important actions, however, the personal representative will be required to give notice to interested persons unless they have waived notice or consented to the proposed action.) The independent administration authority will be granted unless an interested person files an objection to the petition and shows good cause why the court should not grant the authority.
6. **A hearing on the petition will be held in this court as follows:**

   a. Date: Time: Dept.: Room:

   b. Address of court: ☐ same as noted above ☐ other *(specify):*

7. **If you object** to the granting of the petition, you should appear at the hearing and state your objections or file written objections with the court before the hearing. Your appearance may be in person or by your attorney.
8. **If you are a creditor or a contingent creditor of the decedent**, you must file your claim with the court and mail a copy to the personal representative appointed by the court within four months from the date of first issuance of letters as provided in Probate Code section 9100. The time for filing claims will not expire before four months from the hearing date noticed above.
9. **You may examine the file kept by the court.** If you are a person interested in the estate, you may file with the court a *Request for Special Notice* (form DE-154) of the filing of an inventory and appraisal of estate assets or of any petition or account as provided in Probate Code section 1250. A *Request for Special Notice* form is available from the court clerk.
10. ☐ Petitioner ☐ Attorney for petitioner *(name):*

    (Address):

    (Telephone):

NOTE: If this notice is published, print the caption, beginning with the words NOTICE OF PETITION TO ADMINISTER ESTATE, and do not print the information from the form above the caption. The caption and the decedent's name must be printed in at least 8-point type and the text in at least 7-point type. Print the case number as part of the caption. Print items preceded by a box only if the box is checked. Do not print the italicized instructions in parentheses, the paragraph numbers, the mailing information, or the material on page 2.

Form Adopted for Mandatory Use
Judicial Council of California
DE-121 [Rev. January 1, 2006]

NOTICE OF PETITION TO ADMINISTER ESTATE
(Probate—Decedents' Estates)

Probate Code, § 8100
www.courtinfo.ca.gov

Print

DE-121

ESTATE OF *(Name)*: DECEDENT	CASE NUMBER:

PROOF OF SERVICE BY MAIL

1. I am over the age of 18 and not a party to this cause. I am a resident of or employed in the county where the mailing occurred.
2. My residence or business address is *(specify)*:

3. I served the foregoing *Notice of Petition to Administer Estate* on each person named below by enclosing a copy in an envelope addressed as shown below **AND**
   a. ☐ **depositing** the sealed envelope with the United States Postal Service on the date and at the place shown in item 4, with the postage fully prepaid.
   b. ☐ **placing** the envelope for collection and mailing on the date and at the place shown in item 4 following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
4. a. Date mailed: b. Place mailed *(city, state)*:

5. ☐ I served, with the *Notice of Petition to Administer Estate*, a copy of the petition or other document referred to in the notice.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)

(SIGNATURE OF PERSON COMPLETING THIS FORM)

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

	Name of person served	Address *(number, street, city, state, and zip code)*
1.		
2.		
3.		
4.		
5.		
6.		

☐ Continued on an attachment. *(You may use form DE-121(MA) to show additional persons served.)*

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available upon request if at least 5 days notice is provided. Contact the clerk's office for *Request for Accommodations by Persons With Disabilities and Order* (form MC-410). (Civil Code section 54.8.)

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.27 4. Notice of Hearing

§7.27 4. Notice of Hearing

At least 15 days before the hearing, notice of the hearing must be served on each known or reasonably ascertainable heir of the decedent, each devisee named in the will, each person named as executor who is not petitioning, and each alternative executor named in the will offered for probate, even if the devise or appointment is purportedly revoked by a later instrument. Prob C §8110. See *Estate of Carter* (2003) 111 CA4th 1139, 4 CR3d 490 (final distribution decree set aside when administrator failed to give notice of administration to claimants—despite knowing they might be decedent's children—because *he* determined they were not heirs under the statute). On service of notice, see §5.6. See §7.26 for Notice of Petition to Administer Estate (Judicial Council Form DE-121).

NOTE: Notices sent to more than one person in a household must be mailed separately. Cal Rules of Ct 7.51(a)(3).

If, after a diligent search, a person entitled to notice cannot be located, the court will prescribe an alternative form of notice or may dispense with notice. Cal Rules of Ct 7.52(c). The court will do so only if the petitioner files a declaration of diligent search describing the search efforts made. The declaration must include (Cal Rules of Ct 7.52):

- The name of the person whose address is unknown;
- His or her last known address;
- The approximate date when the person was last known to reside at the address;
- The efforts made to locate the person;
- The facts that explain why the person's address cannot be obtained;
- A description of the attempts to discover the person's business and residence addresses by
- Checking with relatives, friends, acquaintances, and employers of the person entitled to notice and of the decedent;
- Reviewing appropriate telephone directories and directory assistance; and
- Searching real and personal property indexes in the recorder's and assessor's offices for the county of last known residence.

If a minor is entitled to notice of hearing, the notice must be sent directly to the minor. A separate copy must also be sent to the person or persons having legal custody with whom the minor resides. Cal Rules of Ct 7.51(d).

To protect the interests of beneficiaries under a charitable trust, Prob C §8111 requires notice to the Attorney General when a charitable trust has no designated trustee resident in California or when the instrument involves or may involve a charitable gift without an identified beneficiary. When notice is required under §8110, it must be accompanied by copies of the Petition for Probate and the will.

The attorney should determine who should also receive copies of the petition and will (if any). See California Decedent Estate Practice §7.84 (2d ed Cal CEB 2009). If the attorney determines that it is appropriate, an information letter may be sent to the beneficiaries. See §7.29.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.27A 5. Notice to Deceased Beneficiaries

§7.27A 5. Notice to Deceased Beneficiaries

The manner of sending notice when the beneficiary is deceased depends on whether the beneficiary died before or after the decedent. When a beneficiary dies before the decedent or does not survive the decedent for a period required by the decedent's will, notice must be sent to the following (Cal Rules of Ct 7.51(e)(2)):

- The persons named in the will as substitute beneficiaries of the gift to the predeceased beneficiary;
- The persons entitled to notice under the antilapse statute (Prob C §21110) if the will does not make a substitute disposition and if the predeceased beneficiary is kindred of the decedent or the decedent's spouse or registered domestic partner (Fam C §297.5; see §4.1) (a "transferee" under Prob C §21110(c)). If the predeceased beneficiary had no issue, that fact should be noted. For discussion of lapsed gifts, see California Decedent Estate Practice §31.86 (2d ed Cal CEB 2009); or
- The residuary beneficiaries or the decedent's heirs if the will does not make a substitute disposition and if the predeceased beneficiary is *not* a relative of the transferor or the decedent's spouse or domestic partner.

For beneficiaries who die after the decedent and survive for the required period, notice must be sent to the following:

- The personal representative of a beneficiary who dies after the decedent and survives for any period required by the decedent's will. Cal Rules of Ct 7.51(e)(1); or
- The postdeceased beneficiary's beneficiaries or other persons entitled to succeed to his or her interest in the decedent's estate if a personal representative has not been appointed for a postdeceased beneficiary. Cal Rules of Ct 7.51(e)(1).

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.28 6. Proof of Mailing

§7.28 6. Proof of Mailing

An affidavit of mailing notice to the beneficiaries (see Prob C §8005(b)(3)) must be filed with the court before the hearing. A declaration may be used in place of the affidavit. See chap 5 for a general discussion of notice. The proof of service by mail form printed on the back of the Notice of Hearing (see §5.7) is similar to the one on the back of the Notice of Petition to Administer Estate. For another form of proof of service, see §5.8.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.29 E. Form: Sample Information Letter to Beneficiary

§7.29 E. Form: Sample Information Letter to Beneficiary

_ _[*date*]_ _

Subject: Estate of _ _[*name*]_ _, deceased

Dear _ _ _ _ _ _:

Our office is working with _ _[*name of representative*]_ _, _ _[*whom _ _[name of decedent]_ _ designated as executor under _ _[his/her]_ _ last will and testamentIwho has been nominated to act as personal representative of _ _[name of decedent]_ _'s estate]_ _, to help bring about the orderly administration of _ _[*name of decedent*]_ _'s affairs.

In order to obtain the official appointment of _ _[*name of representative*]_ _ as _ _[*executor/administrator*]_ _, we have filed a petition for probate with the _ _ _ _ _ _ _ _ County Superior Court.

The court will consider this request for _ _[*name of representative*]_ _'s appointment at a hearing that will take place on _ _[*date*]_ _, at _ _[*time*]_ _. The enclosed legally required Notice of Petition to Administer Estate provides more details about the court hearing. You are free to attend the hearing if you wish to do so, but there is no requirement that you be present.

After the court issues its anticipated appointment of _ _[*name of representative*]_ _ as _ _[*executor/administrator*]_ _, various steps will be taken to help ensure that _ _[_ _[*name of decedent*]_ _'s wishes, as expressed by _ _[*his/her*]_ _ will, areIadministration of the estate is*]_ _ carried out according to applicable legal requirements and with minimal delay. _ _[*If appropriate, elaborate more specifically regarding timing and anticipated distributions*]_ _.

Our office is happy to answer questions of a general nature you may have during the probate process. Because we are representing _ _[*name of representative*]_ _, however, please be aware that we cannot provide you with formal legal representation or advice.

[*If applicable, add the following option*]

[*Option: Retain own counsel*]

You would need to retain your own attorney for that, or for certain specific questions.

[*Continue*]

Please be sure to contact _ _[*name of representative*]_ _ or _ _[*me/our office*]_ _ if you have any general questions regarding the estate or related issues. Thank you for your cooperation.

Very truly yours,
__[*Signature*]__
_ _[*Typed name of attorney*]_ _

Comment: This letter may be prepared and sent to the persons to whom the notices were sent to answer inquiries and prevent misunderstandings. It will also give the recipient basic information about the notice and the status of administration. The attorney should determine how much or how little information it is appropriate to convey, and the letter should be modified accordingly.

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F. Advise Interested Parties of Disclaimer and Waiver Rights

§7.30 1. Notice and Determinations About Exercising Rights

It is good practice to notify beneficiaries of the estate (including contingent beneficiaries) of their rights to disclaim all or part of those interests and that, to be effective, written disclaimers must be made within 9 months after the decedent's death. See Prob C §279. Except in the case of disclaimers by persons under age 21, the 9-month deadline cannot be extended. If the disclaimant is under age 21, the 9-month limitation is tolled until 9 months after that age is attained. IRC §2518(b)(2)(B). This extension applies only if the person does not accept the transfer in the meantime. The regular 9-month period begins on the date of the transfer—not on the date the particular beneficiary is entitled to enjoy the property. If, for example, the decedent's will creates a trust that pays income to A for life with remainder to B, B must disclaim within 9 months of the decedent's death—not 9 months after A's death. See Treas Reg §25.2518-2(c)(3).

The requirements for disclaimer under California law are listed in Prob C §§260-295; the requirements for disclaimer under federal law are listed in IRC §2518.

In addition to informing a surviving spouse or domestic partner (Fam C §297.5(c)) of his or her disclaimer rights, the attorney may inform the surviving spouse or domestic partner of the right to waive or to exercise any of the special spousal/partner rights listed in Prob C §141(a). The attorney should determine whether such advice should be given, because there are situations in which this could conflict with the attorney's duty to the representative. If such advice is given, the form in §7.31 can be modified accordingly.

The attorney who represents an estate must also determine whether a disclaimer must be made on behalf of the decedent, by the personal representative. The attorney who represents a beneficiary of an estate must make the same determination. See §10.20 for form of disclaimer.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.31 2. Sample Form Letter: Notice of Beneficiary's Disclaimer Rights

§7.31 2. Sample Form Letter: Notice of Beneficiary's Disclaimer Rights

_ _[*Name and address*]_ _

Re: Estate of _ _[*name*]_ _, Deceased

Dear _ _[*name*]_ _:

I represent the estate referred to above. You are a _ _[*contingent*]_ _ beneficiary of the estate. Your interest as provided in the will is _ _[*$_ _ _ _ _ _/a life estate in _ _ _ _ _ _/(other)*]_ _. I am writing to you today to inform you of your rights, under California law and federal law, to refuse to accept all or part of the estate to which you would otherwise be entitled. Such a written refusal to accept your share of the estate is called a disclaimer. A disclaimer that is made according to the requirements of California law and federal law is a qualified disclaimer.

Depending on your interests and needs, you may find that there are tax advantages to making a qualified disclaimer. To be effective, you must file a qualified disclaimer with the personal representative of this estate or with the court within nine months after the date of the decedent's death (*i.e.,* no later than _ _[*insert date that is nine months after date of death*]_ _).

[*Optional*]

For your information, I have enclosed a photocopy of the decedent's will with this letter.

[*Continue*]

Please consult your professional tax advisor to determine whether it is in your interest to file a qualified disclaimer before expiration of the 9-month period. You may also wish to obtain legal advice about the nature of your interest in this estate.

Very truly yours,

__[*Signature*]__
_ _[*Typed name of attorney*]_ _

Enclosure

Copies: Original for beneficiary; copy for client; copy for file.

Comment: This form letter may be used to notify beneficiaries of the estate of their rights to disclaim any interests they have in the estate. If the decedent left a will, a photocopy of the will may be enclosed with the letter. The form should be modified if the decedent died intestate.

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G. Proof of Uncontested Will

§7.32 1. Requirement That Will Be Proved

For a will or codicil to be admitted to probate, it must be proved that it was duly executed. To be duly executed, the will must be in writing and signed by the testator, by someone acting in the testator's presence and at the testator's direction, or by a conservator under a court order to make a will. It must also be signed during the testator's lifetime by at least two witnesses who are present at the same time and witness either the signing of the will or the testator's acknowledgment of the signature or the will. Prob C §6110(c)(1). The witnesses must understand that the instrument they sign is the testator's will, although it is not necessary for the testator to declare to the witnesses that the document is his or her will. The witnesses may gain the necessary understanding by, for example, examining the instrument or from the "circumstances surrounding the execution of the will." Comment to Prob C §6110. The statute does not require the witnesses to sign the will in the presence of the testator or of each other, although it is strongly advisable.

Due execution is normally proved in one of two ways: by declaration of a subscribing witness (see Judicial Council form in §7.33) or by a proper attestation clause made under penalty of perjury in the will itself (*i.e.,* a self-proving will). When a will is self-proving, it is not necessary to file a proof of subscribing witness. For an example of an attestation clause that satisfies the requirements for proving an uncontested will, see California Decedent Estate Practice §7.59 (2d ed Cal CEB 2009). For the requirements of due execution, see Decedent Estate Prac §26.24.

NOTE: Some counties may hold that the execution of the attestation clause of a statutory will (*i.e.,* one that complies with Prob C §§6240-6243) does not make the will self-proving. Local rules must be consulted.

If the will is not self-proving, proof of a subscribing witness is required. See §7.33 for Proof of Subscribing Witness (Judicial Council Form DE-131). If no subscribing witness can be found, the will may be proved by someone who can identify the handwriting of the testator and either (1) identification of the handwriting of any one subscribing witness or (2) a writing in the will signed by all subscribing witnesses, or an affidavit of a person with personal knowledge of the circumstances of execution, showing due execution of the will. Prob C §8221. On proving a foreign will, see chap 21 and Decedent Estate Prac §7.65.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.33 2. Form: Proof of Subscribing Witness (Judicial Council Form DE-131)

§7.33 2. Form: Proof of Subscribing Witness (Judicial Council Form DE-131)

INSTRUCTIONS: For each witness to the will, insert information regarding the attorney, the court, the estate, and type in the witness's name and address. This form requires that a photocopy of the will be attached.

If it is unknown whether the decedent signed the will or codicil personally, or directed another to sign it, the subscribing witnesses should be contacted by telephone, if possible, to find out. Then complete items 1 and 2 by checking the appropriate boxes. It should be prepared and dated after the petition for probate has been filed.

See California Judicial Council Forms Manual (Cal CEB 1981) (updated twice yearly) SmartLaser 2006 (Cal CEB software) for blank copies of the Judicial Council form. See §1.30 for discussion of filing requirements.

Copies: Original for filing; office copies.

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, state bar number, and address)*:	TELEPHONE AND FAX NOS.:	*FOR COURT USE ONLY*
ATTORNEY FOR *(Name)*:		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
ESTATE OF *(NAME)*: DECEDENT		
PROOF OF SUBSCRIBING WITNESS		CASE NUMBER:

1. I am one of the attesting witnesses to the instrument of which Attachment 1 is a photographic copy. I have examined Attachment 1 and my signature is on it.
   a. ☐ The name of the decedent was signed in the presence of the attesting witnesses present at the same time by
      (1) ☐ the decedent personally.
      (2) ☐ another person in the decedent's presence and by the decedent's direction.
   b. ☐ The decedent acknowledged in the presence of the attesting witnesses present at the same time that the decedent's name was signed by
      (1) ☐ the decedent personally.
      (2) ☐ another person in the decedent's presence and by the decedent's direction.
   c. ☐ The decedent acknowledged in the presence of the attesting witnesses present at the same time that the instrument signed was decedent's
      (1) ☐ will.
      (2) ☐ codicil.

2. When I signed the instrument, I understood that it was decedent's ☐ will ☐ codicil.

3. I have no knowledge of any facts indicating that the instrument, or any part of it, was procured by duress, menace, fraud, or undue influence.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

..... ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF WITNESS)

.....
(ADDRESS)

ATTORNEY'S CERTIFICATION

(Check local court rules for requirements for certifying copies of wills and codicils)

I am an active member of The State Bar of California. I declare under penalty of perjury under the laws of the State of California that Attachment 1 is a photographic copy of every page of the ☐ will ☐ codicil presented for probate.

Date:

..... ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF ATTORNEY)

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.34 3. Form: Letter to Subscribing Witness

§7.34 3. Form: Letter to Subscribing Witness

_ _[*Name and address*]_ _

Re: Estate of _ _[*name*]_ _, Deceased

Dear _ _[*name*]_ _:

I represent the estate of _ _[*name*]_ _, who died on _ _[*date*]_ _, leaving a will that is dated _ _[*date of will*]_ _, which you signed as a witness. A photocopy of this will is attached to the enclosed form.

In order to have the will admitted to probate, we must include your statement that the will was properly signed and witnessed. A form titled "Proof of Subscribing Witness" is enclosed for this purpose. Please examine the last page of the will, and verify that the signature is yours. Then check the information on the lines with the marked boxes in items 1 and 2 on the form and read item 3 on the form. If all of these are accurate, please sign the form on the line marked "(Signature of Witness)" and return the form to me in the stamped, self-addressed envelope that has been enclosed for your convenience. If any of the information on the form is not accurate, do not sign the form, and please contact me immediately.

Thank you for your assistance in this matter.

Very truly yours,

__[*Signature of attorney*]__
_ _[*Typed name*]_ _

Copies: Original for mailing; office copies.

Comment: Prepare letters to each subscribing witness; enclose Judicial Council Form DE-131 (Proof of Subscribing Witness) with a photocopy of the will attached to it. See §7.33 for form.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/ H. Holographic Wills/§7.35 1. Proof of Handwriting

H. Holographic Wills

§7.35 1. Proof of Handwriting

If the will is holographic (*i.e.,* handwritten), the decedent's handwriting must be proved. Prob C §8222. Judicial Council Form DE-135 (Proof of Holographic Instrument) should be sent to persons who may have seen the testator write the will or who are familiar with the testator's handwriting. The letter in §7.34 may be modified for this purpose.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.36 2. Form: Proof of Holographic Instrument (Judicial Council Form DE-135)

§7.36 2. Form: Proof of Holographic Instrument (Judicial Council Form DE-135)

INSTRUCTIONS: Insert information regarding the attorney, the court, the estate, and type in the name and address of the person who may be able to authenticate the will. Send a copy of the form, with a photocopy of the will attached, and a stamped, self-addressed envelope to each person who may authenticate the will. The form letter in §7.34 may be modified for this purpose. This form conforms to the requirements of Prob C §6111, which provides that the will is a valid holographic will if the signature and the material provisions are in the testator's handwriting.

Copies: Original for filing; copy for client; copy to any person authenticating will; office copies.

DE-135

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, state bar number, and address):*	TELEPHONE AND FAX NOS.:	*FOR COURT USE ONLY*
— ATTORNEY FOR *(Name)*:		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
ESTATE OF *(NAME)*: DECEDENT		
PROOF OF HOLOGRAPHIC INSTRUMENT		CASE NUMBER:

1. I was acquainted with the decedent for the following number of years *(specify)*:

2. ☐ I was related to the decedent as *(specify)*:

3. I have personal knowledge of the decedent's handwriting which I acquired as follows:
   a. ☐ I saw the decedent write.
   b. ☐ I saw a writing purporting to be in the decedent's handwriting and upon which decedent acted or was charged. It was *(specify)*:

   c. ☐ I received letters in the due course of mail purporting to be from the decedent in response to letters I addressed and mailed to the decedent.
   d. ☐ Other *(specify other means of obtaining knowledge)*:

4. I have examined the attached copy of the instrument, and its handwritten provisions were written by and the instrument was signed by the hand of the decedent. *(Affix a copy of the instrument as Attachment 4.)*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

. . . . . (TYPE OR PRINT NAME)

▶ _____ (SIGNATURE)

. . . . . (ADDRESS)

ATTORNEY'S CERTIFICATION

(Check local court rules for requirements for certifying copies of wills and codicils)

I am an active member of The State Bar of California. I declare under penalty of perjury under the laws of the State of California that Attachment 4 is a photographic copy of every page of the holographic instrument presented for probate.

Date:

. . . . . (TYPE OR PRINT NAME)

▶ _____ (SIGNATURE OF ATTORNEY)

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.37 I. Statement of Duties and Liabilities of Personal Representative

§7.37 I. Statement of Duties and Liabilities of Personal Representative

Before letters may be issued, an acknowledgment of receipt by the representative of the statement of duties and liabilities must be on file. Cal Rules of Ct 7.150. The content of this statement is mandated by Prob C §8404 and is incorporated in the Duties and Liabilities of Personal Representative (Judicial Council Form DE-147) in §7.39. An acknowledgment of receipt, required to be filed with the court before letters are issued, appears on the second page of the form.

Local courts are authorized to require the inclusion of the personal representative's birthdate and any driver's license number, if the court ensures their confidentiality (Prob C §8404(b)) and many counties do so through their local rules. See Confidential Supplement to Duties and Liabilities of Personal Representative (Judicial Council Form DE-147S) in §7.39.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.38 1. Form: Duties and Liabilities of Personal Representative and Acknowledgment of Receipt (Judicial Council Form DE-147)

§7.38 1. Form: Duties and Liabilities of Personal Representative and Acknowledgment of Receipt (Judicial Council Form DE-147)

ATTORNEY OR PARTY WITHOUT ATTORNEY (*Name, state bar number, and address*):	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. (*Optional*): E-MAIL ADDRESS (*Optional*): ATTORNEY FOR (*Name*):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
ESTATE OF (*Name*): DECEDENT	
DUTIES AND LIABILITIES OF PERSONAL REPRESENTATIVE and Acknowledgment of Receipt	CASE NUMBER:

DUTIES AND LIABILITIES OF PERSONAL REPRESENTATIVE

When the court appoints you as personal representative of an estate, you become an officer of the court and assume certain duties and obligations. An attorney is best qualified to advise you about these matters. You should understand the following:

1. MANAGING THE ESTATE'S ASSETS

a. Prudent investments
You must manage the estate assets with the care of a prudent person dealing with someone else's property. This means that you must be cautious and may not make any speculative investments.

b. Keep estate assets separate
You must keep the money and property in this estate separate from anyone else's, including your own. When you open a bank account for the estate, the account name must indicate that it is an estate account and not your personal account. Never deposit estate funds in your personal account or otherwise mix them with your or anyone else's property. Securities in the estate must also be held in a name that shows they are estate property and not your personal property.

c. Interest-bearing accounts and other investments
Except for checking accounts intended for ordinary administration expenses, estate accounts must earn interest. You may deposit estate funds in insured accounts in financial institutions, but you should consult with an attorney before making other kinds of investments.

d. Other restrictions
There are many other restrictions on your authority to deal with estate property. You should not spend any of the estate's money unless you have received permission from the court or have been advised to do so by an attorney. You may reimburse yourself for official court costs paid by you to the county clerk and for the premium on your bond. Without prior order of the court, you may not pay fees to yourself or to your attorney, if you have one. If you do not obtain the court's permission when it is required, you may be removed as personal representative or you may be required to reimburse the estate from your own personal funds, or both. You should consult with an attorney concerning the legal requirements affecting sales, leases, mortgages, and investments of estate property.

2. INVENTORY OF ESTATE PROPERTY

a. Locate the estate's property
You must attempt to locate and take possession of all the decedent's property to be administered in the estate.

b. Determine the value of the property
You must arrange to have a court-appointed referee determine the value of the property unless the appointment is waived by the court. You, rather than the referee, must determine the value of certain "cash items." An attorney can advise you about how to do this.

c. File an inventory and appraisal
Within four months after Letters are first issued to you as personal representative, you must file with the court an inventory and appraisal of all the assets in the estate.

Print

ESTATE OF *(Name)*: DECEDENT	CASE NUMBER:

d. File a change of ownership
At the time you file the inventory and appraisal, you must also file a change of ownership statement with the county recorder or assessor in each county where the decedent owned real property at the time of death, as provided in section 480 of the California Revenue and Taxation Code.

3. NOTICE TO CREDITORS

You must mail a notice of administration to each known creditor of the decedent within four months after your appointment as personal representative. If the decedent received Medi-Cal assistance, you must notify the State Director of Health Services within 90 days after appointment.

4. INSURANCE

You should determine that there is appropriate and adequate insurance covering the assets and risks of the estate. Maintain the insurance in force during the entire period of the administration.

5. RECORD KEEPING

a. Keep accounts
You must keep complete and accurate records of each financial transaction affecting the estate. You will have to prepare an account of all money and property you have received, what you have spent, and the date of each transaction. You must describe in detail what you have left after the payment of expenses.

b. Court review
Your account will be reviewed by the court. Save your receipts because the court may ask to review them. If you do not file your accounts as required, the court will order you to do so. You may be removed as personal representative if you fail to comply.

6. CONSULTING AN ATTORNEY

If you have an attorney, you should cooperate with the attorney at all times. You and your attorney are responsible for completing the estate administration as promptly as possible. **When in doubt, contact your attorney.**

NOTICE: 1. This statement of duties and liabilities is a summary and is not a complete statement of the law. Your conduct as a personal representative is governed by the law itself and not by this summary.
2. If you fail to perform your duties or to meet the deadlines, the court may reduce your compensation, remove you from office, and impose other sanctions.

ACKNOWLEDGMENT OF RECEIPT

1. I have petitioned the court to be appointed as a personal representative.
2. My address and telephone number are *(specify)*:
3. I acknowledge that I have received a copy of this statement of the duties and liabilities of the office of personal representative.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF PETITIONER)

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF PETITIONER)

CONFIDENTIAL INFORMATION: If required to do so by local court rule, you must provide your date of birth and driver's license number on supplemental Form DE-147S. (Prob. Code, § 8404(b).)

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.39 2. Form: Confidential Supplement to Duties and Liabilities of Personal Representative (Judicial Council Form DE-147S)

§7.39 2. Form: Confidential Supplement to Duties and Liabilities of Personal Representative (Judicial Council Form DE-147S)

ESTATE OF *(Name)*: DECEDENT	CASE NUMBER:

CONFIDENTIAL STATEMENT OF BIRTH DATE AND DRIVER'S LICENSE NUMBER

(Supplement to *Duties and Liabilities of Personal Representative* (Form DE-147))

(NOTE: This supplement is to be used if the court by local rule requires the personal representative to provide a birth date and driver's license number. Do ***not*** *attach this supplement to Form DE-147.)*

This separate *Confidential Statement of Birth Date and Driver's License Number* contains confidential information relating to the personal representative in the case referenced above. This supplement shall be kept separate from the *Duties and Liabilities of Personal Representative* filed in this case and shall not be a public record.

INFORMATION ON THE PERSONAL REPRESENTATIVE:

1. Name:
2. Date of birth:
3. Driver's license number: State:

TO COURT CLERK:
THIS STATEMENT IS **CONFIDENTIAL**. DO NOT FILE
THIS CONFIDENTIAL STATEMENT IN A PUBLIC COURT FILE.

Comment: The attorney should determine whether local rules have adopted this requirement before filing DE-147S. See §7.37. The supplement should not be attached to the acknowledgment of receipt (DE-147). It is not a public

record and must be kept separate.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.40 J. Hearing

§7.40 J. Hearing

The legal assistant should check local rules and practice to ascertain whether there is a deadline before the hearing date to file all documents and submit the order, to ascertain local policies on correcting any deficiencies in the pleadings or other documents, and to confirm whether an appearance will be necessary. See §§1.26, 5.4.

A supplement to a pleading can correct many minor defects in the original pleadings and will not require giving additional notice of hearing (although a copy of the supplemental pleading must be served if service of the original pleading was required) or continuance of the proceedings. Cal Rules of Ct 7.53(b). An amended pleading or an amendment to the pleadings will require the same notice of hearing (including publication) as the pleading it amends and may require the continuance of the hearing date if insufficient time remains for such notice. Cal Rules of Ct 7.53(a).

An interested person may make an oral objection at the hearing. Prob C §1043(b). Depending on the nature of the objection, the court may either hear and rule on the objection or continue the hearing to permit filing and service of written objections. If the person does not file and serve a timely objection, the court may deem the objections waived. Cal Rules of Ct 7.801.

When the will is admitted to probate, the clerk must record it in the minutes of the court. Prob C §8225.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.41 K. Form: Order for Probate (Judicial Council Form DE-140)

§7.41 K. Form: Order for Probate (Judicial Council Form DE-140)

INSTRUCTIONS: This form is designed for all situations, including a grant of authority under the Independent Administration of Estates Act. Some counties permit attachments to the form after the signature, and others require that the place for execution by the court appear at the end of the last attachment with an appropriate indication (checking the box on the form).

Item 5 of the form fixes bond. Item 5c contains the provision for deposits. See §8.10 on deposits in blocked account in lieu of bond. Include an attachment if there is insufficient space to properly identify the amount and location of the property deposited. A sample attachment is included in §8.13. If the deposit is made before the hearing, the order for probate fixes the bond in the reduced amount. If the deposit is not made until after the hearing, the bond should not be filed until the deposit is made and should then be in the reduced amount.

Los Angeles County has its own form for appointing a probate referee.

Copies: Original for filing; office copies.

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, state bar number, and address)*: TELEPHONE AND FAX NOS.:	*FOR COURT USE ONLY*
ATTORNEY FOR *(Name)*:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
ESTATE OF *(Name)*: DECEDENT	
ORDER FOR PROBATE **ORDER APPOINTING** ☐ **Executor** ☐ **Administrator with Will Annexed** ☐ **Administrator** ☐ **Special Administrator** ☐ **Order Authorizing Independent Administration of Estate** ☐ **with full authority** ☐ **with limited authority**	CASE NUMBER:

WARNING: THIS APPOINTMENT IS NOT EFFECTIVE UNTIL LETTERS HAVE ISSUED.

1. Date of hearing: Time: Dept./Room: Judge:

THE COURT FINDS

2. a. All notices required by law have been given.
   b. Decedent died on *(date)*:
      (1) ☐ a resident of the California county named above.
      (2) ☐ a nonresident of California and left an estate in the county named above.
   c. Decedent died
      (1) ☐ intestate
      (2) ☐ testate
      and decedent's will dated: and each codicil dated:
      was admitted to probate by Minute Order on *(date)*:

THE COURT ORDERS

3. *(Name)*:
   is appointed **personal representative:**
   a. ☐ executor of the decedent's will
   b. ☐ administrator with will annexed
   c. ☐ administrator
   d. ☐ special administrator
      (1) ☐ with general powers
      (2) ☐ with special powers as specified in Attachment 3d(2)
      (3) ☐ without notice of hearing
      (4) ☐ letters will expire on *(date)*:
   and letters shall issue on qualification.
4. a. ☐ **Full authority** is granted to administer the estate under the Independent Administration of Estates Act.
   b. ☐ **Limited authority** is granted to administer the estate under the Independent Administration of Estates Act (there is no authority, without court supervision, to (1) sell or exchange real property or (2) grant an option to purchase real property or (3) borrow money with the loan secured by an encumbrance upon real property).
5. a. ☐ Bond is not required.
   b. ☐ Bond is fixed at: $ to be furnished by an authorized surety company or as otherwise provided by law.
   c. ☐ Deposits of: $ are ordered to be placed in a blocked account at *(specify institution and location)*:
      and receipts shall be filed. No withdrawals shall be made without a court order. ☐ Additional orders in Attachment 5c.
   d. ☐ The personal representative is not authorized to take possession of money or any other property without a specific court order.
6. ☐ *(Name)*: is appointed probate referee.

Date:

JUDGE OF THE SUPERIOR COURT

7. Number of pages attached: ____ ☐ SIGNATURE FOLLOWS LAST ATTACHMENT

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.42 L. Form: Letters (Judicial Council Form DE-150)

§7.42 L. Form: Letters (Judicial Council Form DE-150)

DE-150

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, state bar number, and address)*:	TELEPHONE AND FAX NOS.:	*FOR COURT USE ONLY*
ATTORNEY FOR *(Name)*:		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
ESTATE OF *(Name)*: DECEDENT		
LETTERS ☐ **TESTAMENTARY** ☐ **OF ADMINISTRATION** ☐ **OF ADMINISTRATION WITH WILL ANNEXED** ☐ **SPECIAL ADMINISTRATION**		CASE NUMBER:

LETTERS

1. ☐ The last will of the decedent named above having been proved, the court appoints *(name)*:
   a. ☐ executor.
   b. ☐ administrator with will annexed.
2. ☐ The court appoints *(name)*:
   a. ☐ administrator of the decedent's estate.
   b. ☐ special administrator of decedent's estate
      (1) ☐ with the special powers specified in the *Order for Probate*.
      (2) ☐ with the powers of a general administrator.
      (3) ☐ letters will expire on *(date)*:
3. ☐ The personal representative is authorized to administer the estate under the Independent Administration of Estates Act ☐ **with full authority** ☐ **with limited authority** (no authority, without court supervision, to (1) sell or exchange real property or (2) grant an option to purchase real property or (3) borrow money with the loan secured by an encumbrance upon real property).
4. ☐ The personal representative is not authorized to take possession of money or any other property without a specific court order.

WITNESS, clerk of the court, with seal of the court affixed.

(SEAL)

Date:

Clerk, by

(DEPUTY)

AFFIRMATION

1. ☐ PUBLIC ADMINISTRATOR: No affirmation required (Prob. Code, § 7621(c)).
2. ☐ INDIVIDUAL: **I solemnly affirm** that I will perform the duties of personal representative according to law.
3. ☐ INSTITUTIONAL FIDUCIARY *(name)*:

   I solemnly affirm that the institution will perform the duties of personal representative according to law. I make this affirmation for myself as an individual and on behalf of the institution as an officer.
   (Name and title):
4. Executed on *(date)*:
   at *(place)*: , California.

▶ _____
(SIGNATURE)

CERTIFICATION

I certify that this document is a correct copy of the original on file in my office and the letters issued the personal representative appointed above have not been revoked, annulled, or set aside, and are still in full force and effect.

(SEAL)

Date:

Clerk, by

(DEPUTY)

INSTRUCTIONS: The oath or affirmation must be executed after the petition for probate has been filed, but it may be executed before the hearing date. See Fin C §1587 on a qualifying oath for trust companies, which is now included in

the new Judicial Council form.

Local rules generally provide that, when multiple personal representatives are appointed, the clerk will not issue letters to fewer than all of them or separately to any of them, unless the court specifies otherwise.

If bond has been required, letters will not issue until bond has been posted. Acknowledgment of receipt of the Duties and Liabilities of Personal Representative (Judicial Council Form DE-147) must be filed with the court before letters are issued. For convenience, consider filing form DE-147 along with the petition for probate or administration.

Issuance of letters begins the normal four-month period in which creditors can file claims. See §12.14.

Copies: Original for filing; one certified copy for each item to be transferred (bank accounts, securities, etc.); copy for client; office copies.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.43 III. PETITIONING FOR LETTERS OF ADMINISTRATION

§7.43 III. PETITIONING FOR LETTERS OF ADMINISTRATION

The procedures and forms in the foregoing sections are the same for appointment of an administrator and the issuance of letters of administration, with minor modifications or variations discussed below:

Because there is no will to nominate an executor, the priority of those who may act is set by statute. See Prob C §§8461-8469. If those with priority decline to act, use the declination form in §7.21, modified as indicated.

Because there is no will, there will be no attachment to item 3e of the petition for letters.

Attachment 3f(2) should clarify the priority to appointment if the matter is not clear on its face from the petition itself.

Bond is more likely to be required. See chap 8.

The list of heirs is sufficient. There are no devisees or others.

The letter to beneficiaries can be modified to let heirs know their intestate share of the estate.

No will needs to be proved, so §§7.32-7.36 may be disregarded.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.44 IV. SPECIAL ADMINISTRATION

§7.44 IV. SPECIAL ADMINISTRATION

When a delay is likely to occur in the naming of a regular personal representative (for example, when a will contest has been filed), a petition may be filed for the appointment of a special administrator who can take any immediate actions necessary to preserve or defend the estate. The order of priority of persons who may be named as special administrator is governed by Prob C §8541. See California Decedent Estate Practice §7.29 (2d ed Cal CEB 2009). Except as noted below, and as may be provided by local rule, the procedure is the same as that for appointment of an executor.

The court may appoint a special administrator without notice (see Prob C §8541(a)), although some counties require 24-hour notice to the surviving spouse, named executor, or others that the court determines are entitled to notice. See Decedent Estate Prac §§7.36-7.38.

If notice is required, the attorney should prepare the Order Prescribing Notice (Judicial Council Form DE-200) to meet the requirements of the particular judge. See §5.6 for a copy of this order. The court may also require personal service of the notice. Prob C §8541(a).

The attorney filing the petition must decide whether to request that the administrator be appointed with limited powers or full powers. Full powers are usually sought if it is anticipated that the special administrator's appointment will extend for a lengthy period, such as when there is a will contest. Most courts will not grant full powers before the initial probate hearing date unless there is a strong showing of need. For discussion of the considerations that will determine that decision, and a description of the differences between full and limited authority, see Decedent Estate Prac §§7.30-7.32.

Bond is required unless it is waived by the will for the person seeking the appointment or by all beneficiaries. See Prob C §§8481, 8542-8545; Decedent Estate Prac §7.34; chap 8.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.45 A. Forms and Procedures

§7.45 A. Forms and Procedures

The Petition for Probate (Judicial Council Form DE-111) in §7.11 is also used to seek appointment of a special administrator. It is completed in much the same way, with some modifications. There must be an Attachment 3f(3) stating the grounds and requested powers.

The following are two examples of attachments that could be added as Attachment 3f(3):

If matters require emergency attention:

Among the assets of the estate are _ _[*specify*]_ _, which require immediate and constant attention with reference to _ _[*e.g., continuing business/collecting rent or interest/preventing waste or theft*]_ _.

If the will is being contested:

A contest has been filed to the probate of the document(s) filed in this case and offered for probate as the decedent's last will. No one has been authorized to care for the decedent's property. There will be great delay in granting letters testamentary or of administration pending the determination of the will contest, and it is necessary that someone take charge of and care for the estate property until the contest has been determined.

The requested powers should be limited to those necessary to accomplish the goals indicated in the grounds portion of the attachment.

Most courts require that a petition for probate and letters testamentary or petition for letters of administration be filed and set for hearing before a petition for letters of special administration will be granted. The two petitions are often filed simultaneously. Most often, the petition for letters of special administration is granted only until the hearing date on the underlying petition. If the hearing is continued, the special administrator must request the court to extend his or her authority to a new date.

The order appointing the special administrator is the same Judicial Council form as the one in §7.41 (Judicial Council Form DE-140). The court will modify the notice findings to suit the circumstances (for instance, by striking "given" from item 2a and inserting "waived by court"). Item 3d is completed. The attachment to item 3d(2) should correlate with the special powers requested in Attachment 3f(3) of the petition (Judicial Council Form DE-111; see §7.11). The court will usually add an expiration date after the words "Special Administrator" at item 3d (for example, "until March 10, 200_"). Certified copies of the order should be obtained because they will be needed to prove the scope of authority to act, unless general powers are granted.

An order extending the time period for a special administrator to act is normally an attorney-drafted order.

The letters of special administration form is the same as the form in §7.42 and is issued in the same manner as that form.

Because the Notice of Petition to Administer Estate published and served pursuant to the underlying petition gives notice to creditors and others, no separate notice need be published for the petition for general powers to special administrator unless the court so orders.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.46 B. Subsequent Grant of General Powers

§7.46 B. Subsequent Grant of General Powers

If a will contest has been filed after a special administrator with limited powers has been appointed, the court may make an order granting the administrator general powers. When the court makes its order, new letters with general powers are issued. Prob C §8545. If letters have not already been issued to a general personal representative, Prob C §8545 requires that the order granting the administrator general powers must be on the same notice provided under Prob C §8003 for appointment of a personal representative, unless the grant of powers is made at a hearing on a properly noticed petition for appointment of general personal representative. See §§7.47-7.48 for forms of petition and order.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.47 1. Form: Petition for General Powers to Special Administrator

§7.47 1. Form: Petition for General Powers to Special Administrator

[*Title of court*]

Estate of _ _[*name*]_ _,	**)**	**No. _ _ _ _ _ _**
	)	**PETITION FOR GENERAL**
Decedent	**)**	**POWERS TO SPECIAL**
	)	**ADMINISTRATOR**
	)	**(PROBATE CODE §8545)**
_____	**)**	
		Hearing date:
		Time:
		Department:

Petitioner, _ _[*name*]_ _, was appointed special administrator on _ _[*date*]_ _, and alleges as follows:

1. Since the appointment of petitioner as special administrator, a proceeding to contest the decedent's will before probate has been instituted.

2. Notice of petition to administer estate has been _ _[*duly published/waived*]_ _.

[*Add one of the following alternatives*]

[*Alternative 1: No one requested special notice*]

3. No special notice has been requested.

[*Alternative 2: Special notice has been given*]

3. Special notice has been requested by _ _[*name(s)*]_ _ and has been _ _[*given/waived*]_ _. Proofs of service of special notice or written waivers of special notice are attached as Exhibit A to this petition.

[*Continue*]

4. To expedite administration of the estate, it is necessary that petitioner be granted the additional general powers under Probate Code §8545.

[*Add one of the following alternatives*]

[*Alternative 1: No additional bond required*]

5. No additional bond is required of the special administrator.

[*Alternative 2: Additional bond required*]

5. The special administrator should give an additional bond in the sum of $_ _[*amount*]_ _.

[*Continue*]

WHEREFORE, petitioner requests that letters of special administration with general powers be issued to petitioner and that the court issue all other proper orders.

Date: _ _ _ _ _ _

__[*Signature*]__
_ _[*Typed name*]_ _
Name of petitioner

__[***Signature***]__
_ _[***Typed name***]_ _
Attorney for petitioner

Copies: Original for filing; copy for client; office copies.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.48 2. Form: Order Granting Powers of General Administrator to Special Administrator

§7.48 2. Form: Order Granting Powers of General Administrator to Special Administrator

[*Title of court*]

Estate of _ _[*name*]_ _,	**)**	**No. _ _ _ _ _ _**
	)	**ORDER GRANTING POWERS**
Decedent	**)**	**OF A**
	)	**GENERAL ADMINISTRATOR**
_____	**)**	**TO**
		SPECIAL ADMINISTRATOR

The petition of _ _[*name*]_ _, as special administrator of the state of the above-named decedent, requesting general powers having been duly presented to the court, and it appearing that after qualification of the special administrator a proceeding to contest the will before its probate has been instituted;

[*Add one of the following alternatives*]

[*Alternative 1: Notice is dispensed with*]

and that notice of the hearing of the petition is dispensed with,

[*Alternative 2: Notice given*]

and that notice of the hearing of the petition has been given as required by law,

[*Continue*]

IT IS ORDERED that the special administrator shall have the additional powers, duties, and obligations of a general administrator,

[*Add one of the following alternatives*]

[*Alternative 1: No additional bond required*]

and that no additional bond is required of the special administrator.

[*Alternative 2: Additional bond required*]

and that the special administrator give an additional bond according to law in the sum of $_ _[*amount*]_ _ if executed by an authorized corporate surety or in twice that sum if executed by individual sureties.

Date: _ _ _ _ _ _ __[*Signature*]__
Judge of the _ _[*title of court*]_ _

Copies: Original to be signed by judge and filed with clerk; copy for client; office copies.

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V. MISCELLANEOUS

§7.49 A. Supplement Title of Proceedings

A common reason for supplementing a pleading is to add other names by which the decedent was known. If other names of the decedent are discovered after the petition has been filed, an ex parte order may be obtained adding the additional names to the title of the estate by a supplement to the pleading. The title of the proceeding should be the title on the original pleadings—not as it will be supplemented. All subsequent documents should include those names. Because this procedure can vary from county to county, local practice should be determined.

When the order is signed, new letters should be issued that reflect the new complete title of the proceeding. In transferring securities held under the additional name added to the title of the probate proceeding, transfer agents or other holders of assets will probably require certified copies of both the new letters and the order.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.49A 1. Form: Petition for Order to Supplement Title of Proceedings

§7.49A 1. Form: Petition for Order to Supplement Title of Proceedings

[*Title of court*]

Estate of _ _[*name*]_ _,	**)**	**No. _ _ _ _ _ _**
	)	**PETITION FOR ORDER TO**
Decedent	**)**	**SUPPLEMENT TITLE OF**
	)	**PROCEEDINGS AND REISSUE**
	)	**LETTERS**
	)	**(CAL RULES OF COURT**
	)	**7.3(5))**
	)	
	)	**Hearing date:**
_____	**)**	**Time:**
		Department:

Petitioner, _ _[*name*]_ _, alleges:

Petitioner is the _ _[*executor/administrator*]_ _ of the _ _[*will/estate*]_ _ of the above-named decedent. It has been discovered that the decedent was also known by the name(s) of _ _[*specify*]_ _.

Petitioner asks the court to make its order to supplement the titles of all previous and future proceedings concerning this estate, in order to add to the above title the other name(s) under which the decedent was known, and to order that new letters _ _[*testamentary/of administration*]_ _ be issued.

Date: _ _ _ _ _ _

__[*Signature*]__
_ _[*Typed name*]_ _
Petitioner

[*Verification; see §1.22*]

Copies: Original for filing; certified copies of order only if required by transfer agent; copy for client; office copies.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.49B 2. Form: Order Supplementing Title of Proceedings

§7.49B 2. Form: Order Supplementing Title of Proceedings

[*Title of court*]

Estate of _ _[*name*]_ _,	**)**	**No. _ _ _ _ _ _**
also known as	**)**	**ORDER TO SUPPLEMENT**
_ _ _ _ _ _,	**)**	**TITLE OF PROCEEDINGS**
Decedent	**)**	**AND ISSUE NEW LETTERS**
_____	**)**	

IT IS ORDERED that the titles of all previous proceedings concerning this estate are supplemented to include, and all future proceedings shall include, the name(s) by which the decedent was also known, as follows: _ _[*Specify names*]_ _ and that new letters _ _[*testamentary/of administration*]_ _ be issued.

Date: _ _ _ _ _ _ __[*Signature*]__
Judge of the _ _[*title of court*]_ _

Copies: Original for filing; office copies.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.50 B. Successor Representative Proceedings

§7.50 B. Successor Representative Proceedings

If all the qualified personal representatives die, resign, or become disqualified or incapable, or if their letters are revoked, a successor administrator or administrator with will annexed must be appointed. Prob C §8522.

The procedures for appointment of a successor representative are generally the same as for appointment of the original representative. See generally California Decedent Estate Practice §§7.102-7.104 (2d ed Cal CEB 2009).

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.51 C. Issuance of Amended Letters

§7.51 C. Issuance of Amended Letters

If there is more than one personal representative and one of them will no longer serve as representative, the court may issue amended letters for the remaining co-representative. See California Decedent Estate Practice §7.104 (2d ed Cal CEB 2009). The amended letters will allow the remaining representatives to prove their authority to complete administration.

The petition merely alleges the death, disability, removal, or resignation of the representative and asks the court to issue amended letters to the remaining representative. Although the usual notice is generally required, the court will frequently grant such a petition ex parte. An ex parte application for an order must allege whether special notice has been requested. Cal Rules of Ct 7.55(a). Once granted, the form of letters is the same as that in §7.42, with appropriate modifications.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.52 D. Form: Probating Lost or Destroyed Wills (Attachment 2a)

§7.52 D. Form: Probating Lost or Destroyed Wills (Attachment 2a)

INSTRUCTIONS: If a will has been lost or destroyed (other than intentionally by the decedent), it may still be probated as would any other will under some circumstances, and subject to certain special requirements. Once the attorney has concluded that the lost or destroyed will should be offered for probate (see California Decedent Estate Practice §7.66 (2d ed Cal CEB 2009); Prob C §8223), the will may be offered for probate using the petitions and orders set out in §§7.11-7.41. The Petition for Probate should state that it is a petition for probate of a lost will and should request appointment of the petitioner as administrator with the will annexed. Any copy of the original will should be attached. An Attachment 2a should be added to the petition as follows:

ATTACHMENT 2a

Decedent left a will dated _ _ _ _ _ _ _ _, which petitioner _ _[*is informed and believes and therefore*]**_ _ alleges is the last will of the decedent. This will has never been revoked, but was _ _**[*lost/destroyed*]**_ _.**

_ _[*State facts concerning loss or destruction*]_ _.

Provisions of the will are set forth in the attached written statement, marked Attachment _ _ _, and made a part hereof by this reference.

The testimony of any witness who can prove the provisions of the will may be in writing and filed with the court. Prob C §8224. Some jurisdictions require a copy of the transcript of the proceedings to be submitted with the order. See §7.53.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.53 E. Form: Proof of Lost or Destroyed Will and of Provisions of Will by Declaration

§7.53 E. Form: Proof of Lost or Destroyed Will and of Provisions of Will by Declaration

INSTRUCTIONS: The following declaration, which may be used as Attachment 2 to the Judicial Council Form DE-131 (Proof of Subscribing Witness) in §7.33, is designed to prove both the due execution of the will and its provisions. Often a photocopy of the lost or destroyed will is available. The attorney who drafted the will can attest to its contents from the photocopy. This form has been adapted to that situation. When a copy is not available, the substance of the lost or destroyed will must be set forth, and the declaration should be modified accordingly.

Copies: Original (to be executed by or by one of the subscribing witnesses to the will) for filing; office copies.

ATTACHMENT 2

I, the undersigned, say:

At all times hereafter mentioned I was a competent witness and an attorney licensed to practice in the State of California.

At the above-named decedent's request, I drafted the foregoing instrument, designated as "Attachment 1" _ _[*and acted as subscribing witness to that instrument*]**_ _. I was acquainted with the other subscribing witness.**

Attachment 1 is a true copy of the provisions of the instrument purporting to be the decedent's last will, so subscribed and declared by the decedent to be _ _[*his/her*]**_ _ will and so attested.**

[*If will in existence at decedent's death*]

The original will existed to my own knowledge on _ _[*date*]**_ _, the date of the decedent's death.**

[*If will destroyed during lifetime of decedent without his or her knowledge, state facts of destruction and lack of knowledge of decedent*]

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: _ _ _ _ _ _ __[*Signature of attorney*]__

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.54 F. Will Contests

§7.54 F. Will Contests

If the attorney represents a contestant to a will, at the time the contest is filed, the clerk should issue a summons directed to each affected party. The legal assistant should make sure that the appropriate number of summonses are prepared and that each affected party is listed on one. Failure to have the summonses timely issued could determine the will contest against the contestants. See California Decedent Estate Practice, chap 26 (2d ed Cal CEB 2009).

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.55 G. Administration of Missing Person's Estate

§7.55 G. Administration of Missing Person's Estate

When a person who was a resident of California or who owned property in California has been missing for a continuous period of 5 years, Prob C §§12400-12408 provide a method for administering and distributing the estate.

The petition must be filed in the county in which the missing person had his or her last known residence, if the missing person was a California resident at the time of the disappearance. If the missing person was not a California resident at that time, the petition should be filed where the person had real property or, if none, where he or she had personal property. Prob C §12403.

The proceedings are initiated by an action titled "In the Matter of the Estate of _ _ _ _ _ _, a Missing Person. Probate Code §§12400-12408."

Under Prob C §12404(c) the petition must state (in addition to the other matters required in a petition for decedent estate administration): (1) the last known residence and address of the missing person, (2) the time and circumstances of the disappearance, (3) that the missing person's whereabouts have been unknown to the petitioner and to those who would be likely to know (naming them and their relationship to the missing person) for a continuous period of at least 5 years, and (4) a description of the search or inquiry made to determine the missing person's whereabouts.

Notice of the hearing is the same as that for administration of a decedent's estate, except that notice must also be sent by registered mail to the decedent at his or her last known address. Prob C §12405.

At the hearing on the petition, if the court does not feel that it has sufficient evidence to determine that the missing person is presumed dead, it may require further investigation as provided in Prob C §12406. Once the court determines that the decedent is presumed dead, the court appoints a personal representative and determines a date of death. The estate is then administered like any other decedent's estate. Prob C §12407.

See Prob C §12408 for the rights of a missing person who reappears.

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Source: Estate Planning/California Probate Workflow Manual Revised/7 Petition for Probate, Letters, and Qualification of Representative/§7.56 H. Administration of Estates of Absent Federal Personnel

§7.56 H. Administration of Estates of Absent Federal Personnel

Probate Code §§3700-3712 provide a means to distribute the assets of missing federal military or civilian employees to their immediate families. When the missing person owns no real property in California and his or her personal property is valued at $20,000 or less, there is a summary court proceeding (see Prob C §§3701-3708). If the property is valued at $5000 or less, the court proceeding is unnecessary and property may be collected by the affidavit process set forth in Prob C §§3710-3712. See California Conservatorship Practice §§2.44-2.50 (Cal CEB 2005).

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8

Probate Bonds

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I. INTRODUCTION

§8.1 A. Probate Bond Defined

A probate bond is a promise by a surety to pay if the personal representative commits a breach of trust. It protects the state, heirs, devisees, and creditors. For a detailed discussion of probate bonds, including various types of bonds, see California Decedent Estate Practice, chap 9 (2d ed Cal CEB 2009). For discussion of supervision of the estate by the surety, see Decedent Estate Prac §9.18. For discussion of requiring a larger bond, see Decedent Estate Prac §§9.25-9.28. For discussion of depositing assets in lieu of a bond, see §8.10. Liability under the bond is discussed in Decedent Estate Prac §§9.36-9.43. Probate bonds are governed by the comprehensive Bond and Undertaking Law (CCP §§995.010-996.560).

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§8.2 B. When Bond Is Required

Bonds are required except in the following circumstances: (1) when the will waives bond as to the persons who are seeking letters; (2) when the personal representative is a corporation or association authorized to conduct the business of a trust company qualified to do business in California; (3) when the will does not expressly require a bond and all the beneficiaries (or heirs if there is no will) request in writing that the bond be waived, and the written waivers are attached to the petition for letters (see California Decedent Estate Practice §§9.3-9.4 (2d ed Cal CEB 2009)); (4) when a deposit is made in lieu of a bond (see §8.10); and (5) when a public administrator will act as the personal representative (because he or she is already covered by an official bond). See Prob C §§8480-8481.

Even when a bond is waived by the will or by all the beneficiaries, the court has discretion to require a bond if the proposed personal representative resides outside of California or for other good cause, and it may exercise that discretion either before or after letters are issued. Prob C §8481(b); Cal Rules of Ct 7.201. Examine local rules to determine whether a bond will be required (such as when the personal representative is a nonresident or when fewer than all the named representatives serve).

When the will names more than one person to serve as executor but not all the persons named serve, the court must require each executor to give a bond unless the will expressly waives a bond if fewer than all the named persons serve. Cal Rules of Ct 7.202. The court may waive this requirement if all beneficiaries waive the bond under Prob C §8481(a)(2).

When a corporation and an individual are cofiduciaries, an individual cofiduciary who is required to give a bond must give a separate bond unless the assets are held solely by the corporate fiduciary. Cal Rules of Ct 7.203.

If a bond is required, the court will not issue letters to the person appointed as personal representative until that person files the required bond. Prob C §8480. The bond, having been signed by the representative and the surety, makes both the representative and the surety jointly and severally liable on it. CCP §996.460.

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Source: Estate Planning/California Probate Workflow Manual Revised/8 Probate Bonds/§8.3 C. Who Executes Bond

§8.3 C. Who Executes Bond

If a bond is required, it must be executed by the personal representative before receiving letters testamentary or letters of administration. The bond must also be executed by two or more other individuals as personal sureties or by an authorized surety company admitted to do business in California as an admitted surety insurer. Personal sureties are rarely used. If personal sureties are to be used, see California Decedent Estate Practice §9.16 (2d ed Cal CEB 2009) on the requirements of a personal surety, and consult local rules. The following sections will assume that the surety is a corporation.

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Source: Estate Planning/California Probate Workflow Manual Revised/8 Probate Bonds/§8.4 II. BONDING PROCEDURE

§8.4 II. BONDING PROCEDURE

The court has discretion in fixing the amount of the bond, but the bond may not be more than (Prob C §8482(a)):

- The estimated value of the personal property plus;
- The probable annual gross income from all the estate's property; and
- If independent powers are granted for real property, the estimated value of decedent's interest in the real property.

These values are estimated in the Petition for Probate; see §§7.11, 8.14. If an admitted surety insurer is the surety, as is usually the case, the court may establish a fixed minimum bond amount, however, based on the minimum premium required by the admitted surety insurer. Prob C §8482(b).

If individuals are the sureties, the amount of the bond will be at least twice the value of the personal property plus twice the probable value of the annual income from all the estate's property. Prob C §8482(c). The court has discretion in fixing the amount of the bond above the minimums required. In some counties there is a minimum amount, which is set by local probate rules. See Prob C §8482(b) and §8.2.

If a bond is otherwise required and the personal representative is requesting or has been granted authorization under the Independent Administration of Estates Act (IAEA) (Prob C §§10400-10592) to sell or hypothecate real property or to lease it for a term longer than one year, the court has discretion to include the value of the real property in the estate in fixing the amount of the bond. Prob C §10453. The value of the real property to be bonded may be the net value, reduced by any liens or encumbrances on the property. See Cal Rules of Ct 7.205.

The amount of the bond may be reduced if assets are on deposit in blocked accounts. See §8.10.

Under Prob C §8486 the cost of a bond is allowed as an administration expense. See §18.8.

The legal assistant should have the personal representative complete the corporate surety application and secure the bond before the hearing on the petition for appointment of the representative (on petition, see chap 7). Then the bond may be filed and letters testamentary or letters of administration issued immediately after the hearing. Many law firms deal with a single bonding company's application and bond forms. See §8.5 for a sample application, and §8.6 for a sample bond.

The usual steps are as follows:

- The representative fills out and signs the original application for the bond in the amount set forth in the petition (one copy for representative and one for file) and sends the original to the bonding company.
- The representative signs the original bond and delivers it to the agent.
- The agent (if representative is eligible for bond) executes the bond as attorney-in-fact for the company and files it with the court (copy for representative and office copies).

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Source: Estate Planning/California Probate Workflow Manual Revised/8 Probate Bonds/ III. SAMPLE CORPORATE SURETY BONDING FORMS/§8.5 A. Form: Application for Bond

III. SAMPLE CORPORATE SURETY BONDING FORMS

§8.5 A. Form: Application for Bond

Agent
BONDS
Administrator
Executor
Guardian
Conservator
Trustee Under Will or Deed

Bond No. _ _ _ _ _ _ _ _

APPLICATION FOR PROBATE BOND

1. Name _____ Residence address_____

2. Age _ _ _ _ _ Relationship to decedent, ward(s), or conservatee(s)

Name of decedent or ward_____

Date of death _____ Was there a will? _____

3. Soc. Sec. No. _____ Driver's License No. _____

4. Occupation _____ Business address_____

5. Annual income $_____ Length of time at present work_____

Marital Status _____

6. Your personal net worth? $_____

Own your home? _____ Value $_____

Own other real property? _____ Value $_____

7. If you succeed other fiduciary, provide reason, his or her name, and name of surety____
_____
_____

8. If you have given bond for this estate before, provide name of surety and reason for new bond
_____

9. Your share of estate_____

10. If you are indebted to this estate, provide details and amount_
_____

11. Name and address of your attorney_____

12. Type of bond required _____ Amount of bond $_____

13. Name of estate (if deceased, date and place of death)_____

_____

(if minor(s) or incompetent(s), give name(s) and date(s) of birth)

_____

14. Bond filed in _____ Court, _____ County, _____ City, _____ State.

15. Describe fully all assets and income (including source) of the estate, giving values

_____
_____
_____
_____

16. Describe fully estate liabilities, giving names of creditors and kinds and amounts of debts

_____
_____

17. Will there be a joint account? _____

18. Where will you deposit estate funds?_____

19. Do you understand that an accounting must be made to the court each year or as the court directs? _____

20. Do you understand that increases or reductions of bond must be approved by the court? _____

21. Do you understand that the bond premium must be paid each year? _____

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Source: Estate Planning/California Probate Workflow Manual Revised/8 Probate Bonds/§8.6 B. Form: Bond on Qualification

§8.6 B. Form: Bond on Qualification

INSTRUCTIONS: A corporate surety will normally have its own form of bond for filing. If not, the form below may be used.

Bond No. _ _ _ _ _ _ _

[*Title of court*]

[*Title of case*] **No. _ _ _ _ _ _**
BOND ON QUALIFICATION

KNOW ALL PERSONS BY THESE PRESENTS:

That we, _ _[*name of personal representative*]_ _, as Principal and the _ _[*name of insurance company*]_ _ INSURANCE COMPANY, a corporation organized under the laws of the State of _ _ _ _ _ _ and authorized to transact surety business in the State of California, as Surety, are bound to the estate of _ _[*name of decedent*]_ _, deceased, in the sum of _ _ _ _ _ _ dollars ($_ _ _ _ _ _). We bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, to pay in the event of a breach of this bond.

An order was made by the Superior Court of the State of California, for the County of _ _ _ _ _ _ on the _ _ _ day of _ _ _ _ _ _, _ _ _, appointing the above-named Principal _ _[*executor/administrator/(etc.)*]_ _ of the Estate of _ _[*name of decedent*]_ _ and letters _ _[*testamentary/of administration/(etc.)*]_ _ were directed to be issued on executing a bond according to law in the sum named above.

If the Principal faithfully executes the duties of _ _[*his/her*]_ _ trust according to law, then this obligation is void; otherwise, it remains in full force and effect.

Signed and dated on _ _ _ _ _ _ _ _, at _ _ _ _ _ _, California.

_ _ _ _ _ _ _ _ _ _ _ _ _ _
Principal
_ _[*NAME OF INSURANCE COMPANY*]_ _

The corporate seal and name of _ _[*name of insurance company*]_ _ is affixed to this bond and attested to by _ _ _ _ _ _, who declares under penalty of perjury that _ _[*he/she*]_ _ is the duly authorized Attorney-in-Fact acting under an unrevoked power of attorney on file with the Clerk of the County in which the above-titled court is located.

By:_____
Attorney-in-Fact

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Source: Estate Planning/California Probate Workflow Manual Revised/8 Probate Bonds/§8.7 C. Changing Amount of Bond

§8.7 C. Changing Amount of Bond

In certain circumstances, the court may reduce or increase the amount of the bond. On increasing or reducing the bond, see §§8.8-8.9. See also California Decedent Estate Practice §§9.25-9.35 (2d ed Cal CEB 2009).

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Source: Estate Planning/California Probate Workflow Manual Revised/8 Probate Bonds/§8.8 1. Increasing Amount

§8.8 1. Increasing Amount

When circumstances make it necessary or appropriate to increase the amount of the bond, the personal representative must apply ex parte for an order increasing the bond. Cal Rules of Ct 7.204(a), 7.501(b). If the personal representative has not made the application, the personal representative's attorney must make the ex parte application immediately when he or she becomes aware of the need to increase the bond. Cal Rules of Ct 7.204(b). The court may order that a bond be given or increased in amount even when the will waives bond or all beneficiaries or heirs have waived bond. See CCP §996.010; Prob C §8481(b); Cal Rules of Ct 7.201(b), 7.204. The order may be made on the court's own motion, or on the motion or petition of any interested person for good cause.

The application must request an increase in the bond amount to the total value of the estate's personal property and the probable annual gross income of the estate. Cal Rules of Ct 7.204(c)(1), 7.501(b). If the personal representative has full authority under the IAEA to sell estate real property without court confirmation, the application for the increased bond amount must also show the amount of equity in estate real property. Cal Rules of Ct 7.204(c)(3).

Reasons for increasing the bond are discussed in California Decedent Estate Practice §9.26 (2d ed Cal CEB 2009). The most common reasons are the increase in cash held by the estate when real property is sold, and the filing of an inventory showing that the estate's property has greater value than was assumed at the time the amount of the bond was set.

NOTE: Surety companies and many courts prefer to file an additional bond rather than canceling an existing bond and filing a new one in a larger amount. Consult local rules.

If the court orders that a new, additional, or supplemental bond be filed and the representative fails to do so within the time specified in the order, the court may remove the representative from office. Prob C §8480(b).

An order to file an additional bond is not appealable. See Prob C §1303.

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Source: Estate Planning/California Probate Workflow Manual Revised/8 Probate Bonds/§8.9 2. Reducing Amount

§8.9 2. Reducing Amount

The court can reduce the amount of the bond required (a) when the value of the estate is reduced by a preliminary distribution or payment of taxes, (b) when the personal representative deposits certain assets with the court clerk under CCP §995.710 (rarely done), or (c) when the personal representative places estate assets in a blocked account (*i.e.,* an account from which no withdrawal may be made without court permission).

A reduction in the amount of the bond may be desirable because a smaller bond will cost the estate a smaller premium.

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§8.10 IV. DEPOSIT OF ASSETS IN LIEU OF BOND

The attorney must decide whether to deposit assets to reduce or eliminate the requirement for the bond. If the cash or personal property will be needed in the administration of the estate, the deposit and withdrawal process may be more trouble than it is worth. If stocks or other property are deposited with a bank, the bank's charges may be so close to the amount of the bond premium that it is easier to keep the property and pay the bond premium. For discussion, see California Decedent Estate Practice §§9.5-9.7 (2d ed Cal CEB 2009) and local rules. See §§8.11-8.13 for forms. Deposits of money and personal property with financial institutions are governed generally by Prob C §§9700-9705.

The deposit may be made at any time before letters are issued. If the deposit is to be made after letters have been issued, see §8.14. For considerations that counsel must examine before making this decision, see Decedent Estate Prac §9.7.

If the deposit has already been made to the desired depository, it can easily be retained if the depository's impound receipt is filed with the court. If they are on deposit elsewhere, the court can order them transferred directly to the desired depository, which will give an impound receipt to the administrator. See Fin C §765.

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Source: Estate Planning/California Probate Workflow Manual Revised/8 Probate Bonds/§8.11 A. Form: Receipt and Agreement by Depository

§8.11 A. Form: Receipt and Agreement by Depository

[*Title of court*]

Estate of _ _[*name*]_ _,	**)**	**No. _ _ _ _ _ _**
	)	
Decedent	**)**	**RECEIPT AND AGREEMENT**
	)	**BY**
_____	**)**	**DEPOSITORY (PROBATE CODE §8483)**

The undersigned acknowledges _ _[*a deposit of $*_ _[*amount*]_ _ *in* _ _[*a savings account/an investment certificate*]_ _*/a deposit of the following securities:* _ _[*Describe securities, e.g., name of company, amount of shares*]_ _ *in the name of* _ _[*name of representative/name of decedent*]_ _*/a deposit of* _ _[*describe other property*]_ _]_ _**, which** _ _[*is/are*]_ _ **being held under this agreement with** _ _[*name of personal representative*]_ _ **as petitioner for letters** _ _[*testamentary/of administration/(etc.)*]_ _ **in the above-named estate, from which withdrawals of the property, including any earnings, may be made only on court order.**

[*Add if appropriate*]

All income from such property shall be paid _ _[*e.g., quarterly, semiannually*]_ _ **to** _ _[*name of personal representative*]_ _ **as** _ _[*executor/administrator/(etc.)*]_ _ **of the** _ _[*will/estate*]_ _ **of decedent by mailing that income to** _ _[*him/her*]_ _ **at** _ _[*representative's address*]_ _**.**

Date: _ _ _ _ _ _

_ _[*Typed name of bank/ trust company/ savings and loan association*]_ _
By __[*Signature*]__
_ _[*Typed name*]_ _

Accepted:

__[*Signature*]__
_ _[*Typed name*]_ _
Petitioner

Date: _ _ _ _ _ _

Copies: Original for filing; duplicate original for depository; one copy for each representative; office copies.

Comment: This form of agreement should be modified depending on whether cash only, stock only, or cash and securities are being deposited with the depository. Some institutions have their own forms. The receipt and agreement should be filed either at the hearing or when the representative qualifies, depending on when the deposit is made. Some local rules require that this receipt be filed before the hearing on the petition for probate. See also California Decedent Estate Practice §§9.5-9.7 (2d ed Cal CEB 2009). Local rules may require the use of a local form of receipt.

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Source: Estate Planning/California Probate Workflow Manual Revised/8 Probate Bonds/§8.12 B. Attachment to Petition for Probate on Deposit of Assets

§8.12 B. Attachment to Petition for Probate on Deposit of Assets

If a deposit of assets is used to reduce bond, the following form can be used as an attachment to the Petition for Probate (Judicial Council Form DE-111). See §§7.11, 7.16.

ATTACHMENT 2d
DEPOSIT OF ASSETS

To reduce the amount of the bond that the court will fix, the petitioner _ _[*wants to deposit/wants to invest/has deposited/has invested*]_ _ **the following personal property of the decedent with** _ _[*name of, e.g., bank, trust company, savings and loan association*]_ _**, in accordance with Probate Code §8483:**

_ _[*Describe the personal property in detail*]_ _**.**

The agreement _ _[*made/to be made*]_ _ **with the depository** _ _[*provides/will provide*]_ _ **that the property may be withdrawn only on order of the court. The receipt and agreement with the depository** _ _[*has been/will be*]_ _ **filed in this proceeding.**

_ _[*Name of depository*]_ _ **is willing to act as depository and hold, subject to order of the court, the personal property described above.**

All income should be collected by the _ _[*depository/personal representative*]_ _ **and** _ _[*held subject to further order of the court/paid to petitioner*]_ _**.**

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Source: Estate Planning/California Probate Workflow Manual Revised/8 Probate Bonds/§8.13 C. Attachment to Order for Probate on Deposit of Assets

§8.13 C. Attachment to Order for Probate on Deposit of Assets

INSTRUCTIONS: The following may be added as an attachment to Item 5c of the Order for Probate (Judicial Council Form DE-140) (see §7.41) if a deposit is to be made in lieu of a bond. For further discussion of deposit of assets, see §8.10.

ATTACHMENT 5c
DEPOSIT OF ASSETS

[*When deposit made before hearing, add to findings in order appointing personal representative in §7.38*]

_ _[*Name*]_ _ **has** _ _[*deposited/invested*]_ _ **$**_ _ _ _ _ _ **with** _ _[*name of depository*]_ _

[*Add if applicable*]

and has deposited with _ _[*name of depository*]_ _ **the following securities:** _ _[*List at current market values*]_ _**.**

[*Continue*]

under an agreement with the depository as provided by Probate Code §8483 not to permit withdrawal of the property unless by order of the court.

[*When deposit made after hearing but before qualification, add to order appointing personal representative in §7.38*]

provided, however, that _ _[*name of personal representative*]_ _ **must file in this proceeding a receipt executed by** _ _[*name of depository*]_ _ **acknowledging that** _ _[*name of personal representative*]_ _ **has** _ _[*deposited/invested*]_ _ **with said institution $**_ _ _ _ _ _**,** _ _[*and the following securities: (list at current market any securities deposited)*]_ _ **under an agreement under Probate Code §8483, and that no property may be withdrawn from said depository except by order of the court.**

[*Add in either case when income is subject to withdrawal*]

All income from the property _ _[*deposited/invested*]_ _ **with** _ _[*name of depository*]_ _ **will be paid to** _ _ _ _ _ _ **as** _ _[*executor, administrator/(etc.)*]_ _ **of the** _ _[*will/estate*]_ _ **of the decedent.**

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§8.14 V. REDUCTION AFTER QUALIFICATION

If during administration it is determined that certain funds will not be needed for administration of the estate, then a deposit may be made in lieu of bond (as discussed in §8.10) through the use of an ex parte petition and depository receipt. See local rules. Most banks, trust companies, and savings and loan associations require that the representative give them a certified copy of the order naming them as depository.

If the value of the estate diminishes substantially during administration (*e.g.,* as the result of a preliminary distribution or payment of taxes), the bond may be excessive, and the personal representative then has the duty to seek an order reducing the amount of the bond. This may be accomplished by a petition to reduce bond. See §§8.15-8.16. A declaration (or affidavit) of the petitioner that sets forth the condition of the estate must be attached to the petition. Prob C §8484. See §8.16. Some counties require the filing of an account to show the financial status of the estate.

Notice is given as required in Prob C §1220. Prob C §8484. Because the only persons entitled to notice under Prob C §1220 are the representative and persons requesting special notice, the representative may instead file an ex parte petition to reduce bond under Prob C §8484, if all persons requesting special notice waive notice. See §§8.18-8.19.

Surety companies generally will not prorate the first year's premium when the amount of the bond is reduced. However, it may be possible to obtain an order reducing bond on renewal of the bond after the first year if final distribution cannot be completed within 1 year.

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Source: Estate Planning/California Probate Workflow Manual Revised/8 Probate Bonds/§8.15 A. Form: Petition to Reduce Bond

§8.15 A. Form: Petition to Reduce Bond

[*Title of court*]

Estate of _ _[*name*]_ _,	**)**	**No. _ _ _ _ _ _**
	)	
Decedent	**)**	**PETITION TO REDUCE**
	)	**BOND (PROBATE CODE**
	)	**§8484)**
_____	**)**	
		Hearing date:
		Time:
		Department:

Petitioner, the _ _[*executor/administrator/(etc.)*]_ _ of the _ _[*will/estate*]_ _ of the above-named decedent, alleges:

1. Petitioner has filed a bond of $_ _[*amount*]_ _ as required by order of this Court dated _ _[*date*]_ _.

2. The existing amount of the bond is excessive because _ _[*specify*]_ _.

3. The value of the estate and annual income are set forth in the attached _ _[*declaration/affidavit*]_ _ of the personal representative.

4. Under Probate Code §8484, the appropriate amount of bond is $_ _[*amount*]_ _.

5. Petitioner desires that liability on the bond for future transactions be reduced to $_ _[*dollar amount*]_ _.

6. _ _[*No one has filed a request for special notice/The following _ _[has/have]_ _ filed request(s) for special notice: _ _[List name(s) and address(es)]_ _]_ _.**

[*Add if applicable*]

All persons who requested special notice waived it, and their waivers are attached.

[*Continue*]

WHEREFORE, Petitioner requests that:

1. Notice of hearing _ _[*be given as required by law/not be required*]_ _.

2. The Court order the liability of the existing bond to be reduced to $_ _[*amount*]_ _ and for other relief that the Court considers proper.

Date: _ _ _ _ _ _ __[*Signature of petitioner*]__
_ _[*Typed name*]_ _
_ _[*Executor/Administrator*]_ _ **of the** _ _[*will/estate*]_ _ **of** _ _[*name*]_ _**, decedent**

Date: _ _ _ _ _ _ __[*Signature of attorney for petitioner*]__
_ _[*Typed name*]_ _
Attorney for Petitioner

[*Verification; see §1.22*]

Copies: Original for filing; copy for each representative; office copies.

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Source: Estate Planning/California Probate Workflow Manual Revised/8 Probate Bonds/§8.16 B. Form: Declaration in Support of Petition to Reduce Bond

§8.16 B. Form: Declaration in Support of Petition to Reduce Bond

[*Title of court*]

Estate of _ _[*name*]_ _ ,	**No. _ _ _ _ _ _**
Decedent	**DECLARATION OF _ _[*NAME*]_ _ IN SUPPORT OF PETITION TO REDUCE BOND (PROBATE CODE §8484)**
_____	

I, _ _[*name of declarant*]_ _, the _ _[*executor/administrator/(etc.)*]_ _ of the _ _[*will/estate*]_ _ of the above-named decedent, declare that:

1. On _ _[*date*]_ _, I filed a bond as _ _[*executor/administrator/(etc.)*]_ _ in the amount of $_ _[*amount*]_ _, which has become excessive because _ _[*specify*]_ _.

2. The character and estimated value of the property of the decedent's estate that is in my possession and its probable annual income are:

Real property, _ _[*estimated*]_ _ value	**$ _ _ _ _ _ _**
Probable annual income of real property	**$ _ _ _ _ _ _**
Personal property, _ _[*estimated*]_ _ value	**$ _ _ _ _ _ _**
Probable annual income of personal property	**$ _ _ _ _ _ _**
Total personal property and probable annual income from all property	**$_ _ _ _ _ _**

3. I desire that liability on the bond for future transactions be reduced to the amount of $_ _[*amount*]_ _.

4. Probate Code §8484 requires notice as provided in Probate Code §1220. That section requires that notice be given to the personal representative and persons requesting special notice. Notice to the personal representative is not required, because the personal representative is the petitioner. Probate Code §1201. _ _[*No one has/The following have filed requests for special notice but have signed and delivered waivers of notice that are now on file: _ _[List names and addresses of those who have filed requests for special notice*]_ _]_ _.

WHEREFORE, I request that the court order bond be reduced to the amount of $_ _[*amount*]_ _.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _ _[*date*]_ _, in _ _[*city*]_ _, _ _[*state/country*]_ _.

__[*Signature of declarant*]__
_ _[*Typed name*]_ _
Declarant

Copies: Original for filing; one copy for each surety and each representative; office copies.

Comment: Even if one co-representative is a trust company for whom a bond is not required, both should sign the declaration.

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Source: Estate Planning/California Probate Workflow Manual Revised/8 Probate Bonds/§8.17 C. Form: Order Reducing Bond

§8.17 C. Form: Order Reducing Bond

[*Title of court*]

Estate of _ _[*name*]_ _,	**)**	**No. _ _ _ _ _ _**
	)	
Decedent	**)**	**ORDER REDUCING BOND**
_____	**)**	**(PROBATE CODE §8484)**

The petition of _ _[*name*]_ _ as _ _[*executor/administrator/(etc.)*]_ _ of the _ _[*will/estate*]_ _ of _ _[*name*]_ _, decedent, for an order reducing the bond, filed herein, came on regularly for hearing on _ _[*date*]_ _, at _ _[*time*]_ _, in Department _ _[*number/letter*]_ _.

On proof to the court's satisfaction, the court finds:

1. _ _[*All notices of the hearing have been given as required by law/Notice was not required*]_ _.

2. The allegations in the petition and the _ _[*declaration/affidavit*]_ _ accompanying it are true, and that the present bond given by _ _[*name of personal representative*]_ _ as _ _[*executor/administrator/(etc.)*]_ _ is excessive.

THEREFORE, IT IS ORDERED that the existing bond filed on _ _[*date*]_ _, in the amount of $_ _[*amount*]_ _, shall remain in effect, except that the liability of the surety is reduced to $_ _[*amount*]_ _, effective _ _[*date*]_ _.

Date: _ _ _ _ _ _ __[*Signature*]__
Judge of the _ _[*title of court*]_ _

Copies: Original for filing; one copy for each surety and each representative; office copies.

Comment: Surety companies prefer that the bond be reduced rather than that a new bond be filed. Some local court rules require this method.

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Source: Estate Planning/California Probate Workflow Manual Revised/8 Probate Bonds/§8.18 D. Form: Declaration re Ex Parte Petition to Reduce Bond

§8.18 D. Form: Declaration re Ex Parte Petition to Reduce Bond

[*Title of court*]

Estate of _ _[*name*]_ _,	**)**	**No. _ _ _ _ _ _**
	)	
Decedent	**)**	**DECLARATION OF**
_____	**)**	_ _[*NAME*]_ _ **IN SUPPORT OF EX PARTE PETITION TO REDUCE BOND (PROBATE CODE §8484)**

I, _ _[*name of declarant*]_ _, the _ _[*executor/administrator/(etc.)*]_ _ of the _ _[*will/estate*]_ _ of the above-named decedent, declare that:

1. I have not given notice of the Ex Parte Petition to Reduce Bond. Probate Code §8484 requires notice as provided in Probate Code §1220. That section requires that notice be given to the personal representative and persons requesting special notice. Notice to the personal representative is not required because the personal representative is the petitioner. The only persons requesting special notice are _ _[*names*]_ _. They have signed and delivered waivers of notice that are being filed with this declaration.

2. The character and estimated value of the property of the decedent's estate that is in my possession and its probable annual income are:

Real property, _ _[*estimated*]_ _ value	**$ _ _ _ _ _ _**
Probable annual income of real property	**$ _ _ _ _ _ _**
Personal property, _ _[*estimated*]_ _ value	**$ _ _ _ _ _ _**
Probable annual income of personal property	**$ _ _ _ _ _ _**
Total personal property and probable annual income from all property	**$_ _ _ _ _ _**

3. I desire that liability on the bond for future transactions be reduced to the amount of $_ _[*amount*]_ _.

WHEREFORE, I request that the court order bond be reduced to the amount of $_ _[*amount*]_ _.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _ _[*date*]_ _, in _ _[*city*]_ _, _ _[*state/country*]_ _.

__[*Signature*]__
_ _[*Typed name*]_ _
Declarant

Copies: Original for filing; copy for each representative; office copies.

Comment: If all persons who requested special notice sign waivers of notice, the representative may file an ex parte petition to reduce bond using this declaration.

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Source: Estate Planning/California Probate Workflow Manual Revised/8 Probate Bonds/§8.19 E. Form: Ex Parte Order Reducing Bond

§8.19 E. Form: Ex Parte Order Reducing Bond

Copies: Original for filing; one copy for each surety and each representative; office copies.

[*Title of court*]

Estate of _ _[*name*]_ _,	**)**	**No. _ _ _ _ _ _**
	)	
Decedent	**)**	**ORDER REDUCING BOND**
_____	**)**	**(PROBATE CODE §8484)**

The Ex Parte Petition to Reduce Bond of _ _[*name*]_ _ _ as _ _[*executor/administrator/(etc.)*]_ _ of the _ _[*will/estate*]_ _ of _ _[*name*]_ _, decedent, for an order reducing the bond, has been submitted this date.

On proof to the court's satisfaction, the court finds:

1. Notice has been waived by the only person(s) entitled to notice under Probate Code §1220.

2. The allegations in the petition and the _ _[*declaration/affidavit*]_ _ accompanying it are true, and that the present bond given by _ _[*name of personal representative*]_ _ as _ _[*executor/administrator/(etc.)*]_ _ is excessive.

THEREFORE, IT IS ORDERED that the existing bond filed on _ _[*date*]_ _, in the amount of $_ _[*amount*]_ _, shall remain in effect, except that the liability of the surety is reduced to $_ _[*amount*]_ _, effective immediately.

Date: _ _ _ _ _ _ __[*Signature*]__
Judge of the _ _[*title of court*]_ _

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9

Independent Administration of Estates

I. [§9.1] PURPOSE AND EFFECTIVE DATE

II. [§9.2] OVERVIEW OF INDEPENDENT ADMINISTRATION

III. [§9.3] DECIDING WHETHER TO SEEK INDEPENDENT POWERS

IV. [§9.4] CHECKLIST: USE OF INDEPENDENT POWERS

V. [§9.5] PETITION FOR POWERS OF INDEPENDENT ADMINISTRATION
- A. [§9.6] Form: Petition for Authority Under IAEA
- B. [§9.7] Notice of Hearing
- C. [§9.8] Objections to Petition for Authority
- D. [§9.9] Form: Order Granting Authority Under IAEA
- E. [§9.10] Letters Must Include Description of Authority

VI. EXERCISE OF AUTHORITY FOR INDEPENDENT ADMINISTRATION
- A. [§9.11] Actions Requiring Court Supervision
- B. Notice of Proposed Action
  1. [§9.12] Actions Requiring Notice of Proposed Action
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  4. Procedure for Giving Notice of Proposed Action
     - a. [§9.15] General Requirements; to Whom Notice Given
     - b. [§9.16] Form: Notice of Proposed Action (Judicial Council Form DE-165)
  5. [§9.17] Consent to Proposed Action
  6. [§9.18] Form: Consent to Proposed Action **[Deleted]**
  7. [§9.19] Waiver of Notice of Proposed Action
  8. [§9.20] Form: Waiver of Notice of Proposed Action (and Revocation of Waiver) (Judicial Council Form DE-166)
  9. [§9.21] Objection to Proposed Action
     - a. [§9.22] Service of Objection
     - b. [§9.23] Restraining Order
     - c. [§9.24] Form: Ex Parte Application for Restraining Order
     - d. [§9.25] Form: Restraining Order
     - e. [§9.26] Effect of Failure to Object to Proposed Action
     - f. [§9.27] Procedure After Objections

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Source: Estate Planning/California Probate Workflow Manual Revised/9 Independent Administration of Estates/§9.1 I. PURPOSE AND EFFECTIVE DATE

§9.1 I. PURPOSE AND EFFECTIVE DATE

The Independent Administration of Estates Act (IAEA) (Prob C §§10400-10592) simplifies estate administration by reducing the amount of court involvement. The IAEA gives the personal representative (including a special administrator with full powers) the authority to conduct certain aspects of administering a decedent's estate without obtaining judicial authorization, approval, confirmation, or instructions otherwise required by the Probate Code, unless the decedent's will prohibits it or good cause can be shown why the representative should not. Prob C §§10404-10405, 10452, 10500-10564.

The IAEA has been substantially amended several times. Probate Code §10406(a) provides, however, that the IAEA in its present form applies no matter when authority was granted under the IAEA. The power to borrow money on a loan secured by an encumbrance on real property is accorded under the IAEA even to those whose authority was granted under the IAEA before 1988. Prob C §10406(b).

This chapter will discuss the purpose, scope, and general uses of independent administration. For discussion of how it applies in any particular transaction, see the sections in other chapters discussing those transactions.

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§9.2 II. OVERVIEW OF INDEPENDENT ADMINISTRATION

Independent powers of administration may be granted with the initial order for probate, or in a separate order afterwards. Independent administration is not permitted if the decedent's will provides that the estate not be administered under the IAEA. Prob C §10404.

Either full or limited authority under the IAEA may be granted. Full authority allows the personal representative to take any action allowed under the IAEA. Limited authority allows the representative to take any action other than an action to sell or exchange real property, grant an option to purchase real property, or borrow money with the loan secured by an encumbrance on real property. Prob C §10403.

The IAEA requires court supervision for some actions. See §9.11.

Actions that may be taken without court supervision under the IAEA are divided into three categories: those that may be taken without giving any notice of proposed action (see §9.14), those that sometimes require giving notice (see §9.13), and those that always require giving notice before the action may be taken (see §9.12).

Even when no court supervision is required, the personal representative may request court supervision. Prob C §10500(b). As noted throughout this manual, court supervision is desirable for many acts that do not require court supervision because that supervision may protect the representative from liability. Even if no notice of proposed action is required, the representative may send a notice. See §9.14.

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Source: Estate Planning/California Probate Workflow Manual Revised/9 Independent Administration of Estates/§9.3 III. DECIDING WHETHER TO SEEK INDEPENDENT POWERS

§9.3 III. DECIDING WHETHER TO SEEK INDEPENDENT POWERS

The attorney must determine whether to seek authority to act under the IAEA. The advantages are that actions may be taken more quickly, and often without the need for a hearing. For example, the IAEA's simplified ex parte procedure for obtaining authority for a preliminary distribution could assist the personal representative in a fiscal year-end distribution if it is desirable to shift estate income to the beneficiaries. See California Decedent Estate Practice §§25.17-25.21 (2d ed Cal CEB 2009). The disadvantages include lessened protection from liability and other practical concerns. For example, if a bond is required, and if the representative has full authority under the IAEA to sell estate real property, the court may insist that the bond be large enough to cover the estimated value of the net proceeds of that property.

For further discussion, see Decedent Estate Prac, chap 15.

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Source: Estate Planning/California Probate Workflow Manual Revised/9 Independent Administration of Estates/§9.4 IV. CHECKLIST: USE OF INDEPENDENT POWERS

§9.4 IV. CHECKLIST: USE OF INDEPENDENT POWERS

1. Application for independent administration of estate

    a. In Petition for Probate (see §9.5)

    b. In separate petition (see §9.6)

    c. Full or limited authority (see §9.10)

2. Actions requiring court supervision (see §9.11)—Authorization, approval or confirmation obtained? (see chaps 19-20)

3. Actions requiring notice of proposed action (see §§9.12-9.13)

    a. Proper notice given? (see §9.15)

    b. Waiver (written or implied) or consent obtained? (see §§9.17-9.19)

    c. If objection received:

    - Was restraining order requested? (see §§9.21-9.25)
    - Was court approval obtained? (see §9.27)

4. Actions not requiring notice of proposed action (see §9.14)—Risks and benefits of giving notice weighed? (see §§9.12, 9.14)

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Source: Estate Planning/California Probate Workflow Manual Revised/9 Independent Administration of Estates/§9.5 V. PETITION FOR POWERS OF INDEPENDENT ADMINISTRATION

§9.5 V. PETITION FOR POWERS OF INDEPENDENT ADMINISTRATION

Generally, a request for powers under the IAEA is made by checking the appropriate boxes in the caption and in Item 2c of the Judicial Council Petition for Probate.

If powers under the IAEA were not sought in the Petition for Probate, a separate petition may be filed. An example is given in §9.6.

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Source: Estate Planning/California Probate Workflow Manual Revised/9 Independent Administration of Estates/§9.6 A. Form: Petition for Authority Under IAEA

§9.6 A. Form: Petition for Authority Under IAEA

[*Title of court*]

Estate of _ _[*name*]_ _,	**)**	**No. _ _ _ _ _ _**
	)	
Decedent	**)**	**PETITION FOR AUTHORITY**
	)	**TO ADMINISTER DECEDENT'S**
	)	**ESTATE UNDER THE**
	)	**INDEPENDENT**
	)	**ADMINISTRATION**
	)	**OF ESTATES ACT _ _[*WITH*
_____	**)**	*LIMITED AUTHORITY*]_ _
		(PROBATE CODE
		§§10400-10592)

Petitioner, _ _[*name*]_ _, alleges:

1. Petitioner is the _ _[*executor of the will/administrator of the estate*]_ _ for the above-named decedent.

2. The decedent died on _ _[*date*]_ _, and letters _ _[*testamentary/of administration/(etc.)*]_ _ were issued to petitioner on _ _[*date*]_ _.

3. Petitioner believes it is in the best interests of the estate and those interested in it that _ _[*he/she*]_ _ be empowered to administer the decedent's estate under the provisions of the Independent Administration of Estates Act (Probate Code §§10400-10592) with _ _[*full/limited*]_ _ from the date this petition is granted.

4. The decedent's will does not prohibit administration of _ _[*his/her*]_ _ estate under the IAEA.

5. Notice will be given to the following persons: _ _[*List names and addresses of those required to be given notice under Prob C §10451(b); see §9.7*]_ _.

6. _ _[*Name(s)/No One*]_ _ _ _[*have/has*]_ _ filed a request for special notice.

WHEREFORE, petitioner requests that:

1. The Court finds that all notices have been given according to law;

2. _ _[*He/She*]_ _ be authorized to administer the decedent's estate under the provisions of the Independent Administration of Estates Act (Probate Code §§10400-10592) from the date this petition is granted with _ _[*full/limited*]_ _ authority under the Act; and

3. New letters _ _[*testamentary/of administration/(etc.)*]_ _ be issued bearing the notation that petitioner is authorized to act under the Independent Administration of Estates Act with _ _[*full/limited*]_ _ authority under the Act; and

4. Such further orders be granted that the court may deem proper.

Date: _ _ _ _ _ _ __[*Signature*]__
_ _[*Typed name*]_ _
Petitioner

Date: _ _ _ _ _ _ __[*Signature*]__
_ _[*Typed name*]_ _
Attorney for _ _[*name*]_ _

[*Verification; see §1.22*]

Comment: This form is used when letters have been granted without the authority to administer the estate under the IAEA.

Copies: Original for filing; copy for client; office copies.

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§9.7 B. Notice of Hearing

Notice requirements for the hearing on the petition for independent administration authorization differ, depending on when the petition for authority is filed.

If the request for independent powers of administration is embodied in the Petition for Probate, the same persons are entitled to notice in the same manner as for the Petition for Probate. Prob C §10451. The appropriate boxes in the Notice of Petition to Administer Estate (see §7.26) should also be checked to indicate that power under the IAEA is sought.

If the request for independent powers of administration is sought by a separate petition, then notice must be mailed as provided in Prob C §1220 (*i.e.,* at least 15 days' notice to the personal representative and to all persons who have given notice of appearance or filed a request for special notice) and must also be mailed as provided in §1220 to each known affected heir or devisee, and to each person named as a personal representative in the decedent's will. Prob C §10451(b).

Judicial Council Form DE-120 (Notice of Hearing (Probate)) should be used to give notice of the hearing when independent powers are sought by a separate petition. The notice of hearing must include the substance of the following statement (Prob C §10451(c)):

The petition requests authority to administer the estate under the Independent Administration of Estates Act. This will avoid the need to obtain court approval for many actions taken in connection with the estate. However, before taking certain actions, the personal representative will be required to give notice to interested persons unless they have waived notice or have consented to the proposed action. Independent administration authority will be granted unless good cause is shown why it should not be.

For the form and instructions for giving notice of hearing, see §5.7.

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Source: Estate Planning/California Probate Workflow Manual Revised/9 Independent Administration of Estates/§9.8 C. Objections to Petition for Authority

§9.8 C. Objections to Petition for Authority

At the hearing on the petition for independent administration authority, anyone interested in the estate may appear and object to the granting of such authority. The probate court must grant the authority unless the objecting party can show good cause why it should not be granted. If the objecting party shows good cause why only limited authority should be granted, the court will grant only limited authority. Prob C §10452. Note that the class of persons having standing to appear and object (all who are "interested" in the estate) includes others than those to whom notice must be given. All objections to the granting of authority for independent administration must be in writing or made at the hearing, but no other formalities regarding objections are specified. Prob C §10452.

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Source: Estate Planning/California Probate Workflow Manual Revised/9 Independent Administration of Estates/§9.9 D. Form: Order Granting Authority Under IAEA

§9.9 D. Form: Order Granting Authority Under IAEA

[*Title of court*]

Estate of _ _[*name*]_ _,	**)**	**No. _ _ _ _ _ _**
	)	
Decedent	**)**	**ORDER AUTHORIZING**
	)	**ADMINISTRATION OF**
	)	**DECEDENT'S ESTATE UNDER**
	)	**INDEPENDENT**
	)	**ADMINISTRATION OF**
_____	**)**	**ESTATES**
		ACT

The verified petition of _ _[*name*]_ _, as _ _[*executor of the will/administrator of the estate*]_ _ of the above-named decedent, for authority to administer the decedent's estate under the Independent Administration of Estates Act (Probate Code §§10400-10592) with _ _[*with full/limited authority*]_ _ under the Act came on regularly for hearing on _ _[*date*]_ _, at _ _[*time*]_ _, in Department _ _[*number/letter*]_ _. Proof having been given to the satisfaction of this court,

THE COURT FINDS that:

1. Notice of the time and place of the hearing of the petition has been given as required by law.

2. _ _[*No person appeared to object to the granting of the petition/_ _[Name(s)*]_ _ *appeared to object to the petition but failed to show good cause why the petition should not be granted*]_ _**.**

3. It is in the best interests of the estate and those interested in it that the _ _[*executor/administrator*]_ _ **be granted the authority requested.**

4. The decedent's estate may be administered under the Independent Administration of Estates Act _ _[*without authority to sell or exchange real property or to grant an option to purchase real property or to borrow money with the loan secured by an encumbrance on real property*]_ _**.**

WHEREFORE, IT IS ORDERED that:

1. _ _[*Name*]_ _**, as** _ _[*executor of the will/administrator of the estate*]_ _ **of** _ _[*name*]_ _**, deceased, is granted authority to administer the decedent's estate under the Independent Administration of Estates Act (Probate Code §§10400-10592) with** _ _[*full/limited*]_ _ **authority under the Act.**

2. New letters _ _[*testamentary/of administration/(etc.)*]_ _ **shall be issued to** _ _[*name of executor or administrator*]_ _**, bearing the notation that they are issued under the Independent Administration of Estates Act with** _ _[*full/limited*]_ _ **authority under the Act.**

Date: _ _ _ _ _ _ __[*Signature*]__
Judge of the _ _[*title of court*]_ _

Copies: Original for filing; copy for client; office copies.

Comment: This form should be used if letters have already been issued. If not, Order for Probate (Judicial Council Form DE-140) in §7.41 should be used.

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Source: Estate Planning/California Probate Workflow Manual Revised/9 Independent Administration of Estates/§9.10 E. Letters Must Include Description of Authority

§9.10 E. Letters Must Include Description of Authority

If the authority for independent administration is granted, the letters testamentary or letters of administration must include this information. Prob C §8405(c). When limited authority has been granted, the letters must state that the personal representative has all the powers granted under the Independent Administration of Estates Act except for the powers to sell or exchange real property, grant an option to purchase real property, or borrow money with the loan secured by an encumbrance on real property. Prob C §8405(c). The Judicial Council form, Letters (Judicial Council Form DE-150), reproduced in §7.42 includes the required information.

If the petition is filed and the order issued after the initial issuance of letters on the appointment of the representative, new letters must be issued that include the information about the representative's full or limited authority. Prob C §8405.

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VI. EXERCISE OF AUTHORITY FOR INDEPENDENT ADMINISTRATION

§9.11 A. Actions Requiring Court Supervision

Even though the personal representative has authority for independent administration, Prob C §10501 requires court authorization, approval, confirmation, or instructions otherwise required by the Probate Code as if independent administration had not been granted for the following matters (Prob C §10501(a)):

(1) Allowance of the personal representative's compensation.

(2) Allowance of attorneys' compensation.

(3) Settlement of accountings.

(4) Preliminary distributions (except for certain preliminary distributions under Prob C §10520 of income received during administration and specified property to the persons entitled under the decedent's will), final distributions and discharge.

(5) Sale of property of the estate to the personal representative or to the attorney for the personal representative.

(6) Exchange of property of the estate for property of the personal representative or for property of the attorney for the personal representative.

(7) Grant of an option to purchase property of the estate to the personal representative or to the attorney for the personal representative.

(8) Allowance, payment, or compromise of a claim of the personal representative, or the attorney for the personal representative, against the estate.

(9) Compromise or settlement of a claim, action, or proceeding by the estate against the personal representative or against the attorney for the personal representative.

(10) Extension, renewal, or modification of the terms of a debt or other obligation of the personal representative, or the attorney for the personal representative, owing to or in favor of the decedent or the estate.

Under certain circumstances, items 5-10 above do not apply when the transaction is between the estate (by the personal representative) and the personal representative as an individual. See Prob C §10501(c).

If the personal representative has been granted only limited authority, the court must also approve of a sale or exchange of real property or a grant of an option to sell real property. A representative who has only limited authority also cannot borrow money with the loan secured by an encumbrance on real property without the court's permission unless the authority was granted before July 1, 1988; Prob C §10406(b). Prob C §10501(b).

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Source: Estate Planning/California Probate Workflow Manual Revised/9 Independent Administration of Estates/ B. Notice of Proposed Action/§9.12 1. Actions Requiring Notice of Proposed Action

B. Notice of Proposed Action

§9.12 1. Actions Requiring Notice of Proposed Action

Certain actions that do not require court supervision may be taken only after the personal representative has given a notice of the proposed action. See §§9.15-9.16 on the procedures for giving that notice.

The personal representative must give a notice of proposed action before taking any of the following actions:

(a) Selling or exchanging real property (Prob C §10511);

(b) Selling or incorporating decedent's business or venture (Prob C §10512);

(c) Abandoning tangible property that is uneconomic to collect, maintain, or safeguard (Prob C §10513);

(d) Borrowing or encumbering property (Prob C §10514);

(e) Granting an option to purchase real property within or beyond the period of administration (Prob C §10515);

(f) Transferring property to one given an option in the will to purchase that property (Prob C §10516);

(g) Conveying or transferring property in completion of decedent's contractual obligations (Prob C §10517);

(h) Allowing, compromising, or settling third party claims to property owned by or possessed by decedent and decedent's claims to property owned or possessed by another (Prob C §10518); or

(i) Making a disclaimer (Prob C §10519).

(j) Making a preliminary distribution of: (1) income received during administration to the persons entitled to it under the applicable statute; (2) household furniture and furnishings, motor vehicles, clothing, jewelry and other intangible articles of a personal nature to the persons entitled to the property under the decedent's will, not to exceed an aggregate fair market value of $50,000; and (3) cash to general pecuniary devisees entitled to it under the decedent's will, not to exceed $10,000 to any one person. Prob C §10520. Distributions are authorized only if the time for filing creditors' claims has expired and it appears that the distribution may be made without loss to creditors or injury to the estate or any interested person.

NOTE: When notice of proposed action is required, the representative must list and describe actions taken without prior court approval under the IAEA in any accounting, report, or petition for preliminary or final distribution. Cal Rules of Ct 7.250(a). See §18.6.

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Source: Estate Planning/California Probate Workflow Manual Revised/9 Independent Administration of Estates/§9.13 2. Actions Requiring Notice of Proposed Action Under Certain Conditions

§9.13 2. Actions Requiring Notice of Proposed Action Under Certain Conditions

The following are actions that require a notice of proposed action to be given only if certain conditions or circumstances exist. They are specified in Prob C §§10530-10538:

(a) Managing and controlling estate property if the provision governing the particular action to be taken requires that a notice be given (Prob C §10531);

(b) Entering into contracts if, by their terms, they are not to be fully performed within 2 years (unless the representative has the unrestricted right under the contract to terminate the contract within 2 years) or if the contracts are made to exercise specific powers granted under the IAEA which require the giving of notice for exercise of the power (Prob C §10532);

(c) Investing money as permitted in Prob C §10533(a)(2)(D) or (a)(3) except for investments in direct obligations of the United States or the State of California maturing within 1 year (Prob C §10533(c));

(d) Continuing the decedent's unincorporated business operations or acting in the decedent's place as a general partner of a partnership for a period beyond 6 months after the date letters were issued (Prob C §10534(d));

(e) Paying a family allowance, but only if the payment is either the first payment of a family allowance or the first payment of a family allowance for a period beginning 12 months after the decedent's death, or an increase in the amount of a family allowance (Prob C §10535(b));

(f) Entering into a lease of estate real property if the lease is for a period of more than 1 year (including any extensions to which the lessee is entitled), or the lease of estate personal property if the lease period is more than 2 years (unless the representative has the unrestricted right under the lease to terminate it within 2 years) (Prob C §10536(b)-(c));

(g) Selling or exchanging personal property, except for (1) securities sold on an established stock or bond exchange or listed and sold through NASDAQ by a broker-dealer, (2) the cash sale of subscription rights, (3) the cash sale of personal property that is perishable or uneconomic to keep or that is needed to provide for payment of a family allowance, or (4) the surrender of certain securities for redemption or conversion (Prob C §10537); or

(h) Granting a broker an exclusive right to sell property if the grant is for a cumulative period of more than 270 days (Prob C §10538(c)).

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Source: Estate Planning/California Probate Workflow Manual Revised/9 Independent Administration of Estates/§9.14 3. Actions Not Requiring Notice of Proposed Action

§9.14 3. Actions Not Requiring Notice of Proposed Action

Under the IAEA, the actions that the personal representative may take without giving a notice of proposed action are specified in Prob C §§10530-10564. See Prob C §10502. If the representative seeks to take an action that is not enumerated in §§9.11-9.12, the representative should seek court approval.

Even if a notice of proposed action is not required, Prob C §10580(b) allows the representative to give the notice. The representative may choose to do so because one who receives notice and does not object to the proposed action (or consents to it) may lose the right to have the court review the action after it has been taken. Prob C §10590. See California Decedent Estate Practice §§15.14-15.15 (2d ed Cal CEB 2009) for reasons the representative may choose to seek court supervision even if it is not required.

Note that counsel should contemplate obtaining court approval even though not required before taking any action that is likely to have a great impact on the estate or any of its beneficiaries. See Decedent Estate Prac §15.16 and chap 19.

The following actions may be taken without court approval and do not require the giving of a notice of proposed action:

(a) Managing and controlling estate property, including making allocations and determinations under the Uniform Principal and Income Act (Prob C §§16320-16375) (except as specific provisions of the IAEA require court supervision or notice of proposed action (Prob C §10531));

(b) Entering into a contract (except as noted in §9.13(b); Prob C §10532);

(c) Depositing money in an insured account in a financial institution in California (Prob C §10533(a)(1));

(d) Investing in direct obligations of the United States or the State of California that mature within 1 year (Prob C §10533(a)(2)(A), (c));

(e) Investing in certain money market funds that invest in United States government obligations (Prob C §10533(a)(2)(B));

(f) Investing in common trust funds described in Fin C §1564 (Prob C §10533(a)(2)(C));

(g) Continuing the decedent's unincorporated business operations or act in the decedent's place as a general partner of a partnership for a period no longer than 6 months after the date letters were issued (Prob C §10534(d));

(h) Paying a family allowance (except as noted in §9.13(e)); (Prob C §10535(a));

(i) Leasing estate real property for a period of 1 year or less, lease estate personal property for a period of 2 years or less, or lease personal property for any period while retaining the unrestricted right to terminate the lease within 2 years of its making (Prob C §10536);

(j) (1) Selling or exchanging personal property consisting of securities sold on an established stock or bond exchange or listed and sold through NASDAQ by a broker-dealer, (2) sell subscription rights for cash, (3) sell personal property that is perishable or uneconomic to keep or that is needed to provide for payment of a family allowance for cash, or (4) surrender certain securities for redemption or conversion (Prob C §10537(b));

(k) Granting an exclusive right to sell estate property for a period not exceeding a cumulative total of 270 days (Prob C §10538(b));

(*l*) Taking any action that a personal representative without authority under the IAEA could take without court supervision (Prob C §10551);

(m) Allowing, paying, rejecting, contesting, or settling any claim by or against the estate; compromising or settling any claim or action involving the decedent, the estate, or the personal representative; releasing uncollectible claims in whole or in part; allowing a late claim to be filed (Prob C §10552 as long as the provisions of Prob C §10501(a) are complied with; see §9.11(8)-(10));

(n) Beginning, maintaining, and defending for the benefit of the estate; defending actions or proceedings against the decedent or the personal representative (Prob C §10553);

(o) Extending, renewing, or modifying obligations to or favoring the estate or the decedent (Prob C §10554 as long as the provisions of Prob C §10501(a) are complied with; see §9.11(10));

(p) Conveying or transferring property to implement any specific power granted under the IAEA (Prob C §10555);

(q) Paying taxes and administration expenses (Prob C §10556);

(r) Purchasing an annuity from an admitted insurer to satisfy a provision of the will (Prob C §10557);

(s) Exercising an option right that is an estate asset (Prob C §10558);

(t) Purchasing securities or commodities required to complete a sale made by the decedent (Prob C §10559);

(u) Holding a security in the name of a nominee or any other form (Prob C §10560);

(v) Exercising security subscription or conversion rights (Prob C §10561);

(w) Repairing and improving estate property (Prob C §10562);

(x) Accepting a deed to property subject to a mortgage in lieu of foreclosure or sale under a deed of trust (Prob C §10563); and

(y) Giving a partial satisfaction of a mortgage or cause the trustee of a deed of trust to execute a partial reconveyance (Prob C §10564).

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Source: Estate Planning/California Probate Workflow Manual Revised/9 Independent Administration of Estates/ 4. Procedure for Giving Notice of Proposed Action/§9.15 a. General Requirements; to Whom Notice Given

4. Procedure for Giving Notice of Proposed Action

§9.15 a. General Requirements; to Whom Notice Given

When the notice of a proposed action is given, it must be mailed or personally delivered at least 15 days before the intended action to each known heir or devisee whose interest would be affected by the proposed action. Notice must also be given to persons who have requested special notice and to the State of California if any of the estate will escheat to it. Prob C §§10581, 10586. Note that this list does not include creditors or others who may be interested in the estate and have standing to object to the initial petition for independent administration authority, unless they file a request for special notice. If mailed, the notice must be sent to the person's last known address, and the mailing or delivery must comply with the requirements of Prob C §§1215-1216. Mailing does not extend the 15-day period (Prob C §1215(e)). Prob C §10586.

If the personal representative contemplates that someone who will be sent a notice may be likely to object, but the representative would prefer not to voluntarily seek court supervision, it is recommended that the notice be sent return receipt requested, so that the recipient may not later claim that the notice was not received.

The Probate Code does not require any proof of mailing or service, but a representative may wish to make a timely record of the service by filing a declaration with the court. Local court rules may require filing a Notice of Proposed Action form with the court before the hearing for final distribution.

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Source: Estate Planning/California Probate Workflow Manual Revised/9 Independent Administration of Estates/§9.16 b. Form: Notice of Proposed Action (Judicial Council Form DE-165)

§9.16 b. Form: Notice of Proposed Action (Judicial Council Form DE-165)

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, state bar number, and address)*: TELEPHONE AND FAX NOS.:	*FOR COURT USE ONLY*
ATTORNEY FOR *(Name)*:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
ESTATE OF *(Name)*: DECEDENT	
NOTICE OF PROPOSED ACTION **Independent Administration of Estates Act** ☐ **Objection** ☐ **Consent**	CASE NUMBER:

NOTICE: If you do not object in writing or obtain a court order preventing the action proposed below, you will be treated as if you consented to the proposed action and you may not object after the proposed action has been taken. If you object, the personal representative may take the proposed action only under court supervision. An objection form is on the reverse. If you wish to object, you may use the form or prepare your own written objection.

1. The personal representative (executor or administrator) of the estate of the deceased is *(names)*:

2. The personal representative has authority to administer the estate without court supervision under the Independent Administration of Estates Act (Prob. Code, § 10400 et seq.)
   a. ☐ with **full authority** under the act.
   b. ☐ with **limited authority** under the act (there is no authority, without court supervision, to (1) sell or exchange real property or (2) grant an option to purchase real property or (3) borrow money with the loan secured by an encumbrance upon real property).

3. **On or after** *(date)*: ☐ , the personal representative will take the following action without court supervision *(describe in specific terms here or in Attachment 3)*:
   ☐ The proposed action is described in an attachment labeled Attachment 3.

4. ☐ **Real property transaction** *(Check this box and complete item 4b if the proposed action involves a sale or exchange or a grant of an option to purchase real property.)*
   a. The material terms of the transaction are specified in item 3, including any sale price and the amount of or method of calculating any commission or compensation to an agent or broker.
   b. $ is the value of the subject property in the probate inventory. ☐ No inventory yet.

NOTICE: A sale of real property without court supervision means that the sale will NOT be presented to the court for confirmation at a hearing at which higher bids for the property may be presented and the property sold to the highest bidder.

(Continued on reverse)

Print

ESTATE OF *(Name)*: DECEDENT	CASE NUMBER:

5. **If you OBJECT to the proposed action**
   a. **Sign** the objection form below and deliver or mail it to the personal representative at the following address *(specify name and address)*:

   OR
   b. **Send** your own written objection to the address in item 5a. *(Be sure to identify the proposed action and state that you object to it.)*
   OR
   c. **Apply** to the court for an order preventing the personal representative from taking the proposed action without court supervision.

   d. **NOTE**: Your written objection or the court order must be received by the personal representative before the date in the box in item 3, or before the proposed action is taken, whichever is later. If you object, the personal representative may take the proposed action only under court supervision.

6. **If you APPROVE the proposed action**, you may sign the consent form below and return it to the address in item 5a. If you do not object in writing or obtain a court order, you will be treated as if you consented to the proposed action.

7. **If you need more INFORMATION, call** *(name)*:
   (telephone):

Date:

. . . . . ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF PERSONAL REPRESENTATIVE OR ATTORNEY)

OBJECTION TO PROPOSED ACTION

☐ **I OBJECT** to the action proposed in item 3.

NOTICE: Sign and return this form (both sides) to the address in item 5a. The form must be received before the date in the box in item 3, or before the proposed action is taken, whichever is later. ***(You may want to use certified mail, with return receipt requested. Make a copy of this form for your records.)***

Date:

. . . . . ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF OBJECTOR)

CONSENT TO PROPOSED ACTION

☐ **I CONSENT** to the action proposed in item 3.

NOTICE: You may indicate your *consent* by signing and returning this form (both sides) to the address in item 5a. If you do not object in writing or obtain a court order, you will be treated as if you consented to the proposed action.

Date:

. . . . . ▶ _____
(TYPE OR PRINT NAME) (SIGNATURE OF CONSENTER)

Copies: One copy for every person to whom advance notice of actions must be given; copy for client; office copies;

one copy to file with declaration of service, if required.

Comment: Be as specific as possible on the action to be taken, and disclose material provisions—especially if the action concerns real property. Failure to object may not preclude the recipient from later objecting if there were material omissions from the notice.

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Source: Estate Planning/California Probate Workflow Manual Revised/9 Independent Administration of Estates/§9.17 5. Consent to Proposed Action

§9.17 5. Consent to Proposed Action

Notice need not be given to any person who has consented in writing to the proposed action. That written consent may be executed before or after the action has been taken. Prob C §10582. It is better practice to give the notice and obtain the consent on the back of the form of the notice, but a separate consent may be useful when there is not time for the 15-day period to elapse or when a required recipient was overlooked at the time notice was given. See California Decedent Estate Practice §15.24 (2d ed Cal CEB 2009) on effect of consent.

See form of consent on the reverse side of the Notice of Proposed Action (Judicial Council Form DE-165), reprinted in §9.16.

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Source: Estate Planning/California Probate Workflow Manual Revised/9 Independent Administration of Estates/§9.18 6. Form: Consent to Proposed Action [Deleted]

§9.18 6. Form: Consent to Proposed Action [Deleted]

This section has been deleted. The reverse side of the mandatory Notice of Proposed Action (Judicial Council Form DE-165) must be used to consent to proposed action. See §9.16.

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Source: Estate Planning/California Probate Workflow Manual Revised/9 Independent Administration of Estates/§9.19 7. Waiver of Notice of Proposed Action

§9.19 7. Waiver of Notice of Proposed Action

Notice is not required as to anyone who has waived the right to notice. A waiver must be in writing, and it may waive (a) the right to receive any notice of proposed action, (b) only notices as to certain proposed actions, or (c) only particular aspects of the notice such as delivery, mailing, or the time requirements of Prob C §10586. Prob C §10583. See California Decedent Estate Practice §§15.25-15.26 (2d ed Cal CEB 2009) on effect of waiver.

If someone wishes to waive the right to receive any notice of proposed action or any notice of a particular type of transaction, the Waiver of Notice of Proposed Action (and Revocation of Waiver) (Judicial Council Form DE-166) in §9.20 must be used. See Prob C §10583(b). The waiver can be revoked by completing the Revocation of Waiver of Notice of Proposed Action on the second page of Judicial Council Form DE-166.

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Source: Estate Planning/California Probate Workflow Manual Revised/9 Independent Administration of Estates/§9.20 8. Form: Waiver of Notice of Proposed Action (and Revocation of Waiver) (Judicial Council Form DE-166)

§9.20 8. Form: Waiver of Notice of Proposed Action (and Revocation of Waiver) (Judicial Council Form DE-166)

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, state bar number, and address)*: TELEPHONE AND FAX NOS.:	*FOR COURT USE ONLY*
ATTORNEY FOR *(Name)*:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
ESTATE OF *(Name)*: DECEDENT	
WAIVER OF NOTICE OF PROPOSED ACTION **(Probate Code section 10583)** **(Revocation of Waiver)**	CASE NUMBER:

WARNING

READ BEFORE YOU SIGN

A. The law requires the personal representative to give you notice of certain actions he or she proposes to take to administer the estate. If you sign this form, the personal representative will NOT have to give you notice.

B. You have the right (1) to object to a proposed action and (2) to require the court to supervise the proposed action. If you do not object before the personal representative acts, you lose your right and you cannot object later.

C. IF YOU SIGN THIS FORM, YOU GIVE UP YOUR RIGHT TO RECEIVE NOTICE. This means you give the personal representative the right to take actions concerning the estate without first giving you the notice otherwise required by law. You cannot object after the action is taken.

D. You have the right to revoke (cancel) this waiver at any time. Your revocation must be in writing and is not effective until it is actually received by the personal representative. *(A form to revoke your waiver is on the reverse. You may want to revoke this waiver later. Keep a copy of this form so you can.)*

E. If you do not understand this form, ask a lawyer to explain it to you.

WAIVER OF RIGHT TO NOTICE

1. **I understand** that the **personal representative** named here has authority to administer the estate of the decedent without court supervision under the Independent Administration of Estates Act (California Probate Code sections 10400-10592).
   a. *(name)*:
   b. *(address)*:

(Mail or deliver notices to the personal representative at this address.)

2. **I understand** I have the right to receive notice of certain actions the personal representative may propose to take. I understand that those actions may affect my interest in the estate.

3. **I understand** that by signing this waiver form I give up my right to receive notices from the personal representative of actions he or she may decide to take.

(Continued on reverse)

Print

ESTATE OF *(Name)*: DECEDENT	CASE NUMBER:

4. By signing below, **I WAIVE MY RIGHT** to receive prior notice of *(CHECK ONLY ONE BOX to indicate your choice)*:
   a. ☐ Any and all actions the personal representative is authorized to take under the Independent Administration of Estates Act.
   b. ☐ Any of the kinds of transactions I have listed below that the personal representative is authorized to take under the Independent Administration of Estates Act *(specify which actions you are waiving your right to receive notice of)*:
      ☐ See Attachment 4.

Date:

. . . . . .
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE)

My address is *(type or print)*:

(Keep a copy for your records.)

REVOCATION OF WAIVER OF NOTICE OF PROPOSED ACTION

1. I previously signed a waiver of my right to receive notices of proposed actions by the personal representative under the Independent Administration of Estates Act.
2. I **revoke** (cancel) any previous waiver of my right to receive notices of proposed actions by the personal representative of the estate of the decedent.
3. I request the personal representative to send me all notices required by law.

Date:

. . . . . .
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE)

My address is *(type or print)*:

(Mail or deliver this revocation to the personal representative at the address in item 1 on the reverse. Keep a copy for your records.)

PROOF OF SERVICE BY MAIL

1. I mailed a copy of the ☐ *Waiver of Notice of Proposed Action* ☐ *Revocation* to the personal representative by ☐ **depositing** a copy of the revocation with the United States Postal Service, in a sealed envelope with postage fully prepaid by first-class mail **or** ☐ **placing** the envelope for collection and mailing on the date and place below following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
   I am a resident of or employed in the county where the mailing occurred.
2. The envelope was addressed and mailed as follows:
   a. Name of personal representative served:
   b. Address on envelope:
   c. Date of mailing:
   d. Place of mailing *(city and state)*:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

. . . . . .
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE)

Copies: Original for filing; one copy to personal representative; one copy for waiving party; office copies.

Comment: See §9.19.

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Source: Estate Planning/California Probate Workflow Manual Revised/9 Independent Administration of Estates/§9.21 9. Objection to Proposed Action

§9.21 9. Objection to Proposed Action

Anyone entitled to receive a notice of proposed action may object to the proposed action being taken without court supervision. If an objection is served and the proposed action is one for which the personal representative would have been required to obtain court supervision had he or she not obtained authority under the IAEA, then the representative should apply for court supervision. Prob C §10589(a). If an objection is served but the representative would not have been required to obtain court supervision even if he or she had not been granted powers under the IAEA, then the representative should request instructions from the court and may take the action only under the court's order. Prob C §10589(b). In either event, the person making the objection must be given notice of any court hearing on the matter. Prob C §10589(c).

An objection may be made by filling in the appropriate item on the back of the Notice of Proposed Action (Objection—Consent) (Judicial Council Form DE-165), reprinted in §9.16, or, if the objector also seeks a restraining order, by use of the combined Objection to Proposed Action and Request for Restraining Order form in §9.24.

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Source: Estate Planning/California Probate Workflow Manual Revised/9 Independent Administration of Estates/§9.22 a. Service of Objection

§9.22 a. Service of Objection

The objection must be delivered to or be received at the address noted on the notice of proposed action before the later of the date specified in the notice or the date the action is actually taken. Prob C §10587. The Judicial Council form wisely recommends certified mail, with return receipt requested.

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Source: Estate Planning/California Probate Workflow Manual Revised/9 Independent Administration of Estates/§9.23 b. Restraining Order

§9.23 b. Restraining Order

If the person objecting is concerned that the personal representative will act without court supervision even after receiving the objection, he or she may obtain an order from the probate court (ex parte and without showing cause) restraining the representative from taking the proposed action without court supervision. Prob C §§10587-10588. See California Decedent Estate Practice §§15.31-15.33 (2d ed Cal CEB 2009).

The Probate Code does not outline a procedure for obtaining a restraining order. Because it is not necessary to show cause, an affidavit or declaration should suffice if it states that the person seeking the order is entitled to notice under Prob C §10581 (or was given notice, whether or not required) and requests that a restraining order be issued. Prob C §10588(a). The form in §9.24 may be used if the person objecting to the proposed action seeks a court order that restrains the personal representative from taking the proposed action.

The restraining order must be served on the representative by personal delivery (as required in CCP §415.10), by mail and acknowledgment of receipt (as required in CCP §415.30), or as authorized by the court before the later of the date specified in the notice of proposed action, or the date the action is taken. Prob C §10588.

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Source: Estate Planning/California Probate Workflow Manual Revised/9 Independent Administration of Estates/§9.24 c. Form: Ex Parte Application for Restraining Order

§9.24 c. Form: Ex Parte Application for Restraining Order

[*Title of court*]

Estate of _ _[*name*]_ _,	**)**	**No. _ _ _ _ _ _**
	)	
Decedent	**)**	**EX PARTE APPLICATION FOR**
	)	**RESTRAINING ORDER**
_____	**)**	**(PROBATE CODE §10588)**

Petitioner, _ _[*name*]_ _, alleges:

1. Petitioner is _ _[*named in the will/an heir-at-law*]_ _ of the above-named decedent and as such is entitled to receive notice of proposed action to be taken by _ _[*name*]_ _, as _ _[*executor of the will/administrator of the estate*]_ _ of the decedent, acting under the Independent Administration of Estates Act.

2. Petitioner has received notice that on or after _ _[*date*]_ _, the _ _[*executor/administrator*]_ _ proposes to _ _[*recite proposed action*]_ _. A copy of the notice of proposed action (hereinafter Notice) is attached as Exhibit A.

3. Petitioner objects to the proposed action by the _ _[*executor/administrator*]_ _ as set forth in the attached Notice.

4. Petitioner applies for a restraining order as provided for in Probate Code §10588(a) to prevent the _ _[*executor/administrator*]_ _ from taking the proposed action. Such an application does not require notice to the representative or a showing of cause.

WHEREFORE, petitioner requests that:

1. The court issue an order to restrain _ _[*executor/administrator*]_ _ from _ _[*describe the proposed action*]_ _ and that _ _[*he/she*]_ _ submit the action to the court for _ _[*supervision and approval /instructions*]_ _ as required by law;

2. The court prescribe the manner in which its order so restraining the _ _[*executor/administrator*]_ _ be served on _ _[*him/her*]_ _; and

3. The court make such further order as it deems proper.

Date: _ _ _ _ _ _

__[*Signature*]__
_ _[*Typed name*]_ _
Petitioner

__[*Signature*]__
_ _[*Typed name*]_ _
Attorney for petitioner

[*Verification; see §1.22*]

Copies: Original for filing; copy for client; office copies.

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Source: Estate Planning/California Probate Workflow Manual Revised/9 Independent Administration of Estates/§9.25 d. Form: Restraining Order

§9.25 d. Form: Restraining Order

[*Title of court*]

Estate of _ _[*name*]_ _,	**)**	**No. _ _ _ _ _ _**
	)	
Decedent	**)**	**RESTRAINING ORDER**
_____	**)**	**(PROBATE CODE §10588)**

_ _[*Name of petitioner*]_ _, having presented to this court a verified ex parte application seeking an order restraining the _ _[*executor/administrator*]_ _ of the estate of the above-named decedent from taking the action proposed in the Notice of Proposed Action served on the petitioner;

THE COURT FINDS that:

1. _ _[*Name*]_ _ is a person entitled to and was given notice of proposed actions in the estate.

2. The court is compelled, on objection of a person entitled to notice of proposed action, to issue the requested restraining order without cause being shown therefor.

WHEREFORE, IT IS ORDERED that:

1. _ _[*Name of executor or administrator*]_ _ as _ _[*executor of the will/administrator of the estate*]_ _ of the above-named decedent is restrained from _ _[*describe proposed action*]_ _ until _ _[*he/she*]_ _ submits such proposed action to this court for _ _[*supervision and approval/instructions*]_ _ as required by law as though not acting under the Independent Administration of Estates Act; and

2. _ _[*Name of petitioner*]_ _ shall serve a copy of this order on the _ _[*executor/administrator*]_ _ as provided in Code of Civil Procedure **_ _[*§415.10/§415.30*]_ _.**

Date: _ _ _ _ _ _ __[*Signature*]__
Judge of the _ _[*title of court*]_ _

Copies: Original for filing; certified copy to serve; copy for client; office copies.

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Source: Estate Planning/California Probate Workflow Manual Revised/9 Independent Administration of Estates/§9.26 e. Effect of Failure to Object to Proposed Action

§9.26 e. Effect of Failure to Object to Proposed Action

Generally, one who receives notice of a proposed action and fails to make a timely objection waives the right to have the court review the proposed action after it has been taken. See Prob C §10590; California Decedent Estate Practice §15.35 (2d ed Cal CEB 2009).

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Source: Estate Planning/California Probate Workflow Manual Revised/9 Independent Administration of Estates/§9.27 f. Procedure After Objections

§9.27 f. Procedure After Objections

If an objection has been received or a restraining order served, the personal representative should seek court approval of the proposed action. Prob C §10589. That approval should be sought at a hearing on notice to all interested persons, including the person who made the objection or obtained the restraining order.

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10

Initial Duties of Representative

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II. DEALING WITH PERSONAL REPRESENTATIVE AFTER QUALIFICATION
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- D. [§10.18] Checklist: Business Interests
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- F. [§10.21] Decedent's Mail
- G. [§10.22] Checklist: Taxes
- H. [§10.23] Estate Financial Schedule
- I. [§10.23A] Notice to State Agencies
- J. [§10.24] Miscellaneous

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- C. [§10.26] List of Typical Cash Requirements
- D. [§10.27] Sample Form: Letter to Representative on Estimate of Cash Needs

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§10.1 I. INSTRUCTING THE PERSONAL REPRESENTATIVE

The main functions of estate administration are to collect and manage all assets and to pay debts and taxes owed by the decedent and the estate. Only then can the remaining assets be distributed to the beneficiaries named in the will or, if the decedent left no will, to his other heirs. Although assembling and managing estate assets is the task of the representative, it is the job of the lawyer (and the lawyer's legal assistant and secretary) to assure that the estate administration is proceeding in a timely manner. The law has provided an orderly procedure for accomplishing this.

The lawyer and legal assistant are usually concerned with the following initial steps in estate administration:

Conferring with representative: Immediately after the personal representative has been appointed, the attorney should confer with the representative about his or her duties, procedures, and the estate's assets and liabilities. (This is not to be confused with the interview for estate information outlined in chap 3.) The steps the representative must take should be discussed, with special emphasis on assembling and managing estate assets. See chap 16 on borrowing money, leases, and continuing the decedent's business.

Determining character of decedent's property: After the representative has returned the completed checklist of estate financial information (see §3.6), the attorney should determine as soon as possible the extent to which the decedent's property was separate or community in origin, and its character at the time of death. On termination of joint tenancy, see chap 4.

Establishing control: The noncorporate representative must be instructed and reminded to keep accurate and complete records of every transaction. Many representatives will need detailed instructions. Estate accounting can become a nightmare unless the attorney or someone under the attorney's direction ensures that corrective action may be taken early during administration. For a proper method of recordkeeping to reduce the possibility of error, see §§3.7-3.10, 10.3, and App B. Many attorneys find it easier for their offices to keep the records and prepare the checks for the personal representative.

For discussion of the representative as a client and as a fiduciary, see California Decedent Estate Practice §§10.2-10.3 (2d ed Cal CEB 2009).

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Source: Estate Planning/California Probate Workflow Manual Revised/10 Initial Duties of Representative/ II. DEALING WITH PERSONAL REPRESENTATIVE AFTER QUALIFICATION/§10.2 A. Checklist: Issues for Consideration at Beginning of Estate Administration

II. DEALING WITH PERSONAL REPRESENTATIVE AFTER QUALIFICATION

§10.2 A. Checklist: Issues for Consideration at Beginning of Estate Administration

The following is a checklist of issues that must be addressed at the outset of administration of the estate. Although some tasks are the personal representative's responsibility, the attorney and legal assistant must ascertain that the representative completes the task. It is helpful to clearly allocate responsibility between the representative and the attorney's office at an early stage to avoid misunderstandings. References to text discussions follow each item. Suggestions are made in the following chart as to who should handle a particular task. "R" refers to the representative, "L" to the legal assistant, and "A" to the attorney. For further discussion of safe-deposit boxes, see California Decedent Estate Practice §10.13 (2d ed Cal CEB 2009).

1. Collection of Decedent's Assets

_ _ _R	Inventory items in decedent's safe-deposit box (see §10.7)
_ _ _R	Supervise opening of safe-deposit box held with another person (see §10.7)
_ _ _R	Transfer valuables from decedent's safe-deposit box to estate safe-deposit box (see §10.7)
_ _ _R	Take possession of decedent's bank accounts (see §§10.4-10.5)
_ _ _R	Search for stocks/bonds in which decedent had an interest (see §10.9)
_ _ _R	Initiate collection of debts due decedent or estate (see §10.17)
_ _ _R	Search the State Controller's website at http://www.sco.ca.gov/upd.html for any unclaimed property in decedent's name that the state may be holding

2. Management of Decedent's Estate

_ _ _R	Review investments (see §10.9)
_ _ _R or L	Establish financial record-keeping procedures for estate (see §10.23)
_ _ _R	Open estate bank accounts (see §§10.5-10.7)
_ _ _A or L	Advise representative to identify all expenses (see §§10.3, 10.25)
_ _ _L	Prepare estimate of estate receipts and cash needs (see §10.25)
_ _ _A	Instruct representative about withdrawals of estate funds (see §10.3)
_ _ _R	Cancel decedent's credit cards (see §10.8)
_ _ _R	Contact national credit reporting agencies to get copy of decedent's credit report and to close decedent's credit profile (see §10.8)

3. Bank Accounts

_ _ _R	Deposit estate's cash in interest-bearing accounts (see §§10.3, 10.5)
_ _ _R and L	Confirm insurance coverage of accounts (see §10.5)

4. Stocks and Bonds

_ _ _R	Cancel reinvestment of dividend option (see §10.9)
_ _ _R	Advise transfer agents where to send dividends (see §10.10)

5. Real Property

_ _ _A or L	Review documents of title (see §10.13)
_ _ _R and L	Consider renting residential property (see §10.14, Decedent Estate Prac §10.20)
_ _ _R	Inform tenants where to send rent payments (see §10.13, Decedent Estate Prac §10.22)
_ _ _R or L	Determine amount and status of property tax payments (see Decedent Estate Prac §10.43)
_ _ _R	Confirm homeowner's exemption (see Decedent Estate Prac §10.43)
_ _ _R	Determine insurance coverage of property (see Decedent Estate Prac §10.21)
_ _ _A	Determine whether mortgage must be exonerated (see Decedent Estate Prac §10.19)
_ _ _L	Obtain legal descriptions of real property (see §10.13)
_ _ _R or L	Determine outstanding balances on real property loans (see §10.13)
_ _ _R or L	Determine whether decedent has any loans secured by real property that are in default (see Decedent Estate Prac §10.46)
_ _ _R, L, or A	Ascertain whether decedent owned real property outside California (see Decedent Estate Prac §10.24)
_ _ _ A	Ascertain whether any real property owned by decedent has potential hazardous waste problem (see Decedent Estate Prac §§10.23, 23.21)

6. Insurance and Benefits

_ _ _R	Question decedent's employer about benefits (see Decedent Estate Prac §10.18)
_ _ _R	Ascertain and obtain Social Security benefits (see Decedent Estate Prac §§10.11, 10.18)
_ _ _R or L	Request IRS Form 712 from life insurance companies (see Decedent Estate Prac §10.18)

7. Personal Property

_ _ _R	Determine anticipated disposition by sale or transfer of decedent's automobile (see Decedent Estate Prac §10.29)
_ _ _R	Take custody of personal property (see Decedent Estate Prac §10.25)
_ _ _R	Dispose of perishable or depreciating property (see Decedent Estate Prac §10.30 and chap 18)
_ _ _R, L, or A	Review documents of title
_ _ _R	Determine insurance coverage of property

8. Tax Considerations

_ _ _A or L	Consult with decedent's CPA
_ _ _A	Consider elections under IRC §§2032A (special use valuation for qualified real property), 6166 (installment payments) (see Decedent Estate Prac §§34.25-34.27, 34.33)
_ _ _A (with follow-up by L)	Instruct representative on keeping records for tax purposes (see §10.3)
_ _ _A	Ascertain need for filing gift tax returns (see §10.3; Decedent Estate

Prac §10.42)

_ _ _A Consider other income tax issues (see §14.12)

9. Property Not Included in Probate Estate

_ _ _ A Determine nature of property

_ _ _ A Determine income that must be reported on final income tax return

_ _ _L Transfer joint tenancy property (see §§4.9-4.11)

_ _ _R, L, or A Appraise nonprobate property (see Decedent Estate Prac §10.38)

10. Notice to State Agencies (see §§12.11A-12.12)

_ _ _ R or A Give notice of death to Franchise Tax Board

_ _ _ R or A Give notice of death to Director of Health Care Services, if required

_ _ _ R or A Give notice of death to Director of the California Victim Compensation and Government Claims Board, if required

11. Creditor Claims

_ _ _ R Go through decedent's papers to identify and list creditors (see §12.8A)

12. Miscellaneous Matters

_ _ _R Arrange to have decedent's mail forwarded to representative (see Decedent Estate Prac §10.7)

_ _ _A Determine whether representative should act as partner in decedent's partnership business (see Decedent Estate Prac §10.31 and chap 23)

_ _ _A Review nontransferable options (see Decedent Estate Prac §10.32)

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Source: Estate Planning/California Probate Workflow Manual Revised/10 Initial Duties of Representative/§10.3 B. Written Instructions to Representative

§10.3 B. Written Instructions to Representative

The letter in §10.3A is for the personal representative's information and guidance. The attorney must edit it carefully to suit the particular estate and representative. It may not be appropriate in all cases. The written instructions may be presented to the representative during or after the initial conference after the representative is appointed; in some cases they may be presented before the conference so that the representative can better prepare for the meeting.

The representative will already have received the statement of duties and liabilities required by Prob C §8404 and discussed in §§7.37-7.39. This letter amplifies the information in that statement and covers other matters as well.

If the estate will be independently administered, the attorney may want to change the list of actions that the executor must clear. However, the representative must keep the attorney informed of all actions that require the giving of notice. See §§9.12-9.14.

A rough estimate of the estate's cash requirements may be included in the letter. The attorney may give more detailed information about the estate's cash requirements and sales of estate property at a later time, if necessary.

Some probate attorneys require the representative to acknowledge receipt of the letter.

For further discussion of the initial duties of the representative, see California Decedent Estate Practice §§10.4-10.5 (2d ed Cal CEB 2009).

NOTE: This letter is not intended for use as a form except in the broadest sense. It must be carefully edited by the attorney in each instance to suit each estate and representative. Some attorneys prefer to send this type of letter after letters have been issued and at the same time they are delivered to the representative. In some instances the sample letter may be wholly inappropriate, but some letter should be sent to alert the representative to his or her duties.

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Source: Estate Planning/California Probate Workflow Manual Revised/10 Initial Duties of Representative/§10.3A C. Form: Written Instructions to Representative

§10.3A C. Form: Written Instructions to Representative

Estate of _ _ _ _ _ _

Date: _ _ _ _

Dear _ _ _ _ _ _:

You have now been appointed_ _[*executor of the will/administrator of the estate*]_ _ of _ _[*name of decedent*]_ _.

Although you have reviewed and signed a receipt for a short statement of "Duties and Liabilities of Personal Representative," and we discussed your duties as executor/administrator and the estate administration process at our recent conference, I thought that for your information and future reference it would be helpful to summarize in this letter our respective responsibilities and the events to take place.

I. PURPOSE OF PROBATE ADMINISTRATION

It is our responsibility as your attorneys to see that all the steps in the administration of the estate are taken, including the preparation of all necessary documents. From time to time we will communicate with you about various aspects of administration of the estate, you should feel free to call any time you have a question.

In general, all steps in the administration of the estate are directed toward three goals: collecting and managing assets, paying debts and taxes, and distributing the balance of the assets as provided in the will. As executor, you represent the estate and must carry out the terms of the will; you do not represent the heirs or beneficiaries of the estate.

As executor, you must not do any of the following without consulting us first:

1. Carry on the decedent's business.

2. Perform the decedent's contracts.

3. Make any contracts binding on the estate.

4. Borrow money, sign notes, or execute a mortgage, deed, or other lien agreement on estate property.

5. Give away, sell, or lease any estate property or buy any property for the estate.

6. Distribute estate property to an heir or devisee.

7. Deposit estate funds into your personal account (not allowed under any circumstances).

8. Act without authority of your coexecutor or coadministrator.

9. Pay or compromise any debts or claims against the estate. Claims arising before the date of death and funeral expenses require presentation of a verified claim to you; expenses of estate administration arising after the date of death do not. Neither claims nor expenses of estate administration should be paid, however, if there is any question about the estate's ability to pay all of them.

10. Sell estate stocks or bonds, exercise subscription rights, or buy stocks or bonds for the estate.

[*Add if appropriate*]

In your petition, we asked the court to grant you authority to administer the estate under the Independent Administration of Estates Act, and this authority has been granted. With this authority, you are allowed to take

certain actions in administrating the estate without court approval by simply giving notice of your proposed actions to persons having an interest in the estate. We will provide you with further guidance on this procedure as the administration of the estate progresses. Please take no actions without conferring with us.

[*Continue*]

II. COLLECTION AND MANAGEMENT OF ASSETS

You are to take possession of all the decedent's property. Although we will help you do this and will advise you on managing estate assets, this is your responsibility.

A. Valuables

Securities, jewelry, and other valuable items should be kept in a safe deposit box in the name of the estate. You should not put any estate assets in your own safe deposit box. Please let us know if there are any such items that you think should remain, or be placed, in the possession of another person.

B. Bank and Savings and Loan Accounts

1. Before taking any action to close or transfer any account in the decedent's name, you should check with the institution to determine whether any automatic payments or deposits are being made.

2. The date-of-death balance of joint tenancy accounts should be transferred to the surviving tenant. The executor has no authority to terminate a joint tenancy account unless he or she is the surviving joint tenant. Only the surviving joint tenant, with proof of death, may transfer the account. A joint tenancy asset is not a probate asset unless it is later determined to be a community property asset and subject to administration of the decedent's community interest.

3. The balance of each account that stood in the decedent's name alone should be transferred to an estate account. Note: You should first change the address of the decedent's existing accounts to your address so that tax reporting for the account is mailed to you at year end.

4. All of the decedent's outstanding checks should be listed on the attached estate information checklist.

5. You should open an interest-paying checking account for the estate to maintain cash. If that is not feasible because the amount of cash is too small, you may use a non-interest-paying checking account until the estate has enough cash to open an interest-paying account.

6. Because estate funds may be used only for certain limited purposes, we recommend that you draw no checks on the estate account without consulting us. You must keep an accurate record of all deposits and withdrawals on the estate account. The record should show the amount and source of each deposit and the amount and purpose of each check. This record will be used to prepare any necessary accounting to be submitted to the court when the estate property is distributed.

C. Record of Decedent's Property; Insurance Considerations

So that we can prepare the inventory and appraisal of the estate's assets, you should prepare a complete list of all the decedent's property. Keep an accurate record of all amounts the estate receives as payment on medical insurance, debts owed to the decedent, and refunds, rebates, or similar items. As soon as we have collected the necessary information, we will prepare the inventory for your signature. After you have signed it, we will send it to the probate referee whom the court has appointed to appraise the estate's assets. For gift and estate tax purposes, we will need lists of all property that was held in joint tenancy, and all contractual benefits passing outside probate, *e.g.,* insurance payable directly to a beneficiary, or to the estate, IRA benefits payable directly to an individual, and annuity benefits. We need a copy of all gift tax returns filed by the decedent and a list of each gift valued at more than $13,000 ($12,000 for gifts made before 2009; $11,000 for gifts made before 2006; $10,000 for gifts made before 2002; $3,000 for gifts made before 1982) that the decedent made after the last gift tax return was filed.

1. Insurance Policies. Prepare a list of all the decedent's life insurance policies. We should also know about any beneficial interest the decedent had in anyone else's life insurance policies.

2. Insurance Riders. You should locate all other insurance policies of the decedent's or contact the decedent's insurance broker, who may have the necessary information.

D. Management and Sale of Estate Property

It may become necessary to sell some of the estate's property, either because an item should be disposed of to avoid needless expense or loss through depreciation in value, or to raise cash to pay expenses, taxes, or general pecuniary gifts. Certain assets can be sold only with court authorization. Because probate sales are subject to many technical rules, you should not make any arrangements for the sale of assets without consulting us.

As executor you are required to invest all cash not needed to administer the estate in interest-producing investments. There are limitations, however, on the kinds of investments you may make. Before taking action, you should consult our office.

The law provides considerable leeway for the executor's independent action unless the will expressly precludes administration of the estate under the Independent Administration of Estates Act. Actions under this law require minimal court supervision in the sale of estate assets, the payment of debts, and the conversion of investment assets to another form. Some actions under the Independent Administration of Estates Act will require a Notice of Proposed Action or waiver of notice.

III. HANDLING DEBTS AND TAXES

A. Creditors' Claims

When the petition to admit the will was submitted to the court, a concurrent notice to creditors was published in the manner required by law. In addition, now that you have been appointed personal representative, we must mail a notice to all creditors who have made demands either on the decedent or on the estate ("known" creditors) and to all "reasonably ascertainable" creditors. To ascertain creditors, you should go through the decedent's papers and make a list of the following:

1. The hospital or rest home, if any, where the decedent died.

2. All physicians or other health-care providers who treated the decedent.

3. All ambulance companies used.

4. The landlord (if decedent rented) or mortgage holder (if decedent owned property).

5. All employees and providers of services (*e.g.*, gardeners, cook, accountants, housekeeper).

6. Utility companies (*e.g.*, gas, water, electricity, telephone, cable television).

7. Note payees (may be found by reviewing tax returns for the list of interest deductions).

8. All credit card companies (at time notice of administration of estate is given to creditors, return card to creditors cut in half).

9. Anyone who sends a bill to the decedent.

10. Any securities broker who may have a margin account or other obligation due.

11. Those interested in the decedent's guaranties or contingent liabilities (which may appear on any financial statements of the decedent).

12. Business partners and others involved in similar co-ventures, such as limited liability companies.

13. Creditors of the decedent's business if it appears likely that there may have been personal guaranties or if the business is not incorporated.

14. If there appears to be anyone who may be a creditor or have a claim against the decedent, *e.g.,* if the decedent was in an auto accident before his death that potentially caused physical injury or property damage, list that potential creditor and discuss the potential creditor with us.

As you take actions to learn the identity of the creditors, you should keep a written record of the actions you have taken. This record becomes important if you inadvertently omit a creditor who then tries to make a claim after the period for filing claims has expired.

To be paid, the decedent's creditors must generally file a creditor's claim with the court within 4 months after the issuance of letters testamentary, allowing you to act as executor. Probate Code §9100.

If any creditor demands payment from you, please let us know right away. Any claims not filed as described above are forever barred from collection. For your own protection, you should not pay any claims without consulting us.

You should let us know if there are claims you yourself have, including sums you may have advanced to pay last-illness or funeral expenses. These must be handled differently and most require court approval.

B. Estate Taxes and Income Taxes

As the personal representative, you will be responsible for various tax matters. You may need to provide the tax preparer with information about assets that are not part of the probate estate, such as insurance proceeds and retirement benefits payable to beneficiaries other than the estate, and joint tenancy or community property assets that are distributable to the survivors as a matter of law without the need of probate administration.

1. Income Tax Returns. It will be necessary to prepare and file federal and state income tax returns for the decedent for the period from January 1 through the date of death. These returns are not due until their normal due date of the next April 15.

You may also be required to file income tax returns for the estate for each year until the final distribution. The estate is a separate entity for federal and California income tax purposes. There may be income taxes due in the state of death_ _[*and ancillary administration state*]**_ _.**

[*If applicable, add the following option*]

[*Option: Recommendations regarding tax matters*]

After we have all the necessary information, we will give you our recommendations about the selection of the estate's fiscal year and related income tax matters.

[*Continue*]

2. Estate Tax Returns. Depending on the gross value of the estate, it may be necessary to file a federal estate tax return. The federal estate tax return and the tax are due, with certain exceptions, 9 months after the date of death. Before the date on which the tax is due we will make a rough calculation of the federal estate tax to enable us to provide you with an outline of the estate's cash needs for estate taxes.

California has no inheritance tax or estate tax. However, an inheritance or estate tax return may be required for the decedent in a state other than California if the decedent held property in that other state.

[*For law offices that prepare estate taxes, add the following paragraph; otherwise exclude this paragraph*]

Our office can prepare and file the federal estate tax return, as well as the federal and state income tax returns. You may prefer, however, to have your or the decedent's accountant prepare some or all of these returns if the accountant is familiar with the decedent's assets and the preparation of these somewhat specialized tax returns. In any event, it is critical to assign the responsibility for these returns to ensure timely filing.

[*Continue*]

C. Cash Needs

Once you are in a position to estimate creditors' claims, taxes, and cash on hand, we can determine whether the cash will be adequate or whether assets must be sold to meet the estate's obligations.

IV. DISTRIBUTING THE ESTATE

A. Preliminary Distribution

At any time 2 months or more after the first issuance of letters testamentary, it is possible to petition the court for a partial distribution of estate assets. Probate Code §11620. However, a preliminary distribution can cause adverse income and estate tax results, and therefore the court must be satisfied that distribution may be made without loss to creditors or injury to the estate or any interested person (Probate Code §11621). Consequently, we must carefully evaluate a preliminary distribution before a decision is made to petition the court.

B. Final Distribution

When all debts and taxes have been paid, including federal estate taxes, if any, and the estate is ready for final distribution, we will prepare for your signature a final account and report based on your record of receipts and disbursements. The account and report will ask the court to order distribution of the remaining estate assets to the beneficiaries. When the court enters its order settling the account and report and ordering distribution of the balance of the estate assets, we will help you distribute the assets and obtain the necessary receipts. Ordinarily, assets should be distributed only on court order. If you feel that an exception should be made, please consult us.

V. COMPENSATION

A. Executor's Compensation

1. Compensation for Ordinary Services. Under California Probate Code §10800, you may receive compensation based on the amount of the estate accounted for by you. Compensation is calculated as follows: 4% of first $100,000; 3% of next $100,000; 2% of next $800,000; 1% of next $9,000,000; 0.5% of the next $15,000,000; and a reasonable amount determined by the court on amounts above $25,000,000. _ _[*Describe*]_ _. You may either accept or waive the compensation for your services as executor/administrator. If you accept your compensation, the estate will be entitled to deduct it in computing the taxable estate for estate taxes or, alternatively, in determining the taxable income of the estate. You are required to report this compensation as income. If you waive your entitlement to compensation, however, it will neither be paid and taxed to you nor deductible by the estate. Later we will give you an estate of the amount of your compensation for ordinary services.

2. Compensation for Extraordinary Services. You are entitled to further allowances as the court may consider just and reasonable for extraordinary services, such as sales or mortgages of real or personal property; contested or litigated claims against the estate; preparation of the estate, income, sales, or other tax returns; litigation concerning estate property; carrying on the decedent's business under court order; and other litigation or special services as necessary.

B. Attorneys' Compensation

Our fee agreement with you sets out the services that we will perform and how fees will be calculated for those services. As stated in the fee agreement, some of our services are covered by the fee for ordinary services and some by an additional fee for extraordinary services. For our ordinary services, we as your attorneys are entitled to compensation at the same rate as your ordinary compensation. For any extraordinary services, the Probate Code provides that the court may set whatever fee it considers proper. Examples of extraordinary service are preparing the estate's income tax and estate tax returns, handling an audit of the estate's income tax or estate tax returns, defending the estate in lawsuits, negotiating valuation of assets for estate tax purposes to establish the fair market value, and handling unusual sales transactions. In addition, if there is an ancillary (second) administration in another state, we must render services not contemplated by the compensation schedule to assist and coordinate probate proceedings.

We hope that this general outline of your duties and the major events that will occur during administration of the estate will be useful. Although matters may arise that we have not covered, I want to assure you that we

will try to minimize any inconvenience to you. Conversely, many of the matters mentioned above may not arise in this administration.

If you have any questions about the estate or if you need further details about any of the matters I have mentioned, please do not hesitate to let us know.

Very truly yours,

__[*Signature of attorney*]__
_ _[*Typed name of attorney*]_ _

Copies: Original to representative; office copies.

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III. ASSEMBLING AND MANAGING ESTATE ASSETS

§10.4 A. Checklist: Discovery of Assets

To administer the estate, complete knowledge of the decedent's assets is necessary. Information about those assets can be gleaned from a variety of sources. If it appears likely that the decedent had assets unknown to the attorney and the representative, the legal assistant should consider (after conferring with the attorney) taking the following actions in tracing possible assets (see California Decedent Estate Practice §§13.2-13.6 (2d ed Cal CEB 2009)):

- 1. Review the tentative inventory (if one was prepared to aid counsel in estate planning for the decedent).
- 2. Examine all the decedent's papers, including deeds, insurance policies, bank statements, brokerage statements, stock certificates, tax returns, and other tangible evidences of assets.
- 3. From the information obtained by the attorney from the representative at the initial conference, contact those of decedent's friends, relatives, and business associates who are likely to know of the decedent's assets.
- 4. Contact the decedent's accountant, stockbroker, attorney, and insurance agent.
- 5. For evidence of real property, contact a title company in any county in which it is suspected that the decedent had an interest in real property.
- 6. For evidence of securities other than those known to the stockbroker, you may need to circulate an inquiry to stock companies.
- 7. For evidence of insurance unknown to the insurance agent, an inquiry to possible insurers may be required.
- 8. For evidence of bank accounts and safe-deposit boxes, an inquiry to local banks may be required.
- 9. Examine all of the decedent's mail, including mail delivered after the decedent's death.

More details on performing this type of investigation follow.

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Source: Estate Planning/California Probate Workflow Manual Revised/10 Initial Duties of Representative/ 1. Accounts in Financial Institutions/§10.5 a. Checklist

1. Accounts in Financial Institutions

§10.5 a. Checklist

INSTRUCTIONS: See §10.6 for further discussion of locating the decedent's accounts and of opening estate accounts. See also California Decedent Estate Practice §§10.10-10.17 (2d ed Cal CEB 2009).

1. Tracing

- Verify whether representative has made complete review of decedent's business papers.
- Circularize financial institutions in county and vicinity. See §10.6.

2. Balance

- Verify balances in accounts and accrued interest as of date of death. See §10.6.

3. Accounts held in assumed names

- Alert representative to investigate mail or other documents in decedent's possession showing strange names or aliases.

4. Transfer account

- Obtain a certified copy of representative's letters for each account that needs to be closed.

5. Opening estate accounts

- Obtain a taxpayer identification number (TIN) for the estate from the IRS, which is necessary for estate accounts. See §§14.2-14.2A.
- All excess cash must be invested in interest-bearing accounts or authorized investments (Prob C §9652).
- If advisable to have more than one commercial account, remind representative to limit total amount of all accounts with any institution, including its branches, to current insured limits of federal deposit insurance or federal savings and loan insurance.
- Estate accounts should be opened in the name of the representative. Bank practice varies. Some use the form "Estate of A.B. by C.D. (Executor) Administrator," while others use "C.D. as (Executor) Administrator of the (Will) Estate of A.B." Obtain signature cards and a certified copy of letters for each new account. If more than one representative is appointed, the signature card should be executed by each.

6. Withdrawals

- Instruct the noncorporate representative to keep accurate records of withdrawals from the estate accounts. This discourages the use of estate funds to meet the representative's personal needs, which is a common problem. On probate bookkeeping and control of estate funds, see §§3.7-3.10.

7. Interest

- Check with institution on how interest would be credited to estate account without loss.

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Source: Estate Planning/California Probate Workflow Manual Revised/10 Initial Duties of Representative/§10.6 b. Form: Request for Decedent's Bank Balance

§10.6 b. Form: Request for Decedent's Bank Balance

INSTRUCTIONS: See §10.4. Many banks will not release this information unless the representative countersigns the letter.

_ _[*date*]_ _
Court case no. _ _ _ _ _
Office file no. _ _ _ _ _

Decedent's Name: _ _ _ _ _ _ _ _ _ _ _ _ _ _

Decedent's Address: _ _ _ _ _ _ _ _ _ _ _ _ _ _

Date of Death: _ _ _ _ _ _ _ _ _ _ _ _ _ _

Personal Representative: _ _ _ _ _ _ _ _ _ _ _ _ _ _

Dear Sirs:

We represent the personal representative of the above-named decedent. We are attempting to locate all assets of the decedent. Please answer the following questions. You may wish to use the enclosed copy of this letter for your reply.

1. Did the decedent maintain an account or safe-deposit box in your bank or any of its branches? Yes_ _ _ _ No_ _ _ _

If yes, please supply the following information:

Type of Account	Account Number	Balance at Date of Death	Accrued Interest on Account	Account in Name of
Savings	_____	$_____	$_____	_____
Commercial	_____	$_____	$_____	_____
Agency	_____	$_____	$_____	_____
Trust	_____	$_____	$_____	_____
Safe-deposit box	_____	$_____	$_____	_____

2. If there is any interest that accrued before the decedent's date of death, which is not reflected in the balance given above, please indicate the accrued amount in the chart above.

3. Did anyone else have the power to withdraw funds or otherwise deal with the decedent's account or safe-deposit box? Yes_ _ _ _ No_ _ _ _

If yes, please supply name and address:_____
_____

4. Have any withdrawals or transfers been made since decedent's death? Yes_ _ _ _ No_ _ _ _

A certified copy of letters of the personal representative is enclosed.

A self-addressed envelope is enclosed for your convenience in answering this letter.

Yours very truly,

__[*Signature of attorney*]__
_ _[*Typed name*]_ _

I authorize you to release the information requested in this form.

__[*Signature of representative*]__

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§10.7 2. Safe-Deposit Box

Decedent's safe-deposit box: See probate estate record in §1.6 for box number, location of key, and so on. Arrange for representative or a majority of representatives to open the box. Prob C §9630. The written consent of an absent representative should be obtained in advance. Prob C §9630.

Joint access boxes (see also §10.3): Joint access boxes are generally released to the surviving tenant. The prospective representative and his attorney should be present at the first opening to ensure that estate assets in a joint access box do not pass into the possession of an unauthorized person. Even before his or her qualification, an executor named in the will is authorized to take necessary measures for the estate's preservation under Prob C §8400. Other prospective representatives have no statutory authority to take any action affecting the estate until after appointment and qualification. If a dispute arises concerning the right to possess the contents of a joint access box, the impasse may be resolved by depositing the contents in a new box under an access agreement requiring both disputants' signatures. The bank may hold them in a sealed envelope in its vault for delivery under instructions of both disputants or on order of the court.

Estate safe-deposit box: The representative should transfer the decedent's box into the estate's name. Precautions must be taken in transferring the box's contents from one bank to another. An interbank delivery service or armored car service should be used to transfer valuable items.

The representative should not put any estate assets in his or her own safe-deposit box.

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Source: Estate Planning/California Probate Workflow Manual Revised/10 Initial Duties of Representative/§10.8 3. Credit Cards and Charge Accounts

§10.8 3. Credit Cards and Charge Accounts

All the decedent's credit cards must be canceled. Mutilate cards in the decedent's name and return them to the issuer promptly, even before letters are issued, with a statement of the date of death. Similar notices should be sent to business firms from which the decedent made purchases on credit. For form, see the Judicial Council form in §12.16. When such a notice is sent, it is advisable to enclose an extra copy and ask that receipt of the notice be acknowledged by signing and returning the copy.

The three national credit reporting agencies, Equifax, Experian, and TransUnion should be contacted to close the decedent's credit profile. Obtain copies of the decedent's credit report to learn whether the decedent has any other credit card accounts that need to be closed.

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§10.9 4. Stocks and Bonds

The representative should search diligently for stocks and bonds, take possession of the certificates, and ensure their safekeeping. The certificates should be deposited in the estate safe-deposit box. See §10.7. On transfer of securities, see chap 20.

Obtain information on redemption and reissuance of government bonds from the federal reserve bank or major commercial banks. See §4.17. Some government bonds are redeemable at par on the death of the owner only if they are surrendered within a specified period. These are called "flower bonds."

Unissued shares held in a corporation's dividend reinvestment plan account are often overlooked in the search for stocks and bonds. The representative should cancel the election to have dividends automatically reinvested and should direct that the shares in the account be issued in the representative's name (as representative of the estate). Fractional shares must be liquidated.

Generally, securities owned by the decedent registered in beneficiary form under the Uniform TOD Security Registration Act (Prob C §§5500-5512) are not part of the decedent's probate estate. If none of the beneficiaries survives the death of all owners, however, the security belongs to the estate of a deceased sole owner or the last to die of multiple owners. Prob C §5507.

The actual number of shares owned by the decedent should be verified. As the dividend checks are received, they should be reviewed to determine the number of shares shown on the check. If there is a discrepancy when compared to the certificates, or if the stock is not paying dividends, the attorney or representative should ascertain the status of the decedent's holdings or the company. One approach is to use the services of one of the excellent and inexpensive stock valuation services. They often provide information on stock splits and stock dividends since the date of the certificate at little charge. These services often have information on companies that have merged, changed their name, or been acquired. Finally, they may be able to provide information on companies that have ceased to do business. If, however, the attorney wishes to obtain this information directly, either from the transfer agent or from the Secretary of State of the appropriate state, the following forms will be helpful.

For further discussion of stocks and bonds, see California Decedent Estate Practice §§10.4-10.17 (2d ed Cal CEB 2009).

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Source: Estate Planning/California Probate Workflow Manual Revised/10 Initial Duties of Representative/§10.10 a. Form: Request for Stock Information From Transfer Agent

§10.10 a. Form: Request for Stock Information From Transfer Agent

_ _[*date*]_ _
Estate of _ _[*name*]_ _,
Deceased
Date of Death: _ _[*date*]_ _

_ _[*Address of stock transfer agent*]_ _

Dear Sirs:

We enclose a copy of letters of appointment in the above estate and a certified copy of the death certificate.

According to information furnished to us, the decedent owned the stock described below. Please confirm or correct this as of the decedent's date of death noted above. Please reply on the enclosed copy of this memorandum and return it in the enclosed envelope.

If you do not maintain the stockholder records for the company or companies listed below, please advise us so that we may write to the proper company.

If there is a dividend reinvestment plan, or if there were recent stock splits or stock dividends affecting the number of shares reported, please include this information.

_ _[*List known stocks here*]_ _

Please forward all future dividends, notices, and other communications about this stock to:

__[*Signature of attorney*]__
_ _[*Typed name*]_ _
_ _[*Typed name of law firm*]_ _

I authorize you to release the information requested in this form.

__[*Signature of representative*]__

Copies: Original and copy for addressee; office copies.
Comment: See §10.9.

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Source: Estate Planning/California Probate Workflow Manual Revised/10 Initial Duties of Representative/§10.11 b. Form: Letter Ascertaining Status of Corporation

§10.11 b. Form: Letter Ascertaining Status of Corporation

_ _[*date*]_ _
Estate of _ _ _ _ _ _ _ _ _ _,
Deceased

Secretary of State
State of _ _ _ _ _ _ _ _ _ _ _ _ _

Dear Sir:

We represent the executor of the will of the above-named decedent. Among the assets of the estate are _ _[*(e.g., 250 shares*]_ _ **of** _ _[*name of stock*]_ _**. This company was incorporated under the laws of the State of** _ _ _ _ _ _ **in the year** _ _ _ _**.**

Please inform us whether this corporation is still in existence and, if so, the address of the principal place of business. A return envelope is enclosed for your convenience.

Very truly yours,

__[*Signature of attorney*]__
_ _[*Typed name*]_ _
_ _[*Typed name of law firm*]_ _

Comment: See §10.9.

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Source: Estate Planning/California Probate Workflow Manual Revised/10 Initial Duties of Representative/§10.12 5. Checklist: Life Insurance, Social Security and Death Benefits, and U.S. Savings Bonds

§10.12 5. Checklist: Life Insurance, Social Security and Death Benefits, and U.S. Savings Bonds

1. Life insurance proceeds

- See record of estate in §1.6 for policies on decedent's life payable to estate or beneficiaries. IRC §2042(2).
- Obtain life insurance policies from representative. See §10.3.
- Write to each life insurance company for full list of all policies in effect in which decedent had interest. See §10.3.
- File claim to collect life insurance proceeds. See §4.19.
- Ask insurance company to send two copies of IRS Form 712 for each policy, regardless of whether estate tax return will be filed.
- Insert amounts of proceeds paid, including dividends accrued to date of death, deductions for policy loans, etc., in Estate Financial Schedule, §10.23.
- Services rendered by the attorney in collecting life insurance policy proceeds payable to beneficiaries other than estate may be charged to beneficiaries.
- See Estate Financial Schedule, §10.23.

2. Life insurance decedent owned on life of another

- Obtain life policies from representative.
- Ask insurance company to send two copies of IRS Form 712 for each policy, regardless of whether federal estate tax return will be filed.
- Ask insurance company to provide appropriate forms to change ownership of policies.

3. Social security and death benefits

- See §§4.20-4.26.

4. U.S. saving bonds

- See §§4.15-4.17.
- On redeeming or reissuing co-ownership registered bonds, see §4.16.

Comment: See chap 4; California Decedent Estate Practice, chap 2 and §§10.11, 10.17-10.18 (2d ed Cal CEB 2009).

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Source: Estate Planning/California Probate Workflow Manual Revised/10 Initial Duties of Representative/§10.13 6. Checklist: Real Property

§10.13 6. Checklist: Real Property

1. California real property
    - Get deed or order accurate legal description from title company of each parcel in county (or counties) standing in decedent's name ("property search guaranty").
    - Consider whether to obtain appraisal.
2. Out-of-state real property
    - For information, see ancillary proceeding (chap 21).
    - Obtain independent appraisals?
3. Maintenance (Prob C §9650(b))
    - Charge costs as proper administration expenses.
    - Obtain court instructions before beginning, *e.g.,* costly repairs.
4. Rentals
    - Notify decedent's tenants about where to send payment.
    - If run by manager, may need to obtain court instructions to hire him or her as agent.
    - Due dates.
5. Joint tenancy (see chap 4)
    - See record of estate in §1.6.
    - On joint tenancy transfer, termination, and procedural guide, see §§4.4-4.11.
    - On safe-deposit boxes, see §10.7.
6. Separate files
    - Open separate files for each parcel or group of parcels.
7. Obtain
    - a. Deeds.
    - b. Title insurance policies.
    - c. Fire insurance policies.
    - d. Current title reports.
    - e. Leases.
    - f. Notes and deeds of trust.
    - g. Tax bills.
    - h. Contracts to sell or options.
    - i. Agency agreements.
8. Review general insurance policies
    - a. For adequacy of coverage.
    - b. Ownership endorsements.
    - c. Name(s) of broker(s).
    - d. Expiration of period for vandalism coverage if property is vacant: _ _ _ _ _ _

9. Leases

- Review leases in detail.
- Calendar dates of lease expiration, renewal, rent increases.
- See Decedent Estate Prac, chap 22.

10. Calendar

- a. Rental due dates, and relevant dates of lease: _ _ _ _ _ _
- b. Insurance premium payment dates: _ _ _ _ _ _
- c. Property tax payment dates: _ _ _ _ _ _
- d. Mortgage payment dates: _ _ _ _ _ _
- e. Notices to tenants about increased rents: _ _ _ _ _ _
- f. Lease termination or election dates: _ _ _ _ _ _

11. Rent collection

- a. Name of agent: _ _ _ _ _ _
- b. Other place of payment: _ _ _ _ _ _

12. Property loans

- a. Outstanding balance of secured loans: $_ _ _ _ _ _
- b. Insurance proceeds available to liquidate loan: $_ _ _ _ _ _
- c. See Decedent Estate Prac §§10.19, 10.46.

13. Tax exemption

- Check availability of homeowners' property tax exemptions. See Decedent Estate Prac §10.43.

14. Toxic Waste

- Ascertain whether any real property owned by decedent has potential toxic waste problem (see Decedent Estate Prac §10.23).

Comment: See California Decedent Estate Practice §§10.19-10.24 (2d ed Cal CEB 2009). This checklist should be discussed with the representative because many of the deadlines will be his or hers to meet or enforce (*e.g.,* rent collection or mortgage payments).

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Source: Estate Planning/California Probate Workflow Manual Revised/10 Initial Duties of Representative/§10.14 7. Checklist: Personal Property

§10.14 7. Checklist: Personal Property

1. Personal property (valuables) (Prob C §§9650-9651)

- See §3.6.
- Verify whether record of estate has reported clothing (*e.g.,* furs), expensive hobby tools and materials, books, motor vehicles, boats, art objects, household effects, and other valuables. (Underline here each item reported.)
- Verify whether record is complete on who has possession of valuables; if not, obtain information from representative.
- Arrange private appraisal of items and request written report.
- Send copy of appraisal to probate referee, requesting either inspection or written waiver of right to inspect.
- Send same request to probate referee before inventory submitted to referee.
- Check will for specific gifts.
- Remind attorney to consider continuing rental on decedent's rented property, safeguarding furniture by temporary storage at estate's expense, or permitting beneficiaries to take possession.

2. Automobile (see §4.9; Decedent Estate Prac §10.29)

- Joint tenancy property not subject to administration; see §§4.9-4.12.
- Transfer ownership under Prob C §§13100-13116 if estate's gross value is $100,000 or less.
- On sale as depreciating asset, see Prob C §§10252, 10259.

3. Perishable or depreciating property (Prob C §10252)

- See §3.6.
- Include in inventory.
- On ex parte sale, see §13.25.
- On IAEA, see chap 9.

4. Recovery of valuables from heir or devisee

- See record of estate, §3.6.
- Assist representative to recover before time to file creditors' claims expires. Prob C §§9650-9651.

Comment: See California Decedent Estate Practice §§10.25-10.30, 10.48 (2d ed Cal CEB 2009).

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Source: Estate Planning/California Probate Workflow Manual Revised/10 Initial Duties of Representative/§10.15 8. Form: Disposition; Receipt for Anticipatory Distribution

§10.15 8. Form: Disposition; Receipt for Anticipatory Distribution

[*Title of court*]

[*Title of case*]

No. _ _ _ _ _ _
RECEIPT FOR ANTICIPATORY DISTRIBUTION AND INDEMNITY AGREEMENT

The undersigned hereby acknowledges receipt from _ _[*name of representative*]_ _, the _ _[*executor/administrator/(etc.)*]_ _ of the _ _[*will/estate*]_ _ of the above-named decedent, of the following property: _ _[*Describe*]_ _. In consideration of the anticipatory distribution and delivery of the above-described property to the undersigned before the entry of an order for distribution by the court, the undersigned hereby indemnifies and agrees to save and hold _ _[*name of representative*]_ _, both individually and in _ _[*his/her*]_ _ fiduciary capacity, free and harmless from any and all losses, costs, and expenses (including reasonable attorneys' fees), damages, liabilities, and claims, whether well founded or baseless, arising from or in any way related to the delivery of this property to the undersigned.

The undersigned further agrees to return on demand the above-described property or any part of it, or its equivalent cash value (which shall be that value assigned to the property in the inventory and appraisal filed with the court), at any time during the administration of the estate should _ _[*name of representative*]_ _ in _ _[*his/her*]_ _ discretion decide that the return of this property or any part of it is in the best interests of the above-named estate.

The undersigned further agrees that, as soon as the property has been delivered to the undersigned, _ _[*name of representative*]_ _, as fiduciary, shall have no further duties with respect to maintaining insurance on the property or in connection with its use, and shall not be liable for any insurance coverage, or to take any further action in connection with the property.

Dated: _ _ _ _ _ _ __[*Signature*]__
_ _[*Typed name*]_ _

Copies: Original for filing; copies for client and for recipient; office copies.

Comment: If the attorney determines that it is in the estate's best interest to give personal property to the one who will probably receive it in distribution (see California Decedent Estate Practice §10.28 (2d ed Cal CEB 2009)), the recipient should be given the property after signing the receipt below.

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Source: Estate Planning/California Probate Workflow Manual Revised/10 Initial Duties of Representative/§10.16 B. Checklist: Property, Liability, and Medical Insurance

§10.16 B. Checklist: Property, Liability, and Medical Insurance

- Obtain riders on decedent's property for fire and extended coverage, and liability policies adding representative's name as insured.
- Include automobile liability when justified.
- Review adequacy of insurance coverage.
- Review medical insurance policies, especially for multiple coverages. Note claims periods. Have representative obtain claim forms and process them.

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Source: Estate Planning/California Probate Workflow Manual Revised/10 Initial Duties of Representative/§10.17 C. Checklist: Debts Owed Decedent or Due Estate

§10.17 C. Checklist: Debts Owed Decedent or Due Estate

1. Business debts

- Total estimated outstanding debts: $_ _ _ _ _ _
- Confer with attorney about applicable statutes of limitation. Calendar dates.
- Confer with attorney about bringing suit. Prob C §9820.
- If representative does not have authority under IAEA, petition court for instruction about whether to compromise debt (Prob C §9830). See §12.26.

2. Family transactions

- See California Decedent Estate Practice §10.34 (2d ed Cal CEB 2009).
- Amounts owed by beneficiaries:
  $ _ _ _ _ owed by _ _ _ _ _ _ _
  $ _ _ _ _ owed by _ _ _ _ _ _ _
  $ _ _ _ _ owed by _ _ _ _ _ _ _
- Collect as directed by attorney (usually only if solvency of estate is in question or if amount of debt exceeds beneficial interest of obligor; see Decedent Estate Prac §10.37).

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Source: Estate Planning/California Probate Workflow Manual Revised/10 Initial Duties of Representative/§10.18 D. Checklist: Business Interests

§10.18 D. Checklist: Business Interests

- Check appraised value of decedent's business interests as stated in the Financial Schedule in §3.6. If none, consult with attorney about getting appraisal.
- Representative must decide whether to sell or continue business based on considerations discussed with attorney; see California Decedent Estate Practice §10.31 and chap 23 (2d ed Cal CEB 2009) for full discussion.
- If decedent was an attorney, consider whether representative should petition for appointment of practice administrator to wind up law practice under Prob C §9764. See Decedent Estate Prac §§23.77-23.83.

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Source: Estate Planning/California Probate Workflow Manual Revised/10 Initial Duties of Representative/ E. Interests in Estates and Inter Vivos Gifts/§10.19 1. Checklist

E. Interests in Estates and Inter Vivos Gifts

§10.19 1. Checklist

- Attorney must determine when the interest of decedent in another estate or a trust came into existence and whether it should be disclaimed. If disclaimer, obtain needed court approval.
- If beneficiaries of decedent's will wish to disclaim, they should seek counsel regarding effects either from their own lawyers or, if no conflict exists, from attorney.
- If attorney determines disclaimer is appropriate, legal assistant should prepare disclaimer in §10.20.

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Source: Estate Planning/California Probate Workflow Manual Revised/10 Initial Duties of Representative/§10.20 2. Form: Disclaimer

§10.20 2. Form: Disclaimer

[*Title of court*]

[*Title of case*] **No. _ _ _ _ _ _**
DISCLAIMER

I, _ _[*name*]_ _, hereby irrevocably disclaim _ _[*all/part, as described below,*]_ _ of my interest in the following described property, which I am entitled to take _ _[*(state nature of right, e.g., by intestate succession)/as the donee of a power of appointment*]_ _ from the above-named decedent:

_ _[*Describe property and interest disclaimed*]_ _.

Date: _ _ _ _ _ _ __[*Signature*]__
_ _[*Typed name*]_ _

Copies: Original for filing; copy for disclaimant; office copies.

Comment: This form must be prepared promptly because a disclaimer must generally be made within 9 months after the decedent's death if the property interest passes to the recipient because of that death. IRC §2518; Prob C §295. It is important that the disclaimant not have received the property before making the disclaimer, because such receipt would render the disclaimer ineffective. If the property to be disclaimed is personal property, it should not be given to the anticipated beneficiary. See California Estate Planning, chap 27 (Cal CEB 2002).

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Source: Estate Planning/California Probate Workflow Manual Revised/10 Initial Duties of Representative/§10.21 F. Decedent's Mail

§10.21 F. Decedent's Mail

Arrangements should be made for forwarding the decedent's mail to the representative. Assets or important information occasionally come to light from this source. The postmaster will honor forwarding instructions if the representative provides the post office with a certified copy of the representative's letters. Because several weeks will elapse before letters are issued, the Postal Service will usually accept a notarized statement from the individual to be appointed as the personal representative that he or she is nominated as the executor under the decedent's will or has the highest priority for appointment as administrator, and that the mail should be forwarded, pending the appointment. The statement can then be supplemented in the future with a certified copy of the court order.

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Source: Estate Planning/California Probate Workflow Manual Revised/10 Initial Duties of Representative/§10.22 G. Checklist: Taxes

§10.22 G. Checklist: Taxes

- Notify IRS and California Franchise Tax Board of fiduciary relationship. See §14.3.
- Obtain taxpayer identification number (TIN) for estate from IRS. See §§14.2-14.2A.
- Locate most recent state and federal income tax returns.
- Include any income tax refund due in inventory.
- Determine amount and payment status of property taxes (both real and personal), if any. Submit notice of change of ownership to county assessor.

NOTE: The attorney should confirm that all escaped and/or supplemental property taxes have been paid, and should not assume that there will be little or no escaped or supplemental taxes because property was purchased shortly before death. Reassessment as of the date of death may trigger a large tax bill for the period following death if, for example, the decedent had used the over-55 transfer rule to carry over a very low property assessment from a prior residence.

- Ascertain whether homeowner's exemption was claimed before decedent died.
- Ascertain whether decedent had any employees, including live-in help. Attorney should ascertain whether they were subject to withholding tax or Social Security contributions. See California Decedent Estate Practice §10.47 (2d ed Cal CEB 2009).
- Ascertain whether any federal or California income tax installments are due.

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Source: Estate Planning/California Probate Workflow Manual Revised/10 Initial Duties of Representative/§10.23 H. Estate Financial Schedule

§10.23 H. Estate Financial Schedule

As a result of performing the various steps described in this and earlier chapters, the legal assistant will gradually develop a fairly complete set of financial information. The form in §3.6 should now be almost complete with information about the assets and financial condition of the estate. The compiling of the information is a continuous operation from the opening of the file to the close of the estate, but eventually the asset information is sufficiently complete to be cross-checked to determine its adequacy for the preparation of the inventory (see chap 11).

Typically, information comes to the attorney's office from several sources, which can include the following:

(1) The attorney's estate planning file.

(2) The probate estate record (see form in §1.6) prepared by the personal representative.

(3) The decedent's papers now in the possession of the personal representative or the attorney's office, including homeowners or any special personal property insurance policy.

(4) The decedent's personal income tax returns.

(5) The decedent's bank records.

(6) Responses to inquiries made by the attorney's office.

Just as typically, not all of the information will collate exactly. The legal assistant will find discrepancies that may or may not be serious. A common discrepancy that is not serious is a minor deviation in the computation of accrued interest on the bank accounts. A more serious discrepancy is when the decedent's jewelry or valuable stamp collection is missing. The legal assistant should assemble the information in an organized fashion and report any discrepancies to the attorney, who will decide how to deal with them.

The legal assistant should also periodically calculate the estimated value of the estate. This figure is important to determine whether a federal estate tax return will be required, the probable amount of compensation to the representative and the attorney, and the estimate of the cash needs of the estate. If the cash needs may exceed the available cash, the attorney and representative should consider whether borrowing is appropriate. See §§16.1-16.3.

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Source: Estate Planning/California Probate Workflow Manual Revised/10 Initial Duties of Representative/§10.23A I. Notice to State Agencies

§10.23A I. Notice to State Agencies

Probate Code §9202 requires the personal representative or estate attorney to give notice of administration of the estate to certain state agencies within 90 days after letters are first issued. In all cases, notice must be given to the Franchise Tax Board. Prob C §9202(c). Under certain circumstances, notice of death must be given to the Director of Health Care Services and/or the Director of the California Victim Compensation and Government Claims Board. Prob C §9202(a)-(b). See §§12.11A-12.12.

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Source: Estate Planning/California Probate Workflow Manual Revised/10 Initial Duties of Representative/§10.24 J. Miscellaneous

§10.24 J. Miscellaneous

For discussion of appraisals, and collection of debts, see California Decedent Estate Practice §10.34 and chap 13 (2d ed Cal CEB 2009).

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IV. CASH NEEDS

§10.25 A. Estimate of Cash Needs

The attorney should determine as soon as possible the estate's estimated cash needs. See California Decedent Estate Practice §10.9 (2d ed Cal CEB 2009). The list in §10.26 can help in making that estimate. The personal representative should then be informed of the estimate. Relying on the information in the file, including information gathered in the form provided in §3.6, the attorney or assistant should prepare an estimate of the estate's projected cash needs for the file. This estimate may also be used in planning and in discussions with the personal representative of the estate.

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Source: Estate Planning/California Probate Workflow Manual Revised/10 Initial Duties of Representative/§10.25A B. Form: Estimate of Cash Needs

§10.25A B. Form: Estimate of Cash Needs

ESTIMATE OF CASH NEEDS

Estate of _ _ _ _ _ _ _ _ _ _,
Deceased

Receipts

Item		Estimate
Bank accounts and cash		$_____
Interest		_____
Stock dividends		_____
Principal and interest on notes and deeds of trust		_____
Net rent from real property		_____
Accounts receivable		_____
Life insurance payable to the estate		_____
Miscellaneous items		_____
	Total	$_____

Expenses

Funeral and last-illness expenses		$_____
Claims against the estate		_____
Income tax, federal and state		_____
Gift tax		_____
Estate tax, federal		_____
Estate tax, state		_____
Family allowance, $_____ per month for ___ months		_____
Cash gifts to _____		_____
Executor's commissions		_____
Attorneys' fees		_____
Filing fees		_____
Miscellaneous administration expenses		_____
	Total	$_____
Estimated cash needs (receipts minus expenses)	Total	$_____

Copies: Original for filing; copy for personal representative.

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Source: Estate Planning/California Probate Workflow Manual Revised/10 Initial Duties of Representative/§10.26 C. List of Typical Cash Requirements

§10.26 C. List of Typical Cash Requirements

The following list is not a sample record of cash receipts and disbursements, but a comprehensive listing of estate administration cash requirements. Therefore, it should not be used for probate bookkeeping.

LIST OF POSSIBLE CASH REQUIREMENTS

Estate of _ _ _ _ _ _ _ _ _,
Deceased
Office file no. _ _ _ _ _

EXPENSES	Estimate	Revised estimate of __*date*__	Final and/or Court approved
SUMMARY			
I. IMMEDIATE ARRANGEMENTS	$_____	$_____	$_____
II. SPECIAL PROBLEMS	_____	_____	_____
III. QUALIFICATION OF REPRESENTATIVE	_____	_____	_____
IV. ASSEMBLING AND MANAGING ESTATE ASSETS	_____	_____	_____
V. INVENTORY AND APPRAISAL	_____	_____	_____
VI. CREDITORS' CLAIMS	_____	_____	_____
VII. FAMILY ALLOWANCE	_____	_____	_____
VIII. EXEMPTIONS	_____	_____	_____
IX. TAXES	_____	_____	_____
X. DISTRIBUTION	_____	_____	_____
XI. COMPENSATION	_____	_____	_____
XII. ANCILLARY ADMINISTRATION	_____	_____	_____
TOTAL	$_____	$_____	$_____

I. IMMEDIATE ARRANGEMENTS (chap 2)		Estimate	Revised estimate of _ _[*date*]_ _	Final and/or Court approved
A.	Locating will, codicils, or later will	$_____	$_____	$_____
	Compelling production	_____	_____	_____
	Translation	_____	_____	_____
	Witnesses	_____	_____	_____
	Filing revoked will	_____	_____	_____
	Impeached wills	_____	_____	_____
	Photographic copies	_____	_____	_____

Other	_____	_____	_____
B. Locating and notifying members of family and beneficiaries	_____	_____	_____
C. Autopsy	_____	_____	_____
D. Coroner's inquest	_____	_____	_____
E. Anatomical gifts	_____	_____	_____
Limousine service for transportation of remains to medical center	_____	_____	_____
Other	_____	_____	_____
F. Funeral expenses	_____	_____	_____
Funeral announcements	_____	_____	_____
Mortuary	_____	_____	_____
Cemetery	_____	_____	_____
Flowers	_____	_____	_____
Memorial service	_____	_____	_____
Funeral reception	_____	_____	_____
Other	_____	_____	_____
G. Birth, death, and marriage certificates	_____	_____	_____
H. Medical expenses			
Hospitalization	_____	_____	_____
Physicians	_____	_____	_____
Nurses	_____	_____	_____
Clinical laboratories	_____	_____	_____
Rental of hospital equipment	_____	_____	_____
Pharmaceuticals	_____	_____	_____
I. Other	_____	_____	_____
Closing bills (utilities, newspaper, etc.)	_____	_____	_____
Severance pay and FICA taxes for household employees	_____	_____	_____
TOTAL	$_____	$_____	$_____

II. SPECIAL PROBLEMS	Estimate	Revised estimate of __*date*__	Final and/or Court approved
A. Guardian arrangements for surviving minors	$_____	$_____	$_____
B. Continuing business			
Operating expenses	_____	_____	_____
Outstanding business obligations	_____	_____	_____
C. Appointing special administrator	_____	_____	_____

D. Will contest and heirship proceedings	_____	_____	_____
E. Missing person's estate	_____	_____	_____
F. Other	_____	_____	_____
TOTAL	$_____	$_____	$_____

III. QUALIFICATION OF REPRESENTATIVE (testate or intestate; chap 7)	Estimate	Revised estimate of __*date*__	Final and/or Court approved
A. Petition, notice, and hearings (filing and posting fees)	$_____	$_____	$_____
B. Probate bonds, premiums, and deposits	_____	_____	_____
C. Letters, certified copies	_____	_____	_____
D. Multiple representatives	_____	_____	_____
E. Successor representative proceedings	_____	_____	_____
F. Nonresident representative	_____	_____	_____
G. Other	_____	_____	_____
TOTAL	$_____	$_____	$_____

IV. ASSEMBLING AND MANAGING ESTATE ASSETS (chap 10)	Estimate	Revised estimate of __*date*__	Final and/or Court approved
A. Assembling record of estate assets	$_____	$_____	$_____
Stamps and stationery	_____	_____	_____
Secretarial and research service	_____	_____	_____
Accounting service	_____	_____	_____
B. Ascertaining and contacting persons familiar with decedent's business	_____	_____	_____
C. Real estate	_____	_____	_____
Insurance	_____	_____	_____
Mortgages and encumbrances	_____	_____	_____
Unrecorded contract for purchase	_____	_____	_____
Joint tenancy termination	_____	_____	_____
Leases and rentals	_____	_____	_____
Appraisal	_____	_____	_____
Property taxes owed by decedent	_____	_____	_____
Maintenance	_____	_____	_____
Utilities	_____	_____	_____
Custodian	_____	_____	_____
Necessary repairs	_____	_____	_____
Gardener	_____	_____	_____

Rubbish disposal	_____	_____	_____
Sale	_____	_____	_____
Notice publication	_____	_____	_____
Broker's commission	_____	_____	_____
Title insurance	_____	_____	_____
Recording	_____	_____	_____
Escrow fee	_____	_____	_____
Drawing deed	_____	_____	_____
Tax proration	_____	_____	_____
Other	_____	_____	_____
D. Personal property	_____	_____	_____
Valuables (jewelry, art objects, hobby collections, antiques)	_____	_____	_____
Insurance	_____	_____	_____
Inventory and appraisal (expert appraisal)	_____	_____	_____
Safekeeping: safe-deposit box rental	_____	_____	_____
Recovery	_____	_____	_____
Transfer, packing, moving, and storage	_____	_____	_____
Perishables, disposition	_____	_____	_____

IV. ASSEMBLING AND MANAGING ESTATE ASSETS (chap 10)	Estimate	Revised estimate of _ _*date*_ _	Final and/or Court approved
D. Personal property (cont.)			
Automobiles	$_____	$_____	$_____
Expenses of maintenance	_____	_____	_____
Registration	_____	_____	_____
Necessary repairs	_____	_____	_____
Insurance premiums	_____	_____	_____
Expense of transfer	_____	_____	_____
Smog control check	_____	_____	_____
Balance of conditional sales contract	_____	_____	_____
E. Stocks, bonds, and treasury notes	_____	_____	_____
Transfer			
New York Transfer Stamps	_____	_____	_____
Replacing lost certificates	_____	_____	_____

Sale, fees, and commissions	_____	_____	_____
F. Cash, bank accounts, and receivables			
Collection	_____	_____	_____
Opening estate account and printing checks	_____	_____	_____
Other	_____	_____	_____
G. Claiming insurance and death benefits	_____	_____	_____
H. Business interests (see II.B. above)	_____	_____	_____
I. Miscellaneous assets			
Club membership: monthly dues and improvement levy	_____	_____	_____
Jointly held assets (termination, transfer, etc.)	_____	_____	_____
Decedent's interest in other estates	_____	_____	_____
Decedent's interest in cooperatives, condominiums	_____	_____	_____
Monthly carrying charge, assessments	_____	_____	_____
Other	_____	_____	_____
J. Sale of personal property: fees and commissions	_____	_____	_____
K. Other	_____	_____	_____
TOTAL	$_____	$_____	$_____

V. INVENTORY AND APPRAISAL (chap 11)	Estimate	Revised estimate of _ _*date*_ _	Final and/or Court approved
Inventory and appraisal: preparation and filing	$_____	$_____	$_____
(Partial inventory)	_____	_____	_____
(Supplementary inventory)	_____	_____	_____
Probate referee's statutory commission	_____	_____	_____
Other	_____	_____	_____
TOTAL	$_____	$_____	$_____

VI. CREDITORS' CLAIMS (chap 12) (see also I. Immediate Arrangements)	Estimate	Revised estimate of _ _*date*_ _	Final and/or Court approved
A. Claims for goods sold and	$_____	$_____	$_____

services rendered			
B. Claims of representative; Prob C §9252	_____	_____	_____
C. Premature or contingent claims	_____	_____	_____
D. Accrued spousal support	_____	_____	_____
E. Rents and interests (see IV. C. above)	_____	_____	_____
F. Legal fees and expenses incurred by decedent	_____	_____	_____
G. Accounting services rendered to decedent	_____	_____	_____
H. Insurance premiums (see testamentary instructions)			
Health	_____	_____	_____
Life	_____	_____	_____
All-risk	_____	_____	_____
Personal property	_____	_____	_____
I. Claims of United States (see also IX.)	_____	_____	_____
J. Claims of California (see also IX.)	_____	_____	_____
K. Suit on claims	_____	_____	_____
L. Miscellaneous debts of decedent	_____	_____	_____
M. Claims of surviving spouse or registered domestic partner against the estate (Fam C §297.5) (see §§12.31-12.32)	_____	_____	_____
TOTAL	$_____	$_____	$_____

VII. FAMILY ALLOWANCE (chap 15)	Estimate/ approved amount	Modification
Family allowance	$_____	$_____
TOTAL	$_____	$_____

VIII. EXEMPTIONS (chap 15)	Estimate	Revised estimate of _ _*date*_ _	Final and/or Court approved
Exemption and homestead proceedings	$_____	$_____	$_____
TOTAL	$_____	$_____	$_____

IX. TAXES (chap 14)	Estimate	Revised estimate of _ _*date*_ _	Final and/or Court approved
A. Internal Revenue Service			

Decedent's income tax	$_____	$_____	$_____
Federal estate tax	_____	_____	_____
Federal gift tax	_____	_____	_____
Fiduciary income tax	_____	_____	_____
B. California Franchise Tax Board			
Decedent's income tax	_____	_____	_____
Fiduciary income tax	_____	_____	_____
C. State Controller			
*State inheritance tax	_____	_____	_____
*State gift tax	_____	_____	_____
State estate tax	_____	_____	_____
D. County property taxes	_____	_____	_____
E. Preparation of tax returns by CPA	_____	_____	_____
F. Other	_____	_____	_____
	_____	_____	_____
TOTAL	$_____	$_____	$_____

X. DISTRIBUTION (chaps 17, 18)	Estimate	Revised estimate of _ _*date*_ _	Final and/or Court approved
A. Community property distributed to surviving spouse or registered domestic partner (Fam C §297.5) without administration	$_____	$_____	$_____
B. Cash gifts			
Preliminary distribution	_____	_____	_____
Final distribution	_____	_____	_____
C. Recording fees	_____	_____	_____
D. Certified copies of judgment of distribution	_____	_____	_____
E. Shipping of specific gifts	_____	_____	_____
F. Other	_____	_____	_____
TOTAL	$_____	$_____	$_____

XI. COMPENSATION (chap 19)	Estimate	Revised estimate of _ _*date*_ _	Final and/or Court approved
A. Attorney's compensation			
Statutory compensation	$_____	$_____	$_____
Extraordinary compensation	_____	_____	_____
B. Representative's compensation			

Statutory compensation	_____	_____	_____
Extraordinary compensation	_____	_____	_____
TOTAL	$_____	$_____	$_____

XII. ANCILLARY ADMINISTRATION (chap 21)	Estimate	Revised estimate of __*date*_ _	Final and/or Court approved
Out-of-state administration expenses	_____	_____	_____
TOTAL	$_____	$_____	$_____

---

* Applies only if decedent died or made gifts before California inheritance and gift tax laws were repealed by initiative passed June 8, 1982.

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Source: Estate Planning/California Probate Workflow Manual Revised/10 Initial Duties of Representative/§10.27 D. Sample Form: Letter to Representative on Estimate of Cash Needs

§10.27 D. Sample Form: Letter to Representative on Estimate of Cash Needs

INSTRUCTIONS: Once the cash needs have been determined, the following sample letter is one means of informing the representative. Alternatively, the letter could be shortened and the previous form provided as an enclosure.

Re: Estate of _ _ _ _ _ _

Dear _ _ _ _ _ _:

Preliminary consideration should now be given to the estate's cash requirements. Funds will be needed for _ _[*e.g., creditors' claims/the family allowance/costs of administration/cash bequests/taxes*]**_ _.**

The federal estate tax is imposed on the transfer of the entire taxable estate. The taxable estate is determined by taking the value of the gross estate (all the assets) and deducting from it the total amount of deductions authorized by law. The tax is due nine months after the date of the decedent's death, and a return must be filed for the estate by the representative if the gross estate exceeds the exemption available at the time of death. The exemption is $_ _ _ _ _ _.

We _ _[*will assist you in preparing the federal estate tax return/understand that your accountant, _ _ _ _ _ _, will prepare the federal estate tax return*]**_ _, IRS Form 706, because its preparation is rather difficult and time consuming. At present, we estimate that the estate will owe $_ _ _ _ _ _. Of course, this estimate may change as we receive additional information.**

The California estate "pick-up" tax, if any, will be due and payable at the same time as the federal estate tax. This tax is equal to the amount allowable as a credit against the federal estate tax, and it will not cost the estate extra tax dollars.

As executor of the estate, you are liable for payment of the taxes. The proper procedure is to use estate funds for the payment of those taxes, which will reduce the amounts due to the beneficiaries on distribution of the estate. If this is not possible, you must collect from each beneficiary his or her share of the taxes before delivering any devise.

The amount to be expended during administration of the estate and the sources from which funds may be anticipated during the next nine months are estimated below. Please bear in mind that these figures are estimates only and are subject to revision from time to time.

[*Insert form for estimating cash needs from §10.25*]

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11

Inventory and Appraisal

I. [§11.1] GENERAL INSTRUCTIONS

II. [§11.2] PROCEDURAL GUIDE: OBTAINING APPRAISAL

III. [§11.3] USING INVENTORY DURING ADMINISTRATION

IV. [§11.4] APPOINTMENT OF PROBATE REFEREE

V. [§11.5] DECEDENT'S ASSETS

VI. [§11.6] APPRAISAL RESPONSIBILITIES

VII. [§11.7] CHECKLIST: COMMON ERRORS IN PREPARATION OF INVENTORY

VIII. PREPARATION OF INVENTORY
- A. [§11.8] How to Report Assets; Checklist
- B. [§11.9] Form: Inventory and Appraisal (Judicial Council Form DE-160) and Attachment (DE-161)
  - 1. [§11.10] Sample Completed Inventory—Attachment 1
  - 2. [§11.11] Sample Completed Inventory—Attachment 2
  - 3. [§11.12] Attachment 3 of Inventory
- C. [§11.13] Separate Letter to Assist Referee
- D. [§11.14] Partial and Supplementary Inventory
- E. [§11.15] Form: Appraisal Report of California Probate Referee

IX. FILING INVENTORY AND APPRAISAL
- A. [§11.16] Procedure
- B. [§11.17] Objection to Referee's Appraisal
- C. [§11.18] Special Notice Under Probate Code §§1250, 1252
- D. [§11.19] Form: Notice of Filing of Inventory and Appraisal

X. NOTICE OF CHANGE OF OWNERSHIP
- A. [§11.19A] Change in Ownership
- B. [§11.20] When Required
- C. [§11.20A] Parent-Child and Grandparent-Grandchild Transfer Exclusions
- D. [§11.21] Form: Preliminary Change of Ownership Report (BOE-502-A)
- E. [§11.22] Form: Statement of Death of Real Property Owner
- F. [§11.23] Form: Claim for Reassessment Exclusion for Transfer Between Parent and Child (BOE-58-AH)
- G. [§11.24] Form: Claim for Reassessment Exclusion for Transfer From Grandparent to Grandchild (BOE-58-G)

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§11.1 I. GENERAL INSTRUCTIONS

The personal representative must file an inventory and appraisal (hereafter "inventory") within 4 months after letters are first issued unless the court grants further time. Prob C §8800. Although unusual, penalties may be levied if the inventory is not filed on time. See California Decedent Estate Practice §§13.71-13.74 (2d ed Cal CEB 2009). The inventory is a public record of all property that the decedent owned or in which the decedent had an interest at the time of death that is subject to probate. It provides the probate referee (see §11.13) with the basic facts so that he or she can determine and report to the court the value of the individual assets and the total estate at the date of death. See §11.15.

NOTE: The inventory lists *only* assets subject to probate. There may be nonprobate assets that the attorney will need to deal with that will not be listed on the inventory.

Unless there is a corporate representative, the inventory is usually prepared by the attorney and legal assistant. See §§11.8-11.14.

The inventory enables the court to determine attorney fees and otherwise assists the court in assuring proper administration. It may assist the federal and state taxing authorities, both in determining estate taxes and eventually capital gains taxes when assets are sold by the beneficiaries, although its values are not binding on the tax authorities. The inventory is also a valuable source of information to the beneficiaries and creditors.

When the inventory and appraisal is filed with the county clerk, the personal representative is also required to file a certification that a change in ownership statement (Rev & T C §480) has been filed with the county recorder or assessor in each county in which the decedent owned real property or that no filing is required because the decedent owned no California real property. Prob C §8800. The property tax certification required by Prob C §8800(d) is included on the inventory and appraisal. See §11.20.

If the will refers to a writing that directs disposition of a testator's tangible personal property, the personal representative also must file that writing concurrent with the filing of the inventory and appraisal. Prob C §6132(f)(1). If the writing has not been found when the inventory and appraisal is filed, the personal representative must file the writing at least 60 days before filing the petition for final distribution. Prob C §6132(f)(2). For discussion of writings directing disposition of tangible property, see Decedent Estate Prac chap 28.

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Source: Estate Planning/California Probate Workflow Manual Revised/11 Inventory and Appraisal/§11.2 II. PROCEDURAL GUIDE: OBTAINING APPRAISAL

§11.2 II. PROCEDURAL GUIDE: OBTAINING APPRAISAL

INSTRUCTIONS: The legal assistant should enter deadlines and extensions, if any, on the probate estate record (see §1.6) and on the master checklist (see §1.13).

PROCEDURAL GUIDE

Estate of _ _ _ _ _ _ _ _ _ _
Office file no. _ _ _ _ _ _
Appointment date
_ _ _ _ _ _ _

1. Request appointment of probate referee, if one not already appointed. Request for designation of a particular referee (Prob C §8921), or filing peremptory challenge (Prob C §§8903, 8924(a)(2)). Consider petition to waive appointment of referee, Prob C §§8900-8903; see §11.4.

2. Referee's name, address, telephone no.:_____
_____

3. See Judicial Council form in §11.9.

4. Prepare appraisal by representative (see §11.6).

5. Obtain independent appraisals when appropriate. See Prob C §8904.

___ Jewelry

___ Household furniture

___ Art objects and antiques

___ Stamp, coin, and other collections

___ Real property

___ Business assets

___ Other:

6. Prepare Inventory and Appraisal and attachments 1 and 2 (see §§11.9-11.11) or partial inventory (see §11.14) within four months after appointment of personal representative.

___ Enter deadline date.

___ If partial inventory, prepare and obtain order extending time for filing supplemental inventories.

___ Prepare request for extension of time to file if inventory and appraisal cannot be filed within four months after appointment date. Calendar extended deadline.

7. Submit original and one copy of inventory and appraisal to probate referee in time to be filed within four months after appointment date. Prob C §8800; see §11.16.

8. Send copy to personal representative before filing to allow representative early opportunity to discover valuation problems.

9. File original inventory and appraisal within four months after appointment date.

10. Prepare additional partial or supplemental inventories and appraisals as required.

___ Additional partial inventories (see §11.14)

___ Supplemental inventory to report (see §11.16)

___ Sale of real property (see §11.14)

___ Newly discovered property (see §11.14)

___ Mistake (see §11.14)

11. Enter appraised values in "Estate Financial Schedule" (see §3.6).

12. Mail copies to and file proof of service for each person who requested special notice (see Prob C §8803).

13. Make additional copies for general use as needed (see §11.16).

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Source: Estate Planning/California Probate Workflow Manual Revised/11 Inventory and Appraisal/§11.3 III. USING INVENTORY DURING ADMINISTRATION

§11.3 III. USING INVENTORY DURING ADMINISTRATION

Even in estates in which a federal estate tax return will not be filed, categories of assets are usually reported in the inventory in the same order given in the federal estate tax return (IRS Form 706). When an estate tax return will be filed it is even more helpful to prepare the inventory in that manner. Unless otherwise instructed by the attorney, the legal assistant should always prepare the inventory according to the schedules used in Form 706. Because everything in the inventory must also appear in the final accounting, it acts as a checklist for preparing the final accounting. Those schedules are also invaluable for preparing tax returns.

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§11.4 IV. APPOINTMENT OF PROBATE REFEREE

The Judicial Council form, Order for Probate (see §7.41), provides for appointment of the probate referee. Although use of Judicial Council probate forms is mandatory, it is advisable to inquire about local practice to make sure the court does not have other requirements. In counties with more than one probate referee, the appointment is made on a rotating basis—usually when the request for appointment of a referee is filed, when the petition for probate is filed, or at the time the judge signs the Order for Probate.

The personal representative may make a peremptory challenge of the first designated referee by filing an affidavit or declaration under penalty of perjury with the court and mailing a copy to the referee before the inventory is submitted to the referee. Prob C §8924.

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§11.5 V. DECEDENT'S ASSETS

Prior chapters have explained in detail the steps that can be taken to discover the nature and extent of the decedent's assets. See §§3.3-3.6, 10.4-10.18. Once this process is well under way, the attorney and legal assistant will have enough information to prepare the inventory.

Sometimes it is difficult to determine the ownership of assets, or a dispute can arise as to the ownership. Probate Code §§850-859 (former Prob C §9860 petition) provide a procedure for the representative to determine whether property in the possession of the estate belongs to another or to determine whether property in the possession of a third party actually belonged to the estate. This procedure should be used to resolve disputed ownership issues before the affected assets are included on an inventory. See §§16.5-16.9; California Trust and Probate Litigation, chap 19 (Cal CEB 1999); California Decedent Estate Practice, chap 27 (2d ed Cal CEB 2009).

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Source: Estate Planning/California Probate Workflow Manual Revised/11 Inventory and Appraisal/§11.6 VI. APPRAISAL RESPONSIBILITIES

§11.6 VI. APPRAISAL RESPONSIBILITIES

The representative appraises cash and cash equivalents, cash deposits, money market accounts, brokerage cash accounts, certain checks issued after the date of the decedent's death, the proceeds of life and accident insurance policies and retirement plans, and annuities payable on death to the estate in a lump sum (Prob C §8901), and, unless appointment of a referee has been waived under Prob C §8903 or an appraisal by an independent expert has been elected under Prob C §8904, the referee appraises everything else. Prob C §8902.

Using Probate Referees in Trusts, Probate, Conservatorships and Guardianships, Small Estates and Non-Probate Matters (Probate Referees' Guide) (rev ed 2005), published by the California Probate Referees' Association, deals with the problem of identifying precisely which assets are to be appraised by the representative and which by the referee. The Guide can be found online at http://www.probatereferees.org/information/guide.pdf, and is reprinted in California Decedent Estate Practice §13.83 (2d ed Cal CEB 2009). The material from the Guide that follows has been reproduced with permission from the California Probate Referees' Association:

WHAT GOES ON ATTACHMENT 1? Prob C §§8900-8901

Attachment 1 contains the items that can be appraised by the personal representative. These include only the following:

- Money and other cash items. A "cash" item includes checks, drafts, money orders, or similar instruments issued on or before the date of the decedent's death (or date of appointment) that can be immediately converted to cash on a dollar for dollar basis (that is, the value does not fluctuate). Rare coins or currency are not "cash" items.
- The following checks issued after the date of the decedent's death (or date of appointment):
- (1) Checks for wages earned before death.
- (2) Refund checks, including tax and utility refunds, and Medicare, medical insurance, and other health care reimbursements and payments.
- Cash-type accounts in financial institutions, including a checking account, savings account, certificate of deposit, share account, mutual capital certificate, and other like arrangements, provided the value does not fluctuate.
- Cash deposits and money market funds or accounts, whether in a financial institution or otherwise, including a brokerage cash account. Note: A money market fund is an account where the per share value is always $1.00. If the per share value is more or less than $1.00, it is a security and must be listed on Attachment #2.
- Proceeds of life and accident insurance policies and retirement plans and annuities payable on death to the estate in lump sum amounts.

On Attachment 1, the estate representative fills in the value of each such asset. The value is the same as the cash value *as of the date of death* (or date of appointment), including accrued interest.

AUTHOR'S ADVICE: If a money market account, which should be listed on Attachment 1, is held in a brokerage account, be sure to state that it is a money market account so that the probate referee and the court will know it is a cash equivalent that is properly an Attachment 1 asset and not a security to list on Attachment 2.

NOTE: Foreign currency is not cash for inventory and appraisal purposes and is placed on Attachment 2.

The probate referee appraises everything except the items listed above that go on Attachment 1. The referee appraises (a) real property, including life estates and remainder and reversionary interests, (b) business interests, (c) tangible personal property, (d) promissory notes, (e) securities, including common and preferred stocks, bonds, GNMA and FNMA accounts, mutual funds (except money market mutual funds), and U.S. savings bonds, and (f) other interests, including distributions from estates and trusts, annuities/insurance policies and proceeds, patents, trademarks and copyrights, and judgments and ongoing litigation.

The Guide also discusses items that are not probate estate assets and do not belong on the inventory. They include insurance proceeds payable to named beneficiaries or individual retirement accounts payable to named beneficiaries, Totten trust accounts, joint tenancy assets, property held in trust, and out-of-state real property.

Even though the representative will appraise only cash and cash equivalents for inventory filing purposes, it is important that he or she have a good understanding of the value of all other estate assets, with or without expert help. In order to review and, if necessary, object to the referee's appraisal, the representative should have the best possible idea of the value of the assets. The inventory should not be filed until the personal representative has had a chance to

review it. Any questions with the referee should, if possible, be resolved before the inventory and appraisal is filed with the court. Once the inventory is filed with the court, it can only be changed by filing a corrected Inventory and Appraisal (Judicial Council Forms DE-160, DE-161). For form, see §11.9. See California Decedent Estate Practice §13.82 (2d ed Cal CEB 2009). It is particularly important for the representative to review the inventory when there is disagreement on an asset's value. See §11.17 for discussion of objecting to the referee's appraisals.

The attorney for the representative can assist the referee in making an appraisal by sending a detailed letter with the inventory, giving pertinent data on the assets, and by adding any special information that may not be known by or readily available to the referee. The benefit to the estate is that cooperation may facilitate the referee's appraisal, establish a good working relationship for future estates, and perhaps lead to a favorable resolution if a difference of opinion arises on the appraisal. (See §11.13 for discussion of the contents of separate letter.)

For further discussion of valuation of assets for federal estate tax purposes, see App B.

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§11.7 VII. CHECKLIST: COMMON ERRORS IN PREPARATION OF INVENTORY

The checklist that follows identifies errors that are frequently made by the attorney or the representative in preparing the inventory:

(1) Improper classification of property listed on Attachments 1 and 2.

(2) Failure to include interest and dividends accrued but unpaid on bank accounts listed on Attachment 1.

(3) Failure to include interest accrued but unpaid on life insurance benefits.

(4) Failure to include refunds owed to decedent as of date of death.

(5) Failure to include cash held by decedent at time of death.

(6) Failure of representative or probate referee to sign oath on inventory form.

(7) Failure of attorney to complete and sign statement regarding bond.

(8) Failure to timely submit original inventory (or request extension of time to file inventory) to county clerk for filing within 4 months after issuance of letters (see Prob C §8800(b)).

(9) Failure to submit supplemental inventories of later-discovered assets within 4 months after discovery (see Prob C §8801).

(10) If probate referee will not be used, failure to obtain waiver of appraisal by probate referee by noticed hearing before filing of petition for final distribution. For waiver of appraisal and petition, see California Decedent Estate Practice §§13.10-13.12 (2d ed, Cal CEB 2009).

(11) Failure to give notice of filing inventory to persons requesting special notice.

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VIII. PREPARATION OF INVENTORY

§11.8 A. How to Report Assets; Checklist

No rules govern the method of listing categories in the inventory (unless local rules prescribe an order) but several approaches are commonly used. For examples of how different types of property could be described in the inventory, see §§11.10-11.12, and California Decedent Estate Practice §§13.36-13.67 (2d ed Cal CEB 2009). The inventory should be accompanied by a separate letter that includes many of the details noted in the checklist below. Whichever approach is followed, the categories should be numbered and each asset should be described in sufficient detail to make it easily identifiable by the referee. The most commonly used method in a large estate is to list the categories in the order given in the federal estate tax return (IRS Form 706). In smaller estates, other approaches may make more sense, such as first listing all assets subject to specific distribution under the will, or listing the assets in order of liquidity, alphabetically in each category.

The date of death is the date on which the inventory values are set. Note, however, that for federal estate tax purposes the alternate valuation date—six months after the date of death—may be chosen. IRC §2032. See Decedent Estate Prac §34.3. If the alternate valuation date is chosen, then the dollar values listed in the inventory and appraisal cannot be relied on without further examination for purposes of preparing IRS Form 706. This is particularly true of assets that quickly fluctuate in value, such as stocks.

Do not include income received after death unless it was accrued and receivable before death. If assets were converted to a different form during administration, list them in the inventory in their original form.

In Attachment 1 to the Judicial Council form for inventory and appraisal in §11.10, list only those items appraised by the representative. In Attachment 2, list only those items to be appraised by the referee.

Assets That Must Be Included
(see Decedent Estate Prac §§13.36-13.60)

_ _ _ _ _ _ Cash and Bank Accounts (see sample form in §11.10, items 1-7)

1. Enter dollar-and-cents balances of these items as of date of death.

2. List the following items separately: each item of cash (*e.g.,* money carried by decedent at death or found in his or her home) and each account at a bank or savings and loan association. For definition of "cash" items, see §11.6.

3. For bank account entries, indicate name of banking institution, branch, account number, whether account is commercial or savings, and balance on date of death. A separate entry should be made for interest that had accrued but was unpaid at date of death. The balance should be verified by the bank because decedent's records may be affected by unposted interest or outstanding checks. Decedent's records are reconciled with bank's records by deductions listed in tax returns for outstanding checks. Do not report bank accounts in which decedent held an interest as a joint tenant.

4. Uncashed checks (*e.g.,* social security payments, insurance or tax refunds) payable to decedent and dated before date of death should be reported with name of maker, date of check, and face amount. Social security and some pension checks issued for month of death must be returned and should not be included on the inventory.

_ _ _ _ _ _ Real Property in California (see sample form in §11.11, items 1-15)

1. Include on Attachment 2:

(a) common street address (if there is one) or other common description of real property;

(b) complete legal description of land (do not use the abbreviated legal description found on property tax bills);

(c) the assessor's parcel number; and

(d) a description of the property (*i.e.,* single-family residential, condominium, agricultural, groves,

unimproved land, mining, etc.). (Probate Referees' Guide, p 9 (2005))

2. Check last assessor's records in counties where real property is located. Also check grantor and grantee index to date of death. Old deeds should be checked against recent records to ascertain that no conveyances have been executed after the deed. Better yet, get a report from a title insurance company.

3. On reporting property subject to contract or deed of trust, remainder interest subject to life tenancy, and depreciable property, see Decedent Estate Prac §§13.40-13.45.

_ _ _ _ _ _ Stocks, Bonds, and Treasury Notes (see sample form in §11.11, items 36-57). Accurate, complete descriptions are critical for valuation of publicly traded securities. Omission of even a small portion of the name, such as a series number, can prevent exact identification of the asset to be appraised. If securities are held in street name in a brokerage account, each individual security must still be listed separately on the inventory. Group stocks by company and combine all shares in one amount. If stock certificates have different par values due to stock splits, they still should be listed as a single combined total if they have the same CUSIP number.

List dividends declared of record but unpaid before decedent's death by showing amount of dividend per share and record date payable. If a security is believed to be worthless, submit a copy of the certificate, if available.

1. For each common and preferred stock, include on Attachment 2 (Probate Referees' Guide, p 15 (2005)):

(a) number of shares;

(b) CUSIP number;

(c) exact name of issuing corporation;

(d) name of exchange and ticker symbol (if available); and

(e) if the stock is preferred, indicate.

Par value of stock is usually not listed. If a corporation has changed its stock structure, see Decedent Estate Prac §13.47.

2. For each mutual fund include (Probate Referees' Guide, p 15 (2005)):

(a) number of units and complete name, including series; and

(b) CUSIP number.

3. For stock options include (Probate Referees' Guide, p 15 (2005)):

(a) number of shares;

(b) exact name of the issuing corporation;

(c) CUSIP number;

(d) option price, strike price, or exercise price; and

(e) vesting schedule.

4. For corporate, municipal, and state bonds (see Decedent Estate Prac §13.48), include (Probate Referees' Guide, p 16 (2005)):

(a) total face amount or par value (or quantity and denomination);

(b) CUSIP number;

(c) name of obligor;

(d) type of bond;

(e) interest rate;

(f) date of issue;

(g) date of maturity; and

(h) interest due dates.

The face amount may be shown as the gross value (*i.e.,* $30,000) or the number of bonds (*i.e.,* 30 @$1000). The complete name is critical. Municipal bonds are particularly difficult to value. The name of the stock exchange and its ticker symbol are helpful if they are available.

5. For U.S. Treasury Notes and Bonds (T-bonds, T-notes, and T-bills) include (Probate Referees' Guide, p 16 (2005)):

(a) face amount;

(b) exact name of security and series number;

(c) CUSIP number;

(d) coupon rate, also known as interest rate;

(e) issue date;

(f) maturity date; and

(g) if there are coupons attached, date and number.

Like municipal bonds, U.S. Treasury securities are also very difficult to value because of the very large number of different securities issued by these agencies. A small error in description will result in an incorrect valuation. Supplying the correct CUSIP number (which can be obtained from the security dealer) is essential.

6. For U.S. savings bonds, include (Probate Referees' Guide, p 16 (2005)):

(a) face amount;

(b) series; and

(c) date issued.

Bonds should be arranged chronologically based on issue date. Bonds with the same issue date should be presented together, but not added up. For example: 15 $100 series EE bonds issued 1-10-75, *not* $1500 in series EE bonds. It is not necessary to include certificate numbers.

7. For GNMA, FNMA, and FHLMC accounts, include (Probate Referees' Guide, p 17 (2005)):

(a) face amount;

(b) exact security name and pool number;

(c) CUSIP number;

(d) issue date and maturity date; and

(e) unpaid principal balance, if available.

_ _ _ _ _ _ Notes, Loans, and Accounts Receivable (see sample form in §11.11, items 33-35)

1. For promissory notes, include on Attachment 2 (Probate Referees' Guide, p 14 (2005)):

(a) name of each borrower;

(b) date of note;

(c) amount originally borrowed;

(d) payment amount and payment due dates;

(e) interest rate;

(f) due date (if any); and

(g) any security for the note (if the security is real property, the inventory must include a legal description of the real property and its assessor parcel number).

A copy of the note must be given to the referee. If the note is of doubtful collectibility, or payments have been missed, notify the Referee. If the security may be worth less than the note, the Referee will consider the adequacy of the security in the valuation. A payment schedule is also helpful, but at the very least, the referee needs the date of the last payment before the date of valuation and the amount of the unpaid principal balance as of that date.

2. List contracts for sale of real property by decedent with buyer's name, face amount of contract, property description, recording information if contract was recorded, interest rate, principal balance at date of death, date of contract, and amount of accrued interest or date of last interest payment.

3. List each receivable separately.

_ _ _ _ _ _ Insurance (see sample forms in §11.10, item 8, and §11.11, items 62-63)

Insurance on decedent's life payable to his or her estate and policies owned by decedent on the life of another must be reported in inventory by showing name of company, policy number, face amount of policy, amount actually distributed, and name of insured. Do not report insurance on the decedent's life payable to a named beneficiary. Provide the referee with documentation from the insurance company indicating the amount to be received by the estate. A copy of Form 712, if available, completed by the insurance company is also helpful. On community-owned policy, see Decedent Estate Prac §13.39.

_ _ _ _ _ _ Business Interests (see sample form in §11.11, items 21-22, 35-36)

Decedent's interest in a business is treated as a single unit. The total value of the business is the fair market value of the assets (*e.g.,* equipment, bank accounts, real estate, goodwill, receivables, and any life insurance payable to the entity because of an employee's death) less all business liabilities. See Decedent Estate Prac §13.55. For closely held corporations, include the corporate name and number of shares owned (Probate Referees' Guide, p 11 (2005)); for limited partnerships, include the complete name of the partnership (do not abbreviate the name), the number of units or shares owned, and the original investment amount (Probate Referees' Guide, p 12 (2005)); for general partnerships, include the complete name of the partnership and the percentage ownership of the general partner (Probate Referees' Guide, p 12 (2005)). For most businesses, the identification on the inventory should be complete and detailed enough to clearly identify the business to someone not familiar with it. By separate letter, give referee (see §11.13) information on the history and nature of the business and the extent of its assets, the importance of the decedent in the business, and any other factors significantly related to valuing the business; complete financial statements (including balance sheets, income statements, and the accountant's notes to financial statements) and federal income tax returns for at least three years before the date when the asset is to be appraised; a balance sheet prepared at or near the appraisal date; complete descriptions of any underlying assets, such as real property or a partnership interest reported on the balance sheet; and the name, address, and telephone number of any accountant involved (Probate Referees' Guide, p 11 (2005)).

_ _ _ _ _ _ Tangible Personal Property (see sample form in §11.11, items 23-32)

Personal effects of nominal value that have not been individually devised may be grouped under the general heading of "Furniture, Furnishings, and Personal Effects." Valuable jewelry, art pieces, significant hobby collections, and antiques should be described separately in the inventory. For articles that have been professionally appraised, attach a copy of the appraisal. Mobile homes that are registered through the Department of Housing (and certain mobile homes on a leased space in a mobile home park that are assessed as real property) are personal property. If the mobile home is listed as a structure on a property tax bill, it is probably treated as part of the real estate, and is not separately listed. Supply the referee with a copy of the most recent tax bill for the property where the mobile home is located, and a copy of any Department of Housing registration whenever a mobile home is involved. For mobile homes that are personal property, include the year, make, model, insignia numbers, serial numbers, and dimensions of the mobile unit, and the street address and space number of the mobile home site. For motor vehicles and boats, include the year, make, model, and vehicle identification number (VIN) or hull number. For livestock and breeding animals, include the

name, age, breed, sex, and pedigree. All types of personal property of more than nominal value must be described sufficiently to identify the asset. Probate Referees' Guide, p 13 (2005).

_ _ _ _ _ _ Intangible Personal Property Outside State

Inventory should include decedent's intangible personal property located outside California (*e.g.,* stocks, bonds, promissory notes, franchises, licenses, choses in action).

_ _ _ _ _ _ Miscellaneous Assets (see sample form in §11.11, items 58-61, 64-68)

In this category list the decedent's unusual assets or those subject to factors not readily apparent (*e.g.,* distributions from estates, leaseholds, patents, trademarks and copyrights, trusts continuing beyond decedent's death, income or royalty paid on patents, copyrighted publications). See Probate Referees' Guide, p 17 (2005).

_ _ _ _ _ _ Community or Separate Property

Probate Code §8850 requires the inventory to show which property is community, which is quasi-community, and which is separate. Assets can be so identified by grouping or by an asset-by-asset identification. If disposition of community and quasi-community property differs from that of the separate property (often true with intestate assets), it is very useful to list all community assets first, then quasi-community assets, and finally all separate assets. State whether the interest is 100 percent, one-half, or some other fraction. See Probate Referees' Guide, p 6 (2005).

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Source: Estate Planning/California Probate Workflow Manual Revised/11 Inventory and Appraisal/§11.9 B. Form: Inventory and Appraisal (Judicial Council Form DE-160) and Attachment (DE-161)

§11.9 B. Form: Inventory and Appraisal (Judicial Council Form DE-160) and Attachment (DE-161)

Print

DE-160/GC-040

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, state bar number, and address)*:	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(Optional)*: E-MAIL ADDRESS *(Optional)*: ATTORNEY FOR *(Name)*:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
ESTATE OF *(Name)*: ☐ DECEDENT ☐ CONSERVATEE ☐ MINOR	
INVENTORY AND APPRAISAL ☐ **Partial No.:** ☐ **Corrected** ☐ **Final** ☐ **Reappraisal for Sale** ☐ **Supplemental** ☐ **Property Tax Certificate**	CASE NUMBER: Date of Death of Decedent or of Appointment of Guardian or Conservator:

APPRAISALS

1. Total appraisal by representative, guardian, or conservator (Attachment 1): $
2. Total appraisal by referee (Attachment 2): $

TOTAL: $

DECLARATION OF REPRESENTATIVE, GUARDIAN, CONSERVATOR, OR SMALL ESTATE CLAIMANT

3. Attachments 1 and 2 together with all prior inventories filed contain a true statement of ☐ all ☐ a portion of the estate that has come to my knowledge or possession, including particularly all money and all just claims the estate has against me. I have truly, honestly, and impartially appraised to the best of my ability each item set forth in Attachment 1.
4. ☐ No probate referee is required ☐ by order of the court dated *(specify)*:
5. **Property tax certificate.** I certify that the requirements of Revenue and Taxation Code section 480
   a. ☐ are not applicable because the decedent owned no real property in California at the time of death.
   b. ☐ have been satisfied by the filing of a change of ownership statement with the county recorder or assessor of each county in California in which the decedent owned property at the time of death.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME; INCLUDE TITLE IF CORPORATE OFFICER) (SIGNATURE)

STATEMENT ABOUT THE BOND

(Complete in all cases. Must be signed by attorney for fiduciary, or by fiduciary without an attorney.)

6. ☐ Bond is waived, or the sole fiduciary is a corporate fiduciary or an exempt government agency.
7. ☐ Bond filed in the amount of: $ ☐ Sufficient ☐ Insufficient
8. ☐ Receipts for: $ have been filed with the court for deposits in a blocked account at *(specify institution and location)*:

Date:

(TYPE OR PRINT NAME) (SIGNATURE OF ATTORNEY OR PARTY WITHOUT ATTORNEY)

Form Adopted for Mandatory Use
Judicial Council of California
DE-160/GC-040 [Rev. January 1, 2007]

INVENTORY AND APPRAISAL

CEB

Probate Code, §§ 2610-2616, 8800-8980;
Cal. Rules of Court, rule 7.501
www.courtinfo.ca.gov

Print

DE-160/GC-040

ESTATE OF *(Name)*: ☐ DECEDENT ☐ CONSERVATEE ☐ MINOR	CASE NUMBER:

DECLARATION OF PROBATE REFEREE

9. I have truly, honestly, and impartially appraised to the best of my ability each item set forth in Attachment 2.
10. A true account of my commission and expenses actually and necessarily incurred pursuant to my appointment is:
    Statutory commission: $
    Expenses *(specify)*: $
    TOTAL: $

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF REFEREE)

INSTRUCTIONS

(See Probate Code sections 2610-2616, 8801, 8804, 8852, 8905, 8960, 8961, and 8963 for additional instructions.)

1. See Probate Code section 8850 for items to be included in the inventory.
2. If the minor or conservatee is or has been during the guardianship or conservatorship confined in a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services, mail a copy to the director of the appropriate department in Sacramento. (Prob. Code, § 2611.)
3. The representative, guardian, conservator, or small estate claimant shall list on Attachment 1 and appraise as of the date of death of the decedent or the date of appointment of the guardian or conservator, at fair market value, moneys, currency, cash items, bank accounts and amounts on deposit with each financial institution (as defined in Probate Code section 40), and the proceeds of life and accident insurance policies and retirement plans payable upon death in lump sum amounts to the estate, except items whose fair market value is, in the opinion of the representative, an amount different from the ostensible value or specified amount.
4. The representative, guardian, conservator, or small estate claimant shall list in Attachment 2 all other assets of the estate which shall be appraised by the referee.
5. If joint tenancy and other assets are listed for appraisal purposes only and not as part of the probate estate, they must be separately listed on additional attachments and their value excluded from the total valuation of Attachments 1 and 2.
6. Each attachment should conform to the format approved by the Judicial Council. *(See Inventory and Appraisal Attachment* (form DE-161/GC-041) and Cal. Rules of Court, rules 2.100—2.119.)

Print

ESTATE OF *(Name)*:	CASE NUMBER:
—	

INVENTORY AND APPRAISAL
ATTACHMENT NO.: _____

(In decedents' estates, attachments must conform to Probate Code section 8850(c) regarding community and separate property.)

Page: _____ of: _____ total pages.
(Add pages as required.)

Item No.	Description	Appraised value

INSTRUCTIONS: See the procedural guide in §11.2 and the sample schedules in §§11.10-11.11. In Attachment 1 to the form, list only those items appraised by the representative. In Attachment 2, list only those items to be appraised by the referee. Detailed information that is not required on Attachment 2, but that would assist the probate referee in making his or her determinations, should be included in a separate letter accompanying the inventory. If independent appraisals are sent to the referee, they should be properly identified. For instructions on filing the inventory, and for a sample accompanying letter, see §§11.16, 11.13, respectively.

If a Partial No. 1 Inventory and Appraisal is filed and a second inventory and appraisal completes the inventory of

the decedent's property, the Partial No. 2 box and the Final box should be marked.

The statement about the bond must be completed in all cases. Cal Rules of Ct 7.501(a). If the bond is insufficient, the fiduciary or the attorney for the fiduciary must immediately make an ex parte application for an order increasing the amount of the bond. See §8.8.

Copies: Original for filing; one copy each for referee, county assessor, if necessary (if there is estate real property or property subject to personal property tax), and representative; office copies.

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Source: Estate Planning/California Probate Workflow Manual Revised/11 Inventory and Appraisal/§11.10 1. Sample Completed Inventory--Attachment 1

§11.10 1. Sample Completed Inventory—Attachment 1

INSTRUCTIONS: This attachment is for estate assets to be appraised by the representative.

Number each item. Be sure to triple space between each asset listed. Common items should be listed together. The attachment should state whether the interest in the property is separate, community, or quasi-community, and whether the interest is 100 percent, one-half, or some other fraction. Prob C §8850(c).

The pages of each attachment should be numbered separately because they are completed by different individuals, *e.g.,* Attachment 1, page 1 of 2, *etc.* and Attachment 2, page 1 of 11, *etc*.

ESTATE OF (Name):	CASE NUMBER:
John DOE	189701

INVENTORY AND APPRAISAL
ATTACHMENT NO.: 1

(In decedents' estates, attachments must conform to Probate Code section 8850(c) regarding community and separate property.)

Item No.	Description	Appraised value
1.	Note: All assets listed are the separate property of the decedent.	
1.	Cash found in decedent's home.	$159.37
2.	Interest Checking Account #12-15678, located at Bank of America, A.P. Giannini Branch, South San Francisco, California	$8,719.08
	Accrued interest	$3.88
3.	Certificate of Deposit Acct. #44-09-4589 at World Savings, 1915 Glacier Street, Daly City, California.	$100,897.53
	Accrued interest	$237.57
4.	Money Market Fund at A.G. Edwards brokerage account #678-93456, at Hemet, California.	$19,248.16
	Accrued interest	$43.03
5.	Smith Barney Liquid Asset Account #799-44910-15	$27,692.27
	Accrued interest	$59.48
6.	Uncashed check from Internal Revenue Service payable to decedent, dated before date of appointment.	$2,419.00
7.	Money Order payable to decedent dated before date of appointment.	$166.44
8.	Proceeds from Metropolitan Life Insurance Policy #467-009822-0 on the life of Patricia Marlene Doe.	$25,000.00
9.	Funeral benefit from United Sisterhood of Homemakers.	$1,000.00
10.	Reimbursement of medical expenses from Prudential Insurance.	$2,694.34

Print

ESTATE OF (Name): John DOE	CASE NUMBER: 189701

INVENTORY AND APPRAISAL ATTACHMENT NO.: 1

(In decedents' estates, attachments must conform to Probate Code section 8850(c) regarding community and separate property.)

Item No.	Description	Appraised value
1.		
11.	Reimbursement of medical expenses from Medicare.	$581.09
12.	Health insurance refund from AARP.	$107.93
13.	Refund from National Auto Club.	$15.75
14.	Refund from San Francisco Newspaper Agency.	$41.14
15.	Allowed return of security deposit at Ocean Beach Apartments, 156 Ocean Shore Lane, Soquel, California	$625.00

Total Attachment No. 1: $189,711.06

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Source: Estate Planning/California Probate Workflow Manual Revised/11 Inventory and Appraisal/§11.11 2. Sample Completed Inventory--Attachment 2

§11.11 2. Sample Completed Inventory—Attachment 2

INSTRUCTIONS: This attachment is for estate assets to be appraised by the referee. The "Appraised value" column should be left blank for the referee to fill in. Care must be taken in listing and proofreading real property descriptions because title may be determined based on the legal description in the final judgment of distribution.

Number each item. Be sure to triple space between each asset listed on Attachment 2. This will not only make the inventory easier to read, it will give the referee room to add accrued interest or ex-dividends, as needed.

Common items should be listed together. The attachment should state whether the interest in the property is separate, community, or quasi-community, and whether the interest is 100 percent, one-half, or some other fraction. Prob C §8850(c). When community or quasi-community property is going to be probated (*e.g.,* when the estate includes a community property business or when the decedent's half of community property passes to someone other than the surviving spouse or registered domestic partner), the inventory will usually list the totals and then deduct the survivor's half of the community property interest at the end. The form may also be completed by listing the total value and the decedent's share of each asset. Another alternative is to list each asset as "An undivided community one-half interest in…" and to list only the value of that half. When the value of the interest held by the estate is less than the interest's proportionate value of the whole (*e.g.,* an undivided fractional interest in real property or an interest entitled to a minority discount), the latter alternative should be used. See *Propstra v U.S.* (9th Cir 1982) 680 F2d 1248 (estate entitled to discount decedent's undivided one-half interest in community real property in computing value of decedent's estate); *Estate of Bright v U.S.* (5th Cir 1981) 658 F2d 999 (discount allowed for one-half community property interest in majority block of stock).

ESTATE OF (Name):	CASE NUMBER:
John DOE	189701

INVENTORY AND APPRAISAL
ATTACHMENT NO.: 2

(In decedents' estates, attachments must conform to Probate Code section 8850(c) regarding community and separate property.)

Item No.	Description	Appraised value
1.		

(Editor's Note: Be sure to state the Decedent's interest in the property i.e. 100%, 50% community property, 1/3 interest, etc.)

REAL PROPERTY INTERESTS

VACANT LAND:

1. An unimproved 5 acre parcel of real property situated in the County of San Bernardino, near the town of Phelan, CA 92371, and described as follows: Lot 4, Parcel Map 7488. Subject to an unrecorded contract for purchase, wherein the decedent is the buyer and Linda View Co. is the seller. Assessor's Parcel No. 9983-293-30.

2. Real property situated in the County of Santa Barbara, described as follows: a 50% interest in the oil and mineral rights in and to Lot 14 of the Harris Re-subdivision of Rancho Guadalupe. (Reserved in deed recorded April 4, 1944, in Book A 1234, at page 456 of Official Records of said county.) Assessor's Parcel No. 844-123-029.

AGRICULTURAL:

3. A 25% interest in that real property situated in the County of Riverside, near the town of Thousand Palms, CA 92276, and described as follows: Portions of Farm lots 23, 24, and 25, beginning at a point at the southwesterly corner of Section 6, Township 4 South, Range 6 West, San Bernardino Base & Meridian, thence North 1,320 feet, thence East 2,640 feet, thence South 1,320 feet, thence West 2,640 feet to the point of beginning, consisting of 80 acres, more or less. APN 768-303-21.

SINGLE FAMILY RESIDENTIAL:

4. Residential real property located at 168 Acacia Street, Brisbane, CA 94005, described as follows: Lot 18, Block E, Tract No. 318, Brisbane Valley Homestead #1, as shown on the map on file in Book 2 of Maps, at Page 64, Official Records of San Mateo County, California. Assessor's Parcel No. 007-631-270.

Print

ESTATE OF (Name): John DOE	CASE NUMBER: 189701

INVENTORY AND APPRAISAL
ATTACHMENT NO.: 2

(In decedents' estates, attachments must conform to Probate Code section 8850(c) regarding community and separate property)

Item No.	Description	Appraised value

1.

CONDOMINIUM:

5. A residential condominium unit located at 839 Main Street, Apt. #203, San Mateo, CA 94403. Legal: Unit 23, Bayshore Condominiums (see "Exhibit A" attached for complete legal description). APN: 105-862-030.

(Editor's Note: A condominium consists of at least 2 parcels. Parcel 1 is the fee ownership in the unit itself; Parcel 2 is an undivided interest in all land, as tenants-in-common with all other unit owners. Often there are additional parcels, e.g. an exclusive easement for a patio or balcony area; an exclusive easement for a specific garage space and/or storage cubicle, etc.).

LEASEHOLD ESTATE:

6. A leasehold estate in real property improved with a single residence located at 725 Flying Dolphin Drive, Foster City, CA 94404, described as Lot 841, Tract No. 71-216, Foster City Neighborhood No. 2, Unit No. 3, as filed on December 16, 1971 in Book 61 of Maps at pages 94-97, San Mateo County Records. APN: 094-972-620.

7 An undivided ½ interest in a 40 year leasehold in improved real property (condominium) at 100 Baldwin Drive, Apartment #1028, San Mateo, CA 94401. See Exhibit B for the complete legal description. San Mateo County Assessors Parcel No.109-950-540.

STOCK COOPERATIVE:

8. Golden Rain Foundation of Laguna Hills Membership Certificate No. 24763 and United Laguna Hills Membership Certificate #1-4-92 with the right to reside at 839-D Calle Granada, Laguna Hills, CA 92653. Orange County. Assessor's Parcel No. 716-099-81.

9. 14,500 shares of capital stock in "The 1734 Cypress Apartments, Inc.", a cooperative apartment complex, with an exclusive leasehold interest in the real property commonly known as Apartment #306, 1734 Cypress Street, San Mateo, CA 94402. For the full legal description see Exhibit "C" attached hereto. APN: 140-820-060.

Print

ESTATE OF (Name): John DOE	CASE NUMBER: 189701

INVENTORY AND APPRAISAL
ATTACHMENT NO.: 2

(In decedents' estates, attachments must conform to Probate Code section 8850(c) regarding community and separate property.)

Item No.	Description	Appraised value

1.

RESIDENTIAL INCOME PRODUCING PROPERTY:

10. Four Duplex units located at 259 – 337 E. Magnolia Avenue, Riverside, CA 92503, legally described as: Lots 2 and 3 of Tract No. 3467, filed in Book 56 of Maps, at Page 45, Records of Riverside County, California. Assessor's Parcel Numbers 468-981-34 and 468-981-35.

COMMERCIAL/INDUSTRIAL PROPERTY:

11. A neighborhood shopping center located at 901 E. Pacific Coast Highway, Sunset Beach, CA 90742, consisting of a restaurant building, 6 retail store units and a parking lot, described as: Lots 3 and 4, Block C, Tract No. 389 as shown on the map recorded in Book 39 of Miscellaneous Maps, at pages 40-41, Records of Orange County, California. Assessor's Parcel No. 344-839-30.

LIFE ESTATES:

12. A life estate interest of the decedent in improved real property commonly known as 234 Pine Avenue, Long Beach, CA 90807, and legally described as Lots 16 and 17, Block 141, City of Long Beach, as per Maps, Official Records of Los Angeles County, State of California. APN: 257-451-043. Date of birth of the decedent is January 10, 1916.

13. A life estate interest of the decedent in improved real property commonly known as 238 Pine Avenue, Long Beach, CA 90807, and legally described as Lots 18 and 19, Block 141, City of Long Beach, as per Maps, Official Records of Los Angeles County, State of California. The interest of the decedent is a life estate measured by the life of Toby Miller (female), date of birth March 24, 1929. APN: 257-451-044.

REMAINDER AND REVERSIONARY INTERESTS:

14. A remainder interest in improved real property commonly known as 242 Pine Avenue, Long Beach, CA 90807, and legally described as Lots 20 and 21, Block 141, City of Long Beach, as per Maps, Official Records of Los Angeles County, State of California. Subject to a life estate of Raymond Smith, date of birth September 24, 1925. APN: 257-451-045.

Print

ESTATE OF (Name): John DOE	CASE NUMBER: 189701

INVENTORY AND APPRAISAL
ATTACHMENT NO.: 2

(In decedents' estates, attachments must conform to Probate Code section 8850(c) regarding community and separate property.)

Item No.	Description	Appraised value

1.
TIME SHARE INTEREST:

15. PARCEL ONE: An undivided 0.0204 percent interest in and to the real property in the City of Lake Tahoe, County of El Dorado, State of California and commonly known as 709 East Mountain Ridge Road, and more particularly described as: Parcel B, as shown on the Official Map of Valley View Hotel and Townhouses, Unit #2, filed in the Office of the County Recorder of said county on November 10, 1970 in Book E, Map No. 94.

PARCEL TWO: The exclusive right to use and occupy a "Regency Unit Type" for seven (7) days and nights during the "Prime Season" each "Use Year", pursuant to the terms, conditions and procedures set forth in the Declaration and the then operative "Rules and Regulations" together with the non-exclusive right to use the "Common Area", and "Club Area", during such seven (7) days and nights (as the quoted terms are defined in the Declaration).

APN: 500-748-751.

(Editor's Note: A deeded time share interest has a legal description very similar to that of a condominium. If the legal description is lengthy and complex, it should only be summarized here with an Exhibit attached with the full legal description. The street address and assessor's parcel umber should always be listed here).

BUSINESS INTERESTS

CLOSELY HELD CORPORATION:

16. Ten shares of R. H. Jones Freezing Company of Visalia, California, an unlisted closely held corporation.

LIMITED PARTNERSHIPS:

17. 10 Units Offshore Swindle Partners V Development Fund.

18. 5000 units Overseas Exploration Partners Fund 7.

Print

ESTATE OF (Name): John DOE	CASE NUMBER: 189701

INVENTORY AND APPRAISAL
ATTACHMENT NO.: 2

(In decedents' estates, attachments must conform to Probate Code section 8850(c) regarding community and separate property.)

Item No.	Description	Appraised value
1. 19.	3.75% interest in Fidelity Energy Income Partners 1984-A.	
20.	10/2,100th interest in Hollywood Properties XIX.	
	GENERAL PARTNERSHIP:	
21	45% General Partnership interest in Echo Hill Partnership, a Nevada general partnership.	
	SOLE PROPRIETORSHIPS:	
22.	Assets of that certain Sole Proprietorship known as "Johnny's Corner Grocery Market" located at 152 North 5th Street, Stockton, California 95209	
	TANGIBLE PERSONAL PROPERTY	
	MISCELLANEOUS/FURNITURE AND FURNISHINGS:	
23.	Household furniture and furnishings at 168 Acacia Street, Brisbane, CA 94005.	
24.	1946 Steinway grand piano, Model M, Serial No. 36382, specifically bequeathed to George Smith.	
25.	Tools and equipment located at 4579 Burbon Street, Oak Glen, CA 92399	
	JEWELRY/COINS/ART:	
26	Lady's gold ring with two large white stones.	
27	1861 "S" $20.00 gold piece (U.S.) in uncirculated condition.	

Print

ESTATE OF (Name): John DOE	CASE NUMBER: 189701

INVENTORY AND APPRAISAL
ATTACHMENT NO.: 2

(In decedents' estates, attachments must conform to Probate Code section 8850(c) regarding community and separate property.)

Item No.	Description	Appraised value

28. Original oil painting "Sierra Lake" by Elmer Wachetel (1925).

MOBILE HOMES:

29. 1984 Viking mobile home, 24' x 58', 2 bedrooms, 2 baths, Sunstream model, Serial No. S9382VK and S9383VK located in the "Fairmont Mobile Estates" park at 3900 E. First Street, Space 39, Fresno, CA 93709.

MOTOR VEHICLES/BOATS:

30. 1992 Mercedes 300 SE 4 door Sedan, VIN WDBGA32DN711F448, approximately 57,500 miles, in good condition.

31. 1982 Glasspar, tri-hull, 15-1/2 feet vessel, serial number XXGLS7654, model number 01041968TH, with Evenrude 50 HP outboard motor, serial number EV33332, model XYZ68.

LIVESTOCK AND BREEDING ANIMALS:

32. "King of All", five year old, quarter horse gelding.

PROMISSORY NOTES

PROMISSORY NOTES:

33. Unsecured promissory note payable to decedent, executed by John Swinger, dated July 1, 1994, in the original amount of $8,000.00, bearing interest at 10% per annum, payable at $80.00 or more per month. Interest paid to May 1, 1997.

    Balance due at date of appointment: $6,921.52
    (or date of death in a probate case)

    Accrued interest from May 1, 1997:

Print

ESTATE OF (Name):	CASE NUMBER:
John DOE	189701

INVENTORY AND APPRAISAL
ATTACHMENT NO.: 2

(In decedents' estates, attachments must conform to Probate Code section 8850(c) regarding community and separate property.)

Item No.	Description	Appraised value

1.
34. **Promissory note payable to decedent, executed by John Smith and Jim Jones, dated June 10, 1991 in the original amount of $15,000.00, bearing interest at 10% and payable quarterly at $375.00, interest only. Note is secured by a deed of trust on vacant land, known as Lot 14, Tract 1414, City of Vista, recorded on June 20, 1991 by document number 91-837293, San Diego County Records.**

Balance due at date of appointment: $15,000.00

Accrued Interest from March 20, 1998:

35. **Promissory note payable to decedent, executed by John Smith and Jim Jones, dated July 14, 1989 in the original amount of $98,000, bearing interest at 8% per annum and payable at $824.05 or more per month, secured by first deed of trust on a single family residence at 171 Skyline Drive, Oceanside, CA 92045, recorded July 18, 1989 by document number 77-643871, San Diego County Records.**

Balance due at date of appointment: $83,594.41

Accrued interest from April 18, 1998:

SECURITIES

PORTFOLIO ACCOUNTS AT BROKERAGE FIRMS:

(Editor's Note: a) Show the brokerage firm name and account number, then proceed to list all securities in the brokerage account as separate items as shown below.
b) Always include the CUSIP numbers for positive identification, consisting of a 9 digit string of numbers or numbers and letters.
c) cash or money market funds within the account should be shown on Attachment 1.)

COMMON AND PREFERRED STOCKS:

36. **858 shares Pacific Gas and Electric Company, common stock (NYSE).**
CUSIP 69331C108

Print

ESTATE OF (Name): John DOE	CASE NUMBER: 189701

INVENTORY AND APPRAISAL
ATTACHMENT NO.: 2

(In decedents' estates, attachments must conform to Probate Code section 8850(c) regarding community and separate property.)

Item No.	Description	Appraised value

1
37. 550 shares Chevron Corp., common stock (NYSE). CUSIP 166751107

38. 300 shares Transpacific Company, now known as Empire Realty Company. CUSIP 4344666L9.

39. 329 shares Lucent Technologies, Inc., common stock (NYSE). CUSIP 549463107.

40. 1,000 shares Southern California Gas Company, 6% preferred stock. CUSIP 842434300.

41. 350 shares World Travel, Inc., $3.50 preferred stock, series A. CUSIP 546222ZM7.

MUTUAL FUNDS:

42. 7029 shares of U.S. Government Securities Series CL-1 (Franklin Custodian Funds, Inc.) CUSIP 353496607.

43. 932.847 shares Prudential Pacific Growth Fund Inc., Class B. CUSIP 743941205.

44. 392.672 shares Putnam Fund for Growth & Income, Class B. CUSIP 746761204.

45. 415 shares Kemper California Tax-Free Income Fund A. CUSIP 488424201.

STOCK OPTIONS:

46. Stock options for 2,000 shares of Gilead Sciences, Inc. CUSIP 375558102.

(Editor's Note: It will be necessary to attach a statement showing the vesting schedule of the outstanding and vested options, and the exercise prices thereof).

Print

ESTATE OF (Name): John DOE	CASE NUMBER: 189701

INVENTORY AND APPRAISAL
ATTACHMENT NO.: 2

(In decedents' estates, attachments must conform to Probate Code section 8850(c) regarding community and separate property.)

Item No.	Description	Appraised value

1.

CORPORATE, STATE AND MUNICIPAL BONDS:

47. $10,000 Consumer Power Company, Second Issue of 1985, 5.8%, due August 1, 2010. CUSIP 297544LG2.

48. $50,000 Illinois Railroad Co. 20-year First Mortgage bonds, 6%, due January 31, 2006, interest payable quarterly on February 1, May 1, August 1 and November 1, NYSE coupons attached. CUSIP 447173104.

49. $10,000 California State Public Works Municipal Bond, 5.375%, issued 12/01/81, due 12/01/2001. CUSIP 13068GNG7.

50. $25,000 Los Angeles Wastewater Systems Municipal Bond, 5.2%, issued 11/22/86, due 11/21/2001. CUSIP 544652WH9.

UNITED STATES TREASURY NOTES AND BONDS:

51. 10 units U.S. Government zero coupon bonds, $1,000.00 per unit, due November 15, 2007. CUSIP 912961RL6.

52. $275,000 United States Treasury Bonds, 4 ½ %, due November 11, 2008. CUSIP 9127245P9.

53. $75,000 Treasury Bill, 5.08%, due 10/09/99. CUSIP 9127946U2.

GINNIE MAE (GNMA), FANNIE MAE (FNMA) AND FREDDY MAC (FHLMC) SECURITIES:

54. $40,000 Government National Mortgage Association (GNMA) 8.5 %, due January 15, 2020, $10,003.45 remaining principal balance, Pool #2709. CUSIP 362028AJ4.

Print

ESTATE OF (Name): John DOE	CASE NUMBER: 189701

INVENTORY AND APPRAISAL
ATTACHMENT NO.: 2

(In decedents' estates, attachments must conform to Probate Code section 8850(c) regarding community and separate property.)

Item No.	Description	Appraised value

1.

UNITED STATES SAVINGS BONDS:

55. **Four $100 U.S. Series E Bonds dated April 1, 1958.**

56. **Seven $500 U.S. Series EE Bonds, issued August 1990.**

57. **Three $500 U.S. Series EE Bonds, issued February 1992.**

OTHER INTERESTS

INHERITANCES AND DISTRIBUTIONS FROM TRUSTS:

58. **Right to receive distribution from Estate of Esther Smith, Deceased, Orange County Superior Court Case No. A-115687.**

59. **Right to receive distribution from Estate of Esther Smith, Deceased, Orange County Superior Court Case No. A-115687, as follows:**
    a. **50 shares XYZ Corp., common stock. CUSIP 999707661.**
    b. **10 shares Elmo Corp., common stock. CUSIP 999401722.**

60. **An undivided 832/2796th beneficial interest in that certain trust dated January 25, 1967, wherein Northern City National Bank of Duluth, Iowa is the Trustee, a National Banking Association under the laws of the United States of America.**

61. **Right to receive income distribution from Wilson Family Trust.**

INSURANCE POLICIES:

62. **Prudential Life Insurance Policy No. U986754. Insured: Joseph Jones, the decedent's brother. Policy Owner: John Doe.**

Print

ESTATE OF (Name): John DOE	CASE NUMBER: 189701

INVENTORY AND APPRAISAL
ATTACHMENT NO.: 2

(In decedents' estates, attachments must conform to Probate Code section 8850(c) regarding community and separate property.)

Item No.	Description	Appraised value
1.		

63. Proceeds of Annuity Policy No. 34589. Equitable Life Insurance Company.

PATENTS AND COPYRIGHTS;

64. United States Patent No. 1234567 issued February 24, 1989 covering device known as "Filterall", a water purification system.

65. United States Copyright on the words and music of the song "Your ears are stuffed with beans", published in 1984 by Cornball Publishing Company, San Francisco California.

JUDGEMENTS AND ONGOING LITIGATION:

66. $45,000.00 Judgment entered January 27, 1987 against Frank Lockheed, Riverside County Superior Court, Case No. 77849.

67. John Doe v. PQR Manufacturing Company, Santa Barbara County Superior Court, Case No. 393 292.

PERSONAL INJURY ACTIONS:

68. John Doe v. Farm Machinery Corp., Riverside County Superior Court, Case Number 55505.

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§11.12 3. Attachment 3 of Inventory

Under former law, when the Inheritance Tax Referee was responsible for appraising all assets of a decedent, it was common to complete an Attachment 3 for the assets not subject to probate administration. Under current law, this is neither necessary nor advisable. Attachment 3 could be misleading to the court or to persons interested in the estate. Filing an Attachment 3 with the court as part of the public record may also be an unnecessary invasion of the privacy of the decedent or the successors in interest to the property. If an appraisal of nonprobate assets is desired for any reason, the representative may have it made by the probate referee on the Appraisal Report of California Probate Referee or by any other qualified appraiser. See form in §11.15. The fees for such an appraisal by a person who is also a probate referee are not governed by Probate Code §8961 and should be ascertained ahead of time. See §11.15. If the representative decides to list the nonprobate assets on an Attachment 3 that is filed as part of the Inventory and Appraisal, the attachment should clearly set forth that the assets are not part of the probate estate and are listed for appraisal purposes only.

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§11.13 C. Separate Letter to Assist Referee

To assist the probate referee in making his or her determination of the fair market value of assets, it is desirable to send along with the inventory (or as soon thereafter as possible) a detailed letter stating any additional facts about the items on the inventory known to the law office. The purpose of the letter is to offer facts that will help the referee determine the fair value of assets and to avoid both delay and mistakes of valuation caused by insufficient information.

The letter to the referee should contain the following information and enclose documents pertinent to specific assets:

Real property: Descriptions of existing leases (enclose copies) and easements, if any; information on sales of comparable property, potential sales of estate real property, and a discussion of factors affecting value, such as condition of the property (both positive and negative aspects), improvements, location, soil quality, and accessibility of utilities; copies of any independent appraisals of the property; name of person to contact if necessary to view the property; statement of rental or royalty income earned and expenses in the three to five years before decedent's death; and description of current oil, gas, or mineral exploration, if any. If the property is listed for sale, give the probate referee the name and telephone number of the agent handling the listing.

Fractional interests: Information on how decedent acquired a share of the property and whether he or she ever owned 100 percent; co-owners' names and relationships to decedent, if any.

Business interests: For all business interests, *e.g.,* partnerships or associations, the following basic financial information: a brief statement of history and nature of business and its assets, the importance of decedent in business, and any other factors significantly related to valuing business; complete financial statements (including balance sheets, income statements, and accountant's notes to financial statements) and federal income tax returns for at least 3 years before the date when the asset is to be appraised; balance sheet prepared at or near appraisal date; complete description of any underlying asset reported on balance sheet; the name, address, and telephone number of accountant or CPA involved; and information about any recent transfers of interest in the entity. In addition, for limited partnerships that are not publicly traded: date of original investment and any additional or supplemental investments; summary of investment, including promised return, proposed date for return of capital, nature of assets of partnership, and the record or payments made by partnership; name and address of general partner; copy of detailed quarterly or annual report issued by partnership to investor; copies of K-1. For general partnerships: date and amount of investment; copy of partnership agreement; complete copies of individual partnership tax return schedule C for 3 years; information about recent transfers of partnership interests; copy of any buy-sell agreement and letter outlining relevant facts. Probate Referees' Guide, p 11 (2005).

AUTHOR'S ADVICE: Business interests may be particularly difficult to value; consequently, the representative should include any relevant data affecting the valuation and anticipate that the referee may request additional information or documentation to value the business. These inquiries have no negative connotation.

Stock in closely held corporations: In addition to the basic financial information listed for all business interests, include full name, street address, and telephone number of the corporation; total outstanding shares; number of shares owned by the decedent; information about recent stock transfers between private parties or with the corporation (treasury stock transactions); detailed information about life insurance policies on decedent owned by corporation; copy of any buy-sell agreement; and dividend paying history. Probate Referees' Guide, p 11 (2005).

Securities deemed worthless: Transmit any information such as a pending bankruptcy or the apparent worthlessness of a stock certificate to the referee. If a certificate is believed to be worthless, submit a copy of the certificate, if available, and a copy of any brokerage statement near the date of valuation.

Private collections (art objects, coins, stamps, *etc.*): Copies of independent appraisals; available trade catalogs reflecting currently estimated values of individual items in a collection. (The latter are similar to the automobile trade's "blue book" and are always available in, for example, the stamp or coin trade.)

If possible, counsel should recommend a value for each asset and enclose in the letter support for the recommendation. If the support is sufficient, the referee will often accept the suggestion, but if not, will at least be on notice that counsel may wish to discuss particular valuations before the inventory is filed. Note that the personal representative may elect to have private collections appraised by an independent expert *instead of* by the probate referee. Prob C §8904.

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Source: Estate Planning/California Probate Workflow Manual Revised/11 Inventory and Appraisal/§11.14 D. Partial and Supplementary Inventory

§11.14 D. Partial and Supplementary Inventory

The legal assistant may be directed by the attorney to prepare a partial inventory (see California Decedent Estate Practice §13.71 (2d ed Cal CEB 2009)). Partial inventories may be used if there is to be a sale of depreciating or perishable property or if it appears that there will be an undue delay in compiling a complete list of the decedent's assets. Supplementary inventories may be necessary to report newly discovered property or to correct a mistake. See Decedent Estate Prac §§13.81-13.82. For a format to be used in correcting a mistake, see Decedent Estate Prac §13.82. The Judicial Council form is used for filing either partial or supplemental inventories; the appropriate box in the heading is checked. A supplemental inventory must be filed within 4 months after the discovery of assets not previously reported. Prob C §8801.

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Source: Estate Planning/California Probate Workflow Manual Revised/11 Inventory and Appraisal/§11.15 E. Form: Appraisal Report of California Probate Referee

§11.15 E. Form: Appraisal Report of California Probate Referee

INSTRUCTIONS: The California Probate Referee's Association developed this form for use in nonprobate or other proceedings in which a referee's appraisal is requested. This form can be useful for obtaining an appraisal of nonprobate assets (such as assets held in an inter vivos trust or joint tenancies) for tax purposes. If used for such purposes, it should not be filed with the court; if it is deemed necessary to file the information with the court, use the Judicial Council Inventory Form reprinted in §11.9.

NAME AND ADDRESS OF ATTORNEY OR APPLICANT TEL NO:	
APPRAISAL REPORT OF CALIFORNIA PROBATE REFEREE	
IN THE MATTER OF:	
☐ DECEDENT ☐ DISSOLUTION ☐ OTHER	Date of Death or Designated Date
LIST OF ASSETS AND APPRAISEMENT ☐ FINAL ☐ PARTIAL NO:	

APPRAISALS

1.	Real Property	(Schedule 1)	
2.	Stocks, Bonds, & Notes	(Schedule 2)	
3.	Other Personal Property, Trusts, Misc.	(Schedule 3)	_____
	TOTAL APPRAISAL BY REFEREE		_____

STATEMENT OF APPLICANT

Assets listed in Schedules 1, 2, and 3 are a correct description of the assets requested to be appraised as of the date of death and/or the designated date, I requested an appraisal of the assets listed on the:

☐ Date of Death
☐ Designated Date
☐ Both Dates

DATE:_____ _____
(Signature of Applicant)

The total number of pages attached are: _____ _____
(Type or print name of Applicant)

DECLARATION OF CALIFORNIA PROBATE REFEREE

I have truly, honestly, and impartially appraised to the best of my ability each item set forth in the Statement of Applicant in compliance with Probate Code Section 400 et. seq., and Business and Professions Code 11302(b). A true account of my fees and expenses actually and necessarily incureed pusuant to applicant's request is:

Appraisal Fee:
Expenses: _____
Total: _____

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on:

DATE: _____ at (place)_____

_____ _____
(Type or print name of Referee) (Signature of Referee)

Print

INSTRUCTIONS

If valuation on both the date of death and a designated alternative date are requested, a fee will be charged on each appraisal

Designated date may be any date including the six month alternative valuation date applicable to Federal Estate Tax matters, date of gift, date of separation, date of dissolution, etc.

Submit an original and one copy to Referee

HOW TO LIST ASSETS:

SCHEDULE 1 - Real Property

Real property should be described so that it may be readily identified and located for inspection and appraisal. The County assessment number is useful, if that information is available. On apartment houses or other residential income properties, a tenant's rent schedule, and a schedule of income and expenses for three to five years should be submitted. On commercial properties the same information should be submitted, as well as copies of the lease agreements

SCHEDULE 2 - Stocks, Bonds, Notes

Common Stocks: Give number of shares, the name of the Company as it appears on the certificate itself, as well as the current name of the Company if it has been changed and the exchange on which listed. Dividends accrued, but not received prior to the date of death, showing the amount per share and the record date, should also be listed

Preferred Stocks: Give number of shares, current name of Company, series, rate of return, preference, cumulative or non-cumulative classification, etc. Be careful to list each series separately

Bonds - Corporate, Municipal, State: Give face amount, name of Company (municipality or state), type of bond, interest rate, date due, and date and number of coupons attached and exchange on which listed. List bonds by number of bonds and not total gross value

Saving Bonds and Notes: For ordinary saving bonds (such as Series E) give the series, denomination and date issued. For U.S. Treasury notes and bonds, give series, rate of interest, due date and coupons attached. Private promissory notes require the due date, interest rate, amount of payment, amount of any balloon payments, a description of any security, balance due on date of appraisal and the last date to which interest was paid.

SCHEDULE 3 - Personal Property and Miscellaneous

Personal Property: It is unnecessary to set out in great detail unless of great or unusual value and may be listed as "Furniture, furnishings and personal effects". If valuable jewelry, art pieces and antiques have been previously appraised, please attach copy of that appraisal.

Business Interests. For all business interests, whether sole proprietorship, joint venture, closely held corporation, partnership, etc., financial statements including balance sheets and income statements should be submitted for a period of at least 3 years prior to valuation date. Individual assets for which a depreciable basis is desired should be specifically described.

Annuities and Fractional Interests: Whenever an asset to be appraised is less than a full interest in the property, the extent of the interest should be clearly set forth. For annuities a full description of the corpus and pay out provisions is required. Any remainder or life estate interests will require the dates of birth of the life tenant.

Trusts: A complete list of trust assets should be submitted along with a full description of each asset.

Miscellaneous Assets: A complete description should accompany these items including: any patents, copyrights, judgments, memberships in social clubs (such as a country club), royalties, valuable livestock such as race horses, automobiles or airplanes, etc.

IN THE MATTER OF

SCHEDULE 1 - Real Property

ITEM NUMBER	DESCRIPTION	VALUE AT DATE OF DEATH	VALUE AT DESIGNATED DATE
	TOTALS		

SCHEDULE 1

ATTACH ADDITIONAL SHEETS IF NECESSARY

Print

IN THE MATTER OF

SCHEDULE 2- Stocks, Bonds and Notes

ITEM NUMBER	DESCRIPTION INCLUDING FACE AMOUNT OF BONDS OR NUMBER OF SHARES	UNIT VALUE	TOTAL VALUE AT DATE OF DEATH	UNIT VALUE	VALUE AT DESIGNATED DATE
TOTALS					

SCHEDULE 2

ATTACH ADDITIONAL SHEETS IF NECESSARY

Print

IN THE MATTER OF

SCHEDULE 3 - Personal Property and Miscellaneous Property

(Including Closely Held Businesses and Partnerships)

ITEM NUMBER	DESCRIPTION	VALUE AT DATE OF DEATH	VALUE AT DESIGNATED DATE
TOTALS			

SCHEDULE 3

ATTACH ADDITIONAL SHEETS IF NECESSARY

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IX. FILING INVENTORY AND APPRAISAL

§11.16 A. Procedure

After the inventory (or partial inventory) has been prepared and after the representative has completed the Declaration of Representative (page 1 of the form; see Prob C §§8852, 8905) the attorney should complete item 7 of the Statement About the Bond, if applicable, and date and sign it. The original and one copy should then be sent to the referee. The referee, after completing the inventory by filling in the value of each asset and completing the Declaration of Probate Referee (Prob C §8905) returns the original to the attorney and retains a copy for his or her records. The attorney should make as many copies as needed for the probate file and to use later with tax returns or other instruments (see §11.3) and should file the original and at least one copy with the county clerk. It is good practice to get at least one, if not all, of the conformed copies file-stamped. If local rules so require, at least one copy, which the clerk forwards to the county assessor must also be filed.

AUTHOR'S ADVICE: *Before* filing the inventory with the court, the attorney should have the personal representative review the values assigned by the probate referee so that any discrepancies can be resolved.

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§11.17 B. Objection to Referee's Appraisal

If the attorney receives an inventory from the probate referee that contains values differing substantially from those the representative or attorney believe to be proper, the attorney should discuss those values with both the representative and the probate referee before filing the inventory with the court. Most referees prefer to try to reach an agreement by informal consultation and negotiation rather than by use of the formal proceeding for filing objections. If the referee agrees to a new valuation, he or she will change the value on the inventory to the new agreed value and then return it to the attorney for filing. If an agreement cannot be reached, then the more formal procedures under Prob C §8906 for challenging a referee's appraisal must be used. See California Decedent Estate Practice §13.77 (2d ed Cal CEB 2009).

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§11.18 C. Special Notice Under Probate Code §§1250, 1252

When a request for special notice under Prob C §§1250, 1252 has been filed, a copy of the inventory and appraisal must be served on any interested person requesting special notice within 15 days after the inventory and appraisal is filed with the court; a proof of service of the notice must be filed with the court. Prob C §§1252(b), 1261, 8803. When special notice is requested, the form in §11.19 can used as a face sheet for the inventory and appraisal served.

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Source: Estate Planning/California Probate Workflow Manual Revised/11 Inventory and Appraisal/§11.19 D. Form: Notice of Filing of Inventory and Appraisal

§11.19 D. Form: Notice of Filing of Inventory and Appraisal

[*Title of court*]

Estate of _ _[*name*]_ _**,**	**)**	**No.** _ _ _ _ _ _
	)	
Decedent	**)**	**NOTICE OF FILING OF**
	)	**INVENTORY AND APPRAISAL**
_____	**)**	**(PROBATE CODE §1252(b))**

NOTICE IS HEREBY GIVEN that _ _[*name*]_ _**, as** _ _[*executor/administrator/(etc.)*]_ _ **of the** _ _[*will/estate*]_ _ **of** _ _[*name*]_ _**, deceased, has filed** _ _[*a/an*]_ _ _ _[*Partial/Supplemental*]_ _ **Inventory and Appraisal in the above proceedings, reference to which is made for further particulars.**

Date: _ _ _ _ _ _

__[*Signature*]__
_ _[*Typed name*]_ _
Attorney for _ _[*name*]_ _

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X. NOTICE OF CHANGE OF OWNERSHIP

§11.19A A. Change in Ownership

Revenue and Taxation Code §60 defines a "change in ownership" broadly as "a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest." For these purposes, a life estate generally has been considered an interest equivalent in value to the fee interest. See 18 Cal Code Regs §462.060(a); *Leckie v County of Orang*e (1998) 65 CA4th 334, 76 CR2d 426. In *Steinhart v County of Los Angeles* (2010) 47 C4th 1298, 104 CR3d 195, the California Supreme Court held that the creation of a life estate in real property held in a revocable trust on the death of the settlor is a change in ownership. The court noted that the settlor transferred not just a life estate, but the entire fee interest in the property to the life beneficiary and remainder beneficiaries of the trust on her death. See also *Reilly v City & County of San Francisco* (2006) 142 CA4th 480, 498, 48 CR3d 291 (change in ownership occurs when one sole life income beneficiary of trust dies and is replaced by successor sole life income beneficiary; court limited its holding to cases in which estate is for life of person receiving estate).

The death of an owner of real property is a change in ownership on the date of death. See 18 Cal Code Regs §462.260(c). For discussion of transfers that are excluded from the definition of "change in ownership," see California Estate Planning §15.4 (Cal CEB 2002).

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§11.20 B. When Required

The representative must file a change in ownership statement with the county recorder or assessor of each county in which the decedent at the time of death owned real property. This statement must be filed before or at the time the inventory and appraisal is filed. Rev & T C §480(b). Change in ownership statements also must be filed for all real property transferred at death that is not subject to probate proceedings within 150 days after the date of death. Rev & T C §480(b). Filing a Preliminary Change of Ownership Report (PCOR) meets the requirements of Rev & T C §480(b). For sample PCOR, see §11.21.

In addition, a PCOR must be completed and filed with each county recorder and assessor at the time of recordation of any document effecting change in ownership (*e.g.,* at the time of final distribution); otherwise, penalties may be imposed. Rev & T C §480.3(a)-(b).

The change of ownership form that can be used for each of these reports is set forth in Rev & T C §480.4. Each county has its own form for the Preliminary Change of Ownership Report that is based on the generic Board of Equalization form provided to the counties that is reproduced in §11.21. Counsel should contact the assessor's office in the county where the property is located to obtain the form required by a particular county.

Certification that the change in ownership statement has been filed or is not required because the decedent did not own real property in California must be filed when the inventory and appraisal are filed. Prob C §8800(d). The property tax certificate, formerly a separate document, is now included on the Inventory and Appraisal. See §11.9. The Statement of Death of Real Property Owner, used by the assessor's office to determine whether reassessment is required, also complies with Prob C §8800(d). For sample statement of death, see §11.22.

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Source: Estate Planning/California Probate Workflow Manual Revised/11 Inventory and Appraisal/§11.20A C. Parent-Child and Grandparent-Grandchild Transfer Exclusions

§11.20A C. Parent-Child and Grandparent-Grandchild Transfer Exclusions

Transfers of a principal residence of any value and other property valued up to $1 million (assessed value, not fair market value) between parents and their children or, in certain circumstances, between grandparents and grandchildren do not trigger reassessment as changes in ownership. Rev & T C §63.1. For such transfers, an additional State Board of Equalization form (BOE-58-AH or BOE-58-G; see §§11.23-11.24), available from the County Assessor, must be filed to prevent reassessment due to a change of ownership under Cal Const art XIIIA (Proposition 13). "Children" is defined in Rev & T C §63.1(c)(3) and includes any:

- Child born of the parent or parents, except a child who has been adopted by another person before reaching the age of 18 years;
- Stepchild and that stepchild's spouse while the stepparent-stepchild relationship exists;
- Son-in-law or daughter-in-law of the parent or parents;
- Child adopted before reaching the age of 18 years; and
- Foster child of a state-licensed foster parent who was not adopted, because of a legal barrier, before the child aged out of the foster care system.

NOTE: A purchase or transfer from a foster child to the child's biological parent is a change of ownership if the foster child received the residence from a foster parent through a purchase or transfer that was excluded under Rev & T C §63.1(a).

A "principal residence" means a dwelling that is eligible for the either the homeowners' or disabled veterans' exemption because the transferor owned and occupied the dwelling. It includes only the portion of land underlying the residence that consists of an area of reasonable size used as a site for the residence. Rev & T C §63.1(b)(1).

NOTE: A farm or ranch may not qualify under the principal residence exemption and may require application of some or all of the $1 million exemption. If it is necessary to equalize net value between heirs receiving property and heirs receiving cash, the property should be encumbered before distribution to preserve the exclusion. See California Decedent Estate Practice §§32.16-32.20 (2d ed Cal CEB 2009).

A claim must be filed to take advantage of the parent-child or grandparent-grandchild transfer exclusion. Forms are available from the county assessor's office and must be filed within 3 years of the date of death or before the property is transferred to a third party, whichever is earlier, or within 6 months after the mailing date of a notice of a supplemental or escape assessment, issued because of the transfer or purchase for which the claim is filed or because of a transfer to a third party. Rev & T C §63.1(c)(1), (2), (e). For sample forms, see §§11.23-11.24.

NOTE: If the exclusion is claimed, the transferor, the transferor's legal representative, or the personal representative of the transferor's estate must certify in writing that the transferor will not file a claim to transfer the base year value of the property to a replacement dwelling under Rev & T C §69.5. Rev & T C §63.1(d)(1)(B).

A transfer of real property to the transferor's parent or child is not considered to be a transfer to a third party. Rev & T C §63.1(e)(4). In effect, it means that a second transfer to a parent or child of the original transferee will not cut off the period in which the original transferee may claim the benefit of the parent-child exemption.

PRACTICE TIP: To preserve the full parent-child exclusion and avoid creating undivided interests (when undivided interests are not otherwise desirable for future estate planning purposes), the personal representative may need to encumber the property before distribution. For example, if an estate consisting of $250,000 in cash and an unencumbered residence with a fair market value of $750,000 is to be divided equally between two children and the personal representative mortgages the property for $250,000 and then distributes the encumbered property (with a net value of $500,000) to one child and $500,000 in cash to the other, the residence will not be subject to reassessment because the distribution of 100 percent of the residence will be treated as a parent-child transfer, provided that the will allows the personal representative to make nonprorata distributions. See Letter to Assessors No. 91/08. If instead the personal representative distributes $250,000 in cash and a one-third interest in the residence (with a value of $250,000) to one child and distributes a two-thirds interest in the residence (with a value of $500,000) to the other, and the child receiving the two-thirds interest acquires the remaining one-third interest in the property from the other in exchange for a $250,000 promissory note, then one-third of the property will be reassessed because the child will be treated as having received one-third of the property from the other

child rather than the parent. See Annotation 625.0235 (available on the Board's website at http://www.boe.ca.gov).

Additional relief is afforded by Rev & T C §63.1(e)(1)(C), which provides that a claim for the parent-child exclusion is deemed to be timely filed if it is filed within six months after a notice of supplemental or escape assessment. A late claim may be filed if the property has not been transferred to a third party. Rev & T C §63.1(e)(2). The exclusion takes effect in the assessment year the claim is filed (Rev & T C §63.1(e)(2)(A)) and is set at the adjusted base year value of the property in the year of death adjusted for inflation and the value of any subsequent new construction (Rev & T C §63.1(e)(2)(B)). See California Decedent Estate Practice §§32.16-32.20 (2d ed Cal CEB 2009) for discussion of parent-child/grandparent-grandchild exclusion.

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Source: Estate Planning/California Probate Workflow Manual Revised/11 Inventory and Appraisal/§11.21 D. Form: Preliminary Change of Ownership Report (BOE-502-A)

§11.21 D. Form: Preliminary Change of Ownership Report (BOE-502-A)

Print

BOE-502-A (P1) REV. 11 (07-10)

PRELIMINARY CHANGE OF OWNERSHIP REPORT

To be completed by the transferee (buyer) prior to a transfer of subject property, in accordance with section 480.3 of the Revenue and Taxation Code. A *Preliminary Change of Ownership Report* must be filed with each conveyance in the County Recorder's office for the county where the property is located. Please answer all questions in each section, and sign and complete the certification before filing. This form may be used in all 58 California counties. If a document evidencing a change in ownership is presented to the Recorder for recordation without the concurrent filing of a *Preliminary Change of Ownership Report*, the Recorder may charge an additional recording fee of twenty dollars ($20).

NOTICE: The property which you acquired may be subject to a supplemental assessment in an amount to be determined by the County Assessor. Supplemental assessments are not paid by the title or escrow company at close of escrow, and are not included in lender impound accounts. **You may be responsible for the current or upcoming property taxes even if you do not receive the tax bill.**

SELLER/TRANSFEROR	ASSESSOR'S PARCEL NUMBER
BUYER/TRANSFEREE	BUYER'S DAYTIME TELEPHONE NUMBER ( )

STREET ADDRESS OR PHYSICAL LOCATION OF REAL PROPERTY

MAIL PROPERTY TAX INFORMATION TO (NAME)

ADDRESS	CITY	STATE	ZIP CODE

☐ YES ☐ NO This property is intended as my principal residence. If YES, please indicate the date of occupancy or intended occupancy. MO DAY YEAR

PART 1. TRANSFER INFORMATION *Please complete all statements.*

YES NO

☐ ☐ A. This transfer is solely between spouses *(addition or removal of a spouse, death of a spouse, divorce settlement, etc.)*.

☐ ☐ B. This transfer is solely between domestic partners currently registered with the California Secretary of State *(addition or removal of a partner, death of a partner, termination settlement, etc.)*.

☐ ☐ * C. This is a transfer between: ☐ parent(s) and child(ren) ☐ grandparent(s) and grandchild(ren).

☐ ☐ * D. This transaction is to replace a principal residence by a person 55 years of age or older. Within the same county? ☐ YES ☐ NO

☐ ☐ * E. This transaction is to replace a principal residence by a person who is severely disabled as defined by Revenue and Taxation Code section 69.5. Within the same county? ☐ YES ☐ NO

☐ ☐ F. This transaction is only a correction of the name(s) of the person(s) holding title to the property *(e.g., a name change upon marriage)*. If YES, please explain: _____

☐ ☐ G. The recorded document creates, terminates, or reconveys a lender's interest in the property.

☐ ☐ H. This transaction is recorded only as a requirement for financing purposes or to create, terminate, or reconvey a security interest *(e.g., cosigner)*. If YES, please explain: _____

☐ ☐ I. The recorded document substitutes a trustee of a trust, mortgage, or other similar document.

☐ ☐ J. This is a transfer of property:

1. to/from a revocable trust that may be revoked by the transferor and is for the benefit of ☐ the transferor, and/or ☐ the transferor's spouse ☐ registered domestic partner.
2. to/from a trust that may be revoked by the creator/grantor/trustor who is also a joint tenant, and which names the other joint tenant(s) as beneficiaries when the creator/grantor/trustor dies.
3. to/from an irrevocable trust for the benefit of the ☐ creator/grantor/trustor and/or ☐ grantor's/trustor's spouse ☐ grantor's/trustor's registered domestic partner.
4. to/from an irrevocable trust from which the property reverts to the creator/grantor/trustor within 12 years.

☐ ☐ K. This property is subject to a lease with a remaining lease term of 35 years or more including written options.

☐ ☐ L. This is a transfer between parties in which proportional interests of the transferor(s) and transferee(s) in each and every parcel being transferred remain exactly the same after the transfer.

☐ ☐ M. This is a transfer subject to subsidized low-income housing requirements with governmentally imposed restrictions.

☐ ☐ * N. This transfer is to the first purchaser of a new building containing an active solar energy system.

* If you checked YES to statements C, D, or E, you may qualify for a property tax reassessment exclusion, which may allow you to maintain your previous tax base. If you checked YES to statement N, you may qualify for a property tax new construction exclusion. A claim form must be filed and all requirements met in order to obtain any of these exclusions. Contact the Assessor for claim forms.

Please provide any other information that will help the Assessor understand the nature of the transfer.

THIS DOCUMENT IS NOT SUBJECT TO PUBLIC INSPECTION

Print

BOE-502-A (P2) REV. 11 (07-10)

PART 2. OTHER TRANSFER INFORMATION *Check and complete as applicable.*

A. Date of transfer, if other than recording date: _____

B. Type of transfer:

☐ Purchase ☐ Foreclosure ☐ Gift ☐ Trade or exchange ☐ Merger, stock, or partnership acquisition (Form BOE-100-B)

☐ Contract of sale. Date of contract: _____ ☐ Inheritance. Date of death: _____

☐ Sale/leaseback ☐ Creation of a lease ☐ Assignment of a lease ☐ Termination of a lease. Date lease began: _____

Original term in years *(including written options)*: _____ Remaining term in years *(including written options)*: _____

☐ Other. Please explain: _____

C. Only a partial interest in the property was transferred. ☐ YES ☐ NO If YES, indicate the percentage transferred: _____ %

PART 3. PURCHASE PRICE AND TERMS OF SALE *Check and complete as applicable.*

A. Total purchase or acquisition price. Do not include closing costs or mortgage insurance. $_____

Down payment: $_____ Interest rate: _____ % Seller-paid points or closing costs: $_____

Balloon payment: $_____

☐ Loan carried by seller ☐ Assumption of Contractual Assessment* with a remaining balance of: $_____

* An assessment used to finance property-specific improvements that constitutes a lien against the real property.

B. The property was purchased: ☐ Through real estate broker. Broker name: _____ Phone number: ( ) _____

☐ Direct from seller ☐ From a family member

☐ Other. Please explain: _____

C. Please explain any special terms, seller concessions, financing, and any other information (e.g., buyer assumed the existing loan balance) that would assist the Assessor in the valuation of your property.

_____

_____

PART 4. PROPERTY INFORMATION *Check and complete as applicable.*

A. Type of property transferred

☐ Single-family residence ☐ Co-op/Own-your-own ☐ Manufactured home

☐ Multiple-family residence. Number of units: _____ ☐ Condominium ☐ Unimproved lot

☐ Other. Description: (i.e., timber, mineral, water rights, etc.) ☐ Timeshare ☐ Commercial/Industrial

_____

B. ☐ YES ☐ NO Personal/business property, or incentives, are included in the purchase price. Examples are furniture, farm equipment, machinery, club memberships, etc. Attach list if available.

If YES, enter the value of the personal/business property: $_____

C. ☐ YES ☐ NO A manufactured home is included in the purchase price.

If YES, enter the value attributed to the manufactured home: $_____

☐ YES ☐ NO The manufactured home is subject to local property tax. If NO, enter decal number: _____

D. ☐ YES ☐ NO The property produces rental or other income.

If YES, the income is from: ☐ Lease/rent ☐ Contract ☐ Mineral rights ☐ Other: _____

E. The condition of the property at the time of sale was: ☐ Good ☐ Average ☐ Fair ☐ Poor

CERTIFICATION

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing and all information hereon, including any accompanying statements or documents, is true and correct to the best of my knowledge and belief. ***This declaration is binding on each and every buyer/transferee.***

SIGNATURE OF BUYER/TRANSFEREE OR CORPORATE OFFICER ▶	DATE
NAME OF BUYER/TRANSFEREE/LEGAL REPRESENTATIVE/CORPORATE OFFICER (PLEASE PRINT)	TITLE

E-MAIL ADDRESS

The Assessor's office may contact you for additional information regarding this transaction.

Comment: Each county has its own form for the Preliminary Change of Ownership Report (PCOR) that is based on the generic Board of Equalization form provided to the counties that is reproduced in this section. Generally, however, the County Assessor's office will accept forms from other counties (with the county changed) rather than require the county's own form. PCOR forms are available online or from the recorder's or assessor's office where the property is located. In addition, most legal form software for estate planning or real estate have PCOR forms. See California

Judicial Council Forms Manual (Cal CEB 1981), SmartLaser 2006 (Cal CEB software). In some counties, the Statement of Death of Real Property Owner is filed with the PCOR.

PRACTICE TIP: The State Board of Equalization takes the position that a transfer of joint tenancy interests in trust for estate planning purposes (*i.e.,* transfer to a trust that may be revoked by the grantor who is also a joint tenant and that names the other joint tenant as beneficiary when the grantor dies) is not a change of ownership and no reassessment is triggered on the first joint tenant's death, regardless of the familial relationship between the joint tenants. The Preliminary Change of Ownership Form recognizes this possibility in Part I, Item H(2). It appears that by transferring joint tenancy property into trust, persons who do not have a statutory exemption at death (such as siblings, nieces, nephews, stepchildren, grandchildren living with parents, unmarried and unregistered partners, or friends) can avoid reassessment.

A separate form must be filed to claim the parent-child/grandparent-grandchild transfer exclusion. See §11.20 for time limits for claiming parent-child transfer exclusion. See §§11.23-11.24 for copies of these forms. For property tax reassessment, see §20.16A.

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§11.22 E. Form: Statement of Death of Real Property Owner

Print

Statement of Death of Real Property Owner

Filing this Statement of Death of Real Property Owner with our office may assist us in determining the property does not require reassessment. The filing of a Preliminary Change of Ownership Report will satisfy the requirements of California State Revenue and Taxation Code Section 480(b).

Please complete the following information and submit the forms timely. A delay in returning the forms may result in the unnecessary reassessment and subsequent additional tax bill(s) of the property.

1. Name of Decedent:_____

2. Probate No.:_____ 3. Date of Death_____

4. Address of Property:_____

5. Assessor's Parcel Number(s) (APN)_____

6. Name(s) of Heir(s) or Devisee(s)	Relationship to Decedent	% of Property to be Acquired
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

7. Future tax related correspondence, including tax bills for the Heirs/Devisees, should be sent to:

Name:_____

Address:_____

City:_____ State:_____ Zip Code:_____

The Assessor's Office may contact you for additional information regarding this transaction.

I certify (or declare) under penalty under the laws of the State of California that the foregoing and all information hereon, including any accompanying documents, is true, correct and complete to the best of my knowledge and belief.

_____ _____

Signature of ( )Executor/Administrator ( ) Attorney Date

_____ (_____)_____

Print Name Daytime Telephone Number

Comment: Each county has its own form for the Statement of Death of Real Property Owner. Forms may be obtained from the county assessor's office where the property is located. Generally, the County Assessor's office will accept forms from other counties (with the county changed) rather than require the county's own form.

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Source: Estate Planning/California Probate Workflow Manual Revised/11 Inventory and Appraisal/§11.23 F. Form: Claim for Reassessment Exclusion for Transfer Between Parent and Child (BOE-58-AH)

§11.23 F. Form: Claim for Reassessment Exclusion for Transfer Between Parent and Child (BOE-58-AH)

BOE-58-AH (P1) REV. 13 (08-09)

CLAIM FOR REASSESSMENT EXCLUSION FOR TRANSFER BETWEEN PARENT AND CHILD

NAME AND MAILING ADDRESS
(Make necessary corrections to the printed name and mailing address.)

A processing fee of no more than $175 may be charged for claims filed untimely. The fee will apply if a claim is filed more than 60 days after the date of a second notice of potential eligibility has been sent by the county assessor.

A. PROPERTY

ASSESSOR'S PARCEL NUMBER

PROPERTY ADDRESS		CITY
RECORDER'S DOCUMENT NUMBER		DATE OF PURCHASE OR TRANSFER
PROBATE NUMBER *(if applicable)*	DATE OF DEATH *(if applicable)*	DATE OF DECREE OF DISTRIBUTION *(if applicable)*

The disclosure of social security numbers is mandatory as required by Revenue and Taxation Code section 63.1. *[See Title 42 United States Code, section 405(c)(2)(C)(i) which authorizes the use of social security numbers for identification purposes in the administration of any tax.] A foreign national who cannot obtain a social security number may provide a tax identification number issued by the Internal Revenue Service. The numbers are used by the Assessor and the state to monitor the exclusion limit.*

B. TRANSFEROR(S)/SELLER(S) *(additional transferors please complete "B" on the reverse)*

1. Print full name(s) of transferor(s) _____ _____
2. Social security number(s) ___ ___ ____ ___ ___ ____
3. Family relationship(s) to transferee(s) _____ _____
   If adopted, age at time of adoption _____ _____
4. Was this property the transferor's principal residence? ☐ Yes ☐ No
   If yes, please check which of the following exemptions was granted or was eligible to be granted on this property:
   ☐ Homeowners' Exemption ☐ Disabled Veterans' Exemption
5. Have there been other properties that qualified for this exclusion? ☐ Yes ☐ No
   If **yes,** please attach a list of all previous transfers that qualified for this exclusion. (This list should include for each property: the County, Assessor's parcel number, address, date of transfer, names of all the transferees/buyers, and family relationship. Transferor's principal residence must be identified.)
6. Was only a partial interest in the property transferred? ☐ Yes ☐ No If **yes,** percentage transferred _____ %
7. Was this property owned in joint tenancy? ☐ Yes ☐ No
8. If the transfer was through the medium of a trust, you **must** attach a copy of the trust.

CERTIFICATION

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing and all information hereon, including any accompanying statements or documents, is true and correct to the best of my knowledge and that I am the parent or child (or transferor's legal representative) of the transferees listed in Section C. I knowingly am granting this exclusion and will not file a claim to transfer the base year value of my principal residence under Revenue and Taxation Code section 69.5.

SIGNATURE OF TRANSFEROR OR LEGAL REPRESENTATIVE ▶	DATE
SIGNATURE OF TRANSFEROR OR LEGAL REPRESENTATIVE ▶	DATE
MAILING ADDRESS	DAYTIME PHONE NUMBER ( )
CITY, STATE, ZIP	E-MAIL ADDRESS

(Please complete applicable information on reverse side.)

THIS DOCUMENT IS NOT SUBJECT TO PUBLIC INSPECTION

Print

C. TRANSFEREE(S)/BUYER(S) *(additional transferees please complete "C" below)*

1. Print full name(s) of transferee(s) _____ _____

2. Family relationship(s) to transferor(s) _____ _____

   If adopted, age at time of adoption _____ _____

   If stepparent/stepchild relationship is involved, was parent still married to or in a registered domestic partnership *(registered means registered with the California Secretary of State)* with stepparent on the date of purchase or transfer? ☐ Yes ☐ No

   If **no,** was the marriage or registered domestic partnership terminated by: ☐ Death ☐ Divorce/Termination of partnership

   If terminated by death, had the surviving stepparent remarried or entered into a registered domestic partnership as of the date of purchase or transfer? ☐ Yes ☐ No

   If in-law relationship is involved, was the son-in-law or daughter-in-law still married to or in a registered domestic partnership with the daughter or son on the date of purchase or transfer? ☐ Yes ☐ No

   If **no,** was the marriage or registered domestic partnership terminated by: ☐ Death ☐ Divorce/Termination of partnership

   If terminated by death, had the surviving son-in-law or daughter-in-law remarried or entered into a registered domestic partnership as of the date of purchase or transfer? ☐ Yes ☐ No

3. ALLOCATION OF EXCLUSION (If the full cash value of the real property transferred exceeds the one million dollar value exclusion, the transferee must specify on an attachment to this claim the amount and allocation of the exclusion that is being sought.)

CERTIFICATION

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing and all information hereon, including any accompanying statements or documents, is true and correct to the best of my knowledge and that I am the parent or child (or transferee's legal representative) of the transferors listed in Section B; and that all of the transferees are eligible transferees within the meaning of section 63.1 of the Revenue and Taxation Code.

SIGNATURE OF TRANSFEREE OR LEGAL REPRESENTATIVE ▶	DATE
SIGNATURE OF TRANSFEREE OR LEGAL REPRESENTATIVE ▶	DATE
MAILING ADDRESS	DAYTIME PHONE NUMBER ( )
CITY, STATE, ZIP	E-MAIL ADDRESS

Note: The Assessor may contact you for additional information.

B. ADDITIONAL TRANSFEROR(S)/SELLER(S) *(continued)*

NAME	SOCIAL SECURITY NUMBER	SIGNATURE	RELATIONSHIP

C. ADDITIONAL TRANSFEREE(S)/BUYER(S) *(continued)*

NAME	RELATIONSHIP

Print

BOE-58-AH (P3) REV. 13 (08-09)

CLAIM FOR REASSESSMENT EXCLUSION FOR TRANSFER BETWEEN PARENT AND CHILD
Revenue and Taxation Code, Section 63.1

IMPORTANT: In order to qualify for this exclusion, a claim form must be completed and signed by the transferors and a transferee and filed with the Assessor. A claim form is timely filed if it is filed within three years after the date of purchase or transfer, or prior to the transfer of the real property to a third party, whichever is earlier. If a claim form has not been filed by the date specified in the preceding sentence, it will be timely if filed within six months after the date of mailing of a notice of supplemental or escape assessment for this property. If a claim is not timely filed, the exclusion will be granted beginning with the calendar year in which you file your claim. Complete all of Sections A, B, and C and answer each question or your claim may be denied. Proof of eligibility, including a copy of the transfer document, trust, or will, may be required. ***Please note***:

1. This exclusion only applies to transfers that occur on or after November 6, 1986;

2. In order to qualify, the real property must be transferred from parents to their children or children to their parents;

3. If you do not complete and return this form, it may result in this property being reassessed.

4. California law provides, with certain limitations, that a "change in ownership" does not include the purchase or transfer of:

   - The principal residence between parents and children, and/or
   - The first $1,000,000 of other real property between parents and children.

NOTE: Effective January 1, 2009, Revenue and Taxation Code Section 63.1(j) allows a county board of supervisors to authorize a one-time processing fee of not more than $175 to recover costs incurred by the county assessor due to the failure of an eligible transferee to file a claim for the parent-child change in ownership exclusion after two written requests have been sent to an eligible transferee by the county assessor.

Comment: Each county has its own Claim for Reassessment Exclusion form that is based on the generic Board of Equalization form provided to the counties that is reproduced in this section. Obtain forms from the County Assessor's office where the property is located.

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Source: Estate Planning/California Probate Workflow Manual Revised/11 Inventory and Appraisal/§11.24 G. Form: Claim for Reassessment Exclusion for Transfer From Grandparent to Grandchild (BOE-58-G)

§11.24 G. Form: Claim for Reassessment Exclusion for Transfer From Grandparent to Grandchild (BOE-58-G)

BOE-58-G (P1) REV. 12 (08-09)

CLAIM FOR REASSESSMENT EXCLUSION FOR TRANSFER FROM GRANDPARENT TO GRANDCHILD

NAME AND MAILING ADDRESS
(Make necessary corrections to the printed name and mailing address.)

A processing fee of no more than $175 may be charged for claims filed untimely. The fee will apply if a claim is filed more than 60 days after the date of a second notice of potential eligibility has been sent by the county assessor.

A. PROPERTY

ASSESSOR'S PARCEL NUMBER	PROPERTY ADDRESS
DATE OF PURCHASE OR TRANSFER	RECORDER'S DOCUMENT NUMBER
DATE OF DEATH OF GRANDPARENT *(if applicable)*	PROBATE NUMBER *(if applicable)*

The disclosure of social security numbers is mandatory as required by Revenue and Taxation Code section 63.1. *[See Title 42 United States Code, section 405(c)(2)(C)(i) which authorizes the use of social security numbers for identification purposes in the administration of any tax.] A foreign national who cannot obtain a social security number may provide a tax identification number issued by the Internal Revenue Service. The numbers are used by the Assessor and the state to monitor the exclusion limit.*

B. TRANSFEROR(S)/SELLER(S) (GRANDPARENTS)

1. Print full name(s) of transferor(s) _____
2. Was this property the principal residence of the transferor? ☐ Yes ☐ No
   If **yes,** please check which one of the following exemptions was granted or was eligible to be granted on this property:
   ☐ Homeowners' Exemption ☐ Disabled Veterans' Exemption
3. Was real property other than the principal residence of the transferor transferred? ☐ Yes ☐ No
4. Was only a partial interest in the property transferred? ☐ Yes ☐ No
5. Did you own this property as a joint tenant? ☐ Yes ☐ No
6. If the transfer was through the medium of a trust, you must attach a copy of the trust.
7. Print name(s) of child(ren) of transferor(s)/seller(s) who is(are) the parent(s) of transferee(s) (grandchild):

CERTIFICATION

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing and any accompanying statements are true and correct to the best of my knowledge and that I am the grandparent (or their legal representative) of the transferees listed in Section C. I knowingly am granting this exclusion and will not file a claim to transfer the base year value of my principal residence under Revenue and Taxation Code section 69.5.

SIGNATURE OF TRANSFEROR OR LEGAL REPRESENTATIVE ▶	DATE
SIGNATURE OF TRANSFEROR OR LEGAL REPRESENTATIVE ▶	DATE
MAILING ADDRESS	DAYTIME PHONE NUMBER ( )
CITY, STATE, ZIP	E-MAIL ADDRESS

THIS DOCUMENT IS NOT SUBJECT TO PUBLIC INSPECTION

Print

C. TRANSFEREE(S)/BUYER(S) (GRANDCHILD) *(additional transferees please complete "C" below)*

1. Print full name(s) of transferee(s) _____

   Family relationship(s) to transferor(s) _____

   If adopted, age at time of adoption _____ Adopted by whom? _____

2. Parent: Name of direct descendent of grandparent (son or daughter) _____

   Date of death of direct descendent _____

   (Direct descendent must be deceased in order to qualify for this exclusion. *Please provide death certificate.*)

   Social security number of direct descendent: _____

   a. Was deceased parent married or in a registered domestic partnership *(registered means registered with the California Secretary of State)* as of the date of death? ☐ Yes ☐ No

   b. Is the spouse or registered domestic partner of the deceased parent a *(check one):*
      ☐ Parent of the grandchild *(go to question c).*
      ☐ Stepparent of the grandchild *(a stepparent to the grandchild need not be deceased in meeting the condition that "all of the parents" of the grandchild must be deceased) (go to question 3).*

   c. Had surviving spouse/partner remarried or entered into a registered domestic partnership as of the date of purchase or transfer? ☐ Yes ☐ No

      If **yes,** date of marriage or registration of the domestic partnership must have occurred prior to the date of purchase or transfer to qualify for exclusion. Date of marriage/partnership registration: _____ *(Please provide marriage or partnership certificate.)*

      If **no,** surviving spouse/partner is still considered a child of grandparents and must also be deceased prior to the purchase or transfer to qualify for exclusion. Date of death _____ *(Please provide death certificate.)*

3. Did transferee receive a principal residence from parents? (If transferee has already received an excludable principal residence, or interest therein, from parents, then the purchase or transfer of a principal residence from grandparents will not be excluded as a principal residence but will be applied toward the one million dollar ($1,000,000) full cash value limit exclusion of other real property received from parents.) ☐ Yes ☐ No

   If yes: County: _____ Assessor's Parcel Number: _____

4. Did transferee receive real property other than a principal residence from deceased parent who is a direct descendent of grandparents? (If transferee has already received an excludable principal residence, or interest therein, from parents, then the purchase or transfer of a principal residence from grandparents will not be excluded as a principal residence but will be applied toward the one million dollar ($1,000,000) full cash value limit exclusion of other real property received from deceased parents.) ☐ Yes ☐ No

   If yes, attach list of all previous transfers (include for each property: the county, Assessor's parcel number, situs address, date of transfer, names of all transferees, and the family relationship).

Note: *The Assessor may require additional legal documentation to support the above answers.*

ADDITIONAL TRANSFEREE(S)/BUYER(S) (GRANDCHILD) *(continued)*

NAME	RELATIONSHIP

CERTIFICATION

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing and any accompanying statements are true and correct to the best of my knowledge and that I am the grandchild (or their legal representative) of the transferors listed in Section B. I certify that all my parents who qualify as children of my transferor grandparents are deceased as of the date of transfer or purchase, and that all of the transferees are eligible transferees within the meaning of section 63.1 of the Revenue and Taxation Code.

SIGNATURE OF TRANSFEREE OR LEGAL REPRESENTATIVE ▶	DATE
MAILING ADDRESS	DAYTIME PHONE NUMBER ( )
CITY, STATE, ZIP	E-MAIL ADDRESS

Print

BOE-58-G (P3) REV. 12 (08-09)

CLAIM FOR REASSESSMENT EXCLUSION FOR TRANSFER BETWEEN GRANDPARENT AND GRANDCHILD
Revenue and Taxation Code, Section 63.1

IMPORTANT: In order to qualify for this exclusion, a claim form must be completed and signed by the transferors and a transferee and filed with the Assessor. A claim form is timely filed if it is filed within three years after the date of purchase or transfer, or prior to the transfer of the real property to a third party, whichever is earlier. If a claim form has not been filed by the date specified in the preceding sentence, it will be timely if filed within six months after the date of mailing of a notice of supplemental or escape assessment for this property. If a claim is not timely filed, the exclusion will be granted beginning with the calendar year in which you file your claim. Complete all of Sections A, B, and C and answer each question or your claim may be denied. Proof of eligibility, including a copy of the transfer document, trust, or will, may be required.

1. This exclusion only applies to transfers that occur on or after March 27, 1996;

2. In order to qualify, all the parents of that grandchild **must** be deceased as of the date of purchase or transfer. As used in the preceding sentence, parents are those persons who qualify under section 63.1 as children of the grandparents. However, for transfers that occur on or after January 1, 2006, a son-in-law or daughter-in-law of the grandparent that is a stepparent to the grandchild need not be deceased in meeting the condition that "all of the parents" of the grandchild must be deceased.

3. In order to qualify, the real property must be transferred from grandparents to their grandchildren;

4. If you do not complete and return this form, it may result in this property being reassessed.

5. California law provides, with certain limitations, that a "change in ownership" does not include the purchase or transfer of:

- The principal residence between parents and children, and/or
- The first $1,000,000 of other real property between parents and children.

NOTE: Effective January 1, 2009, Revenue and Taxation Code Section 63.1(j) allows a county board of supervisors to authorize a one-time processing fee of not more than $175 to recover costs incurred by the county assessor due to the failure of an eligible transferee to file a claim for the grandparent-grandchild change in ownership exclusion after two written requests have been sent to an eligible transferee by the county assessor.

Comment: Each county has its own Claim for Reassessment Exclusion form that is based on the generic Board of Equalization form provided to the counties that is reproduced in this section. Obtain forms from the County Assessor's office where the property is located.

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12

Creditors' Claims

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I. PRELIMINARY CONSIDERATIONS

§12.1 A. General Instructions; Constitutional Considerations

The legal assistant can assist the attorney for the representative in handling creditors' claims. For this task the legal assistant should become familiar with the statutory procedure outlined in the procedural guide in §12.3.

Creditors who are known or "reasonably ascertainable" with "reasonably diligent efforts" must be "given notice by mail or other means as certain to ensure actual notice" under the due process clause of the United States Constitution. *Tulsa Prof. Collection Servs., Inc. v Pope* (1988) 485 US 478, 485, 99 L Ed 2d 565, 579, 108 S Ct 1340.

In response to *Tulsa,* the code sections applicable to creditors' claims were amended to require that known or reasonably ascertainable creditors be given constitutionally sufficient notice (Prob C §9050) and also to relax the procedures for filing late claims (Prob C §9103). Actual notice to reasonably ascertainable creditors is now required by Prob C §9050 as well as by *Tulsa*.

Because handling creditors' claims is also a matter of local procedure, the probate attorney and legal assistant should incorporate local rules and practice in following the procedures given in this manual.

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§12.2 B. Statutory Authority

The basic code sections applicable to creditors' claims are CCP §§366.2-366.3; Prob C §§9000-9004, 9100-9205 on filing claims (see §12.13); Prob C §§9050-9054 on notice to creditors (see §12.5-12.9); and Prob C §§9300-9304 on claims established by judgment (see §12.3). For priority in payment of claims, see Prob C §§11400-11422, discussed further in §§12.29-12.30. Venue in actions against representatives is covered in CCP §395.1. Apportionment of debts between the estate and the surviving spouse is covered by Prob C §§11440-11446 and is discussed further in §12.31 and California Decedent Estate Practice §§4.19-4.25, 4.68-4.78 (2d ed Cal CEB 2009).

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Source: Estate Planning/California Probate Workflow Manual Revised/12 Creditors' Claims/§12.3 II. CHECKLIST: PERSONAL REPRESENTATIVE'S HANDLING OF CREDITORS' CLAIMS

§12.3 II. CHECKLIST: PERSONAL REPRESENTATIVE'S HANDLING OF CREDITORS' CLAIMS

This guide may be copied and placed in the estate file as an aid in keeping track of important deadlines. For possible obligations of the decedent for taxes for social security, California unemployment insurance, income, property, or retail sales, see §§12.10-12.11.

The last day for filing claims should be calendared to expedite closing the estate. This date is the later of 4 months after the date letters are issued, or 60 days after the date notice of administration of the estate is mailed or personally delivered to the creditor. Prob C §9100. For discussion of filing late claims, see §12.14.

If both spouses' interests in the community or quasi-community property are administered in probate proceedings, Prob C §13552 controls, and the normal claims periods of Prob C §9100 are invoked. All claims based on the liability of the surviving spouse are barred, except for the following (Prob C §13552):

(a) Claims of creditors who began judicial proceedings to enforce the debt and who serve the surviving spouse with a complaint before expiration of the time for filing claims;

(b) Claims of creditors who secure the acknowledgment in writing of the surviving spouse's liability for the debts; and

(c) Claims of creditors who file timely claims in the estate proceedings (Prob C §13552).

NOTE: There is no provision under the spousal or domestic partner property petition procedures (Prob C §§13650-13660) for publication of notice of petition for administration or filing of creditors' claims. Therefore, unless probate is commenced, creditors acting under Prob C §13554 are not subject to the claims-filing procedures or the 4-month limitations period (Prob C §9100) applicable in probate proceedings. However, the CCP §366.2 1-year statute of limitations applies to actions against the surviving spouse or registered domestic partner under Prob C §13554. Prob C §13554(c).

See California Decedent Estate Practice §§14.71-14.89 (2d ed Cal CEB 2009) for discussion of suits on claims.

CHECKLIST

1. Notice of Petition to Administer Estate published in (name of newspaper) _ on the following dates: _ _ _ _ _ _ _ _ _ _ _ _ _ _ _, _ _ _ _ _ _ _ _ _ _ _ _ _ _ _, _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _. Prob C §§8121, 9001; see form in §7.26.

2. Proof of publication of Notice of Petition to Administer Estate filed on _. Prob C §8124; CCP §§2010, 2015.5.

3. Date of first issuance of letters, including letters of special administration with powers of general administrator: _.

4. Steps taken to determine reasonably ascertainable creditors. See §12.8A. List actions taken.

5. Send Notice of Administration to Creditors (Judicial Council Form DE-157) within 4 months to known or reasonably ascertainable creditors. Time to file claim expires on later of 4 months after letters first issued or 60 days after notice mailed or personally delivered (Prob C §§9051-9052, 9100(a)) but no later than 1 year after the date of death (CCP §§366.2-366.3; Prob C §9100(c)). See §§12.9, 12.13. Calendar deadlines for claims to expedite closing the estate.

Name of Creditor	Date Mailed or Personally Delivered	Filing Deadline
_ _ _ _ _ _ _ _ _ _ _ _ _ _ _	_ _ _ _ _ _ _ _	_ _ _ _ _ _ _ _
_ _ _ _ _ _ _ _ _ _ _ _ _ _ _	_ _ _ _ _ _ _ _	_ _ _ _ _ _ _ _
_ _ _ _ _ _ _ _ _ _ _ _ _ _ _	_ _ _ _ _ _ _ _	_ _ _ _ _ _ _ _

6. If creditor discovered more than 4 months after letters issued, send notice of administration within 30 days of discovery. Prob C §9051(b). Claim must be filed within 60 days after notice is mailed or personally delivered or within 1 year after the date of death, whichever is earlier. Prob C §9100(a)(2).

Name of Creditor	Date Discovered	Date Mailed or Personally Delivered	Filing Deadline
_ _ _ _ _ _ _ _ _ _ _	_ _ _ _ _ _ _ _	_ _ _ _ _ _ _ _	_ _ _ _ _ _ _ _

_ _ _ _

Source: Estate Planning/California Probate Workflow Manual Revised/12 Creditors' Claims/§12.4 III. FORM: RECORD OF CREDITORS' CLAIMS

§12.4 III. FORM: RECORD OF CREDITORS' CLAIMS

The following form may be duplicated and used as a record of creditors' claims and actions taken. When there are many claims in an estate, it is convenient to set up a separate file for creditors' claims and to keep a copy of the claim record sheet on the inside of the file folder cover. Such a record is extremely useful in preparing the representative's accounts. See chap 18.

RECORD OF CREDITORS' CLAIMS

Estate of _____ Date letters issued _____

Office file no. _____

Creditor and address	Nature of claim	Amount	Date claim form or notice sent to creditor	Date filed with county clerk	Date approved by rep. judge	Date notice of allowance or rejection mailed	Date notice filed with clerk	Date paid	Check no.

Checked with county clerk for all claims filed.

All paid claims filed.

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IV. NOTICE TO CREDITORS

§12.5 A. Form of Notice

The Notice of Petition to Administer Estate, the contents and form of which are specified in Prob C §8100, serves as both a notice of petition for probate and a notice to creditors when published. See Prob C §9001. See §7.26 for the Notice of Petition to Administer Estate (Judicial Council Form DE-121).

A separate, specific, written notice to creditors of the administration of the estate must also be given to known or reasonably ascertainable creditors. See §12.9.

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§12.6 B. Publication Requirements

For publication requirements of the Notice of Petition to Administer Estate, see Prob C §8121. That section requires three publications with the first publication date at least 15 days before the hearing on the petition and at least 5 days between the first and last publication in newspapers that meet certain criteria (usually, newspapers of general circulation in the city where the decedent resided). Notice must be published in a newspaper of general circulation in the city where the decedent resided, or for a nondomiciliary decedent, where the property is located. Prob C §8121. If none exists, notice must be published in a general circulation newspaper in the county where the decedent resided or the property is located; if there is no such newspaper, notice is published in a general circulation newspaper published nearest to the county seat of the county where the decedent resided or the property is located. Prob C §8121.

NOTE: In many cases the newspaper will essentially be a free weekly advertising publication. Allow adequate time to make arrangements with the newspaper so the statutorily required publication dates can be accomplished before the hearing. Local publication practices should be ascertained at all times.

Although Prob C §8122 under certain circumstances protects the validity of good-faith efforts to comply with the requirements of §8121, this will probably necessitate a personal appearance and/or a declaration and may create problems with local probate examiners. If there is any doubt, however, about which newspaper is most appropriate for publication, the legal assistant or secretary should bring the issue to the attorney's attention. For further discussion of publication, see §7.25.

Under the procedure for summary administration of small estates by the public administrator, there is no need for publication of notice. Prob C §§7660-7666. However, personal liability for the debts of the decedent will pass to those who take under summary administration. See California Decedent Estate Practice §§3.29-3.34 (2d ed Cal CEB 2009). See §12.13 on filing claims.

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§12.7 C. Proof of Publication

Proof of publication of the Notice of Petition to Administer Estate is required before letters may issue. Prob C §8124. Proof of publication may be made by affidavit (CCP §2010) or by declaration under penalty of perjury (CCP §2015.5). See §§7.25-7.27.

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§12.8 D. Individual Notice to Reasonably Ascertainable Creditors

The Probate Code provides that known or reasonably ascertainable creditors of the estate must be mailed or delivered notice (as provided in Prob C §1215) of administration of the estate. Prob C §9050. Notice of Administration to Creditors (Judicial Council Form DE-157) must be used. See §12.9. That notice must be given within 4 months from the date when letters or administration are first issued or within 30 days after the personal representative first has knowledge of the creditor, whichever is later. Prob C §9051. A creditor is defined as a person who may have a claim against estate property. Prob C §9000(c).

A creditor is considered "known" if the personal representative is aware that the creditor has demanded payment from the decedent or the estate. Prob C §§9050-9051. The personal representative must make reasonably diligent efforts to identify reasonably ascertainable creditors of the decedent. Prob C §9053(d); *Tulsa Prof. Collection Servs., Inc. v Pope* (1988) 485 US 478, 99 L Ed 2d 565, 108 S Ct 1340. The personal representative must notify creditors in good faith. Prob C §9053(a)-(b).

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§12.8A 1. Identifying Creditors

Some steps the representative may take to discover creditors are stated in the creditors' claim portion of the sample letter to the representative in §10.3. The representative should go through the decedent's papers and financial records and make a list of the following:

- Payees receiving multiple payments from the decedent within three years of death;
- Note payees (found by reviewing the last three tax returns for the list of interest deductions);
- Demands for payment or other reminders of an obligation within eight months before or four months after death;
- Copies of promissory notes or other documents that give rise to indebtedness;
- The hospital or care facilities, if any, where the decedent died or received treatment before death;
- All physicians or other health-care providers who treated the decedent;
- All ambulance companies used;
- The decedent's landlord (if decedent rented) or mortgage holder (if decedent owned property);
- All employees and providers of services (gardeners, cook, accountants, housekeeper, *etc.*);
- Utility companies (gas, water, electricity, telephone, cable television, *etc.*);
- Credit card companies;
- Any securities broker who may have an open margin account or other obligation due;
- Those interested in the decedent's guaranties or contingent liabilities (which may appear on any financial statements of the decedent);

EXAMPLE: Notice to borrower *A*'s lender is required when the decedent guaranteed *A*'s obligation and *A* is not in default.

- Business partners and others involved in similar ventures, such as limited liability companies;
- Creditors of the decedent's business if it appears likely that there may have been personal guaranties or if the business is not incorporated.

In addition, the legal assistant should check for judgments recorded in the county where the decedent resided and consult the court index of the county where the decedent resided or owned real property to ascertain whether the decedent is named as a defendant in any legal action pending there. Notice need not be given to creditors whose claims are "conjectural," which would probably relieve a representative from giving notice to, for example, all patients of a deceased physician or all clients of a deceased attorney, on the conjecture that a few may have potential malpractice claims. *Tulsa Prof. Collection Servs., Inc. v Pope* (1988) 485 US 478, 490, 99 L Ed 2d 565, 578, 108 S Ct 1340.

The personal representative may be held personally liable for failure to send notice to a creditor (Prob C §9053), as may the distributee under certain circumstances (Prob C §9392). Thus, when in doubt, the personal representative should send the notice. A personal representative who believes notice to a particular creditor is or may be required is not liable for giving notice even if notice is not required by the Probate Code. Prob C §9053(a). See §12.33 for discussion.

It may be important to the defense of an action by a creditor who did not receive notice to have a record of the efforts made to ascertain the identity of creditors. The legal assistant should make sure that the representative records his or her efforts, that the efforts of the attorney's office are recorded, and that the attorney's file contains such a record.

Creditors who have filed claims, or demands that are treated as formal claims, need not be sent the Notice of Administration to Creditors when certain circumstances are satisfied. Prob C §9054. See Prob C §§9001, 9050-9054; §12.14.

A creditor who has been given the notice must file a claim by the later of the end of the 4-month period or 60 days after the date the notice was given. Prob C §9100(a). Thus, if the representative learns of the debt on the last day of the regular 4-month period and does not send out the notice for 30 days, the claim itself will be timely filed if received within 90 days after the regular 4-month period. See §12.9 for a form of notice.

PRACTICE TIP: Some attorneys do not send out notice to creditors until 2 months after the date letters are issued, so creditors will have only 60 days to file a claim.

For discussion of creditor's tools when no probate proceeding is commenced, see §§12.6-12.8.

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§12.8B 2. Form: Sample Letter to Creditor

Dear _ _[*name of creditor*]_ _ :

Subject: Estate of _ _[*name of decedent*]_ _, deceased

We represent _ _[*name*]_ _, who has been appointed as the personal representative of the Estate of _ _[*name of decedent*]_ _, who died on _ _[*date*]_ _. It has come to our attention that you may have a claim against this estate.

California law requires the personal representative to notify all reasonably ascertainable creditors discovered in the course of administration of an estate. The enclosed Notice of Administration of Estate/Notice to Creditors meets this obligation. The fact that you are being sent this form does not represent any admission that you are owed any money by the Estate of _ _[*name of decedent*]_ _.

In order for your claim to be considered for payment, you must complete and submit a Creditor's Claim. A blank form of Creditor's Claim is enclosed for your convenience. Please follow carefully the Instructions to Claimant at the bottom of the Creditor's Claim form. It is your responsibility to complete and properly file the claim. This law office represents the personal representative and is unable to provide you with legal advice regarding your claim.

Very truly yours,

__[*Signature of attorney*]__
Attorney at Law

Comment: The representative or the attorney often receives bills unaccompanied by a claim. Creditors in that case are "known" creditors who should be sent the notice form in §12.9. Prob C §9050(a).

AUTHOR'S ADVICE: The representative's attorney is under no obligation to assist a creditor in filing a claim and should not do so in most circumstances. One situation in which it may be appropriate to assist a creditor in completing the claim form is when a relative or close friend of the decedent has paid for the funeral. This claim must be submitted in a timely fashion if it is to be honored. Because funeral costs are one of the highest priority obligations of the estate (Prob C §11420), however, such assistance to the relative or friend does not place general creditors at a disadvantage. The problem with helping other creditors, even a service person like a plumber who provided frequent and reasonable services to the decedent, is that it raises the question of a conflict of interest between the representation of the personal representative and the apparent representation of the creditor. It is also a mistake to advise creditors on the law. If the representative's attorney undertakes to do so and the creditor does not understand the advice, the attorney may be subject to the claim that he or she gave improper legal advice or served conflicting interests. Anyone inquiring about getting reimbursed from the estate should be told to seek their own legal counsel.

Copies: Original for filing; copy mailed to each potential creditor; office copies.

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Source: Estate Planning/California Probate Workflow Manual Revised/12 Creditors' Claims/§12.9 3. Form: Notice of Administration to Creditors (Probate) (Judicial Council Form DE-157)

§12.9 3. Form: Notice of Administration to Creditors (Probate) (Judicial Council Form DE-157)

Print

DE-157

NOTICE OF ADMINISTRATION
OF THE ESTATE OF

_____
(NAME)

DECEDENT

NOTICE TO CREDITORS

1. *(Name)*:
   (Address):

   (Telephone):
   is the **personal representative** of the **ESTATE OF** *(name)*: , who is deceased.

2. The personal representative HAS BEGUN ADMINISTRATION of the decedent's estate in the
   a. **SUPERIOR COURT OF CALIFORNIA, COUNTY OF *(specify)*:**
      STREET ADDRESS:
      MAILING ADDRESS:
      CITY AND ZIP CODE:
      BRANCH NAME:
   b. Case number *(specify)*:

3. You must FILE YOUR CLAIM with the court clerk (address in item 2a) AND mail or deliver a copy to the personal representative before the **later** of the following times as provided in Probate Code section 9100:
   a. **four months** after *(date)*: [ ], the date letters (authority to act for the estate) were first issued to the personal representative, OR
   b. **sixty days** after *(date)*: [ ], the date this notice was mailed or personally delivered to you.

4. LATE CLAIMS: If you do not file your claim before it is due, you must file a petition with the court for permission to file a late claim as provided in Probate Code section 9103.

WHERE TO GET A CREDITOR'S CLAIM FORM: If a *Creditor's Claim* (form DE-172) did not accompany this notice, you may obtain a copy from any superior court clerk or from the person who sent you this notice. A letter to the court stating your claim is *not* sufficient.

FAILURE TO FILE A CLAIM: Failure to file a claim with the court and serve a copy of the claim on the personal representative will in most instances invalidate your claim.

IF YOU MAIL YOUR CLAIM: If you use the mail to file your claim with the court, for your protection you should send your claim by certified mail, with return receipt requested. If you use the mail to serve a copy of your claim on the personal representative, you should also use certified mail.

Note: To assist the creditor and the court, please send a copy of the *Creditor's Claim* form with this notice.

(Proof of Service on reverse)

Form Approved by the Judicial Council of California
DE-157 [Rev. January 1, 1998]
Form Adopted for Mandatory Use

NOTICE OF ADMINISTRATION TO CREDITORS
(Probate)

Probate Code, §§ 9050, 9052

Print

[Optional]

PROOF OF SERVICE BY MAIL

1. I am over the age of 18 and not a party to this cause. I am a resident of or employed in the county where the mailing occurred.
2. My residence or business address is *(specify)*:

3. I served the foregoing *Notice of Administration of Creditors* ☐ and a blank *Creditor's Claim* form* on each person named below by enclosing a copy in an envelope addressed as shown below AND
   a ☐ **depositing** the sealed envelope with the United States Postal Service with the postage fully prepaid.
   b ☐ **placing** the envelope for collection and mailing on the date and at the place shown in item 4 following our ordinary business practices. I am readily familiar with the business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

4. a. Date of deposit: b. Place of deposit *(city and state)*:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME) ▶ (SIGNATURE OF DECLARANT)

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

☐ List of names and addresses continued in attachment.

** **NOTE:** To assist the creditor and the court, please send a copy of the* Creditor's Claim *(form DE-172) with the notice.*

Copies: Original for filing; copy mailed to each potential creditor; office copies.

Comment: Use of Judicial Council Form DE-157 to give specific notice to known and reasonably ascertainable creditors of the estate is mandatory. See Cal Rules of Ct 1.31.

Specific notice to creditors may be given by mail under Prob C §1215 or by personal delivery under Prob C §1216. Prob C §9050(a).

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Source: Estate Planning/California Probate Workflow Manual Revised/12 Creditors' Claims/§12.9A 4. Proof of Service of Notice of Administration

§12.9A 4. Proof of Service of Notice of Administration

For service by mail, complete the proof of service accompanying the notice of administration. Prob C §1261. Proof of personal delivery may be made by affidavit. Prob C §1264. The personal representative should calendar deadlines for giving notice and carefully document service dates.

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V. FILING OF CLAIMS BY CREDITOR

§12.9B A. Types of Claims Required to Be Filed and Served

A person who may have a claim against estate property is a creditor. Prob C §9000(c). Creditors must file their claims as provided in Division 7, Part 4, of the Probate Code (Prob C §§9000-9399). Claims that must be filed under Prob C §9100 include demands for payment of any of the following, "whether due, not due, accrued or not accrued, or contingent, and whether liquidated or unliquidated" (Prob C §9000(a)):

- Claims arising out of or contingent on contract. Prob C §9000(a)(1). See California Decedent Estate Practice §§14.30-14.51 (2d ed Cal CEB 2009) on premature or contingent claims.
- Tort claims for personal injury, wrongful death, injury to property, including claims of fraud, waste, destruction, or conversion of property. Prob C §9000(a)(1).
- Taxes incurred before the decedent's death, whether assessed before or after the decedent's death, other than property taxes and assessments secured by a lien. Prob C §9000(a)(2). But see §§12.10-12.11.
- Funeral expenses. Prob C §9000(a)(3).
- Secured claims, unless all recourse beyond the security is waived. Prob C §9391. See Decedent Estate Prac §§14.34, 14.68.
- Unmatured or contingent claims. See Prob C §9151(a)(3) (unmatured or contingent claims must be supported by affidavit showing the facts supporting the claim). See Decedent Estate Prac §§14.30-14.35.

A claim is invalid if it is not filed with the court and served on the personal representative. Prob C §9150(d). Money judgments entered against the decedent must be filed and served like any other claim. Prob C §9300(b). See also Prob C §9301. For discussion of claims based on promises of the decedent, see Decedent Estate Prac §14.42.

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§12.10 B. Claims for Which No Creditor Claim Need Be Filed

A claim does not need to be filed for the following claims under certain circumstances (although there may be advantages to the creditor in filing a claim):

- Secured claims, if all recourse beyond the security is waived (Prob C §9391; see California Decedent Estate Practice §14.34 (2d ed Cal CEB 2009));
- Demands for specific property (Prob C §9000(b));
- Claims for temporary spousal support;

PRACTICE TIP: To be safe, claims for temporary spousal support should be filed.

- Claims based on judgment against the estate or representative, including those in actions commenced against the decedent;
- Claims of the United States based on statutory liability (such as claims for taxes; see Decedent Estate Prac §29.27);
- Claims protected by liability insurance as long as the creditor limits the amount of recovery to the insurance coverage (Prob C §§550-554, 9390). However, claims need to be filed by the plaintiff for amounts not covered by insurance (Prob C §§550-555, 9370, 9390; see Decedent Estate Prac §14.24), and an insurer seeking reimbursement for liability of the decedent must file a claim (Prob C §9390(c));
- Claims that do not involve a demand for payment;
- Claims of entitlement to distribution; and
- Claims arising after death (except for claims for funeral expenses; see Decedent Estate Prac §§14.25-14.27).

See generally Decedent Estate Prac, chap 14.

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§12.11 C. Claims of California and Its Subdivisions

Public entities must file claims under the same rules applicable to other creditors, except as otherwise provided by statute. Prob C §9200. When certain state agencies have claims against the estate, statutes provide that their claims are not barred until the agencies are notified of the administration of the estate. See §12.12 for a suggested form of notice. Those agencies must file a claim within 4 months after the date the notice is mailed unless some other time is provided under Prob C §9201. The specific claims for which the special notices must be sent to those agencies are enumerated in Prob C §9201 and California Decedent Estate Practice §§25.41, 31.25-31.26 (2d ed Cal CEB 2009).

Those agencies are the State Board of Equalization (various taxes), the Employment Development Department (notice must be sent within 30 days after letters are issued if the decedent was an "employing unit"), the Department of Mental Health (claims for care of the decedent or family), the Franchise Tax Board (personal income tax) (see §12.11C), the Department of Health Care Services (Medi-Cal) (see §12.11A), and the California Victim Compensation and Government Claims Board (see §12.11B).

To avoid delay in the estate administration, it is advisable to send the notice to any of those agencies if it is suspected that they may have a claim. For example, if the decedent was a retailer, or engaged in any business or enterprise in which taxes may have been assessed by the State Board of Equalization, that agency should be sent the notice.

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§12.11A 1. Notice to Director of Health Care Services (Prob C §9202(a))

If the personal representative knows or has reason to believe that the decedent or the decedent's predeceased spouse received Medi-Cal or certain other specified state health benefits, the representative or the estate attorney must send notice of administration of the estate, with a copy of the decedent's death certificate attached (Prob C §215; 22 Cal Code Regs §50962(b)), to the Director of Health Care Services within 90 days after letters are issued. Prob C §9202(a). The Director then has 4 months to file a claim. Prob C §9202(a). Generally, it is easier to always send notice to the Department of Health Care Services (DHCS) than to determine whether benefits were paid, unless you are certain that the decedent was either well off or well insured.

NOTE: It is not clear from the statutes or regulations whether the Prob C §9202(a) notice provision applicable to formal administration supersedes the general requirement in Prob C §215, applicable to all estates, that notice of death be sent to DHCS within 90 days after the date of death. However, DHCS staff have reported that they want only one notice, so presumably the notice of administration under §9202(a) will suffice, even though it is usually given later than the §215 deadline.

The date of notice to the Director of DHCS is deemed to be the date the notice is postmarked; or in the absence of a postmark, the date stamp posted by the Department on receipt of the notice; or, in the absence of a date stamp, the date on the original proof of mailing that references the decedent's name, from the person or entity giving notice to the DHCS. 22 Cal Code Regs §50962(b).

NOTE: It is important to get proof of mailing that references the decedent's name rather than rely on the Department date stamping the notice on its receipt. See *Shewry v Wooten* (2009) 172 CA4th 741, 91 CR3d 199.

The general 3-year statute of limitations under CCP §338(a) (not the 1-year period under CCP §366.2) applies to an action based on the statutory liability for public medical benefits based on Medi-Cal support. The 3-year period does not begin to run until the notice required under Prob C §215 is sent to the Director of Health Care Services, and the equitable defense of laches is not available to the party liable for reimbursement of Medi-Cal payments. Furthermore, DHCS is entitled to recover pre-judgment interest. *Shewry v Begil* (2005) 128 CA4th 639, 27 CR3d 209.

There is an exception to recovery for Medi-Cal payments if the beneficiary's estate (here, the remaining assets of a special-needs trust) passes to an adult disabled child. *Shewry v Arnold* (2004) 125 CA4th 186, 22 CR3d 488. Nevertheless, it would be prudent to send the notice of the beneficiary's death to the Director of Health Care Services, with information on the new special-needs trust or other provision for the adult disabled child, so the 3-year period will begin to run. For discussion of Medi-Cal recovery from the estate, see California Elder Law Resources, Benefits, and Planning: An Advocate's Guide, chap 12 (Cal CEB 2003).

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§12.11B 2. Notice to Director of California Victim Compensation and Government Claims Board (Prob C §9202(b))

The general personal representative or estate attorney must notify the Director of the California Victim Compensation and Government Claims Board (http://www.boc.ca.gov) of the decedent's death if the representative or attorney knows or has reason to believe that an heir is confined in a prison or facility under the jurisdiction of the California Department of Corrections and Rehabilitation or the California Department of the Youth Authority or is confined in any county or city jail, road camp, industrial farm, or other local correctional facility. Notice of the decedent's death must be sent within 90 days after letters are issued. Prob C §9202(b). The Director then has 4 months in which to pursue collection of any outstanding restitution fines or orders.

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Source: Estate Planning/California Probate Workflow Manual Revised/12 Creditors' Claims/§12.11C 3. Notice to Franchise Tax Board (Prob C §9202(c))

§12.11C 3. Notice to Franchise Tax Board (Prob C §9202(c))

The general personal representative or estate attorney must notify the Franchise Tax Board (FTB) of the administration of the estate within 90 days after the date letters are issued. Prob C §9202(c). To provide notice, a copy of the letters of administration should be mailed to the Franchise Tax Board, P.O. Box 2952, MS A-454, Sacramento, CA 95812-9974, or faxed to the FTB Decedent Team at (916) 845-0479. The FTB has 18 months to mail notices proposing to assess any tax or to commence any court proceeding without assessment to collect the tax. Rev & T C §19517.

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Source: Estate Planning/California Probate Workflow Manual Revised/12 Creditors' Claims/§12.12 4. Form: Notice to State Agencies of Administration of Estate

§12.12 4. Form: Notice to State Agencies of Administration of Estate

NOTICE TO _ _[*NAME OF AGENCY*]_ _ TO FILE CLAIM

To: _ _[*Name of agency*]_ _

NOTICE IS HEREBY GIVEN that the above-named decedent died on _ _[*date*]_ _, and that letters _ _[*testamentary/of administration/(etc.)*]_ _ **were issued to _ _[*name of representative*]_ _ on _ _[*date*]_ _. _ _[*A copy of the decedent's death certificate is enclosed.*]_ _** Under Probate Code §_ _[*9201/9202*]_ _**, you are requested to file any claim you may have against the decedent or the estate in the manner and within the time required by law. _ _[*Insert adequate identifying matter, such as decedent's Social Security number, the number given the decedent by the agency, decedent's business and residence addresses, and any business name used*]_ _.**

[*If applicable, add the following option*]

[*Option: Heir is in a correctional institution*]

_ _[*Name*]_ _ **is an heir of the above-named decedent and is believed to be in the custody of a prison or facility under the jurisdiction of the California Department of Corrections and Rehabilitation or the California Department of the Youth Authority or confined in a county or city jail, road camp, industrial farm, or other local correctional facility.**

[*Continue*]

Date: _ _ _ _ _ _ __[*Signature*]__
_ _[*Executor/Administrator/(etc.)*]_ _
of the estate of _ _[*name of decedent*]_ _

Copies: Original to be signed by representative for service on agency, one copy to which proof of service is to be attached; office copies.

Comment: This form may be used for those agencies described in §§12.11-12.11B that must be sent a notice. The notice should contain the attorney's name, address, and telephone number, and the court name, title of the action, and docket number. The notice should also contain adequate identifying matter, such as decedent's Social Security number (which will also be on the death certificate), the number given decedent by the agency, the decedent's business and residence addresses, and any business name used. Regarding the option for heirs in a correctional institution, note that the statute does not require that the notice include the name of the penal institution, which is fortunate because inmates are frequently moved.

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§12.13 D. Period for Filing Claims

Generally, a creditor must file a claim with the court and serve a copy of the claim on the personal representative within the later of 4 months after the date that letters of administration were issued or 60 days after the date notice was given to the creditor. Prob C §9100. However, there are several exceptions to that rule, and certain types of claims need not be filed at all. See §12.10.

For those claims that must be filed by the creditor to be valid, the most important exception concerns creditors who demand payment from the estate, or otherwise become known to the personal representative, but who do not actually file creditors' claims. Those creditors must be sent an individual Notice of Administration to Creditors. Some attorneys believe that it is a good idea to send the Notice of Administration to Creditors form with a cover letter explaining that the claim cannot be paid by the estate until certain probate formalities are observed, including the filing of a creditor's claim form; other attorneys believe this is too helpful to an otherwise adverse party and that no further explanation of the form is necessary.

Other exceptions include (1) certain claims of the surviving spouse or registered domestic partner (see California Decedent Estate Practice §§4.19-4.25, 4.68-4.78 (2d ed Cal CEB 2009)); (2) claims of California and its subdivisions as enumerated in Prob C §9201 and as discussed in §§12.11-12.11B; and (3) claims that are tolled under former Prob C §21308 when a beneficiary applies to the court under former Prob C §21320 for a determination of whether the creditor's claim would be a contest under the terms of a no-contest clause in an instrument that became irrevocable before January 1, 2001 (see Prob C §21315; Decedent Estate Prac §§14.29, 26.45). For further discussion of declaratory relief petitions, see California Trust and Probate Litigation, chap 5 (Cal CEB 1999).

Probate Code §9100 does not extend the statute of limitations under CCP §366.2, nor does it extend or toll any other statute of limitations or revive any claim that is barred by any statute of limitations. Prob C §9100(a), (c). Under CCP §366.2, all actions that survive the decedent's death, whether accrued or not, must be filed within one year after the decedent's death whether or not the estate is probated. *Bradley v Breen* (1999) 73 CA4th 798, 86 CR2d 726 (cross-complaint on unaccrued cause of action for equitable indemnity barred by CCP §366.2). Accordingly, the statute of limitations may expire before the plaintiff has a cause of action.

If the action is not "on a liability of the person," CCP §366.2 does not apply. *Estate of Yool* (2007) 151 CA4th 867, 875, 60 CR3d 526 (petition to impose resulting trust on specific property alleged to be included in the decedent's estate did not state a claim on a liability of the person; CCP §343 applies). Furthermore, the limitations under §366.2 do not apply to actions under Prob C §§550-555 to determine the liability of a decedent that is covered by insurance (see Prob C §551).

The statute may be tolled for the timely filing of a creditor claim, a claim against a trust under Prob C §19000, or a Prob C §21320 (operative until January 1, 2010) (no contest clause) determination. CCP §366.2(b). The limitations periods of CCP §§366.2 may be extended if the last day of the period falls on a Sunday, holiday, or days when the court is closed all day as specified in CCP §§12-12b. CCP §§366.2(b)(1).

Unlike the provisions of CCP §366.2(b), the filing of a creditor claim does not extend the CCP §366.3 1-year limitations period on actions to enforce a decedent's promise of distribution from an estate or trust. *Stewart v Seward* (2007) 148 CA4th 1513, 56 CR3d 651. Moreover, the claimant cannot avoid CCP §366.3 by seeking damages as opposed to specific performance. 148 CA4th at 1520.

On presenting claims before appointment of a representative, or in estates subject to summary administration by a public administrator, see Decedent Estate Prac §3.24.

The representative's death, resignation, or removal does not extend the time within which claims may be filed. Prob C §9101.

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§12.14 E. Late Filing of Claims

Until the court makes an order for final distribution, the creditor or the personal representative may petition the court to allow the filing of a creditor's claim after the expiration of the 4-month deadline discussed in §12.13. Prob C §9103(a)-(b). However, the claim cannot be allowed if to do so would extend the 1-year statute of limitations under CCP §366.2. Prob C §9103(f). The creditor must show either of the following (Prob C §9103(a)):

- The personal representative failed to send the creditor proper and timely notice of the estate administration and the petition is filed within 60 days after the creditor has actual knowledge of administration of the estate; or
- The creditor had no knowledge of facts giving rise to the existence of the claim more than 30 days before the time for filing a claim provided in Prob C §9100 (4 months after letters are first issued) and the creditor's petition was filed within 60 days after the creditor had actual knowledge of facts giving rise to the existence of the claim and administration of the estate.

Notice must be given as provided by Prob C §1220 (notice by mail). Prob C §9103(e).

NOTE: Because Prob C §9100 essentially makes all claims timely unless they run up against the underlying CCP §366.2 1-year statute of limitations, it appears that situations requiring a petition under Prob C §9103 will be less common. On its face, Prob C §9100(a)(2) even allows a creditor with actual knowledge, who has not received notice of administration, to file a timely claim within 60 days after the notice is mailed or delivered without showing lack of knowledge of administration of the estate within the basic claim period, because the provision imposing this requirement (Prob C §9103(a)) applies only to late claims. However, the First District Court of Appeal, in an unpublished opinion, has followed the rationale of *Venturi v Taylor* (1995) 35 CA4th 16, 41 CR2d 272, requiring a creditor who has actual knowledge of administration to file a claim within the 4-month period, or if the time to file has expired, to petition the court for leave to file a late claim under Prob C §9103, even if formal notice has not been given. See Prob C §9103(f): "Nothing in this section authorizes allowance or approval of a claim barred by, or extends the time provided in, [CCP §]366.2."

The late claims procedure does not apply to a creditor who received a timely notice of administration and through neglect, inefficiency, or other internal errors failed to file a proper and timely claim. The courts have held that it is the creditor's duty to be diligent. See *Gertner v Superior Court* (1993) 20 CA4th 927, 25 CR2d 47.

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§12.15 F. Preparation of Claims

Claims should be made on the appropriate Judicial Council form in §12.16. Claims due when filed must be supported by an affidavit or declaration under penalty of perjury that the amount is justly due, that no payments have been made that are not credited, and that there are no offsets. Prob C §9151.

If someone other than the creditor makes the declaration or affidavit, he or she must state why the creditor is not making it. Prob C §9151.

For further discussion of the appropriate content of claims, see California Decedent Estate Practice §§14.30-14.31 (2d ed Cal CEB 2009).

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Source: Estate Planning/California Probate Workflow Manual Revised/12 Creditors' Claims/§12.16 G. Form: Creditor's Claim (Probate) (Judicial Council Form DE-172)

§12.16 G. Form: Creditor's Claim (Probate) (Judicial Council Form DE-172)

Print

DE-172

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, state bar number, and address)*: TELEPHONE AND FAX NOS.:	*FOR COURT USE ONLY*
ATTORNEY FOR *(Name)*:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
ESTATE OF *(Name)*: DECEDENT	
CREDITOR'S CLAIM	CASE NUMBER:

You must file this claim with the court clerk at the court address above before the LATER of (a) four months after the date letters (authority to act for the estate) were first issued to the personal representative, or (b) sixty days after the date the *Notice of Administration* was given to the creditor, if notice was given as provided in Probate Code section 9051. You must also mail or deliver a copy of this claim to the personal representative and his or her attorney. A proof of service is on the reverse.
WARNING: Your claim will in most instances be invalid if you do not properly complete this form, file it on time with the court, and mail or deliver a copy to the personal representative and his or her attorney.

1. Total amount of the claim: $
2. Claimant *(name)*:
   a. ☐ an individual
   b. ☐ an individual or entity doing business under the fictitious name of *(specify)*:
   c. ☐ a partnership. The person signing has authority to sign on behalf of the partnership.
   d. ☐ a corporation. The person signing has authority to sign on behalf of the corporation.
   e. ☐ other (specify):
3. Address of claimant *(specify)*:
4. Claimant is ☐ the creditor ☐ a person acting on behalf of creditor *(state reason)*:
5. ☐ Claimant is ☐ the personal representative ☐ the attorney for the personal representative.
6. I am authorized to make this claim which is just and due or may become due. All payments on or offsets to the claim have been credited. Facts supporting the claim are ☐ on reverse ☐ attached.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

. . . . . ▶ _____

(TYPE OR PRINT NAME AND TITLE) (SIGNATURE OF CLAIMANT)

INSTRUCTIONS TO CLAIMANT

A. On the reverse, itemize the claim and show the date the service was rendered or the debt incurred. Describe the item or service in detail, and indicate the amount claimed for each item. Do not include debts incurred after the date of death, except funeral claims.
B. If the claim is not due or contingent, or the amount is not yet ascertainable, state the facts supporting the claim.
C. If the claim is secured by a note or other written instrument, the original or a copy must be attached *(state why original is unavailable.)* If secured by mortgage, deed of trust, or other lien on property that is of record, it is sufficient to describe the security and refer to the date or volume and page, and county where recorded. *(See Prob. Code, § 9152.)*
D. Mail or take this original claim to the court clerk's office for filing. If mailed, use certified mail, with return receipt requested.
E. Mail or deliver a copy to the personal representative and his or her attorney. Complete the *Proof of Mailing or Personal Delivery* on the reverse.
F. The personal representative or his or her attorney will notify you when your claim is allowed or rejected.
G. Claims against the estate by the personal representative and the attorney for the personal representative must be filed within the claim period allowed in Probate Code section 9100. See the notice box above.

(Continued on reverse)

Print

ESTATE OF *(Name)*: DECEDENT	CASE NUMBER:

FACTS SUPPORTING THE CREDITOR'S CLAIM

☐ **See attachment** ***(if space is insufficient)***

Date of item	Item and supporting facts	Amount claimed
	TOTAL:	**$**

PROOF OF ☐ **MAILING** ☐ **PERSONAL DELIVERY** **TO PERSONAL REPRESENTATIVE**

(Be sure to mail or take the original to the court clerk's office for filing)

1. I am the creditor or a person acting on behalf of the creditor. At the time of mailing or delivery I was at least 18 years of age.
2. My residence or business address is *(specify)*:

3. I mailed or personally delivered a copy of this *Creditor's Claim* to the personal representative as follows *(check either a or b below):*
   a. ☐ **Mail**. I am a resident of or employed in the county where the mailing occurred.
      (1) I enclosed a copy in an envelope AND
         (a) ☐ **deposited** the sealed envelope with the United States Postal Service with the postage fully prepaid.
         (b) ☐ **placed** the envelope for collection and mailing on the date and at the place shown in items below following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
      (2) The envelope was addressed and mailed first-class as follows:
         (a) Name of personal representative served:
         (b) Address on envelope:
         (c) Date of mailing:
         (d) Place of mailing *(city and state)*:
   b. ☐ **Personal delivery**. I personally delivered a copy of the claim to the personal representative as follows:
      (1) Name of personal representative served:
      (2) Address where delivered:
      (3) Date delivered:
      (4) Time delivered:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

▶ _____

(TYPE OR PRINT NAME OF CLAIMANT) (SIGNATURE OF CLAIMANT)

Comment: The claim must be signed by an individual. If the creditor is a partnership or a corporation, the appropriate box should be checked. The box in the upper left-hand corner, designated for the attorney's name and address, is for the attorney for the creditor (or for the name of the creditor if he or she does not have an attorney), not for the estate.

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§12.17 H. Filing of Claims With Clerk and Representative

The creditor must file the claim with the court and *serve* a copy on the representative. Prob C §9150(b). The claim is invalid if it is not (1) filed with the court and (2) served on the representative. Prob C §9150(d).

AUTHOR'S ADVICE: Before January 1, 1997, Prob C §9150 required only that creditors *mail* a copy of the claim to the personal representative; failure to do so did not invalidate a properly filed claim, but any loss due to the failure was borne by the creditor. The amended statute substituted service for mailing without defining "served" or "service." Although the statutory form of notice in Prob C §9052 equates service with "mail or delivery," a major creditor may want to obtain an acknowledgment of service or use a process server.

If the creditor mails the claim to the representative but does not file it with the court, the claim is not considered to have been filed. Such a claim should generally be treated as a demand by the creditor for payment; a Notice of Administration to Creditors form (reprinted in §12.9), together with the submitted claim form, should be sent back to the creditor. Some attorneys believe that it is appropriate to circle that part of the notice form that states that a creditor's claim must be filed with the court. Other attorneys believe that, because creditors' interests are adverse to those of the estate, it is improper to help them further than absolutely required by law. Note that the representative may treat a claim that is mailed to the representative but not filed with the court as properly filed if the debt was due, the amount paid was the true amount due, the estate is solvent, and payment by the representative is in good faith. Prob C §9154.

To avoid any dispute about whether the claim was received by the representative, the creditor should obtain an acknowledgment of receipt on a copy of the claim.

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Source: Estate Planning/California Probate Workflow Manual Revised/12 Creditors' Claims/§12.17A I. Acting Under Independent Administration of Estates Act (IAEA)

§12.17A I. Acting Under Independent Administration of Estates Act (IAEA)

A representative who has authority to act under the Independent Administration of Estates Act (IAEA) (Prob C §§10400-10592) may (Prob C §10552):

- Allow, pay, reject, or contest any claims by or against the estate;
- Compromise or settle a claim, action, or proceeding by or against the estate;
- Release claims to the extent they are uncollectible; and
- Allow a late claim to be filed; all without court supervision and without giving notice of proposed action.

PRACTICE TIP: It is a good idea to use a notice of proposed action to propose acceptance or rejection of any claim that seems "out of the ordinary." Frequently, when the notice procedure is used to propose the rejection of claims that are procedurally defective, commercial creditors will simply ignore the notice and a subsequent rejection.

Except for claims of the personal representative or the attorney, if the personal representative has IAEA authority, the court must not act on the allowance or rejection of a claim unless good cause is shown. Prob C §§9252, 10552; Cal Rules of Ct 7.402.

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VI. OFFICE PROCEDURES FOR HANDLING CLAIMS

§12.18 A. When Claim Is Defective

The legal assistant should review all claims to make sure that they contain no defects. The claimant should be informed in writing if his or her claim is defective in any way, or is valid on its face but requires further substantiation. See Prob C §§9151-9152. The defect may require return of the claim form (*e.g.,* failure to sign the form). If the defect is insubstantial, a representative may choose to waive form defects. Prob C §9154. It is important, however, to be consistent when doing so. Many large creditors are careless in postmortem collection, sending routine past-due notices to the former home even when notified of an attorney's address as the proper mailing address. Some out-of-state collection agencies will not provide itemized billings but merely an "affidavit of just debt" or even less.

If the representative has independent powers under the IAEA, the notice of proposed action procedure can be used to inform beneficiaries and creditors, proposing rejection of claims that are defective. See §§9.12, 9.16. Many creditors will ignore such a notice and will not object; this improves the estate's position if it decides to reject a defective claim. Otherwise, if the representative elects not to waive a defect, the letter in §12.18A could be sent to the creditor (and if sent, should be revised to reflect the particular problem that the representative would like addressed). Some attorneys believe that, because creditors' interests are adverse to those of the estate, however, it is improper to help them further than absolutely required by law.

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Source: Estate Planning/California Probate Workflow Manual Revised/12 Creditors' Claims/§12.18A B. Form: Sample Letter When Claim Is Defective

§12.18A B. Form: Sample Letter When Claim Is Defective

Dear _ _ _ _ _ _,

We received a copy of your creditor's claim in the estate of _ _ _ _ _ _, on _ _[*date*]_ _. As provided in Probate Code §9151 applicable to the estate of the decedent, claims due when filed must be supported by an affidavit or declaration under penalty of perjury that the amount is justly due, that no payments have been made that are not credited, and that there are no offsets. If the amount of the claim is contingent, or if the amount is not yet ascertainable, state facts supporting the claim. If your declaration or affidavit is made by someone other than the creditor, it must state the reason.

[*Indicate particular correction or supplemental material needed*]

If your claim is based on a written instrument other than a mortgage, deed of trust, or other lien recorded in the county recorder's office, then you must attach the original or a copy of that instrument with any endorsements to the claim. If the instrument is a mortgage, deed of trust, or other lien recorded in the county recorder's office, then it is sufficient to describe it and refer to the date and volume and page or instrument number of its record. _ _[*Please attach to the affidavit or declaration any vouchers or other proof you have of the validity of your claim*]_ _.

Send us your affidavit or declaration at your earliest convenience, so that we may act on your claim.

If you choose to use a declaration, we suggest that you state the facts as described above and end your declaration with the following words just above the date and your signature: "This declaration is made under penalty of perjury under the laws of the State of California." This statement will satisfy the requirements of California law for a valid declaration.

Very truly yours,

__[*Signature*]__
_ _[*Typed name*]_ _

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§12.19 C. Allowance, Endorsement, and Approval

The procedure for approving claims depends on whether the personal representative is authorized to act under the Independent Administration of Estates Act (IAEA) (Prob C §§10400-10592). If the representative is authorized to act under the IAEA, no court approval is needed (unless the representative or his or her attorney is the creditor, or the representative requests such an approval). Court approval is otherwise required.

When court approval is required, the representative allows a claim by completing and signing the Judicial Council form, Allowance or Rejection of Creditor's Claim, reprinted in §12.20. The form (with proof of service and a copy of the creditor's claim attached) is then filed with the clerk who presents it to the judge for approval or rejection. Cal Rules of Ct 7.401. The judge (or probate commissioner) then endorses on the claim his or her approval or rejection, and the date, and the clerk files the allowance form. Prob C §9251(b). The court does not take any action on claims rejected by the representative.

If the claim is made by the personal representative or by the representative's attorney, it must be presented to the court for allowance or rejection, and the court may require the creditor to file a petition and give notice of hearing. Prob C §9252; Cal Rules of Ct 7.401. If the claim is approved, it is included with other established claims to be paid in the course of administration (Prob C §9252(b)). If the claim is rejected, the representative or attorney may bring an action against the estate (Prob C §9252(c)); however, the order rejecting a personal representative's creditor claim is not appealable (Prob C §1300). *McDonald v Structured Asset Sales, LLC* (2007) 154 CA4th 1068, 65 CR3d 366.

A judge is automatically disqualified from approving his or her own claim. See Prob C §7060; California Decedent Estate Practice §14.36 (2d ed Cal CEB 2009).

If the representative is acting under the IAEA, the representative should still complete and sign the Judicial Council form. Local rules should be consulted for procedures in the particular court. Some courts require that the form be filed with the court but will not act on the claims unless they are claims of the personal representative or the personal representative's attorney. See, *e.g.,* Orange Ct R 605.03.

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Source: Estate Planning/California Probate Workflow Manual Revised/12 Creditors' Claims/§12.20 D. Form: Allowance or Rejection of Creditor's Claim (Probate) (Judicial Council Form DE-174)

§12.20 D. Form: Allowance or Rejection of Creditor's Claim (Probate) (Judicial Council Form DE-174)

INSTRUCTIONS: This form is used to indicate the personal representative's allowance or rejection of a creditor's claim. When the representative has decided to allow or reject a claim, all the items should be filled in, and the representative should sign the form. Either item 8 or item 9 should be checked, as appropriate. In certain situations, the representative may allow the claim in part and reject it in part; if so, both items 8 and 9 should be completed and the representative and law office must comply with the further procedural requirements for both allowance and rejection. Item 4 should indicate the date the Notice of Administration to Creditors (see §12.9) was served on this particular creditor, or marked "not applicable" if the claim was filed without prior notice.

Whether the claim is allowed and approved, or rejected, the creditor and the creditor's attorney must be given notice. Cal Rules of Ct 7.401. Notice can consist of a copy of this form, filled-in, mailed as required under Prob C §1215 or personally delivered. Prob C §9250. A copy of the creditor's claim must be attached to the form, which is then filed with the clerk as described in §12.19.

An action on a rejected claim must be filed within 90 days after the notice of rejection, if the claim is due when notice is given, or 90 days after the claim becomes due, if the claim is not due when notice is given. Prob C §9353(a). For further discussion of actions on rejected claims, see California Decedent Estate Practice, chap 14 (2d ed Cal CEB 2009).

Copies: Original for filing; one to be mailed to creditor; office copies.

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address)*:	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(Optional)*: E-MAIL ADDRESS *(Optional)*: ATTORNEY FOR *(Name)*:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
ESTATE OF *(Name)*: DECEDENT	
ALLOWANCE OR REJECTION OF CREDITOR'S CLAIM	CASE NUMBER:

NOTE TO PERSONAL REPRESENTATIVE

Attach a copy of the creditor's claim to this form. If approval or rejection by the court is not required, do not include any pages attached to the creditor's claim.

PERSONAL REPRESENTATIVE'S ALLOWANCE OR REJECTION

1. Name of creditor *(specify)*:
2. The claim was filed on *(date)*:
3. Date of first issuance of letters:
4. Date of *Notice of Administration*:
5. Date of decedent's death:
6. Estimated value of estate: $
7. Total amount of the claim: $
8. ☐ Claim is allowed for: $ *(The court must approve certain claims before they are paid.)*
9. ☐ Claim is rejected for: $ *(A creditor has 90 days to act on a rejected claim.* See box below.)*
10. Notice of allowance or rejection given on *(date)*:
11. ☐ The personal representative is authorized to administer the estate under the Independent Administration of Estates Act.

Date:

(TYPE OR PRINT NAME OF PERSONAL REPRESENTATIVE) ▶ (SIGNATURE OF PERSONAL REPRESENTATIVE)

NOTICE TO CREDITOR ON REJECTED CLAIM

From the date that notice of rejection is given, you must act on the rejected claim (e.g., file a lawsuit) as follows:

1. **Claim due:** within 90 days* after the notice of rejection.
2. **Claim not due:** within 90 days* after the claim becomes due.

* **The 90-day period mentioned above may not apply to your claim because some claims are not treated as creditors' claims or are subject to special statutes of limitations, or for other legal reasons. You should consult with an attorney if you have any questions about or are unsure of your rights and obligations concerning your claim.**

COURT'S APPROVAL OR REJECTION

12. ☐ Approved for: $
13. ☐ Rejected for: $

Date:

SIGNATURE OF JUDICIAL OFFICER

14. Number of pages attached: _____ ☐ SIGNATURE FOLLOWS LAST ATTACHMENT

(Proof of Mailing or Personal Delivery on reverse)

Form Adopted for Mandatory Use
Judicial Council of California
DE-174 [Rev. January 1, 2009]

ALLOWANCE OR REJECTION OF CREDITOR'S CLAIM
(Probate—Decedents' Estates)

CEB

Probate Code § 9000 et seq., 9250–9256, 9353
www.courtinfo.ca.gov

Print

ESTATE OF *(Name):* DECEDENT	CASE NUMBER:

PROOF OF ☐ MAILING ☐ PERSONAL DELIVERY TO CREDITOR

1. At the time of mailing or personal delivery I was at least 18 years of age and **not a party** to this proceeding.
2. My residence or business address is *(specify):*

3. I mailed or personally delivered a copy of the *Allowance or Rejection of Creditor's Claim* as follows *(complete either a or b)*:

   a. ☐ **Mail.** I am a resident of or employed in the county where the mailing occurred.
      (1) I enclosed a copy in an envelope AND
         (a) ☐ **deposited** the sealed envelope with the United States Postal Service with the postage fully prepaid.
         (b) ☐ **placed** the envelope for collection and mailing on the date and at the place shown in items below following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
      (2) The envelope was addressed and mailed first-class as follows:
         (a) Name of creditor served:
         (b) Address on envelope:
         (c) Date of mailing:
         (d) Place of mailing *(city and state):*

   b. ☐ **Personal delivery.** I personally delivered a copy to the creditor as follows:
      (1) Name of creditor served:
      (2) Address where delivered:
      (3) Date delivered:
      (4) Time delivered:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME OF DECLARANT)

▶ (SIGNATURE OF DECLARANT)

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Source: Estate Planning/California Probate Workflow Manual Revised/12 Creditors' Claims/§12.21 E. Form: Letter to Clerk on Filing the Allowance

§12.21 E. Form: Letter to Clerk on Filing the Allowance

INSTRUCTIONS: The following letter may be used to transmit to the clerk notice that a claim has been approved.

Copies: Original to clerk; office copies.

_ _[*date*]_ _
Estate of _ _ _ _ _ _ _ _
Proceeding No. _ _ _ _ _

To: Clerk of _ _ _ _ _ _ County

Please present to the court the enclosed Judicial Council form(s) for Allowance or Rejection of Creditor's Claim with attached copy(ies) of the creditor's claim(s).

After approval by the court, please endorse your filing marks on the copies of the enclosed forms and return them to me in the enclosed envelope. The enclosed form(s) allow(s) the claims filed by the following creditors):

Name of Creditor	**Amount**
_ _	**$ _ _ _ _ _ _ _**
_ _	**$ _ _ _ _ _ _ _**
_ _	**$ _ _ _ _ _ _ _**

Please address all communications concerning this matter to the attention of the undersigned.

__[*Signature of attorney or legal assistant*]__
_ _[*Typed name*]_ _

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F. Rejecting Claims

§12.22 1. Express Rejection

When a claim is rejected by the representative, Judicial Council Form DE-174 (Allowance or Rejection of Creditor's Claim), reprinted in §12.20 should be used. See the instructions in that section on use of the form. If the claim is a large one, or if it is difficult to express the rejection in the space provided on the Judicial Council form, additional information can be added as an attachment to the form. A completed copy must be served on the creditor and the creditor's attorney, and the information provided by that form fulfills the statutory notice requirements. The original, together with proof of service, must be filed with the court. Cal Rules of Ct 7.401.

For further discussion, see California Decedent Estate Practice §§14.54-14.56 (2d ed Cal CEB 2009).

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§12.23 2. Service and Proof of Notice of Rejection

The notice of rejection must be served on the creditor and the creditor's attorney as provided in Prob C §§1200-1265. Prob C §9250; Cal Rules of Ct 7.401. The Judicial Council form, Allowance or Rejection of Creditor's Claim, incorporates a proof of service. See California Decedent Estate Practice §14.58 (2d ed Cal CEB 2009).

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§12.24 3. Failure to Act as Rejection

Under Prob C §9256, a creditor may consider his or her claim rejected if it is not acted on by the representative or judge within 30 days after the date it was filed. See California Decedent Estate Practice §§14.71-14.72 (2d ed Cal CEB 2009). This option is given so that a creditor can file suit without further delay. Note that Prob C §9352 tolls the statute of limitations until the claim is allowed or rejected.

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§12.25 VII. SPECIAL PROBLEMS OF CREDITORS' CLAIMS AFTER *TULSA V POPE* [Deleted]

This section has been deleted because of the 1996 amendment of Prob C §9050.

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§12.26 VIII. COMPROMISE OF CLAIMS

During administration, it is frequently in the best interests of the estate to compromise or settle claims by or against the estate. Once the attorney and the representative have negotiated a compromise, the representative petitions the court for approval of the compromise. A representative with authority under the Independent Administration of Estates Act may compromise a claim without obtaining the court's approval, and other representatives are entitled to compromise certain claims without prior approval, but prudent counsel generally petition for approval in any event, unless the amount of the claim is very small. For a detailed discussion of compromise of claims, see California Decedent Estate Practice, chap 20 (2d ed Cal CEB 2009).

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§12.27 IX. SUMMARY DETERMINATION OF CONTROVERSY ON CLAIM

Under Prob C §9620, the representative and the creditor may, by written agreement, resolve the validity of the claim in a summary procedure, even if the representative has rejected the claim. The matter is heard by a temporary judge designated in the agreement, or the judge sitting in probate may consent to hear the matter. See California Decedent Estate Practice §14.60 (2d ed Cal CEB 2009).

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§12.28 X. SUIT ON CLAIMS

For discussion of and forms for bringing suit on rejected claims, and for responding to suit against the estate, see California Decedent Estate Practice §§14.71-14.89 (2d ed Cal CEB 2009).

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XI. PAYMENT OF CLAIMS

§12.29 A. Order of Priority and Payment

Because the estate may not have enough assets to pay all the allowed and approved creditor's claims, the Probate Code specifies which claims must be given priority. As a separate matter, the code also requires that some debts and expenses be paid as soon as the representative has sufficient funds. Some lower priority debts may be paid before higher priority debts, as long as sufficient funds are first set aside for the eventual payment of the higher priority debts. Only after all higher priority debts have been paid or provided for may lower priority debts be paid.

Representatives who have been granted authority to administer the estate under the Independent Administration of Estates Act (IAEA) may allow and pay claims without court approval. See §12.17A. Other representatives must first obtain court approval. Those representatives operating with independent powers must be informed of the priorities and must understand that debts may not necessarily be paid immediately, even if the representative knows that the claim is valid.

Except for those debts that must be paid as soon as there are sufficient funds (see below), strict compliance with the Probate Code would require that no debts be paid until the period for filing creditors' claims has expired. As a practical matter, small debts are often paid before all higher priority debts are paid in solvent estates. Should the estate prove unable to pay all debts, however, the representative could be surcharged for debts paid to lower priority creditors. The legal assistant should consult with the attorney before assisting the representative in paying any debt of lower priority than another unpaid obligation. See Prob C §§11420-11421.

Debts owed to the United States or to California that have preference under federal or California laws are entitled to the priority required by those laws. See California Decedent Estate Practice, chap 14 (2d ed Cal CEB 2009). Generally, both jurisdictions recognize and allow the priorities of expenses of administration and funeral expenses. The IRS treats what it calls a "widow's allowance" (the same as a family allowance under Prob C §§6540-6545) as a cost of administration that is given priority ahead of tax liens. Claims of the State of California are given varying priorities, *e.g.,* sales and use tax (Rev & T C §6756), and personal income tax (Rev & T C §19253) claims must be satisfied first, but funeral expenses (Prob C §11420(a)(4)) have a higher priority than Medi-Cal recovery claims unless the Medi-Cal claim is for expenses of a last illness (Prob C §11420(a)(3)). For Medi-Cal estate recovery, see California Elder Law Resources, Benefits, and Planning: An Advocate's Guide, chap 12 (Cal CEB 2003).

The following are the priorities for payment of debts set by Prob C §11420:

(1) Administration expenses (however for obligations secured by a mortgage, deed of trust, or other lien, only administration expenses reasonably related to administration of the secured property are given priority over those obligations);

(2) Obligations secured by a mortgage, deed of trust, or other lien (including a judgment lien) to the extent that the amount of the lien may be paid out of the proceeds of the property subject to the lien;

(3) Funeral expenses;

(4) Last-illness expenses;

(5) Family allowance;

(6) Wage claims; and

(7) All other obligations.

The following debts (for which creditor's claims have first been filed) must be paid as soon as the representative has sufficient funds: funeral expenses, last-illness expenses, family allowance, and wage claims (in that order of priority). Sufficient funds must, however, first be retained to pay anticipated estate administration expenses and debts to the United States or California that have preference under federal or state law. Prob C §11421. See Decedent Estate Prac §14.66.

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§12.30 B. Payment of Allowed Claims

Claims may be contested at any time before settlement of the account in which they are first reported. Prob C §9254. Until the time for filing claims has expired, the account has been settled, and the appeal period has run on the order settling the account and ordering payment of claims (usually 60 days after the order), the representative should be very cautious about paying out claims whether or not independent powers of administration have been granted.

The representative runs a double risk: (1) The estate may not be solvent, and (2) the claim may be objected to by an interested person when the account is filed. Once the period for submitting claims has expired, the first risk is relatively easy to assess (see California Decedent Estate Practice §14.62 (2d ed Cal CEB 2009) for payment of claims in an insolvent estate), but the second may continue to exist. The representative also has a duty under Prob C §11421 to pay debts for funeral expenses, last-illness expenses, family allowance, and wage claims as soon as possible; this duty may conflict with the duty to wait. Most representatives prefer to pay the funeral expenses as soon as possible, and the other claims of solvent estates as soon as the claims period has run.

See Decedent Estate Prac §§14.69-14.70 for further discussion of the dangers of payment of claims before these periods have run.

When an allowed claim is paid in full, the creditor should be asked to withdraw any request for special notice filed. See §5.27 for form.

Providers of medical services often do not know how much of their charges will be satisfied by direct payments to them, particularly Medicare payments, before the time for filing claims expires. Consequently, they will frequently submit claims for all their charges, and they rarely amend those claims after they have received payment from third parties. Before paying such claims, the representative should be certain that no further payments will be made to the provider and ascertain the balance owed. It is not necessary to insist on an amended claim, but receipts showing the amounts actually paid should be obtained from the provider, along with a letter from the provider withdrawing their claim as to the balance.

For discussion of rules on payment of claims that are contingent, disputed, or not yet due, see Decedent Estate Prac §§14.62-14.66. See Decedent Estate Prac, chap 14 also for other rules on payment.

Interest is payable on some claims, if specified by statute or in a written contract. Interest payable under a written contract may be paid under order of the court before the claim is paid. Otherwise, interest is payable at 10 percent per year, beginning with the date the court orders payment. Prob C §11423. See Decedent Estate Prac, chap 24 for further discussion of interest payments. Note that funeral expenses bear interest 60 days after the date of death. That fact, together with the high priority of claims for funeral expenses, means that these claims are usually paid within that period. Health & S C §7101.

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§12.31 XII. ALLOCATION OF DEBTS BETWEEN ESTATE AND SURVIVING SPOUSE OR REGISTERED DOMESTIC PARTNER

The debts of a decedent and his or her surviving spouse are often interrelated. Debts incurred before the death of a married person are subject to allocation during estate administration under Prob C §11444. The only significant deviation from the rules is found in Prob C §11446, which allocates sole liability for funeral expenses and last-illness expenses to the estate.

NOTE: Debt allocation may apply to estates of decedents with surviving registered domestic partners. See Fam C §297.5(c). Family Code §299 implies that a surviving registered domestic partner may be liable to the extent of community property of the partners if the domestic partnership was not terminated or dissolved during the lifetimes of both partners. (See warning letter prescribed by Fam C §299.3.) Further, Fam C §297.5(c) provides that registered domestic partners shall have the same rights, protections, and benefits and be subject to the same responsibilities, obligations, and duties as surviving spouses. However, Prob C §§13502 and 13553, which provide for the election of the surviving spouse to avoid liability for the debts of the deceased spouse by administering both halves of community property, does not expressly include registered domestic partners. Only time and published court decisions will develop the law regarding the liability of surviving registered domestic partners. Court challenges to the status of domestic partnerships and potential initiatives or federal legislation (including an amendment to the United States Constitution) are also potential variables in determining the final status of debts passing to a surviving domestic partner.

The allocation of marital debts will be affected by how much property is subject to estate administration. If a spousal set-aside petition has been granted, there may be a limited amount of estate assets available to satisfy debts, and the surviving spouse is liable under Prob C §§13550-13554. But if an election has been made to subject both halves of the community property to estate administration, it may be that the debts will be allocated entirely to the estate. Take care to look at the facts and circumstances of each particular estate. It is important to distinguish between creditors' rights and the rights of spouses to fix between themselves the responsibility for paying debts. Although a creditor may have access to the community property and the separate property of the contracting spouse, spouses may have the right to have that liability apportioned over the remaining community and separate property assets.

Under Prob C §§13550-13554, the surviving spouse is personally liable for other debts of the decedent unless both halves of the community and quasi-community property, as well as the separate property that passes to the surviving spouse, are subjected to administration. However, the surviving spouse's liability is limited to the net value, at the date of death, of the survivor's interest in the community and quasi-community property plus the decedent's interest in all property (community, quasi-community, and separate) that passes to the survivor without administration. Prob C §13551. The decedent's debts may be enforced against the surviving spouse in the same manner that they could have been enforced against the decedent if he or she had not died. Prob C §13554. The CCP §366.2 1-year statute of limitations applies to actions against the surviving spouse. Prob C §13554(c); Fam C §914(c)(1) (necessaries of life); *Collection Bureau v Rumsey* (2000) 24 C4th 301, 99 CR2d 792 (CCP §366.2 applies to any action on debt of decedent regardless of whom action brought against, including surviving spouse; court rejected contention that four-year statute of limitations for debts on open book account applied because surviving spouse was personally liable for decedent's necessaries of life under Fam C §914). If the surviving spouse had actual knowledge of a debt for the decedent's necessaries of life before the CCP §366.2 1-year period expires and the personal representative does not give the creditor timely written notice of the probate administration, the limitations period of either CCP §337 (four years for written contract) or §339 (two years for oral contract) applies. Fam C §914(c)(2).

A procedure for allocating debts between the estate and the surviving spouse is set forth in Prob C §§11440-11446. If family relationships are harmonious, the most common course of action is for the allocation to be made by agreement and the agreement's allocation to be approved by the court when the estate's accounts are settled. However, if the personal representative and the surviving spouse cannot reach an agreement or if the representative believes that an interested person may challenge the agreement, the representative should file a petition for allocation under Prob C §11441.

Each debt subject to allocation must first be characterized as separate or community under the laws that apply to marital dissolution proceedings. Prob C §11444. Debts incurred before marriage are separate debts (see Fam C §2621); generally, debts incurred after marriage but before the date of separation are divided as community debts (see Fam C §2622). A debt incurred during this period for other than the benefit of the community, however, is separate debt. See Fam C §2625; *Marriage of Cairo* (1988) 204 CA3d 1255, 1267, 251 CR 731 (decided under former CC §4800(d); gambling debts incurred on credit cards in husband's name alone were separate debt). See Fam C §§1000, 2550-2552, 2620-2627. For discussion of the statutory scheme for characterizing debts in marital dissolution proceedings, see Practice Under the California Family Code: Dissolution, Legal Separation, Nullity §§5.76-5.84 (Cal

CEB Annual). Debt allocation may apply to estates of decedents with surviving registered domestic partners. See Fam C §297.5(c).

Debts are then allocated as follows (for §11444 allocation chart, see §12.32):

- Separate debts are allocated to that spouse's separate property assets (Prob C §11444(b)(1));
- Community debts are allocated to the spouses' community property assets (Prob C §11444(b)(1));
- If a separate property asset is subject to that spouse's separate property secured debt, and the net equity is less than the secured debt, the unsatisfied portion of the secured debt is treated as an unsecured separate debt of that spouse and allocated to the spouse's other separate property assets (Prob C §11444(b)(2));
- If the net value of a spouse's separate property assets is less than that spouse's separate debt, the unsatisfied part of the debt is allocated first to that spouse's one-half share of community property; any remaining unsatisfied debt is allocated to the other spouse's one-half share of community property assets (Prob C §11444(b)(3));
- If a community property asset is subject to a community property secured debt and the net equity of the asset is less than the secured debt, the unsatisfied portion is treated as an unsecured community debt and allocated to the other community property assets (Prob C §11444(b)(4)); and
- If the net value of the community property assets is less than the unsecured community debts, the unsatisfied part of the debt is allocated equally between the separate property assets of the decedent and the surviving spouse; if either spouse's separate property assets amount to less than that spouse's share of the unsecured debt, the remaining unsatisfied community debt is allocated to the other spouse's separate property (Prob C §11444(b)(5)).

The only significant deviation from these rules is found in Prob C §11446, which allocates sole liability for funeral expenses and last-illness expenses to the estate.

The court may order a different allocation between the estate and the surviving spouse or registered domestic partner if it finds a different allocation to be equitable under the circumstances. Prob C §11444(d); Fam C §297.5(c).

For a general discussion of this subject, see California Decedent Estate Practice §§4.19-4.25, 4.68-4.78 (2d ed Cal CEB 2009).

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§12.32 XIII. CHART: ALLOCATION OF DEBTS UNDER PROB C §11444

Character of Debt	Type of Debt*	Allocation of Debt			
		Primary Source		Secondary Source	Tertiary Source
Separate	Unsecured	SP of that spouse** (§11444(b)(1))		If SP of that spouse insufficient: ½ share of that spouse's CP (§11444(b)(3))	If ½ share of that spouse's CP insufficient: ½ share of other spouse's CP (§11444(b)(3))
	Secured by SP asset	Equity of asset (§11444(b)(2))	If net equity of asset insufficient: other SP of that spouse (§11444(b)(2))		
Community	Unsecured	Community property (§11444(b)(1))		If CP insufficient: equally between spouses' SP (§11444(b)(5))	If spouse's SP less than share of CP debts: other spouse's SP (§11444(b)(5))
	Secured by CP asset	Equity of asset (§11444(b)(4))	If net equity of asset insufficient: other CP assets (§11444(b)(4))		
*Applies to proven claims					
**Includes registered domestic partner (but see cautionary note in §12.31)					

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XIV. LIABILITY FOR FAILURE TO GIVE NOTICE TO CREDITOR

§12.33 A. Liability of Representative for Failure to Give Notice to Creditor

A representative who gives notice of administration to a creditor under Prob C §9050 in the belief that notice is required is immune from liability for that act. Prob C §9053(a). The representative is also immune from liability for failure to give notice, if one should have been given, unless all of the following are established:

(1) The failure was in bad faith;

(2) The creditor had no actual knowledge of the estate administration before expiration of the time for filing a claim;

(3) The claim would have been granted if properly filed;

(4) The creditor filed a petition to determine the representative's liability within 16 months after letters were first issued; and

(5) Notice of that hearing and a copy of the petition were served on the representative at least 30 days before the hearing on the petition. Prob C §9053(b).

Even if found liable under §9053, the representative is not liable for any part of the claim paid by the estate. Prob C §9053(c).

The creditor must meet a difficult burden of proof to hold the representative liable, but it is important that counsel for the estate inform the representative of the potential risk of not sending notice to all ascertainable creditors.

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§12.34 B. Distributee's Liability to Creditors Without Notice

Probate Code §9392 provides that a distributee is personally liable to a creditor, without the filing of a claim, if:

- The creditor's identity was known to or reasonably ascertainable by the general personal representative within 4 months after letters were issued;
- The claim was not merely conjectural;
- Notice required under the Probate Code was not given and neither the creditor nor the creditor's attorney had actual knowledge of the estate proceedings before the order for final distribution was entered; and
- The statute of limitations has not expired (1 year from the date of death of persons who die after January 1, 1991).

The liability of the distributee of estate property is personal, but is limited to the lesser of (1) the proportion of the value of the property received (valued at the time of the order for distribution) to the value of all property distributed from the estate, or (2) the value of the property distributed to such person (measured on the date the order for distribution is made).

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13

Sales of Estate Property

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Source: Estate Planning/California Probate Workflow Manual Revised/13 Sales of Estate Property/§13.1 I. INTRODUCTION

§13.1 I. INTRODUCTION

During the course of administration of the decedent's estate it is often necessary to sell the decedent's property. Sometimes, however, there are alternatives to selling that the attorney must first explore. See California Decedent Estate Practice §§18.1-18.3 (2d ed Cal CEB 2009).

Authority to sell the property derives either from the representative's powers as a fiduciary or from a testamentary provision directing or authorizing the representative to sell property. If property is to be sold under a testamentary provision, it is essential that the sale provisions of the will are complied with, unless a court order has been obtained relieving the representative of that duty. See Prob C §10002. There are only two significant general differences between the statutory and testamentary powers of sale. First, notice of the sale need not be given under a testamentary power (unless required by the terms of the will). Second, under a testamentary power the representative need not show a statutory reason for the sale. See §13.2.

The decision on whether to sell should be made by the attorney and the representative, based on the considerations discussed in Decedent Estate Prac §§18.4-18.6 (covering reasons for sale, duty to sell, which property may be sold, and priorities in selling property). The attorney must carefully supervise or control all aspects of the sale. This chapter will cover the mechanics of handling a sale. On which sales are unauthorized, see Decedent Estate Prac §18.5. On credit sales, and application of proceeds in sales of encumbered property, see Decedent Estate Prac §§18.13, 18.51.

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§13.2 II. SALES PROCEDURE; OVERVIEW

The representative may sell real and personal property at private sale or public auction. Prob C §10003(c).

Most estate property sales are through private sales. A private sale is one in which bids are solicited independently of each other, while a public or auction sale receives bids in open competitive bidding. When there is no will provision directing the course of action, however, the representative is free to select the method of sale, and the only obligation to the estate is that he or she make an honest determination of the means that will produce the best result.

Auctions of estate property other than furniture, jewelry, or similar items are unusual. A representative may contract in writing with an auctioneer licensed under CC §§1812.600-1812.608 (or, if the auction is to take place in another state, with anyone permitted by the laws of that jurisdiction to sell property at auction) to conduct a public auction of the estate's personal property. Prob C §10151. The contract must permit the estate to reserve or withdraw property from the sale, but the estate property may be sold singly or in lots, and property of other estates administered by the same representative may be auctioned at the same sale. The contract may also fix the auctioneer's compensation, including fees and expenses, to be paid from sale proceeds and in amounts to be determined by the court. In larger cities, auctions are usually handled through professional auctioneers, while in smaller towns, the attorney will often supervise the auction. On auctions generally, see California Trust Administration, chap 5 (2d ed Cal CEB 2001); California UCC Sales and Leases §§2.51-2.59 (Cal CEB 2002).

Whether the method is a private sale or a public auction, the representative must first publish or post notice of the sale (Prob C §§10250, 10300) unless he or she has a testamentary power or direction (Prob C §§10252, 10303), is selling securities (Prob C §10200) or perishable or depreciating property (Prob C §10252), or is acting under the Independent Administration of Estates Act (IAEA) (Prob C §§10400-10592). If a broker is employed, there must be a written agreement. Prob C §10150.

All sales, except those of perishable or depreciating property or securities (Prob C §§10200, 10252), must be returned to the court for confirmation within 30 days after the sale (Prob C §§10260, 10308). The representative should advise all prospective purchasers that the sale is subject to court confirmation. Prob C §§10260, 10308. However, court confirmation is unnecessary for many types of sales when the representative is acting under the IAEA. See Prob C §10580.

If at the confirmation hearing the court finds that the price and other sale terms are fair and conform with code provisions, the court will ask for any increased bids to be made in court (except for auction sales of personal property). If no such bid is made, the court confirms the sale to the original buyer and fixes any broker's commission. If a bid is higher than the original one by the amount specified in the applicable statute (Prob C §§10262, 10311), the court ordinarily confirms the sale to the increased bidder. For credit sales, Prob C §10311(d) requires that the court obtain the representative's consent (or that of his or her counsel) before accepting a higher bid.

The court must continue the sale to allow an inspection if it is shown that the personal representative has denied a bona fide prospective buyer or his or her broker a reasonable opportunity to inspect the property. Cal Rules of Ct 7.451. If good cause is shown for confirmation of the sale, however, the sale will not be continued.

Title passes to the purchaser only on the representative's conveyance after confirmation (Prob C §§10260, 10308, except for personal property sold at public auction, title to which passes on payment and delivery (Prob C §10259(b)).

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Source: Estate Planning/California Probate Workflow Manual Revised/13 Sales of Estate Property/ A. Sales of Real Property/§13.3 1. Checklist: Reasons for Delay in Confirming Sales of Real Property

A. Sales of Real Property

§13.3 1. Checklist: Reasons for Delay in Confirming Sales of Real Property

There are many reasons for a delay in confirming the sale of an estate's real property, many of which are completely avoidable. The following is a checklist for the personal representative's attorney to review in order to make sure that everything has been done that must be done in order to avoid delay in confirmation:

- Notice of sale not published or posted
- Special notice not given, though requested
- Other notices required by law not given
- No legally sufficient reason for the sale because the decedent's will does not authorize or direct the property to be sold, and there is no showing of a good reason for the sale (*e.g.,* necessary to pay debts, to distribute estate)
- Real property has not been appraised within 1 year of sale (Prob C §10309(a)(1))
- Inventory and appraisal not on file
- If a private sale, amount of bid is not at least 90 percent of the appraised value (or reappraised value) of the real property (Prob C §10309(a)(3))
- Inadequate efforts made to expose property to market
- Local court rules on broker's commissions or exclusive listing contracts not followed
- Local court rules regarding deposits not followed
- Legal description or the street address of the real property not attached to petition (both are required)
- Amount by which bond should be increased, if bond increase required, not indicated
- Amount of first overbid not computed
- Terms of sale not included in petition
- Local court rules not observed on deducting "points," termite work, or other repairs in computing broker's commission and minimum overbid amount
- Judicial Council forms not used
- Petition for confirmation of sale not filed within 30 days of date of sale
- Notice of intention to sell real property not published; it is required in all cases *except*
- when power to sell conferred in the will to the actual person acting as executor (*i.e.,* publication required for administrator with will annexed); *or*
- when will directs sale of the subject (real property) (*i.e.,* direction to sell some different parcel does not permit waiver of publication of sale of subject property); *or*
- when sale is pursuant to the Independent Administration of Estates Act
- Counsel failed to appear at the confirmation hearing, if required by local court rules (Note: Even if not required, the personal representative and the attorney should be present at the hearing to ensure proper conduct of sale)
- Bid does not comply with notice of sale
- No statement included about terms of personal property sold as a unit with real property
- Legal description of real property not attached to order confirming sale

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Source: Estate Planning/California Probate Workflow Manual Revised/13 Sales of Estate Property/§13.4 2. Title Company Practices

§13.4 2. Title Company Practices

Before any steps have been taken to arrange the sale of the property, it is wise for the attorney to consult with the title company to ascertain that there is no irregularity in the title, and that the title company will insure the sale. See Decedent Estate Prac §§18.80-18.83.

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Source: Estate Planning/California Probate Workflow Manual Revised/13 Sales of Estate Property/§13.5 3. Employment and Compensation of Brokers

§13.5 3. Employment and Compensation of Brokers

The Probate Code authorizes the personal representative to execute an "exclusive-right-to-sell" contract for a period of up to 90 days on permission granted by the court on a showing of necessity and advantage to the estate, or under the IAEA. See Prob C §10150. See Decedent Estate Prac §18.22 on contracts with brokers and their commission arrangements.

This form can be presented ex parte; no hearing is required. Under Prob C §10150(c) the petition must show the necessity and advantage to the estate. The terms of the listing agreement should be included or a copy of the proposed contract should be attached to the petition as Exhibit A. Cal Rules of Ct 7.453. See §13.6 for a form of ex parte petition to execute a listing agreement. A form of listing agreement is contained in §13.8. A form for the order authorizing execution of a listing agreement is in §13.7. A form of notice and intention to sell real property at private sale is contained in §13.10, and a bid form is in §13.11.

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Source: Estate Planning/California Probate Workflow Manual Revised/13 Sales of Estate Property/§13.6 a. Form: Ex Parte Petition to Execute Exclusive Listing Agreement

§13.6 a. Form: Ex Parte Petition to Execute Exclusive Listing Agreement

[*Title of court*]

Estate of _ _[*name*]_ _,	)	**No.** _ _ _ _ _ _
	)	
Decedent	)	**EX PARTE PETITION TO**
	)	**AUTHORIZE PERSONAL**
	)	**REPRESENTATIVE TO**
	)	**EXECUTE EXCLUSIVE**
	)	**LISTING AGREEMENT WITH**
_____	)	_ _[*BROKER/AGENT*]_ _
		(PROBATE CODE §10150(c))

Petitioner, _ _[*name*]_ _**, alleges that:**

1. Petitioner is the _ _[*executor/administrator/(etc.)*]_ _ **of the** _ _[*will/estate*]_ _ **of the above-named decedent and seeks permission to contract with** _ _[*name*]_ _**, a licensed** _ _[*broker/agent*]_ _**, to sell the estate real property, commonly referred to as** _ _[*address*]_ _ **in the city of** _ _[*name of city*]_ _**, county of** _ _[*name of county*]_ _**, California, more fully described as follows:** _ _[*Insert description of property, including street address*]_ _**.**

2. A _ _[*summary of the terms of the exclusive listing agreement/copy of the exclusive listing agreement to be executed*]_ _ **is attached to this petition as Exhibit A.**

3. It is necessary and to the advantage of the estate that such contract be executed _ _[*state reason, e.g., the property's high price will very likely require that a broker or agent spend a great deal of time and money marketing the property; only by executing this agreement will the estate find a broker or agent willing to properly market the property; personal representative unsuccessfully tried selling the property*]_ _**.**

WHEREFORE, Petitioner requests an order of this court permitting Petitioner to execute such exclusive listing agreement and for all other proper orders.

Date: _ _ _ _ _ _

__[*Signature*]__
_ _[*Typed name*]_ _
Petitioner, _ _[*executor/administrator/(etc.)*]_ _
of the _ _[*will/estate*]_ _ **of** _ _[*name*]_ _**, deceased**

__[*Signature*]__
_ _[*Typed name*]_ _
Attorney for petitioner

Copies: Original for filing; office copies.

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Source: Estate Planning/California Probate Workflow Manual Revised/13 Sales of Estate Property/§13.7 b. Form: Order Authorizing Execution of Listing Agreement

§13.7 b. Form: Order Authorizing Execution of Listing Agreement

[*Title of court*]

Estate of _ _[*name*]**_ _,**	**)**	**No. _ _ _ _ _ _**
	)	
Decedent	**)**	**ORDER AUTHORIZING**
	)	**PERSONAL**
	)	**REPRESENTATIVE TO**
	)	**EXECUTE EXCLUSIVE**
	)	**LISTING AGREEMENT WITH**
_____	**)**	**_ _**[*BROKER/AGENT*]**_ _**

On reading the Ex Parte Petition to Authorize Personal Representative to Execute Listing Agreement of with _ _[*broker/agent*]**_ _ of _ _**[*name*]**_ _, as _ _**[*executor/administrator/(etc.)*]**_ _ of the _ _**[*will/estate*]**_ _ of the above-named decedent, and the court finding that no notice of the hearing of the petition need be given and that all the allegations of the petition are true and that the court should make the order set forth below,**

IT IS ORDERED that _ _[*name*]**_ _, as _ _**[*executor/administrator/(etc.)*]**_ _ of the _ _**[*will/estate*]**_ _ of the above-named decedent, is authorized to execute and deliver that certain written contract, a copy of which is attached to the petition as Exhibit A, by which the _ _**[*executor/administrator/(etc.)*]**_ _ and _ _**[*name*]**_ _, a _ _**[*licensed real estate broker/agent*]**_ _, enter into an exclusive listing agreement to sell the property described in the contract on the terms and conditions set forth in it.**

Date: _ _ _ _ _ _ __[*Signature*]__
Judge of the _ _[*title of court*]**_ _**

Copies: Original for filing; office copies.

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Source: Estate Planning/California Probate Workflow Manual Revised/13 Sales of Estate Property/§13.8 c. Listing Agreement

§13.8 c. Listing Agreement

Most brokers' form listing agreements contain clauses that conflict with the Probate Code or that conflict with the Civil Code provisions that exempt estates. However, it is easy to modify them to comply with the codes. They should be modified to provide that:

(1) The exclusive listing period does not exceed 90 days;

(2) There is no automatic renewal after the 90-day (or shorter) period expires;

(3) The sale is subject to court confirmation;

(4) The bid form is to be provided by the attorney;

(5) The commission will not exceed _ _ percent or the amount the court will allow; and

(6) The sale is "as is" with no warranties.

Any disclosure provisions of the Civil Code that appear in the listing agreement should be crossed out because they are inapplicable.

A copy of the agreement is attached to the petition in §13.6 as Exhibit A. The originals are signed by the representative and the broker or broker's agent after the order has been obtained.

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Source: Estate Planning/California Probate Workflow Manual Revised/13 Sales of Estate Property/ 4. Notice of Sale/ §13.9 a. Publishing or Posting Notice

4. Notice of Sale

§13.9 a. Publishing or Posting Notice

If the power to sell estate property is granted in the will, or if the representative has powers under the Independent Administration of Estates Act (IAEA), the representative may, but need not, publish notice of the sale. Prob C §§10252, 10303. If the representative chooses to publish notice, the representative is generally bound to sell under the terms of the notice although local rules should be consulted to ascertain whether the representative must comply with statutory notice requirements. Without a specific direction to the contrary in the local rules, or from the attorney, the legal assistant should assume that the statutory requirements apply.

Under Prob C §10300 and Govt C §6063a, notice of sale of real property must be published at least three times. For both public auctions and private sales, the first publication must be at least 10 days before the date of sale. Govt C §6063a. Without an order shortening time, the third publication must be at least a week after the first. In a private sale, the court may shorten publication or posting time to no less than 5 days, in which case one publication, under Govt C §6061, is sufficient. Prob C §10302. See Decedent Estate Prac §18.44 for an order shortening time.

The publication must be in a newspaper published at least weekly in the county in which all or some of the land lies. These rules do not apply if (1) there is a testamentary power of sale or direction to sell (Prob C §10303); (2) there is no newspaper published at least weekly in the county, in which case the judge designates another newspaper; or (3) the property is appraised at $5000 or less, in which case posting for 15 days at the courthouse is sufficient. Prob C §10301.

A representative with authority under the IAEA need not comply with the publication rules otherwise required for court confirmation. Prob C §10503.

Even if no notice is to be given by publication, the representative may have a fiduciary duty to publicize the sale in order to obtain the best bid. See Decedent Estate Prac §§18.40-18.43.

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Source: Estate Planning/California Probate Workflow Manual Revised/13 Sales of Estate Property/§13.10 b. Notice of Sale

§13.10 b. Notice of Sale

The form in §13.10A should be used when notice of the sale is published. It should be amended to fit the conditions of the particular transaction. No legal description of the property is required, but if the property does not have a street address, descriptive language relating the property's location and the legal description (copied from the inventory and appraisal) should be included. If used, the legal description must be carefully reviewed for accuracy.

If real and personal property are being sold as a unit, or if the sale is of an undivided interest, both the notice and the caption should reflect that fact.

The notice should be carefully worded both to allow appropriate alternative clauses, and to avoid liability by the representative for failure to fully disclose encumbrances. Local rules should be checked because in some counties and under some circumstances the representative warrants title, and the notice should then provide that the property be sold on an "as-is" basis, except for title.

Because of the many legal pitfalls and considerations involved in preparing this form (see California Decedent Estate Practice, chap 18 (2d ed Cal CEB 2009), it should be prepared only after close consultation with the attorney.

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Source: Estate Planning/California Probate Workflow Manual Revised/13 Sales of Estate Property/§13.10A c. Form: Notice of Sale

§13.10A c. Form: Notice of Sale

[*Title of court*]

Estate of _ _[*name*]**_ _,**	**)**	**No. _ _ _ _ _ _**
	)	
Decedent	**)**	**NOTICE OF SALE OF REAL**
	)	**PROPERTY AT _ _**[*PRIVATE*
_____	**)**	*SALE/PUBLIC AUCTION*]**_ _**

1. NOTICE IS HEREBY GIVEN that, subject to confirmation by this court, on _ _[*date*]**_ _, at _ _**[*time*]**_ _, or thereafter within the time allowed by law, _ _**[*name*]**_ _, as _ _**[*executor/administrator/(etc.)*]**_ _ of the _ _**[*will/estate*]**_ _ of the above-named decedent, will sell at _ _**[*private sale/public auction*]**_ _ to the highest and best net bidder, on the terms and conditions stated below, all right, title, and interest of the decedent at the time of death and all right, title, and interest that the estate has acquired in addition to that of the decedent at the time of death, in the real property located in _ _**[*name of county*]**_ _ County, California.**

2. This property is commonly referred to as _ _[*street address*]**_ _, assessor's parcel number _ _**[*number*]**_ _, and is more fully described as follows: _ _**[*insert legal description*]**_ _.**

3. The property will be sold subject to current taxes, covenants, conditions, restrictions, reservations, rights, rights of way, and easements of record, _ _[*with any encumbrances of record to be satisfied from the purchase price/the purchaser to assume any encumbrances of record*]**_ _.**

[*If applicable, add the following option*]

[*Option: Property sold "as is" except for title*]

4. The property is to be sold on an "as is" basis, except for title.

[*Continue*]

[5.] The personal representative has given an exclusive listing to _ _[*name of broker*]**_ _.**

[6.] Bids or offers are invited for this property. They must be in writing and can be mailed to the office of _ _[*name of attorney*]**_ _, attorney for the _ _**[*executor/administrator/(etc.)*]**_ _ at _ _**[*address*]**_ _ or delivered to _ _**[*name of attorney*]**_ _ personally, at any time after _ _**[*first publication/posting*]**_ _ of this notice and before any sale is made.**

[*If public auction, add*]

[7.] Bids must be sealed and will be opened at the office of _ _[*name of attorney*]**_ _ at _ _**[*time*]**_ _, on the date specified above.**

[*Continue*]

[8.] The property will be sold on the following terms: Cash, or part cash and part credit, the terms of such credit to be acceptable to the undersigned and to the court, _ _[*e.g., 10 percent*]**_ _ of the amount of the bid to accompany the offer by certified check, and the balance to be paid _ _**[*on confirmation of sale by the court/(specify other terms)*]**_ _.**

[9.] Taxes, rents, operating and maintenance expenses, and premiums on insurance acceptable to the purchaser shall be prorated as of the date of _ _[*confirmation of sale/recording of conveyance*]**_ _. Examination of title, recording of conveyance, transfer taxes, and any title insurance policy shall be** *at the expense of the purchaser or purchasers*.

[10.] The undersigned reserves the right to reject any and all bids.

[11.] For further information and bid forms, contact _ _[*name of attorney*]_ _ **at** _ _[*address*]_ _**.**

Date: _ _ _ _ _ _ __[*Signature*]__
_ _[*Typed name*]_ _
_ _[*Executor/Administrator/(etc.)*]_ _
of the _ _[*will/estate*]_ _ **of** _ _[*name*]_ _**, deceased**

Date: _ _ _ _ _ _ __[*Signature*]__
_ _[*Typed name*]_ _
Attorney for _ _[*executor/administrator/(etc.)*]_ _

Copies: One for publishing; copies for filing with proof of publication; office copies.

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Source: Estate Planning/California Probate Workflow Manual Revised/13 Sales of Estate Property/ 5. Bids in Private Sale/§13.11 a. Bid to Purchase Real Property; Representative's Acceptance; Broker's Acceptance

5. Bids in Private Sale

§13.11 a. Bid to Purchase Real Property; Representative's Acceptance; Broker's Acceptance

The bid must be in writing and should be delivered to the representative or other person listed in the notice. The bid may be filed, but it is not customary to do so. The standard form of deposit receipt used in other contexts to bid on real property should not be used. See Decedent Estate Prac §§18.54-18.55 on how the standard deposit receipt can be amended to be usable. The interest rate on deferred payments and the starting date of interest payments should be specified. If the bid provides for purchase subject to existing encumbrances, see Decedent Estate Prac §18.56. The deposit should be paid to the representative—not to the attorney or to the broker. The name and manner in which title is to be taken should be fixed at the outset.

To minimize claims of misrepresentation, the attorney for the estate may require that the bid contain exculpatory clauses. See Decedent Estate Prac §18.57.

The estate should insist that the buyer obtain his or her own property inspections and should have the property itself inspected to aid in evaluating the buyer's bid. See Decedent Estate Prac §18.61.

The original bidder and broker should be informed of the time and the place of the hearing on confirmation so that they may protect their interests if there are overbids.

The broker should also be informed that if he or she or the brokerage firm has a direct or indirect interest in the purchaser, no matter how small, under Prob C §10160.5 the broker will not be allowed a commission for the purchase.

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Source: Estate Planning/California Probate Workflow Manual Revised/13 Sales of Estate Property/§13.11A b. Form: Bid to Purchase Real Property; Representative's Acceptance; Broker's Acceptance

§13.11A b. Form: Bid to Purchase Real Property; Representative's Acceptance; Broker's Acceptance

[*Title of court*]

Estate of _ _[*name*]_ _,	**)**	**No. _ _ _ _ _ _**
	)	
Decedent	**)**	**BID TO PURCHASE REAL**
	)	**PROPERTY; ACCEPTANCES**
_____	**)**	**BY REPRESENTATIVE AND**
		BROKER

To: _ _[*Name*]_ _, as _ _[*executor/administrator/(etc.)*]_ _ of the _ _[*will/estate*]_ _ of the _ _[*will/estate*]_ _ of the above-named decedent:

I, _ _[*name*]_ _, the undersigned bidder, hereby offer(s) the sum of $_ _[*amount*]_ _ _ _[*in cash/(specify credit terms)*]_ _ to purchase the real property belonging to the decedent's estate, commonly known and referred to as _ _[*address*]_ _, _ _[*city*]_ _, California, and more particularly described in _ _[*Exhibit A attached to this bid and by reference made a part of it/the notice of sale first published on _ _[*date*]_ _]_ _, subject to current taxes, covenants, conditions, restrictions, reservations, rights, rights of way, and easements of record.

The property is sold "as is," except for title, in its present condition as of the date of acceptance unless otherwise agreed in writing.

[*If applicable, add one or more of the following options*]

[*Option 1: Property encumbered and encumbrance to be paid from purchase price*]

The following encumbrances are to be satisfied from the purchase price:

[*List encumbrances as follows*]

The _ _[*specify encumbrance, e.g., deed of trust*]_ _ of _ _[*date*]_ _, in favor of _ _[*name of encumbrancer*]_ _, recorded at page _ _, Book _ _, of the _ _[*designate book, e.g., Official Records*]_ _, Office of the County Recorder, _ _ _ _ _ _ County.

[*Option 2: Deposit and proration of charges*]

Delivered to you with this bid is a certified check for $_ _[*amount*]_ _, which is _ _[*e.g., 10 percent*]_ _ of the purchase price, the balance to be paid _ _[*on confirmation of the sale by the court/(specify other terms)*]_ _.

Rentals, taxes, expenses of operation and maintenance, and premiums on insurance acceptable to the bidder shall be prorated as of the date of the _ _[*confirmation of the sale/recording of the conveyance*]_ _. Escrow charges, examination of title, recording of conveyance, transfer taxes, and any title insurance shall be at the expense of the bidder.

[*Continue*]

This sale is conditioned on confirmation by the above-titled court and shall be returned to that court for confirmation before _ _[*date*]_ _, and you, the seller, as the _ _[*executor/administrator*]_ _ of the above-described estate, shall have the same set promptly for hearing. On confirmation of sale by the court and payment of the balance of the purchase price, you shall deliver to me possession and a deed conveying all the interest belonging to the estate in the real property.

_ _[*I/We*]_ _ elect to receive title to the property in the following manner: _ _[*Name(s)*]_ _ as _ _[*separate property/joint tenants/husband and wife as community property/husband and wife as community property with right of survivorship/tenants in common*]_ _.

Date: _ _ _ _ _ _

__[*Signature*]__
__[*Signature*]__
_ _[*Typed name(s) of purchaser(s)*]_ _
Bidder(s)

ACCEPTANCE BY PERSONAL REPRESENTATIVE

Subject to court confirmation, I, _ _[*name*]_ _, as _ _[*executor/administrator/(etc.)*]_ _ of the _ _[*will/estate*]_ _ of the above-named decedent, hereby accept the foregoing bid of _ _[*name(s)*]_ _ as purchaser(s) of all right, title, and interest of the decedent's estate in the real property on the terms stated and hereby agree to pay to _ _[*name*]_ _, as real estate broker, from proceeds of the sale whatever sum the court allows for services in securing the purchaser.

I also acknowledge receipt of a _ _[*certified/cashier's*]_ _ check for $_ _[*amount*]_ _, as deposit.

Date: _ _ _ _ _ _

__[*Signature*]__
_ _[*Typed name*]_ _
_ _[*Executor/*
Administrator/(etc.)]_ _

ACCEPTANCE BY BROKER

_ _[*Name*]_ _, a real estate broker, duly licensed in California, having secured the purchaser(s), _ _[*name(s)*]_ _, hereby accepts the foregoing undertaking of _ _[*name*]_ _, as _ _[*executor/administrator/(etc.)*]_ _ of the _ _[*will/estate*]_ _ of the above-named decedent, to pay to _ _[*name of real estate broker*]_ _ from proceeds of the sale whatever sum may be allowed by the above-titled court.

Date: _ _ _ _ _ _

__[*Signature*]__
_ _[*Typed name*]_ _
Real Estate Broker

Copies: Original for representative; one copy each for bidder and broker; office copies.

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6. Petition for Confirmation of Sale of Real Property

§13.12 a. Introduction; Amount of Sale

All real estate sales must be confirmed by the court unless the representative is acting under full authority of the Independent Administration of Estates Act granted after 1984. The prudent practitioner, however, will seek court confirmation even when it is not required. The confirmation should be presented to the court as an "all-cash" sale after all conditions such as financing have been removed.

Court confirmation is generally obtained through use of the Judicial Council form reprinted in §13.13.

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Source: Estate Planning/California Probate Workflow Manual Revised/13 Sales of Estate Property/§13.13 b. Form: Report of Sale and Petition for Order Confirming Sale of Real Property (Judicial Council Form DE-260/GC-060)

§13.13 b. Form: Report of Sale and Petition for Order Confirming Sale of Real Property (Judicial Council Form DE-260/GC-060)

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	FOR COURT USE ONLY
TELEPHONE NO.: FAX NO. *(Optional):* E-MAIL ADDRESS *(Optional):* ATTORNEY FOR *(Name):*	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
☐ ESTATE ☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF *(Name)*: ☐ DECEDENT ☐ CONSERVATEE ☐ MINOR	
REPORT OF SALE AND PETITION FOR ORDER CONFIRMING SALE OF REAL PROPERTY ☐ **and Sale of Other Property Sold as a Unit**	CASE NUMBER: HEARING DATE AND TIME: / DEPT.:

1. **Petitioner** *(name of each):*

   is the ☐ personal representative ☐ conservator ☐ guardian of the estate of the decedent, conservatee, or minor
   ☐ purchaser (30 days have passed since the sale) *(Attach supporting declaration (Prob. Code, § 10308(b).)*

   and **requests** a court order for *(check all that apply):*

   a. confirmation of sale of the estate's interest in the real property described in Attachment 2e
   b. ☐ confirmation of sale of the estate's interest in other property sold as a unit as described in Attachment 2c.
   c. ☐ approval of commission of *(specify):* % of the amount of: $
   d. additional bond ☐ is fixed at: $ ☐ is not required.

2. **Description of property sold**

   a. Interest sold: ☐ 100% ☐ Undivided *(specify):* %
   b. ☐ Improved ☐ Unimproved
   c. ☐ Real property sold as a unit with other property *(describe in Attachment 2c).*
   d. Street address and location *(specify):*

   e. Legal description is affixed as Attachment 2e.

3. **Appraisal**

   a. Date of death of decedent or appointment of conservator or guardian *(specify):*
   b. Appraised value at above date: $
   c. Reappraised value within one year before the hearing: $ ☐ Amount includes value of other property sold as a unit. *(If more than one year has elapsed from the date in item 3a to the date of the hearing, reappraisal is required.)*
   d. Appraisal or reappraisal by probate referee ☐ has been filed ☐ will be filed
      ☐ has been waived by order dated:

4. **Manner and terms of sale**

   a. Name of purchaser and manner of vesting title *(specify):*

   b. ☐ Purchaser is the ☐ personal representative ☐ attorney for the personal representative.
   c. Sale was ☐ private ☐ public *on (date):*
   d. Amount bid: $ Deposit: $
   e. Payment ☐ Cash ☐ Credit *(specify terms on Attachment 4e.)*
   f. ☐ Other terms of sale *(specify terms on Attachment 4f.)*
   g. ☐ Mode of sale specified in will. ☐ Petitioner requests relief from complying for the reasons stated in Attachment 4g.
   h. ☐ Terms comply with Probate Code section 2542 *(guardianships and conservatorships).*

Form Adopted for Mandatory Use
Judicial Council of California
DE-260/GC-060 [Rev. January 1, 2006]

REPORT OF SALE AND PETITION FOR ORDER CONFIRMING SALE OF REAL PROPERTY
(Probate—Decedents' Estates and Guardianships and Conservatorships)

Probate Code, §§ 2540, 10308
www.courtinfo.ca.gov

Print

☐ ESTATE ☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF (Name):	CASE NUMBER:

5. **Commission**
   a. ☐ Sale without broker
   b. ☐ A written ☐ exclusive ☐ nonexclusive contract for commission was entered into with *(name)*:
   c. ☐ Purchaser was procured by *(name)*:
      a licensed real estate broker who is not buying for his or her account.
   d. ☐ Commission is to be divided as follows:

6. **Bond**
   a. Amount before sale: $ ☐ none.
   b. Additional amount needed: $ ☐ none.
   c. ☐ Proceeds are to be deposited in a blocked account. Receipts will be filed. *(Specify institution and location):*

7. **Notice of sale**
   a. ☐ Published ☐ Posted as permitted by Probate Code section 10301 ($5,000 or less)
   b. ☐ Will authorizes sale of the property
   c. ☐ Will directs sale of the property

8. **Notice of hearing**
   a. Special devisee:
      (1) ☐ None.
      (2) ☐ Consent to be filed.
      (3) ☐ Written notice will be given.
   b. Special notice:
      (1) ☐ None requested.
      (2) ☐ Has been or will be waived.
      (3) ☐ Required written notice will be given.
   c. Personal representative, conservator of the estate, or guardian of the estate:
      (1) ☐ Petitioner (consent or notice not required).
      (2) ☐ Consent to be filed.
      (3) ☐ Written notice will be given.

9. **Reason for sale** *(need not complete if item 7b or 7c checked)*
   a. ☐ Necessary to pay
      (1) ☐ debts
      (2) ☐ devise
      (3) ☐ family allowance
      (4) ☐ expenses of administration
      (5) ☐ taxes
   b. ☐ The sale is to the advantage of the estate and in the best interest of the interested persons.

10. **Formula for overbids**
    a. Original bid: $ _____
    b. 10% of first $10,000 of original bid: $ _____
    c. 5% of (original bid minus $10,000): $ _____
    d. Minimum overbid (a + b + c): $ _____

11. **Overbid.** Required amount of first overbid *(see item 10)*: $ _____

12. **Petitioner's efforts** to obtain the highest and best price reasonably attainable for the property were as follows *(specify activities taken to expose the property to the market, e.g., multiple listings, advertising, open houses, etc.):*

13. Number of pages attached: ____

Date:

_____ ▶ _____
(TYPE OR PRINT NAME OF ATTORNEY) (SIGNATURE OF ATTORNEY*)

* (Signature of all petitioners also required (Prob. Code, § 1020).)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

_____ ▶ _____
(TYPE OR PRINT NAME OF PETITIONER) (SIGNATURE OF PETITIONER)

REPORT OF SALE AND PETITION FOR ORDER CONFIRMING SALE OF REAL PROPERTY
(Probate—Decedents' Estates and Guardianships and Conservatorships)

Copies: Original for filing; one copy each for personal representative, purchaser, broker, and all persons who have

given notice of appearance; office copies.

Comment: The final agreed-on terms should be stated on the Judicial Council form. All items of the form should be filled in.

If the sale is of real and personal property, the box under the caption should be checked, as well as the boxes at items 1b and 2c, and a description of the real property and the personal property to be sold as a unit described in an Attachment 2c. The appropriate boxes indicating the decedent's interest in the property and whether it is improved or unimproved should be checked. The street address is inserted at item 2d, and the legal description of the property included as an Attachment 2e. It cannot be emphasized too strongly that the legal description must be accurate and identical to the legal description in the inventory. If the description as stated in the inventory is wrong, local rules may require that a corrected inventory be filed before the hearing date.

The information requested under item 3 should generally be provided. If a written appraisal was made within a year after the date of the confirmation hearing, that appraisal should be filed with the court before the hearing. If the appraisal will not be available in written form until after the petition has been filed, the second box under item 3d should be checked, and the legal assistant should take all appropriate steps to make sure the appraisal is filed before the hearing date on the petition.

The particulars of the sale should be inserted in item 4. If the sale is on credit, the notes and mortgage or deed of trust should be obtained, and the attachment should list both the encumbrances and the balance due. If the sale is on credit, and if there are other terms of sale, a combined Attachment 4e and 4f may be used, which should specify the terms in detail. It is helpful to either copy or closely parallel the specific language on the bid and acceptance form. If an undivided interest is being sold and the property will be sold only to a purchaser who buys the entire property, such allegations must be in this attachment, and item 4f should not be checked. It is important to verify that each sales transaction is contingent on the other sales transaction when a fractional or undivided interest is being sold.

The appropriate boxes in item 5 should be checked and the name of the broker, if any, filled in. The terms of the commission must also be described.

Because the estate will normally hold cash instead of real property after the sale, the amount of the original bond may no longer be sufficient. In item 6, the amount of the bond before the sale should be filled in. Unless the money is to be placed in a blocked account (and the appropriate box in item 6 checked), additional bond equal in amount to the net proceeds may need to be obtained. If an additional bond is required, the court will not file the order confirming the sale until the additional bond is filed. Cal Rules of Ct 7.206. Consult local rules to determine whether the court will prefer a new bond in the entire new amount, or a second bond to cover the increased amount. If a deposit is to be made in a blocked account, the caption of the petition should also state: "and for authority to deposit proceeds in blocked account." See chap 8 on bonds.

If the property sold was specifically devised, item 8a must be completed. It is better practice to receive the written consent of the specific devisee before putting the property up for sale.

The required amount of the first overbid should be calculated and inserted in item 11. That amount is equal to the sum of the original bid plus 10 percent of the first $10,000 of the original bid (including any assumed encumbrances on the property) and 5 percent on the balance.

The representative's efforts to obtain the highest and best price should be described in detail in item 12. This is frequently overlooked and may cause delay at the hearing.

See California Decedent Estate Practice §§18.67-18.69 (2d ed Cal CEB 2009).

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7. Hearing to Confirm Sale

§13.14 a. Notice of Hearing

Notice of the hearing is given by mail under Prob C §1220 and is posted under Prob C §1230. In addition to the persons entitled to receive mailed notice listed in §1220 and to the purchasers named in the petition (Prob C §10308(c)), notice should be mailed at least 15 days before the hearing to the devisees of specifically devised property and to the broker or brokers. The legal assistant should ask the attorney whether he or she wishes a copy of the petition to be attached to the notice. The Judicial Council form, Notice of Hearing, reprinted in §5.7 may be used for this purpose. Local practice should be verified on whether the clerk or the law office prepares the notices. Copies should be made for the clerk to post, for the office files, and for each person to receive notice. If the representative or attorney's office learns of additional potential purchasers, those purchasers should be given informal written notice of the date, time, and place of hearing.

Both the representative and the attorney should be present at the hearing to ensure proper conduct of the sale, *e.g.,* deposits and written bids by higher bidders. The court will not proceed with the hearing unless the petitioner's attorney, or the petitioner if he or she is unrepresented, is present. Cal Rules of Ct 7.452.

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Source: Estate Planning/California Probate Workflow Manual Revised/13 Sales of Estate Property/§13.15 b. Increased Bid

§13.15 b. Increased Bid

Before the court will confirm the sale of real property, bidders other than the purchaser are permitted to make increased bids in writing in the court. Many courts provide their own forms for such written bids. The legal assistant should obtain such forms and complete as much as possible before the hearing date. If local court forms are not required, the form in §13.16 may be used. The rules governing those bids are discussed in California Decedent Estate Practice §§18.71-18.77 (2d ed Cal CEB 2009). Note that a broker who directly or indirectly purchases the property is not entitled to a commission. See Prob C §10160.5.

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Source: Estate Planning/California Probate Workflow Manual Revised/13 Sales of Estate Property/§13.16 c. Form: Increased Bid in Open Court

§13.16 c. Form: Increased Bid in Open Court

[*Title of court*]

Estate of _ _[*name*]_ _,	**)**	**No. _ _ _ _ _ _**
	)	
Decedent	**)**	**INCREASED BID IN OPEN COURT**
	)	**(PROBATE CODE §10311)**
	)	
	)	**Hearing date:**
_____	**)**	**Time:**
		Department:

The undersigned, representing _ _[*himself/herself/themselves*]_ _ to be financially responsible, hereby bid(s) the sum of $_ _[*amount*]_ _ for the real property of the above-titled estate, the confirmation of sale of which is pending this day before this court. This bid exceeds the amount stated in the return of sale by at least 10 percent on the first $10,000 of the original bid and by at least 5 percent on any balance. Submitted with this bid is _ _[*cash/a certified check*]_ _ for _ _[*e.g., 10 percent*]_ _ of the bid.

The terms of sale shall be as follows: _ _[*Set forth terms as stated in return of sale*]_ _.

Real estate agent procuring this bid: _ _[*name*]_ _.

Title to be taken by _ _[*name(s)*]_ _ as _ _[*specify, e.g., separate property/joint tenants/husband and wife as community property/tenants in common*]_ _.

Date: _ _ _ _ _ _ __[*Signature(s)*]__
_ _[*Typed name(s)*]_ _
Bidder(s)

Copies: Original for filing; copy for representative; copy for bidder; office copies.

Comment: Some counties have their own form for use. Because the information that will be added to this form will not be known until the bid is made in open court, sufficient blank space should be left open on the form to be completed in court.

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Source: Estate Planning/California Probate Workflow Manual Revised/13 Sales of Estate Property/§13.17 d. Form: Order Confirming Sale of Real Property (Judicial Council Form DE-265/GC-065)

§13.17 d. Form: Order Confirming Sale of Real Property (Judicial Council Form DE-265/GC-065)

DE-265/GC-065

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*
After recording return to:

TELEPHONE NO.:
FAX NO. *(Optional):*
E-MAIL ADDRESS *(Optional):*
ATTORNEY FOR *(Name):*

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
STREETADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

FOR RECORDER'S USE

☐ ESTATE OF
☐ CONSERVATORSHIP OF *(Name):*
☐ GUARDIANSHIP OF

☐ DECEDENT ☐ CONSERVATEE ☐ MINOR

ORDER CONFIRMING SALE OF REAL PROPERTY
☐ and Confirming Sale of Other Property as a Unit

CASE NUMBER:

FOR COURT USE ONLY

1. Hearing date: Time: Dept.: Rm.:

THE COURT FINDS

2. All notices required by law were given and, if required, proof of notice of sale was made.
3. a. ☐ Sale was authorized or directed by the will
   b. ☐ Good reason existed for the sale
   of the property commonly described as *(street address or location):*
4. The sale was legally made and fairly conducted.
5. The confirmed sale price is not disproportionate to the value of the property.
6. ☐ Private sale: The amount bid is 90% or more of the appraised value of the property as appraised within one year of the date of the hearing.
7. An offer exceeding the amount bid by the statutory percentages ☐ cannot be obtained ☐ was obtained in open court. The offer complies with all applicable law.
8. The ☐ personal representative ☐ conservator ☐ guardian of the estate of the decedent, conservatee, or minor has made reasonable efforts to obtain the highest and best price reasonably attainable for the property.

THE COURT ORDERS

9. The sale of the real property legally described ☐ in item 15 on page 2 ☐ on Attachment 9
   ☐ and other property sold as a unit described ☐ in item 15 on page 2 ☐ on Attachment 9 is confirmed to *(name):*

   (manner of vesting title):
   for the sale price of: $ on the following terms *(use item 15 on page 2 or Attachment 9 if necessary):*

   ☐ Continued in item 15 on page 2. ☐ Continued on Attachment 9.
10. The ☐ personal representative ☐ conservator ☐ guardian of the estate of the decedent, conservatee, or minor *(name):*
    is directed to execute and deliver a conveyance of the estate's interest in the real property described in item 9
    ☐ and other property described in item 9 sold as a unit upon receipt of the consideration for the sale.

Form Adopted for Mandatory Use
Judicial Council of California
DE-265/GC-065 [Rev. January 1, 2006]

ORDER CONFIRMING SALE OF REAL PROPERTY
(Probate—Decedents' Estates and Guardianships and Conservatorships)

Probate Code, §§ 2543, 10313
www.courtinfo.ca.gov

Print

☐ ESTATE ☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF (Name):	CASE NUMBER:

11. a. ☐ No additional bond is required.
    b. ☐ Additional bond is required in the amount of: $, surety, or otherwise, as provided by law.
    c. ☐ Net sale proceeds must be deposited by escrow holder in a blocked account to be withdrawn only on court order. Receipts must be filed. *(Specify institution and location):*

12. a. ☐ No commission is payable.
    b. ☐ A commission from the proceeds of the sale is approved in the amount of: $ to be paid as follows *(specify):*

13. Other *(specify, use Attachment 13 if necessary):*

14. Number of pages attached: _____

Date:

_____
JUDICIAL OFFICER

☐ Signature follows last attachment.

15. ☐ *(Check all that apply):* ☐ **Legal description** of the ☐ real property ☐ personal property in item 9:
☐ Additional terms of sale from item 9:

[SEAL]	**CLERK'S CERTIFICATE** I certify that the foregoing *Order Confirming Sale of Real Property,* including any attached description of real or personal property, is a true and correct copy of the original on file in my office. Date: CLERK, by _____, Deputy

Copies: Original for filing; a certified copy to record; one copy each for representative, purchaser, and broker; office

copies.

Comment: The confirmation order must show that proof was made at the hearing that notice of sale was given, if required. Prob C §10312. The terms of the order must be consistent with the notice of sale and petition for confirmation of sale. Once again, it is very important to make sure the legal description and the assessor's parcel number included in the order are accurate, or an order nunc pro tunc may need to be obtained before the sale can close. The court will not file the order until additional bond is posted, so it is important to prepare the bond paperwork as early as possible. See Cal Rules of Ct 7.206. See chap 8 on bonds. On confirmation of the sale, the representative must execute a deed to the purchaser (see §13.18), referring to the confirmation order. A certified copy of the order must be recorded in the county or counties in which any part of the land lies. Normally, the deed is prepared by the title company.

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Source: Estate Planning/California Probate Workflow Manual Revised/13 Sales of Estate Property/§13.18 8. Form: Deed to Real Property

§13.18 8. Form: Deed to Real Property

INSTRUCTIONS: A deed to real property under court order should refer to the order. The signature and acknowledgment should clearly indicate that the grantor is acting in his or her capacity as representative.

Copies: Original for recording; copy for purchaser; office copies.

When Recorded Return To:

[*Keep this blank for recording data*]

Mail Tax Statements To:

_ _[*EXECUTOR'S/ADMINISTRATOR'S*]_ _ **DEED**

The undersigned grantor declares:

Documentary transfer tax is $_ _ _ _ _ _

( ) computed on full value of property conveyed, or

( ) computed on full value less value of liens and encumbrances remaining at time of sale.

( ) Unincorporated area: _ _ _ _ _ _

( ) City of _ _ _ _ _ _, and

For a valuable consideration, receipt of which is acknowledged, I, _ _[*name*]_ _, as _ _[*executor/administrator/(etc.)*]_ _ of the _ _[*will/estate*]_ _ of _ _[*name*]_ _, deceased, by order of the Superior Court of California, for the County of _ _ _ _ _ _, made in the matter of the Estate of _ _ _ _ _ _, Case No. _ _ _ _, on _ _[*date*]_ _, confirming the sale of real property and directing the execution of a conveyance, hereby

[*Add if representative not warranting title*]

convey to _ _[*name(s)*]_ _, as _ _[*state manner of taking title, e.g., his separate property/husband and wife, as their community property/joint tenants/tenants in common*]_ _ without any representation, warranty, or covenant of any kind, express or implied,

[*Add if representative warranting title*]

grant to _ _[*name(s)*]_ _, as _ _[*state manner of taking title, e.g., his separate property/husband and wife, as their community property/joint tenants/tenants in common*]_ _

[*Continue*]

all right, title, and interest of the decedent at the time of death and all right, title, and interest that the estate may have subsequently acquired by operation of law or otherwise in the real property situated in the County of _ _ _ _ _ _, California, described as follows:

[*Provide legal description*]

This property is being conveyed subject to (1) current taxes and assessments; (2) reservations, easements,

covenants, conditions, and restrictions of record or apparent; and (3) all matters that would be disclosed by inspection or survey.

Dated: _ _ _ _ _ _

__[*Signature*]__
_ _[*Typed name*]_ _
as _ _[*executor/administrator/(etc.)*]_ _
of the _ _[*will/estate*]_ _ **of**
_ _[*name*]_ _**, deceased**

State of California)
County of _ _[*name of county*]_ _)

On _ _[*date*]_ _**, before me,** _ _[*name and title of officer*]_ _**, personally appeared** _ _[*name(s)*]_ _ **who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.**

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

__[*Signature of officer*]__ [*Officer's seal*]

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B. Sales of Personal Property

1. Notice of Sale

§13.19 a. Statutory Provisions

Notice must ordinarily be given by publication or posting of the sale of personal property at public auction or private sale. The notice may be given by posting at the county court house at least 15 days before the date of the sale or auction, or by publication under Govt C §6063a to be completed by the same date. Prob C §10250. Publication under Govt C §6063a must be made three times during a 10-day period before the sale in a newspaper published at least weekly in the county of probate, with at least 5 days (excluding publication dates) between the first and last publications. Notice of the sale of personal property need not be given, however, if (1) the representative was directed to sell or was given power of sale in the will (unless the power itself provides that notice be given), (2) the property is perishable or depreciating (see §13.25), (3) the property is securities traded on certain exchanges (see §13.27), or (4) the representative has been granted authority to act under the Independent Administration of Estates Act (see §9.14).

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Source: Estate Planning/California Probate Workflow Manual Revised/13 Sales of Estate Property/§13.20 b. Form: Notice of Sale

§13.20 b. Form: Notice of Sale

[*Title of court*]

Estate of _ _[*name*]_ _,	**No. _ _ _ _ _ _**
Decedent	**NOTICE OF SALE OF PERSONAL PROPERTY AT _ _[*PRIVATE SALE/PUBLIC AUCTION*]_ _**
_____	**(PROBATE CODE §10250)**

1. NOTICE IS HEREBY GIVEN that, subject to confirmation by this court, _ _[*name*]_ _ , as _ _[*executor/administrator*]_ _ of the _ _[*will/estate*]_ _ of the above-named decedent, will sell at _ _[*private sale/public auction*]_ _ to the highest and best net bidder on the terms and conditions mentioned below, at _ _[*address*]_ _, at _ _[*time*]_ _, on _ _[*date*]_ _, or in the time thereafter allowed by law, all right, title, and interest of the decedent at the time of death and all other right, title, and interest that the estate has acquired in addition to that of the decedent at the time of death, in the following personal property, located in _ _[*name of county*]_ _ County, California, in its present condition, without any representation or warranty of any kind, express or implied: _ _[*Provide brief description of property*]_ _.

[*If applicable, add the following option*]

[*Option: Private sale*]

[2.] Bids or offers are invited for the property. They must be in writing and can be mailed to the law office of _ _[*name*]_ _, attorney for the _ _[*executor/administrator/(etc.)*]_ _, at _ _[*address*]_ _, or delivered to the attorney personally at any time after the _ _[*first publication/posting*]_ _ of this notice and before the sale.

[*If applicable, add the following option*]

[3.] An inventory appraisal _ _[*is not on file/is on file in this court showing the appraised value of the property to be sold as $_ _[amount*]_ _]_ _.

[*Continue*]

[4.] The property will be sold on the following terms and conditions: _ _[*cash/(specify other terms, e.g., 10 percent of the purchase price to be paid at the time of the presentation of the bid and balance _ _[e.g., on confirmation of sale by the court*]_ _)/premiums on insurance acceptable to the purchaser shall be prorated as of the date of _ _[*confirmation of*]_ _ sale/transfer costs and retail sales tax will be paid by the purchaser*]_ _.

[5.] For further information and bid forms, apply at the law office of _ _[*name of attorney*]_ _ at _ _[*address*]_ _.

Date: _ _ _ _ _ _ __[*Signature*]__
_ _[*Typed name*]_ _
as _ _[*executor/administrator/(etc.)*]_ _
of the _ _[*will/estate*]_ _ of
_ _[*name*]_ _, deceased

Date: _ _ _ _ _ _ __[*Signature*]__
_ _[*Typed name*]_ _
Attorney for _ _[*name*]_ _

Copies: Original for filing; one copy each for representative, buyer, and broker or auctioneer; office copies.

Comment: The notice must state whether the sale is a public auction or for a private sale. For a public auction, the notice must contain the date, time, and place of sale; for a private sale, a place and a day on or after which the sale will occur suffices. The description of property in the form should be general, such as "furniture, furnishings, and

effects." For further discussion of the notice, see California Decedent Estate Practice §§18.110-18.113 (2d ed Cal CEB 2009).

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Source: Estate Planning/California Probate Workflow Manual Revised/13 Sales of Estate Property/§13.21 2. Report of Sale and Petition for Order Confirming Sale of Personal Property

§13.21 2. Report of Sale and Petition for Order Confirming Sale of Personal Property

Personal property estate sales must be reported to and confirmed by the court (Prob C §10260(a)) unless the personal representative is acting under the Independent Administration of Estates Act (IAEA) (Prob C §§10400-10592) (see §13.2) or unless otherwise provided by statute (see California Decedent Estate Practice §18.96 (2d ed Cal CEB 2009)). The form in §13.21A is not used for sale of perishable or depreciating property (see form in §13.26) or for the sale of securities under Prob C §10200 (see form in §13.28) or for sales by representatives acting under the Independent Administration of Estates Act (Prob C §10537).

The petition must be verified and filed within 30 days after the sale date. Although increased bond is not normally an issue for sales of personal property, if the sales price is significantly higher than the original estimate of the value of the property, it may be necessary to petition the court for increased bond. See chap 8 on bonds.

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Source: Estate Planning/California Probate Workflow Manual Revised/13 Sales of Estate Property/§13.21A 3. Form: Report of Sale and Petition for Order Confirming Sale of Personal Property

§13.21A 3. Form: Report of Sale and Petition for Order Confirming Sale of Personal Property

[*Title of court*]

Estate of _ _[*name*]_ _,	**)**	**No. _ _ _ _ _ _**
	)	
Decedent	**)**	**REPORT OF SALE AND**
	)	**PETITION FOR ORDER**
	)	**CONFIRMING SALE OF**
	)	**PERSONAL PROPERTY**
	)	**(PROBATE CODE §10260)**
	)	
_____	**)**	**Hearing date:**
		Time:
		Department:

1. Petitioner, _ _[*name*]_ _, as _ _[*executor/administrator/(etc.)*]_ _ of the _ _[*will/estate*]_ _ of the above-named decedent, brings this report and petition for order confirming sale of personal property and alleges that:

2. _ _[*Under power of sale in the decedent's will/In accordance with the provisions of law relating to sales by petitioner*]_ _**, Petitioner on** _ _[*date*]_ _**, sold at** _ _[*private sale/public auction*]_ _ **the decedent's** _ _[*describe property*]_ _ **to** _ _[*name of purchaser*]_ _ **for $**_ _[*amount*]_ _ **,** _ _[*in cash/(state credit terms)*]_ _**, subject to court confirmation.**

[*If appropriate, add*]

3. The property was appraised at $_ _[*amount*]_ _**.The price is not disproportionate to the value of the property.**

[*Add when sale with notice, with or without testamentary power*]

3. The sale was legally made and fairly conducted and was for the _ _[*purpose of raising funds necessary for the payment of debts, expenses of administration, and taxes/advantage, benefit, and best interests of the estate*]_ _**, and should be confirmed.**

[*Continue*]

[4.] The sale was _ _[*e.g., authorized or directed in the decedent's will/necessary for the payment of debts, expenses of administration, family allowance, or taxes/to the advantage, benefit, and best interests of the estate because* _ _[*specify*]_ _]_ _**.**

[5.] The property sold _ _[*is/is not*]_ _ **specifically devised under the decedent's will.** _ _[*If specifically devised, add whether devisee has consented to sale and that the consent, if any, is on file*]_ _**.**

[*Add one of the following alternatives*]

[*Alternative 1: Notice given*]

[6.] Notice of sale was _ _[*published/posted*]_ _ **according to law and as shown by the affidavit of such** _ _[*publication/posting*]_ _ **on file in the proceeding as Exhibit A.**

[*Alternative 2: No notice given*]

[6.] No notice of sale was required to be given because _ _[*e.g., the sale was authorized/directed in the decedent's will*]_ _**.**

[*Add one of the following alternatives*]

[*Alternative 1: No request for special notice*]

[7]. No one has filed a request for special notice.

[*Alternative 2: Request for special notice filed*]

[7]. The following have filed request(s) for special notice: _ _[*List names and addresses*]_ _**.**

[*Continue*]

WHEREFORE, petitioner requests an order of this court confirming the sale and all other proper orders.

Date: _ _ _ _ _ _

__[*Signature*]__
_ _[*Typed name*]_ _
Petitioner, as _ _[*executor/ administrator/(etc.)*]_ _
of the _ _[*will/estate*]_ _ **of** _ _[*name*]_ _**, deceased**

Date: _ _ _ _ _ _

__[*Signature*]__
_ _[*Typed name*]_ _
Attorney for _ _[*name*]_ _

[*Verification; see §§1.21-1.22*]

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4. Confirmation of Sale

§13.22 a. Notice of Hearing

Notice of the hearing for confirmation of sale is given under Prob C §1220 and posted under Prob C §1230. Prob C §10260(c). Under Prob C §1220(a)(2)(B), the personal representative must give notice of the hearing to anyone who has requested special notice. Prob C §1250(a). The mandatory Notice of Hearing—Decedent's Estate or Trust (Probate—Decedents' Estates) (Judicial Council Form DE-120), reprinted in §5.7 is used for the notice of hearing to confirm a sale of personal property.

Even though the purchase price need not be a certain percentage of the appraised value, the appraisal should be filed before the hearing so the court will have before it a formal determination of value. Local rules should be consulted.

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Source: Estate Planning/California Probate Workflow Manual Revised/13 Sales of Estate Property/§13.23 b. Form: Order Confirming Sale of Personal Property

§13.23 b. Form: Order Confirming Sale of Personal Property

[*Title of court*]

Estate of _ _[*name*]_ _,	**)**	**No. _ _ _ _ _ _**
	)	
Decedent	**)**	**ORDER CONFIRMING SALE**
_____	**)**	**OF PERSONAL PROPERTY**

The verified report and petition of _ _[*name*]_ _, as _ _[*executor/administrator/ (etc.)*]_ _ of the _ _[*will/estate*]_ _ of the above-named decedent, for confirmation of sale of personal property described below, came on regularly to be heard on _ _[*date*]_ _, with _ _[*name*]_ _ appearing as attorney for petitioner. The court, after examining the return and the petition and hearing the evidence, finds that:

1. Notice of hearing _ _[*has been given as required by law and due proof has been made that notice of the hearing was given for the period and in the manner required by law/was not required to be given*]_ _.

[*Add one of the following alternatives*]

[*Alternative 1: When notice of sale given*]

2. Due proof has been made that notice of the sale was given for the period and in the manner required by law.

[*Alternative 2: When notice not given*]

2. Notice of the sale was not required to be given.

3. Proof was made to the satisfaction of the court that _ _[*e.g., the will authorized or directed the sale/the sale was necessary/the sale was to the advantage of the estate and for the benefit of interested persons*]_ _.

4. The sale was legally made and fairly conducted; and the price obtained is the reasonable value of the property sold.

[*Add one of the following alternatives*]

5. No increased bids for the property were made at the hearing.

[*Alternative 2: Increased bids in open court*]

5. At the hearing _ _[*name(s)*]_ _, (a) financially responsible person(s), made an increased bid in writing to purchase the property for $_ _[*amount*]_ _. This bid exceeds the original bid here returned by at least 10 percent.

[*Continue*]

IT IS ORDERED that the sale so made of the personal property described below to _ _[*name*]_ _, for $_ _[*amount*]_ _ _ _[*in cash/(state credit terms)*]_ _ is confirmed, and on receipt of that price and compliance with any terms of sale by the purchaser, the _ _[*executor/administrator/(etc.)*]_ _ is directed to deliver the personal property to the purchaser, together with the necessary instrument of transfer.

The personal property so sold is described as follows: _ _[*Provide description of property*]_ _.

Dated: _ _ _ _ _ _ __[*Signature*]__
Judge of the _ _[*title of court*]_ _

Copies: Original for filing; copy for purchaser; office copies.

Comment: The order must show proof of the giving of notice of sale as prescribed by the Probate Code, and it

should set out and approve any credit terms in connection with the sale.

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Source: Estate Planning/California Probate Workflow Manual Revised/13 Sales of Estate Property/§13.24 c. Form: Bill of Sale

§13.24 c. Form: Bill of Sale

BILL OF SALE

For value received, and under the order of _ _[*date*]_ _, confirming sale of personal property made by the Superior Court of California, for the County of _ _[*name of county*]_ _, in the proceedings for administration of the estate of _ _[*name*]_ _, deceased, _ _[*name*]_ _ , as _ _[*executor/administrator/(etc.)*]_ _ of the _ _[*will/estate*]_ _ of the decedent, hereby sells to _ _[*name*]_ _, all the right, title, and interest of decedent at the time of death, and all other right, title, and interest that the estate has acquired in addition to that of the decedent at the time of death, in the following personal property in its present condition, without representation or warranty of any kind, express or implied.

[*Provide itemized description of property*]

Date: _ _ _ _ _ _

__[*Signature*]__
_ _[*Typed name*]_ _
as _ _[*executor/administrator/(etc.)*]_ _
of the _ _[*will/estate*]_ _ **of**
_ _[*name*]_ _**, deceased**

Copies: Original for purchaser; copy for client; office copies.

Comment: Title passes by executing a bill of sale. This bill of sale may be used for most personal property. If the property is an automobile or other vehicle licensed by the Department of Motor Vehicles (DMV), the DMV form of bill of sale should be used instead. If a vehicle is transferred, it is very important that a Notice of Release of Liability be filled out and filed with the DMV, to cut off the estate's liability for the operation of the vehicle. A form notice may be obtained from automobile clubs or from the DMV at http://www.dmv.ca.gov.

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4. Sales of Perishable or Depreciating Property

§13.25 a. Statutory Provisions

If property will depreciate in value, or perish unless it is used quickly, an ex parte procedure allows for sale without notice. This procedure may also be used if money is needed to pay a family allowance. The attorney should determine whether the property should be sold on this basis. See California Decedent Estate Practice §§18.103-18.108 (2d ed Cal CEB 2009) for discussion of some of the pertinent factors going into this decision. Local rules should be consulted to ascertain whether it is necessary to secure an appraisal or a letter from the referee before approval. See form in §13.26. An ex parte application to sell personal property must state whether the property is specifically devised. If it is, the specific devisee's written consent to the sale must be filed with the application. Cal Rules of Ct 7.454. See Item 2(c) of the Ex Parte Petition for Approval of Sale of Personal Property and Order (Judicial Council Form DE-275/GC-075). See §13.26.

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Source: Estate Planning/California Probate Workflow Manual Revised/13 Sales of Estate Property/§13.26 b. Form: Ex Parte Petition for Approval of Sale of Personal Property and Order (Judicial Council Form DE-275/GC-075)

§13.26 b. Form: Ex Parte Petition for Approval of Sale of Personal Property and Order (Judicial Council Form DE-275/GC-075)

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, state bar number, and address)*:	TELEPHONE AND FAX NOS.:	*FOR COURT USE ONLY*
ATTORNEY FOR *(Name)*:		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
ESTATE OF *(Name)*: ☐ DECEDENT ☐ CONSERVATEE ☐ MINOR		
EX PARTE PETITION FOR APPROVAL OF SALE OF PERSONAL PROPERTY AND ORDER		CASE NUMBER:

1. **Petitioner** *(name of each; see footnote[1] before completing)*:
   is the ☐ personal representative ☐ conservator ☐ guardian
   of the estate and requests a court order approving sale of personal property under Probate Code section 10252.

2. a. The estate's personal property described on the reverse has been sold for cash at the price and on the date specified.
   b. The property
      (1) ☐ would have depreciated in value if not disposed of promptly.
      (2) ☐ would have incurred loss or expense by being kept. *(State reasons in item 2e(3).)*
      (3) ☐ was sold to provide family allowance pending receipt of other sufficient funds.
   c. Specific legatee of this property:
      (1) ☐ none
      (2) ☐ legatee's consent is attached as Attachment 2c(2).
   d. The sale price was not less than the actual value of the property sold and the sale was in the best interests of the estate.
   e. Other facts pertinent to this petition are as follows:
      (1) Special notice ☐ has ☐ has not been requested.
      (2) ☐ Waivers of all special notices are attached as Attachment 2e(2).
      (3) ☐ Other *(specify)*:

Date:

* (Signature of all petitioners also required (Prob. Code, § 1020).)

▶ _____
(SIGNATURE OF ATTORNEY *)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

. . . . . .
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PETITIONER)

. . . . . .
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PETITIONER)

[1] Each personal representative, guardian, or conservator must sign the petition.

(Continued on reverse)

Print

ESTATE OF *(Name)*:	CASE NUMBER:

PROPERTY SOLD

Date of sale	Name of purchaser	Item sold	Sale price	Appraised value *(when required by local rule)*

ORDER APPROVING SALE OF PERSONAL PROPERTY

THE COURT FINDS the sale is proper.

THE COURT ORDERS

The ☐ personal representative ☐ guardian ☐ conservator is authorized to sell the property described above upon the terms and conditions specified. Notice of hearing on the petition is dispensed with.

Date:

JUDGE OF THE SUPERIOR COURT

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

Copies: Original for filing; copy for client; office copies.

Comment: If necessary, attachments should be added to the form to elaborate on any complex terms of sale. If the will named a specific devisee to receive the property being sold, the devisee's written consent to the sale should be obtained and attached to the petition.

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6. Sales of Securities

§13.27 a. Statutory Provisions

Probate Code §10200 provides a simplified procedure for selling, redeeming, or converting securities. A petition is filed (see §13.28) stating the terms and conditions and the advantage to the estate of the proposed sale, redemption, or conversion. Notice of sale must be given by mail under Prob C §1220, and by posting under Prob C §1230 unless the court shortens time or dispenses with this requirement. Notice is not required, however, if the minimum price is fixed by the court, if the securities are sold on an established stock or bond exchange or through the NASD broker's network, or if the securities are to be surrendered for redemption or conversion. See Prob C §10200. No subsequent confirmation is necessary. An ex parte application to sell tangible or intangible personal property must state whether the property is specifically devised. If it is, the specific devisee's written consent to the sale must be filed with the application. Cal Rules of Ct 7.454.

If the representative has authority under the Independent Administration of Estates Act, no court confirmation is necessary for sale of certain securities. See §9.14. Even when the order is not required, many attorneys prefer to obtain it.

If the sales price is significantly higher than the original estimated value, it may be necessary to petition for increased bond. See chap 8.

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Source: Estate Planning/California Probate Workflow Manual Revised/13 Sales of Estate Property/§13.28 b. Form: Ex Parte Petition for Authority to Sell Securities and Order (Judicial Council Form DE-270/GC-070)

§13.28 b. Form: Ex Parte Petition for Authority to Sell Securities and Order (Judicial Council Form DE-270/GC-070)

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, state bar number, and address)*: TELEPHONE AND FAX NOS.:	*FOR COURT USE ONLY*
ATTORNEY FOR *(Name)*:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
ESTATE OF *(Name)*: ☐ DECEDENT ☐ CONSERVATEE ☐ MINOR	
EX PARTE PETITION FOR AUTHORITY TO SELL SECURITIES AND ORDER	CASE NUMBER:

1. **Petitioner** *(name of each; see footnote[1] before completing)*:

   is the ☐ personal representative ☐ conservator ☐ guardian of the estate and requests a court order authorizing sale of estate securities.

2. a. The estate's securities described on the reverse should be sold for cash at the market price at the time of sale on an established stock or bond exchange, or, if unlisted, the sale will be made for not less than the minimum price stated on the reverse.
   b. ☐ Authority is given in decedent's will to sell property; **or**
   c. ☐ The sale is necessary to raise cash to pay
      (1) ☐ debts
      (2) ☐ legacies
      (3) ☐ family allowance
      (4) ☐ expenses
      (5) ☐ support of ward
      (6) ☐ other *(specify)*:
   d. ☐ The sale is for the advantage, benefit, and best interests of the estate, and those interested in the estate.
   e. Other facts pertinent to this petition are as follows:
      (1) ☐ Special notice has not been requested.
      (2) ☐ Waivers of all special notices are presented with this petition.
      (3) ☐ No security to be sold is specifically bequeathed.
      (4) ☐ Other *(specify)*:

Date:

* (Signature of all petitioners also required (Prob. Code, § 1020).)

▶ _____
(SIGNATURE OF ATTORNEY *)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

. . . . . .
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PETITIONER)

. . . . . .
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PETITIONER)

[1] Each personal representative, guardian, or conservator must sign the petition.

(Continued on reverse)

Print

ESTATE OF *(Name)*:	CASE NUMBER:

LIST OF SECURITIES

Number of shares or face value of bonds	Name of security	Name of exchange *(when required by local rule)*	Recent bid asked *(when required by local rule)*	Minimum selling price

ORDER AUTHORIZING SALE OF SECURITIES

THE COURT FINDS the sale is proper.

THE COURT ORDERS

The ☐ personal representative ☐ guardian ☐ conservator is authorized to sell the securities described above upon the terms and conditions specified. Notice of hearing on the petition is dispensed with.

Date:

JUDGE OF THE SUPERIOR COURT

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

Copies: Original for filing; copy for client; office copies.

Comment: Consult local rules to determine how much of a showing of advantage to the estate, and what minimum price criteria for unlisted securities, will be required by the court. See generally California Decedent Estate Practice §18.108 (2d ed Cal CEB 2009). The form can be modified for redemptions and conversions, but it does not apply to exchanges of property covered by Prob C §§9920-9921.

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Source: Estate Planning/California Probate Workflow Manual Revised/13 Sales of Estate Property/§13.29 7. Miscellaneous Sales

§13.29 7. Miscellaneous Sales

For discussion of sale of property as a unit, leaseholds, partnership interests, contract rights, mining property, and condominiums and community or cooperative apartments, see California Decedent Estate Practice §§18.87-18.90 (2d ed Cal CEB 2009).

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§13.30 C. Representative's Remedies If Purchaser Defaults

If the purchaser defaults after confirmation of the sale of real or personal property, Prob C §10350(a) provides that the court, on motion of the representative, may vacate the order of confirmation and order a resale of the property, and award damages to the estate against the purchaser. A new notice of sale must be given and a sale conducted as if the previous one had not occurred. Prob C §10350(c), (d). The representative has discretion on whether to apply for such relief; if he or she does so, the purchaser must be given notice of the hearing to vacate the order and of the resale, unless the purchaser has given written consent to the vacation of confirmation. Prob C §10350(b). If the amount realized on resale does not cover the bid and expenses of the previous sale, the defaulting purchaser is liable to the estate for the deficiency. Prob C §10350(e). No time limit is specified in Prob C §10350.

Alternatively, if the representative files a petition within 60 days after confirmation showing that the original purchaser has failed to complete the purchase and that a bid has been made for the property for at least the same amount, on the same or better terms, and in the manner prescribed in the original notice, the court may vacate the original confirmation order and make an order confirming the sale to the new bidder. Prob C §10351(a)(1). Notice of the hearing on the petition must be given to the person designated in Prob C §1220 as provided in that section, and notice and a copy of the petition must be given to the buyers and brokers named in the order confirming sale. Notice need not be given to a defaulting purchaser who has filed a written consent to vacating the confirmation with the court before the hearing. Prob C §10351(b).

NOTE: Some courts will allow retention of the entire deposit of the defaulting purchaser until the total damages can be ascertained or determined on resale.

The representative's remedies under Prob C §§10350-10351 are not exclusive. See *McCarty v Wilson* (1920) 184 C 194, 193 P 578; *Barnes v Morrison* (1929) 102 CA 152, 282 P 986. For seller's remedies on buyer's breach generally, see California Real Property Sales Transactions §§4.140-4.143 (4th ed Cal CEB 2007). There appears to be no appellate decision on the representative's remedies if the purchaser withdraws before court confirmation. It appears that the bid and its acceptance by the representative (see §13.30) are a contract of sale subject only to court approval (*Mains v City Title Ins. Co.* (1949) 34 C2d 580, 212 P2d 873), which the representative must seek within 30 days after acceptance (Prob C §10308(b)). The bid is therefore enforceable if the representative performs on time. Thus, withdrawal of the purchaser before confirmation as an anticipatory breach should give the representative the same remedies as on breach after confirmation, if he or she has acted within the time limit.

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14

Income and Estate Taxation

I. INCOME TAXATION
- A. [§14.1] Introduction
- B. Taxpayer Identification Number
  - 1. [§14.2] Obtaining Taxpayer Identification Number;
  - 2. [§14.2A] Form: Application for Employer Identification Number (IRS Form SS-4)
- C. [§14.3] Form: Notice Concerning Fiduciary Relationship (IRS Form 56)
- D. [§14.4] Addresses of IRS District Directors **[Deleted]**
- E. [§14.5] Request for Prompt Assessment
- F. [§14.6] Notice of Termination of Fiduciary Relationship
- G. [§14.7] Allocation of Responsibilities and the Calendar

II. ESTATE TAXATION
- A. [§14.8] Introduction
- B. [§14.9] Procedural Guide: Filing Estate Tax Forms
- C. Federal and California Estate Tax Return Forms
  - 1. [§14.10] Form: United States Estate Tax Return (IRS Form 706)
  - 2. [§14.11] Form: California Estate Tax Return (Form ET-1) **[Deleted]**

III. [§14.12] OTHER TAX MATTERS

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I. INCOME TAXATION

§14.1 A. Introduction

Income tax issues arise in most estates. These issues can be extremely complex, usually requiring analysis and action by the attorney or the estate's accountant. The subject of income taxation of estates, including the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA-2001) (Pub L 107-16, 115 Stat 38), is covered in depth in California Decedent Estate Practice, chap 33 (2d ed Cal CEB 2009).

NOTE: For tax years beginning on or after January 1, 2007, persons who are registered domestic partners as of the end of the tax year must file either a joint state income tax return or separate returns, applying the standards applicable to spouses who file separately under IRC §6013. Rev & T C §18521(d). See Decedent Estate Prac §33.11.

The discussion in this chapter will be limited to those few actions that may be taken by the legal assistant who does not have special training in tax matters. The legal assistant should first determine whether someone other than the legal assistant, such as the estate's accountant, will be responsible for taking these actions.

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Source: Estate Planning/California Probate Workflow Manual Revised/14 Income and Estate Taxation/ B. Taxpayer Identification Number/§14.2 1. Obtaining Taxpayer Identification Number

B. Taxpayer Identification Number

§14.2 1. Obtaining Taxpayer Identification Number

Because the estate is an income tax entity separate from the decedent, the representative must obtain a new taxpayer identification number (TIN) for the estate. Although the IRS term is "employer identification number" (EIN) the estate is required to obtain one whether or not it is an employer. The same number is used by taxing authorities in California.

The identification number is required for the estate's federal and California income tax returns (Forms 1041 and 541, respectively). The representative must give this number to banks and corporations paying interest and dividends, and to other persons who are required to file IRS Information Forms 1096 and 1099-A through 1099-S. Treas Reg §301.6109-1(b).

The identification number is obtained by filing IRS Form SS-4, reproduced in §14.2A, which may be obtained on the IRS website at http://www.irs.gov, by calling the IRS at 800-829-3676, or from any office of the Social Security Administration. Form SS-4 is generally self-explanatory, and is not difficult to complete. The instructions accompanying the form require that line 3 contain the name of the representative. It is also helpful to include the representative's title (*e.g.,* executor). The estate's fiscal year must be specified on Form SS-4. It is often difficult to select the most advantageous tax year during the early stages of estate administration. However, the year indicated on Form SS-4 is not binding. The representative may change the taxable year without the consent of the IRS at any time until the estate's first fiduciary income tax return is filed. IRC §441(a).

The IRS will issue an EIN online at the IRS website under Businesses, Employer ID Numbers. If the number is obtained online by a tax professional or a third party other than the fiduciary, the third party must first obtain a completed Form SS-4, including the fiduciary's authorization for the third party to receive the number, that has been signed by the taxpayer. The third party must retain this documentation but is not required to submit it to the IRS.

The fiduciary or the fiduciary's taxpayer representative also can obtain an identification number by telephone, fax, or mail. Consult the IRS Instructions for Form SS-4 for details. When applying by telephone, the SS-4 form should be completed before the call is made, because the IRS representative will ask some of the questions that are answered in the form. After the IRS representative has assigned the number, the number should be typed or written clearly in the upper right-hand corner of the SS-4 form, and a copy retained. If requested by the IRS representative, the signed form should then be mailed or faxed within 24 hours to the address provided by the representative.

NOTE: The procedures for obtaining an EIN continually fluctuate. Consult the IRS website for the current procedures.

NOTE: The IRS has temporarily waived the requirement that the applicant sign Form SS-4 until procedures for accepting digital or electronic signatures are in place. IRS Notice 2000-19, 2000-1 Cum Bull 845.

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Source: Estate Planning/California Probate Workflow Manual Revised/14 Income and Estate Taxation/§14.2A 2. Form: Application for Employer Identification Number (IRS Form SS-4)

§14.2A 2. Form: Application for Employer Identification Number (IRS Form SS-4)

Form **SS-4**
(Rev. January 2010)
Department of the Treasury
Internal Revenue Service

Application for Employer Identification Number

(For use by employers, corporations, partnerships, trusts, estates, churches, government agencies, Indian tribal entities, certain individuals, and others.)

▶ **See separate instructions for each line.** ▶ **Keep a copy for your records.**

OMB No. 1545-0003

EIN

Type or print clearly.

1 Legal name of entity (or individual) for whom the EIN is being requested

2 Trade name of business (if different from name on line 1)

3 Executor, administrator, trustee, "care of" name

4a Mailing address (room, apt., suite no. and street, or P.O. box)

5a Street address (if different) (Do not enter a P.O. box.)

4b City, state, and ZIP code (if foreign, see instructions)

5b City, state, and ZIP code (if foreign, see instructions)

6 County and state where principal business is located

7a Name of responsible party

7b SSN, ITIN, or EIN

8a Is this application for a limited liability company (LLC) (or a foreign equivalent)? ☐ Yes ☐ No

8b If 8a is "Yes," enter the number of LLC members ▶

8c If 8a is "Yes," was the LLC organized in the United States? ☐ Yes ☐ No

9a **Type of entity** (check only one box). **Caution.** If 8a is "Yes," see the instructions for the correct box to check.

- ☐ Sole proprietor (SSN) ___ ___ ___
- ☐ Partnership
- ☐ Corporation (enter form number to be filed) ▶ ___
- ☐ Personal service corporation
- ☐ Church or church-controlled organization
- ☐ Other nonprofit organization (specify) ▶ ___
- ☐ Other (specify) ▶
- ☐ Estate (SSN of decedent) ___ ___ ___
- ☐ Plan administrator (TIN) ___
- ☐ Trust (TIN of grantor) ___
- ☐ National Guard ☐ State/local government
- ☐ Farmers' cooperative ☐ Federal government/military
- ☐ REMIC ☐ Indian tribal governments/enterprises

Group Exemption Number (GEN) if any ▶

9b If a corporation, name the state or foreign country (if applicable) where incorporated — State — Foreign country

10 **Reason for applying** (check only one box)

- ☐ Started new business (specify type) ▶ ___
- ☐ Hired employees (Check the box and see line 13.)
- ☐ Compliance with IRS withholding regulations
- ☐ Other (specify) ▶
- ☐ Banking purpose (specify purpose) ▶ ___
- ☐ Changed type of organization (specify new type) ▶ ___
- ☐ Purchased going business
- ☐ Created a trust (specify type) ▶ ___
- ☐ Created a pension plan (specify type) ▶ ___

11 Date business started or acquired (month, day, year). See instructions.

12 Closing month of accounting year

13 Highest number of employees expected in the next 12 months (enter -0- if none).

If no employees expected, skip line 14.

Agricultural	Household	Other

14 If you expect your employment tax liability to be $1,000 or less in a full calendar year **and** want to file Form 944 annually instead of Forms 941 quarterly, check here. (Your employment tax liability generally will be $1,000 or less if you expect to pay $4,000 or less in total wages.) If you do not check this box, you must file Form 941 for every quarter. ☐

15 First date wages or annuities were paid (month, day, year). **Note.** If applicant is a withholding agent, enter date income will first be paid to nonresident alien (month, day, year) ▶

16 Check one box that best describes the principal activity of your business.

☐ Construction ☐ Rental & leasing ☐ Transportation & warehousing ☐ Health care & social assistance ☐ Accommodation & food service ☐ Wholesale-agent/broker ☐ Wholesale-other ☐ Retail ☐ Real estate ☐ Manufacturing ☐ Finance & insurance ☐ Other (specify)

17 Indicate principal line of merchandise sold, specific construction work done, products produced, or services provided.

18 Has the applicant entity shown on line 1 ever applied for and received an EIN? ☐ Yes ☐ No

If "Yes," write previous EIN here ▶

Third Party Designee

Complete this section **only** if you want to authorize the named individual to receive the entity's EIN and answer questions about the completion of this form.

Designee's name — Designee's telephone number (include area code) ( )

Address and ZIP code — Designee's fax number (include area code) ( )

Under penalties of perjury, I declare that I have examined this application, and to the best of my knowledge and belief, it is true, correct, and complete.

Name and title (type or print clearly) ▶ — Applicant's telephone number (include area code) ( )

Signature ▶ — Date ▶ — Applicant's fax number (include area code) ( )

Do I Need an EIN?

File Form SS-4 if the applicant entity does not already have an EIN but is required to show an EIN on any return, statement, or other document.[1] See also the separate instructions for each line on Form SS-4.

IF the applicant...	AND...	THEN...
Started a new business	Does not currently have (nor expect to have) employees	Complete lines 1, 2, 4a–8a, 8b–c (if applicable), 9a, 9b (if applicable), and 10–14 and 16–18.
Hired (or will hire) employees, including household employees	Does not already have an EIN	Complete lines 1, 2, 4a–6, 7a–b (if applicable), 8a, 8b–c (if applicable), 9a, 9b (if applicable), 10–18.
Opened a bank account	Needs an EIN for banking purposes only	Complete lines 1–5b, 7a–b (if applicable), 8a, 8b–c (if applicable), 9a, 9b (if applicable), 10, and 18.
Changed type of organization	Either the legal character of the organization or its ownership changed (for example, you incorporate a sole proprietorship or form a partnership)[2]	Complete lines 1–18 (as applicable).
Purchased a going business[3]	Does not already have an EIN	Complete lines 1–18 (as applicable).
Created a trust	The trust is other than a grantor trust or an IRA trust[4]	Complete lines 1–18 (as applicable).
Created a pension plan as a plan administrator[5]	Needs an EIN for reporting purposes	Complete lines 1, 3, 4a–5b, 9a, 10, and 18.
Is a foreign person needing an EIN to comply with IRS withholding regulations	Needs an EIN to complete a Form W-8 (other than Form W-8ECI), avoid withholding on portfolio assets, or claim tax treaty benefits[6]	Complete lines 1–5b, 7a–b (SSN or ITIN optional), 8a, 8b–c (if applicable), 9a, 9b (if applicable), 10, and 18.
Is administering an estate	Needs an EIN to report estate income on Form 1041	Complete lines 1–6, 9a, 10–12, 13–17 (if applicable), and 18.
Is a withholding agent for taxes on non-wage income paid to an alien (i.e., individual, corporation, or partnership, etc.)	Is an agent, broker, fiduciary, manager, tenant, or spouse who is required to file Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons	Complete lines 1, 2, 3 (if applicable), 4a–5b, 7a–b (if applicable), 8a, 8b–c (if applicable), 9a, 9b (if applicable), 10, and 18.
Is a state or local agency	Serves as a tax reporting agent for public assistance recipients under Rev. Proc. 80-4, 1980-1 C.B. 581[7]	Complete lines 1, 2, 4a–5b, 9a, 10, and 18.
Is a single-member LLC	Needs an EIN to file Form 8832, Classification Election, for filing employment tax returns and excise tax returns, or for state reporting purposes[8]	Complete lines 1–18 (as applicable).
Is an S corporation	Needs an EIN to file Form 2553, Election by a Small Business Corporation[9]	Complete lines 1–18 (as applicable).

[1] For example, a sole proprietorship or self-employed farmer who establishes a qualified retirement plan, or is required to file excise, employment, alcohol, tobacco, or firearms returns, must have an EIN. A partnership, corporation, REMIC (real estate mortgage investment conduit), nonprofit organization (church, club, etc.), or farmers' cooperative must use an EIN for any tax-related purpose even if the entity does not have employees.

[2] However, do not apply for a new EIN if the existing entity only (a) changed its business name, (b) elected on Form 8832 to change the way it is taxed (or is covered by the default rules), or (c) terminated its partnership status because at least 50% of the total interests in partnership capital and profits were sold or exchanged within a 12-month period. The EIN of the terminated partnership should continue to be used. See Regulations section 301.6109-1(d)(2)(iii).

[3] Do not use the EIN of the prior business unless you became the "owner" of a corporation by acquiring its stock.

[4] However, grantor trusts that do not file using Optional Method 1 and IRA trusts that are required to file Form 990-T, Exempt Organization Business Income Tax Return, must have an EIN. For more information on grantor trusts, see the Instructions for Form 1041.

[5] A plan administrator is the person or group of persons specified as the administrator by the instrument under which the plan is operated.

[6] Entities applying to be a Qualified Intermediary (QI) need a QI-EIN even if they already have an EIN. See Rev. Proc. 2000-12.

[7] See also *Household employer* on page 4 of the instructions. **Note.** State or local agencies may need an EIN for other reasons, for example, hired employees.

[8] See *Disregarded entities* on page 4 of the instructions for details on completing Form SS-4 for an LLC.

[9] An existing corporation that is electing or revoking S corporation status should use its previously-assigned EIN.

Print

Instructions for Form SS-4

Department of the Treasury
Internal Revenue Service

(Rev. January 2010)

Application for Employer Identification Number

Section references are to the Internal Revenue Code unless otherwise noted.

What's New

Name of responsible party. The instructions for Line 7a–b have been changed to request the name of the responsible party. See *Lines 7a–b, Name of responsible party* on page 3 for details.

Election to file Form 944. Eligible employers may now elect to file Form 944 annually instead of Forms 941 quarterly. See *Line 14. Do you want to file Form 944?* on page 5 for details.

General Instructions

Use these instructions to complete Form SS-4, Application for Employer Identification Number. Also see *Do I Need an EIN?* on page 2 of Form SS-4.

Purpose of Form

Use Form SS-4 to apply for an employer identification number (EIN). An EIN is a nine-digit number (for example, 12-3456789) assigned to sole proprietors, corporations, partnerships, estates, trusts, and other entities for tax filing and reporting purposes. The information you provide on this form will establish your business tax account.

CAUTION *An EIN is for use in connection with your business activities only. Do not use your EIN in place of your social security number (SSN).*

Reminders

Apply online. Generally, you can apply for and receive an EIN online using the Internet. See *How To Apply* later.

CAUTION *This is a free service offered by the Internal Revenue Service at* www.irs.gov. *Beware of websites on the Internet that charge for this free service.*

File only one Form SS-4. Generally, a sole proprietor should file only one Form SS-4 and needs only one EIN, regardless of the number of businesses operated as a sole proprietorship or trade names under which a business operates. However, if the proprietorship incorporates or enters into a partnership, a new EIN is required. Also, each corporation in an affiliated group must have its own EIN.

EIN applied for, but not received. If you do not have an EIN by the time a return is due, write "Applied For" and the date you applied in the space shown for the number. Do not show your SSN as an EIN on returns.

If you do not have an EIN by the time a tax deposit is due, send your payment to the Internal Revenue Service Center for your filing area as shown in the instructions for the form that you are filing. Make your check or money order payable to the "United States Treasury" and show your name (as shown on Form SS-4), address, type of tax, period covered, and date you applied for an EIN.

Electronic filing and payment. Now, more than ever before, businesses can enjoy the benefits of filing and paying their federal taxes electronically. Whether you rely on a tax professional or handle your own taxes, IRS offers you convenient programs to make filing and paying easier. Spend less time and worry on taxes and more time running your business. Use e-file and the Electronic Federal Tax Payment System (EFTPS) to your benefit.

- For e-file, visit *www.irs.gov* for additional information.
- For EFTPS, visit *www.eftps.gov* or call EFTPS Customer Service at 1-800-555-4477, 1-800-733-4829 (TDD), or 1-800-244-4829 (Spanish).

Federal tax deposits. New employers that have a federal tax obligation will be pre-enrolled in the Electronic Federal Tax Payment System (EFTPS). EFTPS allows you to make all of your federal tax payments online at *www.eftps.gov* or by telephone. Shortly after we have assigned you your EIN, you will receive instructions by mail for activating your EFTPS enrollment. You will also receive an EFTPS Personal Identification Number (PIN) that you will use to make your payments, as well as instructions for obtaining an Internet password you will need to make payments online.

If you are not required to make deposits by EFTPS, you can use Form 8109, Federal Tax Deposit (FTD) Coupon, to make deposits at an authorized depositary. If you would like to receive Form 8109, call 1-800-829-4933. Allow 5 to 6 weeks for delivery. For more information on federal tax deposits, see Pub. 15 (Circular E), Employer's Tax Guide.

How To Apply

You can apply for an EIN online, by telephone, by fax, or by mail depending on how soon you need to use the EIN. Use only one method for each entity so you do not receive more than one EIN for an entity.

Online. Taxpayers and authorized third party designees located within the United States and U.S. possessions can receive an EIN online and use it immediately to file a return or make a payment. Go to the IRS website at *www.irs.gov/businesses* and click on *Employer ID Numbers.*

TIP *Taxpayers who apply online have an option to view, print, and save their EIN assignment notice at the end of the session. (Authorized third party designees will receive the EIN but the notice will be mailed to the applicant.)*

CAUTION *Applicants who are not located within the United States or U.S. possessions cannot use the online application to obtain an EIN. Please use one of the other methods to apply.*

Telephone. You can receive your EIN by telephone and use it immediately to file a return or make a payment. Call the IRS at 1-800-829-4933. The hours of operation are 7:00 a.m. to 10:00 p.m. local time (Pacific time for Alaska and Hawaii). The person making the call must be authorized to sign the form or be an authorized designee. See *Third Party Designee* and *Signature* on page 6. Also see the *TIP* on page 2.

Note. International applicants must call 215-516-6999.

If you are applying by telephone, it will be helpful to complete Form SS-4 before contacting the IRS. An IRS representative will use the information from the Form SS-4 to establish your account and assign you an EIN. Write the

number you are given on the upper right corner of the form and sign and date it. Keep this copy for your records.

If requested by an IRS representative, mail or fax the signed Form SS-4 (including any Third Party Designee authorization) within 24 hours to the IRS address provided by the IRS representative.

TIP *Taxpayer representatives can apply for an EIN on behalf of their client and request that the EIN be faxed to their client on the same day.* ***Note.*** *By using this procedure, you are authorizing the IRS to fax the EIN without a cover sheet.*

Fax. Under the Fax-TIN program, you can receive your EIN by fax within 4 business days. Complete and fax Form SS-4 to the IRS using the appropriate Fax-TIN number listed below. A long-distance charge to callers outside of the local calling area will apply. Fax-TIN numbers can only be used to apply for an EIN. The numbers may change without notice. Fax-TIN is available 24 hours a day, 7 days a week.

Be sure to provide your fax number so the IRS can fax the EIN back to you.

Note. By using this procedure, you are authorizing the IRS to fax the EIN without a cover sheet.

Mail. Complete Form SS-4 at least 4 to 5 weeks before you will need an EIN. Sign and date the application and mail it to the service center address for your state. You will receive your EIN in the mail in approximately 4 weeks. See also *Third Party Designee* on page 6.

Call 1-800-829-4933 to verify a number or to ask about the status of an application by mail.

Where to File or Fax

If your principal business, office or agency, or legal residence in the case of an individual, is located in:	**File or fax with the "Internal Revenue Service Center" at:**
One of the 50 states or the District of Columbia	Attn: EIN Operation Cincinnati, OH 45999 Fax-TIN: 859-669-5760
If you have no legal residence, principal place of business, or principal office or agency in any state:	Attn: EIN Operation Philadelphia, PA 19255 Fax-TIN: 215-516-1040

How To Get Forms and Publications

Internet. You can access the IRS website 24 hours a day, 7 days a week at *www.irs.gov* to download forms, instructions, and publications.

Phone. Call 1-800-TAX-FORM (1-800-829-3676) to order forms, instructions, and publications. You should receive your order or notification of its status within 10 workdays.

DVD for Tax Products. For small businesses, return preparers, or others who may frequently need tax forms or publications, a DVD containing over 2,000 tax products (including many prior year forms) can be purchased from the National Technical Information Service (NTIS).

To order Pub.1796, IRS Tax Products CD, call 1-877-233-6767 or connect to *www.irs.gov/cdorders*.

Tax Help for Your Business

IRS-sponsored Small Business Workshops provide information about your federal and state tax obligations. For information about workshops in your area, call 1-800-829-4933.

Related Forms and Publications

The following forms and instructions may be useful to filers of Form SS-4.

- Form 990-T, Exempt Organization Business Income Tax Return.
- Instructions for Form 990-T.
- Schedule C (Form 1040), Profit or Loss From Business.
- Schedule F (Form 1040), Profit or Loss From Farming.
- Instructions for Form 1041 and Schedules A, B, D, G, I, J, and K-1, U.S. Income Tax Return for Estates and Trusts.
- Form 1042, Annual Withholding Tax Return for U.S. Source Income of Foreign Persons.
- Instructions for Form 1065, U.S. Return of Partnership Income.
- Instructions for Form 1066, U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return.
- Instructions for Forms 1120.
- Form 2553, Election by a Small Business Corporation.
- Form 2848, Power of Attorney and Declaration of Representative.
- Form 8821, Tax Information Authorization.
- Form 8832, Entity Classification Election.

For more information about filing Form SS-4 and related issues, see:

- Pub. 51 (Circular A), Agricultural Employer's Tax Guide;
- Pub. 15 (Circular E), Employer's Tax Guide;
- Pub. 538, Accounting Periods and Methods;
- Pub. 542, Corporations;
- Pub. 557, Tax-Exempt Status for Your Organization;
- Pub. 583, Starting a Business and Keeping Records;
- Pub. 966, The Secure Way to Pay Your Federal Taxes for Business and Individual Taxpayers;
- Pub. 1635, Understanding Your EIN;
- Package 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code; and
- Package 1024, Application for Recognition of Exemption Under Section 501(a).

Specific Instructions

Print or type all entries on Form SS-4. Follow the instructions for each line to expedite processing and to avoid unnecessary IRS requests for additional information. Enter "N/A" (nonapplicable) on the lines that do not apply.

Line 1. Legal name of entity (or individual) for whom the EIN is being requested. Enter the legal name of the entity (or individual) applying for the EIN exactly as it appears on the social security card, charter, or other applicable legal document. An entry is required.

Individuals. Enter your first name, middle initial, and last name. If you are a sole proprietor, enter your individual name, not your business name. Enter your business name on line 2. Do not use abbreviations or nicknames on line 1.

Trusts. Enter the name of the trust as it appears on the trust instrument.

Estate of a decedent. Enter the name of the estate. For an estate that has no legal name, enter the name of the decedent followed by "Estate."

Partnerships. Enter the legal name of the partnership as it appears in the partnership agreement.

Corporations. Enter the corporate name as it appears in the corporate charter or other legal document creating it.

Plan administrators. Enter the name of the plan administrator. A plan administrator who already has an EIN should use that number.

Line 2. Trade name of business. Enter the trade name of the business if different from the legal name. The trade name is the "doing business as" (DBA) name.

CAUTION *Use the full legal name shown on line 1 on all tax returns filed for the entity. (However, if you enter a trade name on line 2 and choose to use the trade name instead of the legal name, enter the trade name on all returns you file.) To prevent processing delays and errors, always use the legal name only (or the trade name only) on all tax returns.*

Line 3. Executor, administrator, trustee, "care of" name. Trusts enter the name of the trustee. Estates enter the name of the executor, administrator, or other fiduciary. If the entity applying has a designated person to receive tax information, enter that person's name as the "care of" person. Enter the individual's first name, middle initial, and last name.

Lines 4a–b. Mailing address. Enter the mailing address for the entity's correspondence. If the entity's address is outside the United States or its possessions, you must enter the city, province or state, postal code, and the name of the country. Do not abbreviate the country name. If line 3 is completed, enter the address for the executor, trustee or "care of" person. Generally, this address will be used on all tax returns.

If the entity is filing the Form SS-4 only to obtain an EIN for the Form 8832, use the same address where you would like to have the acceptance or nonacceptance letter sent.

TIP *File Form 8822, Change of Address, to report any subsequent changes to the entity's mailing address.*

Lines 5a–b. Street address. Provide the entity's physical address only if different from its mailing address shown in lines 4a–b. Do not enter a P.O. box number here. If the entity's address is outside the United States or its possessions, you must enter the city, province or state, postal code, and the name of the country. Do not abbreviate the country name.

Line 6. County and state where principal business is located. Enter the entity's primary physical location.

Lines 7a–b. Name of responsible party. Enter the full name (first name, middle initial, last name, if applicable) and SSN, ITIN, or EIN of the entity's responsible party as defined below.

Responsible party defined. For entities with shares or interests traded on a public exchange, or which are registered with the Securities and Exchange Commission, "responsible party" is (a) the principal officer, if the business is a corporation, (b) a general partner, if a partnership, (c) the owner of an entity that is disregarded as separate from its owner (disregarded entities owned by a corporation enter the corporation's name and EIN), or (d) a grantor, owner, or trustor, if a trust.

For all other entities, "responsible party" is the person who has a level of control over, or entitlement to, the funds or assets in the entity that, as a practical matter, enables the individual, directly or indirectly, to control, manage, or direct the entity and the disposition of its funds and assets. The ability to fund the entity or the entitlement to the property of the entity alone, however, without any corresponding authority to control, manage, or direct the entity (such as in the case of a minor child beneficiary), does not cause the individual to be a responsible party.

If the person in question is an alien individual with a previously assigned individual taxpayer identification number (ITIN), enter the ITIN in the space provided and submit a copy of an official identifying document. If necessary, complete Form W-7, Application for IRS Individual Taxpayer Identification Number, to obtain an ITIN.

You must enter an SSN, ITIN, or EIN on line 7b unless the only reason you are applying for an EIN is to make an entity classification election (see Regulations sections 301.7701-1 through 301.7701-3) and you are a nonresident alien or other foreign entity with no effectively connected income from sources within the United States.

Lines 8a–c. Limited liability company (LLC) information. An LLC is an entity organized under the laws of a state or foreign country as a limited liability company. For federal tax purposes, an LLC may be treated as a partnership or corporation or be disregarded as an entity separate from its owner.

By default, a domestic LLC with only one member is disregarded as an entity separate from its owner and must include all of its income and expenses on the owner's tax return (for example, Schedule C (Form 1040)). Also by default, a domestic LLC with two or more members is treated as a partnership. A domestic LLC may file Form 8832 to avoid either default classification and elect to be classified as an association taxable as a corporation. For more information on entity classifications (including the rules for foreign entities), see the instructions for Form 8832.

If the answer to line 8a is "Yes," enter the number of LLC members. If the LLC is owned solely by a husband and wife in a community property state and the husband and wife choose to treat the entity as a disregarded entity, enter "1" on line 8b.

CAUTION *Do not file Form 8832 if the LLC accepts the default classifications above. If the LLC is eligible to be treated as a corporation that meets certain tests and it will be electing S corporation status, it must timely file Form 2553. The LLC will be treated as a corporation as of the effective date of the S corporation election and does not need to file Form 8832. See the Instructions for Form 2553.*

Line 9a. Type of entity. Check the box that best describes the type of entity applying for the EIN. If you are an alien individual with an ITIN previously assigned to you, enter the ITIN in place of a requested SSN.

CAUTION *This is not an election for a tax classification of an entity. See* Disregarded entities *on page 4.*

Sole proprietor. Check this box if you file Schedule C, C-EZ, or F (Form 1040) and have a qualified plan, or are required to file excise, employment, alcohol, tobacco, or firearms returns, or are a payer of gambling winnings. Enter your SSN (or ITIN) in the space provided. If you are a nonresident alien with no effectively connected income from sources within the United States, you do not need to enter an SSN or ITIN.

Corporation. This box is for any corporation other than a personal service corporation. If you check this box, enter the income tax form number to be filed by the entity in the space provided.

CAUTION *If you entered "1120S" after the "Corporation" checkbox, the corporation must file Form 2553 no later than the 15th day of the 3rd month of the tax year the election is to take effect. Until Form 2553 has been received and approved, you will be considered a Form 1120 filer. See the Instructions for Form 2553.*

Personal service corporation. Check this box if the entity is a personal service corporation. An entity is a personal service corporation for a tax year only if:

- The principal activity of the entity during the testing period (prior tax year) for the tax year is the performance of personal services substantially by employee-owners, and
- The employee-owners own at least 10% of the fair market value of the outstanding stock in the entity on the last day of the testing period.

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Personal services include performance of services in such fields as health, law, accounting, or consulting. For more information about personal service corporations, see the Instructions for Form 1120 and Pub. 542.

If the corporation is recently formed, the testing period begins on the first day of its tax year and ends on the earlier of the last day of its tax year, or the last day of the calendar year in which its tax year begins.

Other nonprofit organization. Check this box if the nonprofit organization is other than a church or church-controlled organization and specify the type of nonprofit organization (for example, an educational organization).

If the organization also seeks tax-exempt status, you must file either Package 1023 or Package 1024. See Pub. 557 for more information.

If the organization is covered by a group exemption letter, enter the four-digit group exemption number (GEN) in the last entry. (Do not confuse the GEN with the nine-digit EIN.) If you do not know the GEN, contact the parent organization. Get Pub. 557 for more information about group exemption numbers.

If the organization is a section 527 political organization, check the box for *Other nonprofit organization* and specify "section 527 organization" in the space to the right. To be recognized as exempt from tax, a section 527 political organization must electronically file Form 8871, Political Organization Notice of Section 527 Status, within 24 hours of the date on which the organization was established. The organization may also have to file Form 8872, Political Organization Report of Contributions and Expenditures. See *www.irs.gov/polorgs* for more information.

Plan administrator. If the plan administrator is an individual, enter the plan administrator's taxpayer identification number (TIN) in the space provided.

REMIC. Check this box if the entity has elected to be treated as a real estate mortgage investment conduit (REMIC). See the Instructions for Form 1066 for more information.

State/local government. If you are a government employer and you are not sure of your social security and Medicare coverage options, go to *www.ncsssa.org/ssaframes.html* to obtain the contact information for your state's Social Security Administrator.

Other. If not specifically listed, check the "Other" box, enter the type of entity and the type of return, if any, that will be filed (for example, "Common Trust Fund, Form 1065" or "Created a Pension Plan"). Do not enter "N/A." If you are an alien individual applying for an EIN, see the *Lines 7a–b* instructions on page 3.

- **Household employer.** If you are an individual that will employ someone to provide services in your household, check the "Other" box and enter "Household Employer" and your SSN. If you are a trust that qualifies as a household employer, you do not need a separate EIN for reporting tax information relating to household employees; use the EIN of the trust.
- **Household employer agent.** If you are an agent of a household employer that is a disabled individual or other welfare recipient receiving home care services through a state or local program, check the "Other" box and enter "Household Employer Agent." (See Rev. Proc. 80-4, 1980-1 C.B. 581 and Notice 2003-70, 2003-43 I.R.B. 916.) If you are a state or local government also check the box for state/local government.
- **QSub.** For a qualified subchapter S subsidiary (QSub) check the "Other" box and specify "QSub."
- **Withholding agent.** If you are a withholding agent required to file Form 1042, check the "Other" box and enter "Withholding Agent."

Disregarded entities. A disregarded entity is an eligible entity that is disregarded as separate from its owner for federal income tax purposes. Disregarded entities include single-member limited liability companies (LLCs) that are disregarded as separate from their owners, qualified subchapter S subsidiaries (qualified subsidiaries of an S corporation), and certain qualified foreign entities. See the instructions for Form 8832 and Regulations section 301.7701-3 for more information on domestic and foreign disregarded entities.

A disregarded entity must have an EIN if it is subject to employment taxes or certain excise taxes. For wages paid during 2008 and in prior years, the reporting and payment of employment taxes for employees could be made using the name and EIN of either the owner or the disregarded entity (as explained in Notice 99-6, 1999-3 I.R.B. 12).

For wages paid on or after January 1, 2009, the disregarded entity is required to use its name and EIN for reporting and payment of employment taxes. A disregarded entity is also required to use its name and EIN to register for excise tax activities on Form 637, pay and report excise taxes reported on Forms 720, 730, 2290, and 11-C, and claim any refunds, credits, and payments on Form 8849. This requirement for reporting and paying excise taxes became effective after December 31, 2007. See the instructions for the employment and excise tax returns for more information.

Complete Form SS-4 for disregarded entities as follows.

- If a disregarded entity is filing Form SS-4 to obtain an EIN because it is required to report and pay employment and excise taxes (see above) or for non-federal purposes such as a state requirement, check the "Other" box for line 9a and write "disregarded entity" (or "disregarded entity-sole proprietorship" if the owner of the disregarded entity is an individual).
- If the disregarded entity is requesting an EIN for purposes of filing Form 8832 to elect classification as an association taxable as a corporation, or Form 2553 to elect S corporation status, check the "Corporation" box for line 9a and write "single-member" and the form number of the return that will be filed (Form 1120 or 1120S).
- If the disregarded entity is requesting an EIN because it has acquired one or more additional owners and its classification has changed to partnership under the default rules of Regulations section 301.7701-3(f), check the "Partnership" box for line 9a.

Line 10. Reason for applying. Check only one box. Do not enter "N/A." A selection is required.

Started new business. Check this box if you are starting a new business that requires an EIN. If you check this box, enter the type of business being started. Do not apply if you already have an EIN and are only adding another place of business.

Hired employees. Check this box if the existing business is requesting an EIN because it has hired or is hiring employees and is therefore required to file employment tax returns. Do not apply if you already have an EIN and are only hiring employees. For information on employment taxes (for example, for family members), see Pub. 15 (Circular E).

You may have to make electronic deposits of all depository taxes (such as employment tax, excise tax, and corporate income tax) using the Electronic Federal Tax Payment System (EFTPS). See Federal tax deposits *on page 1; section 11,* Depositing Taxes, *of Pub. 15 (Circular E); and Pub. 966.*

Banking purpose. Check this box if you are requesting an EIN for banking purposes only, and enter the banking purpose (for example, a bowling league for depositing dues or an investment club for dividend and interest reporting).

Changed type of organization. Check this box if the business is changing its type of organization. For example, the business was a sole proprietorship and has been incorporated or has become a partnership. If you check this box, specify in the space provided (including available space immediately below) the type of change made. For example, "From Sole Proprietorship to Partnership."

Purchased going business. Check this box if you purchased an existing business. Do not use the former owner's EIN unless you became the "owner" of a corporation by acquiring its stock.

Created a trust. Check this box if you created a trust, and enter the type of trust created. For example, indicate if the trust is a nonexempt charitable trust or a split-interest trust.

Exception. Do not file this form for certain grantor-type trusts. The trustee does not need an EIN for the trust if the trustee furnishes the name and TIN of the grantor/owner and the address of the trust to all payers. However, grantor trusts that do not file using Optional Method 1 and IRA trusts that are required to file Form 990-T, Exempt Organization Business Income Tax Return, must have an EIN. For more information on grantor trusts, see the Instructions for Form 1041.

TIP *Do not check this box if you are applying for a trust EIN when a new pension plan is established. Check "Created a pension plan."*

Created a pension plan. Check this box if you have created a pension plan and need an EIN for reporting purposes. Also, enter the type of plan in the space provided.

TIP *Check this box if you are applying for a trust EIN when a new pension plan is established. In addition, check the "Other" box on line 9a and write "Created a Pension Plan" in the space provided.*

Other. Check this box if you are requesting an EIN for any other reason; and enter the reason. For example, a newly-formed state government entity should enter "Newly-Formed State Government Entity" in the space provided.

Line 11. Date business started or acquired. If you are starting a new business, enter the starting date of the business. If the business you acquired is already operating, enter the date you acquired the business. If you are changing the form of ownership of your business, enter the date the new ownership entity began. Trusts should enter the date the trust was funded. Estates should enter the date of death of the decedent whose name appears on line 1 or the date when the estate was legally funded.

Line 12. Closing month of accounting year. Enter the last month of your accounting year or tax year. An accounting or tax year is usually 12 consecutive months, either a calendar year or a fiscal year (including a period of 52 or 53 weeks). A calendar year is 12 consecutive months ending on December 31. A fiscal year is either 12 consecutive months ending on the last day of any month other than December or a 52-53 week year. For more information on accounting periods, see Pub. 538.

Individuals. Your tax year generally will be a calendar year.

Partnerships. Partnerships must adopt one of the following tax years.

- The tax year of the majority of its partners.
- The tax year common to all of its principal partners.
- The tax year that results in the least aggregate deferral of income.
- In certain cases, some other tax year.

See the Instructions for Form 1065 for more information.

REMICs. REMICs must have a calendar year as their tax year.

Personal service corporations. A personal service corporation generally must adopt a calendar year unless it meets one of the following requirements.

- It can establish a business purpose for having a different tax year.
- It elects under section 444 to have a tax year other than a calendar year.

Trusts. Generally, a trust must adopt a calendar year except for the following trusts.

- Tax-exempt trusts.
- Charitable trusts.
- Grantor-owned trusts.

Line 13. Highest number of employees expected in the next 12 months. Complete each box by entering the number (including zero ("-0-")) of "Agricultural," "Household," or "Other" employees expected by the applicant in the next 12 months.

If no employees are expected, skip line 14.

Line 14. Do you want to file Form 944? If you expect your employment tax liability to be $1,000 or less in a full calendar year, you are eligible to file Form 944 annually (once each year) instead of filing Form 941 quarterly (every three months). Your employment tax liability generally will be $1,000 or less if you expect to pay $4,000 or less in total wages subject to social security and Medicare taxes and federal income tax withholding. If you qualify and want to file Form 944 instead of Forms 941, check the box on line 14. If you do not check the box, then you must file Form 941 for every quarter.

TIP *For employers in the U.S. possessions, generally, if you pay $6,536 or less in wages subject to social security and Medicare taxes, you are likely to pay $1,000 or less in employment taxes.*

For more information on employment taxes, see Pub. 15 (Circular E); or Pub. 51 (Circular A) if you have agricultural employees (farmworkers).

Line 15. First date wages or annuities were paid. If the business has employees, enter the date on which the business began to pay wages. If the business does not plan to have employees, enter "N/A."

Withholding agent. Enter the date you began or will begin to pay income (including annuities) to a nonresident alien. This also applies to individuals who are required to file Form 1042 to report alimony paid to a nonresident alien.

Line 16. Check the one box on line 16 that best describes the principal activity of the applicant's business. Check the "Other" box (and specify the applicant's principal activity) if none of the listed boxes applies. You must check a box.

Construction. Check this box if the applicant is engaged in erecting buildings or engineering projects (for example, streets, highways, bridges, tunnels). The term "Construction" also includes special trade contractors (for example, plumbing, HVAC, electrical, carpentry, concrete, excavation, etc. contractors).

Real estate. Check this box if the applicant is engaged in renting or leasing real estate to others; managing, selling, buying, or renting real estate for others; or providing related real estate services (for example, appraisal services). Also check this box for mortgage real estate investment trusts (REITS). Mortgage REITS are engaged in issuing shares of funds consisting primarily of portfolios of real estate

mortgage assets with gross income of the trust solely derived from interest earned.

Rental and leasing. Check this box if the applicant is engaged in providing tangible goods such as autos, computers, consumer goods, or industrial machinery and equipment to customers in return for a periodic rental or lease payment. Also check this box for equity real estate investment trusts (REITS). Equity REITS are engaged in issuing shares of funds consisting primarily of portfolios of real estate assets with gross income of the trust derived from renting real property.

Manufacturing. Check this box if the applicant is engaged in the mechanical, physical, or chemical transformation of materials, substances, or components into new products. The assembling of component parts of manufactured products is also considered to be manufacturing.

Transportation & warehousing. Check this box if the applicant provides transportation of passengers or cargo; warehousing or storage of goods; scenic or sight-seeing transportation; or support activities related to transportation.

Finance & insurance. Check this box if the applicant is engaged in transactions involving the creation, liquidation, or change of ownership of financial assets and/or facilitating such financial transactions; underwriting annuities/insurance policies; facilitating such underwriting by selling insurance policies; or by providing other insurance or employee-benefit related services.

Health care & social assistance. Check this box if the applicant is engaged in providing physical, medical, or psychiatric care or providing social assistance activities such as youth centers, adoption agencies, individual/family services, temporary shelters, daycare, etc.

Accommodation & food services. Check this box if the applicant is engaged in providing customers with lodging, meal preparation, snacks, or beverages for immediate consumption.

Wholesale–agent/broker. Check this box if the applicant is engaged in arranging for the purchase or sale of goods owned by others or purchasing goods on a commission basis for goods traded in the wholesale market, usually between businesses.

Wholesale–other. Check this box if the applicant is engaged in selling goods in the wholesale market generally to other businesses for resale on their own account, goods used in production, or capital or durable nonconsumer goods.

Retail. Check this box if the applicant is engaged in selling merchandise to the general public from a fixed store; by direct, mail-order, or electronic sales; or by using vending machines.

Other. Check this box if the applicant is engaged in an activity not described above. Describe the applicant's principal business activity in the space provided.

Line 17. Use line 17 to describe the applicant's principal line of business in more detail. For example, if you checked the "Construction" box on line 16, enter additional detail such as "General contractor for residential buildings" on line 17. An entry is required. For mortgage REITS indicate mortgage REIT and for equity REITS indicate what type of real property is the principal type (residential REIT, nonresidential REIT, miniwarehouse REIT).

Line 18. Check the applicable box to indicate whether or not the applicant entity applying for an EIN was issued one previously.

Third Party Designee. Complete this section only if you want to authorize the named individual to receive the entity's EIN and answer questions about the completion of Form SS-4. The designee's authority terminates at the time the EIN is assigned and released to the designee. You must complete the signature area for the authorization to be valid.

Signature. When required, the application must be signed by (a) the individual, if the applicant is an individual, (b) the president, vice president, or other principal officer, if the applicant is a corporation, (c) a responsible and duly authorized member or officer having knowledge of its affairs, if the applicant is a partnership, government entity, or other unincorporated organization, or (d) the fiduciary, if the applicant is a trust or an estate. Foreign applicants may have any duly-authorized person (for example, division manager) sign Form SS-4.

Privacy Act and Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. We need it to comply with section 6109 and the regulations thereunder, which generally require the inclusion of an employer identification number (EIN) on certain returns, statements, or other documents filed with the Internal Revenue Service. If your entity is required to obtain an EIN, you are required to provide all of the information requested on this form. Information on this form may be used to determine which federal tax returns you are required to file and to provide you with related forms and publications.

We disclose this form to the Social Security Administration (SSA) for their use in determining compliance with applicable laws. We may give this information to the Department of Justice for use in civil and/or criminal litigation, and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, and to federal law enforcement and intelligence agencies to combat terrorism.

We will be unable to issue an EIN to you unless you provide all of the requested information that applies to your entity. Providing false information could subject you to penalties.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103. Section 6109 requires paid preparers to provide their identifying number.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Recordkeeping	8 hrs., 36 min.
Learning about the law or the form	42 min.
Preparing, copying, assembling, and sending the form to the IRS	52 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, IR-6526, 1111 Constitution Avenue, NW, Washington, DC 20224. Do not send the form to this address. Instead, see *Where to File or Fax* on page 2.

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Source: Estate Planning/California Probate Workflow Manual Revised/14 Income and Estate Taxation/§14.3 C. Form: Notice Concerning Fiduciary Relationship (IRS Form 56)

§14.3 C. Form: Notice Concerning Fiduciary Relationship (IRS Form 56)

Form **56**
(Rev. December 2007)
Department of the Treasury
Internal Revenue Service

Notice Concerning Fiduciary Relationship

(Internal Revenue Code sections 6036 and 6903)

OMB No. 1545-0013

Part I Identification

Name of person for whom you are acting (as shown on the tax return)	Identifying number	Decedent's social security no.

Address of person for whom you are acting (number, street, and room or suite no.)

City or town, state, and ZIP code (If a foreign address, see instructions.)

Fiduciary's name

Address of fiduciary (number, street, and room or suite no.)

City or town, state, and ZIP code	Telephone number (optional)
	( )

Part II Authority

1 Authority for fiduciary relationship. Check applicable box:

a(1) ☐ Will and codicils or court order appointing fiduciary . . . . . (2) Date of death .....

b(1) ☐ Court order appointing fiduciary . . . . . (2) Date (see instructions) .....

c ☐ Valid trust instrument and amendments

d ☐ Other. Describe ▶ .....

Part III Nature of Liability and Tax Notices

2 Type of tax (estate, gift, generation-skipping transfer, income, excise, etc.) ▶ .....

3 Federal tax form number (706, 1040, 1041, 1120, etc.) ▶ .....

4 Year(s) or period(s) (if estate tax, date of death) ▶ .....

5 If the fiduciary listed in Part I is the person to whom notices and other written communications should be sent for **all** items described on lines 2, 3, and 4, check here . . . . . ▶ ☐

6 If the fiduciary listed in Part I is the person to whom notices and other written communications should be sent for **some** (but not all) of the items described on lines 2, 3, and 4, check here ▶ ☐ and list the applicable federal tax form number and the year(s) or period(s) applicable .....

.....

Part IV Revocation or Termination of Notice

Section A—Total Revocation or Termination

7 Check this box if you are revoking or terminating all prior notices concerning fiduciary relationships on file with the Internal Revenue Service for the same tax matters and years or periods covered by this notice concerning fiduciary relationship . ▶ ☐

Reason for termination of fiduciary relationship. Check applicable box:

a ☐ Court order revoking fiduciary authority

b ☐ Certificate of dissolution or termination of a business entity

c ☐ Other. Describe ▶

Section B—Partial Revocation

8a Check this box if you are revoking earlier notices concerning fiduciary relationships on file with the Internal Revenue Service for the same tax matters and years or periods covered by this notice concerning fiduciary relationship . . . . . ▶ ☐

b Specify to whom granted, date, and address, including ZIP code.

▶ .....

Section C—Substitute Fiduciary

9 Check this box if a new fiduciary or fiduciaries have been or will be substituted for the revoking or terminating fiduciary and specify the name(s) and address(es), including ZIP code(s), of the new fiduciary(ies) . . . . . ▶ ☐

▶ .....

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Part V Court and Administrative Proceedings

Name of court (if other than a court proceeding, identify the type of proceeding and name of agency)		Date proceeding initiated	
Address of court		Docket number of proceeding	
City or town, state, and ZIP code	Date	Time a.m. p.m.	Place of other proceedings

Part VI Signature

Please Sign Here

I certify that I have the authority to execute this notice concerning fiduciary relationship on behalf of the taxpayer.

Fiduciary's signature	Title, if applicable	Date

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Form 56 cannot be used to update the last known address of the person for whom you are acting. Use Form 8822, Change of Address, to make this change.

Purpose of Form

You must notify the IRS of the creation or termination of a fiduciary relationship under section 6903 and give notice of qualification under section 6036. You may use Form 56 to provide this notice to the IRS.

Who Should File

The fiduciary (see **Definitions** below) uses Form 56 to notify the IRS of the creation or termination of a fiduciary relationship under section 6903. For example, if you are acting as fiduciary for an individual, a decedent's estate, or a trust, you may file Form 56.

Receivers and assignees for the benefit of creditors also file Form 56 to give notice of qualification under section 6036. However, a bankruptcy trustee, debtor-in-possession, or other like fiduciary in a bankruptcy proceeding is not required to give notice of qualification under section 6036. Trustees, etc., in bankruptcy proceedings are subject to the notice requirements under title 11 of the United States Code (Bankruptcy Rules).

Definitions

Fiduciary. A fiduciary is any person acting in a fiduciary capacity for any other person (or terminating entity), such as an administrator, conservator, designee, executor, guardian, receiver, trustee of a trust, trustee in bankruptcy, personal representative, person in possession of property of a decedent's estate, or debtor-in-possession of assets in any bankruptcy proceeding by order of the court.

Person. A person is any individual, trust, estate, partnership, association, company or corporation.

Decedent's estate. A decedent's estate is a taxable entity separate from the decedent that comes into existence at the time of the decedent's death. It generally continues to exist until the final distribution of the estate's assets is made to the heirs and other beneficiaries.

Terminating entities. A terminating entity, such as a corporation, partnership, trust, etc., only has the legal capacity to establish a fiduciary relationship while it is in existence. Establishing a fiduciary relationship prior to termination of the entity allows the fiduciary to represent the entity on all tax matters after it is terminated.

When and Where To File

Notice of fiduciary relationship. Generally, you should file Form 56 when you create (or terminate) a fiduciary relationship. File Form 56 with the Internal Revenue Service Center where the person for whom you are acting is required to file tax returns.

Proceedings (other than bankruptcy) and assignments for the benefit of creditors. A fiduciary who is appointed or authorized to act as:

- A receiver in a receivership proceeding or similar fiduciary (including a fiduciary in aid of foreclosure), or
- An assignee for the benefit of creditors,

must file Form 56 on, or within 10 days of, the date of appointment with the Advisory Group Manager, Advisory, Insolvency and Quality (AIQ) Office, of the area office of the IRS having jurisdiction over the person for whom you are acting. See Publication 4235, Technical Services (Advisory) Group Addresses, for more information.

The receiver or assignee may also file a separate Form 56 with the service center where the person for whom the fiduciary is acting is required to file tax returns to provide the notice required by section 6903.

Specific Instructions

Part I—Identification

Provide all the information called for in this part. If there is more than one fiduciary, each fiduciary must file (or otherwise give notice) a separate Form 56.

Name. File a separate Form 56 for each person for whom you are acting in a fiduciary capacity. For example, if you will be filing the decedent's final Form 1040 and are the executor/administrator of the decedent's estate, file one Form 56 entering the name of the decedent as the person for whom you are acting and file one Form 56 entering the name of the estate as the name of the person for whom you are acting.

Identifying number. If you are acting for an individual, an individual debtor, or other person whose assets are controlled, the identifying number is the social security number (SSN). If you are acting for a person other than an individual, including an estate or trust, the identifying number is the employer identification number (EIN).

Decedent's SSN. If you are acting on behalf of a decedent, enter the decedent's SSN shown on his or her final Form 1040 in the space provided. If you are acting on behalf of a decedent's estate that must file a Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, enter the decedent's SSN in addition to entering the EIN (if applicable) as discussed above under *Identifying number.*

Address. Include the suite, room, or other unit number after the street address.

If the postal service does not deliver mail to the street address and the fiduciary (or person) has a P.O. box, show the box number instead of the street address.

For a foreign address, enter the information in the following order: city, province or state, and country. Follow the country's practice for entering the postal code. Please do not abbreviate the country name.

Part II—Authority

Line 1a. Check the box on line 1a if the decedent died *testate* (i.e., having left a valid will) and enter the decedent's date of death.

Line 1b. Check the box on line 1b if the decedent died *intestate* (i.e., without leaving a valid will). Also, enter the decedent's date of death and write "Date of Death" next to the date.

Assignment for the benefit of creditors. Enter the date the assets were assigned to you and write "Assignment Date" after the date.

Proceedings other than bankruptcy. Enter the date you were appointed or took possession of the assets of the debtor or other person whose assets are controlled.

You must be prepared to furnish evidence that substantiates your authority to act as a fiduciary for the person for whom you are acting.

Part III—Nature of Liability and Tax Notices

Line 2. Specify the type of tax involved. This line should also identify a transferee tax liability under section 6901 or fiduciary tax liability under 31 U.S.C. 3713(b) when either exists.

Line 5. If you check the box on line 5, we will treat your address as the address for IRS notices and correspondence for the form(s) and period(s) listed on lines 3 and 4.

Line 6. If you check the box on line 6, we will treat your address as the address for IRS notices and correspondence for the form(s) and period(s) that you list on line 6.

Part IV—Revocation or Termination of Notice

Complete this part only if you are revoking or terminating a prior notice concerning a fiduciary relationship. Completing this part will relieve you of any further duty or liability as a fiduciary if used as a notice of termination. However, completing Section B or C does not relieve any new or substitute fiduciary of the requirement to file a Form 56 or to otherwise give notice.

Part V—Court and Administrative Proceedings

Complete this part only if you have been appointed a receiver, trustee, or fiduciary by a court or other governmental unit in a proceeding other than a bankruptcy proceeding.

If proceedings are scheduled for more than one date, time, or place, attach a separate schedule of the proceedings.

Assignment for the benefit of creditors. You must attach the following information:

1. A brief description of the assets that were assigned, and

2. An explanation of the action to be taken regarding such assets, including any hearings, meetings of creditors, sale, or other scheduled action.

Part VI—Signature

Sign Form 56 and enter a title describing your role as a fiduciary (e.g., assignee, executor, guardian, trustee, personal representative, receiver, or conservator).

Paperwork Reduction Act and Privacy Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. Form 56 is provided for your convenience in meeting this requirement and its use is voluntary. Sections 6903 and 6036 require you to inform the IRS of the creation or termination of a fiduciary relationship. Under section 6109 you must disclose the social security number or other identification number of the individual or entity for which you are acting. The principal purpose of this disclosure is to secure proper identification of the taxpayer. We also need this information to gain access to the tax information in our files and properly respond to your request. We may disclose this information to the Department of Justice for civil or criminal litigation, and to cities, states, and the District of Columbia for use in administering their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. If you do not disclose this information, we may suspend processing the notice of fiduciary relationship and not consider this as proper notification until you provide the information. Providing false information may subject you to penalties.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Recordkeeping . . . . . 8 min.

Learning about the law or the form . . . . . 32 min.

Preparing the form . . . . . 46 min.

Copying, assembling, and sending the form to the IRS . 15 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, IR-6526, 1111 Constitution Avenue, NW, Washington, DC 20224. Do not send Form 56 to this address. Instead, see *When and Where To File* on the prior page.

Comment: Because the representative is responsible for the decedent's income taxes, it is desirable to inform the

IRS of this fiduciary relationship. Otherwise, IRS notices sent to the decedent's last known address are sufficient to satisfy IRC notice requirements. The legal assistant should obtain and fill out IRS Form 56, Notice Concerning Fiduciary Relationship (reprinted above). The legal assistant should fill out the name and last address of the decedent, the nature of the tax (*e.g.,* income tax), and the years involved (year of decedent's death, and previous year if decedent had not already filed income tax returns; other years as well, depending on decedent's business activities—attorney should be consulted). The form should be sent to the IRS service center where the decedent was required to file tax returns, and, if different, the IRS service center in which the representative will be required to file tax returns. A copy should also be sent with a cover letter to the Franchise Tax Board, Fiduciary Audit Unit, P.O. Box 1468, Sacramento, CA 95812-1468.

If the decedent filed income tax returns in other states, those states should also be notified. Each notice should be accompanied by a certified copy of the court order appointing the representative.

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Source: Estate Planning/California Probate Workflow Manual Revised/14 Income and Estate Taxation/§14.4 D. Addresses of IRS District Directors [Deleted]

§14.4 D. Addresses of IRS District Directors [Deleted]

This section has been deleted because the IRS has eliminated District Directors' offices. See §14.5 for address for filing request for prompt assessment.

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Source: Estate Planning/California Probate Workflow Manual Revised/14 Income and Estate Taxation/§14.5 E. Request for Prompt Assessment

§14.5 E. Request for Prompt Assessment

If the attorney and representative determine that it is desirable, the legal assistant should prepare IRS Form 4810 to request that the IRS make a prompt assessment of any tax liabilities of the decedent. The form should be transmitted separately from any other document and sent to the service center where the returns were filed, along with a copy on which the IRS can acknowledge receipt. The form should be mailed with a cover letter requesting the IRS to acknowledge receipt on the copy and to return the copy in an envelope included with the letter.

A similar letter should be mailed to the Franchise Tax Board, Fiduciary Audit Unit, P.O. Box 1468, Sacramento, CA 95812-1468.

If this request is made, the legal assistant should calendar the date 18 months after the request was submitted, because that is the date the prompt assessment period ends.

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Source: Estate Planning/California Probate Workflow Manual Revised/14 Income and Estate Taxation/§14.6 F. Notice of Termination of Fiduciary Relationship

§14.6 F. Notice of Termination of Fiduciary Relationship

Once the representative's duties have terminated (through the closing of the estate, removal of the representative, etc.), as determined by the attorney, the legal assistant should notify both the IRS and the Franchise Tax Board, at the locations indicated in §14.4. The legal assistant should complete IRS Form 56 (reprinted in §14.3), but leave Part III blank, and complete Part IV. A copy of the order of discharge is in §20.22. A certified copy of that order should be attached to the notice. A sample form of cover letter follows:

Dear Sir or Madam,

Please be informed that _ _[*name of representative*]_ _, who has had a fiduciary relationship as the _ _[*executor/administrator/(etc.)*]_ _ of the estate of _ _[*name*]_ _, deceased (taxpayer identification number: _ _ _ _ _ _), no longer has that duty. Enclosed is a Form 56, Notice Concerning Fiduciary Relationship, with the _ _[*e.g., copy of the court order discharging the representative*]_ _ attached.

A copy of this letter is enclosed, along with a return envelope. Please sign the acknowledgment of receipt on the bottom of this letter and return it to us in the envelope provided. Thank you.

Very truly yours,

__[*Signature*]__
_ _[*Typed name*]_ _

Acknowledgment of Receipt

My signature below acknowledges receipt on the date written below of this letter.

Date: _ _ _ _ _ _ **_____**
Signature and title

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Source: Estate Planning/California Probate Workflow Manual Revised/14 Income and Estate Taxation/§14.7 G. Allocation of Responsibilities and the Calendar

§14.7 G. Allocation of Responsibilities and the Calendar

The representative often does not determine whether the attorney or accountant will prepare the returns until several months into the administration. Similarly, the choice of fiscal year may be made after six months or more of the administration. The legal assistant should have a follow-up procedure to make sure the decisions have been made and are reflected in writing. If the attorney's office is to prepare the returns, the due dates should be noted on the probate calendar system. One date that should be noted and planned for early is the due date for the decedent's income tax returns.

It is important to find out as early as possible whether the tax returns for the prior year have been prepared or filed. If not, either the accountant or the legal assistant will prepare and file requests for extension of time to file. An automatic 6-month extension for filing the decedent's final federal income tax return is available by submitting IRS Form 4868 (Application for Automatic Extension of Time to File U.S. Income Tax Return) showing the properly estimated tax amount for the taxable year, on or before the date prescribed for filing the return with the appropriate IRS office. Treas Reg §1.6081-4. An automatic extension of time to file the decedent's income tax return does not extend the time to pay any tax due on the return. Treas Reg §1.6081-4(c).

Because the same form also covers any gift tax returns the decedent may have been required to file, the legal assistant should confer with the attorney to determine whether gift tax returns will be filed and make an appropriate note on the probate calendar.

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II. ESTATE TAXATION

§14.8 A. Introduction

As with income taxation, the important decisions relating to estate taxation often turn on complicated law, and must be made by the attorney. The California inheritance tax was repealed on June 8, 1982 (and is applicable only for decedents with a date of death (and gifts made) on or before that date). For decedents dying after December 31, 2004, the state death tax credit available to the estate under IRC §2011 has been repealed and replaced by a deduction for state death taxes actually paid under IRC §2058. As a result, no state estate or inheritance taxes will be due or payable to California for these decedents. See California Decedent Estate Practice §34.60 (2d ed Cal CEB 2009).

A federal estate tax return must be filed when the estate assets are at least (IRC §2010):

2006-2008	2,000,000
2009	3,500,000
2010	estate tax repealed
2011 or thereafter	1,000,000

NOTE: For the period during which the estate tax is repealed (*i.e.,* during 2010, absent further legislation), the personal representative must file an information return for large transfers, *i.e.,* if the decedent's property has a fair market value that exceeds $1.3 million or if property was acquired by the decedent within 3 years of death. IRC §6018. A return must also be filed to allocate basis adjustments. IRC §§1022, 6018. See California Decedent Estate Practice §34.14 (2d ed Cal CEB 2009). As of this writing, the IRS has not published the return that is to be used to file for taxpayers dying in 2010; therefore, it is unclear what form is to be used for those taxpayers.

PRACTICE TIP: The legal assistant should ask the representative to review the lists and inform the assistant as soon as possible if assets are omitted or if the values given are wrong. If estate assets are worth close to the filing limits, the legal assistant should consult with the attorney as to whether or not a return should nevertheless be filed. Filing a return starts the statute running and helps establish the new basis for estate assets.

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Source: Estate Planning/California Probate Workflow Manual Revised/14 Income and Estate Taxation/§14.9 B. Procedural Guide: Filing Estate Tax Forms

§14.9 B. Procedural Guide: Filing Estate Tax Forms

The legal assistant should learn from the attorney which of the following steps will be handled by the estate's accountant and which will be the legal assistant's responsibility.

PROCEDURAL GUIDE

- **(1) File Notice Concerning Fiduciary Relationship (IRS Form 56), if not already done in connection with income tax returns. See §14.3.**
- **(2) Determine whether any federal gift tax returns need to be filed and, if so, take steps to timely file them. Also obtain copies of any previously filed federal gift tax returns.**
- **(3) Calendar alternate valuation date (6 months after date of death). If alternate valuation date will be used, obtain appropriate appraisals or other information.**
- **(4) File Application for Extension of Time to File U.S. Estate Tax Return and Pay Taxes (IRS Form 4768) on or before the due date for filing IRS Form 706. An estate is allowed an automatic 6-month extension of time to file Form 706. Treas Reg §20.6081-1(b). The extension is considered "automatic" because the taxpayer need not provide an explanation for why an extension is needed, but the taxpayer must file IRS Form 4768 on or before the due date. An extension of time to file the federal estate tax return is not an extension of time to pay the estate tax due. Treas Reg §20.6081-1(e). See California Decedent Estate Practice §§34.17, 34.37-34.38 (2d ed Cal CEB 2009).**
- **(5) File U.S. Estate Tax Return (IRS Form 706) within 9 months after date of death. IRC §6075. The tax is payable on filing. (File an information return relating to large transfers at death for estates of decedents dying in 2010; see IRC §6018.) See §§14.8, 14.10 and Decedent Estate Prac §§34.11-34.19 for discussion of filing requirements and Decedent Estate Prac §§34.21-34.28, 34.37-34.38 for discussion of payment of tax.**
- **(6) When IRS Form 706 is filed, and closing letter is received or audit completed, ask attorney whether to send letter to IRS with the return requesting prompt assessment of estate tax and discharge from personal liability for estate taxes. See Decedent Estate Prac §34.30.**
- **(7) For deaths occurring before January 1, 2005, file California Estate Tax Return (Form ET-1) within 9 months after date of death. The tax is payable on the date of filing. Rev & T C §13501. See §§14.8, 14.11.**
- **(8) If an amended federal estate tax return is filed, immediately file an amended California estate tax return, if required, with a copy of the amended federal return and payment of any additional California tax plus interest. Rev & T C §13503.**
- **(9) For deaths occurring before January 1, 2005, give written notice of final determination of any federal estate tax due to Controller within 60 days after the determination, accompanied by payment of any additional California estate tax plus interest. Rev & T C §13504.**
- **(10) On discharge of the representative from personal liability, send Notice Concerning Fiduciary Relationship and a certified copy of the order of discharge to the IRS and the Franchise Tax Board. See §14.6.**

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Source: Estate Planning/California Probate Workflow Manual Revised/14 Income and Estate Taxation/ C. Federal and California Estate Tax Return Forms/§14.10 1. Form: United States Estate Tax Return (IRS Form 706)

C. Federal and California Estate Tax Return Forms

§14.10 1. Form: United States Estate Tax Return (IRS Form 706)

Form **706**
(Rev. September 2009)

Department of the Treasury
Internal Revenue Service

United States Estate (and Generation-Skipping Transfer) Tax Return

Estate of a citizen or resident of the United States (see separate instructions).
To be filed for decedents dying after December 31, 2008, and before January 1, 2010.

OMB No. 1545-0015

Part 1—Decedent and Executor

1a Decedent's first name and middle initial (and maiden name, if any)	1b Decedent's last name		2 Decedent's Social Security No.
3a County, state, and ZIP code, or foreign country, of legal residence (domicile) at time of death	3b Year domicile established	4 Date of birth	5 Date of death
	6b Executor's address (number and street including apartment or suite no.; city, town, or post office; state; and ZIP code) and phone no.		
6a Name of executor (see page 5 of the instructions)			
6c Executor's social security number (see page 5 of the instructions)			Phone no. ( )
7a Name and location of court where will was probated or estate administered			7b Case number

8 If decedent died testate, check here ▶ ☐ and attach a certified copy of the will. 9 If you extended the time to file this Form 706, check here ▶ ☐

10 If Schedule R-1 is attached, check here ▶ ☐

Part 2—Tax Computation

1	Total gross estate less exclusion (from Part 5—Recapitulation, page 3, item 12)		1	
2	Tentative total allowable deductions (from Part 5—Recapitulation, page 3, item 22)		2	
3a	Tentative taxable estate (before state death tax deduction) (subtract line 2 from line 1)		3a	
b	State death tax deduction		3b	
c	Taxable estate (subtract line 3b from line 3a)		3c	
4	Adjusted taxable gifts (total taxable gifts (within the meaning of section 2503) made by the decedent after December 31, 1976, other than gifts that are includible in decedent's gross estate (section 2001(b)))		4	
5	Add lines 3c and 4		5	
6	Tentative tax on the amount on line 5 from Table A on page 4 of the instructions		6	
7	Total gift tax paid or payable with respect to gifts made by the decedent after December 31, 1976. Include gift taxes by the decedent's spouse for such spouse's share of split gifts (section 2513) only if the decedent was the donor of these gifts and they are includible in the decedent's gross estate (see instructions)		7	
8	Gross estate tax (subtract line 7 from line 6)		8	
9	Maximum unified credit (applicable credit amount) against estate tax	9		
10	Adjustment to unified credit (applicable credit amount). (This adjustment may not exceed $6,000. See page 6 of the instructions.)	10		
11	Allowable unified credit (applicable credit amount) (subtract line 10 from line 9)		11	
12	Subtract line 11 from line 8 (but do not enter less than zero)		12	
13	Credit for foreign death taxes (from Schedule(s) P). (Attach Form(s) 706-CE.)	13		
14	Credit for tax on prior transfers (from Schedule Q)	14		
15	Total credits (add lines 13 and 14)		15	
16	Net estate tax (subtract line 15 from line 12)		16	
17	Generation-skipping transfer (GST) taxes payable (from Schedule R, Part 2, line 10)		17	
18	Total transfer taxes (add lines 16 and 17)		18	
19	Prior payments. Explain in an attached statement		19	
20	Balance due (or overpayment) (subtract line 19 from line 18)		20	

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer other than the executor is based on all information of which preparer has any knowledge.

Sign Here

▶ Signature of executor ▶ Date

▶ Signature of executor ▶ Date

Paid Preparer's Use Only

Preparer's signature ▶	Date	Check if self-employed ▶ ☐	Preparer's SSN or PTIN
Firm's name (or yours if self-employed), address, and ZIP code ▶		EIN ▶	
		Phone no. ( )	

Print

Estate of: | **Decedent's Social Security Number**

Part 3—Elections by the Executor

Please check the "Yes" or "No" box for each question (see instructions beginning on page 7). | **Yes** | **No**

Note. Some of these elections may require the posting of bonds or liens.

1	Do you elect alternate valuation?	**1**		
2	Do you elect special-use valuation? If "Yes," you must complete and attach Schedule A-1.	**2**		
3	Do you elect to pay the taxes in installments as described in section 6166? If "Yes," you must attach the additional information described on pages 10 through 12 of the instructions. **Note. By electing section 6166, you may be required to provide security for estate tax deferred under section 6166 and interest in the form of a surety bond or a section 6324A lien.**	**3**		
4	Do you elect to postpone the part of the taxes attributable to a reversionary or remainder interest as described in section 6163?	**4**		

Part 4—General Information

(Note. Please attach the necessary supplemental documents. **You must attach the death certificate.)** (see instructions on page 12)

Authorization to receive confidential tax information under Regs. sec. 601.504(b)(2)(i); to act as the estate's representative before the IRS; and to make written or oral presentations on behalf of the estate if return prepared by an attorney, accountant, or enrolled agent for the executor:

Name of representative (print or type)	State	Address (number, street, and room or suite no., city, state, and ZIP code)

I declare that I am the ☐ attorney/ ☐ certified public accountant/ ☐ enrolled agent (you must check the applicable box) for the executor and prepared this return for the executor. I am not under suspension or disbarment from practice before the Internal Revenue Service and am qualified to practice in the state shown above.

Signature	CAF number	Date	Telephone number

1 Death certificate number and issuing authority (attach a copy of the death certificate to this return).

2 Decedent's business or occupation. If retired, check here ▶ ☐ and state decedent's former business or occupation.

3 Marital status of the decedent at time of death:

- ☐ Married
- ☐ Widow or widower—Name, SSN, and date of death of deceased spouse ▶
- ☐ Single
- ☐ Legally separated
- ☐ Divorced—Date divorce decree became final ▶

4a Surviving spouse's name	**4b** Social security number	**4c** Amount received (see page 12 of the instructions)

5 Individuals (other than the surviving spouse), trusts, or other estates who receive benefits from the estate (do not include charitable beneficiaries shown in Schedule O) (see instructions).

Name of individual, trust, or estate receiving $5,000 or more	Identifying number	Relationship to decedent	Amount (see instructions)
All unascertainable beneficiaries and those who receive less than $5,000 ▶			
Total			

Please check the "Yes" or "No" box for each question.		**Yes**	**No**
6	Does the gross estate contain any section 2044 property (qualified terminable interest property (QTIP) from a prior gift or estate) (see page 12 of the instructions)?		
7a	Have federal gift tax returns ever been filed? If "Yes," please attach copies of the returns, if available, and furnish the following information:		
7b	Period(s) covered / **7c** Internal Revenue office(s) where filed		
8a	Was there any insurance on the decedent's life that is not included on the return as part of the gross estate?		
b	Did the decedent own any insurance on the life of another that is not included in the gross estate?		

(continued on next page)

Part 4—General Information *(continued)*

If you answer "Yes" to any of questions 9–16, you must attach additional information as described in the instructions.		Yes	No
9	Did the decedent at the time of death own any property as a joint tenant with right of survivorship in which **(a)** one or more of the other joint tenants was someone other than the decedent's spouse, and **(b)** less than the full value of the property is included on the return as part of the gross estate? If "Yes," you must complete and attach Schedule E		
10a	Did the decedent, at the time of death, own any interest in a partnership (for example, a family limited partnership), an unincorporated business, or a limited liability company; or own any stock in an inactive or closely held corporation?		
b	If "Yes," was the value of **any** interest owned (from above) discounted on this estate tax return? If "Yes," see the instructions for Schedule F on page 20 for reporting the total accumulated or effective discounts taken on Schedule F or G		
11	Did the decedent make any transfer described in section 2035, 2036, 2037, or 2038 (see the instructions for Schedule G beginning on page 15 of the separate instructions)? If "Yes," you must complete and attach Schedule G		
12a	Were there in existence at the time of the decedent's death any trusts created by the decedent during his or her lifetime?		
b	Were there in existence at the time of the decedent's death any trusts not created by the decedent under which the decedent possessed any power, beneficial interest, or trusteeship?		
c	Was the decedent receiving income from a trust created after October 22, 1986, by a parent or grandparent? If "Yes," was there a GST taxable termination (under section 2612) upon the death of the decedent?		
d	If there was a GST taxable termination (under section 2612), attach a statement to explain. Provide a copy of the trust or will creating the trust, and give the name, address, and phone number of the current trustee(s).		
e	Did the decedent at any time during his or her lifetime transfer or sell an interest in a partnership, limited liability company, or closely held corporation to a trust described in question 12a or 12b? If "Yes," provide the EIN number to this transferred/sold item. ►		
13	Did the decedent ever possess, exercise, or release any general power of appointment? If "Yes," you must complete and attach Schedule H		
14	Did the decedent have an interest in or a signature or other authority over a financial account in a foreign country, such as a bank account, securities account, or other financial account?		
15	Was the decedent, immediately before death, receiving an annuity described in the "General" paragraph of the instructions for Schedule I or a private annuity? If "Yes," you must complete and attach Schedule I		
16	Was the decedent ever the beneficiary of a trust for which a deduction was claimed by the estate of a pre-deceased spouse under section 2056(b)(7) and which is not reported on this return? If "Yes," attach an explanation		

Part 5—Recapitulation

Item number	Gross estate		Alternate value	Value at date of death
1	Schedule A—Real Estate	1		
2	Schedule B—Stocks and Bonds	2		
3	Schedule C—Mortgages, Notes, and Cash	3		
4	Schedule D—Insurance on the Decedent's Life (attach Form(s) 712)	4		
5	Schedule E—Jointly Owned Property (attach Form(s) 712 for life insurance)	5		
6	Schedule F—Other Miscellaneous Property (attach Form(s) 712 for life insurance)	6		
7	Schedule G—Transfers During Decedent's Life (att. Form(s) 712 for life insurance)	7		
8	Schedule H—Powers of Appointment	8		
9	Schedule I—Annuities	9		
10	Total gross estate (add items 1 through 9)	10		
11	Schedule U—Qualified Conservation Easement Exclusion	11		
12	Total gross estate less exclusion (subtract item 11 from item 10). Enter here and on line 1 of Part 2—Tax Computation	12		

Item number	Deductions		Amount
13	Schedule J—Funeral Expenses and Expenses Incurred in Administering Property Subject to Claims	13	
14	Schedule K—Debts of the Decedent	14	
15	Schedule K—Mortgages and Liens	15	
16	Total of items 13 through 15	16	
17	Allowable amount of deductions from item 16 (see the instructions for item 17 of the Recapitulation)	17	
18	Schedule L—Net Losses During Administration	18	
19	Schedule L—Expenses Incurred in Administering Property Not Subject to Claims	19	
20	Schedule M—Bequests, etc., to Surviving Spouse	20	
21	Schedule O—Charitable, Public, and Similar Gifts and Bequests	21	
22	Tentative total allowable deductions (add items 17 through 21). Enter here and on line 2 of the Tax Computation	22	

Print

Form 706 (Rev. 9-2009)

Estate of: | **Decedent's Social Security Number**

SCHEDULE A—Real Estate

- For jointly owned property that must be disclosed on Schedule E, see the instructions on the reverse side of Schedule E.
- Real estate that is part of a sole proprietorship should be shown on Schedule F.
- Real estate that is included in the gross estate under section 2035, 2036, 2037, or 2038 should be shown on Schedule G.
- Real estate that is included in the gross estate under section 2041 should be shown on Schedule H.
- If you elect section 2032A valuation, you must complete Schedule A and Schedule A-1.

Item number	Description	Alternate valuation date	Alternate value	Value at date of death
1				
	Total from continuation schedules or additional sheets attached to this schedule . . .			
	TOTAL. (Also enter on Part 5—Recapitulation, page 3, at item 1.)			

(If more space is needed, attach the continuation schedule from the end of this package or additional sheets of the same size.)
(See the instructions on the reverse side.)

Copies: Original for filing; copy for representative; one copy attached to California estate tax return for deaths

occurring before January 1, 2005 (see §14.11); office copies.

Comment: IRS Form 706 is used to declare the estate's assets and liabilities in estates that are large enough to require filing of the estate tax return. Note that Form 706 has been revised annually after 2002, and presumably will continue to be so, to reflect the phase-in of changes in the estate tax. The IRS also publishes Instructions for Form 706, which should be consulted when preparing the form. Many law offices prepare the inventory and appraisal (see chap 11) in a manner that resembles the schedules of Form 706, so that information may be used similarly for both forms. In some offices, an accountant is used to prepare the form. In others, the attorney prepares it, with the assistance of the legal assistant, who can gather all the information from the inventory and appraisal, and fill in all the general estate information required on Part 1 of the first page of the form. A certified copy of the will, if any, and a certified copy of the death certificate must be attached.

To give the legal assistant an idea of what the format of the form is like, pages 1-3 and Schedule A (a representative schedule) are included here. For extensive discussion of Form 706 and how to fill it out, see California Decedent Estate Practice §§34.11-34.20 (2d ed Cal CEB 2009).

For discussion of valuation of assets for federal estate tax purposes, see App B.

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Source: Estate Planning/California Probate Workflow Manual Revised/14 Income and Estate Taxation/§14.11 2. Form: California Estate Tax Return (Form ET-1) [Deleted]

§14.11 2. Form: California Estate Tax Return (Form ET-1) [Deleted]

This section has been deleted. For estates of decedents who die after December 31, 2004, there is no requirement to file an estate tax return or pay estate taxes to the State of California because of the repeal of IRC §2011. See generally California Decedent Estate Practice §§34.1, 34.59-34.66 (2d ed Cal CEB 2009) on California estate tax procedures.

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Source: Estate Planning/California Probate Workflow Manual Revised/14 Income and Estate Taxation/§14.12 III. OTHER TAX MATTERS

§14.12 III. OTHER TAX MATTERS

As pointed out in previous chapters, other taxes might be of concern to the decedent and the estate. For example, §12.12 suggested investigating whether the decedent was liable for filing employment tax returns or sales tax returns for a business. The representative might also be responsible for such taxes if he or she continues the employment (such as retaining a housekeeper to temporarily keep the residence occupied and maintained pending sale) or continues the decedent's business. If so, it is necessary to allocate responsibility for preparing the appropriate returns.

The generation-skipping transfer tax generally applies only to estates in excess of $1 million: $1,100,000 for transfers made in 2002; $1,120,000 for transfers made in 2003; for decedents dying in 2004-2009, the GST exemption is the same as applicable exclusion amount under IRC §2010(c) (IRC §2631(c)); in 2010 the GST tax will be repealed; and starting in 2011 the sunset provision will apply, restoring the GST tax with an exemption of $1,120,000 plus further inflation adjustments for the intervening years. For estates exceeding that amount, the attorney must review the situation to determine whether the exemption requires allocation and whether any such tax will be due. This is not normally a function of the legal assistant.

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15

Statutory Protections for Family Members: Family Allowance and Exempt and Homestead Property

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- B. [§15.3] When Representative Has Authority Under Independent Administration of Estates Act
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IV. [§15.20] OTHER PROCEDURES FOR FAMILY PROTECTION

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Source: Estate Planning/California Probate Workflow Manual Revised/15 Statutory Protections for Family Members: Family Allowance and Exempt and Homestead Property/§15.1 I. INTRODUCTION

§15.1 I. INTRODUCTION

The family allowance (Prob C §§6540-6545) and probate homestead (Prob C §§6520-6528) provide for the immediate needs of certain members of the decedent's family during administration, including the surviving spouse or registered domestic partner (Fam C §297.5(c)), minor children, and, in some instances, adult children and parents. The surviving spouse or domestic partner and minor children are also eligible to temporarily possess the family home and property, exempt from enforcement of a money judgment, and to have a probate homestead or property that is exempt from execution set apart for their benefit. These rights exist to protect the family even if the decedent left all his or her property to persons other than family members. Because the rights potentially interfere with the decedent's estate plan, however, a court will view such petitions with caution.

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II. FAMILY ALLOWANCE

§15.2 A. Preliminary Matters

The attorney must determine whether to seek a family allowance, for whom to seek it, when to seek it, and what amount to request. See California Decedent Estate Practice, chap 17 (2d ed Cal CEB 2009). Whether the representative has authority under the Independent Administration of Estates Act is also important. See §15.3.

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§15.3 B. When Representative Has Authority Under Independent Administration of Estates Act

When the representative has authority to act under the Independent Administration of Estates Act (IAEA) (Prob C §§10400-10592), he or she may pay a family allowance without petitioning the court for permission. See §9.14 on procedures for payment of family allowance under the IAEA. The attorney may, however, choose to petition the court to grant the allowance even if such a petition is not necessary, as discussed in California Decedent Estate Practice §§17.56-17.62 (2d ed Cal CEB 2009). The balance of this chapter will discuss the procedures for petitioning the court for a family allowance.

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Source: Estate Planning/California Probate Workflow Manual Revised/15 Statutory Protections for Family Members: Family Allowance and Exempt and Homestead Property/§15.4 C. Checklist: Petition for Payment of Family Allowance

§15.4 C. Checklist: Petition for Payment of Family Allowance

1. Petitioner

- Surviving spouse or registered domestic partner
- Minor child
- Adult child who is incapacitated and dependent on decedent
- Dependent adult child who is not incapacitated
- Dependent parent

2. Financial information

a. Petitioner's income and expenses

Income per Month		Expenses per Month	
Salary	$_ _ _ _ _	Rent or house payment	$_ _ _ _ _
Interest and dividends	_ _ _ _ _	Utilities	_ _ _ _ _
Rent	_ _ _ _ _	Food	_ _ _ _ _
Family allowance	_ _ _ _ _	Clothing	_ _ _ _ _
Other income (itemize)	_ _ _ _ _	Transportation	_ _ _ _ _
_ _ _ _ _ _ _	_ _ _ _ _ _ _	Doctor and dentist	_ _ _ _ _
_ _ _ _ _ _ _	_ _ _ _ _ _ _	Installment payments (itemize necessary installment payments on debts, deeds of trust, conditional sales contracts, and insurance)	
_ _ _ _ _ _ _	_ _ _ _ _ _ _		
_ _ _ _ _ _ _	_ _ _ _ _ _ _		
_ _ _ _ _ _ _	_ _ _ _ _ _ _		
_ _ _ _ _ _ _	_ _ _ _ _ _ _		
_ _ _ _ _ _ _	_ _ _ _ _ _ _		
			_ _ _ _ _
		Income taxes	_ _ _ _ _
		Miscellaneous	_ _ _ _ _
Total	$_ _ _ _ _	Total	$_ _ _ _ _

Comment: The petitioner should also be permitted to list all debts repaid in the last year (other than monthly payments to present creditors) and any attachments and garnishments for the last 4 months. The list should also include disputed, contingent, and unliquidated debts, as well as any other obligations.

b. Petitioner's assets

Business assets	$_ _ _ _ _
Cash and money in banks	_ _ _ _ _
Household furniture and equipment	_ _ _ _ _
Motor vehicles	_ _ _ _ _
Real estate	_ _ _ _ _
Stock, bonds, and notes	_ _ _ _ _
Other property (itemize)	_ _ _ _ _

_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _	_ _ _ _ _ _
_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _	_ _ _ _ _ _
_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _	_ _ _ _ _ _
Total	$_ _ _ _ _ _

3. Petition

- Use form in §15.5; note instructions to that form
- Check local rules for additional allegations

4. Notice (Prob C §6541)

If family allowance to be granted to minor child, surviving spouse or domestic partner (Fam C §197.5(c)), or incapacitated and dependent adult child:

- Before inventory filed, no notice is required but notice by mail under Prob C §1220 may be given
- After inventory filed, notice under Prob C §1220 required

If family allowance to be granted to dependent (but not incapacitated) adult child or parent, notice must be given to all known:

- Heirs whose interests are affected
- Devisees whose interests are affected
- Persons who have requested special notice

5. Hearing

- Date of hearing calendared? _ _[date]_ _
- Must petitioner be present? (check local rules)

6. Order granting family allowance

- See form in §15.7
- Check local rules

7. Payment of allowance

- Date allowance begins: _ _ _ _ _ _ _ _ _ _
- Date allowance ends: _ _ _ _ _ _ _ _ _ _
- Is estate insolvent? (Payments must terminate within one year after letters granted)
- Is estate solvent? (Payments must terminate when administration of estate ends; see California Decedent Estate Practice §§17.50-17.51 (2d ed Cal CEB 2009))
- Renewal of allowance
- Same amount? Petition should allege facts showing continued need
- Increased amount? Second petition should be filed; adapt form in §15.8
- Modification of allowance
- See petition and order for modification in §§15.8-15.9
- Prepare and file petition
- Give notice of payment (see 4. above)
- Must representative be compelled to pay allowance? (check with attorney)

8. Termination of allowance

- See Decedent Estate Prac §17.64

9. Costs and fees

All costs incurred in petitioning for allowance must be paid by estate as expenses of administration:

Filing fees	$_ _ _ _ _ _
Reporter's fees	_ _ _ _ _ _
Other fees	_ _ _ _ _ _
	_ _ _ _ _ _
Total	$_ _ _ _ _ _

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Source: Estate Planning/California Probate Workflow Manual Revised/15 Statutory Protections for Family Members: Family Allowance and Exempt and Homestead Property/ D. Application Procedure/§15.5 1. Petition for Payment of Family Allowance

D. Application Procedure

§15.5 1. Petition for Payment of Family Allowance

If the petitioner is the surviving spouse or registered domestic partner, minor child, or dependent incapacitated adult child of the decedent, the court must order a family allowance, but it has discretion to determine the amount. If the petitioner is a dependent parent, or a nonincapacitated, but dependent, adult child, the court may refuse to order any family allowance. In either situation, care should be taken to give the court enough reason to grant the petition in the full amount sought. Consult local rules to determine any specific required allegations. Consult the attorney for information on the source of payments from income or principal. It may affect beneficiaries under the will in different ways.

If the estate is insolvent, the allowance must terminate no later than 1 year after letters are granted. Prob C §6543(a). Consequently, if there is any possibility that the estate will be insolvent, payments should be sought for only 1 year. Otherwise, the allowance may be continued until the estate is settled. Prob C §6543(a). See California Decedent Estate Practice §§17.49-17.52 (2d ed Cal CEB 2009) on payment of allowance.

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Source: Estate Planning/California Probate Workflow Manual Revised/15 Statutory Protections for Family Members: Family Allowance and Exempt and Homestead Property/§15.5A 2. Form: Petition for Payment of Family Allowance

§15.5A 2. Form: Petition for Payment of Family Allowance

[*Title of court*]

Estate of _ _[*name*]_ _,	**)**	**No. _ _ _ _ _ _**
	)	
Decedent	**)**	**PETITION FOR PAYMENT OF**
	)	**FAMILY ALLOWANCE**
	)	**(PROBATE CODE**
	)	**§§6540-6545)**
	)	
	)	**Hearing date:**
	)	**Time:**
_____)		**Department:**

Petitioner, _ _[*name*]_ _, alleges:

1. Petitioner is _ _[*specify status, e.g., the surviving spouse/the surviving registered domestic partner/a minor child of the above-named decedent, or representative capacity, e.g., the executor/administrator of the _ _[will/estate]_ _ of the above-named decedent*]_ _.

2. _ _[*Name of decedent*]_ _ died on _ _[*date*]_ _, and Letters were issued to _ _[*name*]_ _ as _ _[*executor/administrator*]_ _ of the _ _[*will/estate*]_ _ of _ _[*name*]_ _, the above-named decedent. The inventory and appraisal was filed on _ _[*date*]_ _, showing the value of the estate as $_ _[*amount*]_ _.

3. The decedent is survived by _ _[*specify name, relationship, and, if a minor, age of each person entitled to a family allowance under Prob C §6540(a) or for whom a family allowance may be given under Prob C §6540(b)*]_ _.

[*Add one of the following alternatives*]

[*Alternative 1: Continue as part of paragraph 3 if only one person is entitled*]

No person other than _ _[*name*]_ _ is entitled to a family allowance in this estate.

[*Alternative 2: Continue as part of paragraph 3 if more than one person is entitled*]

_ _[*Name(s) of person(s) for whom allowance is sought*]_ _ _ _[*does/do*]_ _ **not have a reasonable maintenance from other sources.**

[*Continue*]

4. The inventory on file shows _ _[*real and personal/real/personal*]_ _ property of a value of $_ _[*amount*]_ _. Petitioner is informed and believes and therefore alleges that the probable annual income of the estate is $_ _[*amount*]_ _ and that the estate is indebted as follows: _ _[*Provide whatever information is available*]_ _. The period for filing creditors' claims will expire on _ _[*date*]_ _.

5. A reasonable family allowance in the amount of $_ _[*amount*]_ _ per _ _[*state frequency of payment, e.g., month*]_ _ from the _ _[*principal/income*]_ _ of the estate is necessary for the maintenance of _ _[*name(s) of proposed recipient(s)*]_ _ according to _ _[*his/her/their*]_ _ circumstances.

6. Average monthly expenses of _ _[*name of proposed recipient*]_ _ for necessities are as follows: _ _[*Set forth itemized list, including such expenditures as rent or house payments, taxes, insurance, medical and dental bills, food, clothing, insurance, transportation, utilities, telephone, laundry and cleaning, gardening, and entertainment*]_ _.

7. The estimated value of the property owned by _ _[*name of proposed recipient*]_ _ is $_ _[*amount*]_ _. The average monthly income of _ _[*name of proposed recipient*]_ _ from sources outside the estate is approximately

$_ _[*amount*]**_ _.**

8. Notice will be given to the following persons: _ _[*List names and addresses of the personal representative, if not the petitioner, and each known heir and devisee whose interest in the estate would be affected by the family allowance*]**_ _.**

9. _ _[*Name(s)/No one*]**_ _ _ _**[*have/has*]**_ _ filed a request for special notice.**

WHEREFORE, petitioner requests an order authorizing and directing _ _[*name of representative*]**_ _ as _ _**[*executor/administrator/(etc.)*]**_ _ to pay from _ _**[*principal/income (or if income is insufficient, from principal)*]**_ _ of the estate to _ _**[*name(s) of person(s) seeking allowance*]**_ _ the sum of $_ _**[*amount*]**_ _ per _ _**[*state frequency of payment, e.g., month*]**_ _ from _ _**[*e.g., the date of the decedent's death*]**_ _, and to continue payment until _ _**[*e.g., specific date/6 months from the date of the court's order*]**_ _, and granting all other proper relief.**

Date:

__[*Signature*]__
_ _[*Typed name*]_ _
Petitioner

__[*Signature*]__
_ _[*Typed name*]_ _
Attorney for Petitioner

[*Verification; see §1.22*]

Comment: If the petition is made ex parte (see §15.6), the caption should clearly indicate that it is an ex parte petition.

Copies: Original for filing; one copy each for nonpetitioning representative and for petitioner; one for each to whom notice is required (see §15.6); office copies.

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§15.6 3. Notice

Whether and what type of notice is required of a petition for a family allowance depends on who the recipient will be, and whether the order for a family allowance is filed before or after the filing of the inventory.

If the recipient is a minor child, surviving spouse or registered domestic partner (Fam C §297.5(c)), or adult child who is incapacitated and was dependent on the decedent, then no notice is required if the order is filed before the inventory is filed. The attorney should be consulted to determine whether he or she wishes to have notice sent. Local rules may require some notice. The attorney may seek a shortened period of notice, or notices may be sent by mail as provided in Prob C §1220 (15 days' notice to the personal representative and to all persons who have given notice of appearance in the estate). If the inventory has been filed, then notice must be mailed to those persons under Prob C §1220. Prob C §6541(b). For further discussion of ex parte petition, see California Decedent Estate Practice §17.57 (2d ed Cal CEB 2009).

If the recipient is to be a parent or an adult child who was dependent on the decedent, but was not incapacitated, then notice must be mailed under Prob C §1220, regardless of whether the inventory has been filed, to those requesting special notice (or who have given notice of appearance), and to known heirs or devisees whose interests would be affected. Prob C §6541(c). For further discussion of notice, see Decedent Estate Prac §17.60.

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Source: Estate Planning/California Probate Workflow Manual Revised/15 Statutory Protections for Family Members: Family Allowance and Exempt and Homestead Property/§15.7 4. Form: Order for Payment of Family Allowance

§15.7 4. Form: Order for Payment of Family Allowance

[*Title of court*]

Estate of _ _[*name*]_ _,	**)**	**No. _ _ _ _ _ _**
	)	
Decedent	**)**	**ORDER FOR PAYMENT OF**
_____)		**FAMILY ALLOWANCE**

The petition of _ _[*name of petitioner*]_ _ for an order for a family allowance for _ _[*name(s)*]_ _ as the _ _[*e.g., surviving spouse/surviving registered domestic partner*]_ _ _ _[*and/or minor child(ren)*]_ _ of the above-named decedent came on regularly for hearing on _ _[*date*]_ _, at _ _[*time*]_ _, in Department _ _[*number/letter*]_ _ of the above-entitled court, the Honorable _ _[*name of judge*]_ _ presiding. After examining the petition and the evidence, the court finds that notice of the hearing has been given as required by law and that the allegations of the petition are true.

IT IS ORDERED that the _ _[*executor/administrator/(etc.)*]_ _ of the decedent's _ _[*will/estate*]_ _ pay to _ _[*name of recipient*]_ _ the sum of $_ _[*amount*]_ _ per _ _[*state frequency of payment, e.g., month*]_ _ from the _ _[*principal/income/(or if income is insufficient, from principal)*]_ _ of the estate for the maintenance of _ _[*name(s) of person(s) who will receive the family allowance*]_ _ beginning on _ _[*date*]_ _, and continuing on the _ _[_ _[*e.g., first*]_ _ *day of each month thereafter/state other repeat date*]_ _ until _ _[*e.g., date/6 months from the date of this order*]_ _.

Date: _ _ _ _ _ _ __[*Signature*]__
Judge of the Superior Court

Copies: Original for filing; one copy each for nonpetitioning representative and for petitioner; office copies.

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Source: Estate Planning/California Probate Workflow Manual Revised/15 Statutory Protections for Family Members: Family Allowance and Exempt and Homestead Property/ E. Modification or Termination of Allowance/§15.8 1. Form: Petition to Modify or Terminate Family Allowance

E. Modification or Termination of Allowance

§15.8 1. Form: Petition to Modify or Terminate Family Allowance

[*Title of court*]

Estate of _ _[*name*]_ _,	)	**No. _ _ _ _ _ _**
	)	
Decedent	)	**PETITION TO**
	)	**_ _[*INCREASE/DECREASE/ TERMINATE*]_ _ FAMILY**
	)	**ALLOWANCE**
	)	**(PROBATE CODE §6543)**
	)	
	)	**Hearing date:**
	)	**Time:**
_____	)	**Department:**

Petitioner, _ _[*name*]_ _, alleges:

1. Petitioner is _ _[*specify status or representative capacity*]_ _.

2. _ _[*Name of decedent*]_ _ died on _ _[*date*]_ _, and _ _[*his/her*]_ _ estate is being settled.

3. Under the order previously made on _ _[*date*]_ _, _ _[*set forth in detail the order in question*]_ _.

[*Add one of the following alternatives*]

[*Alternative 1: Family allowance should be increased/decreased*]

4. The order for family allowance presently in effect should be _ _[*increased/decreased*]_ _ to $_ _[*amount*]_ _ per _ _[*state frequency of payment, e.g., month*]_ _ for the following reasons: _ _[*State*]_ _.

[*Alternative 2: Family allowance should be terminated*]

4. The order for family allowance presently in effect should be terminated for the following reasons: _ _[*State*]_ _.

[*Continue*]

5. _ _[*No one has filed a request for special notice/The following have filed request(s) for special notice: _ _[List name(s) and address(es)*]_ _]_ _.

WHEREFORE, petitioner requests that this court _ _[*increase/decrease/terminate*]_ _ the order for family allowance now in effect by _ _[*state desired change*]_ _ and grant all other proper relief.

Date: _ _ _ _ _ _

__[*Signature*]__
_ _[*Typed name*]_ _
Petitioner

__[*Signature*]__
_ _[*Typed name*]_ _
Attorney for petitioner

[*Verification; see §1.22*]

Comment: This form may be used to petition for modification or termination of a family allowance. See California

Decedent Estate Practice §§17.63-17.65 (2d ed Cal CEB 2009) on reasons for seeking modification or termination. Paragraph 1 should define the relationship of petitioner to the estate, *e.g.,* heir, devisee under the will, or representative. The reasons for the change should be stated with particularity in paragraph 4. If the allowance is insufficient, the petition should set out the amounts actually spent. If a decrease is sought because, for example, administration has been unduly prolonged, ample assets have already been distributed, or the estate is small and the creditors may receive nothing, such facts should be alleged. Notice requirements are the same as for the original petition.

Copies: Original for filing; one copy each for nonpetitioning representative and for petitioner; office copies.

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Source: Estate Planning/California Probate Workflow Manual Revised/15 Statutory Protections for Family Members: Family Allowance and Exempt and Homestead Property/§15.9 2. Form: Order Modifying or Terminating Family Allowance

§15.9 2. Form: Order Modifying or Terminating Family Allowance

[*Title of court*]

Estate of _ _[*name*]_ _**,**	**)No.** _ _ _ _ _ _
	)
Decedent	**)ORDER**
	)_ _[*INCREASING/DECREASING/TERMINATING*]_ _**FAMILY**
	)ALLOWANCE
_____**)**	

The petition of _ _[*name, the* _ _[*e.g., personal representative/surviving spouse/surviving registered domestic partner/minor child*]_ _ *of the above-named decedent*]_ _ **for an order** _ _[*increasing/decreasing/terminating*]_ _ **the family allowance previously made by this court on** _ _[*date*]_ _**, came on regularly for hearing on** _ _[*date*]_ _**, at** _ _[*time*]_ _**, in Department** _ _[*number/letter*]_ _ **of the above-entitled court, the Honorable** _ _[*name of judge*]_ _ **presiding. The court finds that** _ _[*notice of hearing has been given as required by law and that*]_ _ **the allegations of the petition are true.**

IT IS ORDERED that the allowance of $_ _[*amount*]_ _ **per** _ _[*state frequency of payment, e.g., month*]_ _ **previously granted to** _ _[*name of recipient*]_ _ **on** _ _[*date*]_ _**, is** _ _[*modified by* _ _[*insert modification*]_ _*/terminated on* _ _[*date*]_ _]_ _**.**

Date: _ _ _ _ _ _ __[*Signature*]__
Judge of the Superior Court

Comment: See §15.8.

Copies: Original for filing; one copy each for nonpetitioning representative and for petitioner; office copies.

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Source: Estate Planning/California Probate Workflow Manual Revised/15 Statutory Protections for Family Members: Family Allowance and Exempt and Homestead Property/§15.10 F. Enforcement and Effect of Family Allowance Orders

§15.10 F. Enforcement and Effect of Family Allowance Orders

For discussion of enforcement of family allowance orders, and the effect of the allowance, see California Decedent Estate Practice, chap 17 (2d ed Cal CEB 2009).

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III. EXEMPT AND HOMESTEAD PROPERTY

§15.11 A. Introduction

A probate homestead and exempt personal property may be set apart for the use of the surviving spouse or registered domestic partner (Fam C §297.5(c)) and minor children of the decedent, whether or not they are beneficiaries of the decedent's will.

The decedent's surviving spouse or domestic partner and minor children are entitled to remain in possession of the family dwelling, the family's wearing apparel, household furniture, and the decedent's other property that is exempt from enforcement of a money judgment until 60 days after the inventory has been filed, without a court order. Prob C §6500. Any "interested person" may petition the court for an order modifying the period of temporary possession allowed under Prob C §6500 for good cause. Prob C §6501. See California Decedent Estate Practice §§17.9-17.11 (2d ed Cal CEB 2009).

After the inventory has been filed, on petition, the court may set apart a probate homestead in a residence of the decedent and any or all of the decedent's exempt property for the surviving spouse or domestic partner, the minor child or children, or both. Prob C §6510; Fam C §297.5(c).

See CCP §§704.010-704.210 for exemptions. See also Debt Collection Practice in California, chap 9 (2d ed Cal CEB 1999).

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Source: Estate Planning/California Probate Workflow Manual Revised/15 Statutory Protections for Family Members: Family Allowance and Exempt and Homestead Property/§15.12 B. Procedural Guide: Petition for Homestead Property

§15.12 B. Procedural Guide: Petition for Homestead Property

PROCEDURAL GUIDE

1. Attorney identifies protection to be requested

- **Modifying period of temporary possession of family dwelling and exempt property**
- **Setting apart exempt personal property**
- **Setting apart probate homestead**

2. Attorney identifies petitioner

- **Representative**
- **Surviving spouse**
- **Registered domestic partner**
- **Minor child**

3. Obtain financial information. Use the checklist in §15.4, paragraph 2.

4. Attorney identifies immediate problems

- **Attachment and garnishment**
- **Repossession. Is it legal?**
- **Foreclosure: Notice of default _ _ _ Sale _ _ _**
- **Judgments or actions against decedent or petitioner**
- **List transfer of title or possession of property to relatives or friends**

5. Initiate exemption proceeding

a. Modifying period of temporary possession of family dwelling and exempt personal property

- **Petition for order modifying period of temporary possession of family dwelling; Prob C §6500; for form see §15.13**
- **Notice; Prob C §1220; for form, see §5.7**
- **Order modifying period of temporary possession of family dwelling; for form, see §15.14**

b. Personal property exemption

- **Petition for order setting apart exempt personal property; Prob C §§6500, 6510; for form, see California Decedent Estate Practice §§17.14-17.17 (2d ed Cal CEB 2009)**
- **Notice; Prob C §1220; for form, see §5.7**
- **Order setting apart exempt personal property; for form, see §15.16**

c. Probate homestead

- **Selection of homestead from property of estate (see §§15.11, 15.18)**
- **Has inventory been filed? If so, surviving spouse/domestic partner or minor child may petition to set selected homestead apart; see Prob C §6520**
- **Petition for order setting apart probate homestead**
- **Filing fee, $_ _ _ _ _ _**
- **Prepare check for clerk**

- **File petition**
- **Is notice to be prepared by clerk?**
- **Prepare notice of hearing and proof of posting**
- **Copies; under Prob C §1220, attorney must mail notice to:**
- _ _[*Name of petitioner*]_ _
- _ _[*Name of representative of estate, if other than petitioner*]_ _
- _ _[*Names of parties who appeared in estate or filed request for special notice*]_ _
- **File proof of mailing of notice with clerk**
- **Notice mailed on _ _ _ _ _ _ _ _ _**
- **Proof of mailing filed on _ _ _ _ _ _ _ _ _**
- **Hearing (see §5.7)**
  Date: _ _ _ _ _ _ _ _ _, at _ _ _ _ _.m.
  Place: _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _
- **Notify petitioner to appear**
- **Notify representative to appear**
- **Order setting apart probate homestead; for form, see §15.19**
- **Recording (see §15.19); a certified copy of the order must be recorded in the office of the recorder in each county in which any part of the land lies; Prob C §7263**
- **Obtain _ _[*number*]_ _ certified copies**
- **Prepare check and pay fee of $_ _ _ _ _ _ chargeable to account of _ _[*estate/petitioner*]_ _**

6. Notify petitioner of action taken

- **Mail copy of order setting apart exempt personal property**
- **Mail copy of order setting apart probate homestead to:**
- _ _[*Name of petitioner*]_ _
- _ _[*Name of representative of estate, if other than petitioner*]_ _
- _ _[*Names of parties who filed request for special notice*]_ _
- **Instruct petitioner on what the order means by enclosing letter or memorandum with copy of order**
- **If property already levied on, contact attorney representing creditor to see what can be done about the claim. On petitioner's additional remedies as a debtor, see Debt Collection Practice in California, chaps 4, 12 (2d ed Cal CEB 1999).**

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Source: Estate Planning/California Probate Workflow Manual Revised/15 Statutory Protections for Family Members: Family Allowance and Exempt and Homestead Property/ C. Temporary Possession of Family Dwelling and Exempt Personal Property/§15.13 1. Form: Petition for Order Modifying Period of Temporary Possession of Family Dwelling and Exempt Property

C. Temporary Possession of Family Dwelling and Exempt Personal Property

§15.13 1. Form: Petition for Order Modifying Period of Temporary Possession of Family Dwelling and Exempt Property

[*Title of court*]

Estate of _ _[*name*]_ _,	)	**No.** _ _ _ _ _ _
	)	
Decedent	)	**PETITION FOR ORDER**
	)	**MODIFYING PERIOD OF**
	)	**TEMPORARY POSSESSION**
	)	**OF FAMILY DWELLING AND**
	)	**EXEMPT PROPERTY**
	)	**(PROBATE CODE**
	)	**§§6500-6501)**
_____	)	
		Hearing date:
		Time:
		Department:

Petitioner, _ _[*name*]_ _**, alleges:**

1. Petitioner is _ _[*executor of the will/administrator of the estate/surviving spouse/surviving registered domestic partner/guardian of* _ _[_ _[*name(s)*]_ _*, minor child(ren)*]_ _*/an interested party as* _ _[*specify*]_ _]_ _ **of the above-named decedent.**

2. The administration of the estate of the above-named decedent is pending in this court, and the inventory and appraisal _ _[*was filed on* _ _[*date*]_ _*/is being filed concurrently with this petition/has not yet been filed*]_ _**.**

3. The decedent is survived by _ _[*name(s)*]_ _**,** _ _[*his/her*]_ _ _ _[*spouse/registered domestic partner*]_ _ _ _[*and/or minor child(ren)*]_ _**.**

4. The decedent's _ _[*surviving spouse/surviving registered domestic partner*]_ _ _ _[*and/or minor child(ren)*]_ _ **are currently in possession of the family dwelling and the following property, which is exempt by law from execution under Code of Civil Procedure section(s)** _ _[*list property and applicable statutes, e.g., 695.010-695.070, 703.010-704.995, and 706.050-706.051*]_ _**. The family dwelling is commonly referred to as** _ _[*address*]_ _**, County of** _ _[*county*]_ _**, California, APN** _ _[*insert number*]_ _**, more fully described as follows:** _ _[*Add legal description*]_ _**.**

5. The period of time that _ _[*name(s) of surviving spouse or surviving registered domestic partner, and/or minor child(ren)*]_ _ **should be entitled to remain in possession of the property described in this petition should be** _ _[*extended/shortened*]_ _ **for good cause to** _ _[*e.g., a period of 6 months commencing on the date of entry of order of petition herein/10 days after the filing of this petition*]_ _ **for the following reasons:** _ _[*Specify, e.g., petitioner has been diligently searching for a residence since her husband's funeral on* _ _[*date*]_ _**,** *but has not been able to locate a suitable residence/Petitioner has now located a suitable residence but escrow is not scheduled to close until* _ _[*date*]_ _]_ _**.**

[*If applicable, add one or more of the following options*]

[*Option 1: No payment of rent required*]

Petitioner requests that _ _[*he/she*]_ _ **be allowed to remain in the family residence rent free.**

[*Option 2: Certain payments required*]

Petitioner agrees that _ _[*he/she*]_ _ will make the monthly payments for _ _[*e.g., the mortgage, utilities, trash collection, and water bills*]_ _ during the period covered by the court order.

[*Continue*]

6. _ _[*No request for special notice has been filed/Request for special notice has been filed by _ _[name(s)*]_ _]_ _**.**

WHEREFORE, petitioner requests the following:

1. That the period of time that decedent's _ _[*surviving spouse/surviving registered domestic partner*]_ _ _ _[*and/or minor child(ren)*]_ _ **be allowed to remain in possession of all the property described in this petition, including the family dwelling, be** _ _[*extended/shortened*]_ _ **until** _ _[*date*]_ _**, which is** _ _[*e.g., a period of* _ _[*6 months/10 days*]_ _ *commencing on the date of entry of the order of this court*]_ _**;**

2. That _ _[*names*]_ _ **be allowed to remain in the family dwelling** _ _[*rent free/and be ordered to make monthly payments for* _ _[*e.g., the mortgage, utilities, trash collection, and water bills*]_ _]_ _ **during the period covered by the court order; and**

3. Other proper relief.

Date: _ _ _ _ _ _

__[*Signature*]__
_ _[*Typed name*]_ _
Petitioner

__[Signature]__
_ _[Typed name]_ _
Attorney for petitioner

[*Verification; see §1.22*]

Comment: Both the surviving spouse or domestic partner and the minor children should be named as part of the surviving family in paragraph 3. See §15.11.

Copies: Original for filing; one copy each for nonpetitioning representative and for any parties receiving special notice; copy for petitioner; office copies.

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Source: Estate Planning/California Probate Workflow Manual Revised/15 Statutory Protections for Family Members: Family Allowance and Exempt and Homestead Property/§15.14 2. Form: Order Modifying Period of Temporary Possession of Family Dwelling and Exempt Property

§15.14 2. Form: Order Modifying Period of Temporary Possession of Family Dwelling and Exempt Property

[*Title of court*]

Estate of _ _[*name*]_ _,	**)**	**No. _ _ _ _ _ _**
	)	
Decedent	**)**	**ORDER MODIFYING PERIOD**
	)	**OF TEMPORARY**
	)	**POSSESSION OF FAMILY**
	)	**DWELLING AND EXEMPT**
_____	**)**	**PROPERTY**
		(PROBATE CODE
		§§6500-6501)

The verified petition of _ _[*name*]_ _ to _ _[*extend/shorten*]_ _ temporary possession of certain property of the estate of the above-named decedent came on regularly for hearing on _ _[*date*]_ _, at _ _[*time*]_ _, in Department _ _[*number/letter*]_ _ of the above-entitled court, the Honorable _ _[*name of judge*]_ _ presiding. No person appeared to contest the petition. On proof made to the satisfaction of the court, the court finds that all notices have been given as required by law, the facts alleged in the petition are true, and petitioner has shown good cause to _ _[*extend/shorten*]_ _ the time to remain in possession of the specified property until _ _[*date*]_ _.

IT IS ORDERED that

1. The decedent's _ _[*surviving spouse/surviving registered domestic partner*]_ _ _ _[*and/or minor child(ren)*]_ _ _ _[*are/is*]_ _ entitled to remain in possession of the following property, including possession of the family dwelling, until _ _[*e.g., _ _[date]_ _, which is _ _[e.g., _ _[6 months/10 days*]_ _ *from the date of entry of this order*]_ _]_ _: _ _[*Insert description of property, including legal description of family dwelling*]_ _.

[*If appropriate, add*]

2. Petitioner shall _ _[*remain in possession of the family dwelling without paying rent/make monthly payments for _ _[e.g., the mortgage, utilities, trash collection, and water bills*]_ _]_ _ during the period covered by this order.

Date: _ _ _ _ _ _ __[*Signature*]__
Judge of the Superior Court

Comment: See §§15.11, 15.13.

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Source: Estate Planning/California Probate Workflow Manual Revised/15 Statutory Protections for Family Members: Family Allowance and Exempt and Homestead Property/ D. Setting Aside Exempt Personal Property/§15.15 1. Form: Petition for Order Setting Aside Exempt Personal Property

D. Setting Aside Exempt Personal Property

§15.15 1. Form: Petition for Order Setting Aside Exempt Personal Property

[*Title of court*]

Estate of _ _[*name*]_ _,	**)**	**No. _ _ _ _ _ _**
	)	
Decedent	**)**	**PETITION FOR ORDER**
	)	**SETTING ASIDE EXEMPT**
	)	**PERSONAL PROPERTY**
	)	**(PROBATE CODE §6510)**
	)	
	)	**Hearing date:**
	)	**Time:**
_____)		**Department:**

Petitioner, _ _[*name*]_ _, alleges:

1. Petitioner is the _ _[*executor/administrator/surviving spouse/surviving registered domestic partner/guardian of _ _[name(s)]_ _, minor child(ren)*]_ _ of the above-named decedent.

2. On _ _[*date*]_ _, the inventory and appraisal of the estate property was filed in this court, showing the appraised value and character of the estate as follows: _ _[*Describe*]_ _.

4. The following are the debts of the estate: _ _[*Itemize debts of the estate, e.g., debts due to creditors, last-illness expenses, etc., and include amount of total indebtedness*]_ _.

5. The following property is exempt by law from execution under Code of Civil Procedure section(s) _ _[*list appropriate section(s), e.g., 695.010-695.070, 703.010-704.995, and 706.050-706.051*]_ _:

[*Describe exempt property, e.g., the decedent's household furnishings, appliances, and wearing apparel ordinarily and reasonably necessary for the surviving family members (and not of extraordinary value)*]

6. The decedent is survived by _ _[*name(s) of surviving spouse or surviving registered domestic partner, and/or minor child(ren)*]_ _. The age(s) of the decedent's minor child(ren) _ _[*is/are*]_ _ as follows: _ _[*Specify*]_ _.

7. The property described in this petition should be set aside to _ _[*name(s) of surviving spouse or surviving registered domestic partner, and/or minor child(ren)*]_ _ for the following reasons: _ _[*Specify*]_ _.

8. _ _[*No request for special notice has been filed/Request for special notice has been filed by _ _[name]_ _]_ _.**

WHEREFORE, petitioner requests that all the property described in this petition be set aside to the decedent's _ _[*surviving spouse/surviving registered domestic partner*]_ _ _ _[*and/or minor child(ren)*]_ _ and that other relief as the court may determine proper be granted.

Date: _ _ _ _ _ _

__[*Signature*]__
_ _[*Typed name*]_ _
Petitioner

__[*Signature*]__
_ _[*Typed name*]_ _
Attorney for petitioner

[*Verification; see §1.22*]

Comment: The attorney should be consulted on whether to seek to set aside property for the spouse/domestic partner and children or for only one of them. Both the surviving spouse or domestic partner and minor children should be named as part of the surviving family in paragraph 6. In paragraph 7, all relevant facts should be included: size of the estate, duration of the marriage, extent of family needs, and exempt status of the personal property, *i.e.,* whether the items qualify as necessaries. Notice must be given under Prob C §1220.

Copies: Original for filing; one copy each for nonpetitioning representative and for any parties receiving special notice; copy for petitioner; office copies.

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§15.16 2. Form: Order Setting Aside Exempt Personal Property

[*Title of court*]

Estate of _ _[*name*]**_ _,**	**)**	**No. _ _ _ _ _ _**
	)	
Decedent	**)**	**ORDER SETTING ASIDE**
	)	**EXEMPT PERSONAL**
_____)		**PROPERTY**
		(PROBATE CODE §6510)

The verified petition of _ _[*name*]**_ _ to set aside certain property of the estate of the above-named decedent as exempt property came on regularly for hearing on _ _**[*date*]**_ _, at _ _**[*time*]**_ _, in Department _ _**[*number/letter*]**_ _. No person appeared to contest the petition. On proof made to the satisfaction of the court, the court finds that all notices have been given as required by law and the facts alleged in the petition are true.**

IT IS ORDERED that the following property, which is exempt from execution and is described in the inventory on file in this estate, is set aside for _ _[*name(s) of decedent's surviving spouse or surviving registered domestic partner, and/or minor child(ren)*]**_ _, for _ _**[*his/her/their*]**_ _ use and benefit: _ _**[*Describe*]**_ _.**

Date: _ _ _ _ _ _ __[*Signature*]__
Judge of the Superior Court

Comment: See §15.15.

Copies: Original for filing; one copy each for nonpetitioning representative and for petitioner; office copies.

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E. Setting Aside Probate Homestead

§15.17 1. Introduction

On petition, the court in its discretion may select and set apart a probate homestead for the surviving family's use. Thereafter, the homestead is exempt from the claims of most subsequent creditors of the person for whom the homestead has been set apart. A probate homestead is not exempt from claims against the decedent's estate and is not the same as a declared homestead. For discussion of the purpose of a probate homestead, who is entitled to a homestead, limitations on the homestead, and on selection of the homestead, see California Decedent Estate Practice §§17.18-17.29 (2d ed Cal CEB 2009).

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Source: Estate Planning/California Probate Workflow Manual Revised/15 Statutory Protections for Family Members: Family Allowance and Exempt and Homestead Property/§15.18 2. Form: Petition for Order Setting Aside Probate Homestead

§15.18 2. Form: Petition for Order Setting Aside Probate Homestead

[*Title of court*]

Estate of _ _[*name*]_ _,	**)**	**No. _ _ _ _ _ _**
	)	
Decedent	**)**	**PETITION FOR ORDER**
	)	**SETTING ASIDE PROBATE**
	)	**HOMESTEAD**
	)	**(PROBATE CODE §6520)**
	)	
	)	**Hearing date:**
	)	**Time:**
_____)		**Department:**

Petitioner, _ _[*name*]_ _, alleges:

1. The petitioner is the _ _[*executor/administrator/surviving spouse/surviving registered domestic partner/guardian of _ _[name(s)]_ _, minor child(ren)*]_ _ of the above-named decedent.

2. The following persons request that the court set aside a probate homestead for their benefit:

Name	Relationship	Age
_ _ _ _ _ _ _ _ _ _	_ _ _ _ _ _ _ _ _ _	_ _ _ _ _ _ _ _ _ _
_ _ _ _ _ _ _ _ _ _	_ _ _ _ _ _ _ _ _ _	_ _ _ _ _ _ _ _ _ _

3. On _ _[*date*]_ _, an inventory and appraisal of the estate was filed.

4. The real property described below is listed as Item _ _[*insert number*]_ _ in the inventory and appraisal of the estate and is appraised at $_ _[*amount*]_ _. The real property is commonly known as _ _[*address*]_ _, APN _ _[*insert number*]_ _, and is more fully described as follows: _ _[*Insert legal description*]_ _.

[*Add one of the following alternatives*]

[*Alternative 1: Community property*]

5. The real property was the community property of the decedent and _ _[*name*]_ _, _ _[*his/her*]_ _ surviving _ _[*spouse/registered domestic partner*]_ _.

[*Alternative 2: Quasi-community property*]

5. The real property was acquired by the decedent during _ _[*his/her*]_ _ _ _[*marriage to/registered domestic partnership with*]_ _ _ _[*name of surviving spouse or registered domestic partner*]_ _ and is quasi-community property, as that term is defined in Probate Code §66.

[*Alternative 3: Property was owned in common*]

5. The real property was owned in common by the decedent and _ _[*name(s) of surviving spouse or surviving registered domestic partner, and/or minor child(ren)*]_ _.

[*Alternative 4: Separate property*]

**5. The real property was the separate property of the decedent _ _[*and there is no community property, quasi-*

community property, or property owned in common with petitioner or persons entitled to have the homestead set aside from which a homestead can be selected/and this property is more appropriate for a homestead than is the decedent's community property, quasi-community property, or property owned in common with petitioner because _ _[state reasons]_ _]_ _.

[*Continue*]

6. _ _[*Name(s) of surviving spouse or surviving registered domestic partner, and/or minor child(ren)*]_ _ _ _[*is/are*]_ _ **entitled to have a homestead set aside for** _ _[*him/her/them*]_ _**.**

[*Add one of the following alternatives*]

[*Alternative 1: No declared homestead during decedent's lifetime*]

7. No declaration of homestead was selected, designated, or recorded by either the decedent or _ _[*his/her*]_ _ **surviving** _ _[*spouse/registered domestic partner*]_ _ **during the decedent's lifetime.**

[*Alternative 2: Survivor selected homestead from decedent's separate property*]

7. A declaration of homestead was recorded on the decedent's real property by _ _[*name*]_ _**, the surviving** _ _[*spouse/registered domestic partner*]_ _**, without the decedent's joinder.**

[*Continue*]

[*Add one of the following alternatives*]

[*Alternative 1: Property used as residence*]

8. The real property is now used as a residence by the _ _[*surviving spouse/surviving registered domestic partner*]_ _ _ _[*and/or minor child(ren)*]_ _**.**

[*Alternative 2: Property not used as residence*]

8. The real property is not now used as a residence by the _ _[*surviving spouse/surviving registered domestic partner*]_ _ _ _[*and/or minor child(ren)*]_ _ **but is suitable for use as a residence.**

[*Continue*]

[*Add one of the following alternatives*]

[*Alternative 1: No third person has an interest*]

9. No other person has a right to possession of the real property.

[*Alternative 2: Third person has an interest, but consents*]

9. _ _[*Name*]_ _ **has a right to possession in the real property, which consists of** _ _[*describe right to possession*]_ _**, but** _ _[*he/she*]_ _ **has consented to the setting aside of a homestead in the real property, and the consent is attached as Exhibit A.**

[*Continue*]

10. _ _[*No request for special notice has been filed/Request for special notice has been filed by* _ _[*name(s)*]_ _]_ _**.**

WHEREFORE, petitioner requests an order

1. Setting aside the real property commonly known as _ _[*address*]_ _ **and more fully described above as a probate homestead for the decedent's** _ _[*surviving spouse/surviving registered domestic partner*]_ _ _ _[*and/or minor child(ren)*]_ _**, for** _ _[*describe term, e.g., the lifetime of the surviving spouse, or a term of 1 year from the date of this court's order*]_ _ **on the following conditions:** _ _[*set out conditions*]_ _**; and**

2. For other proper relief.

Date: _ _ _ _ _ _ __[*Signature*]__

_ _[*Typed name*]_ _
Petitioner

__[*Signature*]__
_ _[*Typed name*]_ _
Attorney for petitioner

[*Verification; see §1.22*]

Comment: Property designated and selected as a probate homestead is part of the probate estate and is included in the inventory both for appraisal purposes and as a basis for computing fees and commissions. The petition must contain a legal description of the property homesteaded. See paragraph 4. The information concerning a declared homestead is unnecessary, but the attorney may wish to include the information in paragraph 7 because it indicates the decedent's intent to treat a certain parcel of property as the family dwelling; this criterion is one the court may consider under Prob C §6523.

Because the probate homestead is set apart exclusively for the decedent's surviving spouse/registered domestic partner or minor children, each surviving member of that class should be named in paragraph 6, even though the homestead may be sought for only one member of the class. The court will require the written consent of a third person having a right to possession of the property other than as an heir or devisee, and the consent should be obtained and attached to the petition as an exhibit. See paragraph 9. The attorney should add paragraphs concerning liens and encumbrances on the property, creditors' claims, and the decedent's estate plan as expressed by inter vivos and testamentary transfers or by other means, so that the court will have before it all the information it must consider before setting apart the homestead. Notice of the petition is given under Prob C §1220.

Copies: Original for filing; one copy for representative; one copy for each person who has given notice of appearance or special notice; office copies.

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§15.19 3. Form: Order Setting Aside Probate Homestead

[*Title of court*]

Estate of _ _[*name*]_ _,	**)**	**No. _ _ _ _ _ _**
	)	
Decedent	**)**	**ORDER SETTING ASIDE**
	)	**PROBATE HOMESTEAD**
_____	**)**	**(PROBATE CODE §6520)**

The verified petition of _ _[*name*]_ _ for an order setting aside a probate homestead came on regularly for hearing on _ _[*date*]_ _, at _ _[*time*]_ _, in Department _ _[*number/letter*]_ _. No person appeared to contest the petition. On proof made to the satisfaction of the court, the court finds that all notices of the hearing have been given as required by law and that the facts alleged in the petition are true.

IT IS ORDERED that the real property described below, being the _ _[_ _[*community/quasi-community*]_ _ *property of the decedent/*_ _[*community/quasi-community*]_ _ *property owned in common by the decedent and persons entitled to have the homestead set aside/separate property of the decedent*]_ _, is set aside as a probate homestead for the decedent's _ _[*surviving spouse/surviving registered domestic partner*]_ _ _ _[*and/or minor child(ren)*]_ _ for a term of _ _[*specify term, e.g., 1 year from the date of this order*]_ _ on the following conditions: _ _[*Specify conditions*]_ _.

The real property commonly known as _ _[*address*]_ _, APN _ _[*number*]_ _, is more fully described as follows: _ _[*Give legal description*]_ _.

Date: _ _ _ _ _ _ __[*Signature*]__
Judge of the Superior Court

Comment: A certified copy of the order must be recorded in the office of the recorder in each county in which any part of the real property lies. See also §15.18.

Copies: Original (to be signed by judge and filed with clerk); certified copies as required for recording; office copies.

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§15.20 IV. OTHER PROCEDURES FOR FAMILY PROTECTION

The methods discussed in previous sections are not the only means for protecting the decedent's immediate family. The procedure for a small estate set-aside, discussed in §6.12, is another method of protecting the decedent's surviving spouse or domestic partner and minor children. Furthermore, when a spouse, domestic partner, or child is omitted from the will, the law may provide an intestate share for that omitted family member under Prob C §§21610-21630. See California Decedent Estate Practice §28.34 (2d ed Cal CEB 2009) for more details.

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16

Estate Management Issues: Borrowing Money, Title Disputes, Executory Contracts, Testamentary Options, Petitions for Instructions

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- B. [§16.2] Petitioning for Authority to Borrow Money
- C. [§16.2A] Form: Petition for Authority to Borrow Money and to Execute Security Instrument
- D. [§16.3] Order Authorizing Representative to Borrow Money and to Execute Security Instrument
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- A. [§16.14] Introduction
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  2. [§16.19] Form: Order Authorizing and Instructing or Approving and Confirming Acts of Personal Representative

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I. BORROWING MONEY

§16.1 A. Introduction

When an estate needs to raise cash, the representative may have to borrow money. The decision to do so will be based on the concerns discussed in California Decedent Estate Practice, chap 21 (2d ed Cal CEB 2009). This chapter includes the forms necessary to obtain court permission to borrow money. Representatives who have authority under the Independent Administration of Estates Act (IAEA) may choose to use these procedures if they do not act under the IAEA.

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§16.2 B. Petitioning for Authority to Borrow Money

Under Prob C §9802, the petition for authority to borrow money or to execute a mortgage must show

- the purpose for which the loan is sought,
- the loan's necessity or advantage to the estate,
- the amount requested,
- the rate of interest,
- the period of the note, and
- the description of the encumbered property.

Because loan commitments may specify fluctuating interest rates, the petition should specify a maximum rate of interest or the relevant terms of adjustable-rate loans, including amounts adjustable annually and the maximum rate. The personal representative may join with co-owners of the property to borrow. Prob C §9801. In stating the reasons for borrowing, the petition should show that borrowing is the best way to secure cash funds. Allowable reasons are stated in Prob C §9800.

If the loan is to be secured, an inventory, partial inventory, or appraisal of the security (see §11.15) should be on file or provided to the court. If an inventory is on file, the description of the security should refer to the inventory item. Some counties require that the description of the secured property be set forth in the petition; reference to the inventory item is not permitted. Real property should be designated by street address as well as by legal description. See CCP §455. The Assessor's Parcel Number (APN) of the property given as security must also be designated on the security instrument and on the court order, if any.

If the surviving spouse has elected to have his or her part of the community real property administered in the decedent's estate, the personal representative may not borrow money secured by a mortgage or deed of trust on that property without the spouse's written consent. Prob C §9800(c).

If the personal representative does not have authority under the Independent Administration of Estates Act (IAEA), or has only limited authority, then a petition to borrow funds to be secured by real property raises the issue of the sufficiency of the bond. The borrowing converts real property, which is not included in the base used to calculate the bond, into personal property, which is included. If the bond must be increased, the petition should be revised to include the appropriate allegations and request, and the order should be revised to include the appropriate finding and order. See chap 8 generally on bonds.

Notice of the hearing on the petition must be given by mail under Prob C §1220.

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Source: Estate Planning/California Probate Workflow Manual Revised/16 Estate Management Issues: Borrowing Money, Title Disputes, Executory Contracts, Testamentary Options, Petitions for Instructions/§16.2A C. Form: Petition for Authority to Borrow Money and to Execute Security Instrument

§16.2A C. Form: Petition for Authority to Borrow Money and to Execute Security Instrument

[*Title of court*]

Estate of _ _[*name*]_ _,	)	**No. _ _ _ _ _ _**
	)	
Decedent	)	**PETITION FOR AUTHORITY**
	)	**TO BORROW MONEY AND TO**
	)	**EXECUTE _ _[*DEED OF*
	)	*TRUST/(OTHER SECURITY*
	)	*INSTRUMENT)*]_ _
	)	**(PROBATE CODE §9800)**
	)	
	)	**Hearing date:**
	)	**Time:**
_____	)	**Department:**

Petitioner, _ _[*name*]_ _, alleges:

1. Petitioner is the _ _[*executor/administrator*]_ _ of the _ _[*will/estate*]_ _ of the above-named decedent.

2. *Terms of Proposed Loan*. Petitioner proposes to borrow the sum of $_ _[*amount*]_ _ from _ _[*name of lender*]_ _ with interest at no more than _ _[*number*]_ _ percent per annum, payable _ _[*e.g., monthly/annually*]_ _ beginning _ _[*date*]_ _, and principal payable _ _[*date*]_ _. Petitioner proposes to give _ _[*his/her*]_ _ note in the form of Exhibit A, which is attached to and made a part of this petition.

3. *Security for Loan.* As security for the payment of the note, petitioner proposes to execute and deliver a _ _[*deed of trust/(other security instrument)*]_ _ on the _ _[*real/personal*]_ _ property belonging to the estate described in Exhibit B. The _ _[*deed of trust/(other security instrument)*]_ _ will be substantially in the form of Exhibit C, which is attached to and made a part of this petition.

The property is appraised at $_ _[*amount*]_ _, as shown in the inventory, item _ _[*specify*]_ _. _ _[*The annual income from this property is $_ _[amount*]_ _.]_ _

4. *Purpose of Loan.* Petitioner proposes to use the funds so acquired for the purpose of _ _[*state purpose*]_ _.

5. *Advantage to Estate.* It is to the advantage and best interests of the estate and of all interested parties to borrow the funds because _ _[*state reason for borrowing*]_ _.

6. *Notice.* Notice as required by Probate Code §1220 will be given at least 15 days before the hearing to the following persons: _ _[*List names and addresses*]_ _.

7. *Special Notice.* _ _[*No one has/The following have*]_ _ filed request(s) for special notice _ _[*: List names and addresses*]_ _.

[*If applicable, add the following option*]

[*Option: Consent of surviving spouse]*

8. *Consent of Surviving Spouse.* The decedent's surviving spouse, _ _[*name*]_ _, has consented to the representative's borrowing money secured by a _ _[*deed of trust/(other security instrument)*]_ _ on the property described in Exhibit B. The spouse's written consent is attached to and made a part of this petition as Exhibit D.

[*Continue*]

[*If applicable, add the following option*]

[*Option: Allegation regarding bond*]

[9]. *Bond.* _ _[*The existing bond in the amount of $*_ _[*amount*]_ _ *is sufficient/Bond should be fixed in the amount of $*_ _[*amount*]_ _*. Bond* _ _[*will be furnished by an admitted surety insurer/will be deposited in a blocked account at* _ _[*specify institution and location*]_ _]_ _]_ _**.**

[*Continue*]

WHEREFORE, petitioner requests an order of this court authorizing _ _[*him/her*]_ _ **to borrow the funds and to execute a note and** _ _[*deed of trust/(other security instrument)*]_ _ **as set forth in the petition, requiring** _ _[*no additional bond/additional bond be fixed in the amount of $*_ _[*amount*]_ _]_ _ **and granting all other proper orders.**

Date: _ _ _ _ _

__[*Signature*]__
_ _[*Typed name*]_ _
Petitioner

__[*Signature*]__
_ _[*Typed name*]_ _
Attorney for Petitioner

[*Verification; see §1.22*]

[*Attach exhibits*]

Copies: Original for filing; copy for client; office copies.

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Source: Estate Planning/California Probate Workflow Manual Revised/16 Estate Management Issues: Borrowing Money, Title Disputes, Executory Contracts, Testamentary Options, Petitions for Instructions/§16.3 D. Order Authorizing Representative to Borrow Money and to Execute Security Instrument

§16.3 D. Order Authorizing Representative to Borrow Money and to Execute Security Instrument

If the order affects real property, a certified copy of the order must be recorded in the county recorder's office in which the real property or any part of it lies. The personal representative executes, acknowledges, and delivers the deed of trust or security agreement. The deed of trust or security instrument must state that it is made by authority of the order, giving the date of the order. The note and the security instrument are signed by the representative as such. Prob C §9805.

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Source: Estate Planning/California Probate Workflow Manual Revised/16 Estate Management Issues: Borrowing Money, Title Disputes, Executory Contracts, Testamentary Options, Petitions for Instructions/§16.3A E. Form: Order Authorizing Representative to Borrow Money and to Execute Security Instrument

§16.3A E. Form: Order Authorizing Representative to Borrow Money and to Execute Security Instrument

[*Title of court*]

Estate of _ _[*name*]_ _,	)	**No.** _ _ _ _ _ _
	)	
Decedent	)	**ORDER AUTHORIZING**
	)	_ _[*EXECUTOR/*
	)	*ADMINISTRATOR*]_ _ **TO**
	)	**BORROW MONEY AND TO**
	)	**EXECUTE** _ _[*DEED OF*
	)	*TRUST/(OTHER SECURITY*
	)	*INSTRUMENT)*]_ _
_____	)	**(PROBATE CODE §9804)**

The petition of _ _[*name*]_ _**, as** _ _[*executor/administrator*]_ _ **of the** _ _[*will/estate*]_ _ **of the above-named decedent, for authority to borrow money and to execute** _ _[*a deed of trust/(other security instrument)*]_ _ **came on regularly for hearing this** _ _[*date*]_ _**. On proof made to the satisfaction of the court, the court finds that notice of the hearing has been given as required by law, that the allegations of the petition are true,** _ _[*that the surviving spouse's written consent has been filed with the court,*]_ _ **and that it will be to the advantage of the estate to authorize the** _ _[*executor/administrator*]_ _ **to borrow money and to execute a note** _ _[*and deed of trust/(etc.)*]_ _ **on the terms and conditions set forth in this order.**

IT IS ORDERED that _ _[*name*]_ _**, as** _ _[*executor/administrator*]_ _ **of the** _ _[*will/estate*]_ _ **of the above-named decedent, is authorized and directed to borrow from** _ _[*name of lender*]_ _ **the sum of $**_ _[*amount*]_ _ **and to execute a promissory note** _ _[*and deed of trust/(other security instrument)*]_ _ **on the** _ _[*real property/(other security)*]_ _ **described as follows:** _ _[*Describe loan terms, e.g., interest at no more than* _ _[*number*]_ _ *percent per annum, payable* _ _[*e.g., monthly/annually*]_ _*, beginning* _ _[*date*]_ _*, and principal payable* _ _[*date*]_ _]_ _**.**

The _ _[*real property/(other security)*]_ _ **is described as follows:** _ _[*Describe security*]_ _**.**

The _ _[*executor/administrator*]_ _ **is also authorized and directed to execute all documents and to do all acts advisable, necessary, or proper to complete the borrowing of these funds.**

[*If applicable, add the following option*]

[*Option: Order regarding bond]*

_ _[*The existing bond in the amount of $*_ _[*amount*]_ _ *is sufficient/Bond is fixed in the amount of $*_ _[*amount*]_ _*. Bond* _ _[*will be furnished by an admitted surety insurer/will be deposited in a blocked account at* _ _[*specify institution and location*]_ _]_ _.]_ _

[*Continue*]

Date: _ _ _ _ _ _ __[*Signature*]__
Judge of the _ _[*title of court*]_ _

Copies: Original for filing; certified copy for recording if order affects real property; copy for client; office copies.

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II. TITLE DISPUTES

§16.4 A. Introduction

If the decedent held title to or had possession of property claimed by another or had a claim of interest in property belonging to another, Prob C §§850-859 provide authority for a petition by the personal representative or any interested person to determine who is entitled to the property.

See §16.6 for a petition by the representative when a third party presents a claim to estate property and §16.8 for a petition by the representative, asserting the estate's claim to ownership in property held by a third person. See California Decedent Estate Practice §27.25 (2d ed Cal CEB 2009) for a sample form of objections to the latter petition by a claimant to the estate property. See Decedent Estate Prac §§27.13, 27.30 for a petition by a third party claimant to determine ownership to estate property and an order on the claimant's behalf. See §16.7 for a form of order in favor of the third party and §16.9 for a form of order for the estate.

Probate Code §859 imposes liability for double damages on a person who wrongfully takes, conceals, or disposes of estate property. Depending on the circumstances, the personal representative may want to incorporate an action under this section with a petition to determine ownership of property, or, if the title is certain, in a separate petition.

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B. Procedure Under Prob C §§850-859

§16.5 1. Time and Notice of Hearing

When a probate petition is filed, many courts routinely assign a hearing date according to their own calendaring system. The calendaring clerk may or may not consider the petitioner's preferences. Before filing the petition, counsel should verify what the court's calendaring procedures are for contested probate matters.

A copy of the notice and the petition must be served at least 30 days before the hearing on the personal representative and anyone claiming an interest in (or having title to or possession of) the property in the same manner as service in civil actions. Anyone else whose interest in the estate is affected, along with those who have given notice of appearance in the action or filed a request for special notice, must be served with a copy of the petition by mail under Prob C §1220. Prob C §851. Because that section incorporates the service of summons provisions of the Code of Civil Procedure, service by publication on any unknown parties is controlled by CCP §415.50.

After the required number of photocopies of the endorsed filed copy of the Notice of Hearing have been mailed with copies of the petition as required by Prob C §851, the Proof of Mailing form can be completed, including the box to indicate that a copy of the petition was included with the notice of hearing and was filed before the hearing.

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Source: Estate Planning/California Probate Workflow Manual Revised/16 Estate Management Issues: Borrowing Money, Title Disputes, Executory Contracts, Testamentary Options, Petitions for Instructions/§16.6 2. Form: Petition by Personal Representative to Determine Ownership of Estate Property and for Order Authorizing and Directing Transfer to Claimant

§16.6 2. Form: Petition by Personal Representative to Determine Ownership of Estate Property and for Order Authorizing and Directing Transfer to Claimant

[*Title of court*]

Estate of _ _[*name*]_ _,	**)No.** _ _ _ _ _ _
	)
Decedent	**)PETITION BY**
	)_ _[*EXECUTOR/ADMINISTRATOR*]_ _
	)TO DETERMINE OWNERSHIP OF
	)ESTATE PROPERTY AND FOR
	)ORDER AUTHORIZING AND
	)DIRECTING THE TRANSFER OF
	)ESTATE PROPERTY TO CLAIMANT
	)(PROBATE CODE §850)
	)
	)Hearing date:
	)Time:
	)Department:
	)

Petitioner, _ _[*name*]_ _**, as** _ _[*executor/administrator*]_ _ **of the** _ _[*will/estate*]_ _ **of the above-named decedent, alleges:**

1. Decedent died on _ _[*date*]_ _**,** _ _[*holding title to/in possession of*]_ _ **the property described in Attachment A. Decedent's interest in the property has been inventoried as item** _ _[*specify*]_ _ **and has been appraised at $**_ _[*amount*]_ _**. Petitioner is not aware of any other judicial proceeding to determine the ownership of the property.**

2. Petitioner has been presented with a claim that the property in fact belongs to _ _[*claimant*]_ _**. The facts on which the claim of ownership is based are the following:** _ _[*Set forth all facts on which the claim of ownership is based. Include copies of supporting papers as attachments, retaining the originals for presentation at the hearing. If the claim is to be supported by separately filed declarations, state that and offer a brief summary of their contents*]_ _**.**

3. Petitioner has reviewed the facts on which the claim of ownership is based and believes them to be true and correct.

4. The following is a list of the name(s) and address(es) of all persons known by petitioner to claim an interest in the property and all parties having an interest in decedent's estate who could be affected by a determination of ownership of the property, including the heirs and devisees, and each person who has filed a request for special notice, who will be mailed or personally served with a copy of this petition and notice of the time and place of the hearing on this petition:

[*List of names and addresses*]

WHEREFORE, petitioner requests the court to determine the ownership of the property, to authorize and direct petitioner to transfer the property to its rightful owner, and to issue such other orders as the court considers proper.

Date: _ _ _ _ _ _ __[*Signature*]__
_ _[*Typed name*]_ _
Petitioner

Date: _ _ _ _ _ _ __[*Signature*]__

_ _[*Typed name*]_ _
Attorney for Petitioner

[*Verification; see §1.22*]

Instructions: This form should be used when the personal representative is the petitioner, a claim to the estate property has been presented by a third party, and the representative agrees that the property should go to the claimant.

The wording of the title should make it clear that the proceeding is under Prob C §850. Because these hearings require 30 days' notice for some persons, the calendaring clerk must choose a hearing date far enough in advance to accommodate that requirement.

The property should be described with particularity in the attachment so that all interested parties can identify it. For real property, the street address, if any, or a general description of its location, should be included.

Use endorsed, filed copies for service, but do not send the clerk all the copies with the original. Mail one copy for endorsed filing with the original; when it is mailed back, use it to prepare as many photocopies as needed.

Copies: Original for filing; one copy for each nonpetitioning representative, each heir or beneficiary whose interest is affected, each person who has an interest in the property, and each person who has given notice of appearance in the estate or filed a request for special notice; office copies.

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Source: Estate Planning/California Probate Workflow Manual Revised/16 Estate Management Issues: Borrowing Money, Title Disputes, Executory Contracts, Testamentary Options, Petitions for Instructions/§16.7 3. Form: Order Determining Ownership of Estate Property and Transferring Property to Claimant

§16.7 3. Form: Order Determining Ownership of Estate Property and Transferring Property to Claimant

[*Title of court*]

Estate of _ _[*name*]**_ _,**	**)**	**No. _ _ _ _ _ _**
	)	
Decedent	**)**	**ORDER DETERMINING**
	)	**OWNERSHIP AND DIRECTING**
	)	**_ _**[*EXECUTOR/*
	)	*ADMINISTRATOR*]**_ _ TO**
	)	**TRANSFER PROPERTY TO**
_____	**)**	**CLAIMANT**

[*Add one of the following alternatives*]

[*Alternative 1: Petition by personal representative]*

The verified petition of _ _[*name*]**_ _, as _ _**[*executor/administrator*]**_ _ of the _ _**[*will/estate*]**_ _ of _ _**[*name of decedent*]**_ _, to determine ownership of estate property and to direct the _ _**[*executor/administrator*]**_ _**

[*Alternative 2: Petition by claimant]*

The verified petition of _ _[*name of claimant*]**_ _ to determine ownership of estate property and to direct the _ _**[*executor/administrator*]**_ _ of the _ _**[*will/estate*]**_ _ of _ _**[*name of decedent*]**_ _**

[*Continue*]

to transfer property to claimant came on regularly for hearing on _ _[*date*]**_ _, at _ _**[*time*]**_ _, in Department _ _**[*number/letter*]**_ _. On proof made to the court's satisfaction, the court finds that notice has been given as required by law**

[*Add one of the following alternatives*]

[*Alternative 1: Petition not contested*]

and that the allegations in the petition are true.

[*Alternative 2: Petition contested and statement of decision issued*]

, and the court having issued its statement of decision,

[*Continue*]

IT IS ORDERED AND ADJUDGED:

1. On _ _[*date of death*]**_ _, the property described in Attachment A was owned by _ _**[*name*]**_ _ as _ _**[*specify manner of holding title*]**_ _.**

2. _ _[*Name*]**_ _, as _ _**[*executor/administrator*]**_ _ of the _ _**[*will/estate*]**_ _ of _ _**[*name of decedent*]**_ _, is authorized to transfer all interest in the property to _ _**[*name of claimant*]**_ _ and is directed to prepare, execute, and deliver all necessary documents of transfer.**

3. _ _[*Specify order concerning any additional claims*]**_ _.**

Date: _ _ _ _ _ _

__[*Signature*]__
_ _[*Judge/Commissioner*]**_ _ of the**
_ _[*title of court*]**_ _**

Instructions: If the matter is uncontested, a simple recitation that the allegations in the petition are true should suffice. If local rules do not allow attachments, the description of the property must be in the body of the order.

Copies: Original for filing; one copy for each nonpetitioning representative, each person who has an interest in the property, and each person who has given notice of appearance in the estate or filed a request for special notice; one certified copy for recording in each county where real property is located; one copy for opposing party; office copies.

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Source: Estate Planning/California Probate Workflow Manual Revised/16 Estate Management Issues: Borrowing Money, Title Disputes, Executory Contracts, Testamentary Options, Petitions for Instructions/§16.8 4. Form: Petition by Personal Representative to Establish Estate's Ownership of Property

§16.8 4. Form: Petition by Personal Representative to Establish Estate's Ownership of Property

[*Title of court*]

Estate of _ _[*name*]**_ _,**	**)No. _ _ _ _ _ _**
	)
Decedent	**)PETITION BY**
	)_ _[*EXECUTOR/ADMINISTRATOR*]**_ _**
	)TO ESTABLISH ESTATE'S CLAIM
	)OF OWNERSHIP TO PROPERTY
	)_ _[*,/AND*]**_ _ FOR ORDER**
	)DIRECTING ITS TRANSFER TO
	)ESTATE _ _[*, AND FOR _ _*[*SPECIFY*
	)*ADDITIONAL CLAIMS*]**_ _]_ _**
	)(PROBATE CODE §850)
	)
	)Hearing date:
	)Time:
	)Department:
	)
_____)	

Petitioner, _ _ _ _ _ _, as _ _[*executor/administrator*]**_ _ of the _ _**[*will/estate*]**_ _ of the above-named decedent, alleges:**

1. Decedent died on _ _[*date*]**_ _, having a claim of ownership to the property described in Attachment A. Petitioner has included decedent's claim to the property in the inventory as item _ _**[*specify*]**_ _ with an appraised value of $_ _**[*amount*]**_ _. Petitioner is not aware of any other judicial proceeding to determine ownership of the property.**

2. At the time of decedent's death, _ _[*title to/possession of*]**_ _ the property was held by _ _**[*name*]**_ _. Petitioner has demanded the return of decedent's interest in the property to the estate but _ _**[*name*]**_ _ has refused. The facts on which the estate's claim of ownership is based are the following: _ _**[*Set forth all facts on which the claim of ownership is based. Include copies of supporting papers as attachments, retaining the originals for presentation at the hearing. If the claim is to be supported by separately filed declarations, state that and offer a brief summary of their contents*]**_ _.**

[*If applicable, add the following option*]

[*Option: Additional claims*]

3. Besides the estate's claim of ownership of the property, the estate has claims against _ _[*name*]**_ _ based on the following facts: _ _**[*Set forth all facts on which the additional claims are based. Include copies of supporting papers as attachments, retaining the originals for presentation at the hearing. If the claim is to be supported by separately filed declarations, state that and offer a brief summary of their contents*]**_ _.**

[*Continue*]

[4.] The following is a list of the name(s) and address(es) of all persons known by petitioner to claim an interest in the property and all persons having an interest in decedent's estate who could be affected by a determination of ownership of the property, including the heirs and devisees, and each person who has filed a request for special notice, who will be mailed or personally served with a copy of this petition and notice of the time and place of the hearing on this petition.

[*List of names and addresses*]

WHEREFORE, petitioner requests the court to determine that the decedent was the true owner of the

property, to direct _ _[*name*]_ _ to transfer the property to petitioner as _ _[*executor/administrator*]_ _ of the decedent's _ _[*will/estate*]_ _, _ _[*add any other relief sought*]_ _, and to issue such other orders as the court considers proper.

Date: _ _ _ _ _ _

__[*Signature*]__
_ _[*Typed name*]_ _
Petitioner

Date: _ _ _ _ _ _

__[*Signature*]__
_ _[*Typed name*]_ _
Attorney for _ _[*name*]_ _

[*Verification; see §1.22*]

Comment: This form is used when property believed by the representative to belong to the estate is held or claimed by a third party.

Copies: Original for filing; one copy for each nonpetitioning representative, each person who has an interest in the property, and each person who has given notice of appearance in the estate or filed a request for special notice; office copies.

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Source: Estate Planning/California Probate Workflow Manual Revised/16 Estate Management Issues: Borrowing Money, Title Disputes, Executory Contracts, Testamentary Options, Petitions for Instructions/§16.9 5. Form: Order Establishing Estate's Ownership of Property and Directing Transfer

§16.9 5. Form: Order Establishing Estate's Ownership of Property and Directing Transfer

[*Title of court*]

Estate of _ _[*name*]_ _,	**)**	**No. _ _ _ _ _ _**
	)	
Decedent	**)**	**ORDER ESTABLISHING**
	)	**ESTATE'S OWNERSHIP OF**
	)	**PROPERTY AND DIRECTING**
_____	**)**	**TRANSFER TO ESTATE**

The verified petition of _ _[*name*]_ _, as _ _[*executor/administrator*]_ _ of the _ _[*will/estate*]_ _ of _ _[*name of decedent*]_ _, to establish the estate's ownership of property and to direct its transfer to the estate came on regularly for hearing on _ _[*date*]_ _, at _ _[*time*]_ _, in Department _ _[*number/letter*]_ _. On proof made to the court's satisfaction, the court finds that notice has been given as required by law

[*Add one of the following alternatives*]

[*Alternative 1: Petition not contested*]

and that the allegations in the petition are true.

[*Alternative 2: Petition contested and statement of decision issued*]

, and the court having issued its statement of decision,

[*Continue*]

IT IS ORDERED AND ADJUDGED:

1. On _ _[*date of death*]_ _, the property described in Attachment A was owned by _ _[*name of decedent*]_ _ as _ _[*specify manner of holding title*]_ _.

2. _ _[*Name of respondent*]_ _ is directed to transfer all title and interest in the property to _ _[*name*]_ _, as _ _[*executor/administrator*]_ _ of the _ _[*will/estate*]_ _ of _ _[*name of decedent*]_ _, and is directed to prepare, execute, and deliver all necessary documents of transfer.

3. _ _[*Specify order concerning any additional claims*]_ _.

Date: _ _ _ _ _ _

__[*Signature*]__
_ _[*Judge/ Commissioner*]_ _
of the
_ _[*title of court*]_ _

Copies: Original for filing; one copy for each nonpetitioning representative, each person who has an interest in the property, and each person who has given notice of appearance in the estate or filed a request for special notice; office copies. If the property includes an interest in real property, one certified copy should be obtained for recording in each county where the real property is located.

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III. EXECUTORY CONTRACTS

§16.10 A. Specific Performance of Executory Contract of Sale of Property

If the decedent entered into a written contract to sell real or personal property but died before the transfer was completed, the personal representative or any person claiming rights under such an executory contract may petition the court for authorization to complete the sale. Prob C §850. A similar petition may be brought by the representative or a person claiming an interest if the decedent had entered into a written contract to transfer real or personal property at death, *e.g.,* a buy-sell agreement between partners. Prob C §850.

Civil Code §§3384-3395 provide the statutory requirements for specific performance of an obligation and apply to Prob C §850 petitions to enforce executory contracts. In general, specific performance of a contract may be ordered in the following circumstances (*Blackburn v Charnley* (2004) 117 CA4th 758, 766, 11 CR3d 885):

- The terms of the contract are sufficiently definite and certain for enforcement (CC §3390(5));
- Consideration is adequate (CC §3391(1));
- The requested performance is substantially similar to the contract terms;
- There is mutuality of remedy (CC §3386); and
- Plaintiff's legal remedy is inadequate (CC §3387).

The Assessor's Parcel Number (APN) should be included after the legal description of the property.

See §16.5 on notice under Prob C §§850-859. See California Decedent Estate Practice §27.16 (2d ed Cal CEB 2009) for a petition to be filed by the purchaser for specific performance.

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Source: Estate Planning/California Probate Workflow Manual Revised/16 Estate Management Issues: Borrowing Money, Title Disputes, Executory Contracts, Testamentary Options, Petitions for Instructions/§16.10A B. Form: Petition by Representative for Specific Performance of Executory Contract of Sale of Property

§16.10A B. Form: Petition by Representative for Specific Performance of Executory Contract of Sale of Property

[*Title of court*]

Estate of _ _[*name*]_ _,	**)No. _ _ _ _ _ _**
	)
Decedent	**)PETITION BY**
	)_ _[*EXECUTOR/ADMINISTRATOR*]_ _
	)FOR SPECIFIC PERFORMANCE OF
	)EXECUTORY CONTRACT OF SALE
	)OF PROPERTY
	)(PROBATE CODE §850)
	)
	)Hearing date:
	)Time:
	)Department:
_____)	

Petitioner, _ _[*name*]_ _, as _ _[*executor/administrator*]_ _ of the _ _[*will/estate*]_ _ of the above-named decedent, alleges:

1. Petitioner was appointed as _ _[*executor/administrator*]_ _ by order of this court dated _ _[*date*]_ _. Letters _ _[*testamentary/of administration*]_ _ were issued to petitioner on _ _[*date*]_ _.

2. Decedent died on _ _[*date*]_ _. On _ _[*date*]_ _, decedent entered into a written contract to sell property. The terms of the sale are set forth in full in the copy of the contract attached to this petition as Attachment A. Decedent died before complete performance of the contract. The material provisions of the contract are as follows:

Purchaser's name and manner of taking title: _ _[*Specify*]_ _

Street address and legal description of property: _ _[*Legal description can be set forth in a separate attachment and incorporated by reference*]_ _

Sales price and terms: $_ _[*amount*]_ _; the terms of the sale are _ _[*e.g., all cash/cash and credit as follows: _ _[Specify*]_ _]_ _

Date-of-death appraised value: $_ _[*amount*]_ _

Broker's commission payable by estate: _ _[*number*]_ _ percent, $_ _[*amount*]_ _

Closing costs and other fees payable by estate: $_ _[*amount*]_ _

3. Purchaser has fully performed all the terms and conditions of the contract except for the payment of $_ _[*amount*]_ _, the balance of the purchase price, which purchaser now stands ready, willing, and able to pay _ _[*, and except for the following acts: _ _[Specify*]_ _]_ _.

4. Petitioner has reviewed the terms and conditions of the sale and believes them to be fair and equitable. Petitioner has no knowledge of any facts indicating that the contract was procured by duress, menace, fraud, or undue influence. Petitioner believes that the contract is enforceable by specific performance, on the basis of the following allegations:

[*Allege facts that establish compliance with the requirements of CC §§3384-3395*]

5. As a result of the completion of the contract of sale, the estate will receive approximately $_ _[*amount*]_ _ in cash. _ _[*No/$_ _[amount*]_ _]_ _ additional bond should be required because _ _[*specify*]_ _.

6. Each person entitled to a copy of this petition and notice of the hearing of this petition, including each person who has filed a request for special notice, will be served as required by law.

WHEREFORE, petitioner requests the court to direct petitioner to execute a conveyance of the subject property to the purchaser and to authorize petitioner to deliver that conveyance to the purchaser on receipt by petitioner of the balance of the purchase price _ _[*and completion by purchaser of the following acts:* _ _[*specify*]_ _]_ _, and to order such other relief as the court deems appropriate.

Date: _ _ _ _ _ _ __[*Signature*]__
_ _[*Typed name*]_ _
Petitioner

Date: _ _ _ _ _ _ __[*Signature*]__
_ _[*Typed name*]_ _
Attorney for Petitioner

[*Verification; see §1.22*]

Copies: Original for filing; one copy for each nonpetitioning representative, each person who has an interest in the property, and each person who has given notice of appearance in the estate or filed a request for special notice; courtesy copy for purchaser; office copies.

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Source: Estate Planning/California Probate Workflow Manual Revised/16 Estate Management Issues: Borrowing Money, Title Disputes, Executory Contracts, Testamentary Options, Petitions for Instructions/§16.11 C. Form: Order for Specific Performance of Decedent's Executory Contract of Sale

§16.11 C. Form: Order for Specific Performance of Decedent's Executory Contract of Sale

[*Title of court*]

Estate of _ _[*name*]_ _,	**)**	**No. _ _ _ _ _ _**
	)	
Decedent	**)**	**ORDER FOR SPECIFIC**
	)	**PERFORMANCE OF**
	)	**DECEDENT'S EXECUTORY**
_____	**)**	**CONTRACT OF SALE**

The petition of _ _[*name*]_ _, as _ _[*executor/administrator*]_ _ of the _ _[*will/estate*]_ _ of _ _[*name of decedent*]_ _, for specific performance of decedent's executory contract of sale and to direct the personal representative of the estate to transfer property to purchaser came on regularly for hearing on _ _[*date*]_ _, at _ _[*time*]_ _, in Department _ _[*number/letter*]_ _. On proof made to the court's satisfaction, the court finds that notice has been given as required by law and that the allegations in the petition are true.

IT IS ORDERED AND ADJUDGED:

_ _[*Name*]_ _, as _ _[*executor/administrator*]_ _ of the _ _[*will/estate*]_ _ of the above-named decedent, is authorized and directed to execute a conveyance of the following described property to _ _[*name of purchaser*]_ _ as _ _[*specify manner of holding title*]_ _:

[*State legal description of property, including Assessor's Parcel Number (APN), in the description of the property if applicable*]

The _ _[*executor/administrator*]_ _ shall then deposit the conveyance with _ _[*name and address of escrow holder*]_ _ with instructions to deliver the conveyance to purchaser on receipt by the escrow holder of $_ _[*amount*]_ _, the balance of the purchase price due, plus _ _[*number*]_ _ percent interest from _ _[*date*]_ _ _ _[*, and completion by purchaser of the following acts: _ _[Specify*]_ _]_ _.

Date: _ _ _ _ _ _

__[*Signature*]__
Judge of the _ _[*title of court*]_ _

Comment: For a conditional judgment for specific performance, see California Real Property Remedies and Damages §5.48 (2d ed Cal CEB 2002).

Copies: Original for filing; one copy for each nonpetitioning representative; one courtesy copy for purchaser or other party to contract; one certified copy for each county where the real property is located; office copies.

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§16.12 IV. TESTAMENTARY OPTIONS TO PURCHASE

When an option to purchase real or personal property is given in a will, Prob C §§9980-9983 provide the procedure to petition the court for an order authorizing the representative to transfer the property to the optionee. Either the representative or the holder of the option may petition.

The statutes impose conditions on the exercise of testamentary options. Any option must be exercised within the time period set in the will or, if none, within a year after the decedent's death. The rights of creditors must not be impaired by the issuance of the order (which could happen if, for example, a valuable asset of an insolvent estate were sold for a pittance). The court may require additional bond (see chap 8).

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Source: Estate Planning/California Probate Workflow Manual Revised/16 Estate Management Issues: Borrowing Money, Title Disputes, Executory Contracts, Testamentary Options, Petitions for Instructions/§16.12A A. Form: Petition by Beneficiary of Testamentary Option for Order Authorizing and Directing Sale of Estate Property to Petitioner

§16.12A A. Form: Petition by Beneficiary of Testamentary Option for Order Authorizing and Directing Sale of Estate Property to Petitioner

[*Title of court*]

Estate of _ _[*name*]**_ _,**	**)No. _ _ _ _ _ _**
	)
Decedent	**)PETITION BY BENEFICIARY OF**
	)TESTAMENTARY OPTION FOR
	)ORDER AUTHORIZING AND
	)DIRECTING
	)_ _[*EXECUTOR/ADMINISTRATOR*]**_ _**
	)TO TRANSFER OR CONVEY
	)ESTATE PROPERTY TO
	)PETITIONER _ _[*AND TO APPROVE*
	)*PURCHASE PRICE*]**_ _**
	)(PROBATE CODE §9980)
	)
_____	**)Hearing date:**
	Time:
	Department:

Petitioner, _ _[*name*]**_ _, as the beneficiary of a testamentary option to purchase estate property, alleges:**

1. Decedent died on _ _[*date*]**_ _. By order of this court of _ _**[*date*]**_ _, decedent's will was admitted to probate.**

2. Petitioner was appointed as _ _[*executor/administrator with will annexed*]**_ _ by order of this court dated _ _**[*date*]**_ _. Letters _ _**[*Testamentary/of Administration With Will Annexed*]**_ _ were issued to Petitioner on _ _**[*date*]**_ _.**

3. Under decedent's will, Article _ _ _, Paragraph _ _ _, a testamentary option to purchase certain property from the estate was given to petitioner.

4. The terms specified in the will for the exercise of the option are as follows:

Time limit for exercise of option:_____

Formalities required for exercise of option:_____

Specified selling price or method of valuation:_____

Terms specified for payment:_____

[*If real property, add*]

Address of property:_____

Legal description and Assessor's Parcel Number (APN) is set forth in Attachment A.

[*Continue*]

Appraised value of property: $_ _[*amount*]**_ _ _ _**[*, arrived at by the following method specified in decedent's will: _ _*[*Specify*]**_ _**]**_ _.**

Proposed purchase price: $_ _[*amount*]**_ _ _ _**[*, as specified in the decedent's will: _ _*[*Specify*]**_ _**]**_ _.**

Manner of holding title for optionee: _ _[*Specify*]_ _.

5. Optionee has fully performed all the following terms and conditions specified in the will: _ _[*Specify*]_ _.

6. The period for filing creditors' claims _ _[*will have*]_ _ expired on _ _[*date*]_ _.

[*Add one of the following alternatives*]

[*Alternative 1: Sale will not impair creditors' rights; no bond required*]

7. The sale of the property to petitioner will not impair the rights of creditors of the estate, and no bond is required of petitioner for the creditors' protection because _ _[*specify*]_ _.

[*Alternative 2: Bond required*]

7. The court should require a bond in the proposed amount of $_ _[*amount*]_ _ to be furnished by an authorized surety company.

[*Continue*]

[*Add one of the following alternatives*]

[*Alternative 1: All taxes paid*]

8. All taxes due and owing from the estate have been paid.

[*Alternative 2: Sufficient assets to satisfy unpaid taxes*]

8. There are sufficient other estate assets to satisfy any unpaid taxes.

[*Alternative 3: No taxes due*]

8. No taxes are due and owing from the estate.

[*Continue*]

9. As a result of the exercise of the option to purchase, the estate will receive approximately $_ _[*amount*]_ _ in cash. The current bond for the representative is _ _[*waived/$_ _[amount*]_ _]_ _. The amount of assets on hand that contribute to the appropriate amount of bond is $_ _[*amount*]_ _. Therefore, _ _[*no additional bond should be required/$_ _[amount*]_ _]_ _ additional bond should be required, for a total surety bond in the amount of $_ _[amount*]_ _]_ _.

10. The _ _[*executor/administrator*]_ _ and each person who has filed a request for special notice will be given notice of the time and place of hearing on this petition as required by law.

WHEREFORE, petitioner requests that the court

1. _ _[*Fix the purchase price of the property at $_ _[amount*]_ _,]_ _ _ _[*authorize/Authorize*]_ _ and direct the _ _[*executor/administrator with will annexed*]_ _ to execute a conveyance of the subject property to the petitioner, and deliver that conveyance to the petitioner on receipt by the _ _[*executor/administrator*]_ _ of the sum of $_ _[*amount*]_ _ _ _[*and completion by purchaser of the following acts: _ _[Specify*]_ _]_ _; and

2. Grant all other relief as the court deems appropriate.

Date: _ _ _ _ _ _

__[*Signature*]__
_ _[*Typed name*]_ _
Petitioner

Date: _ _ _ _ _ _

__[*Signature*]__
_ _[*Typed name*]_ _
Attorney for Petitioner

[*Verification; see §1.22*]

Copies: Original for filing; office copies. Unless the optionee is the personal representative, one copy of the petition should be prepared for service on each representative, although this is not required by Prob C §§9980-9981.

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Source: Estate Planning/California Probate Workflow Manual Revised/16 Estate Management Issues: Borrowing Money, Title Disputes, Executory Contracts, Testamentary Options, Petitions for Instructions/§16.13 B. Form: Order Authorizing and Directing Representative to Transfer or Convey Estate Property to Beneficiary of Testamentary Option

§16.13 B. Form: Order Authorizing and Directing Representative to Transfer or Convey Estate Property to Beneficiary of Testamentary Option

[*Title of court*]

Estate of _ _[*name*]_ _,	**)No. _ _ _ _ _ _**
	)
Decedent	**)ORDER AUTHORIZING AND**
	)DIRECTING
	)_ _[*EXECUTOR/ADMINISTRATOR*]_ _
	)TO TRANSFER OR CONVEY
	)ESTATE PROPERTY TO
	)BENEFICIARY OF TESTAMENTARY
_____)OPTION _ _[*AND APPROVING*	
***PURCHASE PRICE*]_ _**	

The petition of _ _[*name*]_ _, as the beneficiary of a testamentary option to purchase estate property, to authorize and direct the _ _[*executor of the will/administrator with will annexed*]_ _ to sell the property to the petitioner _ _[*and to approve the purchase price*]_ _ came on regularly for hearing on _ _[*date*]_ _, at _ _[*time*]_ _, in Department _ _[*number/letter*]_ _. On proof made to the court's satisfaction, the court finds that notice has been given as required by law and that _ _[*creditors' rights will not be impaired by granting the petition/creditors' rights will be protected by _ _[a bond/an additional bond*]_ _ *in the amount of $_ _[amount*]_ _ *to be furnished by an authorized surety company*]_ _.

IT IS ORDERED AND ADJUDGED:

1. _ _[*Name*]_ _, as _ _[*executor of the will/administrator with will annexed*]_ _ of the above-named decedent, is authorized and directed to execute a conveyance of the following described property to _ _[*name*]_ _ as _ _[*manner of holding title*]_ _: _ _[*State legal description of property*]_ _.

2. The representative shall then deposit the conveyance with _ _[*name and address of escrow holder*]_ _ with instructions to deliver the conveyance to purchaser on receipt by the escrow holder of the full purchase price _ _[*and completion by purchaser of the following acts: _ _[Specify*]_ _]_ _.

[*Add one of the following alternatives*]

[*Alternative 1: No bond required*]

3. The personal representative is not required to file _ _[*a/an additional*]_ _ bond as a result of this transaction

[*Alternative 2: Bond required*]

3. The personal representative shall post _ _[*a bond in the amount of $_ _[amount*]_ _*/an additional bond in the amount of $_ _[amount*]_ _*, for a total bond of $_ _[amount*]_ _]_ _, to be furnished by an authorized surety company.

[*Continue*]

[*If appropriate, add*]

4. The purchase price of $_ _[*amount*]_ _ is approved.

[*Continue*]

Date: _ _ _ _ _ _ __[*Signature*]__
Judge of the _ _[*title of court*]_ _

Copies: Original for filing; one copy for each representative and any other person who has appeared at the hearing; one copy for each person who has requested one; courtesy copy for client; office copies. If property includes an interest in real property, one certified copy for recording in each county where real property is located

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V. GRANTS OF OPTIONS TO BUY ESTATE PROPERTY

§16.14 A. Introduction

A representative may grant an option to purchase real property from the estate under Prob C §§9960-9966. Court approval is required unless the representative has full authority under the Independent Administration of Estates Act (IAEA) (Prob C §§10400-10592) and chooses not to seek court approval.

If the representative does petition the court for approval, notice of the hearing must be given by mail under Prob C §1220 to beneficiaries of the estate whose interests would be affected. Prob C §9963. The clerk must post notice under Prob C §1230.

If bond is not waived, the petition should contain enough information to allow the court to determine any increased bond that will be required. The legal description should be accurate and agree with the description in the inventory.

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Source: Estate Planning/California Probate Workflow Manual Revised/16 Estate Management Issues: Borrowing Money, Title Disputes, Executory Contracts, Testamentary Options, Petitions for Instructions/§16.15 B. Form: Petition for Order Authorizing and Directing Representative to Grant Option to Purchase Estate Real Property

§16.15 B. Form: Petition for Order Authorizing and Directing Representative to Grant Option to Purchase Estate Real Property

[*Title of court*]

Estate of _ _[*name*]_ _,	**)No. _ _ _ _ _ _**
	)
Decedent	**)PETITION FOR ORDER**
	)AUTHORIZING AND DIRECTING
	)_ _[*EXECUTOR/ADMINISTRATOR*]_ _
	)TO GRANT OPTION TO PURCHASE
	)ESTATE REAL PROPERTY
	)(PROBATE CODE §9961)
	)
	)Hearing date:
	)Time:
_____)	**Department:**

Petitioner, _ _[*name*]_ _, as _ _[*executor/administrator*]_ _ of the _ _[*will/estate*]_ _ of the above-named decedent, brings this petition for an order authorizing the grant of an option to purchase real property and alleges:

1. Among the assets belonging to the estate is certain real property commonly known as _ _[*e.g., street address*]_ _, more particularly described as follows: _ _[*Provide legal description and Assessor's Parcel Number (APN)*]_ _.

2. Petitioner proposes to grant an option to _ _[*name(s)*]_ _ to purchase this property _ _[*on the following terms and conditions: _ _[specify terms*]_ _*/on the terms and conditions set forth in the offer attached to this petition as Exhibit A*]_ _.

3. Petitioner believes and therefore alleges that granting the option is to the advantage, benefit, and best interests of the estate and those interested in it, for the following reasons: _ _[*Specify*]_ _.

4. The purchase price of this property is at least 90 percent of its appraised value, and the property has been appraised on _ _[*date*]_ _, which is within 1 year of the date of hearing of this petition, by the duly appointed probate referee for this estate as having a value of $_ _[*amount*]_ _.

[*Add one of the following alternatives*]

[*Alternative 1: No real estate broker*]

5. No real estate broker was employed by petitioner.

[*Alternative 2: Real estate broker employed*]

5. Petitioner, by contract in writing, engaged _ _[*name*]_ _, a real estate broker duly licensed by California, through whose efforts the optionee was found. The broker should be allowed a commission of $_ _[*amount*]_ _ for services rendered, subject to approval by the court.

[*Continue*]

6. As a result of the exercise of the option to purchase, the estate will receive approximately $_ _[*amount*]_ _ in cash. The current bond for the representative is _ _[*waived/$_ _[amount*]_ _]_ _. _ _[*No/$_ _[amount*]_ _]_ _ additional bond should be required.

7. Notice will be posted and mailed as required by law. The names and addresses of all the decedent's heirs and devisees, as far as is known to petitioner, to whom notice of the hearing of this petition must be mailed at

least 15 days before said hearing, are as follows: _ _[*List names and addresses of heirs, legatees, and devisees*]_ _**.**

8. _ _[*No one has filed a request for special notice/The following has/have filed a request for special notice:* _ _[*List name(s) and address(es)*]_ _]_ _**.**

WHEREFORE, petitioner requests that the court determine that it is to the advantage of the estate that the above-described option be granted; authorize the granting of the option; direct petitioner to grant the option on the terms and conditions set forth above; _ _[*authorize and direct a commission of $*_ _[*amount*]_ _ *to* _ _[*name of broker*]_ _*;*]_ _ **and make any further orders as may be proper.**

Date: _ _ _ _ _ _ __[*Signature*]__
_ _[*Typed name*]_ _
Petitioner as _ _[*executor/ administrator*]_ _
of the _ _[*will/estate*]_ _ **of** _ _[*name*]_ _**, deceased**

Date: _ _ _ _ _ _ __[*Signature*]__
_ _[*Typed name*]_ _
Attorney for Petitioner

[*Verification; see §1.22*]

Copies: Original for filing; one copy each for representative, grantee of option, purchaser, and broker; office copies

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Source: Estate Planning/California Probate Workflow Manual Revised/16 Estate Management Issues: Borrowing Money, Title Disputes, Executory Contracts, Testamentary Options, Petitions for Instructions/§16.16 C. Form: Order Authorizing and Directing Representative to Grant Option to Buy Estate Real Property

§16.16 C. Form: Order Authorizing and Directing Representative to Grant Option to Buy Estate Real Property

[*Title of court*]

Estate of _ _[*name*]_ _,	)	**No. _ _ _ _ _ _**
	)	
Decedent	)	**ORDER AUTHORIZING AND**
	)	**DIRECTING _ _[*EXECUTOR/***
	)	***ADMINISTRATOR*]_ _ TO**
	)	**GRANT OPTION TO BUY**
	)	**ESTATE REAL PROPERTY**
_____	)	

The petition of _ _[*name*]_ _, as _ _[*executor/administrator*]_ _ of the _ _[*will/estate*]_ _ of the above-named decedent, for an order authorizing and directing the grant of an option to purchase estate real property came on regularly for hearing on _ _[*date*]_ _, at _ _[*time*]_ _, in Department _ _[*number/letter*]_ _. The court finds that:

1. Satisfactory proof having been made, notice of the hearing has been given as required by law and the allegations of the petition are true.

2. Good reason exists and it is to the advantage of the estate for the option to be granted. It does not appear that a higher or better offer may be obtained than the offer set forth in or attached to the petition.

IT IS ORDERED that:

1. _ _[*Name*]_ _, as _ _[*executor/administrator*]_ _ of the _ _[*will/estate*]_ _ of _ _[*name of decedent*]_ _, is authorized and directed to grant the option described below, and the _ _[*executor/administrator*]_ _ is further authorized to sign all necessary documents to effect such transfer, including but not limited to _ _[*specify*]_ _. The terms of the option and description of the property are as follows: _ _[*Insert terms of option and description of property*]_ _. _ _[*The _ _[executor/administrator]_ _ is authorized and directed to pay to _ _[name of broker]_ _ $_ _[amount]_ _ as a commission for services rendered in securing the optionee.*]_ _.

2. After the exercise of the option, _ _[*no/$_ _[amount]_ _]_ _ additional bond must be posted by the representative or surety.

Date: _ _ _ _ _ _

__[*Signature*]__
Judge of the _ _[*title of court*]_ _

Comment: If the option is to be recorded, it is important that its expiration date be clearly stated so that it does not cloud title to the property if it is not exercised.

Copies: Original for filing; one certified copy for recording in each county where real property is located; one copy for representative and any other party who appeared at the hearing; one copy for grantee of option and for each person who has requested a copy; copy for client; office copies.

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VI. COURT INSTRUCTIONS TO PERSONAL REPRESENTATIVE OR APPROVAL OF REPRESENTATIVE'S ACTIONS

§16.17 A. Introduction

Often during the administration of an estate, problems will arise for which the attorney and personal representative would like advice and direction from the court. An order authorizing or instructing the representative or approving and confirming the representative's action can protect the representative from liability for taking the action. This advice and direction is obtained by petitioning for instructions or confirmation.

The forms reprinted in the following sections are for use in requesting instructions from the court. They should be prepared only on direction by the attorney. Even if the representative has authority under the Independent Administration of Estates Act (IAEA) to act without a court order, the attorney may choose to seek one. Because Prob C §9611 states that a petition for instructions is available only when no other procedure is provided by statute, the attorney or legal assistant should ascertain whether some other procedure is available.

The availability of the petition for instructions or confirmation, its purpose and effect, and objecting to a petition are discussed fully in California Decedent Estate Practice, chap 16 (2d ed Cal CEB 2009). This chapter will cover only the procedure for obtaining instructions or confirmation.

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Source: Estate Planning/California Probate Workflow Manual Revised/16 Estate Management Issues: Borrowing Money, Title Disputes, Executory Contracts, Testamentary Options, Petitions for Instructions/ B. Procedure/§16.18 1. Form: Petition to Authorize and Instruct or Approve and Confirm Action of Personal Representative

B. Procedure

§16.18 1. Form: Petition to Authorize and Instruct or Approve and Confirm Action of Personal Representative

[*Title of court*]

Estate of _ _[*name*]_ _,	**)**	**No. _ _ _ _ _ _**
	)	
Decedent	**)**	**Petition TO _ _[*authorize and***
	)	***Instruct THE PERSONAL***
	)	***REPRESENTATIVE/approvE***
	)	***and confirm acts OF***
	)	***PERSONAL***
	)	***REPRESENTATIVE*]_ _TO**
	)	**_ _[*SUCCINCTLY DESCRIBE***
	)	***ACTION* [*TO BE*] *TAKEN*]_ _**
	)	**(PROBATE CODE §9611)**
	)	
	)	**Hearing date:**
_____)		**Time:**
		Department:

Petitioner, _ _[*name of personal representative*]_ _, alleges:

1. Petitioner is the _ _[*executor/administrator/administrator with will annexed*]_ _ of the above-named decedent's _ _[*will/estate*]_ _.

[*Add one of the following alternatives*]

[*Alternative 1: Petitioner requests authorization and instruction*]

2. Petitioner is in doubt about the course of action to be taken regarding _ _[*set forth the factual situation requiring the petition*]_ _ because _ _[*state reasons for hesitation to act*]_ _ but believes the best course of action would be to _ _[*describe proposed action*]_ _. Petitioner requests that the court instruct and direct _ _[*him/her*]_ _ to take the following action: _ _[*Specify action requested to be authorized and directed*]_ _.

[*Alternative 2: Petitioner requests approval and confirmation*]

2. Petitioner requests that the court approve and confirm the following actions that the petitioner has taken: _ _[*Specify acts taken*]_ _.

[*Continue*]

3. Petitioner believes there is no other Probate Code procedure available under which _ _[*he/she*]_ _ could otherwise proceed.

4. _ _[*No one has/The following persons have*]_ _ requested special notice _ _[: *List names and addresses*]_ _.

WHEREFORE, petitioner prays that

[*Add one of the following alternatives*]

[*Alternative 1: Authorize and instruct*]

1. This court authorize and instruct petitioner to _ _[*set forth in detail the instructions required*]_ _.

[*Alternative 2: Approve and confirm*]

1. The court approve and confirm the following acts of the petitioner: _ _[*Set forth in detail the specific acts*]_ _**.**

[*Continue*]

2. Other relief be granted that the court considers proper.

Date: _ _ _ _ _ _

__[*Signature*]__
_ _[*Typed name*]_ _
Petitioner

__[*Signature*]__
_ _[*Typed name*]_ _
Attorney for Petitioner

[*Verification; see §1.22*]

Instructions: Only a representative can file the petition. It must be verified and usually any coexecutor or administrator should be joined. The notice of hearing form in §5.7 should be used to give notice to those entitled.

The legal assistant should learn from the attorney whether the petition should state the precise course of action the representative considers proper, state no course of action, or state the alternatives available. When no objections are anticipated, the court expects the representative, either in the petition (Paragraph 2, Alternative 1) or at the hearing, to indicate what instructions he or she believes the court should order.

Copies: Original for filing; copy for client; extra copies as required; office copies.

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§16.19 2. Form: Order Authorizing and Instructing or Approving and Confirming Acts of Personal Representative

[*Title of court*]

Estate of _ _[*name*]_ _,	)	**No.** _ _ _ _ _ _
	)	
Decedent	)	**Order** _ _[***authorizing and***
	)	***instructing/approving and***
	)	***confirming acts of***]_ _
	)	**Personal Representative**
_____	)	

1. The verified petition of _ _[*name*]_ _**, the** _ _[*executor/administrator/administrator with will annexed*]_ _ **of the above-named decedent's** _ _[*will/estate*]_ _**, seeking** _ _[*authorization and instructions regarding* _ _[*specify nature of action to be taken*]_ _*/approval and confirmation of* _ _[*specify acts*]_ _ *taken by representative*]_ _ **came on regularly for hearing on** _ _[*date*]_ _**, at** _ _[*time*]_ _**, in Department** _ _[*number/letter*]_ _**. No person appeared to contest the petition.**

2. On proof made to the satisfaction of the court, the court finds that all notices have been given as required by law and the facts alleged in the petition are true.

IT IS ORDERED that

[*Add one of the following alternatives*]

[*Alternative 1*]

1. This court authorizes and instructs petitioner to _ _[*set forth in detail the instructions required*]_ _**.**

[*Alternative 2*]

1. The court hereby approves and confirms the following acts of the petitioner: _ _[*Set forth in detail the specific acts*]_ _**.**

Date: _ _ _ _ _ _ __[*Signature*]__
Judge of the _ _[*title of court*]_ _

Comment: On general requirements for preparing probate orders, see §1.37.
Copies: Original for filing; copy for client; extra copies as needed; office copies.

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17

Preliminary Distribution

I. [§17.1] INTRODUCTION

II. REQUIREMENTS FOR PRELIMINARY DISTRIBUTION
- A. [§17.2] General Requirements
- B. [§17.2A] Required Findings of Fact
- C. [§17.2B] Chart: Comparison of Petitions for Preliminary Distribution Under Prob C §§11620 and 11623
- D. Supporting Documents
  1. [§17.3] Inventory and Appraisal
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III. NOTICE REQUIREMENTS
- A. [§17.7] Petition Under Prob C §11620
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IV. PETITION FOR PRELIMINARY DISTRIBUTION
- A. [§17.8] Importance of Following Local Rules of Court
- B. [§17.9] Form: Petition for Preliminary Distribution
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V. [§17.11] FORM: DISTRIBUTEE'S BOND

VI. [§17.12] FORM: RECEIPT OF DISTRIBUTEE

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Source: Estate Planning/California Probate Workflow Manual Revised/17 Preliminary Distribution/§17.1 I. INTRODUCTION

§17.1 I. INTRODUCTION

The representative generally must obtain court approval before making a preliminary distribution except for preliminary distributions of income received during administration and certain assets specified in Prob C §10520 to the persons entitled under the will. See §9.12.

Authorization to make a preliminary distribution may be obtained by filing a noticed petition with the court under Prob C §§11600-11602 and 11620-11622. Notice must be given as provided in Prob C §1220 to the beneficiaries and other interested parties listed in Prob C §11601.

Probate Code §11623 provides an optional alternative procedure for representatives who have authority to act under the Independent Administration of Estates Act. Under Prob C §11623, the court may shorten the notice period or, if special notice has not been requested, dispense with notice entirely if the time for filing creditors' claims has expired.

In addition to the notice requirement, an important distinction between the two procedures is that a §11620 petition is flexible on the amount of property that may be distributed, while the amount that may be distributed under a §11623 petition cannot exceed 50 percent of the net value of the estate.

The factors, including tax consequences, that the attorney and representative must consider in deciding whether to petition for a preliminary distribution are discussed in California Decedent Estate Practice, chap 25 (2d ed Cal CEB 2009).

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Source: Estate Planning/California Probate Workflow Manual Revised/17 Preliminary Distribution/ II. REQUIREMENTS FOR PRELIMINARY DISTRIBUTION/§17.2 A. General Requirements

II. REQUIREMENTS FOR PRELIMINARY DISTRIBUTION

§17.2 A. General Requirements

A petition for preliminary distribution may be filed as early as 2 months after the first issuance of letters under Prob C §11620, but for reasons discussed in California Decedent Estate Practice §25.18 (2d ed Cal CEB 2009), it is usually filed after the period for filing creditors' claims has expired. Unless the period for filing claims has passed, a distributee's bond will have to be obtained in the amount of the distribution. Prob C §11622(a). Local court rules may require a bond even if the period has expired. See §17.11 for a form of distributee's bond.

Preliminary distribution is an interim distribution of a portion of the estate assets. A preliminary distribution is appropriate only if the estate is not in a condition to be finally closed and distributed.

NOTE: If the personal representative receives notice or has actual knowledge within 4 months after issuance of the decedent's death certificate (or entry of judgment determining the fact of decedent's death, if earlier) that the decedent's genetic material is available for purposes of posthumous conception, the personal representative may not make *any* distribution of property until 2 years after issuance of the death certificate (or entry of judgment determining the fact of decedent's death, if earlier), unless (Fam C §7611(f); Prob C §§249.5-249.8):

- The birth of a child of the decedent conceived after death will have no effect on the proposed distribution; or
- The personal representative has received written notice that the person designated by the decedent does not intend to use the material for the posthumous conception of a child of the decedent.

Any petition for preliminary distribution must list and describe all actions taken without prior court approval under the Independent Administration of Estates Act (IAEA) if notice of the proposed action was required. Cal Rules of Ct 7.250. The description must include the following (Cal Rules of Ct 7.250(a)):

- The nature of the action;
- When the action was taken;
- When and to whom notice was given;
- Whether notice was waived and, if so, by whom; and
- Whether any objections were received.

An action taken under the IAEA that was listed and described in an earlier account, report, or petition for distribution and approved by the court does not have to be included in a later account, report, or petition for distribution. Cal Rules of Ct 7.250(b).

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§17.2A B. Required Findings of Fact

Petitions for preliminary distribution require the court to make the following specific findings of fact:

(1) For all petitions, a finding that the "distribution may be made without loss to creditors or injury to the estate or any interested person." Prob C §11621.

(2) For petitions under Prob C §11623, a finding that "the property to be distributed does not exceed 50 percent of the net value of the estate." Prob C §11623(a)(2). See discussion in California Decedent Estate Practice §25.25 (2d ed Cal CEB 2009).

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Source: Estate Planning/California Probate Workflow Manual Revised/17 Preliminary Distribution/§17.2B C. Chart: Comparison of Petitions for Preliminary Distribution Under Prob C §§11620 and 11623

§17.2B C. Chart: Comparison of Petitions for Preliminary Distribution Under Prob C §§11620 and 11623

	Prob C §11620	Prob C §11623
Time for Filing	Two months after first issuance of letters (see §17.2; California Decedent Estate Practice §25.24 (2d ed Cal CEB 2009))	Two months after first issuance of letters (may be heard without notice only after expiration of period for filing creditors' claims) (see §17.2; Decedent Estate Prac §25.18)
Distributee's Bond	Mandatory if period for creditors' claims not expired; in court's discretion thereafter (see §17.2; Decedent Estate Prac §25.25)	Same (see §17.2; Decedent Estate Prac §25.19)
Amount to Be Distributed	No limit if creditors and interested persons are protected (see §17.1; Decedent Estate Prac §25.26)	Maximum: 50% of net value of estate (see §17.1; Decedent Estate Prac §25.20)
Inventory and Appraisal	Not required by Prob C §11620 but may be required by local rules (see §17.3; Decedent Estate Prac §25.27)	Required by §11623 (see §17.3; Decedent Estate Prac §§25.20-25.21)
Account	Not required but may be advantageous (see §17.4; Decedent Estate Prac §25.28)	Not required but may be advantageous (see §17.4; Decedent Estate Prac §25.22)
Notice	15 days' notice under Prob C §1220 to persons identified in Prob C §11601 (see §17.7; Decedent Estate Prac §25.65), although time may be shortened. Prob C §1203.	15 days' notice under Prob C §1220, although time may be shortened or notice dispensed with entirely if brought after expiration of time for filing creditors' claims (see §17.7A; Decedent Estate Prac §25.66)
Who May Petition	Representative, any heir, devisee, legatee, assignee, or successor in interest of any heir, devisee, or legatee (see Decedent Estate Prac §25.24)	Representative under Independent Administration of Estates Act (see Decedent Estate Prac §25.18)
Who May Object to Petition	Representative or anyone interested in estate (see Decedent Estate Prac §§25.67-25.69)	Same
Findings of Fact		
Distribution May Be Made Without Injury to Estate or Any Interested Person	Required (see §17.2A; Decedent Estate Prac §§25.24, 25.59)	Required (see §17.2A; Decedent Estate Prac §§25.17, 25.59)
Distribution May Be Made Without Loss to Creditors	Required (see §17.2A; Decedent Estate Prac §§25.24, 25.59)	Required (see §17.2A; Decedent Estate Prac §§25.17, 25.59)
"Property to Be Distributed Does Not Exceed 50% of the Net Value of the Estate"	Not required (see §17.1; Decedent Estate Prac §25.26)	Required (see §17.1; Decedent Estate Prac §25.20)

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D. Supporting Documents

§17.3 1. Inventory and Appraisal

The inventory and appraisal contains a valuation of the estate's assets and lists the character of the estate's assets as separate, community, or quasi-community. Prob C §§8800, 8850(c). For a detailed discussion of inventory and appraisal, see chap 11.

For petitions under Prob C §11620, local rules usually require that the character and value of the assets proposed for distribution be fully described in the petition without reference to the inventory, or in an attachment if attachments are permitted. Completion and filing of the inventory and appraisal is a logical, although not mandatory, step before petitioning for preliminary distribution. The representative should at least file a partial inventory and appraisal describing and valuing the property sought to be distributed before the hearing on the petition. Local rules may require that at least a portion of the estate's assets, including those proposed to be distributed, be formally appraised before the hearing. See §17.8.

In contrast, petitions under Prob C §11623 limit the amount of distributable property to "50 percent of the net value of the estate." Net value is based on the value of the estate as shown by all inventories and appraisals on file with the court, less creditors' claims, liens, and encumbrances. Prob C §11623(a)(2). The filing of inventories and appraisals for petitions under §11623 cannot be considered optional, because the court is apparently limited in the amount of distribution that can be approved according to the value of the assets listed on inventories and appraisals on file with the court at the date of the hearing. Prob C §11623.

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§17.4 2. Account

Local rules may require that an account accompany the petition for preliminary distribution if the petition is filed under Prob C §11623 by a representative who has authority to act under the Independent Administration of Estates Act. Otherwise, an account is not required, but the attorney may wish to file one for the reasons discussed in California Decedent Estate Practice §25.22 (2d ed Cal CEB 2009). See chap 18 and App B for forms for accounts and instructions on preparation.

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Source: Estate Planning/California Probate Workflow Manual Revised/17 Preliminary Distribution/§17.5 3. Form: Trustee's Consent to Preliminary Distribution Without Account [Deleted]

§17.5 3. Form: Trustee's Consent to Preliminary Distribution Without Account [Deleted]

The requirement of the trustee's consent to preliminary distribution without an account was repealed, operative July 1, 1989. See former Prob C §1004.

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Source: Estate Planning/California Probate Workflow Manual Revised/17 Preliminary Distribution/§17.6 4. Form: Trustee's Declaration Consenting to Act

§17.6 4. Form: Trustee's Declaration Consenting to Act

[*Title of court*]

Estate of _ _[*name*]_ _,	**)**	**No. _ _ _ _ _ _**
	)	
Decedent	**)**	**TRUSTEE'S DECLARATION**
	)	**CONSENTING TO ACT**
_____	**)**	

The undersigned declares:

1. I am the trustee nominated under the decedent's will admitted to probate by this court.

2. I consent to act as trustee.

Executed on _ _[*date*]_ _, at _ _[*place*]_ _.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _ _ _ _ _ _ __[*Signature*]__
_ _[*Typed name*]_ _

Copies: Original for filing; one copy for each representative and trustee; office copies.

Comment: When distribution is to be made to a testamentary trustee, local rules in some counties require that the trustee's consent to act be on file with the court before the hearing on the petition for distribution.

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III. NOTICE REQUIREMENTS

§17.7 A. Petition Under Prob C §11620

Unless the court waives notice or shortens time, notice of the hearing on a petition for preliminary distribution under Prob C §11620 must be given at least 15 days before the hearing as provided in Prob C §1220 to heirs, devisees, and the State of California (in cases of escheat) whose interests are affected and to the Controller if a beneficiary's location or identity is unknown. Prob C §11601. Notice to the Controller must be accompanied by the latest account filed with the court. Prob C §11601(e).

Notice of the hearing may be made by personal delivery, first-class mail, or air mail to anyone living outside the United States, and in all cases must be sent to the person's last known mailing address. Prob C §§11601, 1215, 1220.

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Source: Estate Planning/California Probate Workflow Manual Revised/17 Preliminary Distribution/§17.7A B. Petition Under Prob C §11623

§17.7A B. Petition Under Prob C §11623

A petition for preliminary distribution under Prob C §11623 is governed solely by the general notice provisions in Prob C §1220, which require that, at least 15 days before the hearing on the petition, notice of the hearing be mailed to the executor or administrator when he or she is not the petitioner, any coexecutor or coadministrator not petitioning, and all persons or their attorneys who have requested special notice under Prob C §1250.

Of particular importance for Prob C §11623 petitions, the court may also order the notice to be given for a shorter period than the 15 days required under Prob C §1220 or may even dispense with notice entirely if the petition is brought after the time to file creditors' claims has expired. Prob C §11623(a)(1). The representative may wish to take advantage of this possibility and structure the proposed distribution to meet the requirements of Prob C §11623 rather than Prob C §11620, when, for instance, an immediate distribution is crucial for income tax reasons.

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IV. PETITION FOR PRELIMINARY DISTRIBUTION

§17.8 A. Importance of Following Local Rules of Court

In preparing a petition for preliminary distribution, the legal assistant must be familiar with the local rules of court because practices vary widely from county to county. For instance, some jurisdictions require that the petition contain a recapitulation showing (1) the property on hand, (2) the property proposed to be distributed, (3) the property remaining in the estate after the proposed preliminary distribution, (4) an estimate of the total amount of unpaid taxes and other liabilities, including unpaid claims against the estate, and (5) all other facts necessary to apprise the court of the estimated expenses in closing the estate.

In some counties, this information can be attached by schedule, while other counties do not allow pleading by exhibit. Failure to consult local rules in advance often results in continuances and delays in granting court approval and, in some instances, may result in denial of the petition. See California Decedent Estate Practice §§25.31-25.34 (2d ed Cal CEB 2009).

For the local probate rules of all California counties, see California Local Probate Rules (Cal CEB Annual).

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Source: Estate Planning/California Probate Workflow Manual Revised/17 Preliminary Distribution/§17.9 B. Form: Petition for Preliminary Distribution

§17.9 B. Form: Petition for Preliminary Distribution

17.9-1 Caption

[*Title of court*]

Estate of _ _[*name*]_ _, **Decedent**	**No.** _ _ _ _ _ _ [*Add one of the following alternatives*] [*Alternative 1: Account is not presented*] **PETITION FOR** _ _[*SECOND/THIRD/ETC.*]_ _ **PRELIMINARY DISTRIBUTION,** _ _[*AND*]_ _ _ _[*FOR ALLOWANCE ON ACCOUNT OF COMPENSATION TO* _ _[*EXECUTOR/ADMINISTRATOR*]_ _]_ _ _ _[*AND TO ATTORNEY/S*]_ _, _ _[*AND*]_ _ _ _[*FOR ALLOCATION OF ESTATE TAXES*]_ _, _ _[*AND TO* _ _[*SHORTEN/DISPENSE WITH*]_ _ *NOTICE*]_ _ [*Alternative 2: Account is presented*] **FIRST ACCOUNT AND REPORT OF** _ _[*EXECUTOR/ADMINISTRATOR/ETC*]_ _ **AND PETITION FOR ITS SETTLEMENT,** _ _[*AND/,*]_ _ **FOR PRELIMINARY DISTRIBUTION** _ _[*AND/,*]_ _ _ _[*FOR ALLOWANCE OF COMPENSATION TO* _ _[*EXECUTOR/ADMINISTRATOR*]_ _]_ _ _ _[*AND TO ATTORNEY/S*]_ _, _ _[*AND TO* _ _[*SHORTEN/DISPENSE WITH*]_ _ *NOTICE*]_ _ **(PROBATE CODE §**_ _[*11620/11623*]_ _**)**

17.9-2 Introduction

[*Add one of the following alternatives*]

[*Alternative 1: Account is not included*]

Petitioner, _ _[*name*]_ _, _ _[*executor/administrator/etc.*]_ _ **of the** _ _[*will/ estate*]_ _ **of** _ _[*name*]_ _**, deceased, alleges:**

[*Alternative 2: Account is included*]

Petitioner, _ _[*name*]_ _, _ _[*executor/administrator/etc.*]_ _ **of the** _ _[*will/estate*]_ _ **of** _ _[*name*]_ _**, deceased, now presents the verified** _ _[*first/second/etc.*]_ _ **account and report for the period from** _ _[*date of death (if first account)*]_ _ **to and including** _ _[*date*]_ _**, together with a petition for preliminary distribution,** _ _[*and for allowance of statutory compensation*]_ _**, and alleges:**

[*Continue*]

17.9-3 Date of death and domicile

1. ***Date of Death.*** _ _[*Name of decedent*]_ _ **died** _ _[*testate/intestate*]_ _ **on** _ _[*date*]_ _**, in** _ _ _ _ _ _ **County,** _ _[*state*]_ _**, and was domiciled in** _ _[*that county/(decedent's county of domicile if other than where decedent died)*]_ _**.**

17.9-4 Appointment of executor/administrator with will annexed; letters issued

[*Add one of the following alternatives*]

[*Alternative 1: Appointment of executor/administrator with will annexed*]

2. *Will Admitted to Probate; Letters Issued.* The decedent's will dated _ _[*date*]_ _, _ _[*and codicil(s) dated _ _[date]_ _]_ _, _ _[was/were]_ _ admitted to probate by order of this court on _ _[*date*]_ _.

Petitioner qualified as _ _[*executor of the will/administrator with the will annexed*]_ _, and letters _ _[*testamentary/of administration with the will annexed*]_ _ were issued to petitioner on _ _[*date*]_ _. At all times since then, petitioner has been and now is the duly qualified _ _[*executor/administrator/etc.*]_ _ of the decedent's _ _[*will/estate*]_ _.

[*Alternative 2: Appointment of administrator, no will*]

2. *Appointment of Administrator; Letters Issued*. Despite search and inquiry, no will of the decedent has been found. Petitioner qualified as administrator of the decedent's estate, and letters of administration were issued to the petitioner on _ _[*date*]_ _. At all times since then, petitioner has been and now is the administrator of the estate.

[*If applicable, add the following option*]

[*Option: Earlier issuance of letters to general personal representative*]

[3.] *Letters First Issued.* Letters were first issued to _ _[*name of predecessor*]_ _ as general personal representative on _ _[*date*]_ _.

17.9-5 Authority granted under IAEA

[4.] *Authority Granted Under Independent Administration of Estates Act (IAEA).* On _ _[*date*]_ _, petitioner was granted full authority by order of this court to administer the estate without court supervision under the IAEA. This authority has not been revoked.

[*Continue*]

17.9-6 Passage of time since issuance of letters

[5.] *Time Elapsed Since Issuance of Letters.* More than _ _[*two/four*]_ _ months have elapsed since the date of first issuance of letters _ _[*testamentary/of administration*]_ _ to a general personal representative in this estate.

17.9-7 Publication of notice of petition to administer estate

[6.] *Notice of Petition to Administer Estate Given.* Notice of the petition to administer estate has been published for the period and in the manner prescribed by law, the first publication having been made on _ _[*date*]_ _.

17.9-8 Notice to creditors

[*Add one of the following alternatives*]

[*Alternative 1: 4 months have elapsed since issuance of letters*]

[7.] *Notice to Creditors*. Petitioner has made all reasonable efforts to ascertain creditors of the decedent. Notice of administration has been sent to all known and reasonably ascertainable creditors. More than four months have elapsed since the date letters first issued. The time for filing creditors' claims expired on _ _[*date*]_ _. _ _[*The time for filing late-discovered creditors' claims expired on _ _[date]_ _.*]_ _

[*Alternative 2: At least 2 months have elapsed since issuance of letters*]

[7.] *Notice to Creditors.* At least 2 months have elapsed since the issuance of letters. Notice to creditors has been regularly given as required by law. The time for filing claims has not yet expired. It will expire on

_ _[*date*]_ _.

17.9-9 Notice to public entities

[*Add one of the following alternatives*]

[*Alternative 1: Notice to public entities required*]

[8.] *Notice to Public Entities Served.* The notice required by Probate Code §9201 was served on _ _[*specify public entity*]_ _ **on** _ _[*date*]_ _**,** _ _[*in the form specified by the agency, a copy of which is attached to this petition as Exhibit* _ _[*letter*]_ *_/by mailing a copy of a completed Notice to Creditors to the agency*]_ _**. Other than taxes otherwise addressed in this petition, petitioner has no reason to believe that any other public entities have any basis for making a claim against this estate** _ _[*except* _ _[*name of entity*]_ _*, which filed a claim in this proceeding on* _ _[*date*]_ _]_ _**.**

[*Alternative 2: Notice to public entities not required*]

[8.] *Notice to Public Entities Not Required.* The estate is not required to give notice to any "public entity" described in Probate Code §9201.

17.9-10 Notice to Director of Health Care Services

[*Add one of the following alternatives*]

[*Alternative 1: Notice to Director of Health Care Services required*]

[9.] *Notice to Director of Health Care Services Mailed*. Notice of this proceeding with a copy of decedent's death certificate was mailed to the Director of Health Care Services on _ _[*date*]_ _**, as required by Probate Code §9202(a).** _ _[*A response from the Director of Health Care Services that the department will not file a claim in this proceeding was received and is attached to this petition as Exhibit* _ _[*letter*]_ _.]_ _

[*Alternative 2: Notice to Director of Health Care Services not required*]

[9.] *Notice to Director of Health Care Services Not Required*. Notice to the Director of Health Care Services under Probate Code §9202(a) is not required, because the decedent did not receive, and was not the surviving spouse or registered domestic partner of a person who received, any Medi-Cal benefits.

[*Continue*]

17.9-11 Notice to Director of California Victim Compensation and Government Claims Board

[*Add one of the following alternatives*]

[*Alternative 1: Notice to Director of California Victim Compensation and Government Claims Board required; see §12.11B*]

[10.] *Notice to Director of California Victim Compensation and Government Claims Board Mailed*. Notice of this proceeding with a copy of decedent's death certificate was mailed to the Director of California Victim Compensation and Government Claims Board on _ _[*date*]_ _**, as required by Probate Code §9202(b).** _ _[*A response from the Director of the California Victim Compensation and Government Claims Board that the department will not file a claim in this proceeding was received and is attached to this petition as Exhibit* _ _[*letter*]_ _.]_ _

[*Alternative 2: Notice to Director of California Victim Compensation and Government Claims Board not required*]

[10.] *Notice to Director of California Victim Compensation and Government Claims Board Not Required*. Notice to the Director of California Victim Compensation and Government Claims Board under Probate Code §9202(a) is not required, because neither the petitioner nor petitioner's attorney has any knowledge of an heir or beneficiary being held in any prison, jail, or other correctional facility.

[*Add the following for estates for which letters are first issued on or after July 1, 2008; see §12.11C*]

17.9-11A Notice to Franchise Tax Board

[11.] ***Notice to Franchise Tax Board Mailed*****. The notice required by Probate Code §9202(c) was served on the Franchise Tax Board on** _ _[*date*]_ _**,** _ _[*in the form specified by the Franchise Tax Board, a copy of which is attached to this petition as Exhibit* _ _[*letter*]_ _*/by mailing a copy of a completed Notice to Creditors to the Franchise Tax Board*]_ _**.**

17.9-12 Notice to persons requesting special notice

[*Add one of the following alternatives*]

[*Alternative 1: Special notice not requested*]

[12.] ***Request for Special Notice.*** **No one has filed a request for special notice in this proceeding.**

[*Alternative 2: Special notice requested*]

[12.] ***Request for Special Notice.*** **The following have filed request(s) for special notice in this proceeding:** _ _[*List names*]_ _**.**

[*Alternative 3: Special notice waived*]

[12.] ***Waiver of Special Notice.*** **Waiver(s) of request for special notice by** _ _[*names of all persons having filed a request*]_ _ _ _[*is/are*]_ _ _ _[*being filed simultaneously herewith (list)/attached as Exhibits* _ _-_ _]_ _**.**

17.9-13 Request for order dispensing with notice

[*If applicable, add the following option*]

[*Option: Request to dispense with notice*]

[13.] ***Request for Order Dispensing with Notice.*** **Petitioner requests the court to dispense with the notice requirement for the hearing on this petition** _ _[*because the time for filing creditors' claims has expired*]_ _**;** _ _[*and*]_ _ **there is good cause as required under Probate Code §1220(c) in that** _ _[*state reasons*]_ _**.**

[*Continue*]

17.9-14 Inventory and appraisal

[*Add one of the following alternatives*]

[*Alternative 1: Inventory filed*]

[14.] ***Inventory and Appraisal.*** _ _[*An/A partial*]_ _ **inventory and appraisal was filed on** _ _[*date*]_ _**, showing the value of the estate to be $**_ _[*amount*]_ _**.**

[*Add if appropriate*]

Petitioner alleges that the inventory and appraisal totaling $_ _[*amount*]_ _ **contains all the assets of the estate that have come to petitioner's knowledge or into** _ _[*his/her*]_ _ **possession.**

[*If applicable, add the following option to Alternative 1*]

[*Option: Supplemental inventories are to be filed*]

A _ _[*supplemental/partial No.* _ _ _*/final*]_ _ **inventory and appraisal will be** _ _[*submitted to the probate referee in the near future/filed before the hearing of this petition*]_ _**.**

[*Alternative 2: Inventory not yet filed*]

[14.] ***Inventory and Appraisal.*** **The** _ _[*executor/administrator/etc.*]_ _ **estimates that after the filing of all inventories and appraisals, the value of the estate will exceed $**_ _[*amount*]_ _**.**

[*Continue*]

17.9-15 Character of estate property

[*Add one of the following alternatives*]

[*Alternative 1: Separate or community property only; spouses*]

[15.] *Character of Estate Property.* The decedent was survived by a _ _[*spouse/registered domestic partner*]_ _. The estate consists entirely of the _ _[*separate/community*]_ _ property of the decedent _ _[*and* _ _[*his/her*]_ _ *surviving* _ _[*spouse/registered domestic partner*]_ _]_ _.

[*Alternative 2: Community and separate property; spouses*]

[15.] *Character of Estate Property.* The decedent was survived by a _ _[*spouse/registered domestic partner*]_ _. The estate consists of the separate property of the decedent, which is described in Attachment _ _[*letter*]_ _, and the decedent's one-half interest in the community property _ _[*and quasi-community property*]_ _, which is described in Attachment _ _[*letter*]_ _.

17.9-16 Election by surviving spouse or registered domestic partner to subject property to administration

[*If applicable, add one of the following alternatives*]

[*Alternative 1: Probate Code §13502 election filed within 4 months after letters first issued*]

[16.] *Election by Surviving* _ _[*Spouse/Registered Domestic Partner*]_ _. By document filed herein on _ _[*date*]_ _, the surviving _ _[*spouse/registered domestic partner*]_ _ elected and agreed to subject _ _[*his/her*]_ _ interest in the _ _[*community/quasi-community/community and quasi-community*]_ _ property to this administration.

[*Alternative 2: Probate Code §13502 election filed more than 4 months after letters first issued with court approval*]

[16.] *Distribution to Surviving* _ _[*Spouse/Registered Domestic Partner*]_ _. The surviving _ _[*spouse/registered domestic partner*]_ _'s election to subject _ _[*his/her*]_ _ interest in the _ _[*community/quasi-community/community and quasi-community*]_ _ property to this administration was filed on _ _[*date*]_ _. The court's order allowing the filing of the election more than four months after letters were first issued was filed on _ _[*date*]_ _.

17.9-17 If full account attached (account is optional)

[17.] *Summary of Account.* Petitioner's account covers the period from _ _[*date*]_ _ through _ _[*date*]_ _. Petitioner should be charged and credited as shown in the following summary of account, which is supported by the schedules attached as _ _[*e.g., Exhibit A*]_ _ and incorporated here by reference:

CHARGES

[*Add one of the following alternatives*]

[*Alternative 1: First account*]

Amount of inventory and appraisal	$_ _ _ _ _
Amount of supplemental inventories	$_ _ _ _ _

[*Alternative 2: Subsequent account*]

Property on hand at beginning of account	$_ _ _ _ _
Additional property received	$_ _ _ _ _

[*Continue*]

Receipts during account period other than principal items (Schedule _____)	$_ _ _ _ _
Gains on sale or other disposition (Schedule _____)	$_ _ _ _ _
Net income from trade or business (Schedule _____)	$_ _ _ _ _

Total Charges:

Total Charges: $_ _ _ _ _

CREDITS

Disbursements during account period (Schedule _____) $_ _ _ _ _

[*If applicable, add the following option*]

[*Option: Distributions to testamentary trust*]

Principal (Schedule _____) $_ _ _ _ _

Income (Schedule _____) $_ _ _ _ _

Losses on sale or other disposition (Schedule _____) $_ _ _ _ _

Net loss from trade or business (Schedule _____) $_ _ _ _ _

Distributions (Schedule _____) $_ _ _ _ _

Property on hand at close of account (Schedule _____) $_ _ _ _ _

Total Credits: $_ _ _ _ _

[*Continue*]

17.9-18 Transaction during period of account not readily understandable from schedules

[*Add one of the following alternatives*]

[*Alternative 1: No transactions during account period not readily understandable from schedules*]

[18.] *Transactions During Account Period.* There were no transactions during the account period that are not otherwise readily understandable from the Schedules (Probate Code §1064(a)(1)).

[*Alternative 2: Transaction during account period not readily understandable from schedules*]

[18.] *Transactions During Account Period*. During the period of this account and report, petitioner _ _[*describe all sales, purchases, changes in the form of assets, or other transactions not readily understandable from any schedule*]_ _**.**

[*Continue*]

17.9-19 Unusual expenditures

[19.] *Unusual Expenditures.* There are no unusual account expenditures (Probate Code §1064(a)(2)).

17.9-20 Investment of cash on hand

[20.] *Investment of Cash on Hand.* All investments shown in the account were authorized, and proper investments under the provisions _ _[*of the will and*]_ _ **of the laws of California and were made, retained, and changed as set forth in this account for the best interests of the estate and all persons interested therein. During the period covered by this account, all cash in the estate in excess of cash that was reasonably necessary for orderly administration of the estate was invested in interest-bearing accounts and investments.**

17.9-21 Compensation paid during account period

[21.] *Compensation Paid During Account Period.* No compensation has been paid to the fiduciaries or to their attorneys during the account period _ _[*other than pursuant to a prior court order (Probate Code §1064(a)(3))*]_ _**.**

17.9-22 Disclosure of family or affiliate relationship

[*Add one of the following alternatives*]

[*Alternative 1: No person hired with family or affiliate relationship*]

[22.] During the accounting period, petitioner has not hired any person or entity who has a relationship to petitioner or to petitioner's attorneys.

[*Alternative 2: Disclosure of family or affiliate relationship*]

[22.] During the accounting period, petitioner hired the following agent(s) who _ _[*has/have*]**_ _ a family or affiliate relationship with petitioner: _ _**[*Name, title, and relationship of agent*]**_ _.**

17.9-23 Independent actions taken

[*If applicable, add one or more of the following options*]

[*Option 1: Independent actions taken with notice of proposed action*]

[23.] *Independent Actions Taken with Notice of Proposed Action*. Petitioner took the following actions without court supervision after having sent a notice of proposed action to all persons entitled: _ _[*List and describe actions*]**_ _.**

[*Option 2: Independent actions taken without notice of proposed action*]

[23.] *Independent Actions Taken Without Notice of Proposed Action*. Petitioner took the following actions without court supervision and without sending notice of proposed action: _ _[*List and describe actions*]**_ _.**

17.9-24 Debts paid without creditor claim

[*Add one of the following alternatives*]

[*Alternative 1: No debts paid without creditor claim*]

[24.] *Payment of Debts.* No creditors have been paid _ _[*except those creditors who have properly filed and served formal claims*]**_ _.**

[*Alternative 2: Some debts paid without creditor claim*]

[24.] *Debts Paid Without Creditors' Claims.* Within 4 months after the date letters were first issued to a general personal representative, some written demands for payment were made. Petitioner has waived formal defects and elected to treat the demands as properly filed claims by paying the amounts demanded within 4 months and 30 days after letters first issued. All payments satisfied the following conditions: (a) the debt was justly due; (b) the debt was paid in good faith; (c) the amount paid was the true amount of the indebtedness over and above all payments and offsets; and (d) the estate is solvent.

The following are the amounts paid, the payees, and the dates paid: _ _[*List*]**_ _.**

17.9-25 Creditors' claims filed and allowed

[*Add one of the following alternatives*]

[*Alternative 1: No claims filed; estate solvent*]

[25.] *Creditors' Claims.* No claims have been filed with the court. The estate is solvent. All expenses of administration _ _[*except (specify, e.g., estate taxes, closing expenses, compensation of petitioner as executor or administrator of the estate, attorney fees)*]**_ _ have been paid.**

[*Alternative 2: Claims filed; solvent estate*]

[25.] ***Creditors' Claims.*** **The following claims have been properly filed with the court, served on the estate, fully allowed, and paid:**

Claimant	Date Claim Filed	Amount Claimed	Nature of Claim	Date Paid
_ _ _ _ _ _ _ _	_ _ _ _ _ _	$_ _ _ _ _	_ _ _ _ _ _ _ _ _ _ _ _ _	_ _ _ _ _ _ _
_ _ _ _ _ _ _ _	_ _ _ _ _ _	$_ _ _ _ _	_ _ _ _ _ _ _ _ _ _ _ _ _	_ _ _ _ _ _ _

[*Add one of the following alternatives to Alternative 2*]

[*Alternative 2a: No rejected claims*]

There are no rejected claims.

[*Alternative 2b: Some claims not fully allowed*]

The following claims have been filed with the court and served on the estate but have not been fully allowed:

Claimant	Date Claim Filed	Amount Claimed	Whether Claim Due & Due Date	Action Taken	Action Filed	Security for Claim
_ _ _ _ _ _	_ _ _ _	**$**_ _ _ _ _	_ _ _ _ _ _ _	_ _[*Pending allowance or rejection by personal representative/ Rejected entirely on* _ _[*date*]_ _ */Allowed for* $_ _[*amount*]_ _ *and rejected for the balance on* _ _[*date*]_ _]_ _	_ _[*Petitioner is unaware of any suit having been filed by claimant/ Creditors' action filed and proceeding pending/Action filed and resolved as follows:*]_ _	_ _ _ _
_ _ _ _ _ _	_ _ _ _	**$**_ _ _ _ _	_ _ _ _ _ _ _	_ _ _ _ _ _ _ _	_ _ _ _ _ _ _ _	_ _ _ _

[*Alternative 3: If appropriate, list creditors' claims in separate schedule*]

[*Alternative 3a: Creditors' claims listed in attached schedule*]

[25.] ***Creditors' Claims.*** _ _[*Attachment/Schedule/Exhibit* _ _]_ _ **to this petition lists all creditors' claims, and the amount and disposition of each claim. The estate is solvent. All expenses of administration** _ _[*except (specify, e.g., estate taxes, closing expenses, compensation of petitioner as executor or administrator of the estate, and attorney fees)*]_ _ **have been paid.**

[*Continue*]

The estate is solvent. All debts of the decedent and all expenses of administration have been paid, except _ _[*e.g., estate taxes, closing expenses, compensation of petitioner as* _ _[*executor/administrator/(etc.)*]_ _*, and fees of* _ _[*name*]_ _*,* _ _[*his/her*]_ _ *attorney*]_ _**.**

17.9-26 Report of contested, litigated, or compromised claims

[*If appropriate, add*]

[26.] ***Contested Claims.*** **The** _ _[*following claims/claims shown on Attachment* _ _[*letter*]_ _]_ _ **against the estate have been contested, disputed, compromised, or litigated** _ _[*and the action taken and the present status of the claims are shown on the attachment*]_ _**.**

17.9-27 Payment of claims with interest

[*If appropriate, add*]

[27.] *Interest.* Interest in the amounts indicated below was paid on the following claims: _ _[*List claims, interest amount, and dates claims paid*]**_ _.**

Interest was incurred because these claims, which are debts on which interest is payable under Probate Code §11423, were not paid until the date shown above. The decedent's cash assets at the date of death consisted of $_ _[*amount*]**_ _. The remaining assets consisted of _ _**[*real property/partnership interests/etc.*]**_ _, which could not be liquidated promptly because _ _**[*specify*]**_ _. Petitioner was able to sell _ _**[*identify assets sold*]**_ _ on _ _**[*date*]**_ _, for $_ _**[*amount*]**_ _, at which time the claim was promptly paid. Petitioner alleges that the interest charges were unavoidable under the circumstances and that payment of interest constitutes a proper credit on the accounts.**

17.9-28 Claim by surviving spouse or registered domestic partner

[*If appropriate, add the following*]

[*Claim filed by surviving spouse/registered domestic partner*]

[28.] *Claim by Surviving* _ _[*Spouse/Registered Domestic Partner*]**_ _. The decedent's surviving _ _**[*spouse/registered domestic partner*]**_ _ has filed a creditor's claim under _ _**[*e.g., Probate Code §§11440-11442*]**_ _ before the filing of this petition for preliminary distribution. The claim has been allowed by petitioner, approved by this court, and paid.**

[*Continue*]

17.9-29 No other claims

[29.] *Other Claims*. No other claims have been filed with the court except for those listed above.

17.9-30 Estate taxes

[*Add one of the following alternatives*]

[*Alternative 1: Return not yet filed; estate tax not yet due, determined, or paid*]

[30.] *Estate Taxes.* The federal estate tax return _ _[*and a _ _*[*name of state*]**_ _** *estate tax return*]**_ _ _ _**[*has/have*]**_ _ not yet been filed and _ _**[*is/are*]**_ _ not yet due, and the federal _ _**[*and _ _*[*name of state*]**_ _**]**_ _ estate tax(es) have not yet been determined or paid.**

[*Alternative 2: No estate tax return required*]

[30.] *Estate Taxes.* No federal or _ _[*name of state*]**_ _ estate tax return has been filed because the estate was not sufficient to require such a return, and no estate taxes are due.**

[*Alternative 3: Return filed; no estate tax due*]

[30.] *Estate Taxes.* A federal estate tax return has been filed_ _[*and a _ _*[*name of state*]**_ _** *estate tax return has been filed*]**_ _. No federal _ _**[*or state*]**_ _ estate taxes are due.**

[*Alternative 4: Return filed; estate tax paid*]

[30.] *Estate Taxes.* A federal estate tax return has been filed_ _[*and a _ _*[*name of state*]**_ _** *estate tax return has been filed*]**_ _. The federal estate tax due in the amount of $_ _**[*amount*]**_ _ _ _**[*and _ _*[*name of state*]**_ _** *tax due in the amount of* **$_ _**[*amount*]**_ _**]**_ _ have been paid by _ _**[*the persons charged with it under Article _ _ of the will/petitioner from estate assets*]**_ _.**

Petitioner has _ _[*not*]**_ _ been released from personal liability for the federal estate tax under Internal Revenue Code §2204. The return has _ _**[*not*]**_ _ been audited _ _**[*and/or*]**_ _ a closing letter has _ _**[*not*]**_ _ been issued by the Internal Revenue Service.**

17.9-31 Payment of estate taxes

[*Add one of the following alternatives*]

[*Alternative 1: Distributee is liable for taxes*]

[31.] *Proration of Estate Tax.* The proposed distribution reserves from each _ _[*pecuniary devise/intestate share*]_ _ an amount estimated by petitioner to exceed the estate tax chargeable to it.

[*Add one of the following alternatives to Alternative 1*]

[*Alternative 1a: Will directs payment*]

Article _ _[*number/letter*]_ _ of the will directs that estate taxes be prorated and does not exonerate the beneficiaries from payment of estate taxes.

[*Alternative 1b: Will is silent*]

The will is silent regarding the allocation of estate taxes and therefore those taxes must be prorated.

[*Alternative 1c: Intestate decedent*]

As the decedent died intestate, estate taxes must be prorated.

[*Continue*]

Petitioner believes that the estate tax should be prorated and charged _ _[*pursuant to Probate Code §§20100-20225/pursuant to Article _ _[number/letter]_ _ of the will*]_ _ as set forth _ _[*below/in Attachment _ _*]_ _.

[*Alternative 2: Estate taxes to be paid from residue*]

[31.] *No Proration of Estate Tax Required.* Article _ _[*number/letter*]_ _ of the will provides that all federal estate tax _ _[*attributable to the probate estate/incurred on the decedent's death*]_ _ be paid from the residue of the estate. No allocation or proration of such tax is required. Accordingly, petitioner proposes to pay the gifts that are the subject of this petition in full without proration or reduction of any estate.

[*Alternative 3: Proration of tax between probate and nonprobate assets*]

[31.] *Estate Tax.* Under Article _ _[*number/letter*]_ _ of the decedent's will, the estate tax attributable to the gifts that are the subject of the petition for preliminary distribution are to be paid from the residue of the estate.

Article _ _[*number/letter*]_ _ directs that estate taxes attributable to property passing outside the decedent's probate estate be charged to and collected from the persons sharing in that property to the extent provided by law. The applicable statutes (Probate Code §§20100-20225) provide that the executor has the duty to recover the proportionate amount of such taxes from persons sharing in the taxable estate of the decedent.

Several of the _ _[*beneficiaries/heirs*]_ _ of assets that petitioner seeks to distribute are recipients of property passing outside of probate to which a federal estate tax is attributable. Petitioner submits that _ _[*he/she*]_ _ should be authorized to deduct, from the assets to be distributed, the federal estate tax attributable to those _ _[*beneficiaries/heirs*]_ _.

[*Continue*]

17.9-32 Income taxes

[*Add one of the following alternatives*]

[*Alternative 1: No income taxes payable*]

[32.] *Income Taxes.* No California or federal income taxes are due or payable by the estate.

[*Alternative 2: Income tax paid or secured*]

[32.] *Income Taxes.* All California and federal income taxes due and payable by the estate have been paid or

are adequately secured.

17.9-33 Certificate of California Franchise Tax Board

[*Add one of the following alternatives*]

[*Alternative 1: Estate not distributable to nonresident beneficiaries*]

[33.] *Certificate of California Franchise Tax Board.* A certificate of the California Franchise Tax Board required by Revenue and Taxation Code §19513 does not have to be filed because there are no nonresident beneficiaries of the estate.

[*Alternative 2: Assets exceed $1,000,000, and $250,000 or more is distributable to nonresident beneficiaries*]

[33.] *Certificate of California Franchise Tax Board.* The value of the assets of the estate at the date of the decedent's death exceeded $1,000,000, and assets of at least $250,000 are distributable to the following nonresident beneficiar_ _[*y/ies*]_ _: _ _[*List name(s), address(es), and amount of distribution(s)*]_ _.

The certificate of the California Franchise Tax Board required by Revenue and Taxation Code §19513 _ _[*is on file in the proceeding/will be filed prior to the hearing on this petition*]_ _.

[*Continue*]

17.9-34 Personal property taxes

[*Add one of the following alternatives*]

[*Alternative 1: No personal property tax due*]

[34.] *Personal Property Taxes.* No personal property taxes are due or payable by the estate.

[*Alternative 2: If personal property taxes have been paid*]

[34.] *Personal Property Taxes.* All personal property taxes due and payable by the estate have been paid _ _[*and receipt for them has been filed*]_ _.

[*Continue*]

17.9-35 Intestate heirs

[35.] *Names and Residences of Intestate Heirs.* Petitioner is informed, and believes and therefore alleges, that the following are the decedent's heirs under the California laws of intestate succession:

[*Describe, e.g.,*]

Name	Age (Over/ Under 18)	Relationship	Residence
_ _ _ _ _ _ _ _	_ _ _ _ _ _ _ _	_ _ _ _ _ _ _ _	_ _ _ _ _ _ _ _
_ _ _ _ _ _ _ _	_ _ _ _ _ _ _ _	_ _ _ _ _ _ _ _	_ _ _ _ _ _ _ _
_ _ _ _ _ _ _ _	_ _ _ _ _ _ _ _	_ _ _ _ _ _ _ _	_ _ _ _ _ _ _ _

17.9-36 Testate beneficiaries and heirs

[36.] *Names and Residences of Testate Beneficiaries and Heirs*. *The following* are the devisees and legatees named in the will _ _[*and codicil(s)*]_ _, admitted to probate by this court on _ _[*date*]_ _, _ _[*some of whom constitute/who constitute all*]_ _ the heirs of the decedent:

[*Describe, e.g.,*]

Name	Age (Over/Under 18)	Relationship	Residence

_ _ _ _

[*Option: Interest on general pecuniary devises not distributed within 1 year after decedent's death*]

plus interest on it at the rate of _ _ percent per year for the period commencing _ _[*date*]_ _, until the date of payment.

[*Continue*]

17.9-40 Proposed distribution to testamentary trust

[*If appropriate, add the following option*]

[*Option: Proposed distribution to testamentary trust; no trustee yet appointed by court*]

[40.] *Distribution to Trustee of Testamentary Trust.* _ _[*Name*]_ _ has agreed to serve as trustee of the testamentary trust established by the decedent's will, and this agreement _ _[*was filed in this proceeding on _ _[date]_ _/is attached to this petition as Exhibit _ _]_ _. _ _[Name]_ _ is a proper person to serve as trustee because _ _[*he/she*]_ _ _ _[*is nominated in the decedent's will,/(state other reason,)*]_ _ and _ _[*no bond is required/bond in the amount of $_ _[amount]_ _ is required*]_ _. The _ _[*residue/property*]_ _ of the estate described _ _[*below/in Attachment _ _*]_ _ should be distributed to _ _[*name of trustee(s)*]_ _ in trust as provided in Article _ _ of the will _ _[*and Article _ _ of the (e.g., first codicil)*]_ _ admitted to probate by this court on _ _[*date*]_ _ for the following use and purpose: _ _[*State pertinent provisions of will (including every will provision relating to the trust or trustee) in present tense and in the third person/As set forth in Exhibit _ _*]_ _.

17.9-41 Testamentary trust beneficiaries whose interests are affected by their ages

[42.] *Trust Beneficiaries.* The names and dates of birth of the current trust beneficiaries whose interests are affected by their ages are _ _[*List names and dates of birth*]_ _.

17.9-42 Survivor's community property administered in estate

[43.] *Survivor's Community Property Administered in Estate.* The following property should be distributed to _ _[*name*]_ _, decedent's surviving _ _[*spouse/registered domestic partner*]_ _, as _ _[*his/her*]_ _ community _ _[*and quasi-community*]_ _ property administered in the estate, consisting of the following: _ _[*List/As shown in Attachment _ _ incorporated here by reference*]_ _.

17.9-43 Propriety of proposed distribution

[44.] *Propriety of Distribution.* Although the estate is not now in a condition to be closed, petitioner is informed and believes and therefore alleges that, if this preliminary distribution is granted, there may be distributed at this time, without loss to creditors or injury to the estate or anyone interested in it, the property described in this petition in accordance with the _ _[*will/laws of succession*]_ _. After the distribution proposed in this petition, the approximate value of the property remaining in the estate will be $_ _[*amount*]_ _. The _ _[*executor/administrator/etc.*]_ _ estimates the amount of unpaid _ _[*taxes/claims/liabilities*]_ _ to be $_ _[*amount*]_ _.

17.9-44 Compliance With 50-Percent Limitation of Prob C §11623

***Value of Distribution.* The total value of the estate assets as reflected by the inventor(y/ies) and appraisal(s) on file with the court is $_ _[*amount*]_ _. The total value of all creditors' claims filed _ _[*and served*]_ _ and liens and encumbrances recorded or known to the _ _[*executor/administrator/etc.*]_ _ not reflected in any creditors' claims filed_ _[*and served*]_ _, excluding death tax liens occasioned by the decedent's death, is $_ _[*amount*]_ _. Therefore, the excess amount or the net value of the estate is $_ _[*amount*]_ _, 50 percent of which is $_ _[*amount*]_ _. Because the total value of the property proposed to be distributed in this petition is $_ _[*amount*]_ _, which is less than 50 percent of the net value of the estate, the proposed distribution does not exceed 50 percent of the net value of the estate.**

[*Continue*]

17.9-45 Bond

[*Add one of the following alternatives*]

[*Alternative 1: No distributee's bond is required*]

[45.] *Bond.* Although the estate is not now in a condition to be closed, if this petition for preliminary distribution is granted, there will be ample assets in the estate after the distribution to secure the payment of any remaining _ _[*taxes, claims, expenses of administration, etc.*]_ _. Four months have elapsed since letters first issued to a general personal representative in this matter. Petitioner submits that the court can dispense with the furnishing of a bond by _ _[*each/the*]_ _ distributee named in this petition.

[*Alternative 2: Distributee's bond is required*]

[45.] *Bond.* The distribution should be conditioned on the execution and delivery to petitioner of a bond by _ _[*each/the*]_ _ distributee as follows: _ _[*Specify*]_ _.

[*Continue*]

17.9-46 Allowance on account of compensation

[46.] *Compensation.* The statutory compensation to which petitioner _ _[*and _ _[his/her*]_ _ *attorney each*]_ _ will be entitled on closing of the estate exceeds the sum of $_ _[*amount*]_ _. A statement of the computation of the statutory compensation is attached as Attachment _ _ and made a part of this petition.

An allowance of $_ _[*amount*]_ _, or approximately _ _ percent of the statutory compensation, may be made to petitioner _ _[*and the same to _ _[his/her*]_ _ *attorney*]_ _ for services rendered at this time without harm to the estate or anyone interested in it. Payment of such amounts at this time would be advantageous to the estate and the beneficiaries because _ _[*specify*]_ _.

17.9-47 Request for order

WHEREFORE, petitioner requests this court find that notice of the time and place of hearing has been _ _[*given as required by law/dispensed with/shortened to _ _ _ days*]_ _ and order that _ _[*include all applicable requests listed below*]_ _.

[1.] The _ _[*first/(designate)*]_ _ account of petitioner as _ _[*executor/administrator/etc.*]_ _ be settled, allowed, and approved as filed;

[2.] All acts and transactions of the _ _[*executor/administrator/etc.*]_ _ during the period of account relating to the matters set forth in the _ _[*account and*]_ _ petition be confirmed and approved;

[3.] Petitioner be authorized to recover from the distribution of any _ _[*beneficiary/heir*]_ _ who will also receive assets not subject to probate administration that _ _[*beneficiary's/heir's*]_ _ proportionate share of federal estate taxes attributable to the nonprobate gifts;

[4.] The preliminary distribution requested in this petition be granted and the court make its order for preliminary distribution as set forth above;

[5.]_ _[*No/A $_ _[amount*]_ _]_ _ bond be required of each distributee named in this petition on the basis of the provisions of Probate Code §11622;**

[6.] The compensation requested by petitioner for _ _[*petitioner _ _[and/or*]_ _ *petitioner's attorney(s)*]_ _ be approved; and

[7.] Such further orders be made as the court considers proper.

Date: _ _ _ _ _ _ __[*Signature of representative*]__
_ _[*Typed name*]_ _
Petitioner

Date: _ _ _ _ _ _ __[*Signature*]__
_ _[*Typed name*]_ _
Attorney for petitioner

[*Verification; see §1.22*]

Copies: Original for filing; one copy for each representative; office copies.

Comment: The optional paragraph to form 17.9-4 should be included if letters were issued earlier to a predecessor personal representative. See Prob C §8100(a)(1).

Forms 17.9-9 and 17.9-11A are recommended because most courts will not approve distributions without proof that notice to file claims was given to public entities, including the Director of Health Care Services. Prob C §§215, 9201-9202.

The allegation of form 17.9-44 (distribution may be made "without loss to creditors or injury to the estate or any interested persons" (Prob C §11621)) is not strictly required for petitions filed under Prob C §11623, but it should nevertheless be included.

The description of actions taken under the Independent Administration of Estates Act in form 17.9-23 must include (a) the nature of the action; (b) when it was taken; (c) when and to whom notice was given; (d) whether notice was waived, and by whom; and (e) whether any objections were received. Cal Rules of Ct 7.250. For discussion of Rule 7.250, see §18.5. For actions requiring notice of proposed action, see §9.12.

Form 17.9-31 Alternative 3 may have to be changed to accurately reflect the wills provisions.

Under former Prob C §1024, before a judgment of distribution could be made, all personal property taxes due and payable by the estate must have been paid and an allegation of those facts must have been included in the petition for distribution. There is no similar requirement in current law, but the allegation in form 17.9-34 still may be advisable to show that the requirements of other Probate Code provisions have been met. (*E.g.,* Prob C §§9650, 11621).

On requests for allowance of compensation, see California Decedent Estate Practice §25.63 and chap 30 (2d ed Cal CEB 2009). If compensation is requested, the caption should reflect that fact. "AND FOR ALLOWANCE ON ACCOUNT OF COMPENSATION" should be added to the caption. See chap 19 on compensation generally.

The petition must be verified. For further discussion of the contents of the petition, see Decedent Estate Prac, chap 30.

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Source: Estate Planning/California Probate Workflow Manual Revised/17 Preliminary Distribution/§17.10 C. Form: Order Granting Preliminary Distribution

§17.10 C. Form: Order Granting Preliminary Distribution

17.10-1 Caption and nature of petition

[*Title of court*]

Estate of _ _[*name*]_ _**,**	)**No.** _ _ _ _ _ _
	)
Decedent	)_ _[*EX PARTE*]_ _ **ORDER FOR**
	)**PRELIMINARY DISTRIBUTION** _ _[*AND*]_ _
	)_ _[*FOR ALLOWANCE ON ACCOUNT OF*
	)*COMPENSATION TO*
	)_ _[*EXECUTOR/ADMINISTRATOR*
	)*/(ETC.*]_ _ _ _[*AND TO*
	)*ATTORNEY/S*]_ _,]_ _ _ _[*AND*]_ _
	)_ _[*FOR ALLOCATION OF ESTATE TAX,*]_ _
_____	)_ _[*AND*]_ _ _ _[*FOR DISTRIBUTION TO*
	TESTAMENTARY TRUST]_ _[*or*]
	ORDER SETTLING
	_ _[*FIRST/SECOND/(ETC.)*]_ _ **ACCOUNT**
	AND REPORT OF
	_ _[*EXECUTOR/ADMINISTRATOR/(ETC.)*]_ _**,**
	_ _[*FOR ALLOWANCE ON ACCOUNT OF*
	STATUTORY/EXTRAORDINARY
	COMPENSATION TO
	_ _[*EXECUTOR/ADMINISTRATOR*
	/(ETC.]_ _ _ _[*AND TO*
	ATTORNEY/S]_ _,]_ _ _ _[*FOR ALLOCATION*
	OF ESTATE TAX,]_ _ _ _[*FOR*
	DISTRIBUTION TO TESTAMENTARY
	TRUST,]_ _ **AND FOR PRELIMINARY**
	DISTRIBUTION

17.10-2 Introduction

[*Add one of the following alternatives*]

[*Alternative 1: No account included*]

_ _[*Name*]_ _ **as** _ _[*executor/administrator/etc.*]_ _ **of the** _ _[*will/estate*]_ _ **of** _ _[*name*]_ _**, deceased, having filed** _ _[*his/her*]_ _ **petition for preliminary distribution** _ _[*and to dispense with notice (Probate Code §11623)*]_ _**, the court finds:**

[*Alternative 2: Account included*]

_ _[*Name*]_ _ **as** _ _[*executor/administrator/etc.*]_ _ **of the** _ _[*will/estate*]_ _ **of** _ _[*name*]_ _**, deceased, having filed** _ _[*his/her*]_ _ _ _[*as stated in caption*]_ _ **account, report, and petition for preliminary distribution, and the report and petition coming on** _ _[*this day/*_ _[*date*]_ _]_ _ **regularly for hearing,** _ _[*in Department* _ _*,* _ _[*name*]_ _ *presiding*]_ _**, the court finds:**

17.10-3 Notice of hearing

[*Add one of the following alternatives*]

[*Alternative 1: Notice of hearing given*]

Due notice _ _[*, including special notice to* _ _[*name*]_ _*,*]_ _ **of the hearing on the petition for preliminary distribution** _ _[*and of the settlement of the account/and request for compensation*]_ _ **has been regularly given for the period and in the manner prescribed by law** _ _[*and as prescribed by the order of this court on* _ _[*date*]_ _]_ _**.**

_ _[*No one has filed a request for special notice/Waiver(s) of special notice* _ _[*has/have*]_ _ *been filed*]_ _.

[*Alternative 2: Notice dispensed with or shortened*]

Notice of the hearing of this matter has been _ _[*dispensed with/shortened to* _ _ *days*]_ _ **under Probate Code §**_ _[*11623(a)(1)/1203*]_ _. _ _[*No one has filed a request for special notice/Waiver(s) of special notice* _ _[*has/have*]_ _ *been filed*]_ _.

17.10-4 Allegations true

All allegations of the _ _[*report and*]_ _ **petition filed on** _ _[*date*]_ _ _ _[*and the supplemental account filed on* _ _[*date*]_ _]_ _ **are true.**

17.10-5 Date of death and domicile

_ _[*Name*]_ _ **died** _ _[*testate/intestate/partially intestate*]_ _ **on** _ _[*date*]_ _, **in** _ _[*name of county*]_ _ **County,** _ _[*name of state*]_ _ **, and was at the time of** _ _[*his/her*]_ _ **death domiciled in** _ _[*that county/(name of county of decedent's domicile if other than where decedent died)*]_ _.

17.10-6 Appointment and qualification of representative

On _ _[*date*]_ _**,** _ _[*name*]_ _ **was appointed** _ _[*executor/administrator/etc.*]_ _ **of the decedent's** _ _[*will/estate*]_ _ **and qualified as such on** _ _[*that date/*_ _[*date*]_ _]_ _**. Letters** _ _[*testamentary/of administration/etc.*]_ _ **were issued to** _ _[*name*]_ _ **on** _ _[*the same date/(specify other date)*]_ _**. Since then** _ _[*he/she*]_ _ **has been and now is the** _ _[*executor/administrator/etc.*]_ _ **of the** _ _[*will/estate*]_ _.

17.10-7 Authority under Independent Administration of Estates Act

On _ _[*date*]_ _**,** _ _[*name*]_ _ **was granted authority to administer the estate without court supervision under the Independent Administration of Estates Act. This authority has not been revoked.**

17.10-8 Passage of time since issuance of letters; notice given

More than _ _[*2/4*]_ _ **months have elapsed since the first issuance of letters** _ _[*testamentary/of administration/etc.*]_ _ **in this estate.**

[*If applicable, add the following option*]

[*Option: If four months have expired*]

Notice of administration has been given to creditors, as required by law. The time for filing and serving creditors' claims expired on _ _[*date*]_ _.

17.10-9 Character of estate property

[*Add one of the following alternatives*]

[*Alternative 1: Separate or community property only*]

The estate consists entirely of the _ _[*separate/community*]_ _ **property of the decedent** _ _[*and* _ _[*his/her*]_ _ *surviving spouse/registered domestic partner*]_ _.

[*Alternative 2: Separate and community property; spouses*]

The estate consists of the separate property of the decedent, which is described in Attachment _ _[*letter*]_ _**, and the decedent's one-half interest in the community property** _ _[*and quasi-community property*]_ _**, which is described in Attachment** _ _[*letter*]_ _.

17.10-10 Election by surviving spouse or registered domestic partner to subject property to administration

[*Alternative 1: Probate Code §13502 election filed within 4 months after letters first issued*]

By document filed herein on _ _[*date*]_ _**,** _ _[*name*]_ _**, the surviving** _ _[*spouse/registered domestic*

partner]_ _**, elected and agreed to subject** _ _[*his/her*]_ _ **interest in the** _ _[*community/quasi-community/community and quasi-community*]_ _ **property to probate administration.**

[*Alternative 2: Probate Code §13502 election filed more than 4 months after letters first issued with court approval*]

By document filed herein on _ _[*date*]_ _**,** _ _[*name*]_ _**, the surviving**_ _[*spouse/registered domestic partner*]_ _ **elected and agreed to subject** _ _[*his/her*]_ _ **interest in the** _ _[*community/quasi-community/community and quasi-community*]_ _ **property to probate administration. The court's order allowing the filing of the election more than 4 months after letters first issued was filed on** _ _[*date*]_ _**.**

17.10-11 Disposition of creditors' claims

[*Add one of the following alternatives*]

[*Alternative 1: No creditors' claims filed*]

No creditors' claims have been filed with the court _ _[*or served on the* _ _[*executor/administrator/etc.*]_ _]_ _**. The estate is solvent.**

[*Alternative 2: All claims filed, allowed, and paid*]

All claims filed _ _[*and served*]_ _ **on the estate have been allowed by the** _ _[*executor/administrator/etc.*]_ _**, approved by this court, and paid or are sufficiently secured. The estate is solvent.**

[*Alternative 3: Unrejected claims paid; all rejected claims barred*]

All claims filed _ _[*and served*]_ _ **on the estate were either allowed by the** _ _[*executor/administrator/etc.*]_ _**, approved by this court, and paid, or rejected by the** _ _[*executor/administrator/etc.*]_ _ **or this court; written notice of rejection of each rejected claim has been given in conformity with law; more than 3 months have elapsed since service of the last of the notices of rejection to be served, and more than 2 months have elapsed since the last of the rejected claims became due. The estate is solvent.**

[*Continue*]

[*If applicable, add the following option*]

[*Option: Debts paid without formal claims filed*]

Debts paid by petitioner for which claims were not filed were paid within 4 months and 30 days after letters first issued to a general personal representative, were justly due, were paid in good faith, and were in amounts reasonably necessary to satisfy the indebtedness. The estate is solvent.

17.10-12 Inventory has been filed

_ _[*An inventory/Inventories)*]_ _ **and appraisal(s)** _ _[*is/are*]_ _ **on file in this proceeding, showing assets totaling $**_ _[*amount*]_ _**.**

17.10-13 Estate taxes

[*Add one of the following alternatives*]

[*Alternative 1: Return not yet filed, taxes not yet due, determined, or paid*]

The federal estate tax return for the estate _ _[*and* _ _[*name of state*]_ _ *estate tax return*]_ _ _ _[*has/have*]_ _ **not yet been filed and** _ _[*is/are*]_ _ **not yet due, and the federal** _ _[*and* _ _[*name of state*]_ _]_ _ **estate taxes have not yet been determined or paid.**

[*Alternative 2: No returns necessary*]

No federal _ _[*or* _ _[*name of state*]_ _]_ _ **estate tax return has been filed for the estate because the estate was not sufficient to require such a return, and no estate taxes are due.**

[*Alternative 3: Return filed; no estate tax due*]

A federal estate tax return was filed _ _[*and a* _ _[*name of state*]_ _ *estate tax return was filed*]_ _**. No federal**

_ _[*or state*]_ _ **estate tax is due.**

[*Alternative 4: Return filed; estate taxes paid*]

A federal estate tax return was filed _ _[*, and a _ _[name of state*]_ _ *estate tax return was filed*]_ _. The federal estate tax due in the amount of $_ _[*amount*]_ _ _ _[*and _ _[name of state*]_ _ *tax due in the amount of $_ _[amount*]_ _]_ _ have been paid by _ _[*the persons charged with it under Article _ _ of the will/petitioner from estate assets*]_ _.

[*Continue*]

The _ _[*executor/administrator*]_ _ has _ _[*not*]_ _ been released from personal liability for estate taxes. The federal return has _ _[*not*]_ _ been audited _ _[*and/or*]_ _ a closing letter has _ _[*not*]_ _ been issued by the Internal Revenue Service.

[*Continue*]

17.10-14 Income taxes

[*Add one of the following alternatives*]

[*Alternative 1: No income taxes payable*]

No California or federal income tax is due or payable by the estate.

[*Alternative 2: Income tax paid*]

All California and federal income tax due and payable by the estate have been paid.

[*Continue*]

[*Add one of the following alternatives*]

[*Alternative 1: Estate not distributable to nonresident beneficiaries*]

***Certificate of California Franchise Tax Board.* A certificate of the California Franchise Tax Board required by Revenue and Taxation Code §19513 does not have to be filed because there are no nonresident beneficiaries of the estate.**

[*Alternative 2: Assets exceed $1,000,000, and $250,000 or more is distributable to nonresident beneficiaries*]

The value of the assets of the estate at the date of the decedent's death exceeded $1,000,000, and assets of at least $250,000 are distributable to the following nonresident beneficiar_ _[*y/ies*]_ _:

Name	**Address**	**Amount**
_ _ _ _ _ _ _ _ _ _ _ _ _ _	_ _ _ _ _ _ _ _ _ _ _ _ _ _	$_ _ _ _ _ _
_ _ _ _ _ _ _ _ _ _ _ _ _ _	_ _ _ _ _ _ _ _ _ _ _ _ _ _	$_ _ _ _ _ _
_ _ _ _ _ _ _ _ _ _ _ _ _ _	_ _ _ _ _ _ _ _ _ _ _ _ _ _	$_ _ _ _ _ _

The certificate of the California Franchise Tax Board required by Revenue and Taxation Code §19513 is on file in the proceeding.

17.10-15 Personal property taxes

[*Add one of the following alternatives*]

[*Alternative 1: No personal property taxes due*]

No personal property taxes are due or payable by the estate.

[*Alternative 2: Personal property taxes paid*]

All personal property taxes due by the estate have been paid.

[*Continue*]

17.10-16 Propriety of distribution

Although the estate is not now in a condition to be closed, there may be distributed at this time, without loss to the creditors or injury to the estate or any person interested in it, the following property to the following persons in accordance with the _ _[*will/laws of succession*]_ _: _ _[*Describe; see 17.9-39*]_ _.

17.10-17 Compliance with 50-percent limitation of Prob C §11623

The total value of the assets of the estate as reflected by the inventor(y/ies) and appraisal(s) on file with the court is $_ _[*amount*]_ _; and the total value of all creditors' claims filed _ _[*and served*]_ _ and liens and encumbrances recorded or known to the _ _[*executor/administrator/etc.*]_ _ not reflected in any creditors' claims filed_ _[*and served*]_ _, excluding estate tax liens occasioned by the decedent's death, is $_ _[*amount*]_ _. Thus, the excess amount or the net value of the estate is $_ _[*amount*]_ _, 50 percent of which is $_ _[*amount*]_ _. Because the total value of the property proposed to be distributed in this petition is $_ _[*amount*]_ _, which is less than 50 percent of the net value of the estate, the proposed distribution does not exceed 50 percent of the net value of the estate within the meaning of Probate Code §11623.

[*Continue*]

17.10-18 Bond

[*Add one of the following alternatives*]

[*Alternative 1: No distributee's bond is required*]

The distribution(s) may be made without requiring _ _[*the/any*]_ _ distributee named herein to execute a bond payable to the _ _[*executor/administrator/etc.*]_ _.

[*Alternative 2: Distributee's bond is required*]

The distribution(s) should be conditioned on the execution and delivery to the _ _[*executor/administrator/etc.*]_ _ of a bond by _ _[*name(s)*]_ _, the distributee(s) as set forth below.

[*Continue*]

17.10-19 Compensation on account

[*If applicable, add the following option*]

[*Option: Allowance for statutory compensation*]

An allowance may be made for statutory compensation as set forth below.

[*Continue*]

IT IS ORDERED that _ _[*Include all applicable orders listed below*]_ _.

[1.] The _ _[*first/second/etc.*]_ _ account and report of the _ _[*executor/ administrator/etc.*]_ _ is settled, allowed, and approved as filed.

[2.] All acts and transactions of the _ _[*executor/administrator/etc.*]_ _ during the period of account relating to the matters set forth in the _ _[*account and*]_ _ petition are confirmed and approved.

[3.] The following property shall be distributed to _ _[*name*]_ _, the decedent's surviving _ _[*spouse/registered domestic partner*]_ _, as _ _[*his/her*]_ _ community _ _[*and quasi-community*]_ _ property administered in the estate, together with the decedent's share of community _ _[*and quasi-community*]_ _ property not otherwise disposed of, consisting of the following: _ _[*List*]_ _.

[4.] The property described below is distributed to the following persons:

[*Insert one or more of the alternative distribution provisions found in 17.9-39*]

[*If applicable, add the following option*]

[*Option 1: Estate taxes allocated against each distributee*]

[5.] The _ _[*executor/administrator/etc.*]_ _ is authorized to deduct from the gifts distributed hereunder the federal estate tax attributable to those _ _[*beneficiaries/heirs*]_ _ as follows: _ _[*List dollar amount chargeable to each distributee as his/her prorata share of federal estate tax*]_ _.

[*Option 2: Recovery of taxes on nonprobate property*]

[5.] The _ _[*executor/administrator/etc.*]_ _ is authorized to recover from the distribution of _ _[*name of beneficiary/heir*]_ _, who will also receive assets not subject to probate administration, the _ _[*beneficiary's/heir's*]_ _ proportionate share of federal estate taxes _ _[*and _ _[name of state*]_ _ *estate tax*]_ _ attributable to the nonprobate gifts.

[*Continue*]

[*Add one of the following alternatives*]

[*Alternative 1: Distributee's bond waived*]

[6.] No bond from _ _[*the/any*]_ _ distributee named above is required.

[*Alternative 2: Distributee's bond required*]

[6.] The distribution is conditioned on the execution and filing in this proceeding of a bond in the sum of $_ _[*amount*]_ _ by _ _[*the/each*]_ _ distributee, the bond to be payable to the _ _[*executor/administrator/etc.*]_ _ and conditioned on the payment, whenever required, of the proportion of the debts due from the estate, not exceeding the _ _[*respective*]_ _ amount(s) or value(s) of the distribution(s); the bond to be _ _[*with/without*]_ _ _ _[*personal/corporate*]_ _ surety.

[*If applicable, add the following option*]

[*Option: Payment of compensation*]

[7.] The _ _[*executor/administrator/etc.*]_ _ is authorized and directed to pay _ _[*himself/herself*]_ _ the sum of $_ _[*amount*]_ _ for _ _[*his/her*]_ _ statutory compensation for ordinary services rendered and is authorized and directed to pay the sum of $_ _[*amount*]_ _ to _ _[*name(s) of attorney(s)*]_ _ for _ _[*his/her/their*]_ _ statutory compensation for ordinary services to the estate.

Date: _ _ _ _ _ _

__[*Signature*]__
_ _[*Judge/Commissioner*]_ _
of the _ _[*title of court*]_ _

Copies: Original for filing; one copy for each representative; office copies. If real property is distributed, one certified copy is required for recording in each county where the real property is located.

Comment: Many of the paragraphs of this form are not required by the Probate Code but are required by local court rules.

When the will creates a valid testamentary trust, Cal Rules of Ct 7.650 requires the order of distribution to incorporate the terms of the trust in such a manner as to give effect to the conditions existing at the time distribution is ordered. It requires pertinent provisions to be stated in the present tense and in the third person instead of quoting the will, which is often in the future tense and first person and includes provisions that no longer apply. It is important that the original intent of the testator not be changed in the attempt to conform to provisions of Rule 7.650. The legal assistant should have the attorney review the proposed language of the order to be sure it embodies the testator's intent. It is also important to include all of the provisions of the will that affect the testamentary trust (*e.g.,* definitions) and not just the dispositive provisions.

NOTE: Before drafting the provisions for distribution to a testamentary trust, consult local rules. Some counties may still enforce a local rule requiring the will provisions to be incorporated verbatim in the decree. The attorney should inquire to be sure. If the document does not comply with local rules that conflict with the California Rules of Court,

the document should state that it complies with the California Rules of Court.

Notice may not be dispensed with in a preliminary distribution under Prob C §11623 (IAEA) unless the time for filing creditors' claims has expired. Prob C §11623(a).

Legal descriptions of real property must be carefully reviewed for accuracy. The assessor's parcel number (APN) should also be included.

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Source: Estate Planning/California Probate Workflow Manual Revised/17 Preliminary Distribution/§17.11 V. FORM: DISTRIBUTEE'S BOND

§17.11 V. FORM: DISTRIBUTEE'S BOND

INSTRUCTIONS: If the court orders preliminary distribution within four months after letters are first issued, it must require a bond in the amount of the distribution. After four months, the court has discretion on whether to require a bond and in what amount. If a bond is required, most sureties provide their own form, but the following form may be used if the surety does not. All parties should sign, and the sureties' signatures should be acknowledged before a notary.

Copies: Original for filing; one copy for each surety; one copy for each representative and distributee; office copies.

[*Title of court*]

[*Title of case*]

No. _ _ _ _ _ _
BOND OF DISTRIBUTEE ON
PRELIMINARY DISTRIBUTION

_ _[*I/We*]_ _, _ _[*name(s) of distributee(s)*]_ _**, as principal(s), and** _ _[*names of sureties*]_ _ _ _[*am/are*]_ _ **bound to** _ _[*name of representative*]_ _**, as** _ _[*executor/administrator/etc.*]_ _ **of the** _ _[*will/estate*]_ _ **of** _ _[*name*]_ _**, deceased, in the sum of $**_ _[*amount*]_ _**.** _ _[*I bind myself/We bind ourselves, jointly and severally*]_ _ **to pay whenever required** _ _[*my/our*]_ _ **portion of the debts, expenses of administration, and taxes due from the estate, not exceeding the above amount. If this payment is not required, this bond shall have no force or effect; otherwise, it will remain in effect.**

Date: _ _ _ _ _ _

__[*Signature of distributee*]__
_ _[*Typed name*]_ _
Principal

Date: _ _ _ _ _ _

__[*Signature of first surety*]__
_ _[*Typed name*]_ _
Surety

Date: _ _ _ _ _ _

__[*Signature of second surety*]__
_ _[*Typed name*]_ _
Surety

[*Acknowledgment*]

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Source: Estate Planning/California Probate Workflow Manual Revised/17 Preliminary Distribution/§17.12 VI. FORM: RECEIPT OF DISTRIBUTEE

§17.12 VI. FORM: RECEIPT OF DISTRIBUTEE

INSTRUCTIONS: When there is a restriction or charge on the use or enjoyment of a devise, it should be incorporated in the receipt. If the distributee resides outside California, local rules should be checked to determine whether an out-of-state distributee must have the receipt notarized.

Copies: Original for filing; one copy for each representative and distributee; office copies.

[*Title of court*]

[*Title of case*]

No. _ _ _ _ _ _
RECEIPT OF DISTRIBUTEE

The undersigned acknowledges receipt from _ _[*name*]**_ _, as _ _**[*executor/administrator/etc.*]**_ _ of the _ _**[*will/estate*]**_ _ of the above-named decedent, _ _**[*the sum of $_ _*[*amount*]**_ _/(describe property)*]**_ _, being the entire _ _**[*sum/property*]**_ _ distributed to the undersigned by the order of preliminary distribution of the estate of the decedent made herein on _ _**[*date*]**_ _.**

Date: _ _ _ _ _ _ __[*Signature of distributee*]__
_ _[*Typed name*]_ _

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18

Account, Report, and Final Distribution

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/§18.1 I. INTRODUCTION

§18.1 I. INTRODUCTION

When the estate is ready to be closed, the entire file should be reviewed before drafting the final account and the petition for settlement of the estate and for final distribution. This is the last chance to complete pending matters and to take care of any matters that may have been overlooked. In order to understand the tasks that may be required and the issues that should be addressed before the account, report, and petition can be prepared, the entire chapter should be reviewed. Although checklists should have been used throughout administration, complete review on closing is essential.

Although preparing the account is the statutory duty of the representative, he or she may hire others to perform that duty and pay them from the representative's compensation. Often the legal assistant must transform the representative's account into a format that the court will approve.

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§18.1A A. What Is Included in the Account, Report, and Petition

The representative usually performs at least three functions in accounting for his or her administration of the estate.

- The representative accounts for the financial transactions that have occurred since his or her appointment or, if an account has previously been filed, since the last account, and reports on the financial status of the estate at the time of the report, in a summary and in schedules attached to the petition. This part of the document, called the "financial statement" in Prob C §10900(a), is usually referred to as the account.
- The representative reports, usually in narrative form, on matters not self-explanatory from the attachments, including actions taken under the Independent Administration of Estates Act. A report is required even if a formal account has been waived.
- The representative petitions for settlement of the account, approval of the representative's acts, compensation for the representative and the attorneys, and other relief appropriate to the situation, supported by allegations in the document.

NOTE: A will may refer to a writing that directs disposition of certain tangible personal property not otherwise disposed of by the will. Prob C §6132. Presumably, the validity of the writing is determined using a petition for distribution or a Prob C §11700 petition for determination of the persons entitled to distribution. For §11700 petitions, see California Decedent Estate Practice, chap 28 (2d ed Cal CEB 2009).

These three functions of account, report, and petition for final distribution are often intertwined and it can be difficult to separate the document into its individual parts. Nevertheless, the discussion here relies in part on these distinctions, but for convenience, the term "petition" is also used at times to refer to the pleading incorporating all three. The discussion covers the account schedules first (see §§18.14-18.27), although these are usually the concluding portion of the combined account, report, and petition.

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/ §18.1B B. When to File Final Account, Report, and Petition for Distribution

§18.1B B. When to File Final Account, Report, and Petition for Distribution

The personal representative must file the final account and petition for an order for final distribution when all debts have been paid or adequately provided for and the estate is in a condition to be closed or, if the estate is insolvent, when the estate is in a condition to be closed. Prob C §§10951, 11640. The representative does not have to file a final account if all persons entitled to distribution of the estate sign and file a written waiver of account or a written acknowledgment of receipt of their share of the estate. Prob C §10954. See §18.32A for a form of waiver of account. See §18.33 for a form of acknowledgment of satisfaction of interest.

If the decedent's will refers to a writing that directs disposition of a testator's tangible personal property and the writing has not been filed concurrent with the filing of the inventory and appraisal, the personal representative must file the writing at least 60 days before filing the petition for final distribution. Prob C §6132(f)(2). See California Decedent Estate Practice §31.71 (2d ed Cal CEB 2009).

NOTE: The personal representative may not make a distribution until 2 years after issuance of the decedent's death certificate (or entry of judgment determining the fact of decedent's death, if earlier), if he or she receives notice or has actual knowledge within 4 months after issuance of the decedent's death certificate (or entry of judgment determining the fact of decedent's death, if earlier) that the decedent's genetic material is available for purposes of posthumous conception, unless (Fam C §7611(f); Prob C §§249.5-249.8):

- The personal representative has received written notice that the person designated by the decedent does not intend to use the material for the posthumous conception of a child of the decedent; or
- The birth of a child of the decedent conceived after death will have no effect on the proposed distribution.

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/§18.2 C. Rules Relating to Accounts and Distribution

§18.2 C. Rules Relating to Accounts and Distribution

Accounts are governed by Prob C §§1060-1064, 10900-11052. California Rules of Court that apply to probate proceedings (Title 7) must be consulted as well. Although the provisions are intended to replace the different local court rules concerning contents of accounts, counsel should still consult local probate rules for any unusual requirements in the county where the estate is being administered before preparing the account. The Probate Code and California Rules of Court will prevail over inconsistent local rules, but local court rules may add requirements for the formatting of the account.

Most counties require that the property to be distributed be listed in detail, and some require that the plan of distribution also be included. The petition for final distribution must also allege in both testate and intestate proceedings whether the property is separate or community. In an intestate proceeding, some counties require that the petition contain a list of heirs, and if the decedent had a predeceased spouse or registered domestic partner (Fam C §297.5(c)) and left no issue or surviving spouse or registered domestic partner, the petition must allege whether there are heirs who take under Prob C §6402.5. It is always best to check with the court to determine what specific or additional information is required.

When presenting the final account and report to the court, the representative may seek the court's approval of any transaction for which he or she did not first obtain court authorization. The probate court has the power to ratify a representative's act done without a previous court order.

Sales of depreciating or perishable personal property, or other categories authorized to be sold under Prob C §§10252 and 10259, that were made without court approval can be presented for approval in the petition for final distribution. The representative should show that the sales price was at or above the market price. However, acting first and seeking ratification later is risky and should be avoided.

If the representative took any actions under the Independent Administration of Estates Act that were not ratified by the court, ratification should be sought.

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/§18.3 D. Procedural Guide: Account and Final Distribution

§18.3 D. Procedural Guide: Account and Final Distribution

This procedural guide is intended to be used as an issue-spotting guide for preparing the account and the petition for final distribution. Many of the entries in this guide must be reviewed by the attorney. The estate record in §1.6, if properly maintained during the administration of the estate, should contain most of the information necessary to complete the petition. The data for the account will be found in the records of receipts and disbursements.

Note that item 1 below refers to itemization of receipts and disbursements. See §18.7A on the detail of itemization needed.

PROCEDURAL GUIDE

1. Account waived; acknowledgment of satisfaction of interest; account required (see §18.31)

a. If account waived:

- **Waiver executed by all beneficiaries (see §18.32)**
- **Waiver filed with court or attached to petition**

b. If interests of persons entitled to distribution have been satisfied (see §18.33)

- **Written acknowledgments of satisfaction obtained**
- **Acknowledgments filed or attached to petition**

c. If account required; exhibits and schedules include:

- **Correct starting figure**
- **Receipts itemized**
- **Receipts allocated correctly between principal and income (if required)**
- **Disbursements itemized**
- **Disbursements allocated correctly between principal and income (if required)**
- **Account summarized**
- **Schedules prepared**

d. Explanations of account in the representative's report

- **Inventory and Appraisals filed in the proceedings identified**
- **Description of all sales, purchases, changes in form of assets, or other transactions during accounting period not readily understandable from schedule**
- **Statement of whether all cash, except for amount reasonably necessary for administration, invested in interest-bearing accounts**
- **Explanation of any unusual items in the account**

e. Petition for approval of account accompanying petition for final distribution (§§18.7, 18.29):

- **Statement of all compensation paid from estate assets to representative or representative's attorneys without prior court order (this practice is prohibited by Cal Rules of Ct 7.700)**
- **Disclosure of any family or affiliate relationship between representative and any agent hired by representative during accounting period**

2. Status report file on _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _(see §18.4)

- **Court order directing continuance of administration or requiring final account filed on _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _**

3. Character of estate property (see forms 18.29-13, 18.36-9)

- **All separate**
- **All community or quasi-community**
- **Combination**
- **Surviving spouse (or registered domestic partner; see Fam C §297.5; §4.1) election to probate own interest in community, quasi-community property**

4. Creditors' claims and statement of liabilities (see chap 12, forms 18.29-25, 18.36-11)

- **Paid or adequately provided for**
- **Rejected**
- **Rejected claims barred**
- **Claims not barred and not paid**
- **Debts paid without claim**

5. Notice to Director of Health Care Services, Director of California Victim Compensation and Government Claims Board, Franchise Tax Board, and public entities listed in Prob C §9201 (see forms 18.29-9—18.29-10A)

- **Given as required**
- **Not required**

6. Special notice (see form 18.29-11)

- **None requested**
- **Given as requested**
- **Request waived**

7. Report of actions taken under IAEA (see §18.5, form 18.29-22)

- **Actions taken under IAEA without prior court approval listed and described if notice of proposed action required**
- **Actions taken under IAEA listed and described in prior account, report, or petition for distribution and approved by court**
- **None taken**

8. Report of actions taken without court authorization for which ratification is requested

9. Federal estate taxes and state estate tax (see forms 18.29-30, 18.29-52, 18.36-13)

- **No return required**
- **Return required, no tax due**
- **Taxes paid**
- **Reserve required**
- **Return audited or closing letter received**
- **Allocation of estate tax**

10. Income taxes (see forms 18.29-31, 18.36-15)

- **None due**
- **All paid**
- **Taxes due, not paid**
- **Reserve required**
- **Franchise Tax Board certificate required for certain distributions to nonresidents (18 Cal Code Regs**

§19513)

11. Personal property taxes
    - None due
    - All paid
    - Taxes due, not paid
12. Statutory commissions, and attorney fees requested (see §18.34, forms 18.29-35, 18.36-17)
    - Fee base
    - Fee computation
13. Commissions and attorney fees for extraordinary services requested (see forms 18.29-39, 18.36-17)
    - Declaration in support of commissions for extraordinary services prepared
    - Declaration in support of attorney fees for extraordinary services prepared
14. Closing expenses reserve established (see forms 18.29-42, 18.36-18)
    - Taxes
    - Administration expenses, compensation
15. Distributees (see forms 18.29-43—18.29-51, 18.36-33—18.36-35)

    a. For minor distributees:
    - Distribution under Prob C §§3400-3413 for minor's estates of $5000 or less, and $20,000 or less
    - Distribution to guardian
    - Distribution to custodian under California Uniform Transfers to Minors Act (CUTMA) (Prob C §§3900-3925)

    b. For deceased distributees:
    - Personal representative appointed, see California Decedent Estate Practice §32.80 (2d ed Cal CEB 2009)
    - Affidavit received under Prob C §§13100-13116

    c. For unknown distributees and alternate distributees (Prob C §11603(c)), see Decedent Estate Prac §§31.80, 32.78

    d. For trust distributees:
    - Acceptance of trust by trustee
    - Terms of trust set out in detail

    e. Written notice received from representative of child, within four months of issuance of death certificate or entry of judgment, that decedent had genetic material available for posthumous conception (see §18.1B)
16. Disclaimers filed by heirs or devisees (see form 18.29-45)
17. Description of any option granted that extends beyond the period of administration
18. Distribution plan (see forms 18.29-45—18.29-51)
    - Is a petition to determine heirship required?
    - Should a petition for court instructions regarding the interpretation of the will or testamentary trust be included?
    - Obtain written agreement of distributees if a plan for division is adopted other than that specified in will or under intestate succession
    - Check available assets and divisibility among distributees and ascertain whether petition for

partition required

- **Must the portion of the estate attributable to a predeceased spouse or registered domestic partner (Fam C §297.5(c)) be distributed (Prob C §6402.5)?**
- **Ascertain whether general pecuniary devises bear interest**
- **If expenses were paid from income, should a portion or all be charged to principal and an adjustment made?**
- **If distribution is to be made to a trustee, is income during probate to be paid by trustee to beneficiary (see form 18.36-35)?**
- **How is estate tax to be allocated (see form 18.29-52)?**

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/§18.4 II. STATUS REPORTS

§18.4 II. STATUS REPORTS

The representative must file a verified report on the status of the estate either within 1 year after issuance of letters in estates not required to file a federal estate tax return or within 18 months after issuance of letters in estates required to file an estate tax return, unless a petition for final distribution has been filed. Prob C §§12200-12201. If the estate is not in a position to be closed, the status report must show the following (Prob C §12201(a)):

- The condition of the estate;
- The reasons it cannot be distributed and closed; and
- The estimated time needed to close the estate.

The status report is set for hearing in the same manner as any other probate petition. Notice is given to persons interested in the estate under Prob C §1220 and must include the following statement in not less than 10-point boldface type (or reasonable equivalent if printed) in substantially the following words (Prob C §12201(b)):

YOU HAVE THE RIGHT TO PETITION FOR AN ACCOUNT UNDER SECTION 10950 OF THE CALIFORNIA PROBATE CODE

Although Prob C §§12200-12201 appear to contemplate the filing of a separate status report, there does not seem to be any reason the status report could not be combined with an interim account or petition for preliminary distribution. Most attorneys prefer a status report to be much the same as the type of report that accompanies a petition for preliminary distribution. See §17.9 for a sample form.

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/§18.5 III. REQUIREMENTS UNDER INDEPENDENT ADMINISTRATION OF ESTATES ACT

§18.5 III. REQUIREMENTS UNDER INDEPENDENT ADMINISTRATION OF ESTATES ACT

The representative must file an account before final distribution even when the estate is being administered under the Independent Administration of Estates Act (IAEA); (Prob C §§10400-10592). Prob C §10501. The representative may, however, petition for preliminary distribution without an account. Prob C §§11600, 11621, 11623. See Prob C §11951. If the preliminary distribution is made under Prob C §11623, it is limited to 50 percent of the estate's net value. See §17.4 on filing interim account with preliminary distribution. Probate Code §12200, requiring status reports in certain estates, applies to estates administered under the IAEA.

In any account, report, or petition for preliminary or final distribution, the representative must list and describe actions taken without prior court approval under the IAEA if notice of proposed action was required. Cal Rules of Ct 7.250(a). The description must include the following:

- The nature of the action;
- When it was taken;
- When and to whom notice was given;
- Whether notice was waived, and by whom; and
- Whether objections were received.

An action under the IAEA that has been properly listed and described in an earlier account, report, or petition for distribution and approved by the court does not have to be listed in a later account, report, or petition for distribution. Cal Rules of Ct 7.250(b).

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§18.6 IV. REPORT OF ADMINISTRATION

The purpose of the report of administration, required under Prob C §10900(a), is to provide a complete summary of the estate's administration. It may be necessary to attach additional statements to clarify particular events or circumstances and to permit interested persons to understand the report. The report tells the story of the administration of the estate and should include an explanation of the petitions filed and orders granted during the course of administration, such as litigated matters, determination of heirship, and Prob C §850 petitions.

The report of administration states the liabilities of the estate and detailed information about creditors' claims. Prob C §10900(b). The report of administration must include the amount of compensation paid or payable to the personal representative and to the attorney and must set forth the basis for determining these amounts. See Prob C §10800. For sample Schedule of Estate Accounted for, see §18.26.

The statement of liabilities in the report of administration must include the following information (Prob C §10900(b); Cal Rules of Ct 7.403):

- Whether notice was given to creditors under Prob C §9050;
- Creditors' claims filed, including the date of filing, the name of claimant, the nature of the claim, the amount of the claim, and the action taken; and
- Creditors' claims not paid, satisfied, or adequately provided for, and whether the claim is due, the due date, the date of any notice of rejection, whether a creditor has brought action on a claim, and specific real or personal property that is security for the claim.

Even if all distributees waive an account, the personal representative must still file a final report at the time the formal account would otherwise have been required, although the details of receipts and disbursements do not have to be listed in the report of administration when the account is waived. Prob C §10954(c); Cal Rules of Ct 7.550(b). See §18.31.

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/ V. PREPARING THE ACCOUNT/§18.7 A. Interim and Final Accounts

V. PREPARING THE ACCOUNT

§18.7 A. Interim and Final Accounts

All accounts filed with the court, including interim and final accounts, must include a financial statement (*i.e.,* a summary of account with supporting schedules) and a report of administration as provided in Prob C §§1060-1064, 10900. Prob C §§1060, 10900(a). The term "financial statement" means a summary of account with supporting schedules. The account must state the period covered and contain a summary, supported by detailed schedules.

Interim accounts are not usually filed unless considerable time is expected to elapse before the estate is closed. In that case, and particularly if there are persons interested in the estate who are critical of the representative, filing an interim account is advisable. An interim report may state that a claim has not yet been acted on, but a final account generally cannot be filed unless all claims have been either allowed or rejected and until the time for initiating a suit on rejected claims has elapsed or the litigation on the claim has been concluded. Otherwise, the estate is not in a position to be closed.

An interim account may be combined with a petition for preliminary distribution, partial payment of compensation, instructions, determination of heirship, proration of estate taxes, or other relief related to the account. See chap 17 on preliminary distribution. The final account is generally combined with the petition for distribution or other relief, and usually one order is entered rather than an order settling the account and a separate order for final distribution. See §18.36 for a form of order for final distribution.

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§18.7A 1. Summary of Account

Probate Code §1061 and the local rules of most counties require that the account contain a summary in the form set out in §18.14. The summary, supported by detailed schedules, must show the following (Prob C §§1061(a), 1062):

(1) Property on hand at the beginning of the period covered by the account (*i.e.,* the inventory value of all assets if it is the first account and the property on hand at the end of the prior account if a subsequent account);

(2) The value of assets received during the accounting period, excluding property listed in an inventory;

(3) Receipts of income or principal, excluding items listed under items (1) and (2) or receipts from a trade or business;

(4) Net income from a trade or business;

(5) Gains on sales;

(6) The amount of disbursements, excluding disbursements for a trade or business or distributions;

(7) Losses on sales;

(8) Net losses from a trade or business;

(9) Distributions to beneficiaries; and

(10) Property on hand at the end of the accounting period stated at its carry value (the value stated in the inventory as of the date of the decedent's death, or the acquisition value, if acquired after the date of death).

The summary may affect the decision regarding what type of account is to be filed. See §18.9. In some counties, income and principal must be segregated under certain circumstances, *e.g.,* when accumulated income is to be paid to trust beneficiaries and when real property is specifically devised. As good practice, this procedure could be followed generally.

NOTE: For purposes of Prob C §1061, "net income" and "net loss" are used in accordance with general accounting principles. Prob C §1061(d).

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§18.7B 2. Required Schedules

The summary of account must be supported, when applicable, by detailed schedules showing the following (Prob C §1062):

(1) Receipts, showing the nature and purpose, the source, and the date of each item (see California Decedent Estate Practice §§24.36-24.69 (2d ed Cal CEB 2009));

(2) Disbursements, including the date and nature or purpose of each item and the payee's name (see Decedent Estate Prac §§24.63-24.69, 24.72-24.73);

(3) Net income or loss from a trade or business (schedule sufficient if it provides information disclosed on Schedule C or F of the federal income tax return);

(4) Calculation of gains or losses on sale or other disposition (see Decedent Estate Prac §24.70);

(5) Distributions of cash or property to beneficiaries, showing the date and amount (see Decedent Estate Prac §24.72); and

(6) Itemized list of property on hand, describing each item at its carry value (*i.e.,* value as appraised in the Inventory or cost if acquired during administration (see Decedent Estate Prac §§24.44, 24.76).

All accounts must include an additional schedule showing the estimated market value of assets on hand at the beginning and end of the accounting period. Prob C §1063(a). For discussion of additional schedules that may be required under Prob C §1063, see Decedent Estate Prac §24.42.

This chapter retains detailed forms of account, as well as examples of summary schedules forms that would comply with Prob C §§1061-1063, 10900.

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/§18.8 B. Expenses and Credits Allowed Representatives

§18.8 B. Expenses and Credits Allowed Representatives

Not all disbursements are allowed to representatives. Some are charged to them (and are the personal liability of the personal representative).

Expenses and credits allowed representatives include the following:

(a) Expenses for preservation of estate, including travel;

(b) Reasonable and necessary expenses in administering the estate (*e.g.,* repairs to property, personal and real property taxes, stamps, accountant's services, when services are beyond capacity of ordinary businessperson (*Estate of Broome* (1912) 162 C 258, 267, 122 P 470));

(c) Expenses allowed by statute, including tax counsel or tax experts for preparing tax returns and related matters, premium on representative's bond, cost of judgment unless the action was prosecuted or defended without just cause or in bad faith, reasonable storage, delivery, and shipping costs for distribution of tangible personal property (Prob C §11754);

(d) Losses resulting from continuing decedent's business under decedent's instructions; and

(e) Debts uncollected (if no fault on representative's part).

NOTE: Charges and credits allowed to the representative may be affected by local rules. For example, local travel costs are not allowed in San Francisco and are payable out of the representative's statutory compensation. San Francisco Ct R 14.102.

Expenses chargeable to representatives include the following:

(a) Improperly paid or overpaid claims;

(b) Interest payments improperly withheld or neglected;

(c) Deficient proceeds of sales, when sale unauthorized; and

(d) Amounts paid to others to perform ordinary services that the representative has a duty to perform (*e.g.,* accountant fees for ordinary probate account (*Estate of Billings* (1991) 228 CA3d 426, 278 CR 439)) are payable out of the representative's statutory compensation.

Any item not clearly a normal expense of administration should be brought to the attorney's attention for a determination of how to treat it in the account.

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/§18.9 C. Categorized Versus Chronological Accounts

§18.9 C. Categorized Versus Chronological Accounts

There are two main types of accounts—categorized and chronological. Categorized accounts separate receipts and disbursements into categories (*e.g.,* dividends, interest, rents, principal), while chronological accounts list them in order of time, separating receipts and disbursements. A categorized account should be kept chronologically within categories. Some preliminary analysis is required in preparing a categorized account, while the chronological account permits the use of financial data almost in its original state. Samples of each are shown in §§18.16-18.18, 18.21A-18.22. It is recommended that a detailed record be kept in the office from which the schedules required by Prob C §§1062-1063 may be derived.

The attorney and representative determine what form the accounts should take. Whatever form is used, however, the account must conform with local rules and should contain sufficient information to tell a reasonably intelligent adult beneficiary what has happened to the estate assets during its administration, and what is left for distribution. The account's schedules should agree with and support each other, the source of information should be clear, and it should be readily understood by a lay person. The account should be drafted in such a way that the details of these items can be verified clearly and easily from the schedules or other data in the account. Merely listing receipts and disbursements does not comply with Prob C §1062 and court rules.

NOTE: Local rules frequently require that categorized accounts be used because they facilitate review and make it easier for the court to determine what was spent or received. If receipts are grouped by category, it is easier to see whether all periodic receipts (*e.g.,* rents or dividends) have been received.

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/§18.10 D. Accounting on Appointment of Successor Representative

§18.10 D. Accounting on Appointment of Successor Representative

A special administrator must file a verified account in the same way as any other representative. Prob C §§1021 (verification requirement), 8546(c). If the representative dies or becomes incapacitated, his or her personal representative, guardian, or conservator must account to the court in which the estate is being administered not later than 60 days after the conservator or personal representative is appointed. Prob C §10953. See California Decedent Estate Practice §§24.29, 29.108-29.110, 30.59 (2d ed Cal CEB 2009) on accounting after the appointment of a successor representative.

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/§18.11 E. Surviving Spouse's Community Interest

§18.11 E. Surviving Spouse's Community Interest

Only the decedent's half of community and quasi-community property is subject to probate administration unless property passes outright to the surviving spouse. A surviving spouse may elect to have his or her half probated. See California Decedent Estate Practice §25.44 (2d ed Cal CEB 2009).

Funeral and last-illness expenses are chargeable to the deceased spouse's estate, not to the community share of the surviving spouse.

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/§18.12 F. Checklist: Reasons for Delay in Settling Account

§18.12 F. Checklist: Reasons for Delay in Settling Account

The following checklist sets out common errors made in preparing the final account, report, and petition for final distribution that result in delays in obtaining an order.

(1) Failure to caption petition so as to give complete notice and full information regarding contents; *e.g.,* failure to include in petition's caption and in notice of hearing references to extraordinary fees when requested.

(2) Failure to identify persons required by law to receive notice and to give notices as required by law (including all persons requesting special notice).

(3) Failure to comply with requirements for notice to public entities.

(a) Notice not given to Director of Health Care Services as required by Prob C §9202(a) or failure to explain why notice not required.

(b) Notice not given to Director of California Victim Compensation and Government Claims Board as required by Prob C §9202(b) or failure to explain why notice not required.

(c) Notice not given to Franchise Tax Board as required by Prob C §9202(c).

(4) Failure to put account in proper form.

(a) Summary of account not in correct format.

(b) Incorrect starting figure used. Make sure the starting figure agrees with the Inventory and Appraisal or with the ending carry value of the prior account.

(c) Income received not itemized and source of income not shown.

(d) Disbursements not itemized; date of payment, to whom paid, and for what purpose not shown.

(e) Improper credits claimed; e.g., payments of fees to representative or attorney without court authorization.

(f) Estimated market value of assets on hand not included.

(5) Failure to describe character of the assets on hand for distribution, *i.e.,* separate, community, or quasi-community.

(6) Failure to list and describe all assets on hand for distribution (including, specifically, the cash on hand), either in the body of the petition or in an incorporated schedule or attachment, whether or not an account has been waived. Examples of failure to adequately list and describe assets include the following:

(a) Legal descriptions and assessor's parcel numbers not included for all real property.

(b) The amount of cash or shares of stock to be distributed to each beneficiary not specifically described. Do not state, for example, "one-fifth of all assets on hand."

(c) Reference to "property described in the will" or to "the inventory or appraisal."

(7) Failure to state specifically the manner in which the estate is to be distributed, *i.e.,* failure to justify the proposed distribution by references to the will or by outlining the intestate entitlement. Be sure to do the following:

(a) Designate intestate heirs and show relationships; provide complete facts re identity and genealogy of issue of predeceased children and heirs of predeceased spouses and other nonobvious heirs.

(b) State facts pertaining to any disclaimer and their effect.

(c) Submit assignments, if any, to the court for review as required by Prob C §11604.5.

(d) Describe preliminary distributions, date of filing of orders, and dates of any receipts on file.

(e) If the will refers to fractional or percentage shares for two or more beneficiaries, show the computations and amounts to be distributed to each beneficiary.

(f) Track terms of the will regarding disposition of assets; explain abatements, ademptions, or other unusual circumstances.

(8) Failure to allocate or prorate estate taxes if there is no tax clause.

(9) Failure to describe creditors' claims activity and to list disposition of all claims.

(10) Failure in insolvent estates to itemize all creditors' claims, showing the class to which each belongs, and the proper proration of remaining assets among creditors, or to payment of debts for which no claim has been filed.

(11) Failure to provide for statutory interest in petitions and orders for general pecuniary bequests not made within 1 year of death.

(12) Failure to allocate probate income in cases of specific bequests and distributions to testamentary trusts.

(13) Failure to allege and explain a plan of distribution when there is insufficient cash, when there are complexities in allocating or prorating estate taxes or in computing distributable percentage of residue.

(14) Failure to include calculation of the ordinary compensation of the representative and attorney, whether or not an account is waived. Be sure to do the following:

(a) State payments allowed on account for compensation.

(b) If account is waived, observe local rules and Cal Rules of Ct 7.705(b) and 7.550 regarding estate to be accounted for in determining fee basis.

(c) If multiple representatives or attorneys were involved in estate administration, observe Cal Rules of Ct 7.704(a) with regard to appropriate division of statutory fees. Observe Cal Rules of Ct 7.704(b) regarding notice to former representative or attorney of the hearing on the final distribution.

(15) Failure to sufficiently allege and describe services rendered on extraordinary fee requests.

(16) When distribution is to be made to a testamentary trust, failure to

(a) Incorporate the terms of the trust in the order of distribution in such a manner as to give effect to the conditions existing at the time distribution is ordered or failure to state the pertinent provisions in the present tense and in the third person instead of quoting the will verbatim.

(b) Include written consent of the trustee to act (it must be on file before the hearing).

(c) Justify by appropriate allegation (*e.g.,* consent of beneficiary or provisions of will) any change to the usual method of charging fees one-half to income and one-half to principal.

(17) Failure to comply with Franchise Tax Board clearance requirements (18 Cal Code Regs §19513) if the estate value exceeds $1,000,000 and assets of at least $250,000 are distributable to nonresidents.

(18) Failure to allege whether the representative was acting under the Independent Administration of Estates Act, and to state specifically the transactions undertaken pursuant to the IAEA.

(19) Failure to set forth disposition of assets if an heir or devisee dies before distribution of the estate.

(20) Failure to comply with Prob C §§6800-6806, 12408 on escheat or distribution to "missing" heir or devisee.

(21) Failure to submit Prob C §§13100-13115 declaration for filing before the hearing on the petition if distribution is to be made pursuant to the hearing.

(22) Failure to observe local rules on distribution to minors. Be sure to do the following:

(a) File Prob C §3401 or §3413 declarations before the hearing.

(b) If a guardianship of the estate is required, state name of guardian.

(c) If funds are to be placed in a blocked account by a custodian, state name and relationship of custodian, and name and location of depository.

(23) Failure to request establishment of an appropriate closing reserve for unpaid or contingent tax liability, disputed claims, or closing costs (*e.g.,* certification and recordation of final decree).

(24) Failure to include an omnibus clause for after-discovered property.

(25) Omission of verification of petitioner.

(26) Failure to submit proposed orders sufficiently in advance of hearing.

(27) Attachment of inappropriate "exhibits" to proposed orders.

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G. Financial Statement: Summary and Schedules of Account

1. Summary of Account

§18.13 a. Preparing Summary of Account

A summary of account is required by Prob C §1061. See §18.7A. The discussion and schedules in §§18.14-18.27 explain the individual schedules and show methods of accounting that use the categorized account, but the practitioner may prefer variations on these methods.

The discussion gives some alternative methods but by no means all variations. Cross-checks are also suggested. Whatever method is used, the account should be as self-contained as possible and should contain sufficient information to show the bases for its computations.

This sample summary of account follows the format in Prob C §1061(b); although inapplicable categories (*e.g.,* gains on sale or other disposition and net income and net loss from trade or business) do not have to be shown, listing inapplicable categories as "none" insures that you do not inadvertently omit a category, lets the court know that a category was not omitted because of an oversight, and is required by some courts. See, *e.g.,* Alameda Ct R 7.380.

NOTE: Only income receipts in the schedule of receipts are included in the summary of account. Otherwise there would be a duplication of principal in the inventory and receipts.

The total charges must equal the total credits. Prob C §1061(c). Otherwise the account is in error, or the personal representative will be subject to surcharge.

For discussion of required schedules, see §18.7B. Local probate rules should also be checked for format of summary and schedules and other schedules that may be required. The addition of net gain and net loss from a trade or business to the summary and required schedules and other changes made by the addition of Prob C §§1060-1064 may require redesignation of some schedules. See §18.2.

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/§18.14 b. Form: Sample Summary of Account

§18.14 b. Form: Sample Summary of Account

SUMMARY OF ACCOUNT

CHARGES

[*If first report*]

Amount of inventory and appraisal	**$394,090.03**
Amount of supplemental inventories)	**none**

[*If subsequent report*]

Property on hand at beginning of account	**$_ _ _ _ _ _**
Additional property received	**$_ _ _ _ _ _**

[*Continue*]

Receipts during accounting period, other than capital items (Schedule A)	**7,273.72**
Gains on sale or other disposition (Schedule B)	**1,000.00**
Net income from trade or business (Schedule ___)	**none**
Total Charges:	**$402,363.75**

CREDITS

Disbursements during accounting period	**$7,859.80**
(Schedule C)	
Losses on sale or other disposition	**3,250.00**
(Schedule D)	
Net loss from trade or business (Schedule ___)	**none**
Distributions (Schedule E)	**125,000.00**
Property on hand at close of account	**266,253.95**
(Schedule F)	
Total Credits	**$402,363.75**

Comment: This summary and the schedules are based on the sample forms of cash receipts (see §§18.16-18.18) and cash disbursements (see §§18.19-18.22). They do not correspond to the examples given of inventory items in §§11.10-11.11. This summary can easily be incorporated in the body of the report, with supporting schedules attached

as an exhibit to the petition, or the summary and schedules together can be attached as an exhibit to the petition. See form 18.29-16.

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/§18.15 2. Handling Receipts on the Account

§18.15 2. Handling Receipts on the Account

The heart of any court account is the listing of receipts and disbursements. The schedule of receipts must show the following (Prob C §1062(a)):

- The nature and purpose of each item;
- The source of the receipts; and
- The date of receipt.

The chronological account of receipts gives details of all transactions occurring during administration, compared with the categorized account, which includes the same information but is reported asset by asset for receipts. It is recommended but not required that, even in the chronological account, income receipts be separated from principal receipts. This may be done either by separating the items in two columns as shown in §§18.16-18.17 or by differentiating principal with an asterisk or other mark. The differentiation is necessary to (1) determine statutory compensation, based in part on income (see §19.8), (2) determine what the remaining principal is on items for which periodic installments of principal and interest are paid, and (3) complete the summary of account required by Prob C §1061.

NOTE: Receipts of items listed in the inventory, including income in respect of a decedent, *e.g.,* interest accrued on bank accounts to the date of death and dividends of record at death but received after death, are considered principal for purposes of the account, even though they are reported as income for income tax purposes.

It may be confusing to include the collection of principal items such as uncashed checks at the decedent's death, refunds, dividends of record at date of death but received after death, and the principal portion of note payments in the schedule of receipts if the income and principal receipts are not segregated as shown on sample Schedule A (see §§18.16-18.17). This confusion may be reduced by setting forth the receipt of cash principal items on a separate schedule shown in §18.18. This schedule will also assist in preparing the cash reconciliation schedules required by some counties.

Only the income or uninventoried principal receipts in the schedule are included in the summary in §18.14. Otherwise, there would be a duplication of principal in the inventory and receipts. Transfers between estate accounts should not be included on the account schedules. See sample Schedule G in §18.18 for an alternative to listing cash principal receipts on Schedule A. If Schedule A omits principal receipts, Schedule G must be used. See §§18.18, 18.25 on carry value.

The inclusion in the categorized account of receipts from inventory items in the order in which they appear in the inventory simplifies preparation of the schedule of property on hand (sample Schedule F). See discussion in §18.25.

For purposes of the account, receipts from sales of estate property are shown at the gross sales price on Schedule B (Gains on Sales), or Schedule D (Losses on Sales), with the cost of sales included on Schedule C (Disbursements). A representative frequently receives a check in the net amount from a selling agent, but the attorney should make certain that the gross amount is shown on the sale schedules. Separating sales of property in the cash receipts record (see §3.9) provides a relatively simple method of cross-checking. See discussion in §18.23 on method of reporting gains or losses on sales of estate property.

Receipts of items listed in the inventory, including income in respect of a decedent, *e.g.,* interest accrued on bank accounts to the date of death and dividends of record at death but received after death, are considered principal for purposes of the account. Thus the $75 dividend on ABC Gas & Electric Co. received on February 2 and the interest on the Abbott note accrued to the date of death of $298.21 received on March 5 are treated for accounting purposes as principal, even though they are reported as income for income tax purposes. Similarly, receipts from the sale of 200 shares of XYZ Telephone Co. stock are considered principal with gain or loss reported on the appropriate schedule. Segregating income included in the inventory in a separate column for cash receipts enables the attorney to pinpoint items of this nature.

Receipts of income and principal equal the total receipts shown in §18.18, adjusted for expenses of sale not included in those receipts. Generally, this will be true when all receipts are channeled through the commercial account.

NOTE: Frequently, income items such as interest on savings accounts are not deposited in the commercial bank account, and the attorney should make certain that they are included in the receipts.

The categorized accounts should give the date and amount of each payment as well as the name of the payee. Monthly payments made during the accounting period may be lumped together, as is the family allowance in §18.20.

Shares of stock received as a stock dividend or stock split are *generally not income* and are not included on the schedule of receipts *unless*: (a) the shareholder has the right to accept money or property instead of the shares, or (b) the shares are a dividend on preferred stock for the current year or year immediately preceding. See IRC §305. Their receipt is reported in the petition and on the schedule of changes in the form of assets, and the total shares are shown in Schedule F (Property on Hand). See §18.25.

Income receipts are entered in the summary of account in §18.14 and in the schedule of the estate accounted for in §18.26.

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§18.16 3. Form: Sample Chronological Schedule of Receipts

Schedule A: RECEIPTS

2008		Principal	Income
Jan. 4	William Brown—Rent		$300.00
15	Cash in decedent's possession (Inv. Attach. 1, Item 1)	$45.78	
	Bank of Sierra (Inv. Attach. 1, Item 2)	2,765.98	
	John Harold (Inv. Attach. 1, Item 4)	44.40	
	Sears (Inv. Attach. 1, Item 4)	120.86	
24	American Life Insurance Company, Policy No. 99999, lump sum proceeds (Inv. Attach. 1, Item 5)	10,000.00	
Feb. 2	William Brown—Rent		300.00
	ABC Gas & Electric—Dividend of record (Inv. Attach. 2, Item 3)	75.00	
Mar. 5	William Brown—Rent		300.00
	XYZ Telephone Co.—Dividend		250.00
	A.A. Abbott—Payment on note (Inv. Attach. 2, Item 6)	1,003.56*	596.44
Apr. 3	William Brown—Rent		300.00
May 5	William Brown—Rent		300.00
	ABC Gas & Electric Co.—Dividend		80.00
15	Smith & Co.—Sale of XYZ Telephone Co. pfd. stock (Inv. Attach. 2, Item 4)	17,750.00**	
June 2	William Brown—Rent		300.00
	A.A. Abbott—Payment on note (Inv. Attach. 2, Item 6)	721.22	878.78
July 3	William Brown—Rent		300.00
Aug. 5	ABC Gas & Electric Co.—Dividend		80.00
	William Brown—Rent		300.00
Sept. 5	William Brown—Rent		300.00

	A.A. Abbott—Payment on note (Inv. Attach. 2, Item 6)	**737.45**	**862.55**
	Musician's Quarterly—Refund (Inv. Attach. 2, Item 7)	**4.78**	
	Atlas Health—Refund (Inv. Attach. 2, Item 8)	**73.00**	
Oct. 5	**William Brown—Rent**		**300.00**
Nov. 2	**William Brown—Rent**		**300.00**
	ABC Gas & Electric Co.—Dividend		**80.00**
Dec. 3	**William Brown—Rent**		**300.00**
	A.A. Abbott—Payment on note (Inv. Attach. 2, Item 6)	**754.05**	**845.95**
	Total Principal Receipts	**$34,096.08**	
	Total Income Receipts		**$7,273.72**

***Includes $298.21 interest accrued to date of death (Inv. Attach. 2, Item 6)**

****Includes total amount received; $217.27 expenses of sale included on disbursement schedule.**

Comment: Separating income and principal receipts is not required, but see §18.15 for reasons to do so.

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§18.17 4. Form: Sample Categorized Schedule of Receipts

Schedule A: RECEIPTS

			Principal	*Income*
Dividends:				
ABC Gas & Elec. Co. (Inv. Attach. 2, Item 3)				
Feb. 2, 2008				**$75.00**
May 5, Aug. 5, Nov. 2, 2008: $80.00 each				**240.00**
XYZ Telephone Co., pfd. stock, Mar. 5, 2008				**250.00**
Interest:				
A.A. Abbott note (Inv. Attach. 2, Item 6)	**Principal**	**Income**		
Mar. 5, 2008	**$1,003.56***	**$596.44**		
June 2, 2008	**721.22**	**878.78**		
Sept. 5, 2008	**737.45**	**862.55**		
Dec. 3, 2008	**754.05**	**845.95**		
	$3,216.28	**$3,183.72**	**3,216.28**	**3,183.72**
Rent:				
William Brown, rent on 9236 Maple Lane, Los Angeles, California (Inv. Attach. 2, Item _): 12 months' rent for Jan.-Dec. 2008 at $300 per month				**3,600.00**
Receipts of other principal items:				
Cash in decedent's possession (Inv. Attach. 1, Item_)				
Jan. 15, 2008			**45.78**	
Bank of Sierra (Inv. Attach. 1, Item _)				
Jan. 15, 2008			**2,765.98**	
John Harold (Inv. Attach. 1, Item _)				
Jan. 15, 2008			**44.40**	

Sears (Inv. Attach. 1, Item _)		
Jan. 15, 2008	**120.86**	
American Life Insurance Co., Policy No. 99999, lump-sum proceeds (Inv. Attach. 1, Item _)		
Jan. 24, 2008	**5,000.00**	
200 shares XYZ Telephone Co. pfd. stock (Inv. Attach. 2, Item _)		
May 15, 2008	**17,750.00****	
Musician's Quarterly (Inv. Attach. 2, Item _)		
Sept. 5, 2008	**4.78**	
Atlas Health (Inv. Attach. 2, Item _)		
Sept. 5, 2008	**73.00**	
Total Principal Receipts	**$34,021.08**	
Total Income Receipts		**$7,348.72**

***Includes $298.21 interest accrued to date of death (Inv. Attach. 2, Item _)**

****Includes total amount received; $217.27 expenses of sale included on disbursement schedule.**

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/§18.18 5. Form: Sample Schedule for Receipt of Cash Capital Items

§18.18 5. Form: Sample Schedule for Receipt of Cash Capital Items

Schedule G: RECEIPT OF CASH CAPITAL ITEMS

John Harold (Inv. Attach. 1, Item _ _)	**$44.40**
Sears (Inv. Attach. 1, Item _ _)	**120.86**
American Life Ins. Co.—Insurance proceeds (Inv. Attach. 1, Item _ _)	**10,000.00**
ABC Gas & Electric Co.—Dividend of record (Inv. Attach. 2, Item _ _)	**75.00**
Principal payments on A.A. Abbott note (Inv. Attach. 2, Item _ _):	
Mar. 5	**1,003.56**
June 2	**721.22**
Sept. 5	**737.45**
Dec. 3	**754.05**
Musician's Quarterly refund (Inv. Attach. 2, Item _ _)	**4.78**
Atlas Health refund (Inv. Attach. 2, Item _ _)	**73.00**
Total Receipts	**$13,534.32**

Comment: If Schedule A includes only the income receipts, then a separate schedule should be used for the principal receipts. See §18.15. Local rules may require renumbering of this schedule.

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/§18.19 6. Handling Disbursements on Account

§18.19 6. Handling Disbursements on Account

As with receipts, the categorized account classifies disbursements by type.

If property is specifically bequeathed, related expenses should be segregated, allowing the analysis of the recipient's net income from the property to be more easily determined.

Receipts and cancelled checks need not be filed unless ordered by the court or requested by an interested person. Prob C §10901. The receipt or check numbers for disbursements can be added to the disbursement schedule if the representative wishes, and inclusion of receipt numbers can ensure that all payments are included in the account.

Expenses of sale are included as a disbursement and, although not supported by the representative's cancelled check, should be evidenced by the selling agent's receipted bills or final escrow statement.

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/§18.20 7. Form: Sample Summary of Disbursements Under Prob C §1062

§18.20 7. Form: Sample Summary of Disbursements Under Prob C §1062

Schedule C: DISBURSEMENTS

Components	*Amount*
Expense of administration	**$417.84**
Expenses relating to 9236 Maple Lane, Los Angeles, CA (Inv. Attach. 2, Item _)	**2,581.30**
Claims paid	**1,560.66**
Family allowance paid	**3,300.00**
Total	**$7,859.80**

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/§18.21 8. Account of Disbursements When All or Part of Estate Distributed to Testamentary Trust

§18.21 8. Account of Disbursements When All or Part of Estate Distributed to Testamentary Trust

When all or part of the estate will be distributed to a testamentary trust, disbursements should be allocated to the principal or income accounts so that the net income passing to the trust can be determined.

Principal disbursements consist in part of the principal portion of mortgage or note payments, estate taxes, property taxes that were a lien or were delinquent as of the date of death, income taxes owed on the decedent's final tax returns, debts of the decedent, a family allowance, and expenses of the probate administration, unless the will provides otherwise.

Income disbursements consist in part of the interest portion of mortgage or note payments, estate income tax not attributable to capital gains, accountants' fees to prepare the estate income tax returns, bank service and check-printing charges, property taxes that are a lien after death, and routine expenses of operating estate property, *e.g.,* utility bills, maintenance costs, insurance, and caretaker and gardener fees. Major repairs to real property, such as a new roof or fixing structural defects, are considered principal expenditures.

See California Decedent Estate Practice §§24.53-24.69 (2d ed Cal CEB 2009) for more detail on which real property taxes on California property are considered a lien at death and therefore a principal charge.

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/ §18.21A 9. Form: Sample Chronological Schedule of Disbursements

§18.21A 9. Form: Sample Chronological Schedule of Disbursements

Schedule C: DISBURSEMENTS

Date	Paid to	Purpose	Amount
2008			
Jan. 29	**Richard Roe, M.D.**	**Medical services, last illness**	**$ 150.00**
	Mary Smith, R.N.	**Medical services, last illness**	**24.00**
	Chapel Mortuary	**Funeral**	**498.00**
	Mercy Hospital	**Last Illness**	**230.00**
	P T & T Co.	**Closing bill**	**8.94**
Mar. 10	**Able & Co.**	**Premium on bond**	**30.00**
	Jones & Co.	**Insurance on building**	**52.00**
Apr. 10	**Tax collector**	**Real property taxes a lien after death**	**357.00**
	James Crown	**Probate referee—appraisal**	**128.07**
	Bill Bailey	**Attorney's disbursements**	**27.50**
15	**Internal Revenue Service**	**Decedent's final tax return**	**173.29**
May 1		**Family allowance**	**1,500.00**
5	**Smith & Co.**	**Expenses of sale, XYZ stock**	**217.27**
10	**Mt. Diablo S&L**	**Transfer**	**15,000.00**
	Joseph Smith	**Creditor's claim**	**293.48**
	White Dep't Store	**Creditor's claim**	**182.95**
June 15	**National Bank**	**Payment on deed of trust**	**900.00**
	Daily Journal	**Administration expense, notice of petition to administer estate**	**15.00**
Aug. 1		**Family allowance**	**900.00**
Nov. 1		**Family allowance**	**900.00**
Nov. 15	**National Bank**	**Payment on deed of trust**	**900.00**
Dec. 10	**Tax collector**	**Real property taxes a lien after death**	**372.30**

Total Disbursements	**$22,859.80**

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/§18.22 10. Form: Sample Categorized Account of Disbursements

§18.22 10. Form: Sample Categorized Account of Disbursements

Schedule C: DISBURSEMENTS

Date	*Paid to*	*Purpose*	*Amount*
2008			
Expenses of administration:			
Mar. 10	**Able & Co.**	**Premium on bond**	**$30.00**
Apr. 10	**James Crown**	**Probate referee—appraisal**	**128.07**
	Bill Bailey	**Attorney's disbursements**	**27.50**
June 15	**Daily Journal**	**Notice of petition to administer estate**	**15.00**
May 5	**Smith Co.**	**Expenses of sale, XYZ stock**	**217.27**
			$417.84
Expenses relating to 9236 Maple Lane, Los Angeles, California (Inv. Attach. 2, Item _):			
Mar. 10	**Jones & Co.**	**Insurance**	**$52.00**
Apr. 10	**Tax collector**	**Real property tax**	**357.00**
June 15	**National Bank**	**Payment on deed of trust**	
		Interest	**450.00**
		Principal	**450.00**
Nov. 15	**National Bank**	**Payment on deed of trust**	
		Interest	**436.50**
		Principal	**463.50**
Dec. 10	**Tax collector**	**Real property taxes**	**372.30**
			$2,581.30
Claims paid:			
Jan. 29	**Richard Roe, M.D.**	**Medical services, last illness**	**$150.00**
	Mary Smith, R.N.	**Medical services, last illness**	**24.00**
	Mercy Hospital	**Last illness**	**230.00**
	Chapel Mortuary	**Funeral**	**498.00**

	P T & T	Closing bill	8.94
Apr. 15	Internal Revenue Service	Decedent's final tax return	173.29
May 10	Joseph Smith	Claim	293.48
	White Dep't Store	Claim	182.95
			$1,560.66

Miscellaneous:

May 10	Mt. Diablo S&L	Transfer	$15,000.00
June 15	Family allowance	(11 months at $300 per month)	$3,300.00
			18,300.00
		Total Disbursements	$22,859.80

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/ §18.22A 11. Form: Sample Schedule of Net Income or Loss From Trade or Business

§18.22A 11. Form: Sample Schedule of Net Income or Loss From Trade or Business

Schedule ___: NET INCOME FROM TRADE OR BUSINESS

Gross Receipts/Sales		**$150,000.00**
Less:		
Returns and allowances		**(10,000.00)**
Cost of goods sold		
Gross Profit		**140,000.00**
Other Income		
Gross Income		**140,000.00**
Less Expenses		
Advertisings	**$1,000.00**	
Bad debts from sales or services	**500.00**	
Car and truck expenses	**1,500.00**	
Commissions and fees		
Depletion		
Depreciation and IRC §179 expense deduction		
Employee benefit programs		
Insurance (other than health)	**800.00**	
Interest:		
Mortgage		
Other		
Legal and professional services	**1,000.00**	
Office expense		
Pension and profit-sharing plans		
Rent or lease		
Vehicles, machinery, and equipment		
Other business property		

Repairs and maintenance		
Supplies (not included in cost of goods sold)	**200.00**	
Taxes and licenses		
Travel, meals, and entertainment:		
Utilities	**1,000.00**	
Wages (less employment credits)	**48,000.00**	
Other expenses		
Total Expenses		**(54,000.00)**
Tentative Profit (loss)		**86,000.00**
Expenses for business use of home		
Net Income or (loss) from Trade or Business		**86,000.00**

Comment: The schedule of net income or loss from a trade or business is sufficient for the account if it provides the information disclosed on Schedule C or F of the federal income tax return. Prob C §1062(c).

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§18.23 12. Form: Sample Schedules for Losses or Gains on Sale or Other Disposition

Schedule D: LOSSES ON SALE OR OTHER DISPOSITION

Sold on May 15, 2008, 200 shares of HIJ Telephone Co. 6% first preferred stock, par value of $100 (Inv. Attach. 2, Item _ _):

Sold at	**$17,750**
Appraised at	**−20,000**
Loss	**($2,250)**

Schedule B: GAINS ON SALE OR OTHER DISPOSITION

Sold on May 15, 2008, 200 shares of XYZ Telephone Co. 6% first preferred stock, par value of $100 (Inv. Attach. 2, Item _ _):

Sold at	**$21,000**
Appraised at	**−20,000**
Gain	**$1,000**

Comment: When there are both gains and losses on sales of estate property, some practitioners prepare only one schedule showing the net result and title it "Gains on Sales," "Losses on Sales," or "Gains and Losses on Sales." All sales are listed in the schedule, with the net effect as shown in the heading. This practice seems satisfactory to most courts although some local rules require that losses be separately shown. However, if many sales have occurred during the estate administration, separate gain and loss schedules can clarify these transactions for the court.

Gain or loss is the difference between the gross sales price and the appraised value of the asset as shown in the inventory. Showing the sales price as the gross rather than as the net amount received increases any gain and reduces any loss. The amount of gain or loss shown in the account is not necessarily gain or loss for income tax purposes. Not only are expenses of sale deductible for income tax purposes, but there may be other charges not shown in the account (*e.g.,* depreciation) that affect gain or loss for income tax purposes. See §§18.16-18.17 on reporting sale proceeds in receipts and §§18.19-18.22 on reporting costs of sale in disbursements.

Capital gain dividends from mutual funds are included on this schedule; regular dividends are listed on the schedule of receipts as income.

This schedule also lists property included in the inventory that is no longer in the representative's possession and is not otherwise accounted for. It may include property destroyed by fire or other casualty loss not entirely covered by insurance, or property lost through litigation.

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/§18.24 13. Form: Sample Schedule for Other Dispositions of Property

§18.24 13. Form: Sample Schedule for Other Dispositions of Property

Schedule E: DISTRIBUTIONS

708 Elm Street, Los Angeles, California; Attach. 2, Item _ _, Inventory and Appraisal; distributed to decedent's surviving spouse by order of preliminary distribution dated October 1, 2008:

$125,000

Comment: This schedule should include a list of all cash or property that has been distributed in a preliminary distribution. Prob C §1062(e). The schedule must include the date and amount of the distribution shown at its carry value, *i.e.,* the appraised value for assets included in the inventory and appraisal or the purchase price for assets acquired later.

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/§18.25 14. Form: Sample Schedule of Property on Hand

§18.25 14. Form: Sample Schedule of Property on Hand

The schedule of Property on Hand should show exactly what is on hand and subject to the order for distribution. The representative should be asked to review this schedule in detail. The items are listed at their carry value, *i.e.,* the appraised value for assets included in the inventory and appraisal or the purchase price for assets acquired later. See Prob C §1062(f). The property should be listed in the same order as in the inventory for easy verification. Any investments (*e.g.,* dividend reinvestments) are listed at their cost. Cash items, *e.g.,* bank accounts, should be verified with the latest bank statements at the end of the accounting period.

The description of property should be that shown in the inventory and appraisal and identified by the inventory item number with appropriate additions for stock splits. For securities held in a brokerage account, the schedule must include the complete description of each individual security held in "street name." Cal Rules of Ct 7.651(b)(4). There should be appropriate additions for stock splits, and an adjustment to the inventory value to reflect principal cash receipts, such as on the note receivable in the sample account.

For real property, the schedule must include the complete legal description, any street address, and any assessor's parcel number. Cal Rules of Ct 7.651(b)(3). Legal descriptions of real property should be reviewed for accuracy. For promissory notes, the schedule must indicate whether the notes are secured or unsecured and describe the security interest of any secured notes in detail. Cal Rules of Ct 7.651(b)(2).

Probate Code §1063(a) requires an additional schedule showing the estimated market value of the assets on hand as of the end of the accounting period and the beginning of the accounting period for all accounts subsequent to the initial account. See §18.7B. The market value of assets can be included on the Schedule of Property on Hand, as it is shown here, or on a separate schedule.

Schedule F: PROPERTY ON HAND

On hand as of December 31, 2008:

Property	Carry Value	Fair Market Value
Real property located at 9236 Maple Lane, Los Angeles, California, described as Lot 78, Tract ABC, per map recorded in Book 83, Page 304 of Maps, Records of Los Angeles County, improved with two-story residence, subject to unrecorded contract of purchase in which decedent is purchaser and Jay Smith is seller. Assessor's Parcel No. 935-44-2 (Inv. Attach. 2, Item _ _)	**$180,000.00**	**$200,000.00***
300 shares of ABC Gas & Electric Co. (Inv. Attach. 2, Item _ _)	**6,000.00**	**6,300.00**
Dividend reinvestment: 15 shares of ABC Gas & Electric Co. (Schedule ___: Changes in Assets)	**315.00**	**325.50**
3 US Series E Bonds, $100 each (Inv. Attach. 2, Item _ _)	**277.08**	**285.18**
Balance on note to A.A. Abbott, dated		

8/23/98, secured by deed of trust on 389 First Street, Midville, California (Inv. Attach. 2, Item _ _)	**36,844.02**	**36,844.02**
Antique collection (Inv. Attach. 2, Item _ _)	**1,000.00**	**1,200.00**
Household furniture, furnishings, and personal effects (Inv. Attach. 2, Item _ _)	**5,000.00**	**5,000.00**
Cash, Bank of Sierra, Account No. 000	**18,195.00**	**18,195.00**
Cash, Mt. Diablo Sav. & Loan Ass'n, Account No. 0000	**18,622.85**	**18,622.85**
Total Property on Hand	**$266,253.95**	**$286,772.55**

*Estimate based on real estate broker's analysis of comparable sales

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/ §18.25A 15. Form: Sample Schedule of Changes in the Form of Assets

§18.25A 15. Form: Sample Schedule of Changes in the Form of Assets

Schedule __: CHANGES IN ASSETS

Date	Description	
2008		
Feb 2	**Dividend reinvestment: 1.75 shares of ABC Gas & Electric Co.**	**$75.00**
May 5	**Dividend reinvestment: 2 shares of ABC Gas & Electric Co.**	**80.00**
Aug 5	**Dividend reinvestment: 2 shares of ABC Gas & Electric Co.**	**80.00**
Nov 2	**Dividend reinvestment: 2 shares of ABC Gas & Electric Co.**	**80.00**
Dec 3	**Stock split ABC Gas & Electric 2:1**	**_____**
		$315.00

Comment: It is advisable to obtain court approval to continue any dividend reinvestment plan, because it may be inconsistent with the personal representative's duty to preserve the estate.

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/§18.26 16. Form: Sample Schedule of Estate Accounted For

§18.26 16. Form: Sample Schedule of Estate Accounted For

Schedule ___: ESTATE ACCOUNTED FOR

	Fee Base	
Inventory and Appraisal	**$394,090.03**	
Receipts not accounted for on inventory	**7,273.72**	
Gains on Sale or Other Disposition (Schedule B)	**1,000.00**	**$402,363.75**
Less Losses on Sale or Other Disposition (Schedule D)		**−3,250.00**
Total Estate Accounted for		**$399,113.75**

Compensation Computation

4% of first	**$ 100,000.00**		**$4,000.00**
3% of next	**100,000.00**		**3,000.00**
2% of next	**199,113.75**		**3,982.28**
Total Estate Accounted for	**$399,113.75**	**Total Fees**	**$10,982.28**

Comment: This schedule summarizes those in §§18.14-18.25 as they affect the estate accounted for and the determination of statutory compensation. See also chap 19. This schedule can easily be included in the petition itself (see §18.31).

Statutory compensation is set out in Prob C §10800. Compensation is 4 percent on the first $100,000, 3 percent on the next $100,000, 2 percent on the next $800,000, 1 percent on the next $9,000,000, one-half of 1 percent on the next $15,000,000, and a reasonable amount to be determined by the court on amounts greater than $25,000,000. See chap 19. Some courts will not allow receipts not accounted for in the inventory to be taken into account for purposes of computing the compensation.

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§18.27 17. Form: Sample Schedule of Creditors' Claims

Schedule ___: CREDITORS' CLAIMS

1. Claims filed _ _[*and served*]_ _, allowed, and paid in full

Date Claim Filed	*Date Paid*	*Claimant*	*Nature of Claim*	*Amount*
2008				
Jan. 20	**Jan. 29**	**Mary Smith, R.N. 123 Faraway St. San Francisco**	**Medical services, last illness**	**$ 24.00**
Jan. 20	**Jan. 29**	**Richard Roe, M.D. Mercy Hospital San Francisco**	**Medical services, last illness**	**150.00**
Jan. 20	**Jan. 29**	**Mercy Hospital**	**Medical services, last illness**	**230.00**
Jan. 20	**Jan. 29**	**Chapel Mortuary**	**Funeral**	**498.00**
March 12	**May 10**	**Joseph Smith**	**Services rendered**	**293.48**
March 15		**White Dep't Store**	**Goods sold and delivered**	**182.95**

2. Claims filed and rejected

Date of Service of Claim	*Claimant*	*Nature of Claim*	*Claim Due*	*Date of Notice of Rejection*	*Action Filed*	*Security for Claim*	*Amount*
2008							
Feb. 10	**A.B. Veep**	**gambling debt**	**Jan. 3, 1998**	**March 12, 1998**	**No**	**None**	**$250.00**

Comment: The representative may wish to list any claims filed as a separate schedule to the petition. If this schedule is used, the representative may want to list informal claims (*e.g.,* the bills or statements) as a third category. See Prob C §§9050-9054 on notice to creditors. Probate Code §10900(b) requires that the account state whether notice of administration has been given to creditors. As to all creditors' claims filed, the following must be shown in the account: (a) date of filing, (b) name of claimant, (c) amount of claim, and (d) action taken on claim. The nature of the claim should also be included if the account is part of the final report or petition for final distribution. Cal Rules of Ct 7.403. If any claim is not paid, satisfied, or adequately provided for, the statement of liabilities that is part of the account under Prob C §10900 must indicate (a) whether the claim is due and, if so, when; (b) the date of any notice of rejection; (c) whether the creditor has brought suit on the claim; and (d) the identity of any real or personal property that is security for the claim. Prob C §10900(b)(3).

Payment on unfiled claims may be made by a representative with powers under the Independent Administration of Estates Act (Prob C §§10400-10592) without court approval. However, the representative may seek specific court

confirmation of such actions in the final report and account by listing these claims either on the claim schedule or in the petition itself (see §18.31).

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/ VI. FINAL ACCOUNT, REPORT, AND PETITION FOR DISTRIBUTION/§18.28 A. Checklist: Final Account, Report, and Petition for Distribution

VI. FINAL ACCOUNT, REPORT, AND PETITION FOR DISTRIBUTION

§18.28 A. Checklist: Final Account, Report, and Petition for Distribution

No step in drafting the final account and the petition for its settlement and for final distribution should be taken before the master checklist (see §1.13) has been reviewed systematically to confirm that all steps have been taken to prepare the estate for distribution. The legal assistant should call the attorney's attention to any problems that have been left undecided and matters that have been overlooked.

The closing date may be determined when the estate is in proper condition to be closed and there are sufficient funds to pay all debts and expenses. The checklist below may be used as a guide for final distribution.

OVERALL REVIEW

- Final account, report, and petition for distribution filed; see §§18.28-18.29.
- Notice of hearing mailed by attorney at least 15 days before hearing; see §5.7.
- Set for hearing on _ _ _ _ _ _ _ _ _ _ _ _ _, at _ _ _.m., Dept. _ _ _.
- Proof of mailing of notice of hearing filed with clerk.
- Receipts filed if requested by person interested in estate or by court; include receipts for, *e.g.,* claims, taxes.
- Franchise Tax Board certificate on income taxes filed for certain estates with nonresident beneficiaries; see §18.30.
- Supplemental account filed; see §§18.35-18.35A. Special notice, if requests are on file.
- Order settling accounts and for distribution signed by judge and filed; see §18.36.
- Beneficiaries paid, and receipts received; see §§20.16-20.20.
- Certified copy of order recorded in each county where real property is located.
- Application for final discharge and receipts of distribution filed; see §§20.20-20.21.
- Order for final discharge signed by judge and filed. See §20.22.
- Notify bonding company, if any, of discharge; notify tax authorities, if necessary.

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/ §18.28A B. Preparing Final Account, Report, and Petition for Distribution

§18.28A B. Preparing Final Account, Report, and Petition for Distribution

The pleading prepared at this stage is often referred to as the "final account, report, and petition for distribution." However, the petition should bear the full title and indicate all the relief sought. When there are several items in the petition, some practitioners list and number each item separately in the heading and the notice of hearing.

The title and the notice of hearing should include the request for compensation for ordinary and extraordinary services. Cal Rules of Ct 7.102. An attorney requesting a fee for extraordinary services should either join in the petition or present a separate petition in support of attorneys' compensation. See §19.14.

When the period of administration has exceeded the time limits provided in Prob C §12200, the petition should state (see form 18.29-12) that the estate administration was prolonged under court order, if that is the case.

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/ §18.28B 1. Final Account

§18.28B 1. Final Account

Although some attorneys file an account separate from the report and petition, ordinarily the complete account is attached as an exhibit to the petition. The petition refers to the exhibit and ordinarily includes as part of the report a narrative briefly summarizing the high points of the summary of account. The summary of account is often included in the petition as well as being part of the exhibit. If the account is an interim account, it should be titled, *e.g.,* First Account Current and Report, and indicate any relief sought, such as partial payment of compensation, instructions, etc.

By custom, certain matters are set out in the report to inform the court of the condition of the estate, to show compliance with certain prerequisites to closing the estate and to distribution, and to present matters requiring the court's determination. If the petition includes an account, the report or the petition *must* contain all of the following:

- A description of all sales, purchases, changes in form of assets, or other transactions during the accounting period that are not readily understandable from the account schedules (Prob C §1064(a)(1)).
- An explanation of any unusual items in the account (Prob C §1064(a)(2)).
- A statement of all compensation paid from estate assets to the representative or to attorneys for the representative without a prior court order (Prob C §1064(a)(3)).
- A statement disclosing any family or affiliate relationship between the representative and any agent hired by the representative during the accounting period (Prob C §1064(a)(4)). See form 18.29-19. As used in this section, "family" means a relationship created by blood or marriage, and "'affiliate' means an entity that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the fiduciary" (Prob C §1064(c)).
- An allegation disclosing whether all cash, except for an amount reasonably necessary for orderly administration of the estate, has been invested in interest-bearing accounts or in other investments permitted by law or the governing instrument (Prob C §1064(a)(5)). See California Decedent Estate Practice §§31.10, 31.38 (2d ed Cal CEB 2009).

See §18.31 for required contents of the report if the account has been waived.

Total charges should equal total credits. If the account is the representative's first account, he or she is charged with the total appraised value of the inventory and appraisal. If it is a later account, he or she is charged with the total property on hand as shown on the prior account.

Capital changes, such as sales and redemptions of property, stock splits and shares received by dividend reinvestments, and any purchases made by the representative (investments allowed representatives are set forth in Prob C §§9730-9737), should be fully disclosed in the petition. If the transactions are detailed on a schedule attached to the petition, the specific schedule should be listed.

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§18.28C 2. Claims

Some courts require that all claims be listed in the final account, even though they may have already been listed in an earlier account. If only a few claims have been filed and paid, some attorneys prefer to list them in the report rather than in a separate schedule. For a sample schedule listing claims, see §18.27; on rejection of claim and form of notice, see §§12.22-12.24.

If claims have been paid without prior court approval (*e.g.,* by a representative with authority under the Independent Administration of Estates Act (IAEA)), or if the claim was compromised or rejected in part, the attorney may wish to seek court approval in the petition. Independent actions taken without notice of proposed actions also should be listed. The allegations in form 18.29-22 are necessary to apprise the court, and remind persons interested in the estate, of the reasons why the representative did not obtain court approval (or, in certain cases, send notice) of various interim actions.

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§18.28D 3. Estate and Income Tax Allegations

Form 18.29-30 is included because some courts will not order final distribution unless the estate tax return has been filed and the estate taxes paid. If the representative is petitioning for distribution of the estate before payment of estate taxes, he or she should state that fact in the petition. Counsel should find out whether local probate rules require a statement of how and when the estate tax returns will be filed and the estate taxes paid. If an election to defer federal estate taxes under IRC §6161 or §6166 has been made, an explanation of the terms of the deferral should probably be included in the petition to advise the court about what portion of the tax remains unpaid. Good practice dictates that the petition for distribution not be filed until the estate tax is paid and that a statement be included in the petition to apprise the court and the transferees that additional estate tax, interest, and penalties may be incurred if the return has not been audited nor a closing letter received at the time the petition for distribution is filed.

Form 18.29-32 must be included when beneficiaries in other states or countries receive at least $250,000 in total and the estate exceeds $1 million at the date of death. Rev & T C §19513; 18 Cal Code Regs §19513. See §18.30.

When income tax returns have been filed, some practitioners list the years for which they have been filed and the tax due, and state that the tax has been paid in full.

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§18.28E 4. Heirs and Beneficiaries

The list of heirs or beneficiaries must include the ages of any minors. The ages of adults need not be indicated unless distribution depends on attaining a certain age; if so, the present age should be given. See §§18.29-43—18.29-44.

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§18.28F 5. Proposed Distribution

If the proposed distribution is uncomplicated, the details can be set forth in the petition. If specific gifts are made, it is useful to identify what property comprises the residue, either in the petition or in an accompanying schedule. When the will is unclear or the distributions complex, the report of assets passing to testate beneficiaries should quote or paraphrase all relevant provisions of the will to indicate the specific authority for the requested distributions. This procedure allows the representative to present to the court for resolution any potential questions of interpretation of the will. If the identity of the intestate heirs or the share distributable to each is in question, the petition should state those issues for the court's determination. The manner of proposed distribution and the assets to be distributed to each distributee can be attached as an exhibit and referred to in the petition. The caption (see form 18.29-1) and the request should include the additional relief.

The property to be distributed and details of distribution must be described in detail in the petition or an attachment that is incorporated in the petition by reference; it is unacceptable merely to refer to inventory items or the will in general terms. If an account is filed with the petition, the property description must be included in an account schedule. Cal Rules of Ct 7.651.

Any legal descriptions of real property should be carefully reviewed for accuracy.

Distributions of cash to residuary beneficiaries can cause potential accounting problems if the petition and order do not recognize from the outset that the amount of cash on hand varies from time to time. The best way to do this is to indicate that the residuary beneficiary will receive:

cash of $_ _ _ _ _ _, plus cash receipts and less cash disbursements from _ _[*date final account ends*]_ _ to date of distribution.

If there is more than one residuary beneficiary, the language may be altered, *e.g.:*

cash of $_ _ _ _ _ _, plus one third of cash receipts and less one third of cash disbursements from _ _[*date final account ends*]_ _ to date of distribution.

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/ §18.28G a. Distribution to Minor

§18.28G a. Distribution to Minor

If the proposed distribution is to a minor directly, see forms 18.29-48—18.29-50 for alternative forms regarding blocked accounts, the California Uniform Transfers to Minors Act (CUTMA) (Prob C §§3900-3925), or devises under $5000. If the will provides for a distribution subject to CUTMA but fails to nominate a custodian who will act, the personal representative shall designate a custodian from among those eligible to serve for property of that kind under Prob C §3909(a). Prob C §3905(c). See Prob C §3907(c) (adult member of minor's family or trust company).

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§18.28H b. Distributee's Whereabouts Unknown

If a distributee's whereabouts are unknown, the order of distribution must include alternate distributees and the share to which they are entitled. See form 18.29-47. The alternate distributees are the persons who would be entitled to distribution if the distributee named in the order predeceased the decedent, or in the case of a charitable gift, under the doctrine of cy pres. The distributee is deemed to have predeceased the decedent if the distributee does not claim his or her share within 5 years after the date of the order of distribution and the alternate distributees are entitled to the share. Prob C §11603(c). For discussion of depositing distribution with the county treasurer when the distributee cannot be found, see California Decedent Estate Practice §32.78 (2d ed Cal CEB 2009). In the alternative, if a probate bond is not required, the personal representative may seek an order permitting the estate to hold the missing distributee's share in a blocked account for distribution to the missing distributees, or to the alternate distributees if it is still unclaimed after 5 years.

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/ 6. Compensation/§18.28I a. Ordinary Compensation

6. Compensation

§18.28I a. Ordinary Compensation

Ordinary compensation is set out in Prob C §10800. For a schedule showing computation of compensation, see §19.1.

If there are two or more representatives or attorneys, the court apportions the payment according to the services rendered by each. In such circumstances the petition should recite these facts, request that compensation be apportioned, and suggest a division. See §§18.29A-18.29B, 19.13. If a written agreement has been reached between the parties, the agreement should be referred to in the petition and attached as an exhibit to the report. See also California Decedent Estate Practice §30.39 (2d ed Cal CEB 2009).

The representative should be instructed not to take compensation until the court approves the payment at the hearing. Cal Rules of Ct 7.700. If the representative or the attorney for the representative is paid compensation from assets subject to the account without a prior court order, the petition for approval of the account or a report accompanying the petition must contain a statement of the compensation paid (Prob C §1064(a)(3)) and should be accompanied by a declaration explaining the circumstances of the payment. In addition to removing the personal representative, the court may surcharge the personal representative if the account shows payment of compensation without a court order. The surcharge may include interest from the date of payment. Cal Rules of Ct 7.700(b).

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§18.28J b. Extraordinary Compensation

The court has discretion in deciding whether to award extraordinary compensation to the personal representative or to the attorney for the personal representative. Cal Rules of Ct 7.703. When extraordinary fees are sought, the court may consider the amount of statutory compensation. Cal Rules of Ct 7.703. The court may require the declaration in support of fees to state the time and reasonable applicable hourly rates for the statutory services performed so the court can determine whether statutory fees adequately compensate the personal representative or attorney for some or all of the extraordinary services. See, *e.g., Estate of Walker* (1963) 221 CA2d 792, 34 CR 832.

The attachment or declaration for extraordinary fees must include a detailed description of services provided, the hours expended, the results achieved, and the benefit to the estate. Cal Rules of Ct 7.702. See form 18.29-39. For information on requesting compensation for extraordinary services, see §§19.9-19.16.

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/ §18.28K 7. Closing Expenses

§18.28K 7. Closing Expenses

The attorney must decide on what sum to retain for closing expenses in paragraph 18.29-42 on the basis of the considerations discussed in California Decedent Estate Practice §31.66 (2d ed Cal CEB 2009). These may include actual closing expenses, such as the reasonable costs of storing, delivering, or shipping tangible personal property to the distributee(s), or funds for liabilities, such as estate taxes, estate tax deficiencies, income tax deficiencies, possible unbarred claims, or real property tax escape assessments due to the change in ownership at death.

If the estate has been delayed in closing, the reasons for the delay should be stated in the petition, as a new clause after form 18.29-12.

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/§18.29 C. Form: Final Account, Report, and Petition for Distribution

§18.29 C. Form: Final Account, Report, and Petition for Distribution

Copies: Original for filing; copy for representative; office copies.

18.29-1 Caption

[*Title of court*]

Estate of _ _[*name*]_ _,	)**No.** _ _ _ _ _ _
	)
Decedent	)_ _[*FIRST/SECOND/(ETC.)*]_ _ _ _[*AND*]_ _
	)**FINAL ACCOUNT AND REPORT OF**
	)_ _[*EXECUTOR/*
	)*ADMINISTRATOR/(ETC.)*]_ _ **AND PETITION**
	)**FOR ITS SETTLEMENT, AND PETITION**
	)**FOR FINAL DISTRIBUTION, FOR**
	)**ALLOWANCE OF COMPENSATION TO**
	)_ _[*EXECUTOR/ADMINISTRATOR/(ETC.)*]_ _
	)_ _[*AND*]_ _ **ATTORNEYS FOR ORDINARY**
	)_ _[*AND EXTRAORDINARY*]_ _ **SERVICES**
	)_ _[, AND *FOR (specify, e.g., ALLOCATION*
	)*OF ESTATE TAXES; DISTRIBUTION TO*
	)*TESTAMENTARY TRUST*]_ _
	)
	)**Hearing date:**
	)**Time:**
	)**Department:**
	)
	)
	)
_____	)

18.29-2 Introduction

Petitioner, _ _[*name*]_ _**, the** _ _[*executor/administrator/etc.*]_ _ **of the** _ _[*will/estate*]_ _ **of** _ _[*name*]_ _**, deceased, alleges:**

18.29-3 Date of death and domicile

Date of Death and Domicile. _ _[*Name*]_ _ **died** _ _[*testate/intestate/partially intestate*]_ _ **on** _ _[*date*]_ _**, in** _ _ _ _ _ _ **County,** _ _[*state*]_ _**, and was domiciled in** _ _[*that county/county of decedent's domicile if other than where decedent died*]_ _**.**

18.29-4 Ancillary administration

[*If applicable, add one or more of the following options*]

[*Option 1: Ancillary administration*]

Ancillary Administration. **This is an ancillary administration of the estate. The domiciliary administration is in** _ _[*state or foreign country*]_ _**.**

[*Option 2: Ancillary administration in another state or country*]

Ancillary Administration. **There** _ _[*is/was*]_ _ **an ancillary administration of the decedent's estate in** _ _[*state or foreign country*]_ _**.** _ _[*This ancillary administration has been completed/This ancillary administration has not been completed but its completion is fully provided for and final distribution of this estate should not be further delayed*]_ _**.**

[*Continue*]

18.29-5 Appointment of executor or administrator

[*Add one of the following alternatives*]

[*Alternative 1: Appointment of executor or administrator with will annexed*]

Will Admitted to Probate; Letters Issued. **The decedent's will dated _ _[*date*]_ _, _ _[*and codicil(s) dated _ _[date]_ _]_ _, _ _[was/were]_ _ admitted to probate by order of this court on _ _[*date*]_ _.**

Petitioner qualified as _ _[*executor of the will/administrator with the will annexed)*]_ _ and letters _ _[*testamentary/of administration with the will annexed)*]_ _ were issued to petitioner on _ _[*date*]_ _. At all times since then petitioner has been and is now the duly qualified _ _[*executor/administrator with the will annexed*]_ _ of the decedent's _ _[*will/estate*]_ _.

[*Alternative 2: Appointment of administrator, no will*]

Appointment of Administrator; Letters Issued. **Despite search and inquiry, no will of decedent has been found. Petitioner qualified and was appointed as administrator of the estate, and _ _[*on filing of bond in the amount of $_ _[amount]_ _]_ _, letters of administration were issued to petitioner on _ _[*date*]_ _. At all times since then _ _[*he/she*]_ _ has been and now is the administrator of the estate.**

[*Continue*]

[*If applicable, add the following option*]

[*Option: Authority granted under IAEA*]

18.29-6 Authority granted under Independent Administration of Estates Act (IAEA)

Authority Granted Under Independent Administration of Estates Act. **On _ _[*date*]_ _, petitioner was granted _ _[*full/limited*]_ _ authority by order of this court to administer the estate without court supervision under the Independent Administration of Estates Act. This authority has not been revoked.**

18.29-7 Petition to administer estate published

Notice of Petition to Administer Estate**. Notice of the petition to administer estate has been published for the period and in the manner prescribed by law, the first publication having been made on _ _[*date*]_ _.**

18.29-8 Notice to public entities

[*Add one of the following alternatives*]

[*Alternative 1: Notice to public entities required*]

Notice to Public Entities Served. **The notice required by Probate Code §9201 was served on _ _[*specify public entity*]_ _ on _ _[*date*]_ _, _ _[*in the form specified by the agency, a copy of which is attached to this petition as Exhibit _ _[letter]_ _/by mailing a copy of a completed Notice to Creditors to the agency*]_ _. Other than taxes otherwise addressed in this petition, Petitioner has no reason to believe that any other public entities have any basis for making a claim against this estate _ _[*except _ _[name of entity]_ _, which filed a claim in this proceeding on _ _[date]_ _]_ _.**

Comment: If the agency does not have a form, use the second bracketed alternative ("by mailing …") above.

[*Alternative 2: Notice to public entities not required*]

Notice to Public Entities Not Required. **The estate is not required to give notice to any "public entity" described in Probate Code §9201.**

[*Continue*]

18.29-9 Notice to Director of Health Care Services (Prob C §9202(a))

[*Add one of the following alternatives*]

[*Alternative 1: Notice to Director of Health Care Services required*]

***Notice to Director of Health Care Services Mailed*. Notice of this proceeding with a copy of decedent's death certificate was mailed to the Director of Health Care Services on _ _[*date*]_ _as required by Probate Code §9202(a). _ _**[*A response from the Director of Health Care Services that the department will not file a claim in this proceeding was received and is attached to this petition as Exhibit _ _[*letter*]_ _.]_ _

[*Alternative 2: Notice to Director of Health Care Services not required*]

***Notice to Director of Health Care Services Not Required*. Notice to the Director of Health Care Services under Probate Code §9202(a) is not required, because the decedent did not receive and was not the surviving spouse or registered domestic partner of a person who received any Medi-Cal benefits.**

[*Continue*]

18.29-10 Notice to Director of California Victim Compensation and Government Claims Board

[*Add one of the following alternatives*]

[*Alternative 1: Notice to Director of California Victim Compensation and Government Claims Board required; see §12.11B*]

***Notice to Director of California Victim Compensation and Government Claims Board Mailed*. Notice of this proceeding with a copy of decedent's death certificate was mailed to the Director of the California Victim Compensation and Government Claims Board on _ _[*date*]_ _, as required by Probate Code §9202(b). _ _**[*A response from the Director of the California Victim Compensation and Government Claims Board that the department will not file a claim in this proceeding was received and is attached to this petition as Exhibit _ _[*letter*]_ _.]_ _

[*Alternative 2: Notice to Director of California Victim Compensation and Government Claims Board not required*]

***Notice to Director of California Victim Compensation and Government Claims Board Not Required*. Notice to the Director of California Victim Compensation and Government Claims Board under Probate Code §9202(a) is not required, because neither the petitioner nor petitioner's attorney has any knowledge of an heir or beneficiary being held in any prison, jail, or other correctional facility.**

[*Continue*]

18.29-10A Notice to Franchise Tax Board

***Notice to Franchise Tax Board Mailed*. The notice required by Probate Code §9202(c) was served on the Franchise Tax Board on _ _**[*date*]_ _**, _ _**[*by mailing a copy of a completed Notice to Creditors to the Franchise Tax Board/in the form specified by the Franchise Tax Board, a copy of which is attached to this petition as Exhibit _ _*[*letter*]_ _]_ _**.**

18.29-11 Notice to persons requesting special notice

[*Add one of the following alternatives*]

[*Alternative 1: Special notice not requested*]

***Request for Special Notice.* No one has filed a request for special notice in this proceeding.**

[*Alternative 2: Special notice requested*]

***Request for Special Notice.* The following have filed request(s) for special notice in this proceeding: _ _**[*List names*]_ _**.**

[*Alternative 3: Special notice waived*]

***Waiver of Special Notice.* Waiver(s) of request for special notice by _ _**[*names of all persons who filed a request*]_ _ _ _[*is/are*]_ _ _ _[*being filed simultaneously herewith (list)/attached as Exhibits _ _-_ _]_ _**.**

[*Continue*]

18.29-12 Inventory and appraisal

Inventory and Appraisal. **A _ _[*partial/final*]_ _ inventory and appraisal of the estate was filed on _ _[*date*]_ _, showing assets having a total appraised value of $_ _[*amount*]_ _.**

[*If applicable, add the following option*]

A supplemental inventory and appraisal was returned and filed on _ _[*date*]_ _, showing estate assets with a value of $_ _[*amount*]_ _.

[*Continue*]

Petitioner alleges that such inventor(y/ies) totaling $_ _[*amount*]_ _ contain(s) all the assets of the estate that have come to petitioner's knowledge or into _ _[*his/her*]_ _ possession.

18.29-13 Character of estate property

[*Add one of the following alternatives*]

[*Alternative 1: Separate property or community property only*]

Character of Estate Property. **The estate consists entirely of the _ _[*community/separate*]_ _ property of the decedent.**

[*Alternative 2: Separate and community property*]

Character of Estate Property. **The estate consists of the separate property of the decedent, which is described in Attachment _ _[*letter*]_ _, and _ _[*the decedent's one-half interest in*]_ _ the community property _ _[*and quasi-community property*]_ _ of the decedent and _ _[*name of spouse/registered domestic partner*]_ _, the surviving _ _[*spouse/registered domestic partner*]_ _, which is described in Attachment _ _[*letter*]_ _.**

[*Continue*]

18.29-14 Election by surviving spouse/registered domestic partner to subject property to administration

[*If applicable, add one or both of the following options*]

[*Option 1: Prob C §13502(a)(2) election to probate surviving spouse's or registered domestic partner's interest in community or quasi-community property, or in both*]

Election by Surviving **_ _[*Spouse/Registered Domestic Partner*]_ _. By document filed herein on _ _[*date*]_ _, the surviving _ _[*spouse/registered domestic partner*]_ _ elected and agreed to subject _ _[*his/her*]_ _ interest in the _ _[*community/quasi-community/community and quasi-community property*]_ _ to this administration.**

[*Option 2: Prob C §13502(a)(1) election to probate decedent's separate property or decedent's interest in community or quasi-community property, to probate all three types of interest in property, or to probate both separate and community or quasi-community property*]

Election by Surviving **_ _[*Spouse/Registered Domestic Partner*]_ _. By document filed herein on _ _[*date*]_ _, the surviving _ _[*spouse/registered domestic partner*]_ _ elected to subject the decedent's _ _[*separate property and the decedent's*]_ _interest in the _ _[*community/quasi-community/community and quasi-community*]_ _ property that under the _ _[*will/laws of intestate succession*]_ _ passes to the surviving _ _[*spouse/registered domestic partner*]_ _ to this administration.**

[*Continue*]

18.29-15 Summary of account

Summary of Account. **Petitioner's account covers the period beginning _ _[*date*]_ _ and continuing through _ _[*date*]_ _. Petitioner should be charged and credited as shown in the following summary of account, which is supported by the schedules attached as _ _[*e.g., Exhibit A*]_ _ and incorporated here by reference:**

CHARGES

[*Add one of the following alternatives*]

[*Alternative 1: First, or first and final account*]

Amount of inventory and appraisal: **$_ _ _ _ _ _**

Amount of supplemental inventories: **$_ _ _ _ _ _**

[*Alternative 2: Subsequent account*]

Property on hand at beginning of account: **$_ _ _ _ _ _**

Additional property received: **$_ _ _ _ _ _**

[*Continue*]

Receipts (Schedule ____): **$_ _ _ _ _ _**

Gains on sale or other disposition (Schedule ____): **$_ _ _ _ _ _**

Net income from trade or business (Schedule ____): **$_ _ _ _ _ _**

Total Charges: **$_ _ _ _ _ _**

CREDITS

Disbursements during account period (Schedule ____): **$_ _ _ _ _ _**

[*If applicable, add the following option*]

[*Option: Distributions to testamentary trust*]

Principal (Schedule _____) **$_ _ _ _ _ _**

Income (Schedule _____) **$_ _ _ _ _ _**

Losses on sale or other disposition (Schedule ____): **$_ _ _ _ _ _**

Net loss from trade or business (Schedule ____): **$_ _ _ _ _ _**

Distributions (Schedule ____): **$_ _ _ _ _ _**

Property on hand at close of account (Schedule ____): **$_ _ _ _ _ _**

Total Credits: **$_ _ _ _ _ _**

[*Continue*]

18.29-16 Transaction not readily understandable

[*Add one of the following alternatives*]

[*Alternative 1: No transactions during account period not readily understandable*]

Transactions During Account Period. **There were no transactions during the account period that are not otherwise readily understandable from the Schedules (Probate Code §1064(a)(1)).**

[*Alternative 2: Transactions during account period not readily understandable*]

Transactions During Account Period. **During the period of this account and report, petitioner _ _**[*describe all sales, purchases, changes in the form of assets, or other transactions not readily understandable from any schedule*]**_ _.**

[*Add one of the following alternatives*]

18.29-17 Unusual expenditures

[*Alternative 1: No unusual expenditures*]

Unusual Expenditures. **There are no unusual account expenditures (Probate Code §1064(a)(2)).**

[*Alternative 2: Explanation of unusual expenditures*]

Unusual Expenditures: **The following unusual expenditures are explained as follows: _ _**[*Describe*]**_ _.**

[*Continue*]

18.29-18 Compensation paid during account period

Compensation Paid During Account Period**. No compensation has been paid to the petitioner or to the petitioner's attorney during the account period other than pursuant to a prior court order (Probate Code §1064(a)(3)).**

[*Add one of the following alternatives*]

18.29-19 Family or affiliate relationship

[*Alternative 1: No person hired with family or affiliate relationship*]

Family or Affiliate Relationship. **During the accounting period, petitioner has not hired any person or entity who has a relationship to petitioner or to petitioner's attorneys.**

[*Alternative 2: Disclosure of family or affiliate relationship*]

Family or Affiliate Relationship. **During the accounting period petitioner hired the following agent(s) who _ _**[*has/have*]**_ _ a family or affiliate relationship with petitioner: _ _**[*name, title, and relationship of agent*]**_ _.**

Comment: Probate Code §1064(a)(4) requires a statement disclosing any family or affiliate relationship between the representative and any agent hired by the representative during the accounting period. Some courts have interpreted Prob C §1064(a)(4) to require a statement not only when there is a family or affiliate relationship between the fiduciary and any agent hired by the fiduciary, but also when there is no relationship, to affirmatively state that there is *no* relationship.

[*Continue*]

18.29-20 Investment of cash on hand

Investment of Cash. **All investments shown in the account were authorized and proper investments under _ _**[*the provisions of the will and*]**_ _ the laws of California and were made, retained, and changed as set forth in this account for the best interests of the estate and all persons interested therein. Petitioner has kept all cash in the estate in interest-bearing accounts or other investments authorized by law except amounts needed to administer the estate (Probate Code §1064(a)(5)). A list of the assets on hand is attached as _ _**[*e.g., Exhibit A*]**_ _.**

18.29-21 Sale of assets; Purchase, exchange, or change in form of assets

[*If applicable, add one or more of the following options*]

[*Option 1: If any sales not reported under actions taken under IAEA*]

Sale of Assets**. The _ _**[*assets listed in Exhibit _ _ _/following assets*]**_ _ were sold during administration of the estate: _ _**[*List; if the request for statutory commissions or fees includes any amounts other than the amount of the inventory and appraisal in the fee basis, attach detailed schedule of gains or losses (based on inventory and appraisal values) on sale of assets*]**_ _.**

[*Option 2: If any purchase, exchange, or change in form of assets not reported under actions taken under IAEA powers*]

***Purchase, Exchange, or Change in Form of Assets*. The _ _**[*assets listed in Exhibit _ _ _/following assets*]**_ _ _ _**[*were purchased/were exchanged/changed form*]**_ _ during administration of the estate: _ _**[*List assets, specifying how form changed if applicable*]**_ _.**

[*If applicable, add one or more of the following options*]

18.29-22 Independent actions taken

[*Option 1: Independent actions taken with notice of proposed action*]

***Independent Actions* Taken With Notice of Proposed Action. Petitioner took the following actions without court supervision after having sent a notice of proposed action to all persons entitled to receive one. _ _**[*List and describe actions; see §18.5 for required elements under Cal Rules of Ct 7.250*]**_ _.**

[*Option 2: Independent actions taken without notice of proposed action*]

***Independent Actions* Taken Without Notice of Proposed Action. Petitioner took the following actions without court supervision and without sending a notice of proposed action: _ _**[*List and describe*]**_ _.**

[*Continue*]

18.29-23 Notice to creditors

***Notice to Creditors*. Petitioner has made all reasonable efforts to ascertain creditors of the decedent. Notice of administration has been sent to all known and reasonably ascertainable creditors. More than 4 months have elapsed since the date letters first issued. The time for filing creditors' claims expired on _ _**[*date*]**_ _. _ _**[*The time for filing late-discovered creditor's claims expired on _ _*[*date*]**_ _]_ _.**

[*Continue*]

18.29-24 Debts paid without creditor claim

[*Add one of the following alternatives*]

[*Alternative 1: No debts paid without creditor claim*]

***No Debts Paid Without Creditor Claim*. No creditors have been paid except those creditors who have properly filed and served formal claims.**

[*Alternative 2: Some debts paid without creditor claim*]

***Debts Paid Without Creditor Claim*. Within four months after the date letters were first issued to a general personal representative, some written demands for payment were made. Petitioner has waived formal defects and elected to treat the demands as properly filed claims by paying the amounts demanded within 4 months and 30 days after letters first issued. All payments satisfied the following conditions: (a) the debt was justly due; (b) the debt was paid in good faith; (c) the amount paid was the true amount of the indebtedness over and above all payments and offsets; and (d) the estate is solvent.**

[*Continue*]

18.29-25 Creditors' claims filed and allowed

[*Add one of the following alternatives*]

[*Alternative 1: No creditors' claims filed; solvent estate*]

***Creditors' Claims.* No claims have been filed with the court. The estate is solvent.**

[*Alternative 2: Creditors' claims filed and allowed, solvent estate*]

***Creditors' Claims.* The following claims have been properly filed with the court, served on the estate, fully allowed, and paid.**

Claimant	Date Claim Filed	Amount Claimed	Nature of Claim	Date Paid

_ _ _ _ _ _ _	_ _ _ _ _ _	$_ _ _ _ _	_ _ _ _ _ _ _ _ _	_ _ _ _ _
_ _ _ _ _ _ _	_ _ _ _ _ _	$_ _ _ _ _	_ _ _ _ _ _ _ _ _	_ _ _ _ _

[*Add one of the following alternatives to Alternative 2*]

[*Alternative 2a: No rejected claims*]

Rejected Claims. **There are no rejected claims.**

[*Alternative 2b: Some claims not fully allowed*]

Rejected Claims. **The following claims have been filed with the court and served on the estate but have not been fully allowed: _ _**[*For each claimant, list name, date claim filed, amount claimed, whether claim due and due date, action taken, whether action filed, and whether there is security for the claim*]**_ _.**

[*Continue with Alternative 2*]

The estate is solvent.

[*Alternative 3: If appropriate, list creditors' claims in separate schedule*]

[*Alternative 3a: Creditors' claims listed in attached schedule; solvent estate*]

Creditors' Claims. **_ _**[*Attachment/Schedule/Exhibit _ _ _*]**_ _ attached to this petition lists all creditors' claims, and the amount and disposition of each claim. The estate is solvent. All expenses of administration _ _**[*except (specify, e.g., estate taxes, closing expenses, compensation of petitioner as executor or administrator of the estate, and attorney fees)*]**_ _ have been paid.**

[*Alternative 3b: Creditors' claims listed in attached schedule by classes; insolvent estate*]

Creditors' Claims. **_ _**[*Attachment/Schedule/Exhibit _ _ _*]**_ _ to this petition lists all claims filed and served on the estate and allowed _ _**[*or rejected*]**_ _, the amount now due, and the class to which it belongs. The estate is insolvent. The amount to be paid to each creditor and the basis for the calculation are also set forth.**

[*Continue with Alternative 3*]

18.29-26 Report of contested, litigated, or compromised claims

Contested Claims. **The _ _**[*following claims/claims shown on Attachment _ _ _*]**_ _ against the estate have been contested, disputed, compromised, or litigated _ _**[*and the action taken and the present status of the claims is shown on the attachment*]**_ _.**

18.29-27 Payment of claims with interest

Interest. **Interest in the amounts indicated below was paid on the following claims:**

_ _[*List claims, interest amount, and dates claims paid*]**_ _.**

Interest was incurred because these claims, which are debts on which interest is payable under Probate Code §11423, were not paid until the date shown above. The decedent's cash assets at the date of death consisted of $_ _[*amount*]**_ _. The remaining assets consisted of _ _**[*specify, e.g., real property, partnership interests*]**_ _, which could not be liquidated promptly because _ _**[*specify*]**_ _. Petitioner was able to sell _ _**[*identify assets sold*]**_ _ on _ _**[*date*]**_ _, for $_ _**[*amount*]**_ _, at which time the claim was promptly paid. Petitioner alleges that the interest charges were unavoidable under the circumstances and that payment of interest constitutes a proper credit on the accounts.**

[*Continue*]

18.29-28 Claim by surviving spouse or registered domestic partner

[*Add one of the following alternatives*]

[*Alternative 1: Claim filed by surviving spouse/registered domestic partner*]

***Claim by* Surviving _ _[*Spouse/Registered Domestic Partner*]_ _. The decedent's surviving _ _[*spouse/registered domestic partner*]_ _ has filed a creditor's claim under _ _[*e.g., Probate Code §§11440-11442*]_ _ before the filing of this petition for final distribution. The claim has been allowed by petitioner, approved by this court, and paid.**

[*Alternative 2: No claim filed by surviving spouse/registered domestic partner*]

***No Claim by* Surviving _ _[*Spouse/Registered Domestic Partner*]_ _. The decedent's surviving _ _[*spouse/registered domestic partner*]_ _ has not filed a creditor's claim against the estate under _ _[*e.g., Probate Code §§11440-11442*]_ _ before the filing of this petition.**

[*Continue*]

18.29-29 No other claims

***Other Claims*. No other claims have been filed with the court except for those listed above.**

18.29-30 Estate taxes

[*Add one of the following alternatives*]

[*Alternative 1: No estate tax return required*]

***Estate Taxes.* No federal _ _[*or* _ _[*name of state*]_ _]_ _ estate tax return has been filed because the estate was not sufficient to require such a return, and no estate taxes are due.**

[*Alternative 2: Return filed; no estate tax due*]

***Estate Taxes.* A federal estate tax return was filed on _ _[*date*]_ _ _ _[*, and a* _ _[*name of state*]_ _ *estate tax return was filed on* _ _[*date*]_ _]_ _. No federal _ _[*or state*]_ _ estate taxes are due.**

[*Alternative 3: Return filed; estate taxes paid*]

***Estate Taxes.* A federal estate tax return was filed on _ _[*date*]_ _ _ _[*, and a* _ _[*name of state*]_ _ *estate tax return was filed on* _ _[*date*]_ _]_ _. The federal estate taxes due in the amount of $_ _[*dollar amount*]_ _ _ _[*and the* _ _[*name of state*]_ _ *taxes due in the amount of $*_ _[*dollar amount*]_ _]_ _ have been paid by _ _[*the persons charged with it under Article _ _ of the will/petitioner from estate assets*]_ _.**

Petitioner has _ _[*not*]_ _ been released from personal liability for the federal estate tax under Internal Revenue Code §2204. The return has _ _[*not*]_ _ been audited, _ _[*and*]_ _ a closing letter has _ _[*not*]_ _ been issued by the Internal Revenue Service.

[*If applicable, add one or more of the following options*]

[*Option 1: Reserve requested*]

Petitioner has requested a sufficient reserve from this distribution to pay additional estate tax and interest that may be found to be due.

[*Option 2: Trustees directed to pay from trust corpus*]

Petitioner requests that the trustee(s) named below in paragraph _ _[*number*]_ _, be authorized and directed to pay out of trust corpus in _ _[*his/her/their/its*]_ _ hands, any and all estate tax deficiencies, interest, and penalties that may be assessed against the estate.

[*Continue*]

18.29-31 Income taxes

[*Add one of the following alternatives*]

[*Alternative 1: No income tax payable*]

***Income Taxes.* No California or federal income taxes are due or payable by the estate.**

[*Alternative 2: Income taxes paid*]

Income Taxes. **All California and federal income taxes due and payable by the estate have been paid or are adequately secured.**

18.29-32 Certificate of the California Franchise Tax Board

[*Add one of the following alternatives*]

[*Alternative 1: Estate not over $1 million or distributable to nonresident beneficiaries*]

Certificate of California Franchise Tax Board. **A certificate of the California Franchise Tax Board required by Revenue and Taxation Code §19513 does not have to be filed, because _ _**[*there are no nonresident beneficiaries of the estate/the estate does not exceed $1 million*]**_ _.**

[*Alternative 2: Assets exceed $1 million and $250,000 or more is distributable to nonresident beneficiaries; see 18 Cal Code Regs §19513*]

Certificate of California Franchise Tax Board. **The value of the estate assets at the date of the decedent's death exceeded $1 million and assets of at least $250,000 are distributable to the following nonresident beneficiar(y/ies):**

_ _[*List names, addresses, and amount of distribution*]**_ _.**

The certificate of the California Franchise Tax Board required by Revenue and Taxation Code §19513 _ _[*is on file in the proceeding/will be filed before the hearing on this petition*]**_ _.**

18.29-33 Personal property taxes

[*Add one of the following alternatives*]

[*Alternative 1: No personal property tax due*]

Personal Property Taxes. **No personal property taxes are due or payable by the estate.**

[*Alternative 2: Personal property taxes due and paid*]

Personal Property Taxes. **All personal property taxes due and payable by the estate have been paid _ _**[*and receipt for them has been filed*]**_ _.**

[*Continue*]

[*Add one of the following alternatives*]

18.29-34 Representative's compensation waived

[*Alternative 1: Ordinary compensation waived*]

Representative's Ordinary Compensation Waived**. Petitioner has waived all rights to ordinary compensation as _ _**[*executor/administrator/(etc.)*]**_ _ under the waiver filed in the proceeding on _ _**[*date*]**_ _.**

[*Alternative 2: Waiver of ordinary compensation*]

Waiver of Representative's Ordinary Compensation**. Petitioner hereby waives all rights to ordinary compensation as _ _**[*executor/administrator/(etc.)*]**_ _.**

[*Continue*]

18.29-35 Representative's and attorney's statutory compensation

[*Alternative 3: Ordinary compensation for representative and attorney requested*]

Representative's Ordinary Compensation**. The _ _**[*executor/administrator*]**_ _ has rendered valuable services to the estate, and ordinary compensation should be allowed. The _ _**[*executor's/administrator's*]**_ _ compensation for ordinary services is $_ _**[*amount*]**_ _, computed on a fee base of $_ _**[*amount*]**_ _, arrived at as _ _**[*shown in*

the attached Exhibit _ _/follows:]_ _.

***Attorney's Ordinary Compensation*. The attorney for the _ _**[*executor/administrator*]**_ _ has rendered valuable services to the estate, and ordinary compensation should be allowed. The attorney's compensation for ordinary services is $_ _**[*amount*]**_ _, computed on a fee base of $_ _**[*amount*]**_ _, arrived at as _ _**[*shown in the attached Exhibit _ _/follows:*]**_ _.**

[*If not attached as Exhibit, add the following*]

FEE BASE

Inventory and Appraisal:	**$ _ _ _ _ _**
Receipts, Excluding Principal:	**$ _ _ _ _ _**
Gains on Sales:	**$ _ _ _ _ _**
Less Losses on Sales:	**$** (_ _ _ _)
Fee Base:	**$ _ _ _ _ _**

FEE COMPUTATION

4% of first $100,000:	**$ _ _ _ _ _**
3% of next $100,000:	**$ _ _ _ _ _**
2% of next $800,000:	**$ _ _ _ _ _**
1% of next $9 million:	**$ _ _ _ _ _**
0.5% of next $15 million:	**$ _ _ _ _ _**
Compensation requested for the estate in excess of $25 million:	**$ _ _ _ _ _**
Total Fee:	**$ _ _ _ _ _**

[*If applicable, add the following option*]

[*Option: Estate in excess of $25 million*]

Petitioner believes that the amount of $_ _[*amount*]**_ _ stated above is reasonable compensation for administration of the estate in excess of $25 million because of the additional responsibility and complexity resulting from the size of the estate.**

[*Continue*]

18.29-36 Compensation already paid

[*If applicable, add the following option*]

[*Option: Allowance of compensation already made under prior court order*]

By court order of _ _[*date*]**_ _, $_ _**[*amount*]**_ _ has been paid to the _ _**[*executor/administrator/(etc.)*]**_ _ as compensation, and $_ _**[*amount*]**_ _ has been paid to _ _**[*name of attorney(s)*]**_ _ as compensation. A balance of $_ _**[*amount*]**_ _ is due to the _ _**[*executor/administrator/(etc.)*]**_ _, and a balance of $_ _**[*amount*]**_ _ is due to the attorney(s).**

[*Continue*]

18.29-37 Nonparticipation in compensation if attorney also serving as representative

[*If applicable, add one or both of the following options*]

[*Option 1: Nonparticipation in fees if attorney also serving as personal representative*]

***Nonparticipation in Fees*. _ _[*Name*]_ _, _ _[*one of the petitioners*]_ _, is a member of _ _[*firm name*]_ _, attorneys for the _ _[*executor/administrator/(etc.)*]_ _. _ _[*He/She*]_ _ will not participate in any compensation allowed by the court for legal services and rendered by such firm to the estate or to _ _[*name of firm member who is also representative*]_ _ as representative of the estate. _ _[*His/Her*]_ _ affidavit to that effect is on file.**

[*Continue*]

18.29-38 Allocation of fees between attorneys if more than one attorney provided services

[*Option 2: Allocation of fees between attorneys if more than one attorney provided services*]

***Allocation of Statutory Fee Between Attorneys*. The petitioner's former attorney, _ _[*name*]_ _, provided services to the petitioner from _ _[*date*]_ _, through _ _[*date*]_ _. The petitioner substituted the firm of _ _[*name of firm*]_ _ and filed a Substitution of Attorney in this proceeding on _ _[*date*]_ _. _ _[*Name of former attorney*]_ _ is entitled to a portion of the statutory fees. _ _[*Name of current attorney*]_ _ and _ _[*name of former attorney*]_ _ have agreed that $_ _[*amount*]_ _ of the statutory fee should be paid to _ _[*name of former attorney*]_ _ and the balance of the statutory fee should be paid to _ _[*name of current attorney*]_ _. Petitioner requests that the statutory fee of $_ _[*amount*]_ _ be allocated and paid as follows: (i) $_ _[*amount*]_ _ to _ _[*name of former attorney*]_ _, and (ii) $_ _[*amount*]_ _ to _ _[*name of current attorney*]_ _.**

[*Continue*]

18.29-39 Compensation for extraordinary services

[*Add one or both of the following options if applicable*]

[*Option 1: Extraordinary services by representative*]

***Compensation for Extraordinary Services by Representative*. Petitioner has rendered extraordinary services to the estate, which are described in the Declaration in Support of Extraordinary Compensation, attached as Attachment _ _ _. Petitioner should be allowed reasonable compensation for these services, and a reasonable sum is $_ _[*amount*]_ _, which has not been paid.**

[*Option 2: Extraordinary services by attorney*]

***Compensation for Extraordinary Services by Attorney*. _ _[*Name(s)*]_ _, attorney(s) for petitioner, rendered extraordinary services to the estate, which are described in the Declaration in Support of Extraordinary Attorneys' Compensation, attached as Attachment _ _ _. The attorney(s) should be allowed reasonable compensation for these services, and a reasonable sum is $_ _[*amount*]_ _, which has not been paid.**

[*Continue*]

18.29-40 Status of estate

***Estate in Condition to Be Closed*. More than 4 months have elapsed since the issuance of letters. Notice of administration has been given to creditors as required by law. The time for filing and serving creditors' claims has expired. Petitioner has performed all required duties as _ _[*executor/administrator/(etc.)*]_ _ of the decedent's _ _[*will/estate*]_ _. The estate is _ _[*solvent/insolvent*]_ _. All costs of administration incurred to date _ _[*except (specify, e.g., compensation of petitioner as executor or administrator of the estate and attorney fees)*]_ _ have been paid. The estate is in a condition to be closed.**

18.29-41 Assets on hand

[*Add one of the following alternatives*]

[*Alternative 1: Schedule is attached*]

A list of the assets of the estate on hand on _ _[*date*]_ _, is attached as Exhibit _ _[*e.g., A*]_ _ and incorporated here by reference.

[*Alternative 2: If assets are few, list*]

The assets of the estate on hand on _ _[*date*]_ _, are as follows: _ _[*List and describe in detail*]_ _.

18.29-42 Reserve for closing expenses

[*Add one of the following alternatives*]

[*Alternative 1: Reserve for closing expenses]*

***Reserve for Closing Expenses*. Petitioner anticipates additional expenses including _ _[*describe expenses such as accountant's fees for preparation of the final fiduciary income tax returns for the estate, expenses for transferring assets*]_ _ and miscellaneous closing expenses. Petitioner requests authorization to withhold $_ _[*amount*]_ _ for such closing expenses _ _[*and as a reserve for any liabilities that may hereafter be determined to be due from the estate*]_ _. Petitioner further requests authorization to distribute the balance of the reserve account to _ _[*name*]_ _ without further court order.**

[*If applicable, add the following option*]

[*Option: Testamentary trustee will receive distribution of residue and will assume payment of tax deficiencies]*

The trustee(s) named below should be authorized and directed to pay out of trust corpus in _ _[*his/her/their*]_ _ hands any and all tax deficiencies that may be assessed against the estate: _ _[*List trustee(s)*]_ _.

[*Alternative 2: No reserve if entire estate is paid to trust]*

***No Reserve.* The trustee(s) named below should be authorized and directed to pay out of trust corpus in _ _[*his/her/their*]_ _ hands any and all expenses including all tax deficiencies that may be assessed against the estate. _ _[*List trustee(s)*]_ _. Accordingly, the petitioner does not request authorization to withhold a reserve from distribution.**

18.29-43 Intestate heirs

***Names and Residences of Intestate Heirs*. Petitioner is informed and believes and therefore alleges that the following are the decedent's heirs under the California laws of intestate succession: _ _[*For each heir, list name, age (if under 18 or adult if older), relationship to decedent, and residence address*]_ _.**

18.29-44 Testate beneficiaries and heirs

***Names and Residences of Testate Beneficiaries*. The following are the beneficiaries named in the will _ _[*and codicil(s)*]_ _, admitted to probate by this court on _ _[*date*]_ _: _ _[*For each beneficiary, list name, age (over or under 18), relationship to decedent, and residence address*]_ _.**

18.29-45 Proposed distribution

[*If applicable, add one or both of the following options*]

[*Option 1: Disclaimer filed*]

***Disclaimers*. By written disclaimer of _ _[*date*]_ _, and filed _ _[*in this proceeding/with the personal representative*]_ _ on _ _[*date*]_ _, _ _[*name*]_ _ disclaimed all interest given _ _[*him/her*]_ _ in the following described property: _ _[*List*]_ _.**

As a result of the disclaimer, the disclaimed interest should be distributed as follows: _ _[*Specify*]_ _.

[*Option 2: Waiver of right to disclaim filed*]

***Waiver of Right to Disclaim*. By written waiver of right to disclaim on _ _[*date*]_ _, and filed _ _[*in this proceeding/with the personal representative*]_ _ on _ _[*date*]_ _, _ _[*name*]_ _ waived all rights to disclaim any interest given _ _[*him/her*]_ _ in the following described property: _ _[*List*]_ _.**

Comment: If the estate will be closed before the disclaimer period has run, a waiver may be useful if disclaimer provisions are expressly set forth in the will but no disclaimer is to be filed. See Prob C §284.

[*Continue*]

[*Add one of the following alternatives*]

[*Alternative 1: No advance distributions made*]

***Advance Distributions*. No advance distributions have been made.**

[*Alternative 2: Advance distributions made*]

***Advance Distributions*. By court order of _ _**[*date*]**_ _, petitioner has made advance distributions as follows: _ _**[*Specify*]**_ _.**

The distributions are shown on Schedule _ _ of the attached account, and the receipt(s) of the distributee(s) _ _[*is/are*]**_ _ on file.**

[*Continue*]

[*If applicable, add the following option*]

[*Option: Survivor's community property administered in estate*]

***Distribution of Surviving* _ _**[*Spouse/Registered Domestic Partner*]**_ _'s Community Property Administered in Estate.* The following property should be distributed to _ _**[*name*]**_ _, decedent's surviving _ _**[*spouse/registered domestic partner*]**_ _, as _ _**[*his/her*]**_ _ community property administered in the estate, consisting of the following: _ _**[*List/As shown in Attachment _ _ incorporated here by reference*]**_ _.**

[*Continue*]

[*Add one of the following alternatives*]

[*Alternative 1: Intestate or partial intestacy*]

***Proposed Distribution.* The decedent died _ _**[*intestate/partially intestate*]**_ _.**

[*If partial intestacy, add*]

The will _ _[*and codicil(s)*]**_ _ _ _**[*does/do*]**_ _ not dispose of the property described _ _**[*below/in Attachment _ _*]**_ _.**

[*Continue*]

The property of the estate _ _[*not disposed of by will*]**_ _, together with any other property of the decedent not now known or discovered, should be distributed as follows: _ _**[*List specific property to be distributed to each heir/As shown in Attachment _ _ and incorporated here by reference*]**_ _.**

[*Alternative 2: Testate distribution*]

***Proposed Distribution*. By the terms of the will _ _**[*and codicil(s)*]**_ _ _ _**[*and the order determining interests*]**_ _, the estate in the possession of the _ _**[*executor/administrator/(etc.)*]**_ _ remaining for distribution should be distributed to each beneficiary as follows: _ _**[*List specific property to be distributed to each distributee/As shown in Attachment _ _ and incorporated here by reference*]**_ _ _ _**[*./,*]**_ _**

[*Continue*]

[*If applicable, add the following option*]

[*Option: When estate taxes to be charged to distributees, include amount charged to each distributee*]

less, however, the federal and _ _[*name of state*]**_ _ estate taxes in the sum of $_ _**[*amount*]**_ _, which is _ _**[*his/her*]**_ _ prorata share of the federal and _ _**[*name of state*]**_ _ estate taxes paid by the _ _**[*executor/administrator/(etc.)*]**_ _ and chargeable to _ _**[*him/her*]**_ _.**

[*Continue*]

[*If applicable, add the following option: Interest to be paid on general pecuniary devises*]

Interest at the rate of _ _ percent per year on the unpaid balance of the general pecuniary devise(s) to _ _[*name(s)*]_ _ should be added to such devise(s), commencing on _ _[*date*]_ _, which is 1 year after the date of the decedent's death, to end on the date of final distribution.

Comment: In the absence of other provisions in the will, general pecuniary devises (*i.e.,* for a specific amount of money), including those in trust, that are not distributed within 1 year after the testator's death bear interest thereafter. Prob C §12003. The interest rate is 3 percentage points less than the legal rate of interest on judgments (10 percent per annum; CCP §685.010). Prob C §12001.

18.29-46 Testamentary trustee

Distribution to Trustee of Testamentary Trust. **The _ _[*residue/property*]_ _ of the estate described _ _[*below/in Attachment _ _*]_ _ should be distributed to _ _[*name of trustee(s)*]_ _ in trust as provided in Article _ _[*number/letter*]_ _ of the will _ _[*and Article _ _[number/letter*]_ _ *of the (e.g., first codicil)*]_ _ admitted to probate by this court on _ _[*date*]_ _, for the following use and purpose: _ _[*State pertinent provisions of will (including every will provision relating to the trust or trustee) in present tense and in the third person/As set forth in Exhibit _ _*]_ _.**

[*If applicable, add the following option*]

[*Option: Income during probate to be distributed to trust beneficiaries*]

Income During Probate Distributed to Trust Beneficiaries. **The trustee(s) should pay, from the trust property and free of trust, $_ _[*amount*]_ _ to _ _[*name of income beneficiary*]_ _, which represents the residue of net income received by the _ _[*executor/administrator/(etc.)*]_ _ on the property ordered distributed to the trustee(s).**

[*Continue*]

Consent to Serve/Acceptance of Trust. **_ _[*Name of trustee*]_ _, named under Article _ _[*number/letter*]_ _ of the decedent's will, has consented to serve as trustee of the trust(s) under the will of _ _[*name of decedent*]_ _, and _ _[*his/her/its*]_ _ written _ _[*Consent to Serve/Acceptance of Trust*]_ _ is attached as Exhibit _ _.**

18.29-47 Whereabouts of distributee unknown

[*Option 1: Distribution to county treasurer*]

The property that is to be distributed to _ _[*name of distributee*]_ _, whose whereabouts are unknown, should be distributed in the name of the distributee to the county treasurer in this county, and if _ _[*name*]_ _ does not claim _ _[*his/her*]_ _ share within 5 years after the date of the order of distribution, _ _[*name of distributee*]_ _'s share should, if the requirements of Probate Code §11854 are met, be distributed to the following alternate distributees, who are the persons who would be entitled to distribution under _ _[*decedent's will/the laws of intestate succession*]_ _ if _ _[*name of distributee*]_ _ had predeceased the decedent: _ _[*List alternate distributees and the share to which each is entitled*]_ _.

[*Option 2: Distribution if distributee does not claim property*]

If _ _[*name of distributee*]_ _, whose whereabouts are presently unknown, does not claim _ _[*his/her*]_ _ share within 5 years after the date of this order, _ _[*his/her*]_ _ share should be distributed to the alternate distributees listed below, who are the persons who would be entitled to the distribution under the _ _[*decedent's will/laws of intestate succession*]_ _ if _ _[*name of distributee*]_ _ had predeceased the decedent: _ _[*List alternate distributes and the share to which each is entitled*]_ _.

18.29-48 Gift to minor not exceeding $5000

Gift to Minor Distributee (Less Than $5000). **Property to be distributed to _ _[*name*]_ _, a minor, does not exceed $5000. Petitioner is informed and believes and on that basis alleges that the minor has no guardian of _ _[*his/her*]_ _ estate. Petitioner has received written assurance under oath from the minor's parents that the total estate of the minor, including the distribution to be made, does not exceed $5000. The following property distributable to the minor _ _[*name*]_ _ should be distributed without bond to _ _[*name*]_ _, the minor's parent, to hold in trust for the minor until the minor is 18 years of age.**

18.29-49 Gift to custodian for minor

[*Add one of the following alternatives*]

[*Alternative 1: Custodian named in will*]

***Gift to Minor Distributee (Custodian)*. The will provides that the following property should be distributed to _ _[*name*]_ _, as custodian for _ _[*name*]_ _, _ _[*until, e.g., age 21*]_ _ under the California Uniform Transfers to Minors Act: _ _[*Specify*]_ _.**

[*Alternative 2: Will fails to name qualified custodian*]

***Gift to Minor Distributee (Custodian)*. The will provides that the distribution to _ _[*name*]_ _, a minor, should be given to a custodian under the California Uniform Transfers to Minors Act. The will fails to name a qualified custodian who has agreed to act as custodian. Petitioner designates _ _[*name*]_ _ as custodian under Probate Code §3905(c), and_ _[*name*]_ _ has agreed to serve. The following property should be distributed to _ _[*name*]_ _, as custodian for _ _[*name*]_ _, _ _[*until, e.g., age 23*]_ _ under the California Uniform Transfers to Minors Act: _ _[*Specify*]_ _.**

18.29-50 Gift to minor exceeding $5000

[*Add one of the following alternatives*]

[*Alternative 1: Deposit in blocked account*]

***Gift to Minor Distributee (Blocked Account)*. The cash distribution to _ _[*name*]_ _, a minor, should be deposited in an account at _ _[*name of institution*]_ _, subject to withdrawal only on order of the court**.

[*Alternative 2: Distribution to guardian*]

***Gift to Minor Distributee (Guardian)*. _ _[*Name*]_ _ was appointed guardian of the estate of _ _[*name*]_ _, a minor, by order of the _ _[*name of court*]_ _ on _ _[*date*]_ _. The _ _[*executor/administrator*]_ _ should distribute the property distributable to _ _[*name*]_ _, a minor, to _ _[*name of guardian*]_ _ as guardian of the estate of _ _[*name of minor*]_ _.**

[*Continue*]

[*If appropriate, add court-ordered conditions on distributions*]

***Gift to Minor Distributee (Special Conditions)*. _ _[*Set forth petition for special conditions for transfer to a minor.*]_ _ The _ _[*executor/administrator*]_ _ should therefore distribute _ _[*identify property or cash*]_ _ in accordance with the following conditions: _ _[*Set forth conditions*]_ _.**

18.29-51 Gift to predeceased beneficiary

***Proposed Distribution of Predeceased Beneficiaries' Shares*. Paragraph _ _[*number/letter*]_ _ of the decedent's will provides for distribution of _ _[*his/her*]_ _ entire estate to _ _[*name*]_ _, _ _[*his/her*]_ _ _ _[*e.g., spouse/registered domestic partner*]_ _, or if that person predeceases _ _[*him/her*]_ _, then to _ _[*describe alternative beneficiary, e.g., _ _[names]_ _, his/her 2 adult children, in equal shares*]_ _. The decedent's _ _[*e.g., spouse/registered domestic partner*]_ _ predeceased the decedent on _ _[*date*]_ _. Pursuant to the terms of the will, the estate should be distributed as follows: _ _[*Describe specific assets to be distributed to each alternate beneficiary*]_ _.**

18.29-52 Proration of estate taxes

[*Add one of the following alternatives*]

[*Alternative 1: Estate taxes paid before distribution*]

***Proration of Estate Tax*. Petitioner has paid estate taxes of $_ _[*amount*]_ _.**

[*Add one of the following alternatives*]

[*Alternative 1a: Will directs payment*]

Article _ _[*number/letter*]_ _ of the will directs that estate taxes be prorated and does not exonerate the

beneficiaries from payment of estate taxes.

[*Alternative 1b: Will is silent*]

The will is silent regarding the allocation of estate taxes and therefore those taxes must be prorated.

[*Alternative 1c: Intestate decedent*]

Because the decedent died intestate, estate taxes must be prorated.

[*Continue*]

Petitioner believes that the estate taxes should be prorated and charged _ _[*pursuant to Probate Code §§20100-20225/pursuant to Article _ _*[*number/letter*]*_ _ of decedent's will*]*_ _* **as set forth _ _**[*below/in Attachment _ _*]*_ _*.

[*Alternative 2: Estate taxes to be paid from residue*]

***No Proration of Estate Tax Required*. Article _ _**[*number/letter*]*_ _* **of the will provides that all federal estate taxes _ _**[*attributable to the probate estate/incurred on the decedent's death*]*_ _* **be paid from the residue of the estate. No allocation or proration of such taxes is required.**

[*Alternative 3: Proration of tax between probate and nonprobate assets*]

***Proration of Estate Taxes*. Under Article _ _**[*number/letter*]*_ _* **of the decedent's will, the estate taxes attributable to the gifts that are the subject of the petition for final distribution are to be paid from the residue of the estate.**

Article _ _[*number/letter*]*_ _* **directs that estate taxes attributable to property passing outside the decedent's probate estate be charged to and collected from the persons sharing in that property to the extent provided by law. The applicable statutes (Probate Code §§20100-20225) provide that the personal representative has the duty to recover from persons sharing in the taxable estate of the decedent the proportionate amount of such taxes.**

Several of the _ _[*beneficiaries/heirs*]*_ _* **of assets that petitioner seeks to distribute are recipients of property passing outside of probate to which a federal estate tax is attributable. Petitioner submits that _ _**[*he/she*]*_ _* **should be authorized to deduct, from the assets to be distributed, the federal estate tax attributable to those _ _**[*beneficiaries/heirs*]*_ _*.

18.29-53 Omnibus clause

***Omnibus Clause*. Any other property of the estate not now known or discovered that may belong to the estate or in which the decedent or the estate may have any interest should be distributed as follows without further court order: _ _**[*Specify*]*_ _*.

[*If applicable, add the following option*]

[*Option: After-discovered separate property, community property, or quasi-community property*]

Any separate property should be distributed to _ _[*name*]*_ _*. **The decedent's interest in any community _ _**[*and quasi-community*]*_ _* **property should be distributed to _ _**[*name*]*_ _*.

[*Continue*]

18.29-54 Request for orders

WHEREFORE, petitioner requests this court to order that:

[*Include all applicable requests*]

1. The administration of this estate be _ _[*closed without an account/brought to a close*]*_ _*;

2. The _ _[*first/(designate)*]*_ _* **and final account of petitioner as _ _**[*executor/administrator/(etc.)*]*_ _* **be settled,**

allowed, and approved as filed;

3. All the acts and proceedings of petitioner as _ _[*executor/administrator/(etc.)*]_ _ as set forth in this petition be confirmed and approved;

[*Include all applicable requests*]

[4.] Petitioner be allowed and credited with $_ _[*amount*]_ _ as _ _[*the unpaid balance of*]_ _ ordinary compensation for services as _ _[*executor/administrator/(etc.)*]_ _ and that petitioner be allowed $_ _[*amount*]_ _ for extraordinary services as specified;

[5.] Petitioner be authorized and directed to pay to _ _[*name of attorney*]_ _ $_ _[*amount*]_ _ as _ _[*unpaid balance of*]_ _ ordinary compensation for services to petitioner and to the estate, and $_ _[*amount*]_ _ for extraordinary services as specified;

[6.] The federal estate taxes be allocated and made a charge against the interest(s) of the person(s) against whom the tax is allocated as set forth in the petition;

[7.] Petitioner be authorized to retain $_ _[*amount*]_ _ in cash for closing expenses of administration _ _[*and to pay liabilities*]_ _, and to deliver the unused part to the beneficiar(y/ies) of the estate, as set forth in the petition, without further court order, after the closing expenses have been paid;

[8.] The trustee named in the petition be authorized and directed to pay out of trust corpus in _ _[*his/her/its*]_ _ hands any and all tax deficiencies that may be assessed against the estate;

[9.] Distribution of the estate in petitioner's hands and any other property of the decedent or the estate not now known or discovered that may belong to the estate or in which the decedent or the estate may have any interest be made to the persons entitled to it, as set forth in the petition;

[10.] On the filing of receipts, petitioner be discharged and petitioner and _ _[*his/her*]_ _sureties be discharged and released from all liability to be incurred hereafter; and that

[*Insert requests for special relief in the petition*]

[11.] Such further orders be made as the court considers proper.

Date: _ _ _ _ _ _

__[*Signature of representative*]__
_ _[*Typed name*]_ _
Petitioner

_ _[*Name of attorneys or law firm*]_ _

By: __[*Signature*]__
_ _[*Typed name*]_ _
Attorney for representative

[*Verification; see §§1.21-1.23*]

Comment: The petition and account should be verified. Prob C §1021. See §1.21. Contents of a verification of a civil pleading used in probate proceedings are set forth in CCP §446. The declaration may be executed anywhere (California, sister state, or foreign country) as long as it is made under the laws of California. The declaration must be dated; otherwise it is defective and worthless for evidence and proof. CCP §2015.5. See also Cal Rules of Ct 7.103.

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/ D. Request for Compensation for Extraordinary Services/§18.29A 1. Joinder by Attorney in Request for Compensation for Extraordinary Services

D. Request for Compensation for Extraordinary Services

§18.29A 1. Joinder by Attorney in Request for Compensation for Extraordinary Services

The attorney may attach a joinder in support of the request for payment of extraordinary compensation in the final account, report, and petition for distribution in §18.29. However, it is better practice and required by some courts for the attorney to file a separate petition or declaration supporting an award of extraordinary fees. The joinder need not be made under oath but it is recommended to do so. Local rules should be checked in each case.

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/ §18.29B 2. Form: Joinder by Attorney in Request for Compensation for Extraordinary Services

§18.29B 2. Form: Joinder by Attorney in Request for Compensation for Extraordinary Services

I, the undersigned, say:

I am the attorney for petitioner; I have read the foregoing petition and the request in it for the payment to me of compensation for my extraordinary services as attorney for petitioner. I hereby join in the request for an order of this court allowing me the compensation requested for those services.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _ _ _ _ _ _ __[*Signature*]__
_ _[*Typed name*]_ _
Attorney for petitioner

[*Verification; see §§1.21-1.23*]

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/§18.30 E. Form: Request for Estate Income Tax Clearance Certificate (FTB Form 3571)

§18.30 E. Form: Request for Estate Income Tax Clearance Certificate (FTB Form 3571)

INSTRUCTIONS: If there are beneficiaries in other states or countries who receive at least $250,000 in total and the estate exceeds $1 million at the date of death, then an estate income tax certificate must be obtained from the Franchise Tax Board before the hearing on the final account. Application for the certificate is made on FTB form 3571, a copy of which (along with instructions for its completion) is reprinted below. Be sure to allow enough time for the form to be processed. Be careful to read and follow instructions so the form can be promptly processed. See 18 Cal Code Regs §19513; §18.30.

Copies: Mail original to Franchise Tax Board at address noted on the form; copy to client; office copies.

STATE OF CALIFORNIA
FRANCHISE TAX BOARD
Telephone: 916.845.4210
Fax: 916.843.0422

Request for Estate Income Tax Clearance Certificate

☐ **Expedite Request**
($100 nonrefundable fee – Read side 2)

Please read side 2 before completing this form.

MAIL TO: ESTATE INCOME TAX CLEARANCE CERTIFICATE UNIT MS F150 **FRANCHISE TAX BOARD** PO BOX 1673 SACRAMENTO CA 95812-1673	Complete and send your request to us at least 30 days before the court hearing on the final account. Allow at least 30 days for a response. Approximate date of court hearing: _____

Estate of	Federal Employer ID. No.	Date of Death
Name of Fiduciary	Area Code and Phone No.	Decedent's Social Security No.
Address of Fiduciary (Number and Street)		Probate No.
City or Town, State, and ZIP Code		County of Probate
Name of Attorney		Area Code and Phone No.
Address of Attorney (Number and Street)		Mail Tax Clearance Certificate to: ☐ Attorney ☐ Fiduciary
City or Town, State, and ZIP Code		

Answer "yes" or "no" to these questions and furnish the required documents.

1. Did the decedent reside in the State of California on the date of death? _____
2. Did probate begin in any other state? _____
3. Did fair market value of the estate's assets on the date of death exceed $1 million? _____ (If no, you do not need an Estate Income Tax Clearance Certificate. See Certificate Filing Requirements on side 2.) (If yes, attach a copy of IRS Form 706, if required for federal.)
4. Will probate assets exceeding $250,000 be distributed to nonresident beneficiaries? _____ (If no, you do not need an Estate Income Tax Clearance Certificate. See Certificate Filing Requirements on side 2.)
5. Did preliminary distribution begin? _____ (If yes, furnish a copy of the court order authorizing the distribution.)

Declaration – California Returns Filed for Decedent and Estate

Complete this section and include the four taxable years preceding the date of this request.

Decedent

California Individual Income Tax Returns (Form 540, 540A, 540 2EZ, or 540NR - Long or Short Form) filed by or on behalf of the decedent for the following years: _____, _____, _____, and _____.

Explain in full if the returns for any of the above years were not filed: _____

Estate

California Fiduciary Income Tax Return (Form 541) filed for the following years: _____, _____, _____, and _____.

Explain in full if fiduciary returns were not filed for any of the last four years the estate existed: _____

I declare, under penalties of perjury, the information above is true to the best of my knowledge and belief.

Signature of fiduciary or representative	Title	Date

Print

General Information

For certain estates, the law prohibits the probate court from allowing the final account of the fiduciary, unless the Franchise Tax Board certifies that you paid or secured all taxes as required by law. (Revenue and Taxation Code (R&TC) Section 19513)

In order to obtain an Estate Income Tax Clearance Certificate (Form 2571), you must meet the requirements and pay all accrued taxes of the decedent and the estate. We may also require estimated tax payments by cashier's check, personal check, or money order to secure the payment of any taxes which may later become payable.

Once all requirements are met and you complete and submit your request, we will issue the certificate to the fiduciary or representative designated on the application. **It is your responsibility to file the certificate with the probate court.**

If necessary, we will request a copy of the final account of the fiduciary.

Once we issue the Estate Income Tax Clearance Certificate, it is valid only to the date entered on the certificate. We will issue a new certificate extending the expiration date when a Fiduciary Return (Form 541) is filed for each successive year and the tax for that year, if any, is paid.

Estate Income Tax Clearance Certificate – Filing Requirements

We issue an Estate Income Tax Clearance Certificate if an estate meets **both** requirements:

1. The estate's fair market value of all assets exceeds $1 million on the date of death, and
2. The estate distributes assets exceeding $250,000 (fair market value) to nonresident beneficiaries.

Requirement # 1 – To determine if the estate meets the first requirement:

- For California resident decedents - Include the fair market value of all assets, wherever located.
- For nonresident decedents - Include **only** the fair market value of assets located in California.

Requirement # 2 – To determine if the estate meets the second requirement, we consider:

- The residence of an individual.
- The residence of an organization.

Tax Return Filing Requirements

A. Personal Income Tax Return

Filing requirements for personal income tax returns are in the applicable instructions for the California Individual Income Tax Returns (Form 540, 540A, 540 2EZ, and 540NR-Long or Short Form).

Compute the personal income tax return for the fractional part of the year before death or on the basis of the decedent's method of accounting. You cannot include income and deductions for expenses, interest, taxes, and depletion accrued solely by reason of death for the period the death occurred. Include those items in the return of the estate or beneficiary, upon receipt or payment.

If not previously filed, mark the decedent's final personal income tax return **"FINAL"** at the top of the return in block letters and then file the return.

In addition, furnish copies of the first two pages of any other returns filed for the decedent or the estate within the last six months. Write **"COPY – DO NOT PROCESS"** in bold letters on the face of each copy.

B. Final Fiduciary Return

We require the estate to file a California Fiduciary Income Tax Return (Form 541) and properly report the income distribution. Income earned by the estate in the final year that its assets are distributed pursuant to a decree of final distribution is taxable to the beneficiaries.

File a Form 541 for the year the estate closes, if you meet the filing requirements. Also, file Form 541 to establish any excess deductions allowed to beneficiaries in the final year.

Effect of the Estate Income Tax Clearance Certificate and Continuing Liability of the Fiduciary

The Estate Income Tax Clearance Certificate we issue under R&TC Section 19513 does not relieve the estate of liability for any taxes due or taxes that later become due from the decedent or the estate. The certificate neither relieves the fiduciary of the personal liability for taxes nor other expenses as imposed by R&TC Section 19516.

Withholding Requirement

We may require fiduciaries to withhold tax on California source income distributed to nonresident beneficiaries. For information on withholding requirements, call **888**.792.4900 or go to **ftb.ca.gov** and search for **withholding**.

Where to Send Your Request

Fax your request and required documents to 916.843.0422 or mail to:

ESTATE INCOME TAX CLEARANCE
CERTIFICATE UNIT MS F150
FRANCHISE TAX BOARD
PO BOX 1673
SACRAMENTO CA 95812-1673

For more information, call 916.845.4210.

Expedite Request for Estate Income Tax Clearance Certificate (R&TC Section 19591)

We charge a nonrefundable $100 specialized service fee to expedite your request. The fee is due and payable when you submit the request and **must be paid separately** by certified funds:

- Pay by cashier's check or money order only.
- Write "Special Tax Service Fee" on your payment.

To expedite your request, submit Form 3571, along with all necessary documentation, and payment via overnight private mail service to:

ESTATE INCOME TAX CLEARANCE UNIT MS F150
FRANCHISE TAX BOARD
SACRAMENTO CA 95827

Internet and Telephone Assistance

Website:	**ftb.ca.gov**
Phone:	800.852.5711 from within the United States
	916.845.6500 from outside the United States (not toll-free)
TTY/TDD:	800.822.6268 for persons with hearing or speech impairments

FRANCHISE TAX BOARD PRIVACY NOTICE

Get FTB 1131, *Franchise Tax Board Privacy Notice*, at **ftb.ca.gov** or call us at 800.338.0505. If outside the United States, call 916.845.6500 (not toll-free).

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F. Waiver of Account and Petition for Final Distribution

§18.31 1. Report on Waiver of Account and Petition for Final Distribution

If the account is to be waived, the waiver must be signed by each distributee. Prob C §10954(b). If any distributee is a minor, conservatee, trust, or estate, see California Decedent Estate Practice §31.13 (2d ed Cal CEB 2009) on the signature.

If all distributees waive an account, the personal representative must still file a report at the time the formal account would otherwise have been required. Prob C §10954(c). The report traditionally parallels the format of the one in §18.29. Although the details of receipts and disbursements do not have to be listed in the report of administration when the account is waived, the report must list information on the following (Cal Rules of Ct 7.550):

- Creditors' claims;
- Sales;
- Purchases or exchanges of assets;
- Changes in the form of assets;
- Assets on hand;
- Whether the estate is solvent;
- A detailed schedule of receipts and gains or losses on sale (when a different amount from the amount of the inventory and appraisal is used to calculate fees and commissions) (see Cal Rules of Ct 7.705(b));
- Costs of administration (if reimbursement is requested); and
- Compensation paid or to be paid, and how it was calculated. See Prob C §§10800-10805, 10810, 10954(c)(1); Cal Rules of Ct 7.705. For a sample form using the required calculation, see §19.13.
- For decedent's estate proceedings commenced after August 17, 2003, and before January 1, 2008, the final account or report must include a separate schedule showing the graduated filing fee information required under Cal Rules of Ct 7.552 to obtain a refund of estimated filing fees. For discussion of probate filing fees, see §§1.31, 7.24.

It is also necessary to list certain facts relating to the personal representative's appointment and to detail the distributees of the estate and the assets on hand in the estate at a designated closing date. Information required by Rule 7.550 and actions taken under the Independent Administration of Estates Act can be detailed in separate schedules or in the petition itself. It is recommended that gains or losses on sales of estate assets be detailed in the petition itself, when only a few assets are sold during administration. If there are a lot of sales, *e.g.*, when the decedent owned a lot of stock, it may be easier to report gains and losses on a separate schedule. Any requests for extraordinary compensation should be detailed in the petition or in separate schedules or declarations attached to the petition. Cal Rules of Ct 7.702.

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/ §18.31A 2. Form: Report on Waiver of Account and Petition for Final Distribution

§18.31A 2. Form: Report on Waiver of Account and Petition for Final Distribution

18.31-1 Caption

[*Title of court*]

Estate of
_ _[*name*]_ _,

Decedent

No. _ _ _ _ _ _

_ _[*FIRST AND FINAL*]_ _ **REPORT**
_ _[*EXECUTIVE/ADMINISTRATOR/(ETC.)*]_ _
ON WAIVER OF ACCOUNT AND PETITION FOR FINAL DISTRIBUTION _ _[*, AND*]_ _ **FOR ALLOWANCE OF COMPENSATION TO**
_ _[*EXECUTOR/ADMINISTRATOR*]__ _[*AND*]_ _
ATTORNEYS FOR ORDINARY _ _[*AND EXTRAORDINARY*]_ _ **SERVICES** _ _[*, AND FOR specify, e.g., PRORATION OF ESTATE TAXES/FOR DISTRIBUTION TO TESTAMENTARY TRUST*]

Hearing date:
Time:
Department:

18.31-2 Use provisions from 18.29-2—18.29-14

18.31-15 Waiver of account

Waiver of Account. _ _[*Petitioner* _ _[*e.g., as a beneficiary of decedent's residuary estate*]_ _ *waives the necessity of an account*]_ _. _ _[*Name(s)*]_ _**, the** _ _[*other*]_ _ **person(s) entitled to distribution of all of the estate, waive(s) an account by petitioner, and the waiver(s) of the distributee(s)** _ _[*is/are*]_ _ _ _[*attached to this petition as Attachments* _ _ _*/on file in the proceeding*]_ _**.**

Petitioner has kept all cash in _ _[*his/her*]_ _ **possession in interest-bearing accounts or other investments authorized by law except amounts needed to administer the estate.**

A list of the assets on hand is attached as _ _[*e.g., Exhibit A*]_ _**.**

18.31-16 Continue with provisions 18.29-16—18.29-50

18.31-19 Add the following, as applicable

WHEREFORE, petitioner requests this court to order that:

[*Include all applicable requests*]

1. The administration of the estate be closed without an account;

2. All _ _[*reported*]_ _ **acts and proceedings of petitioner as** _ _[*executor/administrator/(etc.)*]_ _ **as set forth in this report be confirmed and approved;**

[3.] Petitioner be allowed and credited with $_ _[*amount*]_ _ **as** _ _[*the unpaid balance of*]_ _ **ordinary compensation for services as** _ _[*executor/administrator/(etc.)*]_ _ **and that petitioner be allowed $**_ _[*dollar amount*]_ _ **for extraordinary services as specified;**

[4.] Petitioner be authorized and directed to pay to _ _[*name of attorney*]_ _ **$**_ _[*dollar amount*]_ _ **as** _ _[*the*

unpaid balance of]_ _ **statutory compensation for services to petitioner and to the estate, and $**_ _[*dollar amount*]_ _ **for extraordinary services as specified;**

[5.] The federal estate taxes be allocated and made a charge against the interest(s) of the person(s) against whom the tax is allocated as set forth in the petition;

[6.] Petitioner be authorized to retain $_ _[*amount*]_ _ **in cash for closing expenses of administration** _ _[*and to pay liabilities*]_ _ **and to deliver the unused part to the beneficiar(y/ies) of the estate, as set forth in the petition, without further court order after closing expenses** _ _[*and liabilities*]_ _ **have been paid;**

[7.] The trustee named in the petition be authorized and directed to pay out of trust corpus in _ _[*his/her/its*]_ _ **hands any and all tax deficiencies that may be assessed against the estate;**

[8.] Distribution of the estate in petitioner's hands and any other property of the decedent or the estate not now known or discovered that may belong to the estate or in which the decedent or the estate may have any interest be made to the persons entitled to it, as set forth in the petition; and

[*Insert requests for special relief in the petition*]

[9.] Such further orders be made as the court considers proper.

Date: _ _ _ _ _ _

__[*Signature of representative*]__
_ _[*Typed name*]_ _
Petitioner

_ _[*Name of attorneys or law firm*]_ _
By: __[*Signature of attorney*]__
_ _[*Typed name*]_ _
Attorney(s) for representative

[*Verification; see §§1.21-1.23*]

Copies: Original for filing; copy for representative; office copies.

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/§18.32 3. Waiver of Account by Distributees

§18.32 3. Waiver of Account by Distributees

A representative who is also a distributee can waive an account in the body of the petition itself, or can file a separate waiver. The waivers of account of other distributees can be filed in the probate proceeding with the petition for distribution or separately. Because the account may not be waived unless all distributees waive, the waivers must be obtained before the petition is completed and filed. At that time it is usually best to keep all the waivers together and include them as attachments to the petition. Although more than one distributee can sign the same waiver of account form, it is better practice to prepare a separate waiver for each distributee.

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§18.32A 4. Form: Waiver of Account by Distributee

[*Title of court*]

[*Title of case*] **No. _ _ _ _ _ _**

WAIVER OF ACCOUNT BY DISTRIBUTEE

I, _ _[*name*]**_ _, being _ _**[*the sole distributee/one of the distributees*]**_ _ of the estate of _ _**[*name*]**_ _, deceased, do hereby waive the filing and settlement of a final account by _ _**[*name*]**_ _ as _ _**[*executor/administrator/(etc.)*]**_ _.**

Date: _ _ _ _ _ _ __[*Signature*]__
_ _[*Typed name*]_ _
Distributee

Copies: One original for each distributee for filing; one copy of each for each representative; copy for each distributee; office copies.

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§18.33 5. Form: Acknowledgment of Satisfaction of Interest by Distributee

INSTRUCTIONS: If a person's interest in the estate has been satisfied (*e.g.,* by a preliminary distribution), the personal representative should obtain an Acknowledgment of Satisfaction of Interest from that person. Once a waiver of account or an acknowledgment of satisfaction has been obtained and filed for every distributee, no account need be filed. Prob C §10954.

Copies: One original for each distributee for filing; one copy of each for each representative; one copy for each distributee; office copies.

[*Title of court*]

[*Title of case*] **No. _ _ _ _ _ _**

ACKNOWLEDGMENT OF SATISFACTION OF INTEREST BY DISTRIBUTEE

I, _ _[*name*]_ _, acknowledge having received from the estate of _ _[*name of decedent*]_ _, deceased, in complete satisfaction of my interest in that estate, the following property:

[*Describe property*]

Date: _ _ _ _ _ _ __[*Signature*]__
_ _[*Typed name*]_ _
Distributee

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VII. HEARING PROCEDURE

§18.33A A. Hearing Procedure; Obtaining a Hearing Date

The court clerk sets the date for the hearing on the petition for approval of an account and for final distribution. Prob C §1041. Procedures for setting the hearing date vary from county to county. In some counties the attorney may be able to reserve a date by telephone and then send the papers to the court. In other counties, hearing dates are not given out over the telephone but are obtained when the petition and notice of hearing are submitted to the Clerk of the Court. See, *e.g.,* Los Angeles Super Ct R 10.5; San Francisco Ct R 14.2.

AUTHOR'S ADVICE: When the petition is heard in a county that limits the number of matters that can be placed on the calendar on a single day, try to reserve the date in advance.

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/§18.34 B. Notice of Hearing

§18.34 B. Notice of Hearing

Fifteen days' notice of a petition for approval of an account and for final distribution must be given under Prob C §§1220 and 11601. Section 1220 requires notice to the personal representative, to all persons who have appeared in the estate proceeding, and to those who have requested special notice. See allegations in form 18.29-11 regarding special notice. Section 11601 requires notice to each known heir and devisee whose interest in the estate is affected by the petition (any heir or devisee who has already received all he or she is entitled to is no longer "interested in the estate" for this purpose); to the Attorney General if part of the estate will escheat and the State of California's interests are affected; and to the Controller if property will be distributed to the state because no beneficiary is known or a beneficiary's whereabouts are unknown. The Controller must also be given a copy of the latest account. If the estate is insolvent, notice must be given to each creditor whose claim was allowed or approved but is partially or wholly unpaid. Prob C §11000. The allegations in form 18.29-7 call this fact to the attorney's attention and avoid delays in settling the account for lack of proper notice. Most courts will not approve distributions without proof that notice of death or notice to file claims was given or not required to be given to the Director of Health Care Services and other public entities as provided in forms 18.29-9 and 18.29-10A. Prob C §§215, 9201-9202. See §12.11 and California Decedent Estate Practice §§14.3, 25.41, 31.26 (2d ed Cal CEB 2009).

Notice to minors and incapacitated persons should be served on the minor or incapacitated person and on any duly appointed conservator or guardian. Notice to minors must be served in a separate envelope to the guardian (if any) and to each minor, whether or not the minor is living in the same residence as the guardian.

Notice of a waiver of account and final distribution must be given to the same persons entitled to notice of the account. Posting of notice is not required.

The attorney should be consulted to determine whether anyone else should receive notice, and whether copies of the account should accompany the notice. Some attorneys also serve notice on any other beneficiaries.

Proof of service of the notice must be made at or before the hearing. Prob C §1260. Proof is usually made by filing a certificate of service by mail before the hearing date.

If out-of-state residents are receiving at least $250,000 and the estate is valued at $1 million or more, the Franchise Tax Board certificate discussed in §18.30 must be obtained and filed before the hearing. The representative should set the hearing date at least 30 days after the request form in §18.30 has been sent to the Franchise Tax Board, because the Board need not issue the certificate until 30 days after receiving the request. The legal assistant should call the Franchise Tax Board at least a week before the hearing if the certificate has not been received.

Local rules should be checked to ascertain whether the attorney will have to appear personally in court, or whether the court will accept the verified account, report, and petition under Prob C §1022.

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/§18.35 C. Supplemental Account

§18.35 C. Supplemental Account

A supplemental account is no longer required for property acquired or discovered after the order for final distribution of a decedent's estate. See Prob C §11642. The court may require a supplemental account, however, in appropriate cases.

Verify that the account carries forward the correct balance from the final account, that receipts (see §20.20) are on file, and that proper notice has been given.

Receipts and disbursements may be set forth in a schedule attached to the supplemental account, but when the items are not too numerous, it is more convenient to include them in the body of the petition. Similarly, the allegation concerning changes in assets may be omitted, but because the cash balance is usually changed, the allegation helps to avoid errors in distribution that refer only to the original account rather than to both accounts. See §5.6 for order prescribing notice.

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/ §18.35A D. Form: Supplemental Account

§18.35A D. Form: Supplemental Account

18.35A-1 Caption

[*Title of court*]

Estate of _ _[*name*]_ _,	**) No. _ _ _ _ _ _**
	)
Decedent	**) SUPPLEMENTAL ACCOUNT OF**
	) _ _[*EXECUTOR/ADMINISTRATOR/*
	) *(ETC.)*]_ _ AND PETITION FOR
	) ITS SETTLEMENT
	)
	) Hearing: _ _[*date; time*]_ _
	) Department: _ _[*number*]_ _
_____) Hearing judge: _ _[*if known*]_ _	

18.35A-2 Introduction

Petitioner, _ _[*name*]_ _, as _ _[*executor/administrator/(etc.)*]_ _ of the _ _[*will/estate*]_ _ of _ _[*name*]_ _, deceased, herein renders to the court _ _[*his/her*]_ _ supplemental account to the _ _[*first and*]_ _ final account filed in this proceeding.

The following is a full, true, and correct statement of all receipts and disbursements by petitioner for the period beginning _ _[*date*]_ _, and ending _ _[*date*]_ _.

[*Add one of the following alternatives*]

[*Alternative 1*]

18.35A-3 Receipts, disbursements, summary

RECEIPTS

Date	**Description**	**Amount**
_ _ _ _ _ _	_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _	$_ _ _ _ _ _
_ _ _ _ _ _	_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _	$_ _ _ _ _ _
_ _ _ _ _ _	_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _	$_ _ _ _ _ _

DISBURSEMENTS

Date	**Description**	**Amount**
_ _ _ _ _ _	_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _	$_ _ _ _ _ _
_ _ _ _ _ _	_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _	$_ _ _ _ _ _
_ _ _ _ _ _	_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _	$_ _ _ _ _ _

RECAPITULATION

Total Receipts	**$_ _ _ _ _ _**

Total Disbursements	**$_ _ _ _ _ _**
Net additional _ _[*receipts/disbursements*]_ _	**$_ _ _ _ _ _**

[*Alternative 2*]

18.35A-3 Income and principal receipts and disbursements are allocated in final account

RECEIPTS

Date	**Description**	**Principal**	**Income**
_ _ _ _ _ _	_ _ _ _ _ _ _ _ _	**$**_ _ _ _ _ _	**$**_ _ _ _ _ _
_ _ _ _ _ _	_ _ _ _ _ _ _ _ _	**$**_ _ _ _ _ _	**$**_ _ _ _ _ _
_ _ _ _ _ _	_ _ _ _ _ _ _ _ _	**$**_ _ _ _ _ _	**$**_ _ _ _ _ _
Total Principal Receipts		**$**_ _ _ _ _ _	
Total Income Receipts		**$**_ _ _ _ _ _	

DISBURSEMENTS

Date	**Description**	**Principal**	**Income**
_ _ _ _ _ _	_ _ _ _ _ _ _ _ _	**$**_ _ _ _ _ _	**$**_ _ _ _ _ _
_ _ _ _ _ _	_ _ _ _ _ _ _ _ _	**$**_ _ _ _ _ _	**$**_ _ _ _ _ _
_ _ _ _ _ _	_ _ _ _ _ _ _ _ _	**$**_ _ _ _ _ _	**$**_ _ _ _ _ _
Total Principal Disbursements		**$**_ _ _ _ _ _	
Total Income Disbursements		**$**_ _ _ _ _ _	

RECAPITULATION

Receipts:	
Income	**$**_ _ _ _ _ _
Principal	**$**_ _ _ _ _ _
Total Receipts	**$**_ _ _ _ _ _
Disbursements:	
Income	**$**_ _ _ _ _ _
Principal	**$**_ _ _ _ _ _
Total Disbursements	**$**_ _ _ _ _ _
Net additional income _ _[*receipts/disbursements*]_ _	**$**_ _ _ _ _ _
Net additional principal _ _[*receipts/disbursements*]_ _	**$**_ _ _ _ _ _

[*Continue*]

18.35A-4 Changes since final account

Changes Since Final Account. **The details of all changes in estate assets that have occurred since rendition of the final account are as follows:** _ _[*Specify*]_ _**.**

18.35A-5 Request

WHEREFORE, petitioner requests that this supplemental account be settled, allowed, and approved, that notice of its settlement be dispensed with, and that further orders be made as the court considers proper.

Date: _ _ _ _ _ _ __[*Signature of representative*]__
_ _[*Typed name*]_ _
_ _[*Executor/Administrator/(etc.)*]_ _

_ _[*Name of firm or attorney*]_ _
By: __[*Signature*]__
_ _[*Typed name*]_ _
Attorney(s) for representative

[*Verification; see §§1.21-1.23*]

Copies: Original for filing; copy for representative; office copies.

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/ VIII. ORDER SETTLING ACCOUNT AND FOR FINAL DISTRIBUTION/§18.35B A. Matters Covered in Order

VIII. ORDER SETTLING ACCOUNT AND FOR FINAL DISTRIBUTION

§18.35B A. Matters Covered in Order

The order settling the account and distributing the estate has become a catchall. The Probate Code expressly requires only that the order contain (1) the names of the distributees and the share to which each is entitled; (2) a provision that property to be distributed subject to a limitation or condition, including, but not limited to, an option, is distributed to the distributees subject to the terms of the limitation or condition; and (3) alternate distributees if the whereabouts of a distributee named in the order is unknown. Prob C §11603(b)-(c).

Even so, the local rules of many courts require that any order be complete in itself, and suggest that any order be drawn so that its general effect may be determined without reference to the petition on which it is based. As a result, most attorneys include more information than the minimum specified by the Probate Code in their orders for distribution.

The title of the document should generally follow the caption of the account, report, and petition at form 18.29-1. The format of the order should reflect that of the account, report, and petition. Each paragraph should be numbered. The language of the order must mirror the orders requested in the petition unless the rulings of the court at the hearing on the petition necessitate changes. The two documents should be compared to make sure nothing is overlooked that should be included in the order.

Court rules may require other statements or recitals, and local practice should be checked. Local rules may also determine which orders are prepared by the clerk and which are prepared by the attorney.

If not all findings are true as stated in form 18.36-4, see California Decedent Estate Practice §31.110 (2d ed Cal CEB 2009).

There are other methods, besides those set out in 18.36-30—18.36-31, in which distribution can be provided for in the order. Some representatives include in the petition a schedule of proposed distribution (see §18.29-45), which is also attached to the order. The order then provides:

The estate in the possession of the representative is ordered distributed to the persons and in the manner and the shares as set forth in Attachment _ _ _.

Some courts forbid attachments or require that the judge's signature be at the end of the attachment so that it becomes part of the body of the order. Local rules and practice should be consulted.

If deductions for estate taxes are to be made, appropriate provisions must be added to the order or attachment.

As noted in §18.28F, distributions of cash to residuary beneficiaries can cause potential accounting problems if the order does not recognize from the outset that the amount of cash on hand varies from time to time. The best way to do this is to state that the residuary beneficiary will receive:

cash of $_ _ _ _ _ _, plus cash receipts and less cash disbursements from _ _[*date final account ends*]_ _ to date of distribution.

If there is more than one residuary beneficiary, the language may be altered, *e.g.:*

cash of $_ _ _ _ _ _, plus one third of cash receipts and less one third of cash disbursements from _ _[*date final account ends*]_ _ to date of distribution.

If money or property is held by a depositary under Prob C §8483, so that it may be withdrawn only under court order, the order should provide that the depositary make the distribution directly to the beneficiary.

If the will provides for a testamentary trust (see form 18.36-35), the court must determine whether a valid trust has been created by the will and the terms of the trust. Cal Rules of Ct 7.650. The order of distribution must include the terms of the trust. When drafting a decree of distribution that establishes a testamentary trust, it is important not only that the will provisions be accurately reflected in the decree but also that every will provision relating to the trust or the

trustees—not just those provisions describing the dispositive terms—be included. The pertinent provisions should be "stated in the present tense and in the third person instead of quoting the will verbatim." Cal Rules of Ct 7.650.

In drafting a decree of distribution that establishes a testamentary trust, when the will has provided for continuing jurisdiction in the probate court that fact should also be included in the decree.

If the court construes the will to grant a qualified marital deduction or a charitable remainder trust, the decree of distribution should precisely follow the terms of the court's order to ensure the preservation of those federal estate tax deductions.

Care should be taken to make proper distribution of separate, community, and quasi-community property; otherwise, the surviving spouse's or domestic partner's interest in community property may be distributed to the decedent's issue or heirs, along with the decedent's interest in separate property. Usually, reference may be made to other provisions of the order, *e.g.,* those disposing of the surviving spouse's interest, the residue, and the interest obtained through the laws of succession. Some counties do not permit inclusion of an omnibus clause when the character of after-discovered property must be determined before it can be distributed.

If a distributee's whereabouts are unknown, the order of distribution must include alternate distributees and the share to which they are entitled. For discussion of alternate distributees, see §18.28H.

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Source: Estate Planning/California Probate Workflow Manual Revised/18 Account, Report, and Final Distribution/§18.36 B. Form: Order Settling Final Account and for Final Distribution

§18.36 B. Form: Order Settling Final Account and for Final Distribution

18.36-1 Caption

[*Add one of the following alternatives*]

[*Alternative 1: Account is presented*]

[*Title of court*]

Estate of _ _[*name*]_ _,	)**No.** _ _ _ _ _ _
	)
Decedent	)**ORDER SETTLING** _ _[*FIRST/*
	)*SECOND/ETC.*]_ _ **AND FINAL**
	)**ACCOUNT AND REPORT OF**
	)_ _[*EXECUTOR/ADMINISTRATOR*]_ _,
	)**ALLOWING COMPENSATION TO**
	)_ _[*EXECUTOR/ADMINISTRATOR*]_ _
	)**AND ATTORNEYS FOR ORDINARY**
	)_ _[*AND EXTRAORDINARY*]_ _
	)**SERVICES;** _ _[*ALLOCATING*
	)*ESTATE TAXES*]_ _ **AND FOR FINAL**
	)**DISTRIBUTION** _ _[*AND FOR*
	)*DISTRIBUTION TO TESTAMENTARY*
	)*TRUST*]_ _
	)
_____	)

[*Alternative 2: Account is waived*]

[*Title of court*]

Estate of _ _[*name*]_ _,	)**No.** _ _ _ _ _ _
	)
Decedent	)**ORDER FOR FINAL DISTRIBUTION**
	)**ON WAIVER OF ACCOUNT AND**
	)**ALLOWING COMPENSATION TO**
	)_ _[*EXECUTOR/ADMINISTRATOR*]_ _
	)**AND ATTORNEY(S) FOR ORDINARY**
	)_ _[*AND EXTRAORDINARY*]_ _
	)**SERVICES** _ _[*AND FOR, specify,*
	)*e.g., ALLOCATION OF ESTATE*
	)*TAXES/AND FOR DISTRIBUTION TO*
	)*TESTAMENTARY TRUST*]_ _
	)
	)
	)
	)
	)
	)
	)
	)
_____	)

[*Continue*]

18.36-2 Nature of petition and date of hearing

_ _[*Name*]_ _, as _ _[*executor/administrator/(etc.)*]_ _ of the _ _[*will/estate*]_ _ of _ _[*name*]_ _, deceased, having filed _ _[*his/her*]_ _ _ _[(*as stated in caption)*]_ _ account, report, and petition for its settlement and for final distribution, and the account, report, and petition coming on regularly for hearing on _ _[*date*]_ _, in Department _ _[*number/letter*]_ _, the court finds:

FINDINGS

18.36-3 Notice of hearing given

[*Add one of the following alternatives*]

[*Alternative 1: If account included*]

Due notice _ _[*including special notice to _ _ _ _ _ _*]_ _ of the settlement of the account and of the hearing on the petition for final distribution of the estate has been regularly given for the period and in the manner prescribed by law _ _[*and as prescribed by the order of this court on _ _[date]_ _]_ _.

[*If applicable, add the following option*]

[*Option: Supplemental account filed*]

and notice of hearing on the supplemental account filed on _ _[*date*]_ _, has been dispensed with.

[*Alternative 2: If account waived*]

Notice of hearing of the petition has been regularly given as prescribed by law.

[*Continue*]

18.36-4 Account and petition true

All acts and transactions of the _ _[*executor/administrator/(etc.)*]_ _ of the _ _[*will/estate*]_ _ of _ _[*name*]_ _, deceased, during the period of the account are truly shown and are approved, and all allegations of the petition for its settlement and for final distribution are true.

Since rendition of the account _ _[*including the supplemental account filed on _ _[date]_ _]_ _ the sum of $_ _[*dollar amount*]_ _ has been received and the sum of $_ _[*dollar amount*]_ _ has been disbursed.

The account _ _[*and the supplemental account filed on _ _[date]_ _]_ _ _ _[*is/are*]_ _ true and correct and should be settled, allowed, and approved as filed.

18.36-5 Date of death and domicile

_ _[*Name*]_ _ died _ _[*testate/intestate/partially intestate*]_ _ on _ _[*date*]_ _, in _ _ _ _ _ _ County, California, and was at the time of death domiciled in _ _[*that county/(name of county of decedent's domicile if other than where decedent died)*]_ _.

[*If applicable, add the following option*]

[*Option: Ancillary administration*]

This is an ancillary administration of the decedent's estate. The domiciliary administration is in _ _[*state*]_ _.

18.36-6 Appointment and qualification of representative

On _ _[*date*]_ _, _ _[*name*]_ _ was appointed _ _[*executor/administrator/etc.*]_ _ of the decedent's _ _[*will/estate*]_ _ and qualified as such on _ _[*that date/_ _[date]_ _]_ _. Letters _ _[*testamentary/of administration/etc.*]_ _ were issued to _ _[*name*]_ _ on _ _[*the same date/specify other date*]_ _. Since then _ _[*he/she*]_ _ has been and now is the _ _[*executor/administrator/etc.*]_ _ of the _ _[*will/estate*]_ _.

18.36-7 Authority under Independent Administration of Estates Act

On _ _[*date*]_ _, _ _[*name*]_ _ was granted authority to administer the estate without court supervision under

the Independent Administration of Estates Act. This authority has not been revoked.

18.36-8 Estate in condition to be closed

Letters _ _[*testamentary/of administration/(etc.)*]_ _ were issued on _ _[*date*]_ _. More than four months have elapsed since the issuance of letters. Notice of administration has been given to creditors, as required by law. The time for filing and serving creditors' claims has expired, and the estate now is in a condition to be closed.

[*If appropriate, add*]

All persons entitled to distribution of the estate have waived an account by petitioner.

18.36-9 Character of estate property

[*Add one of the following alternatives*]

[*Alternative 1: Separate property only*]

The decedent was survived by a _ _[*spouse/registered domestic partner*]_ _. The estate consists entirely of the separate property of the decedent.

[*Alternative 2: Separate and community property*]

The decedent was survived by a _ _[*spouse/registered domestic partner*]_ _. The estate consists of the separate property of the decedent, which is described in Attachment _ _[*letter*]_ _, and the decedent's one-half interest in the community property _ _[*and quasi-community property*]_ _ which is described in Attachment _ _[*letter*]_ _.

Comment: The use of this finding is optional but is recommended. Although Cal Rules of Ct 7.652 requires an allegation in the petition on the character of the property, there is no requirement that it be in a finding.

[*Continue*]

18.36-10 Election by surviving spouse or registered domestic partner to subject property to administration

[*If applicable, add one or more of the following options*]

[*Option 1: Prob C §13502(a)(2) election to probate survivor's or surviving registered domestic partner's interest in community or quasi-community property, or in both*]

By document filed herein on _ _[*date*]_ _, _ _[*name*]_ _, the surviving _ _[*spouse/registered domestic partner*]_ _, elected and agreed to subject _ _[*his/her*]_ _ interest in _ _[*community/quasi-community/community and quasi-community*]_ _ property to this administration.

[*Option 2: Prob C §13502(a)(1) election to probate decedent's separate property and interest in the community or the quasi-community property, or in both*]

By document filed herein on _ _[*date*]_ _, the surviving _ _[*spouse/registered domestic partner*]_ _, elected to subject the decedent's _ _[*separate property and*]_ _ interest in the _ _[*community/quasi-community/community and quasi-community*]_ _ property that under the _ _[*will/laws of intestate succession*]_ _ passes to the surviving _ _[*spouse/registered domestic partner*]_ _ to this administration.

[*Continue*]

18.36-11 Disposition of creditors' claims

[*Add one of the following alternatives*]

[*Alternative 1: No creditors' claims filed*]

No claims have been filed with the court _ _[*or served on the _ _[executor/administrator/(etc.)*]_ _]_ _.

[*Alternative 2: All claims filed, allowed, and paid*]

All claims filed _ _[*and served*]_ _on the estate have been allowed by the _ _[*executor/administrator/(etc.)*]_ _, approved by this court, and paid.

[*Alternative 3: Unrejected claims paid; all rejected claims barred*]

All claims filed _ _[*and served*]**_ _on the estate were either allowed by the _ _**[*executor/administrator/(etc.)*]**_ _, approved by this court, and paid, or rejected by the _ _**[*executor/administrator/(etc.)*]**_ _ or by this court; written notice of rejection of each rejected claim has been given in conformity with the law; more than three months have elapsed since service of the last of the notices of rejection to be served, and more than two months have elapsed since the last of the rejected claims became due.**

[*Continue*]

18.36-12 Payment of debts and expenses

All debts of the decedent and of the estate and all expenses of administration have been paid, except closing expenses _ _[*(specify)/and compensation of petitioner as _ _*[*executor/administrator/(etc.)*]**_ _ and fees of _ _**[*name(s)*]**_ _, _ _**[*his/her*]**_ _ attorneys*]**_ _.**

18.36-13 Estate tax

[*Add one of the following alternatives*]

[*Alternative 1: No returns necessary*]

No federal or _ _[*name of state*]**_ _estate tax return has been filed for the estate because the estate was not sufficient to require such a return, and no estate taxes are due.**

[*Alternative 2: Return filed; no estate tax due*]

A federal estate tax return was filed _ _[*and a _ _*[*name of state*]**_ _ estate tax return was filed*]**_ _. No federal _ _**[*or state*]**_ _ estate taxes are due.**

[*Alternative 3: Returns filed; estate taxes paid*]

A federal estate tax return was filed on _ _[*date*]**_ _ _ _**[*and a _ _*[*name of state*]**_ _ estate tax return was filed on _ _**[*date*]**_ _]_ _. The federal estate tax shown to be due in the amount of $_ _**[*amount*]**_ _ _**[*and the _ _*[*name of state*]**_ _ tax due in the amount of $_ _**[*amount*]**_ _]_ have been paid by _ _**[*the persons charged with it under Article _ _*[*number/letter*]**_ _ of the will/petitioner from estate assets*]**_ _.**

[*Continue*]

The _ _[*executor/administrator*]**_ _ has _ _**[*not*]**_ _ been released from personal liability for estate taxes. The federal return has _ _**[*not*]**_ _ been audited _ _**[*and/or*]**_ _ a closing letter has _ _**[*not*]**_ _ been issued.**

[*If applicable, add the following option*]

The trustee(s) named below shall be authorized and directed to pay out of trust corpus in _ _[*his/her/their/its*]**_ _ hands any and all estate tax deficiencies, interest, and penalties that may be assessed against the estate.**

[*Continue*]

18.36-14 Allocation of estate tax

[*Add one of the following alternatives*]

[*Alternative 1: Estate tax charged against residue of estate*]

Article _ _ _ of the will provides that all estate tax _ _[*charged to decedent's probate estate/incurred on the decedent's death*]**_ _ be paid from the residue of the estate, and no allocation among the estate distributees is required.**

[*Alternative 2: Estate tax paid; estate tax allocation necessary*]

The estate tax paid on behalf of the estate should be prorated and charged to the estate distributees as set forth in the order for distribution.

[*Continue*]

18.36-15 Income taxes

[*Add one of the following alternatives*]

[*Alternative 1: No income tax payable*]

No California or federal income taxes are due or payable by the estate.

[*Alternative 2: Income tax paid*]

All California and federal income taxes due and payable by the estate have been paid.

[*Continue*]

[*Add one of the following alternatives*]

[*Alternative 1: Estate not distributable to nonresident beneficiaries*]

Certificate of California Franchise Tax Board. **A certificate of the California Franchise Tax Board required by Revenue and Taxation Code §19513 does not have to be filed because there are no nonresident beneficiaries of the estate.**

[*Alternative 2: Assets exceed $1,000,000 and $250,000 or more is distributable to nonresident beneficiaries*]

The value of the assets of the estate at the date of the decedent's death exceeded $1,000,000, and assets of at least $250,000 are distributable to the following nonresident beneficiar(y/ies):

Name	**Address**	**Amount**
_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _	_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _	**$**_ _ _ _ _
_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _	_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _	**$**_ _ _ _ _
_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _	_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _	**$**_ _ _ _ _

The certificate of the California Franchise Tax Board required by Revenue and Taxation Code §19513 is on file in the proceeding.

18.36-16 Personal property taxes

[*Add one of the following alternatives*]

[*Alternative 1: No personal property tax due*]

There are no personal property taxes due or payable by the estate.

[*Alternative 2: Personal property tax paid*]

All personal property taxes due and payable by the estate have been paid.

[*Continue*]

18.36-17 Compensation

[*If applicable, add one or more of the following options*]

[*Option 1: Personal representative's compensation waived*]

The _ _[*executor/administrator*]**_ _ has waived all rights to compensation.**

[*Option 2: Statutory compensation allowed*]

The _ _[*executor/administrator*]**_ _ _ _**[*and the*]**_ _ attorneys for the _ _**[*executor/administrator*]**_ _ have rendered valuable services to the estate, and statutory compensation should be allowed as ordered below.**

[*Option 3: Extraordinary compensation—personal representative*]

The _ _[*executor/administrator*]_ _ has rendered extraordinary services and compensation for such services should be allowed as ordered below.

[*Option 4: Extraordinary compensation—attorney*]

The attorneys for the _ _[*executor/administrator*]_ _ _ _[*has/have*]_ _ rendered extraordinary services to the _ _[*executor/administrator*]_ _ and the estate, and compensation for such services should be allowed as ordered below.

[*Continue*]

18.36-18 Closing expenses

The estimated expenses of closing the estate, including the reserve for payment of any additional tax liability that may hereafter be determined to be due from the estate are $_ _[*dollar amount*]_ _, and the _ _[*executor/administrator/(etc.)*]_ _ should be authorized to withhold that sum from distribution.

[*If applicable, add*]

The trustee(s) named below shall be authorized and directed to pay out of trust corpus in _ _[*his/her/their*]_ _ hands any and all tax deficiencies that may be assessed against the estate. _ _[*List trustee(s)*]_ _

18.36-19 Proposed distribution

Distribution should be ordered as _ _[*requested/specified below*]_ _.

ORDER

18.36-20 Order (short form—use only in very simple estates)

IT IS ORDERED that notice of the hearing has been given as required by law; that the _ _[*executor/administrator/(etc.)*]_ _ has in _ _[*his/her*]_ _ possession belonging to the estate, after deducting credits to which _ _[*he/she*]_ _ is entitled, a balance of $_ _[*dollar amount*]_ _, of which $_ _[*dollar amount*]_ _ is in cash and the remainder consists of the property described below at the appraised value; that the account be allowed and settled accordingly; that out of the cash in _ _[*his/her*]_ _ hands, the _ _[*executor/administrator/(etc.)*]_ _ pay to _ _[*name*]_ _ the sum of $_ _[*dollar amount*]_ _, hereby allowed as attorneys' compensation, and retain $_ _[*dollar amount*]_ _ as compensation for _ _[*his/her*]_ _ services; that the property described below be distributed to the following persons in the specified manner:

_ _[*List persons receiving specific bequests or devises, and describe property included*]**_ _.**

IT IS FURTHER ORDERED that all other property of the estate, whether described or not, be distributed as follows: _ _[*List residuary beneficiaries, their proportions, and the property in the residue*]**_ _.**

Date: _ _ _ _ _ _

__[*Signature*]__
_ _[*Judge/Commissioner*]**_ _ of the**
_ _[*title of court*]**_ _**

18.36-21 Order (long form—number each paragraph)

18.36-22 Introduction: Estate brought to a close

IT IS ORDERED that:

[*Add one of the following alternatives*]

[*Alternative 1: When account presented*]

1. The administration of the estate is brought to a close.

[*Alternative 2: Estate brought to a close when account waived*]

1. The administration of the estate be brought to a close without the requirement of an account.

[*Continue*]

18.36-23 Account settled or waived

[*Add one of the following alternatives*]

[*Alternative 1: Account settled*]

2. The _ _[*executor/administrator/(etc.)*]_ _ has in _ _[*his/her*]_ _ possession belonging to the estate, after deducting credits to which _ _[*he/she*]_ _ is entitled, a balance at the appraised value of $_ _[*dollar amount*]_ _, of which $_ _[*dollar amount*]_ _ is in cash. The _ _[*first/second/final/and supplemental*]_ _ account(s), petition, and report of the _ _[*executor/administrator/(etc.)*]_ _ _ _[*is/are*]_ _ settled, allowed, and approved as filed.

[*Alternative 2: Assets on hand when account waived by distributees*]

2. The _ _[*executor/administrator/(etc.)*]_ _ has in _ _[*his/her*]_ _ possession belonging to the estate a balance at the appraised value of $_ _[*dollar amount*]_ _, of which $_ _[*dollar amount*]_ _ is in cash.

[*Continue*]

18.36-24 Representative's acts approved

[*Add one of the following alternatives*]

[*Alternative 1: Representative's acts approved when account settled*]

3. All _ _[*reported*]_ _ acts and transactions of the _ _[*executor/administrator/(etc.)*]_ _ relating to the matters set forth in the _ _[*account/waiver*]_ _, report, and petition are confirmed and approved.

[*Alternative 2: Representative's acts approved when account waived*]

3. All acts and transactions of the _ _[*executor/administrator/(etc.)*]_ _ relating to the matters set forth in the report and petition are confirmed and approved.

[*Continue*]

18.36-25 Representative's compensation

[*Add one or more of the following alternatives*]

[*Alternative 1: Representative's compensation waived*]

4. The _ _[*executor/administrator/(etc.)*]_ _ has waived _ _[*his/her*]_ _ right to compensation for _ _[*ordinary*]_ _ services rendered in administering the estate.

[*Alternative 2: Representative's statutory compensation*]

4. The _ _[*executor/administrator/(etc.)*]_ _ is authorized and directed to pay to _ _[*himself/herself*]_ _ $_ _[*dollar amount*]_ _ as _ _[*the unpaid balance of*]_ _ statutory compensation for services rendered in administering the estate.

[*If applicable, add the following option to Alternative 2*]

[*Option: Representative's extraordinary compensation*]

and $_ _[*dollar amount*]_ _ as compensation for extraordinary services rendered in the administration of this estate.

[*Continue*]

18.36-26 Statutory and extraordinary attorneys' compensation

5. The _ _[*executor/administrator/(etc.)*]_ _ is authorized and directed to pay _ _[*name(s)*]_ _, _ _[*his/her*]_ _

attorney(s), $_ _[*dollar amount*]_ _ as _ _[*the unpaid balance of*]_ _ statutory compensation for services rendered in the administration of this estate, and $_ _[*dollar amount*]_ _ as compensation for extraordinary services rendered in administering this estate.

18.36-27 Closing expenses

6. The _ _[*executor/administrator/(etc.)*]_ _ is authorized to retain $_ _[*dollar amount*]_ _ from distribution at this time to pay closing expenses _ _[*and as a reserve for additional liabilities (including estate taxes that will be due)*]_ _. Any unexpended portion of such reserve for closing expenses _ _[*and additional liabilities (and death taxes)*]_ _ shall be distributed to _ _[*name distributee(s), and percentage interest of each, if more than one distributee*]_ _ without further order of this court.

18.36-28 Testamentary trustee will pay any tax deficiencies out of trust corpus

7. The trustee(s) named below shall be authorized and directed to pay out of trust corpus in _ _[*his/her/their*]_ _ hands any and all tax deficiencies that may be assessed against the estate. _ _[*List trustee(s)*]_ _

18.36-29 Survivor's community property administered in proceeding

8. The following property shall be distributed to _ _[*name*]_ _, decedent's surviving _ _[*spouse/registered domestic partner*]_ _, as _ _[*his/her*]_ _ community property administered in the estate, together with the decedent's share of community property not otherwise disposed of, consisting of the following: _ _[*List*]_ _.

18.36-30 Distribution plan

[*If applicable, add one or more of the following options*]

[*Option 1: No will or partial intestacy*]

9. The decedent died _ _[*intestate/partially intestate*]_ _, leaving the persons whose names and addresses are set forth below as the only heirs at law:

Name	Residence
_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _	_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _
	_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _
_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _	
_ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _	_ _

The property in the hands of the _ _[*executor/administrator/(etc.)*]_ _ _ _[*not disposed of by will*]_ _ shall be distributed to the decedent's heirs as follows: _ _[*List specific property to be distributed to each heir and amount of estate tax (if any) charged against each share*]_ _.

[*Option 2: Distribution according to will*]

9. *Distribution.* By the terms of the will _ _[*and codicil(s)*]_ _ _ _[*and the order determining interests*]_ _, the estate in the possession of the _ _[*executor/administrator/(etc.)*]_ _ remaining for distribution shall be distributed to the following beneficiaries of the estate:

Name	Age (Over/ Under 18)	Relationship	Residence
_ _ _ _ _ _ _	_ _ _ _ _ _ _ _ _ _	_ _ _ _ _ _ _	_ _ _ _ _ _ _ _ _ _ _ _ _ _ _
_ _ _ _ _ _ _	_ _ _ _ _ _ _ _ _ _	_ _ _ _ _ _ _	_ _ _ _ _ _ _ _ _ _ _ _ _ _ _
_ _ _ _ _ _ _	_ _ _ _ _ _ _ _ _ _	_ _ _ _ _ _ _	_ _ _ _ _ _ _ _ _ _ _ _ _ _ _

The property is to be distributed to each beneficiary as follows:_ _[*List specific property to be distributed to each distributee*]_ _**.**

[*Continue*]

18.36-31 Estate taxes allocated against each distributee in either testate or intestate distribution

[*If applicable, add the following option after each distributee's list of property above*]

[*Option: Estate taxes allocated against each distributee*]

less, however, $_ _[*dollar amount*]_ _**, which is** _ _[*his/her*]_ _ **prorata share of the federal estate tax, paid by the** _ _[*executor/administrator/(etc.)*]_ _ **and chargeable to the distributee.**

[*Continue*]

18.36-32 Interest to be paid on general pecuniary devises

[*If applicable, add the following option*]

[*Option: Interest on general pecuniary devises*]

plus interest on it at the rate of _ _ **percent per year for the period commencing** _ _[*date*]_ _**, until the date of payment.**

[*Continue*]

18.36-33 Whereabouts of distributee unknown

10. If _ _[*name of distributee*]_ _**, whose whereabouts are unknown, does not claim** _ _[*his/her*]_ _ **share within five years after the date of this order,** _ _[*name of distributee's*]_ _ **share shall be distributed to the alternate distributees listed below, who are the persons who would be entitled to distribution under** _ _[*decedent's will/the laws of intestate succession*]_ _ **if** _ _[*name of distributee*]_ _ **had predeceased the decedent.** _ _[*List alternate distributees and the share to which each is entitled*]_ _

18.36-34 Distributee is a minor

[*Add one of the following alternatives*]

[*Alternative 1: Gifts not exceeding $5000*]

11. The following property is distributed without bond to _ _[*name*]_ _**, the parent of** _ _[*name*]_ _**, a minor, to hold in trust for the minor until the minor is 18 years of age.** _ _[*Specify*]_ _**.**

[*Alternative 2: Gifts exceeding $5000*]

[*Use one of the following options*]

[*Option 1: Deposit subject to withdrawal only by court order*]

11. The _ _[*executor/administrator/(etc.)*]_ _ **shall deposit the sum of $**_ _[*amount*]_ _ **in the name of** _ _[*distributee*]_ _ **at** _ _[*institution*]_ _ **subject to withdrawal only by court order.**

[*Option 2: Distribution under Uniform Transfers to Minors Act*]

11. The _ _[*executor/administrator/(etc.)*]_ _ **shall distribute the following property to** _ _[*name*]_ _**, as custodian for** _ _[*name*]_ _**,** _ _[*until age 25,*]_ _ **under the California Uniform Transfers to Minors Act (CUTMA):** _ _[*Specify*]_ _**.**

[*Option 3: Distribution to guardian*]

11. The _ _[*executor/administrator*]_ _ **shall distribute the following property to** _ _[*name of guardian*]_ _ **as guardian of the estate of** _ _[*name of minor*]_ _**.**

[*Option 4: Court-ordered conditions*]

11. The _ _[*executor/administrator/(etc.)*]_ _ shall _ _[*state court-ordered conditions*]_ _ the sum of $_ _[*dollar amount*]_ _.

[*Continue*]

18.36-35 Distribution to trustee

[*If applicable, add*]

12. The property described below is distributed to _ _[*name*]_ _ in trust to be held by the trustee(s) for the following use and purposes: _ _[*Describe, stating pertinent provisions of will in present tense and in the third person*]_ _.

[*If applicable, add*]

[*Income during probate to be distributed to beneficiaries of trust*]

The trustee(s) shall pay forthwith, from the trust property and free of trust, $_ _[*dollar amount*]_ _ to _ _[*name of beneficiary*]_ _, which represents the residue of net income received by the _ _[*executor/administrator/(etc.)*]_ _ on the property ordered distributed to the trustee(s).

[*Continue*]

The property ordered distributed to the trustee(s) under _ _[*this paragraph/paragraph _ _ _*]_ _ consists of the property described: _ _[*below/in Attachment _ _*]_ _.

18.36-36 Omnibus clause

13. Any other property of the estate not now known or discovered that may belong to the estate or in which the decedent or the estate may have any interest shall be distributed as follows: _ _[*Specify*]_ _.

Date: _ _ _ _ _ _

__[*Signature*]__
_ _[*Judge/Court Commissioner*]_ _ **of the**
_ _[*title of court*]_ _

Comment: The language of the order must mirror the petition unless the hearing on the petition requires a different order.

Although it does not appear necessary to include a finding about compensation, a provision should always be included in the order. If statutory commissions and fees have already been paid before their allowance by the court (a practice that is strongly discouraged), the order should approve the payment by the representative.

Some courts add "and signed on *date*," if the order is presented for signature at a date later than that on which it is made.

Copies: Original for filing; one certified copy for recording in each county where real property is located; one certified copy for each transfer agent who will require it; copy for representative; office copies.

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Compensation

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I. COMPENSATION OF PERSONAL REPRESENTATIVE

§19.1 A. Amount of Compensation

The personal representative is entitled to compensation. Probate Code §10800 sets the representative's compensation for ordinary services performed. This compensation is based on the value of the estate accounted for (see §19.8) and is set as follows:

Estate Accounted for

(1) From	(2) To	(3) Compensation on (1)	(4) Plus on excess above (1)
$—0—	$100,000	$—0—	4%
100,000	200,000	4,000	3%
200,000	1,000,000	7,000	2%
1,000,000	10,000,000	23,000	1%
10,000,000+	25,000,000	113,000	0.5%
25,000,000+		188,000	*

*Amount subject to court's discretion

For ordinary services rendered, the estate's attorney is generally entitled to the same compensation as that allowed for the representative's ordinary services. If the will sets the attorney's compensation, however, that provision must be followed unless the court, on petition, grants relief from it. Prob C §10812.

Either the attorney or the representative may waive compensation. The representative and the attorney may agree on a different fee for the attorney for ordinary services performed if it does not exceed the amount set by Prob C §10800. Prob C §10813. A representative may also agree to accept compensation in a lesser amount. If a representative has decided to waive his or her right to compensation (see California Decedent Estate Practice §§30.11-30.14 (2d ed Cal CEB 2009)), the form in §19.3 may be used.

NOTE: Although some attorneys recommend that such a waiver of compensation be filed immediately after it has been signed, others choose not to file a formal waiver until an account and report is filed.

After a noticed hearing, the court may make an order authorizing compensation in an amount greater than provided in the will if the court determines that it is to the advantage of the estate and in the best interest of the persons interested in the estate. Prob C §10802. See §§19.2-19.2A. Although it may not be required because the original will has already been lodged with the court, a copy of the will should be attached to the petition for the court's convenience.

For services that are considered extraordinary rather than ordinary, additional compensation may be approved by the court. See §19.9.

On apportionment of compensation among successive or concurrent representatives or attorneys, see Cal Rules of Ct 7.704. For discussion of this issue, as well as reduction of compensation for failure to timely administer the estate, see California Decedent Estate Practice §§30.39, 30.49 (2d ed Cal CEB 2009).

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Source: Estate Planning/California Probate Workflow Manual Revised/19 Compensation/ B. Relief From Compensation Provision in Will/§19.2 1. Form: Petition by Personal Representative for Relief From Will Provision for Compensation

B. Relief From Compensation Provision in Will

§19.2 1. Form: Petition by Personal Representative for Relief From Will Provision for Compensation

[*Title of court*]

Estate of _ _[*name*]_ _,	**)**	**No. _ _ _ _ _ _**
	)	
Decedent	**)**	**PETITION FOR RELIEF FROM**
	)	**WILL PROVISION FOR**
	)	**COMPENSATION OF**
	)	**PERSONAL**
	)	**REPRESENTATIVE**
	)	**(PROBATE CODE §10802)**
	)	
_____	**)**	**Hearing Date:**
		Time:
		Department:

Petitioner, _ _[*name*]_ _, alleges:

1. Petitioner, _ _[*name*]_ _, is the personal representative of the above-named decedent in the above-captioned estate.

2. The decedent died on _ _[*date*]_ _, and _ _[*his/her*]_ _ will was admitted to probate and letters testamentary were issued to petitioner on _ _[*date*]_ _. A copy of the will is attached as Exhibit A.

3. The petitioner has, until the filing of this petition, taken the following actions: _ _[*List all significant steps in administering the estate that have been accomplished by the time this petition is made*]_ _.

4. Article _ _ _ of the will provides for compensation of the personal representative as follows: _ _[*Recite applicable provision*]_ _.

5. It is to the advantage of the estate and in the best interest of the persons interested in the estate that the personal representative be relieved from that will provision fixing compensation and that compensation be fixed as the compensation to which _ _[*he/she*]_ _ is entitled under Probate Code §§10800 and 10801.

[*If applicable, add one or more of the following options*]

[*Option 1: Changed circumstances*]

[6.] Changed circumstances have rendered the personal representative's compensation provided for in the will grossly inadequate in that _ _[*specify, e.g., the will contemplated that the executor would be _ _[name]_ _, a friend of the decedent's, who was to receive a bequest under the will in addition to compensation; however, because of the death of _ _[name]_ _, a third party has had to perform the duties of the personal representative/the decedent's will was executed 30 years before the decedent's death. The fee provision was generous for its time and indicates the decedent's intent to compensate the personal representative handsomely. The fee in today's dollars, however, is well below the allowable statutory fee*]_ _.

[*Option 2: All persons interested in estate agree*]

[6.] All persons interested in the estate have agreed in writing to and approve the request herein that the personal representative's compensation be greater than that provided for in the decedent's will. This agreement is attached as Exhibit A.

[*Option 3: Fee provision that provides only for ordinary compensation will be inadequate even though it refers to statutory fee*]

[6.] Because of the complexity involved in the probate of the decedent's estate, and the amount of time that the personal representative must devote to these probate matters, the statutorily mandated fee for ordinary services, which is the only compensation provided for in the will, is grossly inadequate, and a personal representative cannot perform the necessary extraordinary services at that fee.

[*Continue*]

[7.]_ _[*No one has filed a request for special notice/The following persons have filed requests for special notice:* _ _[*List name(s) and address(es)*]_ _]_ _**.**

WHEREFORE, petitioner requests:

1. An order of this court authorizing and directing that the personal representative shall be awarded the compensation to which _ _[*he/she*]**_ _ is entitled under Probate Code §§10800 and 10801;**

2. Other relief that the court considers proper.

Date: _ _ _ _ _ _ __[*Signature*]__
_ _[*Typed name*]_ _
Petitioner

Date: _ _ _ _ _ _ __[*Signature*]__
_ _[*Typed name*]_ _
Attorney for Petitioner

[*Verification; see §1.22*]

Copies: Original for filing; copy for personal representative; office copies.

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Source: Estate Planning/California Probate Workflow Manual Revised/19 Compensation/§19.2A 2. Form: Order Granting Relief From Will Provision for Compensation of Personal Representative

§19.2A 2. Form: Order Granting Relief From Will Provision for Compensation of Personal Representative

[*Title of court*]

Estate of _ _[*name*]_ _,	**)**	**No. _ _ _ _ _ _**
	)	
Decedent	**)**	**ORDER GRANTING RELIEF**
	)	**FROM WILL PROVISION FOR**
	)	**COMPENSATION OF**
	)	**PERSONAL**
_____	**)**	**REPRESENTATIVE**

The verified petition of _ _[*name*]_ _ as the personal representative of the above-named decedent in the above-captioned estate for an order granting relief from a will provision for compensation of the personal representative came on regularly for hearing on _ _[*date*]_ _, at _ _[*time*]_ _, in Department _ _[*number/letter*]_ _. _ _[*Name*]_ _ appeared as attorney for petitioner, and _ _[*no one/_ _[name]_ _, as attorney for _ _[name]_ _,*]_ _ appeared in opposition. After examining the petition _ _[*and objections of _ _[name]_ _]_ _ and hearing the evidence, the court finds that all notices of the hearing have been given as required by law and that all allegations of the petition are true.

The court further finds that it is to the advantage of the estate and in the best interest of the persons interested in the estate that the personal representative receive compensation in an amount greater than that provided for in the will, and grants the petition. Good cause appearing,

IT IS ORDERED that the amount of compensation for the personal representative be increased to an amount to which _ _[*he/she*]_ _ is entitled under Probate Code §§10800 and 10801 for ordinary and extraordinary services to the estate.

Date: _ _ _ _ _ _ __[*Signature*]__
Judge of the _ _[*title of court*]_ _

Copies: Original for filing; copy for personal representative; office copies.

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Source: Estate Planning/California Probate Workflow Manual Revised/19 Compensation/§19.3 C. Form: Waiver of Compensation by Personal Representative

§19.3 C. Form: Waiver of Compensation by Personal Representative

[*Title of court*]

Estate of _ _[*name*]_ _**,**	)	**No.** _ _ _ _ _ _
	)	
Decedent	)	**WAIVER BY** _ _[*EXECUTOR/*
	)	*ADMINISTRATOR*]_ _ **OF**
	)	**ORDINARY** _ _[*AND*
	)	*EXTRAORDINARY*]_ _
_____	)	**COMPENSATION**

1. I, the duly appointed _ _[*executor/administrator*]_ _ **of the** _ _[*will/estate*]_ _ **of the above-named decedent, hereby waive all rights to compensation for ordinary services** _ _[*and for extraordinary services*]_ _ **as** _ _[*executor/administrator*]_ _**.**

[*If appropriate, add*]

2. I expressly do not waive my rights to compensation for any extraordinary services I may perform as _ _[*executor/administrator*]_ _**.**

[*Continue*]

[3]. I expressly do not waive any other rights I may have _ _[*e.g., as a beneficiary/heir*]_ _ _ _[*under the will/to the estate*]_ _**.**

Date: _ _ _ _ _ _

__[*Signature*]__
_ _[*Typed name*]_ _
_ _[*Executor/Administrator*]_ _

Comment: This form may be modified to allow a partial waiver of compensation.

Copies: Original for filing; copy for representative; office copies.

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II. WHEN ATTORNEY ACTS AS PERSONAL REPRESENTATIVE AND ATTORNEY

§19.4 A. Serving in Dual Capacity

A personal representative who is an attorney may receive compensation as the personal representative, but not for services as the attorney for the personal representative unless the court specifically approves the right to compensation in advance. Prob C §10804; Cal Rules of Ct 7.706(a). This is true even if the will expressly provides for dual compensation. The court must find that the arrangement is "to the advantage, benefit, and best interests" of the estate. Prob C §10804; Cal Rules of Ct 7.706(a).

For new probate administrations, the attorney should weigh the advantages and disadvantages of serving in a dual capacity. The additional burden imposed by amended Prob C §10804 must be considered. It may be better to hire independent legal counsel or decline to act as representative. For discussion of serving in dual capacity, see California Decedent Estate Practice §30.36 (2d ed Cal CEB 2009).

When the representative is a partner or shareholder of a law firm, the firm may request compensation for legal services in addition to the representative's compensation if the firm and the representative file a written agreement in the estate proceeding not to participate in each other's compensation. Cal Rules of Ct 7.706(b).

If the attorney serving as personal representative decides to act as the attorney for the personal representative, prior approval of any dual compensation must be sought from the court. Perhaps the best time to do so is in conjunction with the initial petition for probate administration. The form for the petition does not readily allow for inclusion of additional matters, so a separate petition should be filed to be heard concurrently with the petition for probate. The form in §19.4A may be used for this purpose.

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Source: Estate Planning/California Probate Workflow Manual Revised/19 Compensation/§19.4A B. Form: Petition for Prior Approval of Dual Compensation for Services as Personal Representative and Attorney for Personal Representative

§19.4A B. Form: Petition for Prior Approval of Dual Compensation for Services as Personal Representative and Attorney for Personal Representative

[*Title of court*]

Estate of _ _[*name*]_ _,	**)No.** _ _ _ _ _ _
	)
Decedent	**)PETITION BY** _ _[*NAME*]_ _,
	)PROPOSED
	)_ _[*EXECUTOR/ADMINISTRATOR*]_ _,
	)FOR PRIOR APPROVAL OF RIGHT
	)TO COMPENSATION AS
	)_ _[*EXECUTOR/ADMINISTRATOR*]_ _
	)AND FOR SERVICES AS ATTORNEY
	)FOR THE
	)_ _[*EXECUTOR/ADMINISTRATOR*]_ _
	)(PROBATE CODE §10804;
	)CALIFORNIA RULES OF COURT
	)7.706(a))
	)
	)Hearing date:
	)Time:
_____	**)Department:**

Petitioner, _ _[*name*]_ _**, alleges:**

1. Petitioner, _ _[*name*]_ _**,** _ _[*has been nominated to act as executor of the will/has priority to act as administrator of the estate*]_ _ **of** _ _[*name of decedent*]_ _**, and it is anticipated that** _ _[*he/she*]_ _ **will qualify as** _ _[*executor/administrator*]_ _ **of the** _ _[*will/estate*]_ _ **when the Court hears the petition for probate set to be heard concurrently with this petition.**

2. Petitioner is an attorney admitted to practice in the State of California.

3. Petitioner believes it is to the advantage, benefit, and best interests of the decedent's estate that _ _[*he/she*]_ _ **also provide services as the attorney for the** _ _[*executor/administrator*]_ _ **because** _ _[*detail reasons, e.g., it would frustrate the intent of the decedent, as set forth in* _ _[*his/her*]_ _ *will, authorizing dual compensation, not to approve the right to dual compensation/decedent nominated* _ _[*name*]_ _ *as executor because of* _ _[*his/her*]_ _ *long-term familiarity with decedent's personal, business, and financial affairs/decedent believed no family member would be able to carry out the duties/decedent chose someone outside the family to moderate potentially adverse interests and chose* _ _[*name*]_ _ *because* _ _[*describe reasons*]_ _*/there are economies to be obtained by the estate in having the same person gather and act on the information in dual capacities*]_ _**.**

WHEREFORE, petitioner requests that the court make its order approving the right to compensation of _ _[*name*]_ _ **as** _ _[*executor/administrator*]_ _ **and for services as the attorney for the** _ _[*executor/administrator*]_ _**, and find that the arrangement is to the advantage, benefit, and best interests of the decedent's estate. The amount of such compensation is to be determined in accordance with the usual law and procedures at the appropriate time after rendition of services.**

Date: _ _ _ _ _ _ __[*Signature*]__
_ _[*Typed name*]_ _
Petitioner

[Verification; see §1.22]

Comment: See §19.4.

Copies: Original for filing; copy for any other representative; copy for those persons who receive copies of the petition for letters; office copies.

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Source: Estate Planning/California Probate Workflow Manual Revised/19 Compensation/§19.4B C. Form: Order Approving Right to Compensation as Personal Representative and for Services as Attorney for Personal Representative

§19.4B C. Form: Order Approving Right to Compensation as Personal Representative and for Services as Attorney for Personal Representative

[*Title of court*]

Estate of _ _[*name*]_ _**,**	**)**	**No.** _ _ _ _ _ _
	)	
Decedent	**)**	**ORDER APPROVING RIGHT**
	)	**TO COMPENSATION AS**
	)	_ _[*EXECUTOR/*
	)	*ADMINISTRATOR*]_ _
	)	**AND FOR SERVICES AS**
	)	**ATTORNEY FOR THE**
	)	_ _[*EXECUTOR/*
_____	**)**	*ADMINISTRATOR*]_ _

The petition of _ _[*name*]_ _**, the** _ _[*executor/administrator*]_ _ **of the** _ _[*will/estate*]_ _ **of** _ _[*name of decedent*]_ _**, came on for hearing on** _ _[*date*]_ _**, at** _ _[*time*]_ _**, in Department** _ _[*number/letter*]_ _**.**

THE COURT FINDS that

All notices required by law have been given.

Compensation of _ _[*name*]_ _ **as the** _ _[*executor/administrator*]_ _ **of the** _ _[*will/estate*]_ _ **of** _ _[*name of decedent*]_ _ **and for services as the attorney for the** _ _[*executor/administrator*]_ _ **would be to the advantage, benefit, and best interests of the decedent's estate for the reasons set forth in the petition.**

IT IS ORDERED that the petition of _ _[*name*]_ _ **for the right to compensation as** _ _[*executor/administrator*]_ _ **and for services as attorney for the** _ _[*executor/administrator*]_ _ **is approved. The amount of such compensation is to be determined in accordance with the usual law and procedures at the appropriate time after rendition of services.**

Date: _ _ _ _ _ _ __[*Signature*]__
Judge of the _ _[*title of court*]_ _

Copies: Original for filing; copy for any other representative; office copies.

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Source: Estate Planning/California Probate Workflow Manual Revised/19 Compensation/§19.5 D. Form: Agreement Not to Participate in Compensation Received by Attorneys for Personal Representative

§19.5 D. Form: Agreement Not to Participate in Compensation Received by Attorneys for Personal Representative

[*Title of court*]

Estate of _ _[*name*]**_ _,**	**)**	**No. _ _ _ _ _ _**
	)	
Decedent	**)**	**AGREEMENT BY**
	)	**_ _**[*EXECUTOR/ ADMINISTRATOR*]**_ _ AND**
	)	**LAW FIRM NOT TO**
	)	**PARTICIPATE IN EACH**
	)	**OTHER'S FEES TO BE**
	)	**RECEIVED AS**
	)	**_ _**[*EXECUTOR/ ADMINISTRATOR*]**_ _**
_____	**)**	**AND ATTORNEY FOR**
		_ _[*EXECUTOR/ ADMINISTRATOR*]**_ _**
		(CALIFORNIA RULES OF COURT 7.706(b))

_ _[*Name of law firm*]**_ _, attorneys conducting a law partnership at _ _**[*address*]**_ _, California, contemplating that _ _**[*name of representative-partner*]**_ _, one of the partners,**

[*Add one of the following alternatives*]

[*Alternative 1: Partner to serve as executor*]

has been nominated as executor under the will of the above-named decedent, and will petition and qualify as executor of the estate

[*Alternative 2: Partner to serve as administrator*]

will qualify as administrator of the estate of the above-named decedent

[*Continue*]

and that _ _[*name(s) of attorney-partner(s)*]**_ _ shall act as _ _**[*his/her*]**_ _ counsel in the proceedings, agree(s) as follows:**

1. _ _[*Name(s) of attorney-partner(s)*]**_ _ shall be entitled to collect and retain as _ _**[*his/her/their*]**_ _ personal funds all fees for services, both ordinary and extraordinary, if any, rendered in _ _**[*his/her/their*]**_ _ capacity as attorney(s) for the _ _**[*executor/administrator*]**_ _ of the _ _**[*will/estate*]**_ _, and _ _**[*name of personal representative-partner*]**_ _ hereby waives and renounces all interest in that compensation and agrees not to share in the attorney fees either directly or indirectly.**

2. _ _[*Name(s) of personal representative-partner*]**_ _ shall be entitled to collect and retain as _ _**[*his/her/their*]**_ _ personal funds all fees for services, both ordinary and extraordinary, if any, rendered in _ _**[*his/her/their*]**_ _ capacity as _ _**[*executor/administrator*]**_ _ of the _ _**[*will/estate*]**_ _, and _ _**[*name(s) of attorney-partner(s)*]**_ _ hereby waive(s) and renounce(s) all interest in that compensation, and agree(s) not to share in the personal representative's fees either directly or indirectly.**

3. This agreement is intended to establish that _ _[*name of personal representative-partner*]**_ _ is not a business partner of _ _**[*name(s) of attorney-partner(s)*]**_ _ or of _ _**[*name of law firm*]**_ _ in any matter concerning the estate. The original of this agreement shall be filed in the proceedings when they are begun.**

4. This agreement is also intended to establish that _ _[*name(s) of attorney-partner(s)*]**_ _ or of _ _**[*name of law firm*]**_ _ _ _**[*is/are*]**_ _ not _ _**[*a business partner/business partners*]**_ _ of _ _**[*name of personal representative-partner*]**_ _ in any matter concerning the estate.**

Date: _ _ _ _ _ _ __[*Signature of representative-partner*]__

_ _[*Typed name*]**_ _**

Date: _ _ _ _ _ _ __[*Signature of attorney-partner*]__
_ _[*Typed name*]_ _

Comment: See §19.4. If there is more than one partner, add additional signature blocks.

Copies: Original for filing; duplicate original for each party to agreement; copy for any other representative; office copies.

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III. ATTORNEY SERVICES THAT MAY BE COMPENSATED

A. Ordinary Compensation

§19.6 1. Services Included

The amount of statutory compensation for ordinary services to the estate is identical for both the representative and the attorney. Prob C §§10800, 10810. This compensation is intended to compensate fully for performance of the ordinary duties of collection, care, and preservation of estate property during the entire administration. It is also intended to compensate for incidental expenses, such as local telephone calls, postage, and secretarial services. Reimbursement may be obtained for major expenses.

Ordinary representative's services include uncomplicated ones performed in locating and assembling estate assets, paying claims, collecting rents, leasing property, petitioning for a family allowance, accounting, and making payments necessary to complete the administration. Appraisal of assets after waiver of appointment of a probate referee does not entitle the personal representative to extraordinary compensation.

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Source: Estate Planning/California Probate Workflow Manual Revised/19 Compensation/§19.7 2. Checklist: Attorney Services Compensated by Statutory Compensation

§19.7 2. Checklist: Attorney Services Compensated by Statutory Compensation

Although the following checklist will not apply in all situations, it may be used as a guide to "ordinary" attorney services compensated by statutory compensation:

- **Meeting with the client to review the will and discuss the Petition for Probate, assets and liabilities, beneficiaries, notices, *etc.***
- **Preparing the Petition for Special Letters of Administration, if ex parte (if contested, extraordinary compensation to the attorney for the appointed special administrator may be petitioned for if shown to be beneficial to the estate)**
- **Preparing the Petition for Probate and related papers to appoint the representative, including locating the will and the beneficiaries**
- **Ordering publication and mailing of the Notice of Petition to Administer Estate**
- **Preparing and serving the Notice of Petition to Administer Estate if in a county where the mailing of notice is not handled by legal newspapers or if additional beneficiaries are discovered and a supplement must be filed**
- **Preparing required supplements or declarations**
- **Preparing a separate Petition for Authority under the Independent Administration of Estates Act**
- **Preparing the Petition for Appointment of Successor Representative and Order for Limited Republication**
- **Preparing the Inventory and Appraisal**
- **Preparing a Petition for Family Allowance (although it is not the representative's duty to file such a petition, if the representative does so, no attorney compensation may be billed)**
- **Handling debts and creditors' claims, including acceptance, rejection, and payment (unless disputes arise that require compromise or litigation)**
- **Preparing a Status Report under Prob C §§12200-12201, unless multiple reports are necessary**
- **Preparing Interim Accounts and Reports**
- **Preparing a Petition for Preliminary Distribution**
- **Preparing a Petition for Compensation**
- **Preparing the Final Account and Report and Petition for Compensation, Extraordinary Compensation, and Final Distribution**
- **Preparing required notices**
- **Preparing required attorney orders**
- **Supervising distribution, preparation of Receipts of Distributees, and discharge of representative**

If the will provides for compensation of the executor, attorney, or both, and the person entitled does not renounce the provision, he or she will receive the amount provided in the will instead of the statutory amount. See §19.2.

Attorney compensation for spousal (or domestic partner) property confirmation proceedings is not payable as ordinary or extraordinary services, but is determined by private agreement between the attorney and the surviving spouse or registered domestic partner.

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§19.8 3. Computing Value of Estate Accounted For

Computation of compensation is based on "the value of the estate accounted for" by the personal representative, defined in Prob C §10800 as "the total amount of the appraisal value of property in the inventory, plus gains over the appraisal value on sales, plus receipts, less losses from the appraisal value on sales, without reference to encumbrances or other obligations on estate property." See California Decedent Estate Practice §§30.32-30.52 (2d ed Cal CEB 2009).

The estate does include the full value of a probate homestead, distributions from another estate received by the representative, and net income (or realized increase in value) from operation of the decedent's business. See Decedent Estate Prac §§30.36-30.38. If property is lost through fire or litigation, the insurance proceeds, but not the value of the property, are included in the estate.

Once the amount of the estate accounted for is determined, the compensation is computed by using the chart in §19.1.

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Source: Estate Planning/California Probate Workflow Manual Revised/19 Compensation/§19.9 B. Checklist: What Constitutes Extraordinary Services

§19.9 B. Checklist: What Constitutes Extraordinary Services

For actions that are not considered a normal part of estate administration, covered by ordinary compensation, the court has discretion to order extraordinary compensation in a sum it finds just and reasonable. Prob C §10811; Cal Rules of Ct 7.703(a).

Even when extraordinary services are performed, the court may *deny* extraordinary compensation when the statutory fee provides adequate compensation for *all* services performed. *Estate of Walker* (1963) 221 CA2d 792, 34 CR 832. See Cal Rules of Ct 7.703(a). See also *Estate of Gilkison* (1998) 65 CA4th 1443, 77 CR2d 463 (grant or denial of extraordinary fees addressed to discretion of probate court); *Estate of Hilton* (1996) 44 CA4th 890, 52 CR2d 491 (attorney denied fees for extraordinary services performed over 12-year period because statutory fee award based on prior statutory fee schedule was adequate compensation for all services performed, even though another attorney would have been entitled to receive compensation from estate for those services). The court may also reduce the requested fees.

Compensation may be requested for extraordinary services performed by a paralegal. Cal Rules of Ct 7.703(e). See §19.10D.

California Rules of Court 7.703(c) includes a nonexclusive list of activities for which extraordinary compensation may be awarded. The following are services for which the representative may be awarded extraordinary compensation (see Cal Rules of Ct 7.703(b)):

- **Sale, lease, exchange, mortgage, or foreclosure of real property (includes vacating same), whether court-supervised or under the Independent Administration of Estates Act**
- **Carrying on decedent's business if necessary to preserve the estate or under court order**
- **Preparing tax returns**
- **Litigation or audits connected with tax liabilities of the decedent or of the estate.**

The following is a nonexclusive list of services for which the attorney may be awarded extraordinary compensation (see Cal Rules of Ct 7.703(c)):

- **Legal services in connection with sale of property held in the estate**
- **Services to secure a loan to pay estate debts**
- **Litigation to benefit the estate or to protect its interests**
- **Defending the personal representative's account**
- **Defense of a will contest (after will admitted to probate)**
- **Successful defense of a will contest (before will admitted to probate)**
- **Successful defense of the representative in a removal proceeding**
- **Extraordinary efforts to locate estate assets**
- **Litigation to support attorney's request for extraordinary compensation, when previous compensation awards are inadequate**
- **Coordination of ancillary administration**
- **Accounting for a deceased, incapacitated, or absconded personal representative under Prob C §10953.**

The following, which is also not exhaustive, lists additional services for which extraordinary compensation may be awarded:

- **Sale or mortgage of personal property**
- **Preparation of tax returns or the adjustment, litigation, or payment of any of the following taxes:**
- **Estate taxes**
- **Income (individual and fiduciary) taxes**
- **Property taxes**
- **Sales taxes**
- **Litigation regarding estate property:**

- **Eminent domain**
- **Collection of funds**
- **Quiet title**
- **Petition to hire special counsel for litigation**
- **Other litigation or special services as necessary for the representative to prosecute, defend, or perform:**
- **Construction or interpretation of the will**
- **Heirship proceedings brought by a representative (NOTE: A representative has no duty to defend against such proceedings, but may participate as a party to assist the court (Prob C §§11700, 11704(b))**
- **Petition for Instructions with a showing of actual need for the instruction**
- **Multiple petitions for preliminary distributions**
- **Petition for authority to give a deed in lieu of foreclosure or condemnation**
- **Petition to complete a contract under Prob C §850**
- **Petition to transfer or convey property under Prob C §§850-859**
- **Termination of joint tenancy of predeceased joint tenant**
- **Petition to establish fact of simultaneous death**
- **Proceedings under Prob C §§8870-8873**

For further discussion of extraordinary compensation, see §19.11; California Decedent Estate Practice §§30.40-30.48 (2d ed Cal CEB 2009).

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§19.9A C. Compensation of Extraordinary Services on a Contingent Fee Basis

Compensation for extraordinary services on a contingent fee basis is expressly authorized by Prob C §10811(c). This section may apply to the attorney handling the estate administration or to special litigation counsel retained to pursue a particular claim or cause of action. The statute requires that (Prob C §10811(c)(1)-(3); Cal Rules of Ct 7.703(d)(1)-(2)):

- The agreement for contingent fees be in writing and comply with Bus & P C §6147 (governing contingent fee contracts generally);
- The agreement be approved by the court following a noticed hearing; and
- The compensation provided for in the agreement is found by the court to be "just and reasonable," and that the agreement is "to the advantage of the estate and in the best interests of the persons who are interested in the estate."

Absent an emergency or other unusual circumstance, the personal representative must obtain the court's approval of the agreement before services are performed under it. Cal Rules of Ct 7.703(d)(3).

For a suggested form of Petition for Authority to Enter Into Contingent Fee Agreement, see §19.9B.

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Source: Estate Planning/California Probate Workflow Manual Revised/19 Compensation/§19.9B D. Form: Petition for Authority to Enter Into Contingent Fee Agreement

§19.9B D. Form: Petition for Authority to Enter Into Contingent Fee Agreement

[*Title of court*]

Estate of _ _[*name*]_ _,	**)**	**No. _ _ _ _ _ _**
	)	
Decedent	**)**	**PETITION FOR AUTHORITY**
	)	**TO ENTER INTO**
	)	**CONTINGENT FEE**
	)	**AGREEMENT**
	)	**(PROBATE CODE §10811(c);**
	)	**CALIFORNIA RULES OF**
	)	**COURT 7.703(d))**
	)	
_____	**)**	**Hearing date:**
		Time:
		Department:

Petitioner, _ _[*name*]_ _, alleges:

1. Petitioner is the_ _[*executor/administrator*]_ _ **of the** _ _[*will/estate*]_ _ **of** _ _[*name*]_ _ **and has been informed and advised by** _ _[*name of attorney for the estate*]_ _**, present attorney for the estate, that special litigation counsel is required in order to** _ _[*specify, e.g., file a complaint for wrongful death, conduct discovery, and participate actively in the trial of the numerous and complex issues presented by the wrongful death litigation*]_ _**. Petitioner has been further advised that** _ _[*name of law firm*]_ _ **is a well-known and respected law firm with expertise in such matters.**

[*If appropriate, add*]

_ _[*Name of law firm*]_ _ **already represents other plaintiffs in the litigation, so employment of present counsel for the estate to do the same work would only duplicate efforts and would not be to the advantage of the estate or in the best interests of the persons interested in the estate. Accordingly,** _ _[*name of law firm*]_ _ **should also be employed to represent the estate in the wrongful death litigation.**

[*Continue*]

2. Petitioner is informed and believes that it is customary in personal injury litigation to enter into an agreement for payment of attorney fees on a contingent fee basis. Petitioner is informed and believes that such a contract would be to the advantage of the estate and those persons interested in the estate because there would be no liability for attorney fees in the event the litigation was unsuccessful, and it appears to be fair that attorney fees would be recoverable from the award if the litigation was successful.

3. Petitioner alleges that it is to the advantage of the estate and in the best interests of the persons interested in the estate that a contingent fee agreement be entered into with _ _[*name of law firm*]_ _**.**

4. Attached as Exhibit A and incorporated herein by this reference is a copy of the proposed contingent fee agreement between the petitioner as _ _[*executor/administrator*]_ _ **of the estate of** _ _[*name of decedent*]_ _ **and** _ _[*name of law firm*]_ _**.**

5. Petitioner alleges that the proposed agreement complies with all of the requirements of Business and Professions Code §6147.

6. Petitioner further alleges that the percentages agreed to in Exhibit A are _ _[*lower than/similar to*]_ _ **those generally agreed to by litigation counsel of similar expertise and, therefore, that the proposed compensation is just and reasonable and this agreement is to the advantage of the estate and in the best interests of the persons interested in it.**

7. _ _[_ _[*Name*]_ _*/No one*]_ _ **has requested special notice.**

WHEREFORE, petitioner asks this court to find that the proposed agreement complies with all of the requirements of Section 6147 of the Business and Professions Code, that the compensation provided for in the agreement is just and reasonable, and that the agreement is to the advantage of the estate and in the best interests of the persons who are interested in the estate, and to make its order authorizing the petitioner to

enter into said agreement and make payment to _ _[*name of law firm*]_ _ in accordance with the terms of the agreement without further order of the court.

Date: _ _ _ _ _ _ __[*Signature*]__
_ _[*Typed name*]_ _
_ _[*Executor/Administrator*]_ _

Date: _ _ _ _ _ _ __[*Signature*]__
_ _[*Typed name*]_ _
Attorney for petitioner

[*Verification; see §1.22*]

Copies: Original for filing; copy for client; copy for estate attorney if estate attorney is not presenting petition; office copies.

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Source: Estate Planning/California Probate Workflow Manual Revised/19 Compensation/§19.9C E. Form: Order Authorizing Contingent Fee Agreement

§19.9C E. Form: Order Authorizing Contingent Fee Agreement

[*Title of court*]

Estate of _ _[*name*]**_ _,**	**)**	**No. _ _ _ _ _ _**
	)	
Decedent	**)**	**ORDER AUTHORIZING**
	)	**CONTINGENT FEE**
_____	**)**	**AGREEMENT**

THE COURT FINDS that the petition of _ _[*name*]**_ _, the _ _**[*executor/administrator*]**_ _ of the _ _**[*will/estate*]**_ _ of _ _**[*name of decedent*]**_ _, came on for hearing on _ _**[*date*]**_ _, at _ _**[*time*]**_ _, in Department _ _**[*number/letter*]**_ _.**

All notices required by law have been given.

The proposed contingent fee agreement between the petitioner as _ _[*executor/administrator*]**_ _ of the estate of _ _**[*name of decedent*]**_ _ and _ _**[*name of law firm*]**_ _ attached to the petition as Exhibit A and incorporated by reference complies with all of the requirements of Section 6147 of the Business and Professions Code, the compensation provided for in the agreement is just and reasonable, and the agreement is to the advantage of the estate and in the best interests of the persons who are interested in the estate.**

IT IS ORDERED that the _ _[*executor/administrator*]**_ _ is authorized to enter into this contingent fee agreement and to make payment to _ _**[*name of law firm*]**_ _ in accordance with the terms of the agreement without further order of the court.**

Date: _ _ _ _ _ _ **__**[*Signature*]**__**
Judge of the _ _[*title of court*]**_ _**

Copies: Original for filing; copy for client; copy for estate attorney; office copies.

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IV. PAYMENT

§19.10 A. Procedure for Claiming Compensation

To obtain payment of attorneys' and representative's compensation, the representative and attorney must petition the court for an order approving the payment. See Prob C §§10830 (allowance before final distribution), 10831 (compensation on final distribution or in final accounting); Cal Rules of Ct 7.700, 7.701. This is true even if the representative had authority under the Independent Administration of Estates Act. The petition may be separate or it may accompany an interim or final accounting.

The personal representative may not pay or receive, and the attorney for the personal representative may not receive ordinary compensation or compensation for extraordinary services before the court authorizes payment. Cal Rules of Ct 7.700(a). Penalties include removal or surcharge of the personal representative or attorney. Cal Rules of Ct 7.700(b). The surcharge may include interest from the date of payment. Cal Rules of Ct 7.700(b).

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Source: Estate Planning/California Probate Workflow Manual Revised/19 Compensation/§19.10A B. Allowance on Account of Statutory Compensation

§19.10A B. Allowance on Account of Statutory Compensation

A petition for allowance of partial payment of ordinary compensation may be made at any time after 4 months from the issuance of letters, on notice to any interested persons as the court may require. Prob C §10830. Most courts set a maximum percent of the total ordinary compensation that may be paid before final distribution. Any payment of ordinary compensation made before final distribution must be low enough to avoid the possibility of overpayment. The amount allowed must be (Cal Rules of Ct 7.701(1)-(3)):

- Based on the estimated amount of statutory compensation payable as of the date of the petition for allowance;
- In proportion to the work actually performed; and
- Based on a detailed description of the ordinary services performed and remaining to be performed.

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Source: Estate Planning/California Probate Workflow Manual Revised/19 Compensation/§19.10B C. Petition for Extraordinary Services

§19.10B C. Petition for Extraordinary Services

A petition for extraordinary compensation must include a statement of facts that does the following (Cal Rules of Ct 7.702(1)-(7)):

- Specifies the amount requested for each type of service performed;
- States the hourly rate of each person who performed services and the hours spent by each of them;
- Describes the services rendered in sufficient detail to demonstrate the productivity of the time spent;
- Shows the nature and difficulty of the tasks performed, the results achieved, and the benefits of the services to the estate; and
- States the estimated amount of statutory compensation to be paid by the estate, if the petition is not part of the final account.

Compensation for extraordinary attorney services rendered to a special administrator may be requested under Prob C §8547(d) on settlement of the special administrator's final account, or in the same manner as for other personal representatives. See Prob C §10831.

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Source: Estate Planning/California Probate Workflow Manual Revised/19 Compensation/§19.10C 1. Allowance on Account of Extraordinary Services

§19.10C 1. Allowance on Account of Extraordinary Services

Compensation for extraordinary services by the personal representative or the attorney for the personal representative may be allowed before final distribution only when it appears that (Prob C §10832):

- Administration will continue, whether due to litigation or otherwise, for an unusually long time;
- Present payment will benefit the estate or the estate beneficiaries; or
- Other good cause is shown.

The personal representative may not pay or receive, and the attorney for the personal representative may not receive compensation for extraordinary services before the court authorizes payment. Cal Rules of Ct 7.700(a).

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Source: Estate Planning/California Probate Workflow Manual Revised/19 Compensation/§19.10D 2. Extraordinary Services by Paralegals

§19.10D 2. Extraordinary Services by Paralegals

Probate Code §10811(b) specifically authorizes the compensation of extraordinary services performed by a paralegal acting under the direction and supervision of an attorney. A request for fees for extraordinary legal services may include a paralegal's services (as those services are defined in Bus & P C §6450(a)) only if the request does the following (Cal Rules of Ct 7.703(e)(1)-(5)):

- Describes the paralegal's qualifications (including education, certification, continuing education, and experience) and states that the paralegal:
- Acted under the direction and supervision of an attorney;
- Satisfies one or more of the minimum qualifications specified in Bus & P C §6450(c); and
- Has completed mandatory continuing education required by Bus & P C §6450(d) for the last 2-year certification period ending before the year during which any part of the paralegal's services were performed;
- States the hours spent by the paralegal on the project and his or her hourly rate;
- Describes the services performed;
- States why a paralegal's services were appropriate in the particular case; and
- Demonstrates that the total amount requested for the attorney and the paralegal does not exceed the appropriate amount if the attorney had performed the services alone.

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§19.11 D. Local Requirements

Rules on the allowance of compensation vary extensively from county to county. Local rules should be consulted before a request for compensation is prepared.

An assignment to an attorney in lieu of compensation will not ordinarily be approved by the courts in several counties. Attorneys' compensation must be stated as such in the report and so approved.

In many counties, the court will not allow payment of more than 70 or 75 percent of statutory compensation before approval of the final account and order for final distribution. See, *e.g.*, Los Angeles Ct R Chap 10, App C 7.3 (in proportion to work completed, ordinarily no more than 70 percent before approval of final account and decree of distribution). In several counties, applications for extraordinary compensation exceeding specified amounts require appearance by the representative or the attorney or require additional notice to interested parties.

In some counties, payment of statutory compensation will not be authorized unless the representative has filed an interim account. In others, no interim account is required as long as there is a basis for computing the statutory compensation.

Some courts will not authorize any payment for extraordinary services until the final account or report is presented, unless there is a benefit to the estate, *e.g.,* income tax savings.

When extraordinary compensation is sought for several services, each service should be described in detail with the specific amount sought for each. Evidence relating to the services may be required at the hearing. Some courts will not accept oral testimony at the hearing and, in any event, under Cal Rules of Ct 7.702 such evidence of extraordinary services must be included in the body of the petition or in a declaration that accompanies the petition.

The declaration should include a description of each specific service rendered, the time required, and the compensation allocable to each service.

The declaration is admissible as evidence if the matter is not contested (Prob C §1022), and it allows a court to determine compensation without personal testimony. Some courts, however, require testimony at the hearing on the final report to support any request for extraordinary compensation greater than a specified amount, *e.g.,* $750.

If an appeal is expected, it may be advisable to request that a specific amount be allocated for each service rendered, so that if extra compensation is allowed in the probate court, but on appeal disallowed for certain services, the entire order will not have to be reversed.

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§19.12 E. Petition for Allowance of Ordinary Compensation

In a petition for statutory compensation, which is normally filed as part of the Final Account, Report Final Account, Report, and Petition for Final Distribution, the calculation of compensation must be stated in substantially the form set forth in Cal Rules of Ct 7.705(a). The form in §19.13 reproduces the method of calculation set forth in that rule, which incorporates the compensation schedule in Prob C §§10800 (representative) and 10810 (attorney).

Both the representative and the attorney should sign the petition as their acknowledgment and approval of the amounts requested. If the attorney petitions separately for compensation, a joinder in that petition should, and in some courts must, be filed by the representative.

Notice is ordinarily given to nonpetitioning personal representatives and persons who have appeared or requested special notice, but the court may require further notice.

See §§19.9A-19.9C if contingent fees are being sought.

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Source: Estate Planning/California Probate Workflow Manual Revised/19 Compensation/§19.13 F. Form: Petition for Allowance of Ordinary Compensation

§19.13 F. Form: Petition for Allowance of Ordinary Compensation

[*Title of court*]

Estate of _ _[*name*]_ _,	)	**No. _ _ _ _ _ _**
	)	
Decedent	)	**PETITION FOR ALLOWANCE**
	)	**OF ORDINARY**
	)	**COMPENSATION TO**
	)	**REPRESENTATIVE, AND FOR**
	)	**ORDINARY AND**
	)	**EXTRAORDINARY FEES TO**
	)	**ATTORNEY**
	)	**(PROBATE CODE §10830;**
	)	**CALIFORNIA RULES OF**
	)	**COURT 7.700-7.701)**
	)	
_____	)	**Hearing date:**
		Time:
		Department:

Petitioners, _ _[*names*]_ _, allege:

1. _ _[*Name*]_ _ is the _ _[*executor/administrator*]_ _ of the _ _[*will/estate*]_ _ of _ _[*name*]_ _, deceased, and _ _[*name*]_ _ is the attorney for the _ _[*executor/administrator*]_ _ and has rendered all legal services necessary in the administration of the estate from its inception. _ _[*Name of executor or administrator*]_ _ has filed herein _ _[*his/her*]_ _ current account showing the value of the estate to be $_ _[*amount*]_ _.

2. Petitioners estimate that the total amount of compensation to which they would be entitled on final settlement of the estate is approximately $_ _[*amount*]_ _ each. Petitioners have made this estimate by the following calculation:

Amount of Estate Accounted for (Commission or Fee Base)

Inventory and Appraisal	**$_ _ _ _ _ _**
Receipts, Excluding Principal	**_ _ _ _ _ _**
Gains on Sales	**_ _ _ _ _ _**
Losses on Sales	**(_ _ _ _ _ _)**
Total Commission or Fee Base	**$_ _ _ _ _ _**

Commission or Fee Computation

4% of first $100,000	**$_ _ _ _ _ _**
3% of next $100,000	**_ _ _ _ _ _**
2% of next $800,000	**_ _ _ _ _ _**
1% of next $9 million	**_ _ _ _ _ _**
0.5% of next $15 million	**_ _ _ _ _ _**
Above $25 million—a reasonable amount determined by the Court	**_ _ _ _ _ _**
Total Commission or Fee	**$_ _ _ _ _ _**

3. Petitioners allege that they have performed approximately _ _[*e.g., 50*]_ _ percent of their ordinary

services in the administration of the estate. The services performed and remaining to be performed are detailed in Attachment A, attached to and made a part of this petition. An allowance of approximately _ _[*e.g., 50*]_ _ percent of $_ _[*amount (the total sum)*]_ _, or $_ _[*amount*]_ _, to each of them is reasonable and can be made without harm to the estate, those interested in it, or any creditor of it.

4. More than 4 months have elapsed since the issuance of letters _ _[*testamentary/of administration)*]_ _ to the _ _[*executor/administrator*]_ _.

[*If applicable, add the following option*]

[*Option: Payment for extraordinary services for attorney is sought*]

5. Petitioner _ _[*name of attorney*]_ _ has performed extraordinary legal services in the administration of the estate. The activities, the amount of time devoted to each, and the costs are detailed in the Declaration of Petitioner, which will be filed in this court before the hearing.

Petitioner _ _[*name of attorney*]_ _ alleges that an allowance of $_ _[*amount*]_ _ is reasonable as compensation for these extraordinary legal services.

[*Continue*]

[*Add one (or more) of the following options*]

[*Option 1: Administration likely to continue for extended period*]

[5a.] The administration of the estate is likely to continue for _ _[*specify period of time, e.g., at least another year*]_ _ because _ _[*specify, e.g., litigation is pending regarding the claim of _ _[name]_ _ against the decedent's estate*]_ _.

[*Option 2: Payment will benefit estate or beneficiaries*]

[5b.] Present payment will benefit _ _[*the estate/the beneficiaries of the estate*]_ _ in that _ _[*specify, e.g., allocation of estate income toward compensation due the executor or administrator and the attorney will reduce income taxation of the estate for the current year*]_ _.

[*Option 3: Good cause*]

[5c.] There is good cause for allowance of compensation to _ _[*name of attorney for executor or administrator*]_ _ in that _ _[*specify, e.g., the amount of extraordinary fees is substantial and it is burdensome for the attorney for the personal representative to carry such a large receivable for such a long period of time*]_ _.

[*Continue*]

WHEREFORE, petitioners pray that the court make its order authorizing and directing the _ _[*executor/administrator*]_ _ to pay to _ _[*name of executor or administrator*]_ _ from estate funds $_ _[*amount*]_ _ for ordinary compensation, and to _ _[*name of attorney*]_ _ $_ _[*amount*]_ _ for ordinary fees and $_ _[*amount*]_ _ for extraordinary fees as attorney for the _ _[*executor/administrator*]_ _.

Date: _ _ _ _ _ _

__[*Signature*]__
_ _[*Typed name*]_ _
_ _[*Executor/Administrator*]_ _

__[*Signature*]__
_ _[*Typed name*]_ _
Attorney for
_ _[*Executor/Administrator*]_ _

[*Verification; see §1.22*]

Copies: Original for filing; copy for representative; copies for those appearing or those who have requested special notice; copy for client; office copies.

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Source: Estate Planning/California Probate Workflow Manual Revised/19 Compensation/ G. Supporting Documents/ §19.14 1. Form: Sample Declaration in Support of Request for Fees for Extraordinary Legal Services

G. Supporting Documents

§19.14 1. Form: Sample Declaration in Support of Request for Fees for Extraordinary Legal Services

[*Title of court*]

Estate of _ _[*name*]_ _,	)	**No. _ _ _ _ _ _**
	)	
Decedent	)	**DECLARATION OF**
	)	**_ _[*NAME*]_ _ IN SUPPORT OF**
	)	**PETITION FOR ALLOWANCE**
	)	**OF ORDINARY**
	)	**COMPENSATION TO**
	)	**REPRESENTATIVE, AND FOR**
	)	**ORDINARY AND**
	)	**EXTRAORDINARY FEES TO**
	)	**ATTORNEY**
	)	**(PROBATE CODE §10830;**
	)	**CALIFORNIA RULES OF**
	)	**COURT 7.700-7.701)**
	)	
_____	)	**Hearing date:**
		Time:
		Department:

I, _ _[*name*]_ _, am the attorney for the _ _[*executor/administrator*]_ _ of the _ _[*will/estate*]_ _ of _ _[*name*]_ _, deceased, and have filed a PETITION FOR ALLOWANCE OF ORDINARY COMPENSATION TO REPRESENTATIVE, AND FOR ORDINARY AND EXTRAORDINARY FEES TO ATTORNEY in this court. I have personal knowledge of the facts set forth below and, if called as a witness in this matter, would and could competently testify to the following:

1. Federal Estate Tax Return

I prepared and filed the United States Estate Tax Return (IRS Form 706). The value of the gross estate was $10 million. The assets consisted of five parcels of real property, 50 issues of stock, 20 bonds, 32 pieces of precious stones, and a stamp collection, which were valued as of the date of death and also the alternate valuation date. My paralegal spent time in gathering the information for these valuations, including review of stock market reports and discussions with persons in the jewelry and stamp collection businesses. The paralegal encountered special difficulties because many corporations were no longer active, and information had to be sought from the states of incorporation regarding their continued existence.

I determined that valuing the property as of the alternate valuation date resulted in considerable tax savings to the estate. After final preparation of IRS Form 706, and after discussing it with the personal representative, who then signed the return, I filed the return with the Internal Revenue Service. The return was accepted as filed, without audit.

	Hours	Hourly Rate	Amount
Attorney time	_ _ _ _	$_ _ _ _ _ _ _	$_ _ _ _ _ _ _
Paralegal time	_ _ _ _	$_ _ _ _ _ _ _	$_ _ _ _ _ _ _
Total			$_ _ _ _ _ _ _

The paralegal's qualifications to perform this work include the following: _ _[*Describe paralegal's education, certification, continuing education, and experience*]_ _. It was appropriate to use _ _[*his/her*]_ _ services in this case because _ _[*explain*]_ _. The total amount requested for my and the paralegal's extraordinary services for this task does not exceed the amount that would be appropriate if I had performed this task alone because _ _[*explain*]_ _.

2. Fiduciary Income Tax Returns

I prepared the estate's fiduciary income tax returns for the year _ _[*year*]_ _, and filed them after review and execution by the personal representative.

	Hours	Hourly Rate	Total
Attorney time	_ _ _ _	$_ _ _ _ _ _ _	$_ _ _ _ _ _ _

3. Sale of Real Property

The decedent owned an undivided one-half (½) interest in five parcels of real property. One of the parcels had to be sold to pay costs of administration and to provide funds for a family allowance for the decedent's minor children by a prior marriage.

An analysis was made to determine which property would be most advantageous to sell. Because a portion of the estate was separate property, consideration had to be given to the needs and desires of the spouse. It was decided that the commercial property would be sold.

I interviewed a broker for the sale and reviewed four different offers. An offer was accepted, and I prepared and filed all necessary documentation, appeared in court at the confirmation hearing, reviewed and revised the escrow instructions, and oversaw the escrow.

	Hours	Hourly Rate	Total
Attorney time	_ _ _ _	$_ _ _ _ _ _ _	$_ _ _ _ _ _ _

4. Litigated Claim Against the Estate

A creditor's claim was filed by the decedent's brother in the sum of $150,000, alleging a promissory note by the decedent. After extensive investigation of the decedent's records and interview of witnesses, it was determined there was sufficient evidence that the decedent had repaid this amount. The claim was rejected, and the claimant filed suit against the estate.

I filed a petition with the court for authority to hire outside counsel to defend the estate, which was granted. The litigation was promptly settled and a compromise and settlement for $10,000 was approved by the court.

Summary

Service	Amount
Tax Work	$_ _ _ _ _
IRS Form 706	_ _ _ _ _
IRS Form 1041/FTB Form 541	_ _ _ _ _
Sale of Real Property	_ _ _ _ _
Litigated Claim Against the Estate	_ _ _ _ _
Total Attorney Fee Requested for Extraordinary Services	$_ _ _ _ _

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _ _ _ _ _ _ __[*Signature*]__

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Source: Estate Planning/California Probate Workflow Manual Revised/19 Compensation/§19.15 2. Form: Sample Agreement on Performance of and Compensation for Duties of Representative

§19.15 2. Form: Sample Agreement on Performance of and Compensation for Duties of Representative

[*Title of court*]

Estate of _ _[*name*]_ _**,**	)	**No.** _ _ _ _ _ _
	)	
Decedent	)	**AGREEMENT ON PERFORMANCE**
	)	**OF AND COMPENSATION FOR**
	)	**DUTIES OF**
	)	_ _[*EXECUTOR/ADMINISTRATOR*]_ _
_____	)	

1. _ _[*Name*]_ _ **is the** _ _[*executor/administrator*]_ _ **of the** _ _[*will/estate*]_ _ **of** _ _[*name*]_ _**, deceased.**

2. _ _[*Name*]_ _ **is the attorney for the** _ _[*executor/administrator*]_ _**.**

3. The _ _[*executor/administrator*]_ _ **lives outside California, and it is difficult to perform some of** _ _[*his/her*]_ _ **duties as** _ _[*executor/administrator*]_ _**, including collecting the decedent's bank accounts and other assets, depositing income checks, preparing checks to pay debts and administration expenses, maintaining books for court accounting and income tax purposes, preparing accountings, etc.**

4. The _ _[*executor/administrator)*]_ _ **desires that** _ _[*his/her*]_ _ **attorney and the attorney's staff perform these duties.**

5. To compensate the attorney, the _ _[*executor/administrator*]_ _ **shall, from** _ _[*his/her*]_ _ **own funds awarded as statutory fees, pay the attorney, when billed, at the hourly rate for the person performing the services disclosed on the bills. However, the amount paid to the attorney for performing some of the personal representative's ordinary services shall not exceed the amount of the personal representative's statutory fees, in compliance with Probate Code §10813.**

6. The _ _[*executor/administrator*]_ _ **remains entitled to statutory compensation as approved by the court for the performance of ordinary services in this matter.**

7. The _ _[*executor/administrator*]_ _ **has been advised to consult with another attorney before signing this agreement.**

Date: _ _ _ _ _ _

__[*Signature*]__
_ _[*Executor/Administrator*]_ _

__[*Signature*]__
_ _[*Typed name*]_ _
Attorney for _ _[*Executor/Administrator*]_ _

Comment: This agreement allows the personal representative to hire an attorney to perform some of the representative's duties and to separately compensate the attorney from the representative's and not the estate's funds. Agreements of this type are untested outside of Los Angeles County, and many practitioners do not believe they are advisable. See California Decedent Estate Practice §30.24 (2d ed Cal CEB 2009).

Copies: Copy for filing; copy for representative; office copies.

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Source: Estate Planning/California Probate Workflow Manual Revised/19 Compensation/§19.16 H. Form: Order for Allowance on Account of Representative's Compensation and Attorney's Compensation

§19.16 H. Form: Order for Allowance on Account of Representative's Compensation and Attorney's Compensation

[*Title of court*]

Estate of _ _[*name*]_ _,	**)No.** _ _ _ _ _ _
	)
Decedent	**)ORDER FOR ALLOWANCE OF**
	)ORDINARY COMPENSATION TO
	)_ _[*EXECUTOR/ADMINISTRATOR*]_ _
	)AND FOR ORDINARY AND
	)EXTRAORDINARY FEES TO
	)ATTORNEY
_____)	

THE COURT FINDS that the _ _[*verified*]_ _ **petition of** _ _[*name(s) of petitioner(s)*]_ _**, the** _ _[*executor/administrator*]_ _ _ _[*and the attorney for the executor/administrator*]_ _ **of the** _ _[*will/estate*]_ _ **of** _ _[*name of decedent*]_ _ **came on for hearing on** _ _[*date*]_ _**, at** _ _[*time*]_ _**, in Department** _ _[*number/letter*]_ _**.**

All notices required by law have been given.

Petitioners have performed approximately _ _[*e.g., 50*]_ _ **percent of their ordinary services in the administration of the estate; an allowance of approximately** _ _[*e.g., 50*]_ _ **percent of $**_ _[*amount (the total sum)*]_ _**, or $**_ _[*amount*]_ _**, to each of them is reasonable and can be made without harm to the estate, those interested in it, or any creditor of it.**

More than 4 months have elapsed since the issuance of letters _ _[*testamentary/of administration)*]_ _ **to the** _ _[*executor/administrator*]_ _**.**

[*If applicable, add the following option*]

[*Option: Payment for extraordinary services is sought*]

Petitioner _ _[*name of attorney*]_ _ **has performed extraordinary legal services in the administration of the estate, and an allowance of $**_ _[*amount*]_ _ **is reasonable as compensation for these extraordinary legal services.**

[*Add one of the following alternatives*]

[*Alternative 1: Administration likely to continue for extended period*]

The administration of the estate is likely to continue for _ _[*specify period of time, e.g., at least another year*]_ _ **because** _ _[*specify, e.g., litigation is pending regarding the claim of* _ _[*name*]_ _ *against the decedent's estate*]_ _**.**

[*Alternative 2: Payment will benefit estate or beneficiaries*]

Present payment will benefit _ _[*the estate/the beneficiaries of the estate*]_ _ **in that** _ _[*specify, e.g., allocation of estate income toward compensation due the personal representative will reduce income taxation of the estate for the current year*]_ _**.**

[*Continue*]

IT IS ORDERED that the _ _[*executor/administrator*]_ _ **pay to** _ _[*name of executor/administrator*]_ _ **from estate funds $**_ _[*amount*]_ _ **for ordinary compensation, and the same amount to** _ _[*name of attorney*]_ _ **for ordinary fees as attorney for the** _ _[*executor/administrator*]_ _**, and $**_ _[*amount*]_ _ **to** _ _[*name of attorney*]_ _ **for extraordinary legal services.**

Date: _ _ _ _ _ _ __[*Signature*]__
Judge of the _ _[*title of court*]_ _

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Transfer of Assets and Discharge of Representative

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- B. [§20.26] Sample Form: Notice of Removal of Trust From Continuing Court Jurisdiction

X. [§20.27] REOPENING ESTATE AFTER DISTRIBUTION

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Source: Estate Planning/California Probate Workflow Manual Revised/20 Transfer of Assets and Discharge of Representative/§20.1 I. INTRODUCTION

§20.1 I. INTRODUCTION

On entry of an order for distribution, the representative should arrange to transfer the estate's assets to the distributees and should obtain receipts for all items except real property. This chapter discusses the steps necessary to transfer assets and to discharge the representative. The discussion of transfer of securities (see §§20.3-20.15) includes transfer from the decedent to the representative as well as transfer from the representative to the distributees. Transfer of real property is discussed in §20.16. Discharge of the representative is discussed in §§20.21-20.22.

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§20.2 II. PROCEDURAL GUIDE: TRANSFER OF ASSETS AND DISCHARGE OF REPRESENTATIVE

PROCEDURAL GUIDE

1. Transfer securities (see chart in §20.5)

2. Transfer real property

- Record certified copy of order for distribution (see §20.16)

[*or*]

- Prepare executor's/administrator's deed, if desired (see §20.16)
- Verify filing of change of ownership statement (see §§11.20-11.21)

3. Transfer other assets

- Stock in closely held business (see §20.17)
- Promissory notes (see California Decedent Estate Practice §§32.62-32.63 (2d ed Cal CEB 2009))
- Tangible personal property (see §20.18)
- Cash (see §20.19)

4. Obtain and file receipts from distributees except for distributees of real property (see §20.20A for form)

5. If distributee cannot be found or refuses to accept devise, deposit distribution and certified copy of order for distribution with county treasurer (see Decedent Estate Prac §32.78)

6. If distributee did not survive until distribution, transfer share to deceased distributee's estate representative (see Decedent Estate Prac §32.80)

7. Prepare Ex Parte Petition for Final Discharge and Order (Judicial Council Form DE-295) (see §§20.21-20.22)

8. Notify bond company of discharge (see §§20.22-20.23)

9. Notify tax authorities of discharge (see §§14.6, 20.22)

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III. TRANSFER OF SECURITIES

§20.3 A. Effect of Uniform Commercial Code

Every state has enacted the Uniform Commercial Code. These laws have simplified the procedure of transferring securities from a decedent to the representative, purchasers from the estate, or distributees of the estate. Although the procedure is relatively simple and straightforward, some latitude exists and some transfer agents demand more documentation than others. The rules for transfer of securities in general are discussed in §§20.4-20.15. Transfer of particular securities is discussed in §20.12.

The rules are in Article 8 of the Uniform Commercial Code (UCC). When the transfer agent is not located in California, variations in the UCC in other states become important to the attorney seeking to transfer securities of companies incorporated in other jurisdictions. The UCC provisions on simplification of fiduciary transfers of securities cover all fiduciaries except temporary or special administrators.

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Source: Estate Planning/California Probate Workflow Manual Revised/20 Transfer of Assets and Discharge of Representative/§20.4 B. Transferring Registered Securities

§20.4 B. Transferring Registered Securities

The issuer's basic duty to transfer registered securities is set forth in Com C §8401. That section provides that a registered security presented for transfer must be transferred when:

- The person seeking registration of transfer is eligible to have the security registered in his or her name;
- The security is endorsed by the appropriate person;
- Reasonable assurance is given that the endorsements are genuine and authorized;
- Any applicable tax collection laws have been complied with;
- The transfer does not violate any transfer restrictions imposed by the issuer in accordance with Com C §8403;
- No demand that the issuer not register transfer has become effective under Com C §8403, or a demand has been made but no legal order or indemnity bond is obtained as provided in Com C §8403(d); or
- The transfer is rightful or to a protected purchaser.

The appropriate person is the personal representative, the surviving joint tenant, or the authorized agent of either.

To prove that the endorsements are genuine, the legal assistant should have a copy of the letters newly certified (most transfer agents require that the letters be certified within the last 60 days), and present them to the transfer agent. A signature guaranty from a member of a nationally recognized securities exchange or a national bank must also be obtained. If there is more than one representative, all must sign. If the signatures of a majority of representatives, but not all of them, may be obtained, the letter in §20.10A should be sent to the transfer agent.

The procedure and documentation required by transfer agents in specific situations is discussed in §§20.5-20.15. If the appropriate documents, including any tax waiver that may be required and any transfer tax that may apply, are sent to the transfer agent, there should be no difficulty in transferring securities in fiduciary situations.

If a transfer agent requests forms or documents that are not technically required, but are easily obtained, the documents should be sent rather than wasting time in pointing out the error.

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Source: Estate Planning/California Probate Workflow Manual Revised/20 Transfer of Assets and Discharge of Representative/ C. Procedure for Transferring Securities/§20.5 1. Chart: Documents Required for Transfer

C. Procedure for Transferring Securities

§20.5 1. Chart: Documents Required for Transfer

The following chart sets out the documents generally required by transfer agents in effecting transfers after a death. It should be noted that a stock certificate and a signature guaranty are always required.

	Stock Power Signed by (see §20.9)	Letters Certified Within 60 Days (see §20.4)	Death Certificate
From _ _[*name of decedent*]_ _ to (see Note):			
a. Representative (see §10.10)	Representative	Yes	No
b. Purchaser from estate	Representative	Yes	No
c. Distributee of estate	Representative	Yes	No
d. Real owner (see §20.13)	Representative	Yes	No
e. Intervivos donee	See §20.13	See §20.13	No
f. Surviving joint tenant (see §20.12)	Surviving joint tenant	N/A	Yes
g. Representative and tenant in common (two new certificates; see §20.12)	Representative and tenant in common	Yes	No
h. Remainder beneficiary (see §20.12)	Remainder beneficiary	See §20.12	Yes
From Representative to:			
a. Purchaser from estate (see §20.14)	Representative	No	No
b. Distributee of estate	Representative	No	No
c. Successor as representative (see §20.15)	Successor	Yes	No

NOTE: If the securities were held in the name of a nominee or in an estate in which the decedent was a beneficiary, the person, or a representative of the company, in whose name the securities are registered should sign the stock power. See §20.9.

In transferring securities, the attorney should be aware that some transfer agents require tax waivers from states other than California for certain securities, affidavits of domicile, or both. These requirements are discussed in §20.8. The need to pay transfer taxes is discussed in §20.7.

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§20.6 2. Services of Banks, Brokers, and Publications

In many estates, particularly those with many securities to transfer, the easiest and least expensive method to do so may be to have a bank or broker write to the transfer agents and arrange for the transfers. The bank or broker will inform counsel of the requirements imposed by various transfer agents and do the correspondence and follow-up work for a nominal charge. Current charges made by Los Angeles banks and brokers are about $15-$50 per issue transferred. Some brokers will handle the transfer of all issues for a flat fee (of, *e.g.,* $100). If the decedent or the representative was a regular customer of the bank or brokerage firm, these services may be provided as a courtesy at a reduced rate. Most estate transfers can be expeditiously and efficiently handled by these experts, leaving the attorney for the representative free of burdensome detail.

The CCH Stock Transfer Guide is the official publication of the rules of the Stock Transfer Association. It sets out (a) transfer requirements of most major security issue transfer agents, (b) essentials for transfer in many common situations under the laws of all states and some foreign countries, (c) rules for computing transfer taxes, and (d) the various state inheritance tax laws. These rules, as well as a stock transfer directory, which lists the names and addresses of most major securities transfer agents, can be found in CCH Inheritance and Gift Tax Reporter, State Compilation. The names and addresses of the transfer agents may appear on the stock certificate, but the addresses may be obsolete or the agent replaced. Therefore, if possible, it is better practice to refer to the updated stock transfer guide. For an exhaustive treatment of the laws by which transfer agents are bound, see Rhodes, The Transfer of Stock (6th ed 1985). Attorneys requesting transfer of securities by the issuing corporation's transfer agent, rather than by a broker, should understand the basic problems the transfer agent faces.

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§20.7 3. Death and Transfer Taxes

A complete list of each state requiring a tax waiver before securities of an organization incorporated under its laws may be transferred can be found in the CCH Stock Transfer Guide. Transfer agents for those securities require that a tax waiver or consent be submitted before those securities can be transferred. The Guide notes to whom to write in those states for the waiver and what information is required. Those states will usually not issue a waiver without an affidavit that the decedent was not a resident of that state (see §20.8) and will often charge a fee for issuing the waiver.

No consents or waivers are needed for California residents who died on or after June 8, 1982, the date of the repeal of the inheritance tax. However, if the transfer agent will accept neither a certified copy of the letters nor the death certificate, the Controller's office, on request, will issue a "to whom it may concern" letter, indicating that the estate is not subject to California inheritance tax. The address of the Controller is State Controller, Division of Collections, Bureau of Tax Administration, 3301 "C" St., Rm 700, Sacramento, CA 95816. The mailing address is P.O. Box 942850, Sacramento, CA 94250-5880, Attn: Inheritance Tax Section.

If stock in a corporation incorporated in New York or Florida is to be transferred, those states levy a stock transfer tax, but a 100 percent rebate is available on the New York tax.

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Source: Estate Planning/California Probate Workflow Manual Revised/20 Transfer of Assets and Discharge of Representative/§20.8 4. Form: Affidavit of Domicile

§20.8 4. Form: Affidavit of Domicile

AFFIDAVIT OF DOMICILE

STATE OF CALIFORNIA
COUNTY OF _ _ _ _ _ _ _ _ _

I, _ _[*name*]_ _, being duly sworn, state that I reside a*t* _ _[*address*]_ _, _ _[*city*]_ _, California, and that I am the _ _[*executor/administrator*]_ _ of the _ _[*will/estate*]_ _ of _ _[*name of decedent*]_ _, deceased, who died at _ _[*address*]_ _, _ _[*city*]_ _, California, on _ _[*date*]_ _.

At the time of death, the decedent's domicile was in _ _[*city*]_ _, _ _[*county*]_ _, California, which it had been for the preceding _ _[*number of*]_ _ years. The decedent did not dwell or lodge in any state other than California, during or for the greater part of any period of 12 consecutive months in the 24 months immediately preceding _ _[*his/her*]_ _ death; and further, the decedent did not, within one year before death, execute any formal instrument or will in which _ _[*he/she*]_ _ declared _ _[*he/she*]_ _ was a resident of any other state. The decedent's last federal income tax return, for the year _ _[*date*]_ _, was filed on _ _[*date*]_ _ with the Internal Revenue Service Center in _ _[*city and state*]_ _ , and the decedent last voted in _ _[*city*]_ _, California.

At the time of death, the decedent was the owner of _ _[*number of*]_ _ shares of _ _[*describe security*]_ _, and the certificate representing those shares was then physically located in _ _[*city*]_ _, _ _[*state*]_ _.

Date: _ _ _ _ _ _ __[*Signature*]__
_ _[*Typed name*]_ _
Affiant

STATE OF CALIFORNIA)
COUNTY OF _ _[*Name of county*]_ _ **)**
)

Subscribed and sworn to (or affirmed) before me on this _ _[*number*]_ _ day of _ _[*month*]_ _, 20_ _, by _ _[*name(s)*]_ _, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

WITNESS my hand and official seal.

__[*Signature of officer*]__ [*Officer's seal*]

Comment: Some transfer agents supply their own form of affidavit. If the affidavit is to be used in California, a declaration under penalty of perjury under the laws of the State of California may be used instead, but a better practice is to prepare these forms as affidavits.

Copies: Original for transfer agent; copy for representative; office copies.

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§20.9 5. Power of Attorney for Transfer of Securities

When a stock certificate or registered bond is presented to the transfer agent, it must be accompanied by a stock or bond power of attorney, executed by the registered owner or by someone with the power to execute for the owner. The power authorizes the transfer. Although couched in the wording of a power of attorney, the power is also an assignment. It is normally printed on the back of the certificate, or the transferor may execute an Assignment Separate From Certificate (commonly referred to as a stock power). Printed forms may be obtained from banks, brokers, and legal printers, or the document can be drafted by an attorney. The certificates should be sent by registered or insured mail. The stock power should be sent under separate cover if it is not on the back of the certificate itself.

The attorney in fact is normally the person who actually transfers the stock on the books of the corporation. For this reason, it is customary either to leave the space for the attorney in fact blank or to fill in the name of a person (*e.g.,* a broker, a bank) with power of substitution, thus preventing the insertion by an unauthorized person of his or her name as the attorney for transfer. The second alternative is often used if the transferee's name is left blank when the stock power is signed. When forwarding the stock power to the transfer agent, the person with power of substitution sends with it the written appointment of another person.

Because a transfer agent has no means of identifying the signatures on a stock power, the agent usually insists that the signatures on the power forwarded to him or her be guaranteed by an institution that is a member of a "medallion program," *i.e.,* a program that sets standards for persons authorized to guarantee a signature (*e.g.,* Securities Transfer Agents Medallion Program (STAMP), New York Stock Exchange Medallion Program, or Stock Exchange Medallion Program). Com C §8402(a)(1). The guaranty takes the form of "Signature Guaranteed," followed by the guarantor's name and the signature of the person empowered to sign for it. The guarantor must be a bank or trust company having a correspondent in the city in which the transfer agent is located or must be a member firm of a nationally recognized securities exchange. Signatures are normally guaranteed by the bank of the person executing the stock power or by the broker handling the sale or transfer.

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Source: Estate Planning/California Probate Workflow Manual Revised/20 Transfer of Assets and Discharge of Representative/§20.9A 6. Form: Assignment Separate From Certificate

§20.9A 6. Form: Assignment Separate From Certificate

Assignment Separate From Certificate

For value received, _ _[*name(s) of assignor*]_ _ hereby sell(s), assign(s), and transfer(s) to _ _[*name(s) of assignee*]_ _ _ _[*spelled number*]_ _ (_ _[*Arabic number*]_ _) shares of _ _[*kind of stock (e.g., common or preferred)*]_ _ stock of _ _[*name of corporation*]_ _, standing in the name of _ _[*registered owner*]_ _ on the books of the corporation, represented by Certificate No.(s) _ _[*number(s)*]_ _, and do(es) irrevocably constitute and appoint _ _[*leave blank or fill in name of attorney in fact*]_ _ as the attorney to transfer the stock on the books of the corporation, with full power of substitution.

Date: _ _ _ _ _ _

__[*Signature*]__
_ _[*Typed name*]_ _
_ _[*Title*]_ _

Signature of _ _[*Name*]_ _
Guaranteed by:
__[*Guarantor's name*]__
__[*Signature of person empowered to sign for guarantor*]__

In the presence of:
_ _[*Signature of witness*]__
Witness

Copies: Original to transfer agent; copy for representative; office copies.

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§20.10 D. Mailing

The certificates should be sent by registered or insured mail with the request that they be transferred to the distributee. The stock power should be sent under separate cover if it is not on the back of the certificate itself, to avoid someone's intercepting the certificate and stock power together (the certificate is negotiable if found with the stock power but if one is lost or stolen, it is worthless without the other).

This letter should be used when the stock certificate is still in the decedent's name and has not been transferred to the representative. When the stock has already been transferred to the representative's name, only a stock assignment with the signature guaranty (item 1) is needed; the transfer agent has already received current certified letters and an affidavit of domicile.

If the transferee's name, address, and social security number are not on the stock power, they should be included in the cover letter. This information is particularly important because the transfer agent must send out dividends, proxies, and other notices and make appropriate reports to the IRS.

When a large number of securities are to be transferred, it is advisable to prepare one cover letter with blank spaces and to reproduce as many copies as needed. The blanks can then be filled in, the letters signed, and the securities sent to individual transfer agents. All securities with the same transfer agent can be included in one letter. The letter may be adapted for different situations.

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Source: Estate Planning/California Probate Workflow Manual Revised/20 Transfer of Assets and Discharge of Representative/§20.10A 1. Form: Sample Cover Letter to Accompany Certificates

§20.10A 1. Form: Sample Cover Letter to Accompany Certificates

_ _[*Date*]_ _

Re: Estate of _ _ _ _ _ _, deceased

Dear _ _ _ _ _ _:

I, _ _[*name*]_ _, am the _ _[*executor/administrator/(etc.)*]_ _ of the _ _[*will/estate*]_ _ of _ _[*name of decedent*]_ _, who died on _ _[*date*]_ _. At the time of death, _ _[*he/she*]_ _ owned _ _[*number*]_ _ shares of the stock of _ _[*name of company*]_ _.

The court has ordered the residue of the estate distributed to _ _[*name of distributee*]_ _. I am accordingly enclosing the following certificates of the _ _[*common/preferred*]_ _ stock of _ _[*name of company*]_ _, registered in the name of _ _[*name of decedent*]_ _:

[*List all certificates by CUSIP number,*
and specify the number of shares covered by each]

The following additional documents are also submitted:

1. A stock assignment separate from certificates signed by _ _[*name of representative*]_ _, whose signature has been guaranteed. The assignment is being sent to you under separate cover.

2. A certified copy of letters _ _[*testamentary/of administration*]_ _ of _ _[*name of representative*]_ _ dated within 60 days of the requested transfer.

3. An affidavit of domicile indicating that the decedent was a resident of California at the date of death.

[*Add if stock power is signed by majority but not all representatives*]

4. The stock powers for _ _[*the above stocks/(or list stocks)*]_ _ are signed by a majority, but not all, of the representatives. California Probate Code §9630(a)(2) provides that "[w]here there are more than two personal representatives, a majority must concur to exercise a power." Therefore, under California law the representatives' act is valid.

[*Continue*]

I would appreciate your canceling the enclosed certificates and issuing a new certificate for _ _[*number*]_ _ shares of stock registered in the name of _ _[*name of distributee*]_ _. _ _[*His/Her*]_ _ address is _ _[*address*]_ _; _ _[*his/her*]_ _ Social Security number is _ _[*insert Social Security number*]_ _. Enclosed is an IRS Form W-9 signed by the distributee. All future notices and dividends should be sent to _ _[*name of distributee*]_ _ at that address.

Very truly yours,
__[*Signature of personal representative*]__

_ _[*Name*]_ _
[*Executor/Administrator*] _
of the _ _[*Estate/Will*]_ _ **of** _ _[*name*]_ _**, Decedent**

Guaranteed by:
__[*Guarantor's name*]__
__[*Signature of person empowered to sign for guarantor*]__

In the presence of:
__[*Signature of witness*]__

Witness

Encls.
Registered Mail—Insured
Return Receipt Requested

Copies: Original to transfer agent; copy for representative; office copies.

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Source: Estate Planning/California Probate Workflow Manual Revised/20 Transfer of Assets and Discharge of Representative/§20.11 2. Form: Letter to Transfer Agent Concerning Lost Certificates

§20.11 2. Form: Letter to Transfer Agent Concerning Lost Certificates

_ _[*Date*]_ _
Re: Estate of _ _ _ _ _ _, deceased

Dear _ _ _ _ _ _:

We represent _ _[*name*]_ _, the _ _[*executor/administrator/(etc.)*]_ _ of the _ _[*will/estate*]_ _ of _ _[*name of decedent*]_ _, who died on _ _[*date*]_ _. At the time of death, _ _[*he/she*]_ _ owned _ _ _ shares of the stock of _ _[*name of company*]_ _.

We have been unable to find the stock certificates themselves, and we request that you obtain replacement stock certificates for us.

If you require an indemnity bond, please send us the forms you will need to have completed and information on the cost of the bond.

Very truly yours,

__[*Signature of attorney*]__

Comment: If the stock certificates for stock registered to the decedent have been lost, this letter may be sent to the transfer agent to obtain replacement certificates. See California Decedent Estate Practice §§32.43-32.45 (2d ed Cal CEB 2009). If the certificates are to be canceled and reissued in the name of the representative or distributee, this letter may be combined with the letter in §20.10A.

Copies: Original to transfer agent; copy for representative; office copies.

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§20.12 E. Transfer of Particular Securities

The procedure for appointing a successor fiduciary when the decedent has been acting as trustee, custodian for a minor, guardian, or conservator is discussed in California Decedent Estate Practice §§2.95-2.100 (2d ed Cal CEB 2009). When appointed, the successor should send the stock certificates registered in the name of the decedent-fiduciary to the transfer agent, with a stock assignment, a signature guaranty (see §§20.9-20.9A), and a copy of the order of appointment or new letters, certified within 60 days before the request for transfer.

When a small estate is transferred by affidavit under Prob C §§13100-13116, the person entitled to receive the property executes the declaration (or affidavit) (see form in §6.6) and sends it with the stock certificate to the transfer agent, requesting that the certificate be transferred to the applicant's name. A copy of Prob C §§13100-13116 (see §6.3) should be attached to the transmittal letter, which should state that those Probate Code sections apply.

To transfer securities to a surviving joint tenant, transfer agents require the certificates, a stock power executed by the surviving joint tenant with a signature guaranty (see §§20.5-20.9A), and a certified copy of the death certificate of the deceased joint tenant. See §§4.5-4.11 on joint tenancy property; see §4.12 on community property in joint tenancy form.

If securities that are not held in the survivor's name are confirmed to the spouse or registered domestic partner by court order, a certified copy of the order should be supplied to the transfer agent.

In addition, if certificates are registered in the name of a husband and wife as joint tenants, but a confirmation proceeding finds the property to be community property, the letter to the transfer agent should explain this.

When a decedent owned securities as a tenant in common with a surviving person, the decedent's interest in the securities is subject to probate, and the surviving person's is not. During the probate proceedings, it may be desirable for the representative and the surviving cotenant to have canceled the certificates that were issued to the individuals as tenants in common and new certificates issued separately, one in the name of the representative of the deceased owner and one in the name of the surviving owner. The documents usually required are set out in the chart in §20.5.

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Source: Estate Planning/California Probate Workflow Manual Revised/20 Transfer of Assets and Discharge of Representative/§20.13 1. Securities in Which Decedent Has an Interest

§20.13 1. Securities in Which Decedent Has an Interest

Securities owned by the decedent may be held in a "street name" or the name of a nominee, such as a broker. It is usually easiest procedurally to change the title of the entire account, which is usually done by a letter signed by the representative or other appropriate person, with the signature guaranteed. If securities, including mutual funds, are held in a "street name" brokerage account, the simplest way to transfer title is to write to the broker or transfer agent and ask for specific transfer forms. Depending on the title of the account, the additional required documentation is the same as stated in §20.5. Once the title to the account is changed, if the certificates are desired, the account can be closed and certificates will be delivered without the necessity of further stock powers and other documents.

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Source: Estate Planning/California Probate Workflow Manual Revised/20 Transfer of Assets and Discharge of Representative/§20.14 2. Securities in Representative's Name

§20.14 2. Securities in Representative's Name

The only documents required by transfer agents to effect a transfer from a representative to purchasers from, or distributees of, the estate are the certificates and a stock power signed by the representative. A copy of the court order should be sent as well, however, because some transfer agents request it and will not act until they have received it.

If the securities were purchased during administration of the estate in the name of the representative, that fact should be noted in the letter of transmittal to the transfer agent.

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Source: Estate Planning/California Probate Workflow Manual Revised/20 Transfer of Assets and Discharge of Representative/§20.15 F. On Appointment of Successor Representative

§20.15 F. On Appointment of Successor Representative

When another person is appointed to take a representative's place, securities in the name of the original representative should be transferred to the successor. The successor must send the transfer agent the old certificates, a certified copy of letters, dated within 60 days before the presentation for transfer (see §20.11), and a stock power signed by the successor with the signature guaranteed (see §§20.4-20.14). If the former representative was acting as a coexecutor or coadministrator, and either the remaining representatives continue to act alone or a new representative is appointed, amended letters should be secured from the court and certified copies of those letters sent to the transfer agent to support the request for transfer.

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IV. TRANSFER OF OTHER ASSETS

A. Real Property

§20.16 1. Transfer

Real property is usually transferred by recording a certified copy of the order for distribution, containing an exact and legible legal description (in which it is helpful to include the assessor's parcel number) of the real property, in each county in which the property is located. If the representative believes that the order is not clear enough standing alone, the representative may provide the beneficiary with an executor's or administrator's deed to be recorded concurrently with the order for distribution. If the representative prefers not to record the order (perhaps because of its length), the representative may provide a deed to be recorded without the order. In either event, the representative's deed will normally contain a reference to the order for distribution, together with a limitation on representations, warranties, and covenants.

The same procedure is used for any interest in real property, such as mineral rights.

At the time of recording, the representative should file appropriate change in ownership forms for the assessor's office. See §11.21 for an example of that form.

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Source: Estate Planning/California Probate Workflow Manual Revised/20 Transfer of Assets and Discharge of Representative/§20.16A 2. Property Tax Reassessment

§20.16A 2. Property Tax Reassessment

For real property in California, the passage of title by death will generally be considered a change in ownership requiring a reassessment for property tax purposes under Cal Const art XIIIA (Proposition 13), subject to numerous exceptions (see, *e.g.,* Cal Const art XIIIA, §2(h), excepting transfers to children and, in certain instances, grandchildren of principal residence and up to $1 million of assessed value of other real property). See §11.20A. See Rev & T C §§60-69.5; 18 Cal Code Regs §§462.001-462.500. Interspousal transfers (Rev & T C §63) and transfers between registered domestic partners (Rev & T C §62(p); effective January 1, 2000) are not changes in ownership.

NOTE: Any domestic partner whose property was reassessed because of a transfer between registered domestic partners that occurred between January 1, 2000, and January 1, 2006, can have the reassessment reversed. The transferee partner must submit an application for reversal of the reassessment to the county assessor by June 30, 2009. Rev & T C §62(p)(2). Any reassessment reversal applies beginning with the lien date of the assessment year in which the application is filed. Rev & T C §62(p)(2)(e).

The property is reassessed retroactively from the date of death, not the date of distribution of the property.

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Source: Estate Planning/California Probate Workflow Manual Revised/20 Transfer of Assets and Discharge of Representative/§20.17 B. Transfer of Stock in Closely Held Corporations

§20.17 B. Transfer of Stock in Closely Held Corporations

Closely held stock is normally transferred by the representative's directing the attorney for the closely held corporation to prepare new stock certificates showing proof of ownership as set forth in the order for distribution. The attorney may require a certified copy of the order for distribution for corporate records.

For further discussion of the transfer of stock in closely held corporations, see California Decedent Estate Practice §§32.54-32.56 (2d ed Cal CEB 2009).

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Source: Estate Planning/California Probate Workflow Manual Revised/20 Transfer of Assets and Discharge of Representative/§20.18 C. Tangible Personal Property

§20.18 C. Tangible Personal Property

The representative usually transfers personal effects by relinquishing dominion and control of the asset to the beneficiary. The beneficiary should be given a certified copy of the order for distribution to establish title to the asset if a subsequent purchaser or donee requires evidence of ownership. Unless the will provides for payment of expenses of shipping the assets, the estate may not be able to pay these costs even if this is what family members prefer. Special arrangements must be made to ensure that delivery of valuable items is accomplished. Receipts should be signed concurrently with the delivery.

Certificates of ownership of motor vehicles should be endorsed by the representative and sent to the Department of Motor Vehicles with a certified copy of the representative's letters. See §4.9. The insurance company should be notified of the change of ownership.

If a distributee has only a life estate in personal property, the personal representative must get an inventory of the property from the distributee. The personal representative must file the inventory with the court and give a copy to any distributee of the remainder. Prob C §11752.

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Source: Estate Planning/California Probate Workflow Manual Revised/20 Transfer of Assets and Discharge of Representative/§20.19 D. Cash

§20.19 D. Cash

Cash is normally distributed to a beneficiary by the representative's drawing a check (which may be a cashier's check for ease in negotiation) made payable to the beneficiary on one or more of the estate's checking accounts or other demand accounts. As an alternative, the representative may distribute certificates of deposit or other evidences of ownership directly to the beneficiary. A receipt should be obtained from the beneficiary to file with the court. See §20.20.

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V. RECEIPT

§20.20 A. Receipt on Distribution

The representative should obtain a receipt on delivery of all property except real property. Those receipts must be filed with the court. As to real property that is distributed, the personal representative must file a statement identifying the date and place or location of recording and other recording information for the court's order of distribution or the personal representative's deed. Prob C §11753. As far as possible, the receipt should list the property in the same order as it is listed in the order for distribution because it will be easier to determine whether all property has been distributed.

If the receipt is for cash distributed to a residuary beneficiary, the amount will almost certainly vary from the amount reflected in the order for distribution. See §§18.28F and 18.35A for suggested language to add to the petition and order to address this. To the receipt should be attached a reconciliation of the cash from the date of the last account to the date of the distribution. The form for the reconciliation is similar to that for the supplemental account given in §18.35.

See California Decedent Estate Practice §§32.78-32.80 (2d ed Cal CEB 2009) for the procedures to be followed when property is refused, unclaimed, or to be distributed to a minor or incompetent without a guardian or conservator, or when a distributee has died during administration.

If a fiduciary for a distributee is appointed under another jurisdiction, distribution may be made to the foreign fiduciary. The foreign fiduciary must provide a receipt and a certified copy of his or her appointment.

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Source: Estate Planning/California Probate Workflow Manual Revised/20 Transfer of Assets and Discharge of Representative/§20.20A B. Form: Receipt on Distribution

§20.20A B. Form: Receipt on Distribution

_ _[*Title of court*]_ _

Estate of _ _[*name*]_ _,	**)**	**No. _ _ _ _ _ _**
	)	
Decedent	**)**	**RECEIPT ON DISTRIBUTION**
	)	**(PROBATE CODE §11751)**
_____	**)**	

Received from _ _[*name*]_ _, the _ _[*executor/administrator/(etc.)*]_ _ of the _ _[*will/estate*]_ _ of the above-named decedent, the property distributed to the undersigned by order for distribution in this estate made on _ _[*date*]_ _. The property received consists of the following: _ _[*Describe property*]_ _.

Date: _ _ _ _ _ _ __[*Signature*]__
_ _[*Typed name*]_ _
Distributee

Copies: Original for filing; copy for representative; one copy for each distributee; office copies.

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VI. DISCHARGE OF REPRESENTATIVE

§20.21 A. Petition and Order of Final Discharge

When the attorney and representative decide that it is time to obtain a discharge for the representative (see California Decedent Estate Practice §32.83 (2d ed Cal CEB 2009)), Judicial Council Form DE-295 (Ex Parte Petition for Final Discharge and Order) should be used. See §20.22.

Some representatives, such as banks or trust companies, require a certified copy of the order of final discharge for their records. A certified copy of the order should be delivered to the surety on the representative's bond. See §20.23. See §8.14 on obtaining a refund for premiums after the first year. If the representative has sent a Notice Concerning Fiduciary Relationship (IRS Form 56) to the Internal Revenue Service and the Franchise Tax Board, he or she should send each of them a certified copy of the order. See §14.3. For form order of final discharge, see §20.22.

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Source: Estate Planning/California Probate Workflow Manual Revised/20 Transfer of Assets and Discharge of Representative/§20.22 B. Form: Ex Parte Petition for Final Discharge and Order (Judicial Council Form DE-295)

§20.22 B. Form: Ex Parte Petition for Final Discharge and Order (Judicial Council Form DE-295)

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(Optional):* E-MAIL ADDRESS *(Optional):* ATTORNEY FOR *(Name):*	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
☐ ESTATE ☐ CONSERVATORSHIP ☐ GUARDIANSHIP OF *(Name):* ☐ DECEDENT ☐ CONSERVATEE ☐ MINOR	
EX PARTE PETITION FOR FINAL DISCHARGE AND ORDER	CASE NUMBER:

1. Petitioner is the ☐ personal representative ☐ conservator ☐ guardian of the estate of the above-named decedent, conservatee, or minor. Petitioner has distributed or transferred all property of the estate as required by the final order ☐ and all preliminary orders for distribution or liquidation filed in this proceeding on *(specify date each order was filed):*

2. All required acts of distribution or liquidation have been performed as follows *(check all that apply):*
   a. ☐ All personal property, including money, stocks, bonds, and other securities, has been delivered or transferred to the distributees or transferees as ordered by the court. The receipts of all distributees or transferees are now on file or are filed with this petition. Conformed copies of all receipts previously filed are attached on Attachment 2.
   b. ☐ No personal property is on hand for distribution or transfer.
   c. ☐ Real property was distributed or transferred. The order for distribution or transfer of the real property; the personal representative's, conservator's, or guardian's deed; or both, were recorded as follows *(specify documents recorded, dates and locations of recording, and document numbers or other appropriate recording information):*
   d. ☐ No real property is on hand for distribution or transfer.
   e. ☐ No receipts are required because Petitioner is the sole distributee.
   f. ☐ The minor named above attained the age of majority on *(date):*
3. Petitioner requests discharge as personal representative, conservator, or guardian of the estate.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME OF PETITIONER) ▶ (SIGNATURE OF PETITIONER)

ORDER FOR FINAL DISCHARGE

THE COURT FINDS that the facts stated in the foregoing *Ex Parte Petition for Final Discharge* are true.

THE COURT ORDERS that *(name):*

is discharged as ☐ personal representative ☐ conservator ☐ guardian of the estate of the above-named decedent, conservatee, or minor, and sureties are discharged and released from liability for all acts subsequent hereto.

Date:

JUDICIAL OFFICER

☐ SIGNATURE FOLLOWS LAST ATTACHMENT.

Form Adopted for Mandatory Use
Judicial Council of California
DE-295/GC-395
[New January 1, 2006]

EX PARTE PETITION FOR FINAL DISCHARGE AND ORDER
(Probate—Decedents' Estates and Conservatorships and Guardianships)

Probate Code, §§ 2100, 2627, 2631, 11753, 12250;
www.courtinfo.ca.gov

Copies: Original for filing; copy for representative; one certified copy for surety company; one certified copy each for Internal Revenue Service and Franchise Tax Board, if necessary; office copies.

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Source: Estate Planning/California Probate Workflow Manual Revised/20 Transfer of Assets and Discharge of Representative/§20.23 VII. DISCHARGE OF SURETY BOND

§20.23 VII. DISCHARGE OF SURETY BOND

When a representative has been discharged, there is no reason to continue the payment of bond premiums. A surety company will not, however, automatically learn of the discharge. It is necessary to inform the surety company, which requires a certified copy of the court's order discharging the representative before it will cancel the bond. If the estate has been open for more than 1 year, most surety companies will prorate the unearned bond premium and make a refund to the estate.

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§20.24 VIII. CLOSING PROBATE FILES

After final distribution and discharge, an estate file should not be kept open indefinitely in the office. There is no rule of thumb on how long an estate file should be retained in the active files after the representative has been discharged. At this time, the legal assistant should remind the attorney to examine the file to remove what may now be regarded as extraneous material. Taking this step will often substantially reduce the physical bulk of even an average estate file. Many of the decedent's documents, records, and correspondence may now be released to, *e.g.,* the surviving spouse or domestic partner, with appropriate instructions on safekeeping. The office should retain a detailed record of all such transactions in the estate file.

Because questions may arise after the estate has been closed, some firms retain all probate files indefinitely. For this purpose, the feasibility of microfilming should be considered.

An estate file may be kept open for the administration of a testamentary trust until final distribution of all assets held by the trust. A new file should be set up for the trust.

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IX. COURT SUPERVISION OF TRUSTS

§20.25 A. Notice to Beneficiaries of Certain Testamentary Trusts Concerning Court Supervision

If the attorney will continue to represent the trustee of testamentary trusts established during administration, further notices may be required. Any trust created by a will executed before July 1, 1977, if it is not later republished and if it does not specifically provide that the trust should be subject to the superior court's continuing jurisdiction, is subject to continuing court jurisdiction if no trustee is a trust company. If a trustee is a trust company, under Prob C §17351 the trust must be removed from court supervision and the trustee must within 6 months after the initial funding of the trust give notice to all beneficiaries of certain information required in Prob C §17351. A sample notice and description of documents that must accompany it are set out in §20.26.

This notice must be accompanied by a copy of the text of Prob C §§17200-17201. Prob C §17351(b)(3). The notice should be sent by registered or certified mail. If it is sent by regular first-class mail instead, an acknowledgment of receipt of notice (see §5.10) must be obtained from the beneficiary. Prob C §17351(a).

Proof of service of the notice must be filed with the court that had jurisdiction over the administration of the decedent's estate within 7 months after the date the trust was initially funded. Prob C §17351(c).

If no trustee is a trust company, the trustee must obtain court approval if he or she wants to remove the trust from the court's continuing jurisdiction. Prob C §17352. Until the removal is approved by the court, the notice described above need not be given. Prob C §17352(e).

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§20.26 B. Sample Form: Notice of Removal of Trust From Continuing Court Jurisdiction

[Title of court]

[*Title of case*]

No. _ _ _ _ _ _
NOTICE OF REMOVAL OF TRUST FROM CONTINUING COURT JURISDICTION (PROBATE CODE §17351)

FIRST NATIONAL BANK, a trust company acting as trustee of the testamentary trust under the will of John H. Jones, deceased, established by order of this court dated _ _[*date*]_ _, gives this notice to each beneficiary of the trust that by virtue of the change in law on January 1, 1983, this trust is not subject to the continuing jurisdiction of this court.

Probate Code §17200 gives any beneficiary of the trust the right to petition a court to determine important matters relating to the administration of the trust. A copy of Probate Code §§17200-17201 is attached to this notice.

Each income beneficiary is entitled to an annual statement of the principal and income receipts and disbursements of the trust and will be provided with such a statement annually or more frequently. Any other beneficiary may obtain such information on making a written request to the trustee.

The above-named court had jurisdiction of the administration of the decedent's estate and is the appropriate court in which to file a petition under Probate Code §17200. The address of the court is _ _[*address*]_ _.

This notice was executed on _ _[*date less than six months from date of order above*]_ _, at _ _[*place*]_ _, California.

FIRST NATIONAL BANK

by _ _[*typed name of officer*]_ _

Copies: One for each beneficiary; one for the court clerk; one for each trustee not sending the notice; office copies.

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§20.27 X. REOPENING ESTATE AFTER DISTRIBUTION

Letters may be issued after final settlement of an estate. Prob C §12252. Issuance may be justified when property is discovered after final distribution, but "reopening" an estate is resorted to only when "necessary or proper" and there is no omnibus clause (see forms 18.29-53 and 18.36-36) distributing after-discovered property.

The procedure for issuance of letters (see chap 7) should be followed in the petition to reopen the estate and for letters testamentary. The original representative has priority for appointment. If the estate is reopened because of after-discovered assets, requirements of notice, inventory and appraisal, estate taxes, and others must be met.

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21

Ancillary Administration

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§21.1 I. INTRODUCTION

Usually a decedent's estate is probated at his or her domicile. Ancillary administration, which is a secondary probate, must be considered whenever the decedent has left property in a state or country other than his or her domicile. The state within whose borders those assets are physically located has the power to subject them to probate to assure proper passage of title and to protect local creditors.

"Ancillary administration," as used in this chapter, means probate of a nonresident decedent's local assets, assuming probate has begun at the decedent's domicile. The law and strategies governing ancillary administration are discussed in depth in California Decedent Estate Practice, chap 11 (2d ed Cal CEB 2009). This chapter will cover only those forms and procedures pertinent to administering an estate in California when the primary administration is in another state or country.

In general, the procedures for administering an ancillary estate in California are the same as those for administering a primary estate. The discussion in this chapter is generally limited to those aspects of ancillary administration that differ from normal administration. The discussion assumes there is a domiciliary administration and that the attorney handling that administration is coordinating the administration with the California attorney. If that is not true, the situation could become more complicated. See Decedent Estate Prac, chap 11.

If the primary administration is in a foreign country, and if the decedent died intestate, the court may require the same complicated certification of an order or decree of administration as required for certification of a foreign country's order or decree admitting the will to probate. See §§21.2-21.5.

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§21.2 II. ADMINISTRATION OF FOREIGN ESTATES

Whether the domiciliary probate is in another state or country, it will inherently have more problems than will a domiciliary probate in California. All actions with deadlines should be calendared to allow for the time it may take to transmit documents over a distance. If the action involves communicating with those who do not speak English, extra time must be scheduled to translate the various documents and the correspondence. The responsibility for scheduling and coordination tends to fall primarily on the legal assistant.

If the decedent was a resident of another state in the United States and if that state asserts an estate or inheritance tax, it may be necessary to allocate the tax between the jurisdictions and the beneficiaries of each. Most states give credit for state death taxes payable to another state, which should be claimed at the time the returns are filed.

If the decedent was a nonresident alien, federal estate tax may be due. The law governing the imposition and calculation of the tax is different for nonresident aliens than it is for citizens or resident aliens. It may be necessary to do legal research or to consult a tax expert to prepare and file the return.

Because an ancillary administration is usually necessary when the nonresident decedent owned land in California, one of the issues to be addressed early is whether the land is to be sold during the period of administration rather than distributed. If the land is to be sold, the sale is handled like any other probate sale of real property. See chap 13. The proceeds from the sale should be sufficient to leave cash on hand after paying expenses of administration of the California probate and other local charges. If so, it then becomes a judgment call for the attorney, in consultation with the attorney for the domiciliary estate, whether the remaining cash should be distributed to the domiciliary estate or directly to the beneficiaries. If the land will not be sold, there may be a problem in obtaining the necessary cash to meet the ancillary probate estate's obligations. Cash may need to be advanced by the domiciliary estate. If the land is on hand at the end of the period of estate administration, it must be distributed directly to the beneficiaries. California has jurisdiction over the land and is the only state that can order its distribution to the beneficiaries.

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Source: Estate Planning/California Probate Workflow Manual Revised/21 Ancillary Administration/§21.3 III. AUTHENTICATION AND FILING OF WILL PROBATED IN FOREIGN JURISDICTION

§21.3 III. AUTHENTICATION AND FILING OF WILL PROBATED IN FOREIGN JURISDICTION

The petitioner should file an authenticated copy of the will and an authenticated copy of the foreign court's order admitting the will to probate in the California court having jurisdiction. The authenticated copy of the will is filed independently of the petition, and an additional copy should be filed with the petition as an exhibit in the same manner as required for a petition for probate of a resident decedent's will.

The procedure for authenticating a foreign will is provided in Evid C §§1530-1532. See §21.4 for a checklist to authenticate a foreign will and §21.5 for discussion of procedures. See also Evid C §§1452-1454, 1522(a)(3). A court will admit a foreign will to probate if it appears that it was duly admitted to probate in the foreign jurisdiction (or proved according to its laws). If the foreign jurisdiction is a sister state, the will must be admitted to probate in California, unless it is shown that (a) the sister-state determination was not based on a finding that the decedent was domiciled in the sister-state, (b) all interested parties were not given notice and an opportunity to contest, or (c) the sister-state determination was not final. Prob C §12522. The rule is similar for foreign country probates, except that the foreign court's order must show a finding of domicile, notice and opportunity to contest, and finality of the judgment. Prob C §12523. If these elements are shown, neither contest nor revocation is allowed in California. If the will was not admitted to probate in the foreign jurisdiction but is valid under California law (a common example is a holographic will), then the petition is filed in the same way as one for a California domiciliary. See chap 7.

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Source: Estate Planning/California Probate Workflow Manual Revised/21 Ancillary Administration/§21.4 A. Checklist: Authenticating Foreign Will Probated, Established, or Proved in Foreign Jurisdiction

§21.4 A. Checklist: Authenticating Foreign Will Probated, Established, or Proved in Foreign Jurisdiction

(1) When will admitted, established, or proved in court proceeding in United States, Panama Canal Zone, Trust Territory of Pacific Islands, or Ryukyu Islands (see Evid C §1530(a)(2)):

- Contact the attorney handling primary administration. Request that he or she:

(a) Send copy of order (with will attached) admitting will to probate in other jurisdiction, after arranging that order be certified as a true and correct copy of the order by a public employee (or deputy of a public employee) who has custody of the original order—*e.g.,* the county clerk where the primary administration is pending.

(b) Send separate copy of will; that copy should be certified by a public employee (or deputy of a public employee) who has custody of the original will—*e.g.,* the county clerk where the primary administration is pending—as a true and correct copy of the will that has been admitted to probate there.

- File the petition for probate of a foreign will (see §21.10) with a copy of the authenticated will and order attached as an exhibit.

(2) When will admitted, established, or proved in any other jurisdiction or country not a signatory to the Hague Convention (discussed in §21.5; (see Evid C §1530(a)(3)):

- Contact attorney handling primary administration. Request that he or she:

(a) Send copy of order (with will attached) admitting will to probate in other jurisdiction, or other evidence that the will was established or proved under laws of that jurisdiction, accompanied by attestation of public officials (see §21.5).

(b) Obtain final statement certifying the genuineness of signature on the above attestation and the official position of above officials (see §21.5).

- If foreign attorney states that any of the above is unavailable, consult local probate commissioner or court clerk about what documentation will be required.
- Have any documents, including the will, that are not in English translated into English.
- Have translator prepare certification of proper translation. See §7.19 for form of certification.
- File the petition for probate of a foreign will (see §21.10) with the authenticated copies of the will and the order, along with the attestation and the final statement attached as an exhibit. If the will has been translated, attach a copy of the translation and the translator's certification.

(3) When will admitted, established, or proved in any other jurisdiction that is a signatory to the Hague Convention (discussed in §21.5):

- Contact the attorney handling primary administration. Request that he or she send a copy of the order (with will attached) admitting the will to probate in other jurisdiction, or other evidence that the will was established or proved under laws of that jurisdiction, accompanied by apostille (see §21.5).
- If the foreign attorney states that any of the above is unavailable, consult local probate commissioner or court clerk about what documentation will be required.
- Have any documents, including the will, that are not in English translated into English.
- Have the translator prepare certification of proper translation. See §7.19 for form of certification.
- File the petition for probate of the will and order, along with the apostille attached as an exhibit. If the will has been translated, attach a copy of the translation and the translator's certification.

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Source: Estate Planning/California Probate Workflow Manual Revised/21 Ancillary Administration/§21.5 B. Procedure for Authentication of Foreign Pleadings or Documents

§21.5 B. Procedure for Authentication of Foreign Pleadings or Documents

The procedure for authenticating a foreign document (*e.g.,* the will) or a pleading (*e.g.,* the order admitting the will to probate) from the primary administration depends on where the primary administration is taking place.

If the primary administration is in the United States, the Panama Canal Zone, the Trust Territory of the Pacific, or the Ryukyu Islands, the procedure is simple—a copy of the will and a copy of the order admitting the will to probate (with another copy of the will attached) must be certified as a true and correct copy by the public employee (or deputy) who has the will or order in his or her legal custody. This person is usually the court clerk or a local equivalent. The attorney probating the primary estate should be asked to obtain these certified copies. If there is no such attorney, one may write to the court clerk to obtain those documents.

If the primary administration is in a country that is a signatory to the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents (5 October 1961), no diplomatic or consular "legalization" is required. A copy of the order admitting the will to probate (with a copy of the will attached) must be certified by use of the following apostille:

APOSTILLE

(Convention de La Haye du 5 octobre 1961)
1. Country: _
This public document

2. has been signed by _
3. acting in the capacity of _
4. bears the seal/stamp of _

_ _
Certified
5. at _ _ _ _ _ _ _ _ _ _ _ _ _ _ 6. the _ _ _ _ _ _ _ _ _ _ _ _ _ _
7. by _
8. No. _ _ _ _ _ _ _ _ _ _ _ _ _ _
9. Seal/stamp: 10. Signature:

_ _

Each signatory to the convention designates those individuals who may execute the apostille. The attorney probating the primary estate should learn who is authorized in that country to execute the apostille. The text of the convention and the list of signatories (including most European countries) is reprinted in VIII Martindale-Hubbel Law Directory, pt VI, p 1C-24. Many courts are unfamiliar with this procedure, although it is recognized in CC §1183.

If the primary administration is anywhere else in the world, the procedure is more complex. A chain of authentications must be obtained, beginning with that of the official who has custody of the will and ending with that of certain consular officials, as provided in Evid C §1530(a)(3) and described below. The chain begins with the attestation (by one having the power under local law to make that attestation) that the copies of the will and the order equivalent to the order admitting a will to probate are correct copies. Then some other official must certify that the person making the attestation is authorized to make the attestation and that the signature on the attestation is genuine. This step is repeated as many times as necessary until one of the following people can certify to the authority of the link below and the genuineness of the signature on the attestation: The secretary of an embassy or legation, consul general, consul, vice consul, consular agent, other officer in the foreign service of the United States stationed in the nation where the primary administration is taking place (authenticated by his or her seal of office), or a diplomatic or consular official of the foreign country assigned or accredited to the United States. That last step is called the "final statement."

The attorney handling the primary administration should be asked to contact someone listed above who has authority to issue a final statement, inform that person about which local court is involved, and ask which is the lowest official in

the chain for which the United States official will be able to certify the signature and authority. See §21.6 for a sample letter to the foreign attorney explaining what is required. If that attorney cannot or will not do so, the same might be accomplished by contacting the embassy, informing them of the problem, and asking their assistance in obtaining the required certifications and attestations.

Documents that are not in English will have to be translated and accompanied by both the translation and the certification by the translator before they can be filed in the California court.

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Source: Estate Planning/California Probate Workflow Manual Revised/21 Ancillary Administration/§21.6 C. Form: Sample Letter to Attorney Probating Primary Estate in Foreign Country; Decedent Died Testate

§21.6 C. Form: Sample Letter to Attorney Probating Primary Estate in Foreign Country; Decedent Died Testate

INSTRUCTIONS: If the decedent left no will, see the sample letter in §21.7.

Dear _ _ _ _ _ _,

To pursue ancillary administration of the estate of _ _ _ _ _ _ _ _ _ _, deceased, in California, our local law requires that the decedent's will be properly certified. Our laws also require certification of the order or decree admitting the will to probate or other evidence of the will's establishment or proof according to your laws. In this letter I will refer to the order, decree, or evidence of the will's establishment or proof as the "order."

[*For foreign countries that are parties to the Hague Convention*]

Proper certification requires that you obtain two apostilles under the Convention Abolishing the Requirements of Legalization for Foreign Public Documents, entered at The Hague on 5 October 1961 (TIAS 10072; 527 UNTS 189)—one for the will, and one for the order admitting the will to probate.

One apostille is needed to certify that the order is valid, and the other is needed to certify that any notarization or certification of the will itself is valid. Please determine which official your country has designated to execute these apostilles.

[*For foreign countries that are not parties to the Hague Convention*]

Proper certification requires that you obtain at least two certificates authenticating the will and two certificates authenticating the order.

The first certificate must accompany a copy of the will, and a similar certificate must accompany a copy of the order. This certificate is a statement by a person in your country having authority to attest that the copy of the will and the copy of the order are correct copies.

The second certificate (one each for the copy of the will and the copy of the order) must be obtained from the secretary of an embassy or legation, consul general, consul, vice consul, consular agent, or other officer in the foreign service of the United States stationed in your country. That certificate is called a "final statement" and must be authenticated by his or her seal of office. The final statement certifies that the signature on the first certificate is valid and that the official had authority to attest to the validity of the copy of the will or order.

If the official who will be asked to sign a final statement cannot certify the signature or the authority of the official who signed the first certificate, then it will be necessary to create a chain of certificates that culminates in a certificate by someone whom the official signing the final statement can certify. Each interim certificate must certify that the person lower in the chain had the authority to certify the signature and position of the person below him or her in the chain. For example, if the clerk of your court certifies that a copy of the will is correct and that he has authority to attest to the fact that it is a correct copy, but the official who must sign the final statement cannot certify the validity of the clerk's signature and authority, it may be necessary to obtain a certificate from a lower court judge as well, certifying that the clerk's signature is valid and that the clerk is authorized to attest to the correctness of the copy. If the United States official cannot certify the validity of that judge's signature and authority, but can certify the signature and authority of a higher court judge, it will be necessary to obtain a certificate from the higher judge certifying the signature and authority of the lower court judge's certificate.

Because these requirements can be confusing, we suggest you contact the United States official before obtaining any certificates in order to determine which local authority's signature and authority can be certified by the United States official in a final statement.

Very truly yours,

_ _[*Signature*]_ _

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Source: Estate Planning/California Probate Workflow Manual Revised/21 Ancillary Administration/§21.7 D. Form: Sample Letter to Attorney Probating Primary Estate in Foreign Country; Decedent Died Intestate

§21.7 D. Form: Sample Letter to Attorney Probating Primary Estate in Foreign Country; Decedent Died Intestate

INSTRUCTIONS: If the decedent left a will, see the sample letter in §21.6.

Dear _ _ _ _ _ _,

To pursue ancillary administration of the estate of _ _ _ _ _ _ _ _ _ _ _, deceased, in California, our local law requires certification of the order or decree authorizing the administration of the estate, or other evidence of establishing or proving the administration according to your laws. In this letter I will refer to the order, decree, or other evidence of the establishment or proof of the commencement of administration as the "order."

[*For foreign countries that are parties to the Hague Convention*]

Proper certification requires that you obtain an apostille certifying the order as provided in the Convention Abolishing the Requirement of Legalization for Foreign Public Documents, entered at The Hague on 5 October 1961 (TIAS 10072; 527 UNTS 189). Please determine which official your country has designated to execute this apostille.

[*For foreign countries that are not parties to the Hague Convention*]

Proper certification requires that you obtain at least two certificates authenticating the order.

The first certificate must accompany a copy of the order. This certificate is a statement by a person in your country having authority to attest that the copy of the order is a correct copy.

The second certificate must be obtained from the secretary of an embassy or legation, consul general, consul, vice consul, consular agent, or other officer in the foreign service of the United States stationed in your country. That certificate is called a "final statement" and must be authenticated by his or her seal of office. The final statement certifies that the signature on the first certificate is valid and that the official had authority to attest to the validity of the copy of the order.

If the official who will be asked to sign a final statement cannot certify the signature or the authority of the official who signed the first certificate, then it will be necessary to create a chain of certificates that culminates in a certificate by someone whom the official signing the final statement can certify. Each interim certificate must certify that the person lower in the chain had the authority to certify the signature and position of the person below him or her in the chain. For example, if the clerk of your court certifies that a copy of the will is correct and that he has authority to attest to the fact that it is a correct copy, but the official who must sign the final statement cannot certify the validity of the clerk's signature and authority, it may be necessary to obtain a certificate from a lower court judge as well, certifying that the clerk's signature is valid and that the clerk is authorized to attest to the correctness of the copy. If the United States official cannot certify the validity of that judge's signature and authority, but can certify the signature and authority of a higher court judge, it will be necessary to obtain a certificate from the higher judge certifying the signature and authority of the lower court judge's certificate.

Because these requirements can be confusing, we suggest that you contact the United States official before obtaining any certificates in order to determine which local authority's signature and authority can be certified by the United States official in a final statement.

Very truly yours,

__[*Signature*]__

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Source: Estate Planning/California Probate Workflow Manual Revised/21 Ancillary Administration/§21.8 E. Certification by Translator

§21.8 E. Certification by Translator

A certification by the translator must accompany both the original language version and the English translation of any document or pleading.

See §7.19 for a form of certificate by translator.

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Source: Estate Planning/California Probate Workflow Manual Revised/21 Ancillary Administration/ III. FORMS/§21.9 A. Form: Cover Sheet for Filing Documents

III. FORMS

§21.9 A. Form: Cover Sheet for Filing Documents

INSTRUCTIONS: When filing documents that relate to a particular probate but that are not already attached to a petition or other pleading that includes the title of the court and caption of the case, the following may be used as a cover sheet. At the end of the sheet, list the names of the documents in the first column, and the exhibit letter in the same row in the second column.

Copies: Original for filing; office copies.

[*Title of court*]

[*Title of case*]

No. _ _ _ _ _ _
COVER SHEET FOR FILING FOLLOWING DOCUMENTS FROM PRIMARY ADMINISTRATION: _ _[*LIST DOCUMENTS TO BE FILED*]**_**

[*Use if primary administration is in United States, Panama Canal Zone, Trust Territory of the Pacific Islands, or Ryukyu Islands*]

The following attached documents are certified copies of the _ _[*pleadings/documents/pleadings and documents*]**_ _ filed in the primary administration of the estate of _ _ _ _ _ _ _ _ _ _, deceased, action no. _ _ _, filed in _ _**[*state jurisdiction of primary administration*]**_ _.**

[*Use if primary administration is in a foreign country that is a party to the Hague Convention (discussed in §21.5)*]

The following attached _ _[*pleadings/documents/pleadings and documents*]**_ _ are copies of _ _**[*pleadings/documents/pleadings and documents*]**_ _ filed in the primary administration of the estate of _ _ _ _ _ _ _ _ _ _, deceased, action no. _ _ _, filed in _ _**[*state jurisdiction of primary administration*]**_ _.**

Each copy is accompanied by an apostille under the Convention Abolishing the Requirement of Legalization for Foreign Public Documents entered at The Hague on October 5, 1961 (TIAS 10027; 527 UNTS 189) certifying its genuineness.

[*Use if primary administration is anywhere else*]

The following attached _ _[***pleadings/documents/pleadings and documents***]**_ _ are copies of _ _**[***pleadings/documents/pleading and documents***]**_ _ filed in the primary administration of the estate of _ _ _ _ _ _ _ _ _ _, deceased, action no. _ _ _, filed in _ _**[***state jurisdiction of primary administration***]**_ _. Each copy is accompanied by an attestation that the copy is a correct copy of the writing and that the person attesting has authority to so attest, and by a final statement from one authorized under Evidence Code §1530(a)(3) certifying the genuineness of the signature and official position of the person _ _**[***signing the attestation/who has, in a chain of similar certificates, authority to certify the genuineness of the signature and the official position of the person who signed the attestation***]**_ _.**

[*Add if any documents or pleadings have been translated*]

The _ _[*specify documents or pleadings*]**_ _ attached _ _**[*is/are*]**_ _ in _ _**[*specify language*]**_ _, and _ _**[*is/are*]**_ _ accompanied by a translation into English and a certification of its accuracy by the translator.**

[*Continue*]

_ _[*List name of document*]_ _ _ _[*List exhibit letter*]_ _

_ _[*List name of document*]_ _ _ _[*List exhibit letter*]_ _

_ _[*List name of document*]_ _ _ _[*List exhibit letter*]_ _

Dated: _ _ _ _ _ _

_____

Attorney for Representative

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Source: Estate Planning/California Probate Workflow Manual Revised/21 Ancillary Administration/§21.10 B. Form: Attachment to Petition for Probate of Nondomiciliary Decedent's Will and for Letters Testamentary (Judicial Council Form DE-111)

§21.10 B. Form: Attachment to Petition for Probate of Nondomiciliary Decedent's Will and for Letters Testamentary (Judicial Council Form DE-111)

INSTRUCTIONS: For admission of a foreign will and for letters testamentary for a nondomiciliary decedent, the Petition for Probate (Judicial Council Form DE-111) should be modified at the caption and at items 2a, 3c, and 3(e). See §7.11 for the entire four page Form DE-111. The caption should be modified to read "Petition for Probate of Nondomiciliary Decedent's Will and for Letters Testamentary." Item 2a should be modified to specify that decedent's wills and codicils, if any, be admitted to probate "as a nondomiciliary decedent's will (see attachment 2a)." Item 3c should be modified by adding the phrase "in California" after "Character and estimated value of the property of the estate." Attachments to items 2a and 3e(2), similar to the ones below, should be added. Attachment 3e(2) must be modified if Alternative 2 is used in Attachment 2a. Many attorneys use a separate attachment for each item; the form in this section includes several items on one attachment to minimize the amount of space used.

An attachment to item 2a should also include allegations that the decedent was domiciled in the sister state or foreign nation at the time of death, that all interested persons were given notice and an opportunity to contest the proceeding, and that the foreign order is final.

Copies: Original for filing with Form DE-111; one copy for each representative; office copies.

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address)*:	*FOR COURT USE ONLY*
TELEPHONE NO.: FAX NO. *(Optional)*: E-MAIL ADDRESS *(Optional)*: ATTORNEY FOR *(Name)*:	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
ESTATE OF *(Name)*: DECEDENT	
PETITION FOR ☐ **Probate of Nondomiciliary Decedent's Will and for Letters Testamentary** ☐ **Probate of Will and for Letters of Administration with Will Annexed** ☐ **Letters of Administration** ☐ **Letters of Special Administration** ☐ **with general powers** ☐ **Authorization to Administer Under the Independent Administration of Estates Act** ☐ **with limited authority**	CASE NUMBER: HEARING DATE: DEPT.: TIME:

1. Publication will be in *(specify name of newspaper)*:
   a. ☐ Publication requested.
   b. ☐ Publication to be arranged.
2. **Petitioner** *(name each)*: **requests that**
   a. ☐ decedent's will and codicils, if any, be admitted to probate as a nondomiciliary decedent's will (see attachment 2a).
   b. ☐ *(name)*:
      be appointed
      (1) ☐ executor
      (2) ☐ administrator with will annexed
      (3) ☐ administrator
      (4) ☐ special administrator ☐ with general powers
      and Letters issue upon qualification.
   c. ☐ full ☐ limited authority be granted to administer under the Independent Administration of Estates Act.
   d. (1) ☐ bond not be required for the reasons stated in item 3d.
      (2) ☐ $ bond be fixed. The bond will be furnished by an admitted surety insurer or as otherwise provided by law. *(Specify reasons in Attachment 2 if the amount is different from the maximum required by Prob. Code, § 8482.)*
      (3) ☐ $ in deposits in a blocked account be allowed. Receipts will be filed.
      (Specify institution and location):
3. a. Decedent died on *(date)*: at *(place)*:
      (1) ☐ a resident of the county named above.
      (2) ☐ a nonresident of California and left an estate in the county named above located at *(specify location permitting publication in the newspaper named in item 1)*:
   b. Street address, city, and county of decedent's residence at time of death *(specify)*:

Form Adopted for Mandatory Use
Judicial Council of California
DE-111 [Rev. March 1, 2008]

PETITION FOR PROBATE
(Probate—Decedents Estates)

CEB

Probate Code, §§ 8002, 10450;
www.courtinfo.ca.gov

ESTATE OF *(Name)*: _ DECEDENT	CASE NUMBER:

3. c. **Character and estimated value of the property of the estate in California** *(complete in all cases)*:

(1) Personal property: $

(2) Annual gross income from

(a) real property: $

(b) personal property: $ _____

(3) **Subtotal** *(add (1) and (2))*: $ _____

(4) Gross fair market value of real property: $

(5) (Less) Encumbrances: $(_____)

(6) Net value of real property: $ _____

(7) **Total** *(add (3) and (6))*: $ _____

d. (1) ☐ Will waives bond. ☐ Special administrator is the named executor, and the will waives bond.

(2) ☐ All beneficiaries are adults and have waived bond, and the will does not require a bond. *(Affix waiver as Attachment 3d(2).)*

(3) ☐ All heirs at law are adults and have waived bond. *(Affix waiver as Attachment 3d(3).)*

(4) ☐ Sole personal representative is a corporate fiduciary or an exempt government agency.

e. (1) ☐ Decedent died intestate.

(2) ☐ Copy of decedent's will dated: ☐ codicil dated *(specify for each)*:

are affixed as Attachment 3e(2).

(Include typed copies of handwritten documents and English translations of foreign-language documents.)

☐ The will and all codicils are self-proving (Prob. Code, § 8220).

f. **Appointment of personal representative** *(check all applicable boxes)*:

(1) Appointment of executor or administrator with will annexed:

(a) ☐ Proposed executor is named as executor in the will and consents to act.

(b) ☐ No executor is named in the will.

(c) ☐ Proposed personal representative is a nominee of a person entitled to Letters. *(Affix nomination as Attachment 3f(1)(c).)*

(d) ☐ Other named executors will not act because of ☐ death ☐ declination ☐ other reasons *(specify)*:

☐ Continued in Attachment 3f(1)(d).

(2) Appointment of administrator:

(a) ☐ Petitioner is a person entitled to Letters. *(If necessary, explain priority in Attachment 3f(2)(a).)*

(b) ☐ Petitioner is a nominee of a person entitled to Letters. *(Affix nomination as Attachment 3f(2)(b).)*

(c) ☐ Petitioner is related to the decedent as *(specify)*:

(3) ☐ Appointment of special administrator requested. *(Specify grounds and requested powers in Attachment 3f(3).)*

g. Proposed personal representative is a

(1) ☐ resident of California.

(2) ☐ nonresident of California *(specify permanent address)*:

(3) ☐ resident of the United States.

(4) ☐ nonresident of the United States.

Case Number: _ _[*number*]_ _

Attachments 2a and 3e(2) to Petition for Probate

ATTACHMENT 2a

Decedent's Will

[*Add one of the following alternatives*]

[*Alternative 1: Will admitted to probate in another state*]

Decedent left a will dated _ _[*date*]_ _ that has been duly proved, allowed, and admitted to probate in the _ _[*name*]_ _ court of _ _[*name*]_ _ County, _ _[*name of state*]_ _, on _ _[*date*]_ _.

[*Alternative 2: Will established or proved in another country*]

Decedent left a will dated _ _[*date*]_ _ that was established or proved according to the laws of _ _[*name of country*]_ _.

ATTACHMENT 3e(2)

Copy of Will and Order Admitting Will to Probate in _ _[*name of state/foreign nation*]_ _

A duly authenticated copy of the will and of the order admitting the same to probate in the above-named court is presented and filed herewith, and true copies of these documents are attached to and made a part of this petition. The will was executed in conformity with the laws of _ _[*name of state/foreign nation*]_ _, where the testator was domiciled at the time of _ _[*his/her*]_ _ death, and according to the laws of California. The court at the time of admitting the will to probate was a court of competent jurisdiction and had jurisdiction of the matters and of all parties' interests in the estate. All interested persons were given notice and an opportunity to contest the proceeding, and the order is final.

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Source: Estate Planning/California Probate Workflow Manual Revised/21 Ancillary Administration/§21.11 C. Form: Attachment to Order for Probate of Nondomiciliary Decedent's Will and for Letters Testamentary (Judicial Council Form DE-140)

§21.11 C. Form: Attachment to Order for Probate of Nondomiciliary Decedent's Will and for Letters Testamentary (Judicial Council Form DE-140)

Judicial Council Form DE-140 (Order for Probate) may be used for admission of a foreign will and for letters testamentary for a nondomiciliary decedent with modifications to the caption to read "Order for Probate of Nondomiciliary Decedent's Will" and the additions to paragraph 2 by attachment.

If the will has not been admitted to probate in the foreign jurisdiction, the findings and order should be changed to show that the foreign will has been established or proved according to the law of the foreign jurisdiction. On authenticating foreign wills, see §§21.3-21.5.

Some local rules require that the Judicial Council form be used and that no riders or exhibits be attached. Other counties permit attachments to the form if the place for execution by the court appears at the end of the last attachment and an appropriate indication is made on the form that this has been done.

Copies: Original for filing with Order for Probate; one copy for each representative; office copies.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):	TELEPHONE AND FAX NOS.:	FOR COURT USE ONLY
ATTORNEY FOR (Name):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
ESTATE OF (Name): DECEDENT		
ORDER FOR PROBATE OF NONDOMICILIARY DECENDENT'S WILL **ORDER APPOINTING** ☐ **Executor** ☐ **Administrator with Will Annexed** ☐ **Administrator** ☐ **Special Administrator** ☐ **Order Authorizing Independent Administration of Estate** ☐ **with full authority** ☐ **with limited authority**		CASE NUMBER:

WARNING: THIS APPOINTMENT IS NOT EFFECTIVE UNTIL LETTERS HAVE ISSUED.

1. Date of hearing: Time: Dept./Room: Judge:

THE COURT FINDS

2. a. All notices required by law have been given. See attachment 2.
   b. Decedent died on *(date)*:
      (1) ☐ a resident of the California county named above.
      (2) ☒ a nonresident of California and left an estate in the county named above.
   c. Decedent died
      (1) ☐ intestate
      (2) ☐ testate
      and decedent's will dated: and each codicil dated:
      was admitted to probate by Minute Order on *(date)*:

THE COURT ORDERS

3. *(Name)*:
   is appointed **personal representative:**
   a. ☐ executor of the decedent's will
   b. ☐ administrator with will annexed
   c. ☐ administrator
   d. ☐ special administrator
      (1) ☐ with general powers
      (2) ☐ with special powers as specified in Attachment 3d(2)
      (3) ☐ without notice of hearing
      (4) ☐ letters will expire on *(date)*:
   and letters shall issue on qualification.
4. a. ☐ **Full authority** is granted to administer the estate under the Independent Administration of Estates Act.
   b. ☐ **Limited authority** is granted to administer the estate under the Independent Administration of Estates Act (there is no authority, without court supervision, to (1) sell or exchange real property or (2) grant an option to purchase real property or (3) borrow money with the loan secured by an encumbrance upon real property).
5. a. ☐ Bond is not required.
   b. ☐ Bond is fixed at: $ to be furnished by an authorized surety company or as otherwise provided by law.
   c. ☐ Deposits of: $ are ordered to be placed in a blocked account at *(specify institution and location)*:
      and receipts shall be filed. No withdrawals shall be made without a court order. ☐ Additional orders in Attachment 5c.
   d. ☐ The personal representative is not authorized to take possession of money or any other property without a specific court order.
6. ☐ *(Name)*: is appointed probate referee.

Date:

JUDGE OF THE SUPERIOR COURT

7. Number of pages attached: ____ ☐ SIGNATURE FOLLOWS LAST ATTACHMENT

Estate of _ _[*name*]_ _, Decedent

Case Number: _ _[*number*]_ _

Attachment 2 to Order for Probate

ATTACHMENT 2
Findings

It appears from _ _[*an authenticated order/evidence presented*]_ _ **and the court finds that decedent's will was** _ _[*admitted to probate in* _ _[*name of state/country*]_ _ /_ _[*established/proved*]_ _ *according to the laws of* _ _[*name of state/country*]_ _]_ _[.]

[*Add the following, if true*]

in a proceeding in which all interested parties were given notice and an opportunity for contest.

[*Continue*]

[*Add the following, if true*]

The determination has become final, is not subject to revocation, and is based on a finding that the decedent was domiciled at death in _ _[*name of state/country*]_ _**.**

[*Continue*]

The will was valid according to the laws of _ _[*name of state/country*]_ _**.**

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Source: Estate Planning/California Probate Workflow Manual Revised/21 Ancillary Administration/ D. Final Distribution/ §21.12 1. Form: Petition for Final Distribution

D. Final Distribution

§21.12 1. Form: Petition for Final Distribution

INSTRUCTIONS: In drafting the petition, the form in §18.29 should be followed except for the changes noted below.

Use of a proposed distribution schedule or schedules is a convenient way to list the assets to be transferred. The schedule(s) can be attached as exhibits and then incorporated into the body of the Order for Final Distribution.

If there is real property in the estate, the court may, if necessary, direct a sale of the real property and a delivery of the proceeds. Prob C §12541; see §13.2. If there is no sale, the real property must be distributed directly to the beneficiaries or heirs who are entitled to it.

Delivery of assets other than real property is usually made to the representative in the domiciliary jurisdiction, rather than directly to the devisees, for the convenience of estate administration as a whole and to avoid problems of allocating estate taxes.

For distribution directly to the beneficiaries, follow the form of petition in 18.29-45. Some of the language that follows may be useful in modifying the petition to reflect the ancillary administration. An allegation concerning the solvency of the domiciliary administration to pay claims and pecuniary devises may be helpful in determining that there is no need to remit the remaining assets to the court in the domiciliary state for ultimate distribution there.

In a nonresident decedent's estate, the distributees are also likely to be nonresidents. Consequently, the tax clearance certificate required by Rev & T C §19513 should be obtained and filed in the proceeding if the California estate is valued above $1 million and if $250,000 or more is distributable to one or more nonresident beneficiaries. Rev & T C §19513(b). See §18.30.

(a) The caption of the Final Account and Petition for Distribution should include the notation:

AND FOR FINAL DISTRIBUTION TO DOMICILIARY REPRESENTATIVE

(b) Use 18.29-2—18.29-4.

(c) Substitute one of the following for 18.29-5:

[*Add one of the following alternatives*]

[*Alternative 1: Testate estate*]

The decedent's will was admitted to probate on _ _[*date*]_ _**, in** _ _[*name of county, state*]_ _**.** _ _[*Name*]_ _ **is the duly appointed, qualified, and acting** _ _[*executor/administrator with will annexed*]_ _ **of the decedent's estate in** _ _[*state of domiciliary jurisdiction*]_ _**. An authenticated copy of the decedent's will of** _ _[*date*]_ _ _ _[*and codicil(s) of* _ _[*date*]_ _]_ _ _ _[*was/were*]_ _ **admitted to probate by order of this court on** _ _[*date*]_ _**. Petitioner qualified as** _ _[*executor/administrator*]_ _**, and letters** _ _[*testamentary/of administration with will annexed*]_ _ **were issued to petitioner on** _ _[*date*]_ _**. At all times since then petitioner has been and now is the duly qualified** _ _[*executor/administrator with will annexed*]_ _ **of the ancillary administration of the decedent's estate.**

[*Alternative 2: Intestate estate*]

The decedent died intestate. _ _[*Name*]_ _ **is the duly appointed, qualified, and acting administrator of the decedent's estate in** _ _[*state of domiciliary jurisdiction*]_ _**. Petitioner qualified as ancillary administrator of the estate, and letters of administration were issued to petitioner on** _ _[*date*]_ _**. At all times since then petitioner has been and now is the ancillary administrator of the estate.**

[*Continue with form options in chap 18*]

(d) In presenting the information on creditors' claims (18.29-25—18.29-27), set forth any ancillary claims paid from the domiciliary administration as well as usual information on claims customarily presented locally. See discussion in California Decedent Estate Practice, chap 11 (2d ed Cal CEB 2009).

(e) Insert before the request for orders (18.29-54) the following:

It is in the best interests of the estate and interested persons and necessary that _ _[*the whole of the assets of the estate/a certain part of the estate assets described herein*]_ _ be distributed and delivered to the _ _[*executor/administrator*]_ _ of the above-named decedent's estate in _ _[*state of domiciliary jurisdiction*]_ _.

(f) Replace paragraph 9 of the request for orders in 18.29-54 with the following:

Distribution of the estate in petitioner's hands and any other property of the decedent or the estate not now known or discovered is to be made to _ _[*name*]_ _, the _ _[*executor/administrator*]_ _ of the above-named decedent's estate in _ _[*state of domiciliary jurisdiction*]_ _, as set forth in the petition.

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Source: Estate Planning/California Probate Workflow Manual Revised/21 Ancillary Administration/§21.13 2. Form: Order for Final Distribution

§21.13 2. Form: Order for Final Distribution

INSTRUCTIONS: In drafting the order, the form in §18.36 should be followed except for any applicable changes noted below.

(a) The title of the order should follow the caption of the account, report, and petition.

(b) In place of 18.36-6, insert one of the following as the finding of the court:

[*Add one of the following alternatives*]

[*Alternative 1: Testate estate: Appointment and qualification of domiciliary representative*]

The decedent's will was admitted to probate on _ _[*date*]**_ _, in the _ _ _ _ Court of _ _ _ _ _ _County, _ _**[*state*]**_ _. _ _**[*Name*]**_ _ is the duly appointed, qualified, and acting _ _**[*executor/administrator/(etc.)*]**_ _ of the decedent's estate in _ _**[*state of domiciliary jurisdiction*]**_ _.**

An authenticated copy of the decedent's will of _ _[*date*]**_ _, _ _**[*and codicil(s) of _ _*[*date*]**_ _*]**_ _ _ _**[*was/were*]**_ _ admitted to probate by order of this court on _ _**[*date*]**_ _. Petitioner qualified as _ _**[*executor/administrator with will annexed*]**_ _ and letters _ _**[*testamentary/of administration with will annexed*]**_ _ were issued to petitioner on _ _**[*date*]**_ _. At all times since then petitioner has been and now is the duly qualified _ _**[*executor/administrator/(etc.)*]**_ _ of the ancillary administration of the decedent's estate.**

[*Alternative 2: Intestate estate: Appointment and qualification of domiciliary representative*]

Decedent died intestate. _ _[*Name*]**_ _ is the duly appointed, qualified, and acting administrator of the decedent's estate in _ _**[*state of domiciliary jurisdiction*]**_ _. Petitioner qualified as ancillary administrator of the estate, and letters of administration were issued to petitioner on _ _**[*date*]**_ _. At all times since then petitioner has been and now is the ancillary administrator of the estate.**

[*Continue*]

(c) Include among the findings, if appropriate, necessity of distribution to domiciliary administrator:

[*Add one of the following alternatives*]

[*Alternative 1: Testate estate*]

It is necessary and in the best interests of the estate that _ _[*all the estate assets/a certain part of the estate assets described in this petition*]**_ _ be distributed according to the will and that the assets be delivered to the _ _**[*executor/administrator/(etc.)*]**_ _ of the decedent's estate in _ _**[*state of domiciliary jurisdiction*]**_ _.**

[*Alternative 2: Intestate estate*]

It is necessary and in the best interests of the estate that _ _[*all the estate assets/a certain part of the estate assets described in this petition*]**_ _ be delivered to the administrator of the decedent's estate in _ _**[*state of domiciliary jurisdiction*]**_ _.**

[*Continue*]

(d) The distribution plan should set out in detail to whom property is distributed. See 18.36-30. Identify the domiciliary representative in the distribution plan as the:

_ _[*executor/administrator*]_ _ **of the decedent's estate in** _ _[*state of domiciliary jurisdiction*]_ _**.**

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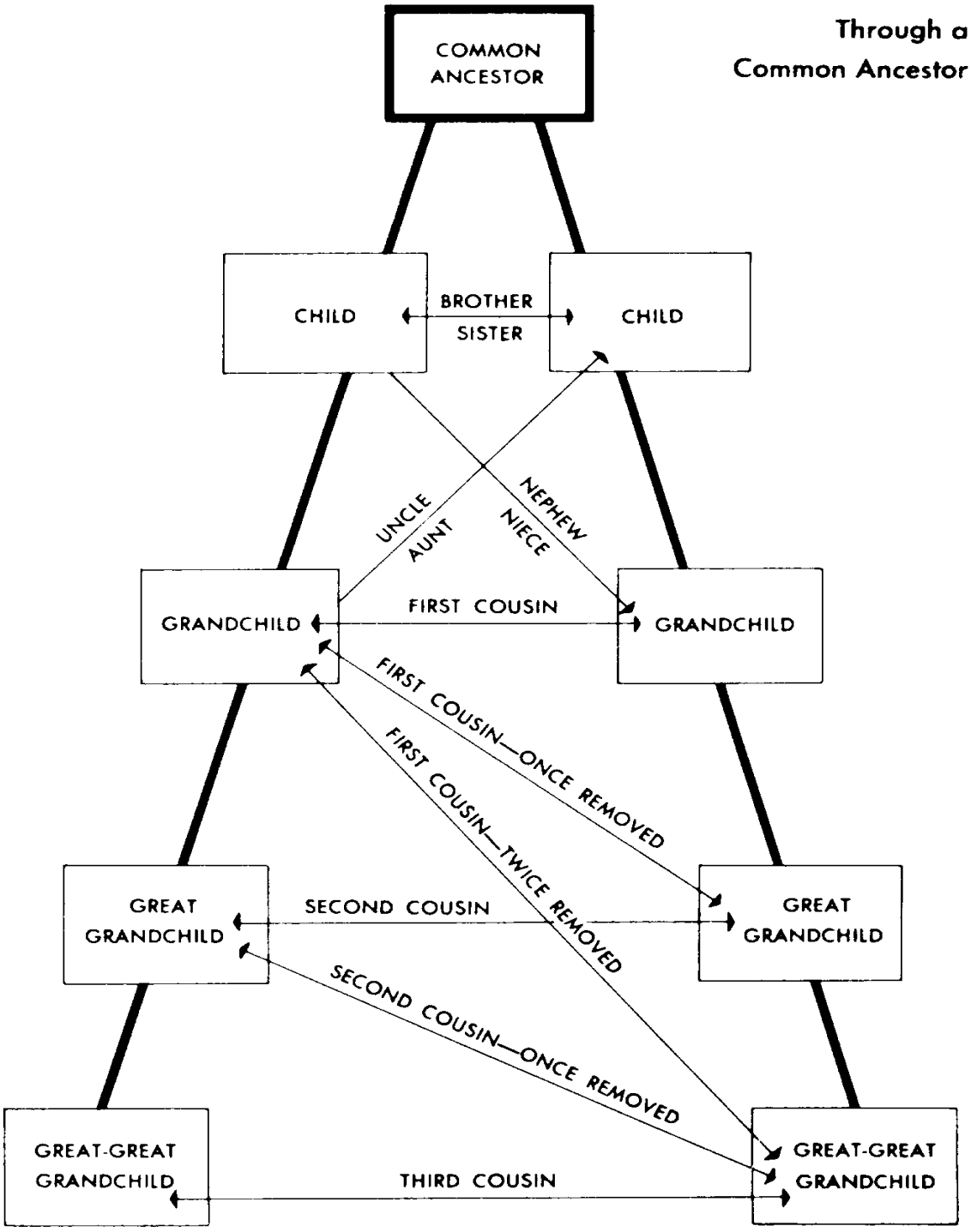
Appendix A

Tables of Consanguinity

CHART OF RELATIONSHIPS

Through a Common Ancestor

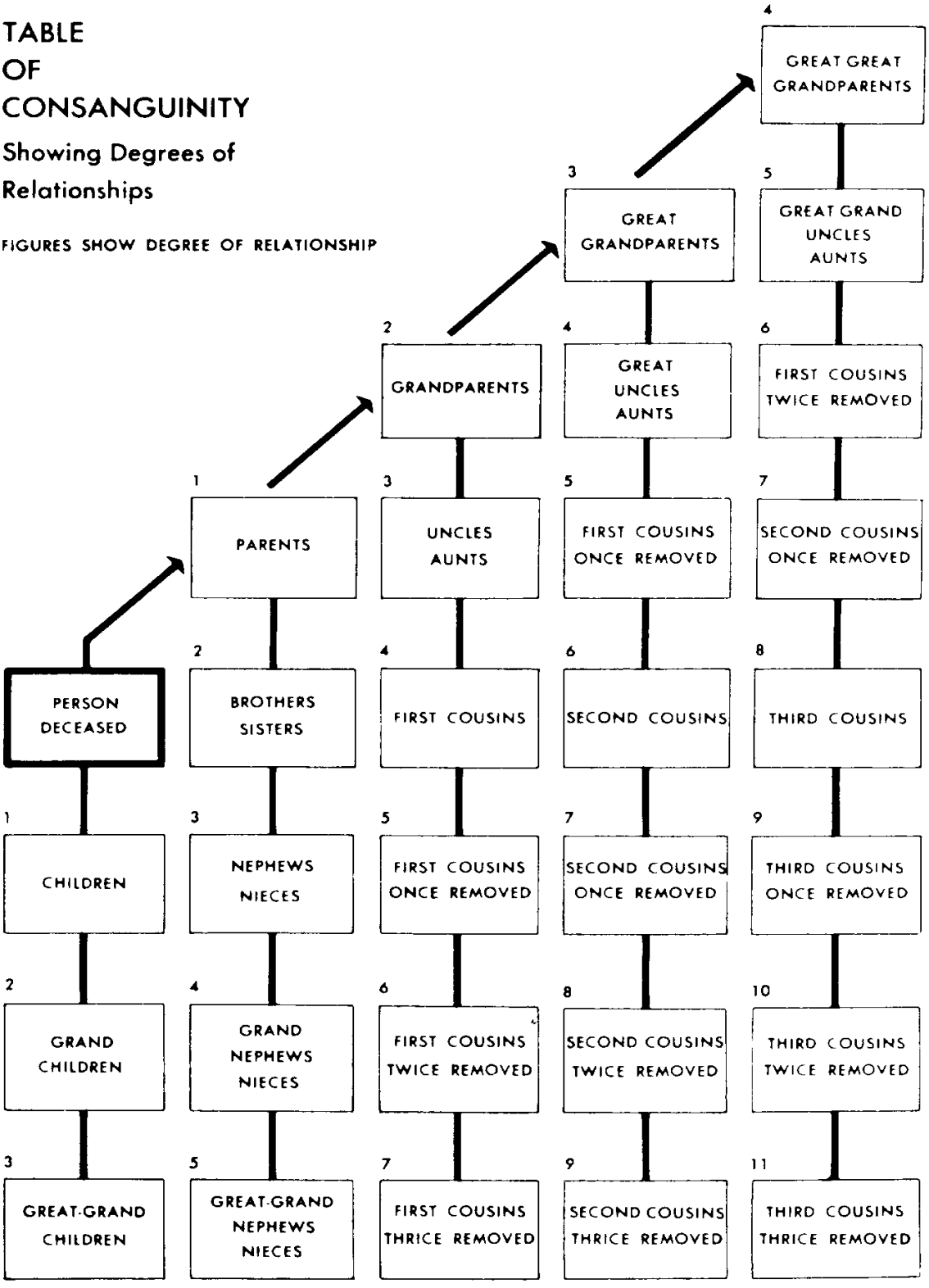


Print

TABLE OF CONSANGUINITY

Showing Degrees of Relationships

FIGURES SHOW DEGREE OF RELATIONSHIP



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Appendix B

Valuation of Assets for Federal Estate Tax

I. GENERAL RULES

II. ASSETS
- A. Real Property (Form 706; Schedule A)
- B. Stocks and Bonds (Form 706; Schedule B)
- C. United States Series E Bonds (Form 706; Schedule B)
- D. Cash (Form 706; Schedule C)
- E. Notes, Mortgages (Form 706; Schedule C)
- F. Miscellaneous

I. General Rules

(1) Definition of fair market value (FMV): The price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having knowledge of relevant facts.

(2) Time of valuation: As of the date of death for inventory. As of the date of death for estate tax unless alternate valuation is elected.

(3) Alternate valuation: For estate tax purposes only, if the alternate valuation would lower the estate tax payable, each asset is valued at (a) 6 months after the date of death or (b) the date of its distribution, sale, exchange, or disposition, whichever is earlier.

(4) Appraisals may be made only by the personal representative unless appraisers are hired, in which case they are made by the appraisers and approved by the personal representative. Appraisals are generally desirable for all real estate and may be desirable for closely held business interests.

(5) Detailed handling of specific types of assets is covered in chap 11.

II. Assets

A. Real Property (Form 706; Schedule A)

(1) Actual current purchase or sales prices is generally used.

(2) Sales price of a comparable property is the next best indication and is particularly useful in evaluating raw acreage or a personal residence.

(3) Other methods include capitalization of income and determination of reproduction cost. Local assessed values are generally of little value. Fractional undivided interests in real estate are generally worth less than the prorata value of the entire tract; a discount may be available.

(4) Value of improvements should be stated separately from that of land itself.

B. Stocks and Bonds (Form 706; Schedule B)

(1) If there are sales on the valuation date, FMV is the average of the highest and lowest selling prices.

(2) If there are no sales on the valuation date, the valuation is determined by using nearest dates before and after the date of death, and FMV is the weighted average of the total of such highest and lowest selling prices.

(3) For over-the-counter securities, FMV is the average of the bid and asked prices on the applicable date.

(4) Its former position having been struck down, the IRS now accepts the redemption value of open-end mutual funds as the correct valuation figure. Reg §20.2031-8(b).

(5) Dividends: If the valuation date is between the record date and the payment date, the amount of the dividend is separately reportable.

C. United States Series E Bonds (Form 706; Schedule B)

The ownership of these bonds is determined by reference to the federal savings bond regulations. United States E bonds are reportable on Schedule B of the death tax returns.

D. Cash (Form 706; Schedule C)

Although only the net balance is included for valuation purposes, checking accounts reduced by and with the total amount of the outstanding checks shown should be listed at the gross balances shown by the bank. Unless accrued interest is available to the decedent at the date of death, the principal amount of savings accounts and nonnegotiable certificates of deposit is the FMV. Reg §20.2031-5.

E. Notes, Mortgages (Form 706; Schedule C)

The FMV of mortgages, notes, and accounts is the amount of unpaid principal plus the amount of interest accrued to the date of valuation, unless mitigating circumstances are established. Reg §20.2031-4. The appropriate value is included in Schedule C of the death tax returns and on the inventory. If the decedent owned an undivided interest in such a note or claim, the names and relationship of the co-owners must also be shown on the inventory.

F. Miscellaneous

(1) Closely held securities: There is no single method of valuation. Restrictive or "buy-sell" agreements may be controlling. Appraisals may be extremely helpful in the absence of controlling "buy-sell" provisions. The IRS treats earnings as the most important factor. Closely held securities are reportable on Schedule B of the death tax returns.

(2) Other business interests: Partnership and joint venture interests are valued in the same manner as stocks in a closely held business. Sole proprietorships may be valued in the same manner as closely held businesses, but they are generally valued at liquidation value because the key individual is the decedent. These business interests are reportable on Schedule F of the death tax returns.

(3) Jointly owned property: Such property is valued in the same manner as other property and is includable on Schedule E. The instructions should be consulted regarding the includable portion.

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