

## Source: Estate Planning/Handling a Probate (Action Guide)/Introductory Material

### Handling a Probate

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#### Scope of Guide

This Action Guide provides step-by-step instructions for handling a probate, from gathering the decedent's assets to discharging debts and liabilities and distributing the remaining assets. The guide does not include an extensive discussion of preparing the accounting (see [Handling a Fiduciary Accounting \(Cal CEB Action Guide November 2008\)](#); [California Decedent Estate Practice, chaps 24 and 31 \(2d ed Cal CEB 2009\)](#); [California Probate Workflow Manual Revised \(rev ed Cal CEB 1989\)](#)), nor does it address procedures for transferring nonprobate property (see [Transferring Property Without Probate \(Cal CEB Action Guide September 2008\)](#)). Except for pointing out estate and income tax issues that must be considered, this Action Guide does not include information about preparing estate and income tax returns (see [Decedent Estate Prac, chaps 33-34](#), for more in-depth discussion of estate taxation and income taxation of estates).

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#### Abbreviations

Decedent Estate Prac	<a href="#">California Decedent Estate Practice (2d ed Cal CEB 2009)</a>
IAEA	Independent Administration of Estates Act
Probate Workflow	<a href="#">California Probate Workflow Manual Revised (rev ed Cal CEB 1989)</a>
Transferring Prop	<a href="#">Transferring Property Without Probate (Cal CEB Action Guide September 2008)</a>
Trust Admin	<a href="#">California Trust Administration (2d ed Cal CEB 2001)</a>

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#### About the Authors

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Beginning Probate Proceedings

STEP 1. INITIAL INTERVIEW

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PURPOSE OF ESTATE ADMINISTRATION

The main functions of estate administration and duties of the representative are to:

- a. Collect and manage all assets;
- b. Give notice and opportunity to be heard to interested parties;
- c. Pay debts and taxes owed by decedent;
- d. Liquidate assets when necessary or appropriate; and
- e. Distribute the balance of the assets.

INITIAL CONTACT

The first contact with the prospective client is usually a telephone call advising the attorney that the client's relative has died. The attorney should suggest that the prospective client obtain sufficient certified copies of the death certificate to meet the needs described in [step 3](#), below.

ARRANGE INTERVIEWS

As soon as possible after decedent's death and subject to tax compliance deadlines (but consider allowing relatives like a spouse or child a few weeks to grieve and compose themselves, so that they can focus on the attorney's advice):

- a. Ascertain the personal representatives who are able and willing to administer the estate.
- b. Warn prospective representatives of the various duties and liabilities of the position. Convincing an inappropriate individual that serving is inadvisable is far preferable to permitting the individual to serve and risk future surcharge actions and excessive delays.
- c. Identify family members or close friends who may be able to provide information about the estate and estate assets.
- d. Set up interviews to gather information and to establish an effective relationship with the nominee personal representatives.
- e. Advise clients to bring to the initial meeting:
  - (1) Original estate planning documents;
  - (2) Death certificates (certified copies);
  - (3) Asset and liability information; and
  - (4) Copy of decedent's most recent individual income tax returns as an aid to locating assets.

NOTE

Confirm all client's representations with financial statements or records. Obtain property profiles for all real property. Do not assume that client's grant deed is the last recorded deed.

- f. Use the form letter in [Appendix 1](#) to:
  - (1) Confirm interview appointments; and

(2) Transmit:

- (a) Estate information checklist ([Appendix 2](#)),
- (b) Preliminary inventory and financial schedule ([Appendix 3](#)); and
- (c) Request for decedent's legal documents ([Appendix 4](#)) before the interview.

#### OBTAIN DECEDENT'S LEGAL DOCUMENTS

- a. Take possession of and examine decedent's original estate planning documents and all legal papers as soon as possible. It is impossible to characterize or determine title to the estate's assets and obligations without referring to documents of title, contracts, and other legal documents.
- b. When information is obtained from several sources, indicate the source so that any discrepancies can be reconciled later.

#### NOTE

Do not rely solely on the memories of the prospective personal representative, the surviving spouse or registered domestic partner, or other family members for information on decedent's estate.

**Form:** For a request for decedent's legal documents, see [Appendix 4](#).

#### PREPARE FOR FIRST MEETING WITH POTENTIAL REPRESENTATIVE OR FAMILY

##### Review Known Asset Information

If decedent's will was drafted by an attorney in the office, the will file usually contains basic estate information used to prepare estate documents. Use the checklist in [Appendix 2](#) to:

- a. Identify changes in the estate since the will was prepared; and
- b. Update basic information about the estate that was gathered when the estate plan was made.

#### GATHER ESTATE INFORMATION

##### Before or During First Formal Interview

- a. To gather basic estate information, use the checklist in [Appendix 2](#).
- b. Identify assets and debts. The preliminary inventory and financial schedule in [Appendix 3](#) can be used for this purpose. See [step 17](#), below.
- c. Obtain names, addresses, and telephone numbers of friends, accountants, or bookkeepers who prepared decedent's tax returns, and business associates of decedent who may have further knowledge of decedent's assets.
- d. Make a preliminary estimate of estate values. Consider obtaining independent appraisals. See [Preparing Inventory and Appraisal in step 18](#), below. See [California Decedent Estate Practice §13.25 \(2d ed Cal CEB 2009\)](#), referred to throughout this Action Guide as [Decedent Estate Prac.](#)
- e. Prepare preliminary Estate Record. See [Appendix 5](#).
- f. Estimate cash requirements.
- g. Ascertain how title to assets is held.
- h. Determine whether ancillary administration is required.
- i. Discuss whether there will be any challenges by potential heirs to the probate of the will or administration of the estate by the nominated executor or petitioner.
- j. Discuss income tax basis adjustment of assets.
- k. Discuss adequacy of insurance coverage on real and personal property.

- l. Ascertain whether decedent made taxable gifts after 1976.
- m. Determine whether estate tax return is required.
- n. Discuss individual income tax compliance, particularly if decedent died between January 1 and that year's specific tax reporting deadline (*i.e.*, April 15).
- o. Discuss fiduciary income tax planning and compliance (such as fiscal year filings and avoiding taxation at the estate level). Do not assume that all, or even most, accountants will have expertise in this area of tax law.

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**Source:** Estate Planning/Handling a Probate (Action Guide)/Beginning Probate Proceedings/STEP 2. PREPARE TO HANDLE ESTATE FOR CLIENT

STEP 2. PREPARE TO HANDLE ESTATE FOR CLIENT

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OPEN FILE

Open file for client. You can use the Estate Record form ([Appendix 5](#)) as a cover sheet to the file. It provides easy access to information that will be necessary throughout the course of administration.

SEND DOCUMENTS TO CLIENT

Send the client:

a. Employment agreement letter;

b. Allocation of responsibilities letter:

(1) Advise client that he or she is responsible for preparing a formal accounting as part of his or her statutory duty. Recommend or refer client to a qualified accountant or paralegal for assistance.

NOTE

Do not assume that most accountants, even those who have been in practice for many years, have sufficient experience in handling fiduciary accountings and understand the appropriate form and legal requirements.

(2) Address the fees and costs for handling non-probate assets.

NOTE

When creating a representation agreement, consider potential conflicts of interest and the need for waivers that should be included, especially when there are co-executors.

STEP 3. FIRST STEPS IN HANDLING DECEDENT'S ESTATE

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OBTAIN DEATH CERTIFICATES

a. Determine probable number of certified death certificates that may be needed for:

- (1) Opening decedent's safe deposit box;
- (2) Filing insurance claims;
- (3) Recording affidavits of death of a joint tenant;
- (4) Transferring securities and bank accounts;
- (5) Attaching to Form 706 and Form ET-1 (federal and state estate tax returns (state estate tax return, Form ET-1, is obsolete for decedent's dying after 2004)); and
- (6) Other requirements.

b. Ask mortuary to obtain certified copies of the death certificate.

NOTE

Most mortuaries will obtain certified copies of the death certificate and add the cost to their bill or creditor's claim.

c. If additional copies are needed, obtain them from the responsible county department in the county where decedent died. In some counties, copies may be obtained on the Internet.

**Form:** For a letter requesting certified copies of the death certificate, see [Appendix 6](#).

NOTE

Only certain parties are allowed to receive a death certificate. When requesting a death certificate, a sworn statement must be completed, declaring under penalty of perjury that the individual is authorized by law to receive the death certificate. The sworn statement must be notarized. Counties often have their own forms of sworn statement that must be completed. [Health & S C §§103525-103527](#).

PARTIES AUTHORIZED TO REQUEST DEATH CERTIFICATES

The parties authorized to request death certificates include:

- a. A parent or legal guardian of the registrant (person listed on the certificate).
- b. A party entitled to receive the record as a result of a court order.
- c. A member of a law enforcement agency or a representative of another governmental agency, as provided by law, who is conducting official business.
- d. A child, grandparent, grandchild, brother or sister, spouse, or domestic partner of the registrant.
- e. An attorney representing the registrant or the registrant's estate, or any person or agency empowered by statute or appointed by a court to act on behalf of the registrant or the registrant's estate.
- f. Any agent or employee of a funeral establishment who acts within the course and scope of his or her employment and who orders certified copies of a death certificate on behalf of an individual specified in paragraphs (1) to (5), inclusive, [Health & S C §7100\(a\)](#).

**Further Research:** See National Center for Health Statistics, Where To Write for Vital Records, available at

## LOCATE WILL

Although the attorney or the family usually knows whether decedent left a will, it is still necessary to search for codicils and subsequent wills. Inquire at or contact:

- a. Banks where decedent had an account or other business or personal connection to ascertain the existence of a safe deposit box;
- b. Decedent's close personal friends;
- c. Decedent's employer;
- d. Decedent's lawyer if someone other than yourself; and
- e. Any others likely to have possession or know the location of a will.

## Opening Safe Deposit Box

If the safe deposit box was held in decedent's name alone, court must appoint person to open box if no key is found; a person who has a key to the box may access it, before letters are issued, only to remove (Prob C §331(b), (d)(3)-(4), (f)):

- a. Decedent's wills and trust instruments; and
- b. Any instructions for disposition of decedent's remains.

## Required Documents

The financial institution may require (Prob C §331(b)(1)-(2)):

- a. A death certificate or a written statement of death from the coroner, treating physician, or hospital or institution where decedent died; and
- b. Proof of the identity of the person seeking access.

## NOTE

If the bank refuses to allow access to a person who has a key to the box, obtain a court order for access to the safe deposit box.

## DELIVER WILL

- a. Within 30 days after learning of the testator's death:
  - (1) Deliver will to court clerk (Prob C §8200(a)(1)); and
  - (2) Mail copy of will to nominated executor. Prob C §8200(a)(2).
- b. If the person who has possession of the will fails to deliver it, obtain a court order requiring its production. Prob C §8201.

## JUDGE'S PERSPECTIVE

The duty to deliver the will is not dependent on the decision to offer a petition for probate

## PHOTOCOPY ORIGINAL WILL

Before filing the original will, make photocopies, because they may be required in the following situations:

- a. *Petition for probate*. A copy must be attached to the petition for probate filed with the court. See step 6, below.
- b. *Proof of subscribing witness*. In uncontested proceedings when the will is not "self-proving," it may be proved by a witness's affidavit or declaration. A copy of the will must be attached to the affidavit or declaration. Prob C §§1000, 1022, 8220; CCP §2009. See step 9, below.
- c. *Estate tax returns*. A copy should be attached to the federal estate tax return.

d. *Beneficiaries.* In some situations, you may want to make copies of the will for the beneficiaries to allay uncertainties and minimize inquiries about the estate.

e. *Ancillary administration.* If part of the estate must be probated in another state, a certified or exemplified copy of the will (obtained from the court) must be available for ancillary administration. See Decedent Estate Prac §11.20.

f. *File copies.* Counsel and all representatives must have a copy of the will.

## LOCATE WITNESSES TO PROVE WILL

Unless the will is self-proving (see CCP §2015.5 and Prob C §8220), locate subscribing witnesses to the will before filing the petition or soon thereafter. For proof of subscribing witness and proving a will when the witnesses are predeceased or missing, see step 9, below.

## DETERMINE EXECUTOR OR ADMINISTRATOR WITH WILL ANNEXED

a. Determine early on whether the named executor is available, willing, and capable of administering the estate.

b. If the executor is living but for any reason will not act, he or she should file a declination to act with the court. The declination may be conditional on the appointment and service of a successor or appointment of a specific representative.

## LOCATE HEIRS AND BENEFICIARIES

### NOTE

Since January 1, 2005, registered domestic partners and former or surviving registered domestic partners have had the "same rights, protections, and benefits," and are "subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law" as spouses and former or surviving spouses. Fam C §297.5(a)-(c). Among these rights, protections, and benefits are administration without probate for property passing to the spouse, omitted spouse protections, family allowance in probate, and probate homestead. Further, "[t]he rights and obligations of registered domestic partners with respect to a child of either of them shall be the same as those of spouses. The rights and obligations of former or surviving registered domestic partners with respect to a child of either of them shall be the same as those of former or surviving spouses." Fam C §297.5(d). As a result, children of domestic partners also may be considered children of the decedent. In this Action Guide, reference to a "domestic partner" means a registered domestic partner.

### Determine Heirs at Law

In all cases, it is necessary to:

a. Construct a "family tree" to determine heirs at law (*i.e.*, those entitled to the estate if there is no will or if the will is invalid) and serve as a checklist of persons to be named in the petition (see step 6, below; for intestate succession rules, see Prob C §§6400-6414; for consanguinity tables, see Appendix 7).

b. Begin a search for decedent's "reasonably ascertainable" heirs (Prob C §44) and beneficiaries (Prob C §24) as soon as possible after death so that the petition will not be delayed (Prob C §8002(a)(3)).

### NOTE

Since January 1, 2005, a decedent's heirs may include posthumously conceived children conceived within 2 years of decedent's death if decedent expressly authorized the posthumous conception of a child. If the personal representative receives notice or actual knowledge within 4 months after decedent's death that decedent's genetic material is available for purposes of posthumous conception, the personal representative may not make a distribution of property until 2 years after decedent's death unless the birth of a child of decedent conceived after death will not have any effect on the proposed distribution. Fam C §7611(f); Prob C §§249.5-249.8, 6453(c).

c. Use "reasonably diligent efforts" to find heirs and beneficiaries, including checking (see, *e.g.*, Cal Rules of Ct 7.52(a)):

(1) With decedent's relatives, friends, acquaintances, employers, and former employers;

(2) City and telephone directories and directory assistance;

- (3) Internet directories;
- (4) Department of Motor Vehicles registration;
- (5) Last known address; and
- (6) Real and personal property index in assessor's office in the county of the person's last known address.

#### NOTE

Although local probate rules may suggest that voter registration roles should be searched, Govt C §6254.4 and Elec C §2194 do not permit a voter's home address to be obtained by searching the voter roles.

#### Contact Social Security Administration

If you are unable to find an address, you can request the Social Security Administration to forward a notice of hearing on Form SSA-L963, if you know the person's social security number or:

- a. Date of birth;
- b. Place of birth;
- c. Father's name; or
- d. Mother's maiden name.

#### JUDGE'S PERSPECTIVE

A declaration of due diligence may be required, specifically stating the efforts made to identify or locate an heir or beneficiary. See Service of Notice in step 8, below, for content of declaration. Whether efforts are reasonable depends on the facts and circumstances of the case, including the cost of the search and the interest of the person to whom notice must be given. Due diligence requires the use of obvious sources of information and follow-up on newly discovered sources of information.

#### Communicating With Heirs and Beneficiaries

To facilitate distribution, as soon as the heirs and beneficiaries are ascertained, send each heir and beneficiary a Form W-9 (Request for Taxpayer Identification Number) and a letter explaining that it is mandatory to return the W-9 to receive a distribution.

**Source:** Estate Planning/Handling a Probate (Action Guide)/Beginning Probate Proceedings/STEP 4. DETERMINE WHETHER PROBATE IS REQUIRED

STEP 4. DETERMINE WHETHER PROBATE IS REQUIRED

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UNDERSTAND NONPROBATE PROPERTY TRANSFERS

When Probate Is Not Required

Probate is not required to transfer the following types of property:

- a. Joint tenancy assets (see Decedent Estate Prac §§2.2-2.32).

NOTE

A joint tenancy between decedent and a former spouse or domestic partner, created before or during the marriage or domestic partnership, is severed if the former spouse or partner is not the transferor's surviving spouse or domestic partner (as defined in Prob C §78 and Fam C §297.5(c)) at the time of death, because the marriage or domestic partnership has been dissolved, terminated, or annulled, unless an exception under Prob C §5601(b) applies. Prob C §5601(a). See Decedent Estate Prac §2.9.

- b. Community and separate property assets passing free of trust to surviving spouse or domestic partner (see Decedent Estate Prac §§4.40-4.78).

- c. Community property with right of survivorship (CC §682.1), which retains all the features of community property except that it passes on death to the surviving spouse or domestic partner without administration, in the same manner as joint tenancy property (see Decedent Estate Prac §4.39).

- d. Assets held in trust with a designated beneficiary (*e.g.*, inter vivos trusts, testamentary trusts, Totten trusts) (see Decedent Estate Prac §§2.84-2.88).

NOTE

If property listed on a trust schedule has not been formally transferred to the trust, a Prob C §850(a)(3) petition can be used to obtain a court order declaring that the property is a trust asset (and therefore not subject to probate). See Estate of Heggstad (1993) 16 CA4th 943, 20 CR2d 433; California Trust Administration §§15.39A, 15.40A-15.40B (2d ed Cal CEB 2001), referred to throughout this Action Guide as Trust Admin.

- e. Joint accounts or multiple party accounts, Pay on Death (POD) accounts, Transfer on Death (TOD) accounts or securities, or Totten Trust accounts (see Decedent Estate Prac §§2.46-2.54).

- f. Life insurance on decedent's life designating beneficiaries other than the estate (see Decedent Estate Prac §§2.60-2.65).

- g. Retirement plans designating beneficiaries other than the estate (*e.g.*, pension plans, profit-sharing plans, Keogh plans, IRAs) (see Decedent Estate Prac §§2.66-2.71).

- h. Annuities (see Decedent Estate Prac §2.76).

- i. Life estates (see Decedent Estate Prac §§2.33-2.35).

- j. U.S. bills, notes, and savings bonds (see Decedent Estate Prac §§2.77-2.82).

- k. Social security death and survivor benefits (see Decedent Estate Prac §§2.89-2.94).

Nonprobate Transfers to Former Spouse or Domestic Partner

A nonprobate transfer to a transferor's former spouse or domestic partner, in an instrument executed before or during the marriage or domestic partnership, will fail, if, at the time of the transferor's death, the former spouse or partner is not the transferor's surviving spouse or domestic partner as defined in Prob C §78 and Fam C §297.5(c), because the marriage or domestic partnership has been dissolved, terminated, or annulled, unless an exception under Prob C §5600(b) applies. Prob C §5600(a).

**Exception:** A beneficiary designation provision in a life insurance policy is not defined as a nonprobate transfer. Prob C §5600(e).

## 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 the Employee Retirement Income Security Act of 1974 (ERISA) (29 USC §§1001-1461). See *Egelhoff v Egelhoff* (2001) 532 US 141, 149 L Ed 2d 264, 121 S Ct 1322.

### Handling Nonprobate Property

When handling nonprobate property:

- a. Identify liability for payment of debts and taxes (see, *e.g.*, Decedent Estate Prac §34.35).
- b. Terminate, collect, and transfer nonprobate property. See Transferring Property Without Probate (Cal CEB Action Guide September 2008), referred to throughout this Action Guide as Transferring Prop.

## SUMMARY ADMINISTRATION

### Small Estates

- a. A probate proceeding is not required to collect or transfer certain real and personal property held in decedent's name having a value under \$100,000. Prob C §§13100, 13151.
- b. *Exclusions From Ceiling:* The \$100,000 ceiling does not include certain specified assets, *e.g.*:
  - (1) Decedent's automobile;
  - (2) Certain "floating homes";
  - (3) Mobilehomes or campers;
  - (4) Compensation for services not exceeding \$5000;
  - (5) Joint tenancy assets;
  - (6) Life estate assets;
  - (7) Multiple-party accounts;
  - (8) Assets held in a revocable trust; or
  - (9) Assets passing to a surviving spouse or domestic partner.

**Further Research:** See Prob C §13050 for a complete list of excluded assets.

### Estates Not Exceeding \$20,000

Estates not exceeding a net value of \$20,000 in personal property, wherever located, and real property in California, may be summarily set aside to a surviving spouse or domestic partner or minor children. Prob C §§6600-6615; Fam C §297.5(c).

**Further Research:** To transfer property without probate, see Transferring Prop.

### Estates With Real Property Not Exceeding \$20,000

- a. Estates where the gross value of all real property located in California does not exceed \$20,000, as reported on an inventory and appraisal by a probate referee, may be transferred by affidavit under Prob C §§13200-13210. Prob C §13200(a)(5).
- b. This procedure can be used only after 6 months have elapsed from the death of the decedent. Prob C §13200(a)(6).

### Decide Whether to Probate Estate When Not Required

Even if you decide that summary administration is available, a probate proceeding may still be desirable to:

- a. Protect beneficiaries against decedent's creditors (see Decedent Estate Prac §14.1);

b. Facilitate distribution of assets and payment of decedent's debts when the beneficiaries are either numerous or living far apart, or both; or

c. Resolve a dispute over:

(1) Ownership;

(2) Title; or

(3) Interest in property.

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**Source:** Estate Planning/Handling a Probate (Action Guide)/Beginning Probate Proceedings/STEP 5. IDENTIFY MATTERS REQUIRING IMMEDIATE ATTENTION

STEP 5. IDENTIFY MATTERS REQUIRING IMMEDIATE ATTENTION

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DETERMINE NEED FOR SPECIAL ADMINISTRATOR

In some circumstances, it may be necessary to have a special administrator appointed. Circumstances that require immediate appointment of a special administrator pending appointment of the representative include when:

- a. The person who is to be the representative needs evidence of authority to carry on decedent's business or to gain possession of the residence or other assets;
- b. There is livestock that requires immediate possession;
- c. The sale of real property initiated before decedent's death must be completed;
- d. A mortgage or other loan must be paid (if the lender will not defer action and there is no one to advance payment);
- e. It is necessary to respond to a default on a loan secured by real property;
- f. A claim or lawsuit needs to be filed immediately because a limitation period is about to expire; or
- g. A tax return or other tax compliance must be filed within a certain deadline.

CONTINUING DECEDENT'S BUSINESS

If the estate includes a business, steps must be taken promptly to preserve and protect the business.

Petition for Appointment of Special Administrator

It may be necessary to petition the court to appoint a special administrator with powers to run the business.

Powers of Special Administrator

A special administrator may exercise the powers given in [Prob C §8544](#) and any of the powers, duties, and obligations of a general personal representative that are conferred by the appointment. [Prob C §8545](#).

Consider Continuing or Liquidating Business

Counsel and the interested parties should consider whether to continue or liquidate the business. Examine:

- a. Any applicable will provisions and internal business documents such as a buy-sell arrangement;
- b. The circumstances of the business and the estate; and
- c. Applicable legal principles.

**Further Research:** For further discussion of continuing decedent's business and related business problems, see [Decedent Estate Prac. chap 23](#).

ASCERTAIN WHETHER DECEDENT'S CAUSES OF ACTION SURVIVE DEATH

- a. Ascertain whether decedent was a party to a cause of action before death by:
  - (1) Consulting family members;
  - (2) Reviewing decedent's personal records; and
  - (3) Checking the court index in the county of decedent's residence.

b. Ascertain whether the cause of action survives decedent's death and whether it must be prosecuted or defended by decedent's personal representative. Causes of action generally survive death, subject to any applicable statute of limitations. CCP §377.20.

## REVIEW INSURANCE COVERAGES

- a. Review decedent's automobile, homeowners' liability, and other insurance policies to determine whether coverage is adequate or should be increased to protect estate assets and the representative;
- b. If necessary, obtain additional insurance coverage as soon as possible;
- c. Inform decedent's insurers of the death; and
- d. If the estate is to be probated, have the personal representative added as a named insured. See Decedent Estate Prac §§10.18, 10.44.

## COLLECT BENEFITS

Take prompt steps to collect benefits owed to the estate or beneficiaries because of decedent's death, including:

- a. State disability insurance (SDI) payments;
- b. Retirement or disability income, either from federal social security or as a fringe benefit of decedent's employment;
- c. Funeral and death benefits from Social Security Administration, Veterans Administration, or employment agreements;
- d. Medical expenses from group insurance;
- e. Group life and disability income benefits; and
- f. Workers' compensation claims.

**Further Research:** For further discussion of collecting miscellaneous death benefits, see Decedent Estate Prac, chap 2.

## CANCEL DECEDENT'S CREDIT CARDS

- a. Cancel all credit cards in decedent's name. Mutilate the cards and return them to the issuer promptly, even before letters are issued, with a statement of the date of death.
- b. Contact the three national credit reporting agencies—Equifax, Experian, and TransUnion—to close decedent's credit profile.
- c. Send notices to business firms from which decedent made purchases on credit. Enclose an extra copy and ask that receipt of the notice be acknowledged by signing and returning the copy.
- d. Inquire whether decedent maintained insurance on the credit cards that would pay off the amount due on death.

## COLLECTING DECEDENT'S MAIL

- a. If decedent's residence will be unoccupied, arrange to have decedent's mail forwarded to the representative. Otherwise, it is often preferable to continue receiving mail at decedent's residence until it is sold, because the forwarding period is limited.
- b. Depending on the post office:
  - (1) The postmaster will honor forwarding instructions before letters are issued, if the individual to be appointed provides the post office with a notarized statement that:
    - (a) He or she is nominated as executor under decedent's will or has the highest priority for appointment as administrator; and
    - (b) Mail should be forwarded, pending the appointment; or
  - (2) Fill out a change of address card, writing "DECEASED" across the top of the card, and submit a change of address card to the post office in the zip code area where decedent lived, along with a copy of the death certificate.

## OTHER NONTAX ISSUES REQUIRING IMMEDIATE ACTION

- a. Cancel magazine and newspaper subscriptions;
- b. Consider surrendering rented real or personal property;
- c. Notify Social Security Administration of death and need to discontinue payments; return checks for month in which decedent died and any months thereafter;
- d. Hold all dividends received after the date of death and before appointment of the representative for later deposit;
- e. Arrange for care of pets and perishable or depreciating property; and
- f. Evaluate toxic waste issues for any real property.

## PLAN FOR TAX MATTERS

Consider and plan for the following tax matters as soon as possible:

- a. Securing an accountant for the estate; and
- b. Filing Notice of Fiduciary Relationship (IRS Form 56).

### Income Tax Returns

Consider and plan for the following tax matters as soon as possible:

- a. Applying for a taxpayer identification number (see Decedent Estate Prac §33.54);
- b. Filing request for prompt assessment (IRC §6501(d); Rev & T C §19517);
- c. Determining whether 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); Treas Reg §§1.6012-1 – 1.6012-5, 1.6013-1 – 1.6013-4);
- d. Preparing decedent's prior tax year and final personal income tax returns, requesting extensions for filing or payment, and filing joint returns with surviving spouse (see Decedent Estate Prac, §§33.9-33.44):
  - (1) For calendar-year taxpayers, the return is due on April 15 after the year of death; and
  - (2) For fiscal-year taxpayers, the return is due on the 15th day of the 4th calendar month after the end of the fiscal year (IRC §6072(a));
- e. Paying decedent's estimated tax (see Decedent Estate Prac §33.108);
- f. If estate has not been closed by 2 years after decedent's death, making quarterly estimated tax payments (IRC §6654(l) (see Decedent Estate Prac §33.108);
- g. If decedent was a member of a partnership, electing optional adjustments to the basis of partnership property under IRC §§743, 754; and
- h. If decedent was a general partner, making an election to continue partnership for income and property tax issues.

### Estate Tax Returns

Consider and plan for the following tax matters as soon as possible:

- a. Selecting the estate's tax year (see Decedent Estate Prac §33.55);
- b. Filing for automatic 6-month extension of time to file estate tax return (IRS Form 4768) on or before the due date for filing Form 706 (IRC §6081(a); Treas Reg §20.6081-1; see Decedent Estate Prac §34.17);
- c. Preparing and filing federal (Form 706) and state (Form ET-1) estate tax returns (if decedent died prior to January 1, 2005), if required, 9 months (15 months with 6-month automatic extension) after date of death (see generally Decedent Estate Prac, chap 34);
- d. Filing application for determination of tax and discharge of the representative from personal liability on filing the federal estate

tax return (IRC §2204; see Decedent Estate Prac §§33.3-33.7;

e. Filing IRC §2032A elections and agreements within time to file Form 706 (for discussion of elections, see Decedent Estate Prac §34.33); and

f. Disclaiming an interest in the estate of another decedent within 9 months after date of death of other decedent to avoid tax. Prob C §§279, 295; IRC §§2045, 2518.

#### Other Tax Considerations

Consider and plan for the following tax matters as soon as possible:

- a. Paying property taxes when due (see Decedent Estate Prac §10.43);
- b. If the estate is over \$1 million and \$250,000 is distributable cumulatively to nonresident beneficiaries, requesting a California Income Tax Clearance on FTB Form 3571 (Rev & T C §19513) at least 30 days before the date of the hearing of final distribution and filing it before the hearing date;
- c. Obtaining copies of decedent's state and federal gift tax returns for prior years and determining whether additional gift tax returns are required (California gift tax was repealed effective June 8, 1982);
- d. Allocating decedent's unused and unallocated exemption; and
- e. If generation-skipping transfers are in excess of exemption amount, filing appropriate returns and paying tax.

**Further Research:** For discussion of income and estate taxes, see Decedent Estate Prac, chaps 33-34.

#### DISCLAIMERS

Advise beneficiaries that they may disclaim all or part of their interest in the estate within 9 months after decedent's death. Prob C §§260-295; IRC §§2046, 2518. For discussion of disclaimers, see California Estate Planning, chap 27 (Cal CEB 2002).

#### WAIVER BY SURVIVING SPOUSE OR DOMESTIC PARTNER

a. Advise surviving spouse or domestic partner that he or she may waive rights to (Prob C §141; Fam C §297.5(c)):

- (1) Property that would pass from decedent by intestate succession;
- (2) Property that would pass from decedent by will in a will executed before the waiver;
- (3) A probate homestead;
- (4) Have exempt property set aside;
- (5) A family allowance;
- (6) Have an estate set aside under Prob C §§6600-6615;
- (7) Take community property or quasi-community property against decedent's will;
- (8) Take the statutory share of an omitted spouse (Prob C §§21610-21612);
- (9) Be appointed as personal representative of decedent's estate;
- (10) An interest in property that is the subject of a nonprobate transfer on death under Prob C §§5000-5032.

b. The waiver must be in writing, signed by the surviving spouse or domestic partner, and should be filed with the court clerk in the county in which the probate has been filed. Prob C §142; Fam C §297.5(c). On waiver by surviving spouse or domestic partner, see Prob C §§140-147.

Petitioning for Probate

STEP 6. PREPARE PETITION FOR PROBATE

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COMMENCING PROBATE PROCEEDINGS

Any interested person may begin proceedings by filing a petition for ([Prob C §8000](#)):

- a. Appointment of a personal representative; and
- b. Probate of decedent's will, if decedent had a will.

USE MANDATORY JUDICIAL COUNCIL FORM

Petition for Probate (Judicial Council Form DE-111) must be used. See [Cal Rules of Ct 7.101](#).

**Caution:** Always use the current version of Form DE-111. The current version is available on the Judicial Council website at [www.courtinfo.ca.gov/forms](http://www.courtinfo.ca.gov/forms).

**Form:** For a copy of Form DE-111, see [Appendix 8](#).

HEADING AND CAPTION

2nd Box (Court's Name and Address)

Ascertain which county has jurisdiction over the estate. The petition must be filed in the superior court:

- a. *If decedent was domiciled in California:* In the county where decedent was domiciled ([Prob C §7051](#)).
- b. *If decedent was not domiciled in California:*
  - (1) In the county where decedent died, if decedent had property located in that county ([Prob C §7052\(a\)](#)); or
  - (2) Any county where property of decedent is located, if decedent had no property in the county where he or she died ([Prob C §7052\(a\)](#)).

NOTE

The name of the branch court, not just the address, should be included if the petition is being filed in a branch court.

3rd Box (Estate of)

Include all known names of decedent, stating the most commonly used name first, because that name will be the "short form" title of the estate. If decedent was a married woman, the heading should include her married name, *e.g.*, "Also known as Mrs. John C. Doe."

NOTE

It is important to include all known names, including nicknames, used by decedent. Check all deeds and other title documents for AKAs. If decedent owns real property in an unlisted name, the petition will have to be amended to include the name in order to transfer insurable title.

4th Box (Petition for)

Check the box designating the type of petition being requested.

- a. *Probate of Will and for Letters Testamentary:* Check this box if decedent died testate and an executor named in the will is

petitioning for letters testamentary.

b. *Probate of Will and for Letters of Administration with Will Annexed*: Check this box if:

- (1) Decedent died testate but failed to name an executor; or
- (2) Named executors are unable or unwilling to act.

#### NOTE

Persons entitled to appointment as Administrator With the Will Annexed are governed by the same statutory requirements and order of priority as persons entitled to letters of administration.

c. *Letters of Administration*: Check this box if decedent died without a will. For statutory requirements and priority of persons entitled to letters of administration, see Decedent Estate Prac §7.50.

d. *Letters of Special Administration*: Check this box if the immediate appointment of a personal representative is necessary to preserve the estate pending issuance of letters. See step 5, above.

e. *Authorization to Administer Under Independent Administration of Estates Act (IAEA)*: Check this box if you are requesting authority under the IAEA. Unless decedent's will prohibits it, IAEA powers may be requested by (Prob C §10404):

- (1) An executor;
- (2) An administrator;
- (3) An administrator with will annexed; or
- (4) A special administrator granted the powers of a general administrator.

See step 19, below.

#### NOTE

Unless the will prohibits it, the IAEA box (or the limited IAEA authority box if the bond is an issue) should always be checked. With IAEA authority, the personal representative has the flexibility to use independent powers, but may still seek court approval of any risky actions. See Decedent Estate Prac §§7.54, 15.2. For further discussion of IAEA, see discussion in this step, below.

#### PUBLICATION (ITEM 1)

Insert the name of the local paper to be used for publication on the first line and check whether publication is requested or to be arranged. For publication requirements, see Publishing Notice of Petition to Administer Estate in step 8, below.

#### NOTE

In some counties, if publication is requested in the petition, newspapers will begin publication without further contact from the attorney. Check with the clerk or local newspapers.

#### APPOINTMENT OF PERSONAL REPRESENTATIVE (ITEMS 2B, 3F, 3G)

a. Enter the name of the person (or persons if there are co-representatives). If an executor normally uses a different name from that given in the will, 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."

b. If the proposed representative is a nominee of a person entitled to letters, attach the nomination to the petition as:

- (1) Attachment 3f(1)(c) (executor or administrator with will annexed); or
- (2) Attachment 3f(2)(b) (administrator).

c. If named executors will not act, specify their reasons in 3f(1)(d). If the named executor will not act for reasons other than death or declination, specify those reasons in Attachment 3f(1)(d).

**Further Research:** For discussion of who may serve as personal representative and priority for appointment, see Decedent Estate

**Forms:** For Attachment 3f(1)(c), see Appendixes 12-13; for Attachment 3f(2)(b), see Appendix 14.

#### AUTHORITY TO ADMINISTER ESTATE UNDER IAEA (ITEMS 2C, 4)

Check appropriate boxes if full or limited IAEA authority is requested and the will does not disallow it.

##### Deciding Whether to Seek Independent Powers

a. *Advantages* of IAEA authority are that:

- (1) Actions may be taken more quickly; and
- (2) A hearing is not usually required.

**Example:** The IAEA's simplified ex parte procedure for obtaining authority for a preliminary distribution could assist the representative in making a fiscal year-end distribution if shifting estate income to beneficiaries is desirable. See Decedent Estate Prac §25.17.

b. *Disadvantages* of IAEA authority include:

- (1) Lessened protection from liability; and
- (2) Possible increased bond. For estates that require a bond (Prob C §10453):
  - (a) The court has discretion to fix the bond amount to include the estimated value of the net proceeds from the sale of real property in the estate if full powers are granted (*i.e.*, the personal representative is allowed to sell, exchange, grant an option to purchase, or encumber real property without court supervision); but
  - (b) With limited IAEA powers, the bond will not include the value of real property, because it can be sold only with court approval.

##### NOTE

With IAEA authority, the personal representative has the flexibility to use independent powers but may still seek court approval of risky actions. However, if 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.

#### BOND (ITEMS 2D, 3D)

Check box in Item 2d, indicating:

- a. Whether a bond is required;
- b. If so, the amount of bond to be fixed;
- c. Whether a blocked account is to be used; and
- d. If so, the amount in deposits in the blocked account.

##### Blocked Account

Deposits in a blocked account reduce the amount of the bond.

- a. *Deposit before order for probate:* Obtain a receipt from the depository and file it at the hearing on the petition for probate.
- b. *Deposit after order for probate:*
  - (1) Provide for a reduced bond in the order for probate if the assets are deposited;
  - (2) Deposit the assets before qualification and issuance of letters;

- (3) Obtain a receipt from the depository; and
- (4) File receipt with the clerk who will issue letters.

**Form:** For Receipt and Agreement by Depository, see [Appendix 9](#).

#### NOTE

Cash deposited in blocked accounts plus any interest the cash is expected to earn should not exceed the limit of federal government insurance for each individual bank or savings and loan association.

#### Income From Assets in Blocked Account

If a blocked account is used, specify how income received from the assets deposited shall be paid to the petitioner.

**Form:** For Attachment 2 to Petition for Probate on Deposit of Assets, see [Appendix 10](#).

#### Waiver of Bond

- a. If no bond is required, show the reasons by checking the appropriate box at Item 3d; and
- b. Attach the written waivers required by [Prob C §8481\(a\)\(2\)](#) for each heir or beneficiary to the verified petition for letters.

**Form:** For Attachment 3d to Petition for Probate, see [Appendix 11](#).

**Further Research:** For discussion of bond procedures, see [step 14](#), below. For discussion of when bond is not required, see [Decedent Estate Prac §9.4](#); for discussion of blocked accounts, see [Decedent Estate Prac §§9.6-9.14](#).

#### JURISDICTIONAL FACTS (ITEMS 3A, 3B)

- a. Enter date and place of death. The date of death (DOD) is on the death certificate and is important for fixing the time title passes and for determining the deadline for payment of estate taxes.
- b. If jurisdiction is based on the location of decedent's property, state the street address, *city*, and county of the property.
- c. Enter the street address, *city*, and county of decedent's residence at the time of death. [Prob C §8002\(a\)\(2\)](#).

#### NOTE

Whether jurisdiction is based on decedent's domicile or the location of decedent's property, the city is required to determine the correct newspaper for publication of notice. [Prob C §8121\(b\)](#).

#### CHARACTER AND ESTIMATED VALUE OF ESTATE (ITEM 3C)

State the character and estimated value of estate property. [Prob C §8002\(a\)\(4\)](#). The net value of real property less encumbrances must be included in all cases.

#### NOTE

Because the court uses this information to fix the bond, estimate the values carefully. If you underestimate the value, a petition to increase the bond will be necessary if the amount fixed is inadequate. See [Cal Rules of Ct 7.204](#).

#### If Will Waives Bond

Under [Cal Rules of Ct 7.201](#), if the will waives the bond, the petition for letters must state that fact. The petition still must specify the character and estimated value of estate property.

#### NOTE

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\(b\)](#).

#### INTESTACY OR TESTACY (ITEM 3E)

## Proving Intestacy

Check the appropriate box so that the verified petition can be used to prove intestacy at the hearing. Prob C §§1000, 1022, 8220; CCP §2009.

## Wills and Codicils

- a. Check appropriate boxes.
- b. Enter the date of the will and of any codicils.
- c. Attach to the petition as Attachment 3e(2):
  - (1) A copy of the will and any codicils;
  - (2) A typewritten copy of any will or any codicil (or any part of it) that is handwritten;
  - (3) An English translation of any will or codicil that is in a foreign language; and
  - (4) An authenticated copy of the order for probate, if the will has already been admitted to probate in another state (Prob C §§12520-12521; see Decedent Estate Prac §7.65).

## NOTE

Authentication is not synonymous with certification.

## NAMES, AGES, AND RESIDENCES OF HEIRS AND TESTATE BENEFICIARIES (ITEMS 5-8)

### Item 5

Check appropriate boxes regarding facts about decedent's spouse or domestic partner and children in Item 5. See Locate Heirs and Beneficiaries in step 3, above.

### Item 6

- a. Skip Item 6 if:
  - (1) Decedent is survived by any issue; or
  - (2) There is a surviving spouse or domestic partner, but no surviving parent or surviving issue of deceased parents.
- b. If decedent is survived by a spouse or domestic partner and:
  - (1) A parent or parents, check Box 6-a; or
  - (2) Surviving issue of deceased parents, check Box 6-b.
- c. If decedent was not survived by a spouse, domestic partner, or issue, check the first box under Item 6 that applies.

### Item 7

Complete Item 7 only if decedent was not survived by a spouse, domestic partner, or issue.

## NOTE

If decedent is not survived by a spouse, domestic partner, or issue, Prob C §6402.5 and Fam C §297.5(c) provide that certain property passes to the surviving issue or next of kin of a predeceased spouse or domestic partner. Issue of a predeceased spouse or domestic partner also may be considered issue of the decedent. Prob C §§26, 50, 6453; Fam C §§297.5(d), 7540, 7611.

### Item 8

In Item 8, for each heir and devisee of decedent, state his or her:

- a. Name and address;

b. Age (persons 18 years or older may be listed as adults; minors (those under age 18) should be listed as minors and their ages given); and

c. Relationship to decedent (persons not related by blood, marriage, or domestic partnership are designated "strangers").

#### NOTE

If decedent was survived by a spouse or domestic partner, but there are no issue or surviving parents or issue of deceased parents, note that information in Item 8 so that the court will know that you did not neglect to fill in Item 6.

#### Who Must Be Included in Item 8

List:

a. All persons mentioned in the will or any codicils, including:

(1) Deceased beneficiaries (see discussion in this step, below);

(2) Contingent beneficiaries; and

(3) All executors named in the will, including any who are not joining in the petition, and alternate executors.

#### NOTE

Beneficiaries named in the will who are later deleted in a codicil must still be listed.

b. All persons named or checked in Items 2, 5, 6, and 7.

c. All beneficiaries of a devisee trust if:

(1) The trustee and the personal representative are the same person; or

(2) No trustee has been appointed. Prob C §1208(b).

#### NOTE

List anyone whose status is in doubt. Persons listed in Item 8 are mailed notice of the hearing on the petition.

#### Deceased Beneficiaries

List:

a. Beneficiaries named in the will or any codicils who predeceased decedent, with a notation that they predeceased decedent and their date of death, if known.

b. Issue of the predeceased beneficiary if the predeceased beneficiary's interest did not lapse on death. See Prob C §21110. If the predeceased beneficiary had no issue, note that fact. For discussion of lapsed gifts, see California Will Drafting §12.16 (3d ed Cal CEB 1992).

c. Beneficiaries or heirs who die *after* decedent with:

(1) Their dates of death; and

(2) The names and addresses of the personal representatives or other successors in interest of the heirs' or beneficiaries' estate.

#### NOTE

Depending on the will's provisions, the beneficiary's estate may be entitled to distribution. An intestate heir's estate will be entitled to distribution because the heir's interest vests at death.

#### Class Gifts

If the will contains a class gift, list the names of all people in the class in Item 8 and specify their relationships to decedent, *e.g.*, 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."

#### JUDGE'S PERSPECTIVE

Make sure that all applicable boxes are checked. Boxes that are often overlooked are:

- Item 2c— independent powers;
- Items 2d and 3d— amount of bond; why bond is waived;
- Item 3f(1)— why nominated personal representative cannot act;
- Item 5a(7)— whether decedent is survived by issue of predeceased child.

#### SIGNATURE AND VERIFICATION

Have all petitioners sign and date the declaration at the bottom of the petition. The declaration serves as a verification. CCP §2015.5.

#### JUDGE'S PERSPECTIVE

Failure to date the verification is one of the most common errors in the petition for probate.

##### Verification by Attorney

The petitioner's attorney may verify the petition if the petitioner is out of the county or for some other cause cannot sign or verify the petition. Prob C §1023.

#### NOTE

It is not good practice for the attorney to verify the petition, because if the petition is not verified by a petitioner, *it may not be received as evidence* (Prob C §§1000, 1022; CCP §446), and the petitioner will have to appear at the hearing on the petition even if it is uncontested.

##### Verification by Petitioner

When a petitioner verifies the petition and the attorney has presented all other necessary documents to the court before the hearing, in some counties neither the petitioner nor the attorney is required to appear at the hearing. Consult local rules for pre-grant procedures.

**Source:** Estate Planning/Handling a Probate (Action Guide)/Petitioning for Probate/STEP 7. FILE PETITION FOR PROBATE AND SET HEARING DATE

STEP 7. FILE PETITION FOR PROBATE AND SET HEARING DATE

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REVIEW PETITION

Review the petition for probate to ensure that:

- a. All applicable boxes are checked;
- b. All required attachments are affixed and correctly numbered; and
- c. A photocopy of the will and any codicils are attached.

FILE PETITION

- a. File the original petition, any attachments, and the original will with the court clerk (hole-punched if required by local practice), with copies of all documents and a pre-addressed stamped envelope to receive a file-stamped copy of the petition.
- b. Pay the filing fee.

NOTE

If the will is not filed concurrently with the petition, the petition must refer to the last will, which must be filed before the hearing date.

CERTIFICATE OF GROUNDS FOR ASSIGNMENT

If filing in a county that has branch courts, ascertain whether you must file a certificate of grounds for assignment to have the case assigned to the main court or to a particular branch court in the district where decedent was domiciled or the personal representative resides.

*Example:* In Los Angeles County, a Family and Probate Case Cover Sheet—Certificate of Grounds for Assignment to District form is required in all family and probate cases. Los Angeles Ct R 2.0(d).

FILING FEES

- a. The filing fee for the first petition for letters of administration (or special letters of administration) is \$350. Govt C §70650(a). The fee for filing an objection is also \$350. Govt C §70650(b).
- b. The fee is charged again for each petition for letters of administration or special administration. Govt C §70650(c).
- c. If both letters of administration and special letters of administration are sought, then two filing fees will be charged. Govt C §70650(d).

OBTAIN HEARING DATE

- a. The clerk will set a hearing date not less than 15 nor more than 30 days after the petition is filed. Prob C §8003.
- b. When filing the petition, you may request that the clerk set the hearing date between 30 and 45 days after the date the petition is filed. Prob C §8003.

NOTE

The court may not shorten the time for giving notice. Prob C §8003(a).

**Source:** Estate Planning/Handling a Probate (Action Guide)/Petitioning for Probate/STEP 8. NOTICE OF HEARING OF PETITION TO ADMINISTER ESTATE

STEP 8. NOTICE OF HEARING OF PETITION TO ADMINISTER ESTATE

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PREPARE NOTICE OF HEARING—NOTICE OF PETITION TO ADMINISTER ESTATE

Notice is given on Notice of Petition To Administer Estate (Judicial Council Form DE-121). For Form DE-121, see [Appendix 15](#).

NOTE

Do not use Notice of Hearing (Probate) (Judicial Council Form DE-120) to give notice.

Who Prepares Notice

a. Check local practice to determine who:

- (1) Prepares the notice;
- (2) Attends to mailing and publication; and
- (3) Prepares and files proof of mailing and of publication.

b. In some counties:

(1) The law office prepares the caption of the form (leaving the case number blank), fills in Items 1-5 and 10, and submits the form to the clerk;

(2) The clerk assigns a case number, sets the hearing date, and fills in Item 6; and

(3) The law office then:

(a) Gives copies of the notice to the appropriate newspaper (see Publishing Notice of Petition to Administer Estate, below in this step);

(b) Mails notice to the required recipients (see Service of Notice, below in this step);

(c) Completes the proof of service on the back of Form DE-121; and

(d) Files the form with the court.

c. In other counties (*e.g.*, Los Angeles County), a copy of the petition is placed in a box in the clerk's office for the newspaper to pick up, and the newspaper handles all aspects of the notice. The law office reserves a hearing date with the calendar clerk and fills in Items 1-6 and 10, in addition to the steps set forth immediately above.

PUBLISHING NOTICE OF PETITION TO ADMINISTER ESTATE

NEWSPAPER REQUIREMENTS

a. Have notice published in a newspaper of general circulation:

(1) In the *city* where decedent resided at the time of death; or

(2) Where decedent's property is located if the court has jurisdiction under [Prob C §7052](#) because decedent was not domiciled in California at the time of death.

b. Have notice published in a newspaper of general circulation in the area of the county where decedent resided or the property is located if:

- (1) There is no city newspaper;
- (2) Decedent did not reside in a city; or
- (3) The property is not located in a city. Prob C §8121(b).

c. If there is no such county newspaper, have notice published in a newspaper of general circulation published in California nearest to the county seat where decedent resided or the property is located. Prob C §8121(b).

#### NOTE

If you are unsure in which newspaper to publish, check with the court probate attorney or paralegal.

#### PUBLICATION DATES

- a. Publish notice at least 3 times in a newspaper published at least once a week.
- b. At least 5 days must intervene between the first and last publication dates, not counting the publication dates.
- c. The first publication date must be at least 15 days before the hearing. Prob C §8121(a).

#### REVIEW PUBLISHED NOTICE

Check the published notice to be sure that the case number, title of case, publication dates, court name, and all other matters are correct.

#### PROOF OF PUBLICATION

- a. Ascertain whether:
  - (1) The newspaper files proof of publication with the court or mails or delivers it to the attorney; or
  - (2) The attorney must pick up the proof of publication and file it.
- b. Make sure that the proof of publication is filed with the court clerk before the hearing date. Prob C §8124.

#### NOTE

If the newspaper has not filed the proof, get proper proof from the newspaper and file it if there is time or bring it to the hearing. Prob C §1260(a).

Service of notice
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#### MAIL NOTICE; FILE PROOF OF MAILING NOTICE

a. At least 15 days before the hearing, personally serve or mail by first-class mail to their residence or place of business, notice of the hearing (Prob C §8110):

- (1) To all persons required to be listed in Item 8 on Form DE-111 (see step 6, above).

#### NOTE

Notices sent to more than one person in a household must be mailed separately. Cal Rules of Ct 7.51(a)(3).

- (2) To the Attorney General at the Attorney General's Sacramento office if decedent's will involves or may involve:

- (a) A testamentary trust of property for charitable purposes other than a charitable trust with a designated California resident trustee; or

- (b) A devise for charitable purposes without an identified devisee. Prob C §8111.

- (3) For beneficiaries who are citizens of a foreign nation, to a recognized diplomatic or consular official of the nation at its local

address. Prob C §8113.

b. File proof of mailing notice with the court before the hearing. Prob C §1261.

#### NOTE

Mailing is complete when the notice is deposited in the mail and the 15-day notice period has not been extended. Prob C §1215(e).

#### WHEN MAILING ADDRESS UNKNOWN

a. If the address of the person to whom notice is to be given is unknown, submit a declaration of diligent search, showing the efforts made to find the missing persons (see Locate Heirs and Beneficiaries, in step 3, above).

b. The court may dispense with notice or require it to be given in a manner that is reasonably calculated to give actual notice to the person to be given notice. Prob C §1212; CCP §413.30; Cal Rules of Ct 7.52(c).

#### Declaration of Diligent Search

The declaration must include (Cal Rules of Ct 7.52):

- a. The name of the person whose address is unknown;
- b. His or her last known address;
- c. The approximate date when the person was last known to reside at the address;
- d. The efforts made to locate the person;
- e. The facts that explain why the person's address cannot be obtained;
- f. A description of the attempts to discover the person's business and residence addresses by:
  - (1) Checking with relatives, friends, acquaintances, and employers of the person entitled to notice and of decedent;
  - (2) Reviewing appropriate telephone directories and directory assistance; and
  - (3) Searching real and personal property indexes in the recorder's and assessor's offices for the county of last known residence.

#### NOTICE TO MINOR

Send notice to the minor's guardian if one has been appointed, and also send notice directly to the minor (in a separate envelope to each minor living in the same residence) unless notice is personally served on a California-resident guardian of the estate of the minor under Prob C §1210. Cal Rules of Ct 7.51(c)-(d).

#### NOTICE TO DECEASED BENEFICIARIES

##### Predeceased Beneficiaries

When a beneficiary dies before decedent or does not survive decedent for a period required by decedent's will, send notice to (Cal Rules of Ct 7.51(e)(2)):

- a. The persons named in the will as substitute beneficiaries of the gift to the predeceased beneficiary; or
- b. The persons entitled to notice under the antilapse statute (Prob C §21110) if:
  - (1) The will does not make a substitute disposition; and
  - (2) The predeceased beneficiary is kindred of decedent or decedent's spouse or domestic partner (a "transferee" under Prob C §21110(c)); or
- c. The residuary beneficiaries or decedent's heirs if:
  - (1) The will does not make a substitute disposition; and

(2) The predeceased beneficiary is *not* kindred of the transferor or decedent's spouse or domestic partner (see Fam C §297.5(c)).

#### NOTE

If the predeceased beneficiary had no issue, note that fact. For discussion of lapsed gifts, see California Will Drafting §12.16 (3d ed Cal CEB 1992).

#### Postdeceased Beneficiaries

Send notice to:

- a. The personal representative of a beneficiary who dies after decedent and survives for any period required by decedent's will. Cal Rules of Ct 7.51(e)(1).
- b. The postdeceased beneficiary's beneficiaries or other persons entitled to succeed to his or her interest in decedent's estate if a personal representative has not been appointed for a postdeceased beneficiary. Cal Rules of Ct 7.51(e)(1).

See discussion of deceased beneficiaries in step 6, above.

#### SEND INFORMATION LETTER WITH NOTICE

- a. A letter may be prepared and sent with the notice informing recipients that:
  - (1) The notice is being sent because it is required by law;
  - (2) They need not attend the hearing personally; and
  - (3) The notice is being sent to give them an opportunity to object to the petition or the will in the manner required by law.
- b. Determine how much or how little information is appropriate to convey and modify the form letter in Appendix 16 accordingly.

#### NOTE

A letter prevents the attorney's loss of time in being telephoned before the hearing for details and saves the time of beneficiaries who could interpret the notice as requiring their appearance at the hearing.

**Source:** Estate Planning/Handling a Probate (Action Guide)/Petitioning for Probate/STEP 9. PROVING UNCONTESTED WILL

STEP 9. PROVING UNCONTESTED WILL

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COMPLETE PROOF OF SUBSCRIBING WITNESS

If the will is not self-proving (*i.e.*, has no proper attestation clause made under penalty of perjury) (see Decedent Estate Prac §7.59):

- a. Prepare letters to each subscribing witness (see Appendix 17);
- b. Enclose Proof of Subscribing Witness (Judicial Council Form DE-131) (see Appendix 18) with a photocopy of the will attached to it and a self-addressed stamped envelope;
- c. Complete attorney's certification, dating it on or after the date the will is filed; and
- d. If there are any codicils, prepare a separate Form DE-131 for each codicil.

PREDECEASED OR MISSING WITNESSES

If the subscribing witnesses predeceased the testator or cannot be found, the will may be proved by someone who can identify the testator's handwriting and (Prob C §8221):

- a. Proof of the handwriting of one of the subscribing witnesses; or
- b. An affidavit of a person with personal knowledge of the circumstances of execution, showing due execution of the will.

PROOF OF HOLOGRAPHIC WILL

If the will is holographic — *i.e.*, the signature and "material" provisions are in decedent's handwriting (Prob C §6111(a)) — the handwriting must be proved on Proof of Holographic Instrument (Judicial Council Form DE-135). Prob C §8222.

- a. Insert information about the attorney, the court, the estate, and the name and address of the person who may be able to authenticate the will.
- b. Send a copy of Form DE-135 with a photocopy of the will attached, and a self-addressed stamped envelope to each person who may have seen the testator write the will or who is familiar with the testator's handwriting. The letter in Appendix 17 may be modified for this purpose.
- c. Complete attorney's certification, dating it on or after the date the will is filed.

**Further Research:** For further discussion of holographic wills, see Decedent Estate Prac §7.61.

PROVING WILL ADMITTED TO PROBATE IN ANOTHER STATE OR COUNTRY

- a. If a nondomiciliary decedent's will has been admitted to probate in another state or country, a petition for probate must include (Prob C §12521):
  - (1) The will or an authenticated copy of the will; and
  - (2) An authenticated copy of the order admitting the will to probate or other evidence of the establishment of the will under the law of the sister state or foreign nation.

NOTE

"Authenticated copy" means a copy that satisfies the requirements of Evid C §§1530-1532. Prob C §12521(b).

- b. To prove a will admitted to probate in:
  - (1) Another state, a United States territory, or other place mentioned in Evid C §1530(a)(2), file a copy attested to or certified as

a correct copy by the public employee having legal custody of the will;

(2) Another country, the will must be attested to and proved as provided in Evid C §1530(a)(3).

**Further Research:** For further discussion of ancillary administration, see Decedent Estate Prac, chap 11.

## PROBATING LOST OR DESTROYED WILL

If the will is lost or destroyed (other than intentionally by decedent), it may, in some circumstances, still be probated as would any other will:

- a. Use Petition for Probate (Judicial Council Form DE-111) by inserting the word "lost" or "destroyed" before the word "will" at the appropriate place in the title of the form. See Appendix 8.
- b. Request appointment of petitioner as administrator with will annexed.
- c. Attach a copy of the original will to the petition or a statement of its contents.
- d. Add Attachment 2a to the petition. See Appendix 19.
- e. Attach a declaration as Attachment 2 to Proof of Subscribing Witness (Judicial Council Form DE-131) to prove due execution of the will and its provisions.

**Form:** Attachment 2 in Appendix 20 is designed to prove both due execution of the will and its provisions when the attorney who drafted the will can attest to its contents from a photocopy of the lost or destroyed will. If a copy is not available, set forth the substance of the lost or destroyed will, and modify the declaration accordingly.

## JUDGE'S PERSPECTIVE

If the will was last in decedent's possession and the will or a duplicate original of the will cannot be found, there is a presumption that the decedent destroyed the will in order to revoke it. Prob C §6124. The proponent of the will has the burden of producing evidence to overcome that presumption. If a copy of a lost will is proffered, the copy must be authenticated. See declaration in Attachment 2 in Appendix 20.

**Source:** Estate Planning/Handling a Probate (Action Guide)/Petitioning for Probate/STEP 10. PREPARE ORDER FOR PROBATE

STEP 10. PREPARE ORDER FOR PROBATE

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PREPARE ORDER FOR PROBATE

- a. Prepare Order for Probate (Judicial Council Form DE-140); and
- b. Check local rules to ascertain the requirements and procedures for submission of the order. Some courts require the order to be filed with the petition or before the hearing; others require filing after the hearing.

**Example:** In San Francisco, if the proposed order is not submitted to the probate courtroom at least 2 weeks before the scheduled hearing date, the hearing will be continued for at least 2 weeks. San Francisco Ct R 14.6. Los Angeles County requires only that the order first be submitted to a Probate Attorney for examination. Los Angeles Ct R 10.36.

**Form:** For Form DE-140, see [Appendix 21](#).

EXHIBITS AND ATTACHMENTS TO ORDER FOR PROBATE

Requirements for exhibits and attachments vary from county to county.

- a. Some courts prohibit riders or exhibits to any order but permit attachments as long as the place for execution by the court appears at the end of the last attachment and a notation is made on the form itself that this was done. See, *e.g.*, Los Angeles Ct R 10.41.
- b. Other courts discourage exhibits to orders, but permit exhibits to be made a part of an order if the court's signature appears at the end of the exhibits with a notation to that effect at the end of the order. See, *e.g.*, San Francisco Ct R 14.27.

**Form:** If a deposit is to be made in a blocked account, the attachment to Item 5c of the Order for Probate in [Appendix 22](#) may be added. For discussion of blocked accounts, see Deposit in Blocked Account in [step 14](#), below.

**Source:** Estate Planning/Handling a Probate (Action Guide)/Petitioning for Probate/STEP 11. HEARING PROCEDURES

STEP 11. HEARING PROCEDURES

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HEARING PROCEDURES

- a. Some courts require a personal appearance and testimony on matters alleged in the petition.
- b. Most courts will accept, without the need for personal appearances or testimony at the hearing:
  - (1) The verified petition to prove the matters alleged in it; and
  - (2) If the will is not self-proving, the proof of subscribing witness to prove the will.

CHECK LOCAL RULES

Check local rules and practice to:

- a. Ascertain whether there is a deadline before the hearing date to file all documents and submit the order;
- b. Learn local policies for obtaining examiner's notes and on correcting deficiencies in the pleadings or other documents (probate examiner's notes may be available by mail, fax, online, by telephone, or by posting at the courthouse, depending on the county); and
- c. Confirm whether an appearance is necessary.

REVIEW AND CLEAR EXAMINER'S NOTES

- a. Review probate examiner's notes to learn whether the petition was recommended for approval and whether any problems need to be corrected;
- b. Before the hearing date, and as required by local policy, supply the court with any additional documents or explanations necessary to justify approval of the petition; and
- c. Find out whether the court will accept fax documents to correct problems.

NOTE

If the defects are not cured, or if nonapproval is based on defects that are not procedural or statutory, an appearance (and/or a mandatory continuance) is required.

JUDGE'S PERSPECTIVE

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 determine 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.

STEP 12. PREPARE LETTERS

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PREPARE LETTERS

- a. Prepare letters testamentary or letters of administration on the form Letters (Probate) (Judicial Council Form DE-150).  
*Copies:* Original (oath or affirmation to be executed, then given to clerk for issuance of letters) to be filed; one certified copy for each item to be transferred (*e.g.*, bank accounts, securities); office copies.
- b. Submit the letters at the same time as the Order for Probate.
- c. If a bond is ordered, it must be filed before letters will be issued, or it may be presented with the letters to be issued.

OBTAIN COPIES

Obtain certified copies of the letters as needed to transfer bank and brokerage accounts from decedent's name to the estate's name.

NOTE

You may have to obtain additional certified copies later, because most financial institutions require that letters be certified within 60 days before presentation. It is also a good idea to keep one file-stamped copy of letters that has not been certified for later certification.

**Source:** Estate Planning/Handling a Probate (Action Guide)/Petitioning for Probate/STEP 13. ACKNOWLEDGMENT OF RECEIPT OF STATEMENT OF DUTIES AND LIABILITIES

STEP 13. ACKNOWLEDGMENT OF RECEIPT OF STATEMENT OF DUTIES AND LIABILITIES

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FILE ACKNOWLEDGMENT OF RECEIPT

- a. Give individual personal representatives Duties and Liabilities of Personal Representative (Judicial Council Form DE-147), which instructs individual representatives on their fiduciary duties and liabilities. Prob C §8404(a).
- b. Ascertain whether the court has adopted local rules that require the personal representative to give his or her date of birth and driver's license number, if any, in addition to signing the acknowledgment of receipt. Prob C §8404(b). If information is required, file Confidential Supplement to Duties and Liabilities of Personal Representative (Judicial Council Form DE-147S).

NOTE

Form DE-147S should not be attached to Form DE-147. It is not a public record and must be kept separate.

WHEN FILING IS REQUIRED

Acknowledgment of receipt (which is on the second page of 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.

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**Source:** Estate Planning/Handling a Probate (Action Guide)/Petitioning for Probate/STEP 14. OBTAIN PROBATE BOND

STEP 14. OBTAIN PROBATE BOND

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WHEN BOND REQUIRED

A bond must be posted before letters will issue unless the court waives bond because:

- a. Decedent's will waives the bond (Prob C §8481(a)(1));
- b. All beneficiaries waive the bond in writing, and the will does not require a bond (Prob C §8481(a)(2));
- c. All heirs waive the bond in writing (see Prob C §§24(a), 8481(a)(2)); or
- d. The sole personal representative is a corporate fiduciary or an exempt government agency. Prob C §301.

JUDGE'S PERSPECTIVE

For beneficiaries and heirs who are minors, a guardian ad litem must be appointed to waive the bond. The appointment may be made by ex parte application. Check local rules on who may be appointed. In Alameda County, for example, the court will not appoint a guardian who is a beneficiary or personal representative.

Other Situations

The court may also require a bond if:

- a. The proposed personal representative resides outside California. Prob C §8481(b); Cal Rules of Ct 7.201(b).
- b. All named representatives nominated by the testator, for whom the testator waived bond, do not qualify; in that event, the administrator with will annexed must post bond. Prob C §8480.
- c. The will nominates two or more people to serve without bond, but not all those nominated serve, and the will does not specifically waive bond for fewer people than the number specified. Cal Rules of Ct 7.202.
- d. 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.

AMOUNT OF BOND

Admitted Surety Insurer

If an admitted surety insurer is the surety, the court will fix the bond at no more than the sum of (Prob C §8482(a)):

- a. The estimated value of the personal property;
- b. The probable annual gross income of the estate; and
- c. If independent powers are granted as to estate real property, the estimated value of the estate's interest in the real property.

Individual Sureties

If individuals are the sureties, the value of the bond will be at least twice the value of the bond fixed under Prob C §8482(a). Prob C §8482(c).

BONDING PROCEDURE

If a bond is required, have the personal representative complete the surety application and secure the bond before the hearing on the petition for appointment of the representative. The usual steps are:

- a. The representative fills out and signs the original application for the bond in the amount set forth in the petition and sends the

original to the bonding company;

- b. The representative signs the original bond and delivers it to the agent;
- c. The agent (if the representative is eligible for bond) executes the bond as attorney-in-fact for the company and files it with the court; and
- d. The clerk records the date and amount of the bond and the names of the sureties.

**Further Research:** For discussion and forms for personal sureties, see Decedent Estate Prac §§9.16-9.19 and California Civil Procedure Before Trial §32.159 (4th ed Cal CEB 2004).

## DEPOSIT IN BLOCKED ACCOUNT

To reduce the amount of the bond, the representative may deposit estate assets in his or her possession into a blocked account or allow a trust company or financial institution to retain assets already in its possession. Prob C §8401. The deposit may be made:

- a. Before the order for probate; or
- b. After the order but before letters are issued.

### NOTE

A trust company or financial institution that receives or retains property under Prob C §8401 is protected to the same extent as though the property had been received from a person who had been appointed as personal representative. Prob C §8401(c).

#### Deposit Before Order for Probate

When depositing before order for probate:

- a. Obtain a receipt from the depository that states that the depository will not allow any withdrawal except on court order; and
- b. File it at the hearing on the petition for probate and for letters.

#### Deposit After Order for Probate

When depositing after order for probate:

- a. Provide for a reduced bond in the order for probate if the assets are deposited;
- b. Deposit the assets before qualification and issuance of letters;
- c. Obtain a receipt from the depository stating that the depository will not allow any withdrawal except on court order; and
- d. File the receipt with the clerk who will issue letters.

### NOTE

Unless the securities or money are already on deposit with a qualified depository, it is not always possible for the person petitioning for appointment to obtain possession of decedent's assets before appointment or before letters are issued.

**Form:** For form of Receipt and Agreement by Depository, see Appendix 9.

**Further Research:** For further discussion of reducing amount of bond by depositing assets, see Decedent Estate Prac §§9.29-9.35.

**Source:** Estate Planning/Handling a Probate (Action Guide)/Petitioning for Probate/STEP 15. APPLICATION FOR APPOINTMENT OF PROBATE REFEREE

STEP 15. APPLICATION FOR APPOINTMENT OF PROBATE REFEREE

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APPLICATION FOR APPOINTMENT OF PROBATE REFEREE

Check local rules to learn whether a special application is required for appointment of a probate referee.

- a. In some counties, a probate referee is appointed on the order for probate without a special application.
- b. Some counties have their own form order appointing a probate referee prepared by the clerk at the time letters are issued.
- c. Other counties require the filing of a request for appointment of a referee.

DESIGNATION OF REFEREE

By Court

In counties with more than one probate referee, the court makes the appointment on a rotating basis.

At Request of Personal Representative

The court may designate a referee requested by the personal representative on a showing of good cause, including the following (Prob C §8921):

- a. The referee recently appraised the property that is to be appraised in the administration of the estate;
- b. The referee will be making related appraisals in another proceeding; or
- c. The referee recently appraised similar property in another proceeding.

Challenging Designated Referee

The personal representative may peremptorily challenge the first designated referee by (Prob C §8924):

- a. Filing an affidavit or declaration under penalty of perjury with the court; and
- b. Mailing a copy of the affidavit or declaration to the referee before the inventory is submitted to the referee.

NOTE

While Prob C §8903 provides for waiver of the probate referee in certain cases, the referees will usually object to the waiver and the courts will generally rule in favor of the referee.

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Handling the Estate After Appointment

STEP 16. INSTRUCTING THE REPRESENTATIVE

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CONFER WITH REPRESENTATIVE

- a. Promptly after the representative has been appointed, confer with him or her in detail about:
  - (1) The duties;
  - (2) The technical procedures to follow; and
  - (3) The estate's assets and liabilities.
- b. Instruct the representative about keeping accurate and complete records of every transaction from the inception of administration.
- c. Advise the representative to identify all expenses.
- d. Instruct the representative on withdrawals of estate funds.
- e. Discuss the procedure for processing and paying claims.

NOTE

It may be advantageous and convenient for a family member or the representative to pay smaller debts and present an itemized creditor's claim for reimbursement. For example, funeral homes often provide a discount for prompt payment.

- f. Instruct the representative that attorney and executor fees may not be paid without court order.
- g. Advise the representative of the minimum anticipated duration of administration, stated in months, from the issuance of letters, not from the date of death.
- h. Warn the representative that it is seldom possible to close an estate immediately after the claims period has expired.
- i. Advise each representative that:
  - (1) By accepting appointment, the representative submits him- or herself and all official acts to the court's jurisdiction; and
  - (2) As a court-appointed fiduciary, the representative can be surcharged for malfeasance or misfeasance in performing the duties, which can include:
    - (a) Personal liability for losses suffered by the estate, plus interest; and
    - (b) Possibly attorney fees and costs if the court finds the actions of the fiduciary were unreasonable and in bad faith.
- j. Provide the representative with a list of things that cannot be done without:
  - (1) Consulting the attorney;
  - (2) Obtaining a court order; or
  - (3) Awaiting expiration of the period of time prescribed by law.

**Further Research:** For methods of recordkeeping to reduce the possibility of error, see [Decedent Estate Prac. §§1.43-1.48; California Probate Workflow Manual Revised §§3.7-3.10 \(rev ed Cal CEB 1989\)](#), referred to throughout this Action Guide as Probate Workflow; [Handling a Fiduciary Accounting \(Cal CEB Action Guide November 2008\)](#).

## SEND WRITTEN INSTRUCTIONS

After the initial conference:

- a. Give the representative written instructions on his or her duties and the administration of the estate in general; and
- b. Provide a rough estimate of the estate's cash requirements.

*Form:* For a letter of instructions, see [Appendix 23](#).

### NOTE

This letter contains more detail than does the required Judicial Council form outlining the representative's duties and liabilities (Form DE-147; see [step 13](#), above). It serves as a further, more explicit notification to the representative of his or her duties. Some probate attorneys require the representative to acknowledge receipt of this letter, or they send the letter by certified mail.

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**Source:** Estate Planning/Handling a Probate (Action Guide)/Handling the Estate After Appointment/STEP 17.  
IDENTIFY, COLLECT, AND MANAGE ESTATE ASSETS

STEP 17. IDENTIFY, COLLECT, AND MANAGE ESTATE ASSETS

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DISCOVERY OF ASSETS

- a. Advise the personal representative of his or her duty to collect and manage decedent's assets that are subject to probate.

NOTE

Although the primary responsibility of the attorney is to assist the representative with probate administration, the attorney should also advise the representative and family members of the need to identify, collect, and manage decedent's nonprobate assets. The representative will need to ascertain all of decedent's assets to file the estate and personal income tax returns, and family members may need assistance in transferring nonprobate assets such as joint tenancy property, pay-on-death accounts, and retirement plans.

- b. Consider taking the following steps in tracing possible assets:

- (1) Review any tentative inventory prepared to aid counsel in estate planning for decedent;
- (2) Examine all decedent's papers, including deeds, insurance policies, bankbooks, stock certificates, tax returns, and other tangible evidence of assets;
- (3) From information obtained from the representative at the initial conference, contact decedent's friends, relatives, and business associates who are likely to know about decedent's assets;
- (4) Contact decedent's accountant, stockbroker, attorney, and insurance agent;
- (5) For evidence of real property, contact a title company in any county where it is suspected that decedent had an interest in real property;
- (6) If securities other than those known to the stockbroker might exist, circulate an inquiry to stock companies;
- (7) Inquire of possible insurers for evidence of insurance unknown to decedent's insurance agent;
- (8) Inquire at local banks for evidence of bank accounts and safe deposit boxes;
- (9) Search the Controller's website at [www.sco.ca.gov/col/ucp](http://www.sco.ca.gov/col/ucp) for any unclaimed property in decedent's name that the state may be holding; and
- (10) Examine decedent's mail, including mail delivered after decedent's death.

**Further Research:** See [Decedent Estate Prac §§13.2-13.6](#).

COLLECT AND MANAGE DECEDENT'S ASSETS

- a. Review decedent's investments;
- b. Examine basic documents (*e.g.*, savings account passbooks, deeds, stock certificates) to learn how title is held; and
- c. Establish financial recordkeeping procedures for the estate. The schedule in [Appendix 3](#) can be adapted to the particular estate and expanded or contracted as circumstances warrant.

NOTE

The schedules may also be used as the starting point in preparing the inventory. See [step 18](#), below.

SAFE DEPOSIT BOXES

Handling Decedent's Safe Deposit Boxes

- a. Arrange for representative or a majority of representatives to open decedent's safe deposit box;
- b. Inventory items in safe deposit box; and
- c. Transfer valuables from decedent's safe deposit box to estate safe deposit box.

#### Joint Access Safe Deposit Boxes

- a. Joint access boxes are generally released to the surviving tenant. Supervise the opening of a safe deposit box held with another person to ensure that estate assets do not pass into any unauthorized person's possession.
- b. If the right to possess the contents of a joint access box is disputed, have the contents deposited in a new safe deposit box under an access agreement requiring both disputants' signatures.

#### BANK AND SAVINGS ACCOUNTS

##### Handling Decedent's Bank and Savings Accounts

- a. Have the representative identify all bank accounts in decedent's name alone, in joint tenancy, and in common with anyone else.
- b. Ascertain from the banks, in writing, account balances and accrued interest as of the date of death. Note, however, that information so provided by banks is not always accurate. Obtain actual copies of the bank statements for the month of death and calculate the accrued interest based on the information contained in the statement.
- c. Verify interest that does not legally accrue until a date after death.

#### NOTE

Information on balances and accrued interest is required to file an estate tax return, if any, and decedent's final income tax return.

- d. Ascertain whether transfer of funds to the estate account will cause forfeiture of interest on early withdrawal. Consider leaving the funds in such an account until they may be withdrawn with interest.

##### Transfer Account Into Estate's Name

Have the representative transfer California accounts in decedent's name into the estate's name by:

- a. Presenting a certified copy of the representative's letters, and, if the bank requires, a certified copy of decedent's death certificate; and
- b. Signing a new signature card.

#### NOTE

Most banks require current copies of letters, *i.e.*, letters certified within 60 days before presentation. New certified copies of letters may be obtained from the court clerk. See [step 12](#), above.

##### Automatic Bill Payments

Have the representative wait one billing cycle and check with the bank regarding any automatic bill payments before transferring account.

##### Direct Deposits

If decedent was having social security payments or employment retirement benefits directly deposited, advise the surviving joint tenant or the representative (with a certified copy of letters) to:

- a. Notify the proper agency in writing of decedent's death (a telephone call may serve as a prompt, initial notification); and then
- b. Close the account.

#### NOTE

If the direct deposits continue, the bank will normally return the check with a notification that the account has been closed.

#### Open Estate Accounts

- a. Take possession of decedent's bank accounts. Prob C §9650.
- b. Open estate bank accounts in the representative's name, with title clearly reflecting his or her official capacity, *e.g.* (depending on bank practice):
  - (1) "C.D. as Executor/Administrator of the Will/Estate of A.B."; or
  - (2) "Estate of A.B. by C.D., Executor/Administrator."

#### NOTE

If more than one representative is appointed, each must execute signature cards. The account should require the signature of all representatives to make any withdrawal.

- c. Deposit all of the estate's cash (noting the source of the deposit) in interest-bearing accounts or authorized investments except for funds needed to administer the estate. Prob C §9652.
- d. Channel transfers to or deposits in savings accounts through the estate checking account to provide a complete and accurate record for reporting and tracing, if needed.

**Example:** If proceeds of the sale of assets are to be deposited into the savings account, the deposit should be made first into the checking account and a withdrawal then made from the checking account to savings.

- e. Limit the total amount (taking into consideration any interest anticipated to be earned) of each account with an institution, including its branches, to the insured limits (presently \$100,000) of federal deposit insurance or federal savings and loan insurance.
- f. Hold all dividends received after the date of death and before appointment of the representative for later deposit.
- g. Suggest an average balance to be kept in the checking account.
- h. Confirm insurance coverage of accounts.
- i. For specific devises (and general pecuniary gifts when the estate administration exceeds 1 year in duration), retain the investment and the dividends or interest thereon in a separate account, if possible, to avoid the necessity of tracing income at the time of preparing an interim or final accounting and thus simplify the accounting work for the personal representative.

**Further Research:** For further discussion of opening estate accounts, see Decedent Estate Prac §10.12.

#### STOCKS AND BONDS

- a. Search for stocks and bonds in which decedent had an interest.
- b. Take possession of the certificates and deposit them in the estate safe deposit box or brokerage account opened in estate's name.
- c. Ascertain the form in which title is held by:
  - (1) Reviewing the original certificates; or
  - (2) For securities held in "street name," reviewing brokerage account records and verifying the information with the broker.
- d. Transfer brokerage accounts to the name of the estate.
- e. Cancel automatic dividend reinvestment elections.
- f. Have unissued shares held in a corporation's dividend reinvestment plan or direct purchase plan issued in the representative's name or to a brokerage account in the name of the estate.

#### Notify Transfer Agents

Transfer agents of securities registered in decedent's name and held in certificate form should be:

- a. Notified in writing of decedent's death.
- b. Sent a copy of the representative's letters certified within 60 days and a certified copy of decedent's death certificate.

#### NOTE

Although not all transfer agents require a copy of the death certificate, it is easier just to include a copy.

- c. Told where to send dividend checks payable during administration.

#### Handling Registered Securities

- a. Registered securities (*i.e.*, those already in decedent's name) may be left in decedent's name unless the representative cannot otherwise make transactions involving the securities.

#### NOTE

Most dividend-paying agents continue to send dividends and to honor the representative's endorsement (if a certified copy of the letters is on file with the agent), even though the securities remain in decedent's name.

- b. The representative can transfer title directly from decedent's name to a purchaser, if the security is sold during administration, or to the distributee.
- c. If the estate includes a large number of securities, consider transferring the securities to a brokerage account in the estate's name.

#### NOTE

Even with a small number of securities, a brokerage account in the name of the estate makes the collection of dividends and any sales and distribution of the shares more convenient.

**Further Research:** See Decedent Estate Prac §§10.14-10.17, chap 32.

## LIFE INSURANCE, EMPLOYEE BENEFITS, AND SOCIAL SECURITY BENEFITS

### Life Insurance Proceeds

- a. Obtain life insurance policies on decedent's life from the representative;
- b. Write to each life insurance company for a full list of all policies in effect in which decedent had an interest;
- c. File a claim to collect life insurance proceeds; if policy is payable to the estate, supply certified copies of the representative's letters;
- d. Ask insurance company to send two copies of IRS Form 712 for each policy, regardless of whether an estate tax return is to be filed; and
- e. Insert amounts of proceeds paid, including, *e.g.*, dividends accrued to date of death, deductions for policy loans, in estate financial schedule (see Appendix 3).

### Life Insurance Decedent Owned on Life of Another

- a. Obtain life insurance policies owned by decedent on life of another from representative;
- b. Ask insurance company to send two copies of IRS Form 712 for each policy, regardless of whether estate tax return is to be filed; and
- c. Ask insurance company for appropriate forms to change ownership of policies.

### Employee Benefits

If decedent was employed, ask the employer whether there is any unpaid salary, pension, survivor's benefits, or group life

insurance payable to the estate or to surviving family members.

#### NOTE

Detailed information on these matters should be obtained for income and estate tax purposes.

#### Social Security Benefits

Advise the representative or surviving spouse or children:

- a. To ascertain what benefits are available, *e.g.*, funeral benefits, survivor benefits, or both; and
- b. That beneficiaries must apply for the lump-sum benefit within 2 years after decedent's death.

#### NOTE

The Social Security Administration normally prefers to deal with the individuals involved rather than the attorney.

**Further Research:** On social security benefits, see Decedent Estate Prac §§2.90-2.94.

#### REAL PROPERTY

- a. Obtain and review deeds, title insurance policies, fire insurance policies, current title reports, leases, notes and deeds of trust, tax bills, contracts to sell or options, and agency agreements.
- b. Open separate files for each parcel or group of parcels.
- c. Ascertain amount and status of property tax payments (see Decedent Estate Prac §10.43).
- d. Check availability of homeowner's property tax exemption (see Decedent Estate Prac §10.43).
- e. Ascertain outstanding balances on real property loans and whether mortgage insurance proceeds are available to liquidate the loans.
- f. Ascertain whether mortgage must be exonerated (see Decedent Estate Prac §10.19).
- g. Review general insurance policies for adequacy of coverage, ownership endorsements, broker name(s), and expiration of period for vandalism coverage if property is vacant.
- h. Calendar:
  - (1) Rental due dates and relevant lease dates;
  - (2) Insurance premium payment dates;
  - (3) Property tax payment dates;
  - (4) Mortgage payment dates;
  - (5) Notices to tenants of any increased rent;
  - (6) Lease termination, option, or elections dates.
- i. Ascertain whether any of decedent's real property has a potential toxic waste problem (see Decedent Estate Prac §10.23).

#### California Real Property

- a. Get deed or order accurate legal description from title company of each parcel in decedent's name ("property search guaranty") in the county of residence and any other county where decedent is believed to have owned real property.
- b. Consider obtaining a preliminary title report for all real property to confirm title and liens.

#### Out-of-State Real Property

- a. Inquire about the nature and extent of decedent's real property interests in other jurisdictions;

- b. Pursue ancillary administration promptly, because all assets, wherever situated, must be reported for federal estate tax purposes, and the information cannot be compiled until ancillary proceedings are well advanced; and
- c. Advise the representative of costs and legal fees of the counsel in the other jurisdiction.

**Further Research:** For a detailed discussion of problems of ancillary administration, see Decedent Estate Prac. chap 11.

#### Maintenance

- a. Advise the representative to maintain improved property in good repair. Prob C §9650.
- b. Charge costs of maintenance as expenses of administration.
- c. Obtain court instructions before beginning, *e.g.*, costly repairs, particularly if the estate's solvency is in question or if the heirs or beneficiaries do not consent in advance.
- d. If the property will be vacant:
  - (1) Have the locks changed if previous occupants have keys;
  - (2) Consider renting residential property to protect it from vandalism, theft, or damage from natural causes.

#### Rentals

- a. Inform decedent's tenants where and to whom to send rent payments.
- b. If the property is being managed by a third party and it is not feasible for the representative to assume management, counsel may obtain court instructions authorizing employment of an agent.

#### Leases

- a. Review leases in detail.
- b. Calendar dates of lease expiration, renewal, and rent increases.

**Further Research:** For further discussion of leases, see Decedent Estate Prac §§22.18-22.37.

#### PERSONAL PROPERTY

Technically, the representative should take physical possession of all items (Prob C §9650), but sometimes it is impracticable or uneconomical to attempt more than distant supervision.

- a. Place items of small size and high intrinsic value in the estate's safe deposit box.
- b. Safeguard other items, such as clothing, tools and materials pertaining to hobbies, books, motor vehicles, art objects, and household effects as much as reasonably possible.
- c. Consider:
  - (1) Paying additional rent on decedent's dwelling to safeguard the furniture and furnishings;
  - (2) Storing the items at the estate's expense;
  - (3) Donating or abandoning tangible personal property, *e.g.*, miscellaneous household items (unless specifically devised) if the fair market value is less than the cost of collecting, maintaining, or protecting it (for procedure to abandon property, see Prob C §§9780-9788); or
  - (4) Permitting the beneficiaries to take possession of items to which they are entitled.

#### NOTE

Although the last option is usually preferable, anticipatory distribution is acceptable only if (1) each item or group of items is carefully described in an inventory, (2) each may be inspected by the probate referee, (3) the items need not be sold to satisfy creditors, and (4) the identity of those entitled to ultimate distribution is not in doubt.

d. If beneficiaries are allowed to take possession of items, obtain a receipt and indemnification from the beneficiary for items received.

**Form:** For a form of receipt, see [Appendix 24](#).

e. If a rented dwelling will be vacated, give the landlord notice immediately and arrange for the return of any security deposit.

f. Retain all but the most obviously worthless items for the probate referee's inspection.

g. If the estate contains perishable or depreciating property such as livestock or harvested crops, the representative may need to move promptly to dispose of it. [Prob C §§10252, 10259](#). On sales of perishable property, see [Decedent Estate Prac §§18.103-18.108](#).

h. Determine anticipated disposition by sale or transfer of decedent's automobile (see [Decedent Estate Prac §10.29](#)).

i. If decedent owned valuable jewelry, antiques, collections, or similar property, suggest that the representative obtain independent appraisals (see [Decedent Estate Prac §10.26](#)):

(1) To substantiate the values for federal estate tax and distribution purposes; and

(2) As support for suggested values given to the probate referee.

#### NOTE

Appraisals are also helpful for federal income tax basis data, even if no federal estate tax return is required.

**Practice Tip:** If the estate contains firearms, advise the personal representative about the various restrictions on distributing firearms to beneficiaries or heirs, such as the different restrictions on distribution of long rifles as opposed to handguns, and the proper handling of firearms that may constitute an "assault weapon" under California law (see [Pen C §§12000-12101](#)). Compliance with these restrictions is essential to protect the personal representative from personal liability.

#### PROPERTY, LIABILITY, AND MEDICAL INSURANCE

a. Review existing liability (including automobile liability), fire and extended coverage, and personal property insurance to determine whether it adequately protects the estate and the representative;

b. Inform insurance companies of decedent's death so that policies can be endorsed to show the representative as the named insured;

c. Obtain additional coverage if existing coverage is inadequate; and

d. Review medical insurance policies, especially for multiple coverages. Note claims periods. Have representative obtain and process claim forms.

#### COLLECT DEBTS

##### Business Debts

a. Advise the representative to:

(1) Search out and enforce the estate's contract rights;

(2) If appropriate, reach a compromise with a debtor (with court approval if the representative lacks IAEA authority); and

(3) Institute legal action if other means fail. See [Prob C §9650](#).

b. Calendar pertinent dates under applicable statutes of limitation.

##### Decedent's Personal Transactions

Decedent's papers may indicate transactions of an ambiguous nature with a relative or close friend, *e.g.*, canceled checks marked "loan" or "advance."

- a. Determine whether to pursue collection (usually only if solvency of estate is in question or if amount exceeds beneficial interest of obligor) (see Decedent Estate Prac §10.37).
- b. Consider a compromise, particularly if costs of legal action would exceed the amount in controversy.
- c. Apply to the court for instructions if a substantial amount is involved.

#### DECEDENT'S BUSINESS INTERESTS

- a. Decide whether to sell or continue the business. See Continuing Decedent's Business in step 5, above; Decedent Estate Prac, chap 23.
- b. If appropriate, inspect and conduct "Phase I" due diligence investigation of business for hazardous waste problems. See Decedent Estate Prac §10.31, chap 23.
- c. Obtain appraisal of decedent's business interests.
- d. If decedent was an attorney, consider whether representative should petition for appointment of a practice administrator to wind up the law practice under Prob C §9764. See Decedent Estate Prac, chap 23.

#### NOTE

If the business can be operated only by a licensed professional, the representative's responsibility is limited to finding a purchaser for the business.

#### INTERESTS IN ESTATES

- a. Ascertain when the interest of decedent in another estate or trust came into existence and whether it should be disclaimed;
- b. Obtain court approval of any disclaimer;
- c. If beneficiaries of decedent's will wish to disclaim, advise them to seek counsel on the effects of disclaimer from their own attorney, or, if no conflict exists, from the estate attorney;
- d. Prepare any disclaimer promptly so that it can be made within 9 months after decedent's death. IRC §§2046, 2518; Prob C §295.

**Sample Form:** For a form disclaimer, see Probate Workflow §10.20.

#### NOTE

It is important that the disclaimant not receive the property before making the disclaimer, because receipt would nullify the disclaimer. If the property to be disclaimed is personal property, it should *not* be given to the anticipated beneficiary. When the disclaimant is a minor or a conservatee, see Probate Workflow §§7.30-7.31.

#### TAXES

Unless counsel represented decedent in tax matters and has copies of returns on file, instruct the representative to gather decedent's tax papers and obtain copies of the California and federal income and gift tax returns for prior years.

##### Income Tax Returns

- a. Use decedent's most recent state and federal income tax returns:
  - (1) To ascertain whether they were timely filed; and
  - (2) To help in ascertaining whether the inventory includes all of decedent's assets.
- b. Ascertain whether any federal or California income tax installments are due.
- c. Include any income tax refund due in the inventory on Attachment 1.

#### NOTE

Income schedules are often invaluable in disclosing assets through sources of income.

d. If returns cannot be located, ascertain whether:

(1) The returns were filed; or

(2) Decedent was not required to file income tax returns because of a limited income. On representative's duty to file income tax returns, see Decedent Estate Prac §§33.3-33.7.

e. Consider whether to request a prompt assessment of decedent's income tax returns. See Decedent Estate Prac §33.7.

#### Gift Taxes

Determine whether:

a. Decedent made any transfers that are reportable gifts, *e.g.*, transfer of title from decedent's name into joint tenancy with another.

b. Any gift tax returns:

(1) Must be filed by following April 15 (IRC §6075(b)) for gifts made during decedent's lifetime; and

(2) Should be filed even if there is no gift tax liability.

#### NOTE

If decedent made any transfers during the year of death in excess of the allowable annual exclusions or any transfers of separate property for which a gift-splitting election must be made by the spouse, gift tax returns for that year should be filed.

#### Property Taxes

a. Submit notice of change of ownership forms to county assessor. See step 21, below.

b. Ascertain:

(1) Amount and status of payment of real and personal property taxes; and

(2) Whether homeowner's property tax exemption (allowed only if decedent occupied the residence on January 1 of the year of death (Rev & T C §§218, 2192)) was claimed before decedent died.

c. If exemption was not claimed, but decedent was eligible, file claim on estate's behalf.

#### Estate Taxes

a. Advise representative that if an estate tax return must be filed:

(1) The federal return is due 9 months (15 months if request for automatic 6-month extension filed within 9 months) after the date of death (IRC §6075; Treas Reg §20.6081-1(b)); and

(2) For decedents dying prior to January 1, 2005, the California estate tax or "pick-up" tax is due 9 months after the date of death in an amount equal to the credit allowable under IRC §2011 against federal estate taxes for state estate taxes paid (Rev & T C §§13302, 13531-13532):

(a) If decedent owned property in California and in other states, California imposes its tax on a proportionate part of the federal allowable credit (Rev & T C §13303);

(b) The state death tax credit does not apply to decedents dying after 2004. As a result, no California estate tax will be payable and no return must be filed with California for decedents dying after 2004. IRC §2011(f).

b. File IRS Form 56 (Notice of Fiduciary Relationship) (see Decedent Estate Prac §33.2):

(1) Within 30 days after appointment of the fiduciary;

(2) At the IRS office where the tax return is to be filed.

## NOTE

It is not necessary to use a separate taxpayer identification number for the *federal* estate tax return. Decedent's social security number should be used. This number should not be confused with the separate taxpayer identification number required for use on the fiduciary income tax returns to report income earned during the period of administration, *i.e.*, IRS Form 1041 (federal) and FTB Form 541 (California).

### Withholding Tax and Social Security Contributions

Ascertain whether (see Decedent Estate Prac §10.47):

- a. Decedent had any employees, including live-in help; and
- b. Employees' wages were subject to withholding tax or social security contributions.

### EXERCISE OF OPTIONS

- a. Ascertain whether decedent holds any nontransferable option rights;
- b. Obtain copies of any incentive stock option plans to learn how much time the estate has to exercise the options and the cost of exercising such options; and
- c. Obtain court order to exercise options if the representative does not have authority under the IAEA (see Prob C §10558; step 19, below) if it would be advantageous to the estate and in the best interests of those interested in the estate. Prob C §9734.

### ESTIMATE CASH NEEDS

- a. Prepare an estimate of the estate's cash requirements (*e.g.*, debts, taxes, devises) as soon as the information is available, and forecast the dates by which cash for each item must be raised.
- b. Include all major receipts and disbursements of the estate that can be anticipated:
  - (1) Receipts include items such as:
    - (a) Proceeds of life insurance policies;
    - (b) Debts owed to the estate;
    - (c) Dividends and interest; and
    - (d) Refunds on income tax payments or from the cancellation of insurance policies or subscriptions.
  - (2) Disbursements include items such as:
    - (a) Income, gift, real and personal property, and estate taxes;
    - (b) Administrative expenses;
    - (c) Debts and claims against the estate (including funeral and last-illness expenses);
    - (d) The family allowance; and
    - (e) Cash bequests.
- c. Ascertain whether assets should be sold or money borrowed to meet cash requirements. See step 15, above, and Probate Workflow, chap 16.

**Form:** For a Letter to Representative on Estimate of Cash Needs, see Appendix 25.

**Source:** Estate Planning/Handling a Probate (Action Guide)/Handling the Estate After Appointment/STEP 18.  
PREPARE INVENTORY AND APPRAISAL

STEP 18. PREPARE INVENTORY AND APPRAISAL

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WHO PREPARES INVENTORY AND APPRAISAL

Even though the Probate Code imposes on the representative the duty to prepare the inventory, unless there is a corporate fiduciary, the inventory is usually prepared by the attorney and legal assistant from information supplied by the representative.

PREPARING INVENTORY AND APPRAISAL

- a. Request appointment of probate referee, if not already appointed. See [step 15](#), above.
- b. Consider petition to waive appointment of referee for good cause. [Prob C §§8900-8903](#). Neither the personal representative nor the attorney are entitled to extraordinary compensation, however, for appraising estate property. [Prob C §8907](#). On procedure, see [Decedent Estate Prac §§13.10-13.12](#).

NOTE

Waiver motions are rarely granted and generally should not be filed absent a showing of good cause. For examples of good cause, see [Decedent Estate Prac §13.12](#).

- c. Calendar deadline for filing inventory and appraisal (within 4 months after letters are first issued ([Prob C §8800](#))).
- d. Prepare inventory of all assets subject to probate for the probate referee to appraise on Inventory and Appraisal (Judicial Council Form DE-160) and Inventory and Appraisal Attachment (Judicial Council Form DE-161).

**Forms:** For Forms DE-160 and DE-161, see [Appendixes 26-27](#).

NOTE

Note that the date of death is located in an easy-to-overlook box below the case number on Form DE-160.

- e. List and appraise items to be appraised by the representative on Attachment 1. List, but do not appraise, items to be appraised by the probate referee on Attachment 2. For Attachment 1 and 2:
  - (1) Number each item.
  - (2) For convenience in estates in which an estate tax return is to be filed, group common items together, putting categories of assets in the same order as in the federal estate tax return (IRS Form 706).
  - (3) State whether the interest is:
    - (a) Separate, community, or quasi-community (to the extent the personal representative can ascertain); and
    - (b) 100 percent or a fraction.

NOTE

Unless (1) the surviving spouse or domestic partner elects to probate his or her one-half interest in community property ([Prob C §13502](#); [Fam C §297.5\(c\)](#)), or (2) decedent willed his or her one-half interest in community property to someone other than the surviving spouse or domestic partner, community property is not listed on the inventory.

- (4) Include in the preparation of Attachment 2 dividends on securities and interest on bonds accrued but unpaid at the date of death.
- (5) If assets were converted to a different form during administration, list them in the inventory in their original form (as they existed on the date of death).
- (6) Number the pages of each attachment separately.

- f. For assets listed on Attachment 2, in a separate letter accompanying the inventory, supply detailed information that would assist the probate referee in making a determination. On contents of separate letter, see Decedent Estate Prac §13.16.
- g. Consider electing independent appraisals of "unique, artistic, unusual, or special" items of tangible personal property such as jewelry, art objects and antiques, and stamp, coin, and other collections. Prob C §8904. Make election by a notation on the inventory delivered to the probate referee indicating the property to be appraised by an independent expert.
- h. In a substantial estate, consider hiring an expert appraiser for:
- (1) Closely held stock or business interests; or
  - (2) Real property that is difficult to appraise (*i.e.*, improved single-use commercial property having no comparables).
- i. Submit copy of appraisals to probate referee.

#### NOTE

When dealing with complex valuations of difficult assets, a detailed appraisal by an independent expert appraiser may fare better in an IRS audit than an appraisal by a probate referee. Moreover, the consequences of undervaluation (or sometimes overvaluation) dictate that measures be taken to ensure reasonable accuracy.

- j. Submit original and one copy of inventory and appraisal to probate referee in time to be filed within 4 months after appointment date. Prob C §8800.
- k. Prepare request for extension of time to file if inventory and appraisal cannot be filed within 4 months after appointment date. Calendar extended deadline.
- l. When the referee returns the appraised inventory, verify that the bond is sufficient.
- m. If the bond is insufficient, apply for an ex parte order increasing the bond amount. The application must show the value of the estate's personal property and the probable annual gross income of the estate. Cal Rules of Ct 7.204, 7.501. See Decedent Estate Prac §§9.25-9.28.
- n. Have the representative review the inventory before filing it with the court so that any discrepancies can be resolved without having to file a corrected inventory.
- o. If the referee and the representative disagree on the value of particular assets, discuss the values with the representative and the referee before filing inventory with the court.
- p. File original inventory and appraisal within 4 months after letters first issue.
- q. Within 15 days after the inventory is filed, mail copies to everyone who requested special notice. See Prob C §8803.

**Further Research:** For further discussion of preparing the inventory and appraisal, see Decedent Estate Prac, chap 13.

#### JUDGE'S PERSPECTIVE

Failure to file a timely inventory and appraisal may be cause for removal of the personal representative. Prob C §8502.

#### APPRAISAL RESPONSIBILITIES

- a. The representative appraises (Prob C §8901):
- (1) Money and liquid items, including checks, drafts, money orders, or similar instruments issued on or before the date of decedent's death that can be immediately converted to cash;
  - (2) Checks issued after the date of decedent's death for:
    - (a) Wages earned before death; and
    - (b) Refunds, including tax and utility refunds, subscriptions, and Medicare, medical insurance, and other healthcare reimbursements and payments;
  - (3) Cash type accounts in financial institutions, including checking accounts, savings accounts, certificates of deposit, share

accounts, mutual capital certificates, and similar arrangements, including interest accrued but unpaid on the date of death;

(4) Cash deposits and money market mutual funds or accounts; and

(5) Proceeds of life and accident insurance policies and retirement plans and annuities payable on death to the estate in lump-sum amounts.

b. The referee appraises everything else. Prob C §8902.

c. Inventory values are date-of-death values.

#### NOTE

For federal estate tax purposes, the alternate valuation date—6 months after the date of death—may be chosen. IRC §2032(a)(2).

**Further Research:** For further assistance in identifying which assets are appraised by the representative and which by the referee, see *Using Probate Referees in Trusts, Probate, Conservatorships and Guardianships, Small Estates and Non-Probate Matters (Probate Referees' Procedure Guide)* (rev 2005). A copy can be obtained from local probate referees or the Daily Journal. The Guide is also reprinted in Decedent Estate Prac §13.83.

#### WHAT DOES NOT GO IN INVENTORY AND APPRAISAL

As a rule, the following are not estate assets and are not included in the inventory:

a. Insurance proceeds payable to named beneficiaries;

b. Retirement accounts payable to named beneficiaries;

c. Totten trust accounts;

d. Joint tenancy assets;

e. Property held in trust; and

f. Out-of-state real property.

#### NOTE

Generally, out-of-state tangible personal property is included (*e.g.*, an automobile located in another state). Out-of-state intangible personal property of a California resident is always included.

#### PARTIAL AND SUPPLEMENTAL OR CORRECTED INVENTORY

##### Partial Inventory

Partial inventories may be used if:

a. Depreciating or perishable property is to be sold; or

b. It appears that there will be an undue delay in compiling a complete list of decedent's assets.

##### Supplementary Inventory

a. Supplementary inventories may be necessary to report newly discovered property.

b. File the supplemental inventory within 4 months after discovery of assets not previously reported. Prob C §8801.

##### Corrected Inventory

Corrected inventories may be necessary to correct mistakes.

##### Reappraisal for Sale

A reappraisal for sale is required for the sale of real property more than 1 year after decedent's death.

*Further Research:* For discussion of partial and supplementary inventories, see [Decedent Estate Prac §§13.79-13.82](#).

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**Source:** Estate Planning/Handling a Probate (Action Guide)/Handling the Estate After Appointment/STEP 19.  
EXERCISING INDEPENDENT AUTHORITY UNDER IAEA

STEP 19. EXERCISING INDEPENDENT AUTHORITY UNDER IAEA

---

UNDERSTAND WHEN NOTICE OF PROPOSED ACTION IS REQUIRED

Certain actions that do not require court supervision may be taken by a personal representative with independent administration authority only after giving a notice of proposed action to the affected parties. Give a notice of proposed action before:

- a. Selling or exchanging real property (Prob C §10511).
- b. Selling or incorporating decedent's unincorporated business (Prob C §10512).
- c. Abandoning tangible personal property if its fair market value is less than the cost of collecting, maintaining, or protecting the property (Prob C §10513).
- d. Borrowing or encumbering property (Prob C §10514).
- e. Granting an option to purchase estate property (Prob C §10515).
- f. Transferring property to a person given an option to purchase in the will (Prob C §10516).
- g. Completing decedent's contract to convey or transfer property (Prob C §10517).
- h. Allowing, compromising, or settling decedent's or third party's claim to property (Prob C §10518).
- i. Making a disclaimer (Prob C §10519).
- j. Making a preliminary distribution of (Prob C §10520):
  - (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 tangible articles of a personal nature to the persons entitled to the property under 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 decedent's will, not to exceed \$10,000 to any one person.

NOTE

Preliminary 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.

- k. Leasing real property for more than 1 year (Prob C §10536(b)) or entering into any contract that is not to be performed within 2 years (Prob C §10532(b)).
- l. Investing estate funds except as authorized by the Probate Code, *e.g.*, in banks, savings and loans, common trust funds described in Prob C §9730(c), and some mutual funds (Prob C §10533).
- m. Continuing decedent's unincorporated business operations or acting in decedent's place as a general partner for more than 6 months after the date letters were issued (Prob C §10534(d)).
- n. Paying a family allowance, but only if the payment is either the first payment of a family allowance, the first payment of a family allowance for a period beginning 12 months after decedent's death, or an increase in family allowance payments (Prob C §10535(b)).
- o. Selling or exchanging personal property, except in the following circumstances:
  - (1) Sales of securities on an established stock or bond exchange (Prob C §10537(b)(1));
  - (2) Sales of securities listed and sold through NASDAQ by a broker/dealer (Prob C §10537(b)(2));

- (3) Cash sales of (Prob C §10537(b)(3)):
- (a) Security subscription or conversion rights;
  - (b) Perishable goods;
  - (c) Personal property necessary to pay a family allowance;
  - (d) Personal property at public auction;
  - (e) Property that will depreciate in value if not disposed of promptly; or
  - (f) Property that will incur loss or expense by being kept.
- (4) Surrender of certain securities for redemption or conversion (Prob C §10537(b)(4)).

p. 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).

#### NOTE

Even though these actions do not require court supervision, it may be prudent or advantageous to seek court supervision even if it means more work for counsel and the representative.

**Further Research:** For discussion of factors to consider in deciding whether to seek court supervision, see Decedent Estate Prac §15.14-15.16.

#### Notice of Proposed Action Not Required

Certain actions may be taken by a personal representative with independent administration authority without giving a notice of proposed action, *e.g.*:

- a. Allowing, paying, compromising, or releasing claims by or against the estate (Prob C §10552);
- b. Commencing or defending actions (Prob C §10553);
- c. Extending, renewing, or modifying obligations owing to or in favor of decedent or the estate (Prob C §10554);
- d. Payment of taxes, assessments, and expenses (Prob C §10556);
- e. Purchasing an annuity to satisfy devise (Prob C §10557);
- f. Exercising option rights (Prob C §10558); or
- g. Cash sales of:
  - (1) Security subscription or conversion rights;
  - (2) Perishable goods;
  - (3) Personal property necessary to pay a family allowance;
  - (4) Personal property at public auction;
  - (5) Personal property that will depreciate in value if not disposed of promptly; or
  - (6) Personal property that will incur loss or expense by being kept.
- h. Granting an exclusive right to sell property for a period not to exceed 90 days, and granting to the same broker up to two more 90-day extensions, after which notice of proposed action is required for further extensions. Prob C §10538(a)(1), (2).

#### GIVE NOTICE OF PROPOSED ACTION WHEN REQUIRED

Mail or personally deliver notice of proposed action (subject to the consent or waiver rules) on Notice of Proposed Action

(Judicial Council Form DE-165), at least 15 days before the intended action to ([Prob C §§10581, 10586](#)):

- a. Each known heir or devisee whose interest in the estate would be affected by the proposed action;
- b. Persons who have requested special notice; and
- c. The Attorney General at the Sacramento office, if any part of the estate will escheat to the state and if its interest in the estate would be affected by the proposed action.

#### NOTE

This list of who must be given notice 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, unless they file a request for special notice.

#### When Mailing Notice

- a. If mailed, send the notice to the person's last known address, by first-class mail if the recipient resides in the United States or by airmail if the recipient resides outside the United States. [Prob C §§1215, 10586](#).
- b. Mailing does not extend the 15-day period. [Prob C §1215\(e\)](#).

#### NOTE

If you believe that someone who is to be sent notice is likely to object, but you would prefer not to voluntarily seek court supervision, send the notice return receipt requested, so that the recipient may not later claim to have never received the notice.

#### Whether to File Notice

Although the Probate Code does not require filing the original notice of proposed action or proof of mailing or service, check local rules to see whether the court requires it.

#### Contents of Notice

Be as specific as possible on the action to be taken and disclose material provisions, especially if the action concerns real property.

#### NOTE

Failure to object may not preclude the recipient from objecting later if there were material omissions from the notice.

**Further Research:** For Notice of Proposed Action (Judicial Council Form DE-165), see [Decedent Estate Prac §15.27](#).

#### Consent to Proposed Action

Notice is not required to anyone who has consented in writing to the proposed action. The consent may be executed before or after the action has been taken. [Prob C §10582](#).

#### NOTE

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.

#### Waiver of Notice of Proposed Action

Notice need not be given to anyone who has waived the right to notice with respect to the particular proposed action. The waiver must be in writing, and it may waive the right to receive ([Prob C §10583](#)):

- a. Any notice of proposed actions;
- b. Only notices as to certain proposed actions; or
- c. Only particular aspects of the notice, such as the delivery, mailing, or time requirements of [Prob C §10586](#).

**Form:** For form of Waiver of Notice of Proposed Action (Probate) (Judicial Council Form DE-166), see [Decedent Estate Prac](#)

## OBJECTIONS TO PROPOSED ACTION

Anyone required to receive a notice of proposed action may object to the action being taken without court supervision.

### Deliver or Mail Objection

- a. The person objecting to the proposed action must mail or deliver a written objection to the personal representative at the address in the notice.
- b. The objector may use Notice of Proposed Action (Judicial Council Form DE-165) or any other writing that identifies the proposed action objected to with reasonable certainty. Prob C §10587.

### Obtain Restraining Order

- a. Anyone entitled to notice of proposed action (or who is given notice) may seek an order restraining the personal representative from taking the proposed action without court supervision. The court shall grant the requested order without requiring notice to the personal representative. Prob C §10588.
- b. The restraining order must be personally served or mailed to the representative before the later of the date:
  - (1) Specified in the notice of proposed action after which the action is to be taken; or
  - (2) The proposed action is actually taken.

## HANDLING OBJECTIONS TO PROPOSED ACTION

- a. If an objection to a proposed action is one for which the representative:
  - (1) Would have been required to obtain court supervision had he or she not obtained IAEA authority, take the proposed action only with court supervision (Prob C §10589(a)); or
  - (2) Would not have been required to obtain court supervision, even without IAEA authority (Prob C §10589(b)):
    - (a) Request instructions from the court; and
    - (b) Take action only under court order.
- b. Give notice of any court hearing to anyone who has objected.

**Source:** Estate Planning/Handling a Probate (Action Guide)/Handling the Estate After Appointment/STEP 20.  
PREPARE FORMS FOR COUNTY ASSESSOR'S OFFICE

STEP 20. PREPARE FORMS FOR COUNTY ASSESSOR'S OFFICE

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CHANGE OF OWNERSHIP STATEMENT; PRELIMINARY CHANGE OF OWNERSHIP REPORT (PCOR)

a. Complete and file a:

- (1) Change of Ownership Statement (Death of Real Property Owner) with the county recorder or assessor in each county where decedent owned real property that is subject to probate proceedings; and
- (2) Preliminary Change of Ownership Report (PCOR) with the county recorder at the time of recordation of any document effecting a change in ownership (*e.g.*, at the time of final distribution).

b. File the change in ownership statement before or when the inventory and appraisal is filed. Rev & T C §480(b).

NOTE

Contact the assessor's office where the property is located to learn which form is required by the particular county. In some counties, the PCOR can be used instead of the Change of Ownership Statement for purposes of Rev & T C §480(b). In other counties, both forms are required.

PREPARE PARENT-CHILD/GRANDPARENT-GRANDCHILD EXCLUSION FORM

a. Real property will be reappraised for property tax reassessment purposes at death unless:

- (1) The property passes to the surviving spouse or domestic partner (Rev & T C §§62(p), 63; 18 Cal Code Regs §462.240(k)) as indicated on the PCOR or Change of Ownership Statement; or
- (2) An exclusion applies for which a claim must be filed, such as a (Rev & T C §63.1):
  - (a) Parent-child transfer, which can include a transfer between a foster parent and a foster child who was not adopted because of a legal barrier before the child aged out of the foster care system; or
  - (b) Grandparent-grandchild transfer when all natural parents of the grandchild who qualify as children of the grandparents are deceased as of the date of transfer.

NOTE

The transferor or the personal representative of the transferor's estate must certify that he or she will not file a claim to transfer the base year value of the property under Rev & T C §69.5. Rev & T C §63.1(d)(1)(B).

b. Even though filing is not required immediately, it is practical to prepare the application for the parent-child exclusion or the grandparent-grandchild exclusion from reassessment at the same time that the PCOR is prepared.

c. Begin the process of obtaining the signatures of all child or grandchild beneficiaries.

NOTE

To preserve the exclusion, the property should be encumbered before distribution as needed to equalize net value between heirs receiving property and heirs receiving cash. See Decedent Estate Prac §13.26.

Amount of Exclusion

- a. 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(a).
- b. "Principal residence" includes only the portion of land underlying the principal 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.

### When Claim Must Be Filed

A parent-child or grandparent-grandchild claim is timely if it is filed:

- a. Within 3 years after the date of transfer or before the property is transferred to a third party, whichever is earlier; or
- b. Within 6 months after the mailing of the notice of supplemental or escape assessment. Rev & T C §63.1(e)(1).

## NOTE

For purposes of Rev & T C §63.1, the date of transfer for parent-child and grandparent-grandchild transfers under a will or by intestate succession is the date of death. Rev & T C §63.1(c).

### Late Claim

If the property has not been transferred to a third party, a claim may be filed after expiration of the filing period specified in Rev & T C §63.1(e)(1), effective in the assessment year in which the claim is filed. Rev & T C §63.1(e)(2).

**Source:** Estate Planning/Handling a Probate (Action Guide)/Handling the Estate After Appointment/STEP 21.  
HANDLING DEBTS ('CREDITOR CLAIMS')

STEP 21. HANDLING DEBTS ("CREDITOR CLAIMS")

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INSTRUCT REPRESENTATIVE

a. As soon as practicable, advise the personal representative of his or her duties to:

- (1) Examine decedent's mail, personal papers, and effects and to make "reasonably diligent efforts" to identify decedent's creditors; and
- (2) Notify those creditors of the administration of the estate.

b. Explain the possible consequences of failing to ascertain creditors in good faith and failing to notify them.

NOTE

Paying debts and creditors' claims is subject to the rules in Prob C §§9000-9399.

**Form:** For a procedural guide for creditors' claims, see Appendix 28.

IDENTIFY CREDITORS

All "known" and "reasonably ascertainable" creditors must receive notice. Prob C §9050(a).

Known Creditors

Creditors are considered "known" if the personal representative is aware that the creditor has demanded payment from decedent or the estate. Prob C §9050(a).

**Example:** The representative or the attorney often receives bills unaccompanied by a claim. In that event, creditors are "known" creditors who should be sent the notice form unless the representative elects to treat the bill as a claim under Prob C §9154.

Ascertaining Creditors

To ascertain creditors:

a. Advise the representative to go through decedent's papers and make a list of:

- (1) Multiple payments on a debt by decedent within 3 years before death;
- (2) Note payees (found by reviewing the last three tax returns for the list of interest deductions);
- (3) Demands for payment or other reminder of an obligation within 8 months before or 4 months after death;
- (4) Copies of promissory notes or other documents that give rise to indebtedness;
- (5) The hospital or rest home, if any, where decedent died;
- (6) All physicians or other health-care providers who treated decedent;
- (7) Any ambulance companies used;
- (8) Decedent's landlord (if decedent rented) or mortgage holder (if decedent owned property);
- (9) All employees and service providers (*e.g.*, gardener, cook, accountant, maid);
- (10) Utility companies (*e.g.*, gas, water, electricity, telephone, cable television);
- (11) All credit card companies;

(12) Any securities broker who may have a margin account or other obligation due;

(13) Anyone interested in decedent's guaranties or contingent liabilities (which may appear on any of decedent's financial statements); and

(14) Creditors of decedent's business if it appears likely that personal guaranties may have been made or if the business is not incorporated;

b. Check for judgments recorded in the county where decedent resided; and

c. Consult the court index of the county where decedent resided to ascertain whether decedent is named as a defendant in any legal action pending there.

#### Make Record of Potential Creditors

a. For each potential creditor, note the creditor's:

(1) Name;

(2) Mailing address;

(3) Account number, if applicable; and

(4) Any other information relevant to the debt.

**Form:** For a form that can be used to keep a record of creditors' claims, see [Appendix 31](#).

b. Keep a record of the efforts made to ascertain creditors' identities. 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.

#### NOTE

Notice is not required to creditors whose claims are conjectural, which would probably relieve a representative from giving notice to, *e.g.*, all patients of a deceased physician, on the conjecture that a few have potential malpractice claims.

#### HANDLING DEBTS UNDER IAEA

a. Under the IAEA ([Prob C §§10400-10592](#)), the representative can:

(1) Pay the estate's indebtedness; or

(2) Require each creditor to file a claim.

b. The representative can allow, pay, reject, contest, or compromise any claim without giving a Notice of Proposed Action ([Prob C §10552](#)).

#### NOTE

Unless there is a reason to do otherwise, small ordinary expenses incurred by decedent before death should be paid without requiring a claim. To protect the representative, require that a claim be filed for any debt or bill that is unexplained or unexpectedly large.

#### GIVE NOTICE TO CREDITORS

##### General Published Notice

Publication of the Notice of Petition To Administer Estate serves as both a notice of petition for probate and a general notice to creditors when published. [Prob C §9001](#). See [step 8](#), above, and [Appendix 15](#).

##### Individual Notice to Known or Reasonably Ascertainable Creditors

a. Mail or deliver a separate written notice of administration to all known or reasonably ascertainable creditors within the later of:

- (1) 4 months after letters are first issued; or
- (2) 30 days after the personal representative first has knowledge of the creditor.

b. Give individual notice to creditors on Notice of Administration to Creditors (Judicial Council Form DE-157).

#### NOTE

Some attorneys believe that it is a good idea to send the notice form with a cover letter explaining that the claim cannot be paid until certain probate formalities are observed, including filing a creditor's claim form; others believe that this approach is too helpful to an otherwise adverse party and no further explanation of the form is necessary.

**Form:** For a letter to creditor to accompany form, see [Appendix 29](#).

#### Exception

Notice is not required to known creditors:

- a. Who have filed a formal claim; or
- b. Who have made a written demand for payment, such as sending a bill, within 4 months after letters are first issued, and the representative elects to treat the demand as a claim under [Prob C §9154](#). [Prob C §9054](#).

#### NOTE

The representative's attorney has no obligation to help a creditor file a claim and generally should not do so. One situation in which it may be appropriate, however, is when a decedent's relative or close friend has paid for the funeral. Because funeral costs are a high priority obligation of the estate, helping the relative or friend does not place general creditors at a disadvantage. Helping *other* creditors does raise conflict-of-interest questions.

#### NOTICE TO PUBLIC ENTITIES

a. Claims of the state of California and its political subdivisions, governed by special statutes specified in [Prob C §9201\(b\)](#), are not barred until:

- (1) Written notice or a request is given to the agency; and
- (2) The period provided for in the applicable statute expires.

b. Check with the agency to see whether it has a form to use for the written notice or request. See [Prob C §9201\(a\)\(1\)](#).

**Form:** For form of notice if the agency does not provide one, see [Appendix 30](#).

c. If notice is mailed, enclose:

- (1) An extra copy with an endorsement at the end stating that, "The original of the foregoing was received on \_\_[date]\_\_," followed by the name of the agency and the person signing for the agency; and
- (2) A self-addressed stamped envelope.

d. In the letter forwarding the notice, request that the copy be endorsed and returned.

#### NOTE

If the written notice or request is not given, the time for enforcement otherwise provided in the law applies.

#### Notice to Director of Health Services

a. Give the Director of Health Services notice of decedent's death within 90 days after letters are issued, if decedent ([Prob C §9202](#)):

- (1) Received or may have received Medi-Cal healthcare benefits; or
- (2) Was the surviving spouse of a person who received such benefits.

- b. Enclose a copy of decedent's death certificate (Prob C §215).
- c. Send the notice to the Director of Health Services at the Sacramento office.

#### Notice to California Victim Compensation and Government Claims Board

a. Give the Director of the California Victim Compensation and Government Claims Board notice of decedent's death within 90 days after letters are issued if (Prob C §9202(b)):

- (1) Estate representative or estate attorney knows or has reason to believe that an heir is confined in a prison or facility under the jurisdiction of the Department of Corrections, the Department of the Youth Authority, or confined in any county or city jail, road camp, industrial farm, or other local correctional facility.
- (2) The statute requires that notice be sent to the Director of the California Victim Compensation and Government Claims Board, regardless of whether the inmate is a devisee or other beneficiary of the decedent's estate.

b. Prob C §216 requires that the notice shall include all of the following:

- (1) The name, date of birth, and location of incarceration of the decedent's heir;
- (2) The heir's California Department of Corrections and Rehabilitation (CDCR) number if incarcerated in a CDCR facility, or booking number if incarcerated in a county facility;
- (3) A copy of the decedent's death certificate;
- (4) The probate case number and the name of the superior court hearing the case.

c. Enclose a copy of decedent's death certificate. Prob C §215.

d. The director of the board has 4 months after the notice is received in which to pursue collection of any outstanding restitution fines or orders.

#### Notice to Franchise Tax Board

a. For estates for which letters are first issued after June 30, 2008, the general estate 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).

b. To provide notice, a copy of the letters of administration should be mailed to the Franchise Tax Board, P.O. Box 2592, MS A-454, Sacramento, CA 95812-9974, or faxed to the FTB Decedent Team at (916) 845-0479.

c. Notice shall be given as provided in Prob C §1215.

d. 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.

#### NOTE

Giving notice is the responsibility of the estate attorney, the beneficiary, the personal representative, or the person in possession of decedent's property.

**Form:** For form of notice, see Appendix 30.

#### FAILING TO GIVE NOTICE

a. Calendar 16 months after letters were first issued as the last date on which creditors can petition under Prob C §9053 for the representative's failure to give proper notice.

b. Notice of hearing and the petition must be served on the representative 30 days before the hearing.

#### PAYING BILLS WITHOUT A CLAIM

Representative With IAEA Authority

A representative with IAEA authority may allow and pay any claim against the estate. Prob C §10552(a).

#### Representative Without IAEA Authority

a. If a creditor makes a written demand for payment, such as a bill, within 4 months after letters are first issued to a general personal representative, the representative may elect to waive formal defects and treat the demand as a claim under Prob C §9154 by paying the amount demanded within 30 days after the 4-month period, if:

- (1) The debt is justly due;
- (2) The debt is paid in good faith;
- (3) The amount paid is the true amount of the indebtedness, taking into account payments and offsets; and
- (4) The estate is solvent.

b. Consider paying ordinary expenses like utility bills or doctor bills without requiring a formal claim if you are sure no one will object.

#### FILING OF CLAIMS BY CREDITOR

##### Types of Claims That Must Be Filed

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)):

- a. Claims arising or contingent on contract, not only claims specifically provided for by contract;
- b. Tort claims for personal injury, wrongful death, injury to property (including fraud claims, waste, or destruction), or conversion of property;
- c. Taxes incurred before decedent's death, whether assessed before or after decedent's death, other than property taxes and assessments secured by a lien;
- d. Funeral expenses, which are an exception to the rule that claims are required only for decedent's obligations arising before death (see Decedent Estate Prac §14.17);
- e. Secured claims, unless all recourse beyond the security is waived (Prob C §9391); and
- f. 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).

##### Claims by Personal Representative

Advise the personal representative to file a creditors' claim if he or she has paid any of decedent's debts (*e.g.*, funeral expenses or hospital bills) from personal funds or has any other claim against the estate. For action on claim by personal representative, see Procedures for Handling Claims, in this step, below.

##### Formal Claims Not Required

The representative should investigate decedent's affairs to ascertain whether there are any claims of a type not required to be filed that may still be obligations of the estate, requiring action by the representative. Among such claims are:

- a. Secured claims, if all recourse beyond the security is waived. Prob C §9391. The representative must decide whether to pay the debt or to permit the property to be taken.
- b. Tort claims for which suit is pending at the date of death that are covered by adequate insurance. Prob C §9390.
- c. Demands for specific property.
- d. Claims based on judgments against the estate or the representative.
- e. Claims of the United States based on statutory liability (such as claims for taxes).

f. Claims protected by liability insurance if claimant limits amount of recovery to insurance coverage. Prob C §§550-554, 9390.

**Further Research:** For further discussion of claims that do not need to be filed, see Decedent Estate Prac §14.28.

#### Time for Filing Claims

a. Creditors must file claims with the court (Prob C §9100):

(1) Within the later of:

(a) 4 months after letters are first issued to a general personal representative; or

(b) 60 days after the date notice of administration is given to the creditor; but

(2) No later than 1 year after the date of death. CCP §366.2.

b. Claims must be served on the personal representative within the later of:

(1) 30 days after the claim is filed; or

(2) 4 months after letters issue to a personal representative with general powers.

c. Calendar last day for filing claims. Generally claims not filed and served within these time limits are invalid. Prob C §9150.

d. The limitations period of CCP §366.2 does not apply to an attempt to impose a resulting trust over specific estate property rather than to impose a liability that could be enforced against estate assets. Estate of Yool (2007) 151 CA4th 867, 60 CR3d 526.

e. The filing of a creditor's claim does not extend the CCP §366.3 1-year statute of 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.

**Form:** Claims are made on Creditor's Claim (Judicial Council Form DE-172).

**Further Research:** For contents of claims, see Decedent Estate Prac §§14.30-14.37. On the 1-year statute of limitations under CCP §366.2, see Decedent Estate Prac §14.42.

#### LATE CLAIMS

##### Petition Court

The claimant or the personal representative may petition the court to allow a creditors' claim to be filed against the estate after the 4-month claims period if the claimant can show that (Prob C §9103(a)-(b)):

a. The representative failed to send the creditor proper and timely notice of estate administration and the petition is filed within 60 days after the creditor has actual knowledge of administration; or

b. 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; and

c. The creditor's petition was filed within 60 days after the creditor had actual knowledge of the facts giving rise to the existence of the claim and the administration of the estate.

##### Claim Not Allowed

Late claims are not allowed after the court has made an order for final distribution of the estate or more than 1 year after the date of death. Prob C §9103(b).

**Further Research:** For discussion of late claims, see Decedent Estate Prac §14.41.

#### PROCEDURES FOR HANDLING CLAIMS

##### Review Claims

a. Review all claims to make sure that:

- (1) The debt or obligation was incurred before the date of death (except for funeral expenses);
  - (2) The claim was timely filed and served; and
  - (3) It contains no other defects.
- b. Use the form in [Appendix 31](#) to keep a record of creditors' claims and actions taken.
  - c. For convenience, when there are many claims in an estate, set up a separate file for creditors' claims and keep a copy of the claim record sheet on the inside of the file folder cover.

#### Defective Claims

- a. Inform the claimant in writing if the claim is defective in any way or if it is valid on its face but requires further substantiation. See [Prob C §§9151-9152](#).
- b. The representative may choose to waive an insubstantial defect under [Prob C §9154](#). See [Paying Bills Without a Claim](#), above in this step.

#### Allow or Reject Claims

- a. When a claim is filed, the personal representative (whether acting under the IAEA or not) must allow or reject the claim in whole or in part. [Prob C §9250](#).
- b. Complete and sign Allowance or Rejection of Creditor's Claim (Judicial Council Form DE-174):
  - (1) Item 4 should indicate the date the Notice of Administration to Creditors was served on this particular creditor or be marked "not applicable" if the claim was filed without prior notice.
  - (2) If the claim is allowed in part and rejected in part, complete items 8 and 9.

#### NOTE

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.

- c. File the original allowance or rejection and a copy of the claim with the court clerk.
- d. Serve a copy of the allowance or rejection on the creditor and the creditor's attorney.

#### NOTE

If the representative is acting under the IAEA, consult local rules. Most courts require that the form be filed with the court only if the claims are claims of the personal representative or the attorney. See, *e.g.*, San Francisco Ct R 14.62.

#### Failure to Act as Rejection

- a. A claimant may consider the claim rejected and file suit if the personal representative or the court has not acted on it within 30 days after the date it was filed. [Prob C §9256](#).
- b. Inaction by the personal representative does not mean that the claim is automatically rejected.

#### Suit on Rejected Claims

Calendar last day to file suit on rejected claim:

- a. The holder of a rejected claim must bring suit against the representative in the proper court ([Prob C §9353\(a\)](#)):
  - (1) If the claim is due, within **90 days** after the date of service of notice of rejection; or
  - (2) If the claim is not due, within **90 days** after it becomes due "regardless of whether the statute of limitations otherwise applicable to a claim will expire before or after" that time.
- b. The 1-year rule of [CCP §366.2](#) is tolled while the claim is pending. [Prob C §9353\(a\)](#).

**Further Research:** For discussion of and forms for bringing suit on rejected claims, and for responding to suit against the estate, see Decedent Estate Prac §§14.71-14.89.

#### Court's Action on Allowance of Claim

- a. If the personal representative has IAEA authority, court approval is not required (except for claims of the representative or the attorney). Cal Rules of Ct 7.402.
- b. If the personal representative does not have IAEA authority:
  - (1) The clerk will present the claim and allowance to the judge for approval or rejection; and
  - (2) The court will endorse on the claim whether it is approved or rejected and the date.

#### NOTE

The court may examine the creditor and others and take evidence on the validity of the claim.

#### Claim of Personal Representative or Attorney

- a. If the personal representative or the personal representative's attorney is a creditor, the clerk will present the claim to the court or the judge for approval or rejection. Prob C §9252.
- b. The court may require the personal representative or attorney to file a petition and give notice of a hearing.
- c. If the claim is approved, it is included with other established claims to be paid in the course of administration.
- d. If it is rejected, the personal representative or attorney may bring an action against the estate. Summons is served on the judge, who will appoint an attorney at estate expense to defend the action. Prob C §9252(c).
- e. An order rejecting a personal representative's creditor claim is not appealable. McDonald v Structured Asset Sales, LLC (2007) 154 CA4th 1068, 65 CR3d 366.

#### NOTE

If the representative's claim is for \$1000 or more and is for services performed for decedent, some courts will not approve the claim without a hearing with notice to interested parties. Consult local rules.

#### Compromising or Settling Claims

Consider compromising or settling claims by or against the estate. See Decedent Estate Prac, chap 20, for considerations in compromising claims.

#### Representative With IAEA Authority

A representative with IAEA authority may compromise a claim without obtaining court approval. Prob C §10552(b).

#### Representative Without IAEA Authority

Representatives without IAEA authority:

- a. Must obtain court approval if the time for filing creditors' claims has not expired (Prob C §9831);
- b. May compromise or settle claims without court approval after the time for filing creditors' claims has expired except for a compromise or claim that (Prob C §§9830-9831):
  - (1) Involves title to real property, an interest in or encumbrance on real property, or an option to purchase real property or an interest in it (an exception is provided for certain leases) (Prob C §9832);
  - (2) Requires transfer or encumbrance of estate property or the creation of an unsecured liability of more than \$25,000 (Prob C §9833);
  - (3) Is a claim by the estate against the personal representative or his or her attorney and an extension, renewal, or modification of the terms of a debt obligation of the representative or his or her attorney owed to the estate (Prob C §9834); or

(4) Is a wrongful death or personal injury action. Prob C §9835.

## NOTE

To avoid a later challenge to the propriety of a compromise when the representative's account is settled, it is a good idea to obtain court approval even if it is not required, unless the amount of the claim is very small. Alternatively, if the representative has IAEA authority, mail out a notice of proposed action regarding the approval of the claim(s); failure of the interested parties to object within the 15 days provided by the IAEA will bar a future challenge. Prob C §§10586-10588, 10590(d).

**Further Research:** For a detailed discussion of compromise of claims, see Decedent Estate Prac, chap 20.

## PAYING CLAIMS

### Order of Priority

The personal representative must pay decedent's debts, expenses of administration, and charges against the estate in the following order (Prob C §11420):

a. Debts owed to the United States or California that have preference under the laws of the United States (*e.g.*, taxes) or California (*e.g.*, sales and use tax (Rev & T C §6756), personal income tax (Rev & T C §19253), and unemployment insurance tax (Un Ins C §1701)) are given the preference required by those laws (see Decedent Estate Prac §§14.62-14.69).

## NOTE

The IRS allows administration costs and funeral expenses to be paid ahead of any tax obligation for which no lien exists. Rev Rul 80-112, 1980-1 Cum Bull 306.

b. 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).

c. 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 from the proceeds of the property subject to the lien.

d. Funeral expenses.

e. Last-illness expenses.

f. Family allowance.

g. Wage claims.

h. All other obligations.

### Immediate Payment

a. Instruct the representative to pay the following debts (for which creditors' claims have been filed) as soon as sufficient funds are available (Prob C §11421):

(1) Funeral expenses;

(2) Last-illness expenses;

(3) Family allowance; and

(4) Wage claims.

b. Retain sufficient funds to pay (Prob C §11421):

(1) Debts to the United States and California that have preference under federal or state law; and

(2) Administration expenses.

## NOTE

Until notice from the Department of Health Care Services is received stating that it will not be filing a claim in the estate, small debts should only be paid if the estate has substantial liquidity. Except for debts paid under Prob C §11421, 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, however, in solvent estates, small debts are often paid before all higher priority debts are paid. If the estate is unable to pay all debts, however, the representative could be surcharged for payments to lower-priority creditors.

#### Paying Allowed Claims

a. Whether or not the representative has independent powers under the IAEA, be extremely careful about paying creditors' claims unless:

(1) The time for filing claims has expired, keeping in mind that the Department of Health Care Services claim period does not commence until it is provided with a copy of decedent's death certificate;

(2) The estate is solvent;

(3) The account has been settled; and

(4) The order settling the account and ordering payment of claims has become final, *i.e.*, the period for appeal has expired (60 days after notice of entry of the order or 180 days after entry of the order if no notice is given).

b. Once the time period for submitting claims has expired, the risk that the estate may be insolvent is relatively easy to assess.

c. Claims may be contested at any time before settlement of the account in which they are first reported. Prob C §9254.

#### NOTE

Most representatives prefer to pay funeral expenses as soon as possible and to pay other claims of solvent estates as soon as the claims period has run. For further discussion of the dangers of paying claims before this period has run, see Decedent Estate Prac §14.65.

#### Payments to Medical Providers

Medical service providers often submit claims for all their charges without knowing how much will be satisfied by direct payments, particularly Medicare payments. They rarely amend their claims after they have received payment from third parties. It is not necessary to insist on an amended claim, but before paying such claims:

a. Ascertain:

(1) The balance owed; and

(2) Whether insurance coverage is available;

b. Make sure that no further payments will be made to the provider;

c. Obtain receipts showing the amounts actually paid; and

d. Allow the claim for the lesser amount and reject the balance.

#### ALLOCATE DEBTS BETWEEN ESTATE AND SURVIVING SPOUSE OR DOMESTIC PARTNER

Debts incurred before death by a decedent with a surviving spouse or domestic partner are subject to allocation during estate administration. Prob C §§11440-11446; Fam C §297.5(c).

#### Characterize Debt

First, characterize each debt subject to allocation as separate or community under the laws that apply to marital or domestic partnership dissolution proceedings (Prob C §11444(b)):

a. Debts incurred before marriage or registration are separate debts (see Fam C §2621);

b. Generally, debts incurred after marriage or registration but before the date of separation are divided as community debts (see Fam C §2622);

c. Debts incurred during marriage or domestic partnership for other than the benefit of the community are separate debts (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).

#### Allocate Debts

Allocate debts as follows (for Prob C §11444 allocation chart, see Appendix 32):

- a. Separate debts are allocated to that spouse or partner's separate property assets (Prob C §11444(b)(1));
- b. Community debts are allocated to the spouses or partners' community property assets (Prob C §11444(b)(1));
- c. If a separate property asset is subject to that spouse or partner's separate property secured debt, and the net equity is less than the secured debt, the unsatisfied portion of the secured debt:
  - (1) Is treated as an unsecured separate debt of that spouse or partner; and
  - (2) Allocated to the spouse or partner's other separate property assets (Prob C §11444(b)(2));
- d. If the net value of a spouse or partner's separate property assets is less than that spouse or partner's separate debt, the unsatisfied part of the debt:
  - (1) Is allocated first to that spouse or partner's one-half share of community property;
  - (2) Any remaining unsatisfied debt is allocated to the other spouse or partner's one-half share of community property assets (Prob C §11444(b)(3));
- e. 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:
  - (1) Is treated as an unsecured community debt; and
  - (2) Allocated to the other community property assets (Prob C §11444(b)(4)); and
- f. 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 or domestic partner; if either spouse or partner's separate property assets are less than that spouse or partner's share of the unsecured debt, the remaining unsatisfied community debt is allocated to the other spouse or partner's separate property. Prob C §11444(b)(5).

**Exception:** Funeral and last-illness expenses are charged against the estate. Prob C §11446.

#### Property Subject to Administration

Allocation of marital or domestic partnership debts is affected by how much property is subject to estate administration. Consider the facts and circumstances of each case:

- a. If a spousal set-aside petition has been granted, a limited amount of probate estate assets may be available to satisfy debts, and the surviving spouse or domestic partner will be liable under Prob C §§13550-13554; or
- b. If the surviving spouse or domestic partner elects to subject both halves of the community property to estate administration under Prob C §13502, the community property and decedent's separate property debts will be allocated entirely to the estate.

#### Allocation by Agreement

- a. If family relationships are harmonious:
  - (1) Allocate the debts by agreement; and
  - (2) Have the court approve the allocation agreement when the estate's accounts are settled.
- b. If an interested person challenges the allocation agreement, file a petition for allocation under Prob C §11441.

**Further Research:** For a general discussion of allocation, see Decedent Estate Prac §§4.22-4.25.



**Source:** Estate Planning/Handling a Probate (Action Guide)/Handling the Estate After Appointment/STEP 22. SELLING ESTATE PROPERTY

STEP 22. SELLING ESTATE PROPERTY

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REASONS TO SELL ESTATE ASSETS

During administration it may be necessary to sell estate assets to:

- a. Raise cash to pay creditors;
- b. Avoid the cost of caring for estate property; or
- c. Avoid distributing fractional shares in an asset.

EVALUATE ALTERNATIVES

a. Unless decedent's will directs the representative to sell all assets or a particular asset, consider alternatives to a sale, including:

- (1) Distributing the property to the heirs and letting them sell it.

NOTE

To preserve an exclusion from reassessment, it may be necessary to encumber real property before distribution (see [step 20](#), above).

- (2) Allowing the heirs to execute an option or a sales contract, to be completed after distribution of the property to them.
  - (3) Borrowing money or leasing the property to generate rental income if the estate needs cash.
- b. Canvass the heirs to learn whether:
- (1) Any of them wishes to buy the property.
  - (2) The residence will be vacant (making it difficult to insure).
  - (3) The publicity inherent in a probate sale would be undesirable.

**Further Research:** For priorities in selling estate assets, see [Decedent Estate Prac §18.9](#).

Selling Personal Property
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INITIAL CONSIDERATIONS

- a. Ascertain whether the representative has a testamentary power of sale.
- b. Decide whether to hold a private sale (bids solicited independently of each other) or a public auction (open, competitive bidding).

GIVING NOTICE

Representative With IAEA Authority

A representative with IAEA authority may sell personal property without obtaining court approval (but a notice of proposed action is required except for publicly traded securities and property described in [Prob C §10252](#); for notice of proposed action, see [step 19](#), above).

Representative Without IAEA Authority

- a. Give notice of sale of personal property at public auction or private sale by (Prob C §10250):
  - (1) Posting notice at the county courthouse at least 15 days before the date of the sale or auction; and/or
  - (2) Publication under Govt C §6063, to be completed at least 15 days before the date of the sale or auction.
- b. Calendar date that sale may be held.

#### When Notice Is Not Required

Notice of sale is not required if:

- a. The representative was directed to sell or was given power of sale in the will (unless the power itself requires that notice be given) (Prob C §10252(a)-(b));
- b. The property is perishable or depreciating (Prob C §10252(c));
- c. The sale is necessary to provide for payment of a family allowance pending the receipt of other funds (Prob C §10252(d)); or
- d. The property consists of securities sold on an established stock or bond exchange or through the NASD broker's network, or the securities are to be surrendered for redemption or conversion (Prob C §10200).

#### Prepare Notice of Sale

- a. State whether the sale is a public auction or a private sale.
- b. For a public auction, state the date, time, and place of sale. For a private sale, the notice may state a day on or after which the sale will occur.
- c. Describe the property in general terms, such as "furniture, furnishings, and effects" or "stock in trade."
- d. Other matters that may be included in the notice are terms and conditions of sale, such as proration of personal property taxes, payment of costs of escrow and transfer, and payment of retail sales tax. See Prob C §10253(b).

#### NOTE

The property must be sold on any and all terms specified in the notice. Thus, the terms of the sale should be stated as generally and as open-ended as the estate's circumstances will allow.

**Further Research:** For further discussion of the notice, see Decedent Estate Prac §§18.40-18.52.

**Form:** For form of notice of sale of personal property, see Appendix 33.

### PETITION FOR CONFIRMATION OF SALE OF PERSONAL PROPERTY

#### Prepare Petition

- a. Use the form for petition for confirmation of sale of personal property (see Appendix 34) for the sale of personal property other than (Prob C §10260):
  - (1) Perishable or depreciating property;
  - (2) Property sold to pay a family allowance; or
  - (3) Securities under Prob C §10200(e).
- b. Verify, file, and set the petition for hearing. Prob C §§1021, 10260(a).

#### NOTE

If the personal representative fails to file a petition for confirmation within 30 days after the sale, the purchaser may file it. Prob C §10260(b).

#### Give Notice

- a. At least 15 days before the hearing (Prob C §10260(c)):
  - (1) Mail or personally deliver notice of hearing for confirmation to anyone:
    - (a) Interested in the estate as provided in Prob C §1220; and
    - (b) Who has requested special notice as provided in Prob C §1250; and
  - (2) Arrange for posting as provided in Prob C §1230.

**Form:** The general Notice of Hearing (Judicial Council Form DE-120) can be used for this notice. See Decedent Estate Prac §6.14.

- b. Notify original bidder and any broker of the date of the hearing.
- c. 5 days before the hearing, ascertain that proof of posting was filed.

#### NOTE

Even though the purchase price does not have to be a certain percentage of the appraised value, file the Inventory and Appraisal before the hearing so that the court will have a formal determination of value.

#### CONFIRMATION HEARING

- a. Appear at hearing; and
- b. If increased bid is received, arrange at hearing for deposit and written bid by increased bidder.

#### NOTE

If the sales price is significantly higher than the original estimate, it may be necessary to petition the court for increased bond. See Decedent Estate Prac §§9.25-9.28.

#### PREPARE ORDER CONFIRMING SALE

- a. Prepare order:
  - (1) Showing proof that notice of sale was given; and
  - (2) Setting out and approving any credit terms regarding the sale.
- b. Submit order to the court.

**Forms:** For order confirming sale of personal property, see Appendix 35.

#### PREPARE BILL OF SALE

- a. Prepare bill of sale and arrange for representative's signature; and
- b. Obtain balance of purchase price from purchaser and deliver bill of sale.

**Forms:** For bill of sale that may be used for most personal property, see Appendix 36.

#### NOTE

If the property is an automobile or other vehicle licensed by the Department of Motor Vehicles, use the DMV form of bill of sale. Also fill out and file a Notice of Release of Liability with the DMV.

#### DEPRECIATING PERSONAL PROPERTY

- a. Ascertain whether property is depreciating or perishable property. See Decedent Estate Prac §§18.103-18.108.

#### NOTE

There are no clear-cut rules defining what property may be classified as perishable or depreciating. Much depends on local court

practice, although the nature of the property is of primary importance.

**Example:** Some courts permit requests for automobiles to be sold as depreciating property while others disfavor such requests. For additional examples, see Decedent Estate Prac §18.105.

b. Consider abandoning or donating property (unless it is specifically devised) if its fair market value is less than the cost of collecting, maintaining, or protecting it (for procedure to abandon property, see Prob C §§9780-9788).

c. If an acceptable offer is received, prepare bill of sale and submit to the representative for signature. For bill of sale, see Appendix 36.

d. Deliver bill of sale to purchaser on receipt of purchase price.

#### OBTAIN EX PARTE ORDER APPROVING SALE OF PROPERTY

a. Prepare Ex Parte Petition for Approval of Sale of Personal Property and Order (Judicial Council Form DE-275) for cash sale of the following personal property (Prob C §§10252, 10259):

- (1) Property that will cause loss or expense to the estate if kept;
- (2) Perishable or depreciating personal property; and
- (3) Property that is sold to provide a family allowance pending receipt of other sufficient funds.

#### NOTE

Although the above personal property may be sold without notice and passes without the need for court confirmation or approval, the personal representative is responsible for the actual value of the property unless the sale is reported and approved by the court. Prob C §10259(c).

b. If necessary, add attachments to Judicial Council Form DE-275 to elaborate on any complex terms of sale.

c. If the will named a specific devisee to receive the property being sold, obtain and attach the devisee's written consent to the sale to the petition.

d. If notice is dispensed with, obtain waivers of any requests for special notice, file return of sale, and submit order of confirmation for signature.

#### SELLING SECURITIES

To sell securities (Prob C §10200):

a. File a petition stating the terms and conditions (*i.e.*, either the minimum price at which the representative proposes to sell or that the sale will be made on an established stock exchange) and the advantage to the estate of the proposed sale, redemption, or conversion.

**Form:** To sell securities, use Ex Parte Petition for Authority To Sell Securities and Order (Judicial Council Form DE-270).

b. Give notice of the hearing as provided in Prob C §1220 and post as required by Prob C §1230. Prob C §10200(d).

#### NOTE

Ordinarily, the court dispenses with notice of hearing on the petition for authority to sell.

c. Notice of the sale is not required if (Prob C §10200):

- (1) The court fixes the minimum selling price;
- (2) The securities are to be sold on an established stock or bond exchange or through the NASD broker's network; or
- (3) The securities are to be surrendered for redemption or conversion

d. After the court grants authority, the representative makes the sale, observing the terms and conditions of the court's authorization. No further confirmation is necessary.

**Further Research:** See Decedent Estate Prac, chap 18.

## Selling Securities Under IAEA

A representative acting under the IAEA may sell securities over the counter or when listed on an established stock or bond exchange for cash, without giving notice to beneficiaries in advance or obtaining prior court approval. Prob C §10537.

### NOTE

A representative with IAEA authority may wish to obtain an ex parte order to sell securities in order to avoid any delay from an objection to the proposed action or a transfer agent's refusal to transfer title without a court order.

## 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 Decedent Estate Prac, chap 18.

Selling Real Property

## PRELIMINARY STEPS

- a. Consult with a title company to confirm that there is no irregularity in the title and that the title company will insure the sale. Obtain preliminary title report. See Decedent Estate Prac §18.63.
- b. Ascertain whether representative has testamentary power of sale.
- c. Determine whether sale is to be through broker listing, private sale, or auction, and whether bids are to be sealed.
- d. File ex parte petition to execute listing agreement if representative does not have authority under the IAEA. For forms of ex parte petition to execute a listing agreement and order authorizing execution, see Appendixes 37-38.
- e. Enter into a written listing agreement with a broker. If necessary, modify the broker's form listing agreement 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 a certain percent or an amount the court will allow (*e.g.*, 5 percent in Los Angeles County); and
  - (6) The sale is "as is" with no warranties.

### NOTE

Any Civil Code disclosure provisions that appear in the listing agreement should be crossed out because they do not apply.

**Caution:** Preprinted forms specifically designed for use in the probate context should be used instead of the routine preprinted forms used in the nonprobate context.

- f. Calendar expiration date of broker's exclusive listing.

**Further Research:** For discussion of employment and compensation of broker, see Decedent Estate Prac §§18.18-18.29.

## PUBLISH OR POST NOTICE OF SALE

- a. If the will contains the power to sell estate property, or if the representative has IAEA powers to sell real property, the representative may, but is not required, to publish notice of the sale. Prob C §10303.

- b. If publication is required, or if you decide to publish, publish notice (Prob C §10300; Govt C §6063a):
- (1) Three times with at least 5 days between the first and last publication dates, not counting the publication dates;
  - (2) For at least 10 days; and
  - (3) In a newspaper published at least weekly in the county in which all or some of the land lies.
- c. As an alternative to publication, notice of sale may be posted at the courthouse where the property is located if the property is valued at \$5000 or less on the inventory and appraisal. Prob C §10301.
- d. Calendar first date that sale may be held.

**Form:** For form to use when representative publishes notice of sale, see Appendix 39.

**Further Research:** For discussion of notice of sale, see Decedent Estate Prac §§18.40-18.52 and for soliciting bids under power of sale, see Decedent Estate Prac §§18.54-18.61.

#### ACCEPTING BIDS

- a. Examine offers to see whether any are acceptable. Offers must be on the exact terms specified in the Notice of Sale.
- b. Verify that deposit by buyer complies with local rules.
- c. Do not use the standard deposit receipt form used in other contexts to bid on real property. For form Bid for Purchase of Real Property; Representative's Acceptance; Broker's Acceptance, see Decedent Estate Prac §18.57; Probate Workflow §13.11.

#### NOTE

The sales price on a private sale must be at least 90 percent of its appraised value (*i.e.*, its gross value) made within 1 year before the sale. Prob C §10309. An Inventory and Appraisal—Reappraisal for Sale (Judicial Council Form DE-160) may be necessary. See Appendix 26; see Decedent Estate Prac §13.80, chap 18.

- d. The deposit should be paid to and held by the representative, not retained by the attorney or the broker.
- e. If an acceptable offer is received, subject to payment of broker's commission, have commission agreement prepared and signed by the representative and broker.
- f. Insist that the buyer obtain his or her own property inspections.

#### NOTE

Some representatives' attorneys require inclusion in the bid of a provision that minimizes claims of misrepresentation, such as the following:

**We have inspected the property and the offer is made as a result of this inspection and not on any representation made by the seller or any selling agent. We agree that you offer the property without representation, warranty, or covenant of any kind, express or implied \_ \_[except as to title]\_ \_.**

- g. Inform the original bidder and the broker of the time and place of the hearing on confirmation so that they may protect their interests if overbids are made.

#### CONFIRM SALE OF REAL PROPERTY

All real estate sales must be confirmed by the court (Prob C §10308) unless the representative is acting under full authority of the IAEA (Prob C §10503).

#### NOTE

Many attorneys will seek court confirmation even when it is not required, because of the protection against liability that the court order provides.

Prepare Petition for Confirmation of Sale

a. Prepare Report of Sale and Petition for Order Confirming Sale of Real Property (Judicial Council Form DE-260) (see [Appendix 40](#)):

- (1) Insert all known names of decedent to avoid later difficulties with title companies and other third parties;
  - (2) If the sale is made at public auction, it is not necessary to allege the amount of the appraisal; in a private sale, the amount of the appraisal does not have to be alleged, but it is good practice (Item 3);
  - (3) The terms of sale should be identical to those specified in the notice of sale and bid (Item 4);
  - (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 (Attachment 4e); and
  - (5) Describe the representative's efforts to obtain the highest and best price in Item 12.
- b. Verify and file the petition within 30 days after the date of sale, *i.e.*, acceptance of bid by the representative. [Prob C §10308\(b\)](#).

#### NOTE

Report the sale to the court with the final agreed-on terms, after all conditions, particularly financing, have been removed so that the sale can be presented as an "all-cash" sale.

**Further Research:** For detailed discussion on completing Judicial Council Form DE-260, see [Decedent Estate Prac §§18.67-18.70](#).

#### Post and Mail Notice of Hearing

- a. Ascertain whether the attorney or the clerk prepares and signs the copy of notice that is posted by the clerk. [Prob C §1230](#).
- b. Mail a copy of the notice of hearing at least 15 days before the hearing to ([Prob C §§1220, 10308\(c\)](#)):
  - (1) Each person requesting special notice;
  - (2) Each nonpetitioning personal representative;
  - (3) The purchasers named in the petition; and
  - (4) Each devisee of specifically devised property.

#### NOTE

Although not required by the Probate Code, it is a good idea to give notice to all brokers and any unsuccessful bidders.

- c. If notice is by posting, arrange for posting at least **15 days** before hearing; **5 days** before hearing, ascertain that proof of posting was filed.
- d. File proof of service of notice of hearing.

#### Appear at Hearing to Confirm Sale

- a. Petitioner's attorney must appear at the hearing to confirm the sale or the court will not proceed. [Cal Rules of Ct 7.452](#).
- b. Both the representative and the attorney should appear at the hearing to ensure that the sale is conducted properly, *e.g.*, if increased bid is received, arrange at hearing for deposit and written bid by increased bidder.
- c. If the court does not furnish a printed form of increased bid, the attorney must provide it (see [Appendix 41](#)), because few bidders come to court prepared. Any overbid must be at least 10 percent higher on the first \$10,000 and 5 percent on any balance.

#### Order Confirming Sale

- a. Prepare order confirming sale and representative's deed to the purchaser referring to the confirmation order if the deed is not prepared by the title company:
  - (1) The terms of the order must be consistent with those of the notice of sale, petition for confirmation of sale, and minute order

of the court confirming the sale.

(2) Make sure that the legal description in the order is accurate.

**Forms:** For Form DE-265 and a form of representative's deed, see Appendixes 42-43.

b. Submit proposed order and deed to title company for approval or comments.

c. If order is approved, submit to court for signature and arrange for obtaining and filing any additional bond required.

#### NOTE

If an additional bond is required, the court will not file the order until the additional bond is posted (Cal Rules of Ct 7.206), so it is important to prepare the bond paperwork as early as possible. See step 14, above.

d. Record a certified copy of the order accompanied by PCOR in the county or counties where any part of the property lies (usually done by title company at the close of escrow).

#### NOTICE OF PROPOSED ACTION

a. If proceeding under the IAEA, give a notice of proposed action to all interested persons 15 days before the sale is to be completed.

b. The notice of proposed action must include the material terms of the sale, including:

(1) The sales price; and

(2) Commissions paid to the broker or agent.

#### NOTE

Many attorneys will attach a copy of the sales contract to the notice of proposed action; this provides the beneficiaries with all the terms of the sale.

c. If any objections are received, seek court's confirmation of sale.

d. Determine whether to petition for additional bond or a blocked bank account.

#### CLOSING THE SALE

a. Have the representative sign the deed.

b. Obtain balance of purchase price from purchaser, and deliver deed.

#### NOTE

These days the title company usually handles closing the sale.

Remedies If Purchaser of Real or Personal Property Defaults

#### WHAT TO DO IF PURCHASER DEFAULTS

If the purchaser defaults after confirmation of the sale, determine whether to vacate order and resell (Prob C §10350) or sell to new bidder for same or better price (Prob C §10351).

#### Order Vacating Sale and Directing Resale

a. If proceeding under Prob C §10350, prepare petition and order:

(1) Vacating the order of confirmation;

(2) Ordering a resale of the property; and

- (3) Awarding damages to estate against the defaulting purchaser.
- b. Give notice of hearing as required by Prob C §1220 to (Prob C §10350(b)):
  - (1) Persons designated in Prob C §1220;
  - (2) The defaulting buyer, unless the buyer has given written consent to vacating the confirmation; and
  - (3) The broker named in the confirmation order.
- c. Send a new notice of sale. Prob C §10350(c).
- d. Conduct the sale as if the previous one had not occurred. Prob C §10350(d).
- e. 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).

NOTE

No time limit for filing the motion is specified in Prob C §10350.

Order Vacating Sale and Confirming Sale to New High Bidder

If a new offer is received under Prob C §10351:

- a. Within 60 days after confirmation, prepare and file petition and order vacating sale and confirming sale to new high bidder showing that:
  - (1) The original purchaser failed to complete the purchase; and
  - (2) 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.
- b. Give notice as provided for notice of hearing on the petition to vacate the order and of the resale.

**Source:** Estate Planning/Handling a Probate (Action Guide)/Handling the Estate After Appointment/STEP 23. MAKING PRELIMINARY DISTRIBUTIONS

STEP 23. MAKING PRELIMINARY DISTRIBUTIONS

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CONSIDER MAKING PRELIMINARY DISTRIBUTION

Preliminary distribution is an interim distribution of a portion of the estate assets appropriate only when the estate is not in a condition to be finally closed and distributed. For a procedural guide on planning preliminary distributions, see [Appendix 44](#). Consider making a preliminary distribution of a portion of decedent's assets:

- a. To allow beneficiaries to enjoy all or part of their inheritances before final distribution;
- b. To avoid paying interest on pecuniary devises under [Prob C §12003](#);
- c. To eliminate personal property from the estate, such as household furniture and furnishings, that may be difficult or costly to store;
- d. To transfer the cost of care, maintenance, insurance, taxes, and other upkeep on estate assets, particularly real property, from the estate to the beneficiary;
- e. To shift taxable income or available deductions from one taxpayer (the estate) to another (the beneficiary or a testamentary trust);
- f. To establish the alternate value of distributed property for federal estate tax purposes under IRC §2032(a)(1); and
- g. When decedent was not a California resident and the estate is being probated in a foreign jurisdiction, to deliver decedent's property to the foreign representative subject to administration in California.

**Further Research:** For a detailed discussion of making preliminary distributions, see [Decedent Estate Prac, chap 25](#).

PREPARING AND FILING PETITION

Time for Filing

A petition for preliminary distribution may be filed as early as 2 months after letters are first issued to a general personal representative. [Prob C §11620](#).

NOTE

Because a distributee's bond is required under [Prob C §11622](#) if the court orders distribution before 4 months have elapsed, most counsel wait until the creditors' claims period has expired.

Amount of Distribution

For a petition for preliminary distribution filed under:

- a. [Prob C §11620](#): There are no limits on the amount of property that can be distributed, as long as the court determines that the distribution may be made without loss to creditors and persons interested in the estate.
- b. [Prob C §11623](#) (under IAEA): The amount distributed may not exceed 50 percent of the net value of the estate based on the value of estate property shown on all inventories and appraisals less creditors' claims, liens, and encumbrances.

List Actions Requiring Notice of Proposed Action

List and describe all actions taken without prior court approval under the IAEA if notice of the proposed action was required. [Cal Rules of Ct 7.250](#). The description must include:

- a. The nature of the action;
- b. When the action was taken;

- c. When and to whom notice was given;
- d. Whether notice was waived, and if so, by whom; and
- e. Whether any objections were received.

#### Inventory and Appraisal

For petitions under:

- a. Prob C §11620: Check local rules to see whether an inventory and appraisal is required. Although an inventory and appraisal is not statutorily required, the representative should at least file a partial inventory and appraisal describing and valuing the property to be distributed before the hearing on the petition.
- b. Prob C §11623: The filing of inventories and appraisals is required because the distributions the court can approve are limited to 50 percent of the net value of the estate, which is based on the value of estate assets as shown "by all inventories and appraisals on file with the court."

#### Account

An account is not statutorily required to be submitted with a petition for preliminary distribution under Prob C §11620 or §11623.

**Further Research:** For considerations in filing an optional accounting with a Prob C §11620 petition, see Decedent Estate Prac §25.28.

#### NOTE

Filing an accounting with a Prob C §11623 petition appears to prevent the court from hearing the petition on either the shortened-notice basis or the ex parte basis otherwise permitted by §11623, because a 15-day notice is required for settling an account (Prob C §11000) and there is no provision for dispensing with notice.

#### GIVING NOTICE

##### Petition Under Prob C §11620

For a petition under Prob C §11620, unless the court waives notice or shortens time, give at least 15 days' notice as provided in Prob C §1220 to persons listed in Prob C §11601.

##### Petition Under Prob C §11623

- a. For a petition by a representative with IAEA authority under Prob C §11623, 15 days' notice is required only to the persons listed in Prob C §1220, *i.e.*, any nonpetitioning representatives and anyone who has requested special notice.
- b. If special notice has not been requested, the court may dispense with notice entirely if the time for filing creditors' claims has expired.

#### ORDER FOR DISTRIBUTION

a. The court must find:

- (1) For all petitions, that the "distribution may be made without loss to creditors or injury to the estate or any interested person" (Prob C §11621); or
- (2) For petitions under Prob C §11623, that "the property to be distributed does not exceed 50 percent of the net value of the estate." Prob C §11623(a)(2).

b. The order is stayed until any bond required by the court is filed. Prob C §11621.

#### DISTRIBUTEES' BOND

a. If the court orders preliminary distribution (Prob C §11622):

- (1) Within **4 months** after letters are first issued, it must require a bond from the distributee in the amount of the distribution;

(2) After 4 months, the court has discretion on whether to require a bond and in what amount.

b. The bond is conditioned on payment of the distributee's share of the estate's debts, not to exceed the amount distributed.

NOTE

Most sureties provide their own form, but the form in [Appendix 45](#) may be used if the surety does not.

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## STEP 24. PETITION FOR FINAL DISTRIBUTION

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### REVIEW FILE

Review the file to see whether the estate is ready to be closed. The estate record in [Appendix 5](#), if properly maintained during administration, should contain most of the information necessary to complete the petition.

**Form:** For a procedural guide that can be used as an issue-spotting checklist for preparing the account and the petition for final distribution, see [Appendix 46](#).

### PREPARE WAIVER OF ACCOUNT; ACKNOWLEDGMENT OF SATISFACTION; ACCOUNT

Prepare estate account or get waivers of account or an acknowledgment of satisfaction from every distributee.

#### Waiver of Account

- a. If an account is waived, make sure all beneficiaries sign a waiver before the petition is completed and filed. Although more than one distributee can sign the same waiver-of-account form, it is usually easier to send a separate form to each distributee.
- b. Waivers should be filed separately with the court, rather than filing them as attachments to the petition, so it is easier for the court to locate a waiver.

#### Acknowledgment of Satisfaction of Interest

- a. If a person's interest in the estate has been satisfied (*e.g.*, by a preliminary distribution), obtain a written acknowledgment (receipt) of satisfaction from that person.
- b. File the acknowledgments or attach them to the petition.

### NOTE

Once a waiver of account or an acknowledgment of satisfaction has been obtained and filed for each distributee, an account does not have to be filed. [Prob C §10954](#).

#### Report of Administration

Although the details of receipts and disbursement do not have to be listed in the report of administration when the account is waived under [Prob C §10954](#), the report still must list the information required by law, including information about ([Cal Rules of Ct 7.550](#)):

- a. Creditors' claims;
- b. Sales;
- c. Purchases or exchanges of assets;
- d. Changes in the form of assets;
- e. Assets on hand, including carry value;
- f. Whether the estate is solvent;
- g. A detailed schedule of receipts and gains or losses on sale (if the request for statutory commissions or fees includes any amount other than the amount of the inventory and appraisal in the fee basis; see [Cal Rules of Ct 7.705\(b\)](#));

- h. Costs of administration (if reimbursement is requested);
- i. The amount of fees or commissions paid or to be paid and the basis for the fees (see Prob C §§10800-10805, 10810); and
- j. The calculation of fees or commissions according to Cal Rules of Ct 7.705.

#### If Account Required

If an account is required, check that:

- a. The starting figure is correct (usually the inventory and appraisal value);
- b. Receipts are itemized and correctly allocated between principal and income if such allocation is required;
- c. Disbursements are itemized and correctly allocated between principal and income if such allocation is required;
- d. The account is summarized (Prob C §1061);
- e. The necessary schedules are prepared (Prob C §§1062-1063); and
- f. The petition for approval of the account or a report accompanying the petition contains all the following (Prob C §1064; see Appendix 47):
  - (1) 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 schedule;
  - (2) An explanation of any unusual items in the account;
  - (3) A statement of all compensation paid from estate assets to the representative or to attorneys for the representative without a prior court order;
  - (4) A statement disclosing any family or affiliate relationship between the representative and any agent hired by the representative during the accounting period; and
  - (5) An allegation disclosing whether all cash, except for an amount reasonably necessary for the orderly administration of the estate, has been invested in interest-bearing accounts or in other investments permitted by law or the governing instrument.

#### JUDGE'S PERSPECTIVE

Review Prob C §§1063-1064 to make sure that all necessary allegations and schedules are included in the account, petition for approval of the account, or a report accompanying the petition. Failure to comply with §§1063-1064, requiring disclosure of the hiring of certain agents, a schedule of liabilities, and an allegation that cash has been invested in interest-bearing accounts, is a common problem with the account and petition. Inadequate explanation of disbursements is a frequent cause of delay in approval of the final account.

**Further Research:** For a detailed discussion of preparing an account, see Handling a Fiduciary Accounting, steps 11-21 (Cal CEB Action Guide November 2008), and Decedent Estate Prac, chap 24. For a discussion of waivers, see Decedent Estate Prac §§24.31-24.35.

#### TIME FOR FILING PETITION FOR FINAL DISTRIBUTION; STATUS REPORT

Within **1 year** after issuance of letters or **18 months** if an estate tax return is required, file (Prob C §12200):

- a. A petition for final distribution, showing that:
  - (1) All debts and taxes have been paid or adequately provided for and the estate is in a condition to be closed; or
  - (2) The estate is insolvent and in a condition to be closed (Prob C §11640); or
- b. A verified report on the status of the estate showing the condition of the estate, the reasons it cannot be distributed and closed, and the estimated time needed to close the estate (Prob C §12201(a)):
  - (1) Give notice of report to persons interested in the estate as provided in Prob C §1220; and

(2) Include the following statement in at least 10-point boldface type on the notice of hearing (Prob C §12201(b)):

**YOU HAVE THE RIGHT TO PETITION FOR AN ACCOUNT UNDER SECTION 10950 OF THE CALIFORNIA PROBATE CODE.**

JUDGE'S PERSPECTIVE

The failure to close an administration within the statutory period may cause a reduction in the compensation of the personal representative or the attorney for the personal representative. Prob C §12205.

PREPARING PETITION FOR FINAL DISTRIBUTION

SAMPLE LANGUAGE

The sample form language for the petition for final distribution in Appendix 47 comes from Decedent Estate Prac. For a complete discussion of petition clauses, see Decedent Estate Prac, chap 31.

HEADING

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 in the heading and in the notice of hearing.

NOTE

It is generally good practice (and required by most courts) to include a request for extraordinary compensation in the title and in the notice of hearing.

INTRODUCTORY PARAGRAPHS

The petition must allege:

- a. Decedent's date of death and residence;
- b. The dates the personal representative qualified and letters were issued; and
- c. Any ancillary administration.

*Form:* For petition title and introductory paragraphs, see Appendix 47.

AUTHORITY AND ACTIONS TAKEN UNDER IAEA

If the personal representative has IAEA authority, the petition must list and describe actions taken without court approval.

a. For actions that required a notice of proposed action (see step 19, above), the description must include (Cal Rules of Ct 7.250(a)):

- (1) The nature of the action;
- (2) When the action was taken;
- (3) When and to whom notice was given;
- (4) Whether notice was waived, and if so, by whom; and
- (5) Whether any objections were received.

*Form:* See Appendix 47.

NOTE

Many courts require that the original Notice of Proposed Action be filed with the court before or with the petition for final distribution. Check local rules.

- b. Ordinary actions taken to care for and preserve the estate during administration, such as making ordinary repairs or storing personal property, do not have to be listed.
- c. Major transactions that affect the property on hand for distribution should be described.

## STATUS OF ESTATE

The allegation about the status of the estate is recommended because [Prob C §11640](#) requires that the representative file a petition for final distribution when sufficient funds are available to pay debts and the estate is in a condition to be closed. See [Appendix 47](#) for specific allegation.

## CREDITORS' CLAIMS

- a. If written notice was given to any known or reasonably ascertainable creditors, attach a list of those creditors, the date notice was given, and whether a claim was filed. See [Appendix 47](#) for a sample list of creditors.
- b. The allowed and rejected claims can be listed in an exhibit instead of in the body of the petition.
- c. When debts are paid without formal claims under [Prob C §9054](#), a specific allegation should be included indicating the payment. If the account is waived, these debts do not have to be listed.

**Further Research:** See [Decedent Estate Prac §§31.41-31.46](#).

## TAXES

- a. If the representative is petitioning for distribution of the estate before estate taxes are paid, state that fact in the petition and what provisions have been made for payment.
- b. If an election to defer federal estate taxes under IRC §6166 was made, describe the terms of the deferral in the petition in order to inform the court of the portion of the tax that remains unpaid.

**Form:** See [Appendix 47](#).

**Further Research:** See [Decedent Estate Prac §§31.47-31.51](#). On estate tax procedures, see [Decedent Estate Prac, chap 34](#).

## PROPERTY ON HAND FOR DISTRIBUTION

- a. Because the property listed on the schedule of property on hand represents the estate that is to be distributed, have the representative verify that the property is actually on hand.
- b. List items at their carry value, *i.e.*, the appraised value for assets listed in the inventory and appraisal, or the purchase price for assets acquired later. See [Prob C §1062\(f\)](#).
- c. List property in the same order as in the inventory and appraisal, with descriptions as shown in the inventory and identified by inventory item number for easy verification.

## JUDGE'S PERSPECTIVE

Real and personal property must be specifically described (including the full legal description and the APN) in the petition and order for final distribution. See also the order for distribution in [Appendix 48](#).

**Form:** For allegations about property on hand, see [Appendix 47](#).

**Further Research:** See [Decedent Estate Prac §§31.55-31.57](#).

## PROPOSED DISTRIBUTION

- a. List all persons entitled to distribution and show their addresses, ages, relationship to decedent, and proposed distribution.

## NOTE

Some counties require that the proposed distribution be detailed for each beneficiary, *e.g.*, the amount of cash to be received by each or the numbers of shares securities to be received by each. Practitioners should check local rules.

b. The description of property to be distributed must include (Cal Rules of Ct 7.651(b)):

- (1) The value of cash on hand;
- (2) Whether promissory notes are secured or unsecured, and a description of any security interest in detail;
- (3) The complete legal description, any street address, and the assessor's parcel number for real property; and
- (4) The complete description of each individual security held in "street name" in a brokerage account.

c. If the proposed distribution is straightforward, the details can be set forth in the petition.

d. When the will is unclear or the distributions are complex, the report of assets passing to testate beneficiaries should quote or paraphrase all relevant will provisions to indicate the specific authority for the requested distributions.

**Form:** See Appendix 47 for specific allegations.

**Further Research:** For further discussion of distribution provisions, including distribution to minors, see Decedent Estate Prac §§31.72-31.76.

## JUDGE'S PERSPECTIVE

When distributions to minors are placed in a blocked account, a receipt must be filed with the court.

### Distribution to Trustee of Testamentary Trust

a. If will establishes a testamentary trust, include in the distribution order every will provision relating to the trust or the trustees including who shall act as successor trustee(s) in the event the current trustee is unable to act, not just provisions describing dispositive terms. See Appendix 47.

b. Provisions must be stated in the present tense and in the third person; the order cannot just quote the will. Cal Rules of Ct 7.650.

**Further Research:** For further discussion of distribution to trustee of testamentary trust, see Decedent Estate Prac §§31.68-31.69.

### When Distributee's Whereabouts Are Unknown

If a distributee's whereabouts are unknown, the order of distribution must include alternate distributees and the shares to which they are entitled. Prob C §11603(c). See Appendix 47.

a. The alternate distributees are the persons who would be entitled to distribution:

- (1) If the distributee named in the order predeceased the decedent; or
- (2) In the case of a charitable gift, under the doctrine of cy pres.

b. The distributee is deemed to have predeceased the decedent if:

- (1) The distributee does not claim his or her share within 5 years after the date of the order of distribution; and
- (2) The alternate distributees are entitled to the share.

**Further Research:** For further discussion of distribution when distributee's whereabouts are unknown, see Decedent Estate Prac §§31.70-31.71.

## COMPENSATION

### Statutory Compensation

The petition for statutory compensation or attorney fees must set forth the estate accounted for and the calculation of statutory compensation. Cal Rules of Ct 7.705. See Appendix 47 for statement of fee base and calculation in petition.

### Calculation of Compensation

The ordinary statutory compensation for services of the personal representative (Prob C §10800) and the attorney for the personal representative (Prob C §10810) is:

- a. 4% of the first \$100,000;
- b. 3% of the next \$100,000;
- c. 2% of the next \$800,000;
- d. 1% of the next \$9 million;
- e. 0.5% of the next \$15 million; and
- f. Determined by the court on amounts above \$25 million.

#### NOTE

A personal representative who is also a member of the law firm receiving fees must either waive statutory compensation as a personal representative or agree not to participate in any fee for legal services. Prob C §10804; Cal Rules of Ct 7.706.

**Further Research:** For the amount of ordinary compensation generally, see Decedent Estate Prac §§30.33-30.39.

#### Apportionment of Compensation

If there are two or more representatives or attorneys, the court apportions statutory commissions and fees. Cal Rules of Ct 7.704.

- a. If the parties have made a written agreement, the court must base the apportionment on the agreement. Refer to the agreement in the petition and attach it as an exhibit to the account.
- b. If there is no agreement, the court equitably apportions commissions and fees according to the services each rendered. The petition should recite these facts, request that the compensation be apportioned, and suggest a division. See Decedent Estate Prac §30.39.

**Form:** See Appendix 47.

#### Extraordinary Compensation

a. A request for extraordinary compensation must include or be accompanied by a statement of facts on which the petition is based. The statement must (Cal Rules of Ct 7.702):

- (1) Show the nature and difficulty of the tasks performed;
- (2) Show the results achieved;
- (3) Show the benefit of the services to the estate;
- (4) Specify the compensation requested for each category of service performed;
- (5) State the hourly rate for each person who performed services and the time spent;
- (6) Describe the services rendered in enough detail to demonstrate that the time was spent productively; and
- (7) State the estimated amount of *statutory* compensation if the petition is not part of the final account or report.

b. Some courts also require a showing that the statutory fee is insufficient to provide reasonable compensation for both ordinary and extraordinary services. Check local rules.

**Form:** See Appendix 47.

**Further Research:** For examples of extraordinary services, see Cal Rules of Ct 7.703.

#### Compensation Paid in Advance

Although the personal representative and the estate's attorney should *never* be paid without *prior* court approval (Cal Rules of Ct

7.700), if the representative or attorney has paid himself or herself compensation without a prior court order, the petition for approval of the account and for final distribution must (Prob C §1064(a)(3); see Decedent Estate Prac §30.54):

- a. Contain a statement of the compensation paid; and
- b. Ask for court approval of the prior payments.

**Form:** See Appendix 47.

#### Removal and/or Surcharge If Compensation Paid in Advance

In addition to removing the personal representative, the court may (Cal Rules of Ct 7.701(b)):

- a. Surcharge the personal representative for paying or receiving statutory fees or commissions, or fees for extraordinary services, before obtaining a court order authorizing payment; and
- b. Impose any other sanctions authorized by law against the personal representative or the attorney for the personal representative.

**Further Research:** For discussion of compensation, see Decedent Estate Prac, chap 30, and check local rules.

#### RESERVE FOR CLOSING EXPENSES

a. Even though an estimate of closing expenses is no longer required, it is still advisable to include an estimate. Examples of estimated closing expenses include:

- (1) Estate taxes, interest, and penalties that will be paid after distribution;
- (2) The cost of transferring securities to the distributees;
- (3) The cost of reasonable storage, delivery, and shipping for distribution of tangible personal property to the distributees;
- (4) The cost of certifying and recording copies of the decree of distribution of real property; and
- (5) Unascertained contingencies, such as assessment of additional taxes pending receipt of an estate tax closing letter or expiration of statute of limitations for audit of tax returns.

b. Some courts require additional information about the nature and amount of anticipated closing expenses. Check local rules.

**Form:** For request for reserve for closing expenses, see Appendix 47.

#### VERIFICATION

The personal representative must verify the petition and account. Prob C §1021. See Decedent Estate Prac §§1.27-1.28.

#### HEARING PROCEDURES

#### OBTAINING HEARING DATE

- a. The court clerk sets the date for the hearing on the petition for approval of an account and for final distribution. Prob C §1041.
- b. Procedures for setting the hearing date vary from county to county:
  - (1) In some counties, the attorney may be able to reserve a date by telephone and then send the papers to the court;
  - (2) In other counties, hearing dates are obtained only when:
    - (a) The petition is filed (see, *e.g.*, Los Angeles Ct R 10.15); or
    - (b) The petition and notice of hearing are submitted to the court clerk (see, *e.g.*, San Francisco Ct R 14.2).

## NOTE

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.

## GIVING NOTICE OF HEARING

a. Mail notice of the hearing on a petition for approval of an account (Prob C §11000) and for final distribution (Prob C §11601) at least 15 days before the hearing date as provided in Prob C §1220 to:

- (1) Each known heir or devisee whose interests would be affected by the petition (subject to the stepchild/foster-child exception of Prob C §1207) (Prob C §§11000(a)(2)-(3), 11601(b)-(c));
- (2) Everyone who has requested special notice (Prob C §1220);
- (3) The Attorney General, if any portion of the estate will escheat to the state of California and its interest would be affected by the petition (Prob C §§11000(a)(4), 11601(d));
- (4) Each creditor whose claim is allowed or approved but is unpaid, if the estate is insolvent (Prob C §11000(a)(5)); and
- (5) The controller, if property will be distributed to the state of California because there is no known beneficiary or the beneficiary's whereabouts are unknown. Prob C §11601(d).

## NOTE

If the beneficiaries of an insolvent estate waive the account, notice does not have to be given to creditors whose claims are unpaid unless they have requested special notice. Major creditors usually will request special notice, however.

- b. Give notice on Notice of Hearing (Judicial Council Form DE-120). For copy of form, see Decedent Estate Prac §6.11.
- c. File proof of mailing before the date set for the hearing.

## Notice to Minors and Incompetent Persons

Serve notice to minors and incompetent persons on both the minor (in a separate envelope to each minor) or incompetent person and on any duly appointed guardian or conservator, unless (see Cal Rules of Ct 7.51(c)-(d)):

- a. The court has dispensed with notice to the minor or conservatee; or
- b. The notice is personally served on a California-resident guardian or conservator of the estate under Prob C §1210.

## HEARING PRACTICES

a. In some counties, the representative's personal appearance and testimony in support of the allegations in the account, report, and petition for distribution are required.

## NOTE

Appearance by the attorney is often required when fees for extraordinary services are sought. See Decedent Estate Prac §30.55.

- b. In some counties, the court accepts the verified account, report, and petition when the petition and account are uncontested and comply with all legal requirements, and an appearance is required only if further information on any actions stated in the petition or account is needed. See Prob C §§1000, 1022; CCP §2009.
- c. Many counties have a tentative ruling or pre-grant system. If the matter is pre-granted and no one objects, appearance is excused.
- d. Many courts will inform attorneys about defects in the petition or notice by telephone or the Internet. Defects may then sometimes be cured by giving the court supplemental documents, so that the petition can be granted without a continuance.

## NOTE

Because procedures differ from county to county, consult local rules, and, if necessary, court staff or an attorney who regularly appears before the court. Most courts have websites that provide information on practice and procedure.

## ORDER OF FINAL DISTRIBUTION

### PREPARING ORDER OF FINAL DISTRIBUTION

#### Minimum Requirements

The order settling the account has become a catch-all. The Probate Code expressly requires that the order contain only (Prob C §11602):

- a. The names of the distributees and the share to which each is entitled; and
- b. A provision that property to be distributed subject to a limitation or condition, including but not limited to an option, is distributed subject to the terms of the limitation or condition.

#### Additional Findings

Good practice and some court rules call for including a finding or an order that (see Decedent Estate Prac §§31.95-31.132):

- a. All allegations of the petition are true;
- b. Notice to creditors has been given as required by law (Prob C §9001);
- c. All personal property taxes due and payable by the estate have been paid;
- d. The account is settled (Prob C §§11000, 11002);
- e. All debts of decedent and the estate have been paid;
- f. Authorizes withholding estimated closing expenses;
- g. Authorizes payment of compensation; and
- h. Includes the full terms of any trust created by the will, including definitions (these terms must be stated in the present tense and in the third person), includes all powers of the trustee, and names the substitute trustee(s) on the failure of a named trustee to act.

#### NOTE

Court rules may require other statements or recitals, and local practice should be checked.

**Form:** For form language for the order of final distribution, see Appendix 48. For complete discussion of order clauses, see Decedent Estate Prac §§31.95-31.132.

**Source:** Estate Planning/Handling a Probate (Action Guide)/Closing the Estate/STEP 25. TRANSFERRING ASSETS AND DISCHARGE

STEP 25. TRANSFERRING ASSETS AND DISCHARGE

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TRANSFERRING ASSETS

On entry of the judgment of distribution, the representative should:

- a. Arrange to transfer the estate's assets to the distributees; and
- b. Obtain and file receipts for all items.

NOTE

Make sure you have a completed W-9 for each distributee. See [step 3](#), above.

TRANSFERRING SECURITIES

- a. It is usually simpler and less expensive to have a stockbroker carry out the transfers, *e.g.*, decedent's broker or a broker the client has used in the past.
- b. Present the following documents to each stock transfer agent, mutual fund, or other private institution:
  - (1) Any original stock certificate, bond, or other instrument (if lost, see [Transferring Prop. step 33](#));
  - (2) Affidavit of Domicile, used to avoid transfer taxes imposed by New York state, where most transfer agents, mutual funds, and other institutions are located;
  - (3) Stock or Bond Power, endorsed by the representative appointing the transfer agent or stockbroker as the client's "attorney in fact" to carry out the transfer with a "signature guaranty" by a bank official or stockbroker (similar to a notary acknowledgment;
  - (4) Letters certified within 60 days before presentation to prove the representative's appointment or incumbency; and
  - (5) Letter of instructions to, *e.g.*, reissue the security identifying the distributee as the owner. For sample letter when security is still in decedent's name, see [Decedent Estate Prac §32.41](#).

NOTE

For a full discussion of transfer of securities, see [Decedent Estate Prac §§32.28-32.50](#).

Securities in Representative's Name

The only documents required by transfer agents to transfer securities in the representative's name to purchaser or distributees of the estate are ([Com C §8402](#)):

- a. The certificates;
- b. A stock power signed by the representative; and
- c. A signature guaranty.

NOTE

It may save time to send a copy of the court order as well, because some transfer agents request it and will not act until they receive it.

Mailing Certificates

- a. Send stock certificates or bonds by registered or insured mail.

- b. Mail the stock power and the certificates separately; if one is lost or stolen, it is worthless without the other.

**Form:** For a chart of documents required for transfer of securities, see [Appendix 49](#).

#### NOTE

Some transfer agents require tax waivers from states other than California for certain securities, affidavits of domicile, or both.

#### TRANSFERRING REAL PROPERTY

- a. Record a certified copy of the order for distribution that contains an exact and legible legal description (including the assessor's parcel number (APN)) of the real property in each county where the property is located.
- b. File Preliminary Change of Ownership Report (PCOR) with the county recorder. See [step 20](#), above.
- c. The representative may provide the beneficiary with an executor's or administrator's deed that contains a reference to the representative's authority to convey title, together with a limitation on representations, warranties, and covenants, to be recorded concurrently with the distribution order.

#### NOTE

This is rarely done, and is not necessary if the decree is recorded.

- d. Notify property insurance carrier of the transfer.

#### NOTE

A representative who prefers not to record the order (perhaps because of its length) may provide a deed to be recorded without the order.

**Form:** For form of deed, see [Appendix 43](#).

#### TRANSFERRING OTHER ASSETS

##### Stock in Closely Held Corporation

Request the attorney for the closely held corporation to prepare new stock certificates showing proof of ownership as set forth in the judgment of distribution. The attorney may need a copy of the judgment of distribution for corporate records.

##### Promissory Notes

Distribute to a beneficiary by assignment. If the note is secured by real property, record a certified copy of the judgment of final distribution in the county in which the property is located.

##### Tangible Personal Property

Transfer tangible property by relinquishing dominion and control of the asset to the distributee. Give the distributee a certified copy of the judgment of distribution to establish title to the asset.

##### Automobiles

- a. Endorse the certificate of ownership and send it to the Department of Motor Vehicles with a certified copy of the representative's letters.
- b. Notify the insurance company of the change of ownership.

##### Cash

- a. Draw a check on the personal representative's account made payable to the beneficiary on one or more of the estate's checking accounts or other demand accounts.
- b. If the beneficiary does not return the receipt, make a copy of the front and the back of the check and submit with a declaration in lieu of the receipt.

## OBTAIN AND FILE RECEIPTS

- a. The representative should obtain a receipt on delivery for all items except real property.
- b. List property on the receipt in the same order as in the judgment of distribution—it makes it easier to see whether all property has been distributed.
- c. File "the appropriate receipts" (unless the court has excused filing a receipt), showing that all property has been delivered to the persons entitled to it. Prob C §12250.
- d. If a distributee cannot be found or refuses to accept distribution, deposit distribution and a certified copy of judgment of distribution with the county treasurer. If property to be deposited is personal property other than money, obtain a court order for deposit. See Decedent Estate Prac §32.78.
- e. If any distributee did not survive until distribution, transfer the share to the deceased distributee's estate representative. See Decedent Estate Prac §32.80.

*Form:* For form receipt, see Appendix 50.

## FINAL DISCHARGE

### Prepare Documents

After all estate assets have been distributed, prepare Ex Parte Petition for Final Discharge and Order (Judicial Council Form DE-295)

*Forms:* For copy of form, see Appendix 51.

### NOTE

Some courts require all receipts to be filed when you file the declaration of final discharge. Some courts also require a copy of the order of final distribution so that the probate examiner can ensure that there is a receipt from each distributee. Check local rules.

### Deliver Order of Final Discharge

- a. Deliver a certified copy of the order of final discharge to the surety on the representative's bond. See Decedent Estate Prac §9.50 on obtaining a refund for premiums after the first year.
- b. If the representative sent a notice of fiduciary relationship (IRS Form 56) to the IRS, he or she should send the IRS a certified copy of the order of final discharge.

### NOTE

When bond has been waived, some attorneys do not have the representative discharged. This practice facilitates handling assets discovered after final distribution.

APPENDIX 1  
Appointment Letter

--[*date*]--

Estate of --[*name*]--

Office file no. -----

--[*Name*]--

--[*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 of the decedent's legal papers and documents. To assist you in assembling 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 --[*time*]-- 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*]--

Attorney for --[*name*]--

Enclosures

*Copies:* Original to client or survivor; office copies.

**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 2 Basic Estate Information Checklist

APPENDIX 2

Basic Estate Information Checklist

1. Full name or names of decedent: \_\_\_\_\_

Also known as: \_\_\_\_\_

a. Address at time of death: \_\_\_\_\_  
\_\_\_\_\_

b. Location of decedent's 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 and family information

a. Name of spouse/registered domestic partner: \_\_\_\_\_

b. Date and place of marriage/registration: \_\_\_\_\_  
\_\_\_\_\_

c. Status of spouse/registered 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, 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 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 ((if will not self-proving) names, current addresses, and availability; if unavailable, obtain exemplars of signatures):

---

---

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

a. Beneficiaries of will or intestate heirs:

---

---

---

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

---

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**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 3 Preliminary Inventory and Financial Schedule

APPENDIX 3  
Preliminary Inventory and Financial Schedule

ESTATE OF \_\_ [NAME] \_\_

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
_____	_____	\$ _____
_____	_____	\$ _____

3. Outstanding Checks

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

4. Certificates of Deposit

Institution and Location	In name of	Balance	Maturity Date
_____	_____	\$ _____	_____
_____	_____	\$ _____	_____

5. Market-Rate or Similar Accounts

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

C. Real Estate

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

D. Securities

1. Stocks

Company	In name of	Number and	Certificate
_____	_____	_____	_____

		type of shares	number
_____	_____	_____	_____
_____	_____	_____	_____

2. Bonds

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

3. U.S. Bonds

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

E. Insurance

1. Life Insurance

a. On Decedent's Life

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

b. On Decedent's Spouse's Life

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

c. On the Life of Other Individual

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

Salary due from \_\_\_\_\_ for period of \_\_[date]\_\_ to \_\_[date]\_\_ \$ \_\_\_\_\_  
 Insurance and pension benefits \$ \_\_\_\_\_

2. Social Security Benefits

Funeral benefits \$ \_\_\_\_\_  
 Survivor benefits \$ \_\_\_\_\_

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

\_\_\_\_\_  
 \_\_\_\_\_





**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 4 Memorandum Request to Representative for Decedent's Legal Documents

APPENDIX 4

Memorandum Request to Representative for Decedent's Legal Documents

Memorandum to: \_ \_ *[Name of representative]* \_ \_

From: \_ \_ *[Name of attorney]* \_ \_

Re: Decedent's Legal Documents

Please furnish us with the originals of the following papers in which \_ \_ *[name of decedent]* \_ \_ is named, or with copies if originals are unavailable. We need all documents in which \_ \_ *[he/she]* \_ \_ is named alone, with others, or as a joint tenant.

	Date Furnished
1. Deeds	_____
2. Leases	_____
3. Contracts	_____
4. Partnership agreements	_____
5. Annuities and life insurance policies on decedent's life and on decedent's spouse's/registered domestic partner's life	_____
6. Documents showing any death or retirement benefits with decedent's employer	_____
7. Property ( <i>e.g.</i> , fire, theft) and liability insurance policies	_____
8. Automobile ownership certificates (pink slip)	_____
9. Trust instruments made by decedent, or by another if decedent had an interest	_____
10. Account books	_____
11. California and federal income tax returns for past 5 years	_____
12. All federal gift tax returns	_____

*Copies:* Original to client or survivor; office copies.

**INSTRUCTIONS:** If the attorney already has certain information in the estate planning file for decedent, the form should be modified to reflect that fact.

APPENDIX 5  
Probate Estate Record

Special notice to \_\_\_\_\_  
Date of death \_\_\_\_\_  
Place of death \_\_\_\_\_  
Residence \_\_\_\_\_  
Office file no. \_\_\_\_\_  
Estate of \_\_\_\_\_  
Est. value: Real prop. \_\_\_\_\_  
Social Security No \_\_\_\_\_  
Tax I.D. no. \_\_\_\_\_

Referred by \_\_\_\_\_

Related proceedings (e.g., conservatorship) \_\_\_\_\_

SPECIAL EXPERTS NEEDED: Tax attorney? \_\_\_\_ C.P.A.? \_\_\_\_ Other? \_\_\_\_

WILL \_\_\_\_\_ --[date]-- CODICIL(S) \_\_\_\_\_ --[date(s)]--

Pwr/IAEA? \_\_\_\_ Pwr/Sale? \_\_\_\_ Pwr/Lease? \_\_\_\_ Trust? \_\_\_\_

Pwr/Appt? \_\_\_\_ BOND waived? \_\_\_\_ Amount \$ \_\_\_\_

Special provisions \_\_\_\_\_

Was decedent a conservator? \_\_\_\_\_

NONPROBATE ASSETS: Safe deposit box? \_\_\_\_

Ins? \_\_\_\_ Trust? \_\_\_\_ Lease? \_\_\_\_ Real prop? \_\_\_\_ Stocks? \_\_\_\_

Joint bank acct? \_\_\_\_ Joint real prop? \_\_\_\_ Other joint prop? \_\_\_\_

SUMMARY PROCEEDINGS: Small estate? \_\_\_\_

Property passing to spouse or registered domestic partner? \_\_\_\_

NOTICE OF PETITION FOR ADMINISTRATION: Filed? \_\_\_\_

Notice mailed? \_\_\_\_ Proof of mailing filed? \_\_\_\_

Notice published? \_\_\_\_ Proof of publication filed? \_\_\_\_/.

Hearing date: \_\_\_\_ Hearing time: \_\_\_\_ Department: \_\_\_\_

LETTERS:

General? \_\_\_\_ Special? \_\_\_\_ Special w/ general's pwrs? \_\_\_\_

Pwr under IAEA? \_\_\_\_ Date issued: \_\_\_\_

Bond waived? \_\_\_\_ Bond amount: \_\_\_\_

CREDITORS:

List received? \_\_\_\_ Notice mailed? \_\_\_\_

ASSETS: In our safe? \_\_\_\_\_ In trustee acct? \_\_\_\_\_

Tangible or perishable? \_\_\_\_\_

BUSINESS order needed? \_\_\_\_\_ JOINT probate? \_\_\_\_\_

INCOME TAX: Who prepares returns? \_\_\_\_\_

Fiscal year ending? \_\_\_\_\_ First returns due? \_\_\_\_\_

ESTATE TAX: None \_\_\_\_\_ IRS Form 706 due: \_\_\_\_\_

State return due: \_\_\_\_\_

Who prepares returns? \_\_\_\_\_

OTHER TAX DECISIONS MADE:

Disclaimer? \_\_\_\_\_

Request Prompt Assessment? \_\_\_\_\_

Any special elections to be made? \_\_\_\_\_

PROBATE REFEREE: \_ \_ [name, address, phone number] \_ \_

Petition to waive appointment? \_\_\_\_\_

FAMILY ALLOWANCE: Amount \$ \_\_\_\_\_ Ends: \_ \_ [date] \_ \_

Recipients: \_\_\_\_\_

ACCOUNTS: Interim? \_\_\_\_\_ Final? \_\_\_\_\_ Waived? \_\_\_\_\_

FEES:	Personal rep #1:	Requested? _____	Waived? _____	Extra? _____
	Personal rep #2:	Requested? _____	Waived? _____	Extra? _____
Atty:	_____	Requested? _____	Waived? _____	Extra? _____

CHRONOLOGICAL CHECKLIST

Period	Action	Date by which action must be taken
<b>DATE OF DEATH</b>		
Within 30 days	Lodge will with court; mail copy to nominated executor	_____
Within 50 days after receiving notice of petition for administration	Petition for probate	_____
Within 90 days	Notify Director of Health Services if decedent received Medi-Cal benefits or was surviving spouse or registered domestic partner of person who received Medi-Cal benefits ( <u>Prob C §215</u> )	_____
Within 9 months	File disclaimers and estate tax returns and pay estate taxes (IRS 706; Cal ET-1)	_____
<b>DATE LETTERS ISSUED:</b> _____		
Promptly	Notice of Fiduciary Relationship (IRS Form 56); Application for Tax I.D. no. (IRS Form SS-4)	_____
Within 2 months	Preliminary distribution allowed	_____
Within 4 months	Inventory and Appraisal filed	_____
Within 90 days	Notice to Director of California Victim Compensation and Government Claims	_____

Within 120 days after will admitted	Board ( <u>Prob C §9202(b)</u> ). Notice to Franchise Tax Board ( <u>Prob C §9202(c)</u> ) Filing of will contest	_____
Within 4 months after letters issued or, if later, within 30 days after representative first has knowledge of a creditor	Notice of administration sent to known or reasonably ascertainable creditors ( <u>Prob C §9050</u> ); preliminary distribution allowed	_____
Within 4 months after letters issued or 60 days after notice of administration sent to creditors	Creditors' claims filed (see <u>Prob C §§9100-9104</u> on extending time)	_____
Within 4 months after letters issued	Election to administer community property under <u>Prob C §13502</u>	_____
Within 1 year or 18 months after letters issued	Status report or petition for final distribution ( <u>Prob C §12200</u> )	_____
Within 16 months after letters issued	Deadline for creditor to petition to determine liability of personal representative for failure to give notice ( <u>Prob C §9053</u> )	_____
Before estate is closed	Notice of administration sent to late-discovered creditors	_____
<b>MISCELLANEOUS DATES</b>		
April 15	Decedent's final income tax returns due	April 15, 20__
Within 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?
- \_\_\_\_\_ 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:

\_\_\_\_\_

\_\_\_\_\_

---

---

**Attorney initials** \_\_\_\_

INSTRUCTIONS: The probate estate record may be copied and attached to the outside of individual file folders or the main file folder. The form contains basic information on decedent, the estate, interested parties, and the status of the probate estate. This form enables the reader to see at a glance the specifics and current status of a probate estate. The form also supplies names and addresses of persons who request special notice (Probate Workflow §5.23), so that the requirement of giving the special notice or obtaining a waiver is not overlooked. When the estate is closed, these records can be kept as summaries of information in inactive files.

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**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 6 Letter Requesting Death Certificate

APPENDIX 6

Letter Requesting Death Certificate

\_\_ [date] \_\_

Estate of \_\_ [name] \_\_, deceased

Dear \_\_ [Sir/Madam] \_\_:

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

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

Very truly yours,

\_\_ [Signature] \_\_

\_\_ [Typed name] \_\_

Attorney for \_\_ [name] \_\_

Enclosure

*Copies:* Original for mailing; office copies.

INSTRUCTIONS: See general instructions in step 3. In Los Angeles County, use the Bureau of Vital Statistics form.

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**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 7 Table of Consanguinity; Chart of Relationships

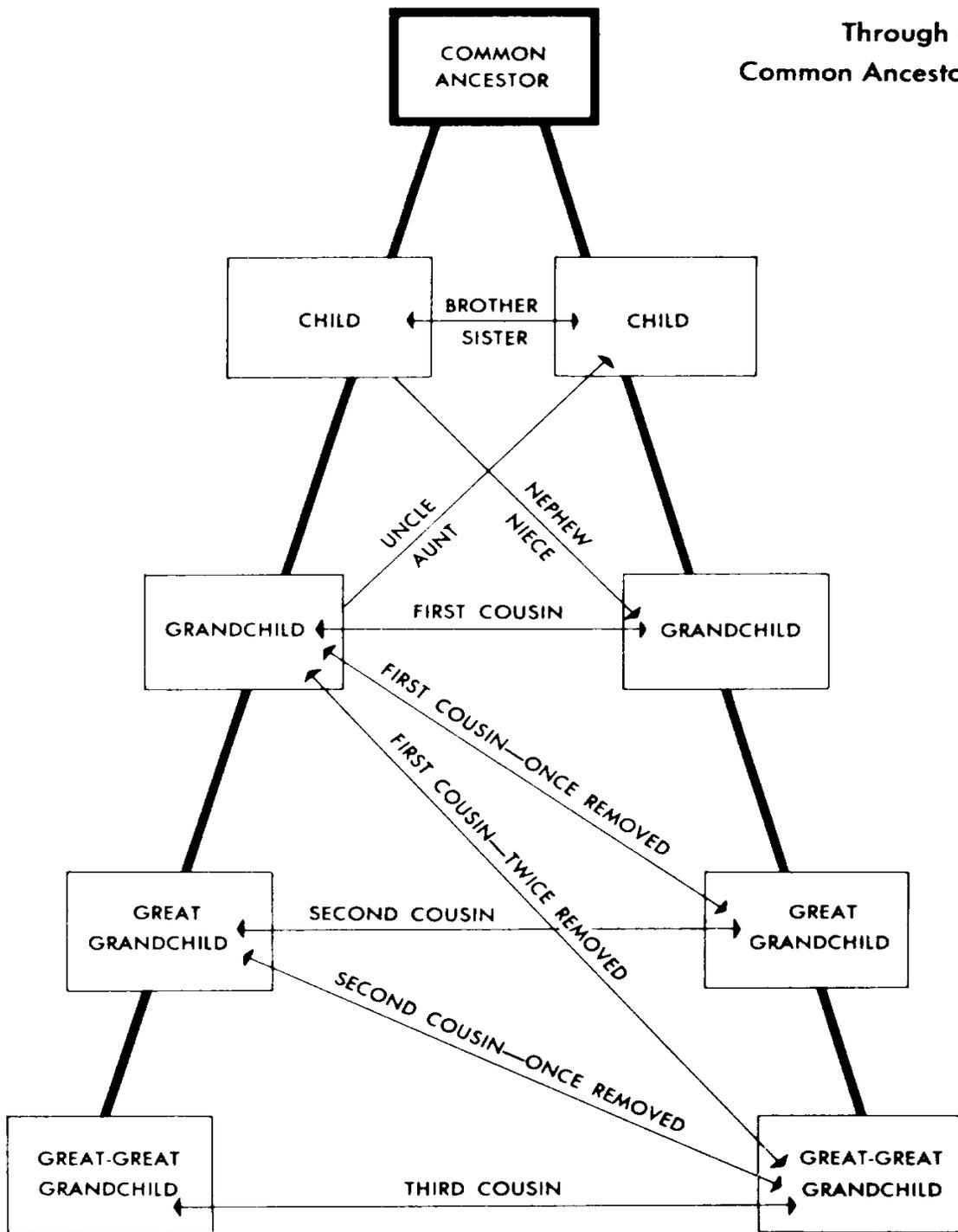
APPENDIX 7  
Table of Consanguinity; Chart of Relationships





# CHART OF RELATIONSHIPS

Through a Common Ancestor



**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 8 Petition for Probate (Judicial Council Form DE-111)

APPENDIX 8  
Petition for Probate (Judicial Council Form DE-111)



ATTORNEY OR PARTY WITHOUT ATTORNEY ( <i>Name, State Bar number, and address</i> ):  TELEPHONE NO.: _____ FAX NO. ( <i>Optional</i> ): _____ E-MAIL ADDRESS ( <i>Optional</i> ): _____ ATTORNEY FOR ( <i>Name</i> ): _____	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
ESTATE OF ( <i>Name</i> ): _____  <div style="text-align: right;">DECEDENT</div>	
PETITION FOR <input type="checkbox"/> Probate of Will and for Letters Testamentary <input type="checkbox"/> Probate of Will and for Letters of Administration with Will Annexed <input type="checkbox"/> Letters of Administration <input type="checkbox"/> Letters of Special Administration <input type="checkbox"/> with general powers <input type="checkbox"/> Authorization to Administer Under the Independent Administration of Estates Act <input type="checkbox"/> 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*): \_\_\_\_\_









**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 9 Receipt and Agreement by Depository

APPENDIX 9  
Receipt and Agreement by Depository

[Title of court]

Estate of \_ [name] \_ , ) No. \_ \_ \_ \_ \_  
Deceased )  
)  
) RECEIPT AND AGREEMENT BY  
) DEPOSITORY (PROBATE CODE  
\_\_\_\_\_ ) §8401)

The undersigned acknowledges \_ [a deposit/investment] \_ of \$ \_ [amount] \_ in \_ [a savings account/investment certificates] \_ and deposit of the following securities: \_ [Describe securities, e.g., name of company, amount of shares] \_ in the name of \_ [name of representative] \_ , which \_ [is/are] \_ being held pursuant to this agreement with \_ [name of representative] \_ as petitioner for letters \_ [testamentary/of administration] \_ in the above-named estate, from which withdrawals of \_ [any kind/principal] \_ may be made only on court order.

[Add if appropriate]

All income from such property shall be paid quarterly to \_ [name of representative] \_ as \_ [executor/administrator] \_ of the \_ [will/estate] \_ of decedent by mailing that income to \_ [him/her] \_ at \_ [address of representative] \_ .

[Continue]

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.

**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 10 Attachment 2 to Judicial Council Form DE-111 Deposit of Assets to Reduce Bond

APPENDIX 10

Attachment 2 to Judicial Council Form DE-111 Deposit of Assets to Reduce Bond

To reduce the amount of the bond that the court will fix, Petitioner \_\_ *[desires to deposit/desires 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 \_\_ *[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]* \_\_.

**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 11 Attachment 3d to Judicial Council Form DE-111 Waiver of Bond

APPENDIX 11

Attachment 3d to Judicial Council Form DE-111 Waiver of Bond

Estate of \_\_[name]\_\_, ) No. \_\_\_\_\_  
Deceased )  
)  
) WAIVER OF BOND  
)  
\_\_\_\_\_ ) (PROBATE CODE §8481(a)(2))

I, \_\_[name]\_\_, in my individual capacity as \_\_[an heir/a beneficiary under the will]\_\_ of the above-named decedent, waive the requirement of a bond by \_\_[name of personal representative]\_\_ under Probate Code §8481(a)(2).

Date: \_\_\_\_\_  
\_\_[Typed name]\_\_ \_\_\_\_\_[Signature]\_\_

*Comment:* If there is more than one beneficiary or heir, each must execute a waiver, or this form can be modified so it can be signed by all.

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**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 12 Attachment 3f(1) to Judicial Council Form DE-111 Declination to Serve as Executor and Nomination

APPENDIX 12

Attachment 3f(1) to Judicial Council Form DE-111 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 act 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]\_\_.

Date: \_ \_ \_ \_ \_

\_\_[*Signature*]\_\_

\_\_[*Typed name*]\_\_



**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 14 Attachment 3f(2)(b) to Judicial Council Form DE-111 Nomination of Administrator

APPENDIX 14

Attachment 3f(2)(b) to Judicial Council Form DE-111 Nomination of Administrator

Estate of \_\_[name]\_\_ , ) No. \_\_\_\_\_  
Deceased )  
)  
) NOMINATION OF  
) ADMINISTRATOR  
)  
) (PROBATE CODE §8465)  
\_\_\_\_\_ )

I \_\_[name]\_\_, \_\_[state relationship of nominating heirs to decedent, e.g., the surviving spouse]\_\_ of decedent, \_\_[name]\_\_, nominate \_\_[name]\_\_, a resident of the State of \_\_[name]\_\_ and over the age of majority, to serve as administrator of the Estate of \_\_[name]\_\_.

Date: \_\_\_\_\_ )  
\_\_[Typed name]\_\_ )

INSTRUCTIONS: The relationship of the nominating heirs to decedent should be stated in order to ascertain that they are the persons entitled to priority.

**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 15 Notice of Petition to Administer Estate (Judicial Council Form DE-121)

APPENDIX 15  
Notice of Petition to Administer Estate (Judicial Council Form DE-121)



ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i>   TELEPHONE NO.: _____ FAX NO. <i>(Optional)</i> : _____ E-MAIL ADDRESS <i>(Optional)</i> : _____ ATTORNEY FOR <i>(Name)</i> : _____	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
ESTATE OF <i>(Name)</i> :   <div style="text-align: right;">DECEDENT</div>	
<b>NOTICE OF PETITION TO ADMINISTER ESTATE OF</b> <b><i>(Name)</i>:</b>	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.







**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 16 Information Letter to Beneficiary

APPENDIX 16

Information Letter to Beneficiary

\_\_ [date] \_\_

Subject: Estate of \_\_ [name] \_\_, deceased

Dear \_\_ [name] \_\_:

A Notice of Petition To Administer Estate of the above-named decedent \_\_ [is enclosed/has been mailed to you] \_\_. The purpose of the notice is to give anyone who desires to \_\_ [contest the will or to object to the appointment of the petitioner/object to the petition] \_\_ an opportunity to do so in the manner provided by law. If you do not object, it is not necessary for you to appear personally at the hearing.

[Add if appropriate]

Authority has been requested to administer the estate under the Independent Administration of Estates Act. This authority would reduce to some extent the court supervision ordinarily required, thus expediting administration of the estate.

[Continue]

The notice also informs you of your right to file a request for special notice.

[Add if appropriate]

A spousal property petition has been filed with this petition. It would remove all property passing to the decedent's spouse from the probate proceedings.

[Add if a copy of the petition, the will, or both, are enclosed]

Also enclosed is a copy of the petition \_\_ [and the will] \_\_.

[Add if extract of will is enclosed]

An extract of the will pertaining to your inheritance is enclosed.

[Add if inheritance is described]

\_\_ [The will of the decedent leaves you/You will receive] \_\_ \_\_ [specify] \_\_, which will be \_\_ [paid/distributed/(use appropriate wording)] \_\_ on the closing of the estate.

[Continue]

At least \_\_ [number] \_\_ months will be required to complete the estate proceedings, as long as there are no unforeseen complications.

[Add if appropriate]

As soon as an inventory is completed, a copy will be sent to you. Also, when the estate is being closed, a copy of the final account will be sent to you so that you will be fully informed of all proceedings.

[Continue]

If you have any questions about the estate, we will be pleased to answer them.

Very truly yours,

\_\_ [Signature] \_\_

\_\_ [Typed name] \_\_

Attorney for \_\_ [name] \_\_

**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 17 Letter to Subscribing Witnesses

APPENDIX 17

Letter to Subscribing Witnesses

\_\_ [date] \_\_

\_\_ [Name, address, and telephone no.] \_\_

Re: Estate of \_\_ [name] \_\_, deceased

Dear \_\_ [name] \_\_:

I represent the estate of \_\_ [name] \_\_, who died on \_\_ [date] \_\_, leaving a will dated \_\_ [date of will] \_\_, which you signed as a witness. A photocopy of this will is attached to the enclosed form.

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 to 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 three are accurate, please sign the form on the line marked "(Signature of Witness)" and return the form to me in the self-addressed stamped 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] \_\_

\_\_ [Typed name] \_\_

Attorney for \_\_ [name] \_\_

**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 18 Proof of Subscribing Witness (Judicial Council Form DE-131)

APPENDIX 18  
Proof of Subscribing Witness (Judicial Council Form DE-131)





**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 19 Attachment 2a to Judicial Council Form DE-111 Lost or Destroyed Will

APPENDIX 19

Attachment 2a to Judicial Council Form DE-111 Lost or Destroyed Will

Decedent left a will dated \_\_[date]\_\_, 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]\_\_.

The will provisions are set forth in the attached written statement, marked Attachment \_\_\_ and made a part of this document by this reference.

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**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 20 Attachment 2 to Judicial Council Form DE-131 Proof of Due Execution

APPENDIX 20

Attachment 2 to Judicial Council Form DE-131 Proof of Due Execution

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.

[Add if will was 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 was destroyed during decedent's lifetime without his or her knowledge, state facts of destruction and facts of decedent's lack of knowledge]

I certify 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 \_ \_ *[name]* \_ \_

*Copies:* Original (to be executed by or by one of the subscribing witnesses to the will) for filing; office copies.

*Comment:* This declaration, which may be used as Attachment 2 to Proof of Subscribing Witness (Judicial Council Form DE-131, in [Appendix 18](#), 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 modified accordingly.

**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 21 Order for Probate (Judicial Council Form DE-140)

APPENDIX 21  
Order for Probate (Judicial Council Form DE-140)



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):	TELEPHONE AND FAX NOS.:	<i>FOR COURT USE ONLY</i>
ATTORNEY FOR (Name):		
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b>		
STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
ESTATE OF (Name):		DECEDENT
<b>ORDER FOR PROBATE</b> <b>ORDER APPOINTING</b> <input type="checkbox"/> Executor <input type="checkbox"/> Administrator with Will Annexed <input type="checkbox"/> Administrator <input type="checkbox"/> Special Administrator <input type="checkbox"/> Order Authorizing Independent Administration of Estate <input type="checkbox"/> with full authority <input type="checkbox"/> with limited authority		CASE NUMBER:
<b>WARNING: THIS APPOINTMENT IS NOT EFFECTIVE UNTIL LETTERS HAVE ISSUED.</b>		

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

SIGNATURE FOLLOWS LAST ATTACHMENT

7. Number of pages attached: \_\_\_\_\_

**ORDER FOR PROBATE**

**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendix/APPENDIX 22 Attachment 5c to Judicial Council Form DE-140 (Deposit of Assets)

APPENDIX 22

Attachment 5c to Judicial Council Form DE-140 (Deposit of Assets)

[When deposit made before hearing, add to findings  
in order appointing personal representative]

— *[Name]* — has — *[deposited/invested]* — \$ — *[amount]* — 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]

, provided, however, that — *[name of personal representative]* — shall file in this proceeding a receipt executed by — *[name of depository]* — acknowledging that — *[name of personal representative]* — has — *[deposited/invested]* — with said institution \$ — *[amount]* —, — *[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 when income is subject to withdrawal]

All income from the property — *[deposited/invested]* — with — *[name of depository]* — shall be paid to — *[name]* — as — *[executor, administrator]* — of the — *[will/estate]* — of the decedent.

**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 23 Letter of Instructions

APPENDIX 23

Letter of Instructions

Estate of \_\_\_\_\_

\_\_ [date] \_\_

Dear \_\_ [name of executor of the will/administrator of the estate] \_\_:

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 legal documents. From time to time we will communicate with you about various aspects of administration of the estate, but 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/administrator] \_\_, 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 beneficiary.
7. Deposit estate funds in your personal account (not allowed under any circumstances).
8. Act without authority of your \_\_ [coexecutor/ 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 administering 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 that is part of the decedent's estate. 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. 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 tax reporting for the account is mailed to you at year end.

2. All of decedent's outstanding checks should be listed on an estate information checklist.

3. 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 noninterest-paying checking account until the estate has enough cash to open an interest-paying account.

4. 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 due 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, not to the estate, IRA benefits payable directly to an individual, or annuity benefits. We need a copy of all gift tax returns filed by the decedent.

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 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 any 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.*, gardener, cook, accountant, 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. 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. Income Taxes and Estate 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 state income tax purposes. There may be income taxes due in the state of death and any other 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,



broadest sense. The attorney must edit it carefully to suit the particular estate and representative.

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**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 24 Receipt for Anticipatory Distribution and Indemnity Agreement

APPENDIX 24

Receipt for Anticipatory Distribution and Indemnity Agreement

[Title of court]

Estate of \_ \_[name]\_ \_ , ) No. \_ \_ \_ \_ \_  
Deceased )  
) RECEIPT FOR ANTICIPATORY  
) DISTRIBUTION AND INDEMNITY  
\_\_\_\_\_ ) AGREEMENT

The undersigned hereby acknowledges receipt from \_ \_[name of representative]\_ \_ , the \_ \_[executor/administrator]\_ \_ of the \_ \_[will/estate]\_ \_ of the above-named decedent, of the following property: \_ \_[Describe property]\_ \_ .

In consideration of the anticipatory distribution and delivery of the above-described property to the undersigned before the entry of a judgment of 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 attorney 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 by the probate referee in the inventory and appraisal filed with the court), at any time during the administration of the estate if \_ \_[name of representative]\_ \_ in \_ \_[his/her]\_ \_ discretion decides that the return of this property or any part of it is in the estate's best interests.

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.

Date: \_ \_ \_ \_ \_ )  
\_ \_[Type name]\_ \_ ) \_\_\_\_\_[Signature]\_\_\_\_\_

**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 25 Letter to Representative on Estimate of Cash Needs

APPENDIX 25

Letter to Representative on Estimate of Cash Needs

Re: Estate of \_ \_ [name] \_ \_

Dear \_ \_ [name] \_ \_:

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 assets) and deducting from it the total deductions authorized by law. The tax is due 9 months after the date of the decedent's death, and the representative must file a return for the estate if the gross estate exceeds the exemption available at the time of death. The exemption is \$ \_ \_ [amount] \_ \_.

We \_ \_ [will assist you in preparing the federal estate tax return/understand that your accountant, \_ \_ [name] \_ \_ , 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 \$ \_ \_ [amount] \_ \_ , but this 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 to pay these 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 9 months are estimated below. Bear in mind that these figures are estimates only and are subject to revision from time to time.

Receipts

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 15 months	_____
Cash bequests to	_____
Executor's commissions	_____
Attorney fees	_____
Filing fees	_____
Miscellaneous administration expenses	_____
TOTAL	\$ _ _ _ _ _

**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 26 Inventory and Appraisal (Judicial Council Form DE-160)

APPENDIX 26  
Inventory and Appraisal (Judicial Council Form DE-160)





ESTATE OF (Name):  <div style="display: flex; justify-content: space-around; margin-top: 10px;"> <input type="checkbox"/> DECEDENT    <input type="checkbox"/> CONSERVATEE    <input type="checkbox"/> MINOR </div>	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.)

**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 27 Inventory and Appraisal Attachment (Judicial Council Form DE-161)

APPENDIX 27  
Inventory and Appraisal Attachment (Judicial Council Form DE-161)



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.)*

<u>Item No.</u>	<u>Description</u>	<u>Appraised value</u>
-----------------	--------------------	------------------------

**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendix/APPENDIX 28 Procedural Guide: Creditors' Claims

APPENDIX 28  
Procedural Guide: Creditors' Claims

1. Notice of petition to administer estate published in: \_\_\_\_\_ on \_\_\_\_\_. Prob C §§8100, 8120-8125.
2. Proof of publication of notice of petition to administer estate filed on \_\_\_\_\_. Prob C §8124; CCP §§2010, 2015.5.
3. Date letters first issued, including letters of special administration with powers of general administrator: \_\_\_\_\_.
4. Steps taken to determine reasonably ascertainable creditors. See Decedent Estate Prac §§14.6-14.11. List actions taken:
5. Send notice of administration 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)).

Name of Creditor	Date Mailed or Personally Delivered	Filing Deadline
_____	_____	_____
_____	_____	_____
_____	_____	_____

6. If creditor is discovered more than 4 months after letters issued, send notice of administration within 30 days after discovery. Prob C §9051(b). Claim must be filed within 60 days after notice is given 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
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

7. Request for claim sent to (Prob C §§9201-9202):

- \_\_\_ State Board of Equalization on \_\_\_\_\_. See Rev & T C §6487.1.
- \_\_\_ Department of Mental Health on \_\_\_\_\_. See Welf & I C §7277.1.
- \_\_\_ Employment Development Department on \_\_\_\_\_. See Un Ins C §1090.
- \_\_\_ Director of Health Services on \_\_\_\_\_. Prob C §9202. DHS likes to have copy (need not be certified) of death certificate attached.
- \_\_\_ California Victim Compensation and Government Claims Board on \_\_\_\_\_. Prob C §§216, 9202(b).
- \_\_\_ Franchise Tax Board on \_\_\_\_\_. See Prob C §9202(c), Rev & T C §19517.

8. Claims approved: (Prob C §§9250-9251)

Name of Creditor	Amount	Date Filed
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____

File Allowance or Rejection of Creditor's Claim (Judicial Council Form DE-174) for each claim allowed.

9. Claims paid: (Prob C §§11400-11429)

Name of Creditor	Amount	Date Filed
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____

10. Claims rejected:

Date Notice of	Last Date for
----------------	---------------

Name of Creditor

Rejection Served

Creditor to File Suit

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

*Comment:* File Allowance or Rejection of Creditor's Claim (Judicial Council Form DE-174) for each claim rejected.

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**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 29 Letter to Creditor

APPENDIX 29  
Letter to Creditor

\_\_ [date] \_\_

Subject: Estate of \_\_ [name] \_\_, deceased

Dear \_\_ [name of creditor] \_\_:

We represent \_\_ [name] \_\_, who has been appointed as the personal representative of the Estate of \_\_ [name] \_\_, 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] \_\_.

For your claim to be considered for payment, you must complete and submit a Creditor's Claim. A blank Creditor's Claim form is enclosed for your convenience. Please follow carefully the Instructions to Claimant at the bottom of the 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 about your claim.

Very truly yours,

\_\_ [Signature] \_\_

\_\_ [Typed name] \_\_

Attorney for \_\_ [name] \_\_

**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 30 Notice of Decedent's Death

APPENDIX 30

Notice of Decedent's Death

To: \_\_[Name of agency]\_\_

NOTICE IS HEREBY GIVEN that the above-named decedent died on \_\_[date]\_\_, and that letters \_\_[testamentary/of administration]\_\_ were issued to \_\_[name of representative]\_\_ on \_\_[date]\_\_. Under Probate Code §9200, 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. \_\_[A copy of the decedent's death certificate is enclosed.]\_\_

[Add the following if an heir is known to be or reasonably believed to be in jail]

\_\_[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 Department of Corrections or the Department of the Youth Authority or confined in a county or city jail, road camp, industrial farm, or other local correctional facility.

Date: \_\_\_\_\_ [Signature]\_\_\_\_  
\_\_[Typed name]\_\_, \_\_[Executor/Administrator]\_\_  
of the Estate of \_\_[name of decedent]\_\_

INSTRUCTIONS: The notice should contain the attorney's name, address, and telephone number; the court name, title of the action, and docket number; and adequate identifying matter, such as the number given to decedent by the agency, decedent's social security number (which will also be on the death certificate), decedent's business and residence addresses, and any business name used.

*Comment:* The statute does not require that the notice include the name of the penal institution, which is fortunate, since inmates are frequently moved.

**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 31 Record of Creditors' Claims

APPENDIX 31

Record of Creditors' Claims

Estate of \_\_\_\_\_

Office file no. \_\_\_\_\_

Claimant and address	Nature of claim	Amount	Date notice of admin sent to claimant	Date claim form sent to claimant	Date filed w/ court clerk	Date served on personal rep	Date approved		Date paid	Check no.
							By rep.	By judge		
1.		\$								
2.		\$								
3.		\$								
4.		\$								

\_\_\_ Checked with court clerk for all claims filed.

\_\_\_ All paid claims filed and served.

**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 32 Table: Allocation of Debts Under Prob C §11444

APPENDIX 32

Table: Allocation of Debts Under Prob C §11444

Character of Debt	Type of Debt *	Allocation of Debt			
		Primary Source	Secondary Source	Tertiary Source	
<b>Separate</b>	Unsecured	SP of that spouse. <u>§11444(b)(1)</u>		If SP of that spouse insufficient: ½ share of that spouse's CP. <u>§11444(b)(3)</u>	If ½ share of that spouse's CP insufficient: ½ share of other spouse's CP. <u>§11444(b)(3)</u>
	Secured by SP asset	Equity of asset. <u>§11444(b)(2)</u>	If net equity of asset insufficient: other SP of that spouse. <u>§11444(b)(2)</u>		
<b>Community</b>	Unsecured	Community property. <u>§11444(b)(1)</u>		If CP insufficient: equally between spouses' SP. <u>§11444(b)(5)</u>	If spouse's SP less than share of CP debts: other spouse's SP. <u>§11444(b)(5)</u>
	Secured by CP asset	Equity of asset. <u>§11444(b)(4)</u>	If net equity of asset insufficient: other CP assets. <u>§11444(b)(4)</u>		
*Applies to proven claims					

**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 33 Notice of Sale of Personal Property

APPENDIX 33

Notice of Sale of Personal Property

[Title of court]

Estate of \_\_[name]\_\_ , ) No. \_\_\_\_\_  
Deceased )  
)  
) NOTICE OF SALE OF PERSONAL  
) PROPERTY AT \_\_[PRIVATE]  
\_\_\_\_\_ ) SALE/PUBLIC AUCTION]\_\_

Notice is hereby given that the undersigned will sell at \_\_[private sale/public auction]\_\_ to the highest and best net bidder on the terms and conditions mentioned below, and subject to confirmation by the court, 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 and to the following described personal property, in its present condition, without any representation or warranty of any kind, express or implied: \_\_[Provide brief description of property]\_\_ .

[Add for private sales]

Bids or offers are invited for the property, must be in writing, and will be received at the law office of \_\_[name]\_\_ at \_\_[address]\_\_ , or may be filed with the clerk of this court or delivered to the undersigned personally at any time after the \_\_[publication/posting]\_\_ of this notice and before the sale.

[Continue]

Terms and conditions of sale: \_\_[cash/(specify other terms, e.g., 10 percent of the purchase price)]\_\_ to be paid at the time of presentation of bid \_\_[and balance \_\_[on confirmation of sale by the court/(specify other terms)]\_\_]\_\_ .

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. Payment of escrow and transfer costs and of retail sales tax will be by the purchaser.

The undersigned reserves the right to reject any and all bids before entry of an order confirming the sale.

For further information and bid forms, apply at the law office of \_\_[name]\_\_ at \_\_[address]\_\_ .

Date: \_\_\_\_\_ [Signature]\_\_  
\_\_[Typed name]\_\_  
as \_\_[executor/administrator]\_\_  
of the \_\_[will/estate]\_\_ of \_\_[name]\_\_ , deceased

*Copies:* Original for filing; one copy each for representative, buyer, and broker; office copies.

**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 34 Petition for Confirmation of Sale of Personal Property

APPENDIX 34

Petition for Confirmation of Sale of Personal Property

[Title of court]

[Title of case] ) No. \_\_\_\_\_  
 )  
 )  
 ) PETITION FOR CONFIRMATION  
 ) OF  
 \_\_\_\_\_ )  
 ) SALE OF PERSONAL PROPERTY

Petitioner, as \_\_[*executor/administrator*]\_\_ of the \_\_[*will/estate*]\_\_ of the above-named decedent, alleges that:

[Add one of the following alternatives]

[Alternative 1: When sale is without notice under testamentary power]

1. Under the power of sale in the decedent's will, petitioner sold without notice on \_\_[*date*]\_\_,

[Alternative 2: When sale is with notice, with or without testamentary power]

1. \_\_[*Under power of sale in the decedent's will/In accordance with the provisions of law relating to sales by petitioner*]\_\_, after notice \_\_[*published/posted*]\_\_ according to law and as shown by the affidavit of such \_\_[*publication/posting*]\_\_ on file in the proceeding, to which reference is made for further particulars, petitioner on \_\_[*date*]\_\_, sold

[Continue]

at \_\_[*private sale/public auction*]\_\_ the decedent's \_\_[*describe property*]\_\_ to \_\_[*name of purchaser*]\_\_ for \$ \_\_[*amount*]\_\_, \_\_[*in cash/(state credit terms)*]\_\_, subject to confirmation by the court.

2. The price is not disproportionate to the value of the property.

[Add the following when sale is 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.

[Add one of the following alternatives]

[Alternative 1]

[4.] No one has filed request(s) for special notice.

[Alternative 2]

[4.] 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

*Copies:* Original for filing; one copy each for representative, purchaser, and broker; office copies.

**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 35 Order Confirming Sale of Personal Property

APPENDIX 35

Order Confirming Sale of Personal Property

[Title of court]

[Title of case] ) No. \_\_\_\_\_

)

)

ORDER CONFIRMING SALE OF

)

PERSONAL PROPERTY

The verified petition of \_\_[name of representative]\_\_, as \_\_[executor/administrator]\_\_ 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:

1. Notice of hearing has been given as required by law and the allegations of the petition are true.

[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.

[Continue]

3. 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]

[Alternative 1: No increased bids made]

4. No increased bids for the property were made at the hearing.

[Alternative 2: Increased bid made]

4. 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]\_\_ 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 itemized description of property]\_\_.

Date: \_\_\_\_\_ [Signature]\_\_\_\_\_

Judge of the Superior Court



**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 37 Ex Parte Petition to Execute Listing Agreement

APPENDIX 37

Ex Parte Petition to Execute Listing Agreement

[Title of court]

[Title of case] ) No. \_\_\_\_\_  
)  
)  
) EX PARTE PETITION TO  
) EXECUTE  
\_\_\_\_\_) LISTING AGREEMENT

Petitioner, \_\_[name]\_\_, alleges:

1. Petitioner is the \_\_[executor/administrator]\_\_ of the \_\_[will/estate]\_\_ of the above-named decedent and seeks permission to contract with \_\_[name]\_\_, a licensed real estate broker, to sell the estate's real property, described as follows: \_\_[Insert description of property, including street address]\_\_.
2. A copy of the contract 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., because the property's high price will very likely require that a broker spend a great deal of time and money marketing the property, it is only by executing this listing agreement that the estate will find a broker willing to properly market the property]\_\_.
4. No one has filed request for special notice.

Petitioner requests an order of this court permitting petitioner to execute such listing agreement, that notice of hearing on this petition be dispensed with and for all other proper orders.

Date: \_\_\_\_\_ [Signature]\_\_\_\_  
\_\_[Typed name]\_\_  
Petitioner

Date: \_\_\_\_\_ [Signature]\_\_\_\_  
\_\_[Typed name]\_\_  
Attorney for Petitioner

*Copies:* Original for filing; office copies.

**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 38 Order Authorizing Execution of Listing Agreement

APPENDIX 38  
Order Authorizing Execution of Listing Agreement

[Title of court]

[Title of case] ) No. \_\_\_\_\_

)

)

)

ORDER AUTHORIZING  
EXECUTION

OF LISTING AGREEMENT

On reading and filing the Ex Parte Petition To Execute Listing Agreement of \_\_[name of representative]\_\_, as \_\_[executor/administrator]\_\_ 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 of representative]\_\_, as \_\_[executor/administrator]\_\_ 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]\_\_ gives \_\_[name]\_\_, a licensed real estate broker, a listing to sell the property described in the contract on the terms and conditions set forth in it and that ex parte notice is sufficient.

Date: \_\_\_\_\_

\_\_[Signature]\_\_

Judge of the Superior Court

*Copies:* Original for filing; office copies.

**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 39 Notice of Intention to Sell Real Property at Private Sale

APPENDIX 39

Notice of Intention to Sell Real Property at Private Sale

[Title of court]

[Title of case] ) No. \_\_\_\_\_  
)  
)  
) NOTICE OF INTENTION TO SELL  
)  
\_\_\_\_\_ ) REAL PROPERTY AT PRIVATE  
SALE

Notice is hereby given that, subject to confirmation by this court, on \_\_[date]\_\_, at \_\_[time]\_\_, or thereafter within the time allowed by law, the undersigned as \_\_[executor/administrator]\_\_ of the \_\_[will/estate]\_\_ of the above-named decedent, will sell at private sale to the highest and best net bidder on the terms and conditions hereinafter mentioned 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, as follows: \_\_[Describe]\_\_.

This property is commonly referred to as \_\_[street address/other common designation]\_\_.

The sale is 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]\_\_.

[Add when representative warrants title]

The property is to be sold on an "as is" basis, except for title.

[Continue]

Bids or offers are invited for this property and must be in writing and will be received at the office of \_\_[name]\_\_, attorney for the \_\_[executor/administrator]\_\_ 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.

[Add, if desired]

Bids must be sealed and will be opened at the office of \_\_[name of attorney]\_\_ at \_\_[time]\_\_ on the date specified above.

[Continue]

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 term]\_\_. 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.

The undersigned reserves the right to refuse to accept any bids.

Date: \_\_\_\_\_ [Signature]\_\_\_\_  
\_\_ [Typed name] \_\_  
\_\_ [Executor/Administrator] \_\_

Date: \_\_\_\_\_ [Signature]\_\_\_\_  
\_\_ [Typed name] \_\_  
Attorney for \_\_ [Executor/Administrator] \_\_

*Copies:* One for publishing; copies for filing (proof of publication, including Notice of Intention To Sell filed with clerk); office copies.

*Comment:* See Decedent Estate Prac §18.52 for detailed comments on this form.



**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 40 Report of Sale and Petition for Order Confirming Sale of Real Property (Judicial Council Form DE-260)

APPENDIX 40

Report of Sale and Petition for Order Confirming Sale of Real Property (Judicial Council Form DE-260)



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b> STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
<input type="checkbox"/> ESTATE <input type="checkbox"/> CONSERVATORSHIP <input type="checkbox"/> GUARDIANSHIP   OF (Name): _____ <input type="checkbox"/> DECEDENT <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> MINOR	
<b>REPORT OF SALE AND PETITION FOR ORDER                  CONFIRMING SALE OF REAL PROPERTY</b> <input type="checkbox"/> 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).



<input type="checkbox"/> ESTATE <input type="checkbox"/> CONSERVATORSHIP <input type="checkbox"/> GUARDIANSHIP OF	CASE NUMBER: _____
(Name): _____	

**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.
- 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.
- b. Special notice:
  - (1)  None requested.
  - (2)  Has been or will be waived.
  - (3)  Required 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)

APPENDIX 41

Increased Bid in Open Court

[Title of court]

[Title of case] ) No. \_\_\_\_\_

)

\_\_\_\_\_ ) INCREASED BID IN OPEN COURT

The undersigned, representing \_\_[himself/herself/themselves]\_\_ to be financially responsible, hereby bid(s) the sum of \$ \_\_[amount]\_\_ for the 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 their community property/tenants in common]\_\_.

Date: \_\_\_\_\_ [Signature]\_\_

\_\_[Typed name]\_\_

Bidder

Copies: Original for filing; copy for representative; office copies.

**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 42 Order Confirming Sale of Real Property (Judicial Council Form DE-265)

APPENDIX 42  
Order Confirming Sale of Real Property (Judicial Council Form DE-265)



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

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:

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.

*FOR COURT USE ONLY*

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.



<input type="checkbox"/> ESTATE <input type="checkbox"/> CONSERVATORSHIP <input type="checkbox"/> 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)	<p style="text-align: center;"><b>CLERK'S CERTIFICATE</b></p> <p>I certify that the foregoing <i>Order Confirming Sale of Real Property</i>, including any attached description of real or personal property, is a true and correct copy of the original on file in my office.</p> <p>Date: _____ CLERK, by _____, Deputy</p>
--------	---



**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 44 Procedural Guide/Decisional Steps in Planning Preliminary Distributions

APPENDIX 44

Procedural Guide—Decisional Steps in Planning Preliminary Distributions

1. Time for filing petition for preliminary distribution

- Notice of petition to administer estate published on \_\_ *[date]* \_\_. Prob C §8100.
- Issuance of letters: \_\_ *[date]* \_\_.
- 2 months after issuance of letters: \_\_ *[date]* \_\_.
- 4 months after issuance of letters: \_\_ *[date]* \_\_.
- Has the time for filing creditors' claims expired?

2. Distributee's bond

- If bond is required, arrangements should be made with a bonding company to have the bond form prepared and submitted to the court before the hearing of the petition, or as soon thereafter as possible so as not to delay the distribution. On the court's discretion, see Decedent Estate Prac §§25.19, 25.25.

3. Will provisions

- Are any assets specifically devised?
- Consider distribution to effect payment of specific bequests and to eliminate possibility of interest on bequests.
- Consider distribution of personal effects or assets requiring special care.

4. Distributees' personal and financial information

- Ascertain ages, present income tax brackets, and fiscal years of all heirs and legatees.
- Do any distributees anticipate a great shift in their personal income tax brackets during the period of administration of the estate (*e.g.*, beneficiary about to retire)?

5. Nontax factors affecting distribution

- Consider prompt distribution of estate and enjoyment of pecuniary gifts.
- Do any distributees have pressing needs for money (emergency situations)? Is the representative's duty of fairness to all distributees being met?

6. Alternatives to distribution

- Family allowance.
- Exempt property.

7. Need for additional relief

- Instructions to representative. See Prob C §9611.
- Proceedings to determine entitlement to estate distribution. See Decedent Estate Prac, chap 28.

8. Estate's cash needs

- Prepare estimate of estate's cash needs if not already prepared. See Estimate Cash Needs, step 17. If the period for filing creditors' claims has not expired, be certain sufficient assets remain in the estate to cover any additional or remaining claims and expenses of administration.
- Compare cash needs to total value of estate.

9. Valuation of estate's assets

- Determine date-of-death value of assets.

- Assemble and list assets subject to probate and arrange for appraisal if inventories are not yet filed.
- Review Inventory and Appraisal on file. The property proposed to be distributed should be included in any inventory on file.
- Determine present values of assets proposed to be distributed.
- Compare date-of-death values with present values to determine whether assets are appreciating or depreciating. On tax options with regard to distribution of appreciated or depreciated assets, see Decedent Estate Prac, chap 33.
- Will distribution fix alternate valuation for estate tax purposes? See Decedent Estate Prac, chap 34.

#### 10. Status of estate

- Is estate in a condition to be closed? On requirements for final distribution, see Decedent Estate Prac, chap 31.

#### 11. Representative's account

- Is an account required or suggested by local rules? On other advantages of filing account, see Decedent Estate Prac, chap 24.
- Is distribution to a trust contemplated? See Decedent Estate Prac, chap 24.

#### 12. Preliminary distribution under Prob C §11623

- Does the representative have authority to administer the estate under the Independent Administration of Estates Act?
- Does property to be distributed exceed 50 percent of net value of the estate?

#### 13. Notice of preliminary distribution

- On petition under Prob C §11620, see step 23.
- On petition under Prob C §11623, see step 24.

#### 14. Assets to be distributed

- Specific bequests.
- Payment of pecuniary gifts.
- Compare values of assets proposed to be distributed to values of assets retained.

#### 15. Tax effect of distribution

- Does distribution pass out income from the estate to its distributees? See Decedent Estate Prac §§33.87-33.98.
- Determine effect of distribution on basis of assets distributed. See Decedent Estate Prac §§33.119-33.129.
- Determine postmortem tax planning options with regard to distribution.

#### 16. Should distribution be used to fund a testamentary trust?

- Consider early creation of new tax entity to minimize overall income taxes payable.
- Consider early creation of trust to allow trustee to collect life insurance or employer annuities that name the trustee as beneficiary.
- Consider keeping distributed income in the trust or passing it immediately from the trust to its beneficiaries.

#### 17. Compensation of representative and attorney

- For statutory provisions, see Decedent Estate Prac, chap 30.
- For tax options concerning compensation as deduction against estate tax or income tax, see Decedent Estate Prac, chap 33. On waiver of representative's compensation, see Decedent Estate Prac, chap 30.

#### 18. Prepare schedule of proposed distribution

- Should written consent of beneficiaries be obtained?

- Consider hazards of nonprorata distribution. See Decedent Estate Prac, chap 33.

19. Petition and order of preliminary distribution

- Prepare petition and proposed order.
- Do the assets to be distributed affect the amount of the representative's bond?
- If so, is petitioning the court to reduce the bond justified? See Decedent Estate Prac, chap 9.

**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 45 Distributee's Bond on Preliminary Distribution

APPENDIX 45  
Distributee's Bond on Preliminary Distribution

[Title of court]

Estate of \_\_[name]\_\_, ) No. \_\_\_\_\_  
Deceased )  
)  
) DISTRIBUTEES BOND 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]\_\_ 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]\_\_  
\_\_[Typed name]\_\_  
Principal

Date: \_\_\_\_\_ \_\_[Signature of first surety]\_\_  
\_\_[Typed name]\_\_  
Surety

Date: \_\_\_\_\_ \_\_[Signature of second surety]\_\_  
\_\_[Typed name]\_\_  
Surety

[Acknowledgment]

*Copies:* Original for filing; one copy for each surety; copy for distributee; office copies.

*Comment:* All parties should sign, and the sureties' signatures should be acknowledged before a notary.

**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 46 Account and Final Distribution Checklist

APPENDIX 46

Account and Final Distribution Checklist

1. Account waived or required (see Decedent Estate Prac §§24.25-24.35)

a. If account waived:

- Waiver executed by all beneficiaries (see Decedent Estate Prac §§24.31-24.35)
- Waiver filed with court/attached to petition

b. If interests of persons entitled to distribution have been satisfied (see Decedent Estate Prac §24.35):

- Obtain written acknowledgments of satisfaction
- File acknowledgments or attach to petition

c. If account required; Exhibits and Schedules include:

- Correct starting figure
- Receipts itemized
- Receipts allocated correctly between principal and income
- Disbursements itemized
- Disbursements allocated correctly between principal and income
- Account summarized
- Schedules prepared

d. Explanations of account in the representative's report

- Identify Inventory and Appraisals filed in the proceedings
- 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 (see Decedent Estate Prac §§24.36-24.86):

- Statement of all compensation paid from estate assets to representative or representative's attorneys without prior court order (this practice is strongly disapproved)
- Disclosure of any family or affiliate relationship between representative and any agent hired by representative during accounting period

2. Status report filed on \_\_[date]\_\_ (see Decedent Estate Prac §§31.5-31.7)

- Court order directing continuance of administration or requiring final account filed on \_\_[date]\_\_

3. Character of estate property (see Decedent Estate Prac §31.11)

- All separate
- All community or quasi-community
- Combination
- Surviving spouse or registered domestic partner (see Fam C §297.5(c); Decedent Estate Prac §§31.31-31.32) election to

probate own interest in community, quasi-community property

4. Creditors' claims and statement of liabilities (see Decedent Estate Prac §§31.41-31.46)

- Paid or adequately provided for
- Rejected
- Rejected claims barred
- Claims not barred and not paid
- Expenses paid without claim

5. Notice to Director of Health Services and public entities listed in Prob C §9201 (see Decedent Estate Prac §§31.25-31.26)

- Given as required
- Not required

6. Special notice (see Decedent Estate Prac §31.27)

- None requested
- Given as requested
- Request waived

7. Report of actions taken under IAEA (see Decedent Estate Prac §§31.39-31.40)

- List and describe all actions taken without prior court approval under IAEA if notice of proposed action required
- Actions taken under IAEA listed and described in prior accounting, report, or petition for distribution and approved by court
- None taken

8. Report of actions taken without court authorization

- List and describe all actions taken without court authorization
- None taken

9. Federal estate taxes and state estate tax, if any (see Decedent Estate Prac §§31.47-31.48)

- No return required
- Return required, no tax due
- Taxes paid
- Reserve required
- Return audited or closing letter received

10. Income taxes (see Decedent Estate Prac §§31.49-31.51)

- None due
- All paid
- Taxes due, not paid
- Reserve required
- Franchise Tax Board certificate for certain distributions to nonresidents

11. Personal property taxes (see Decedent Estate Prac §§31.52-31.53)

- None due

- All paid
  - Taxes due, not paid
12. Statutory fees, commissions, and attorney fees claimed (see Decedent Estate Prac §§31.81-31.83)
- Fee base
  - Fee computation
13. Commissions and attorney fees for extraordinary services requested (see Decedent Estate Prac §§31.84-31.87)
- 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 Decedent Estate Prac §§31.58-31.59)
- Taxes
  - Administration expenses, fees, commissions
15. Distributees (see Decedent Estate Prac §§31.68-31.76)
- 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 Uniform Transfers to Minors Act (Prob C §§3900-3925)
- b. For deceased distributees:
- Personal representative appointed
  - Affidavit received under Prob C §§13100-13116
- c. For unknown distributees and alternate distributees (see Prob C §11603(c)), see Decedent Estate Prac §§31.70-31.71.
- d. For trust distributees:
- Acceptance of trust by trustee
16. Have heirs, legatees, or devisees filed disclaimers? (see Decedent Estate Prac §31.66)
17. Has an option been granted that extends beyond the period of administration?
18. Distribution plan
- Ascertain whether a petition to determine heirship or interest in estate is required
  - Check matters of will interpretation for inclusion in petition as a subject for court instructions
  - 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
  - Is Prob C §6402.5 involved in distribution of the estate?
  - Do 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, determine whether income during probate is to be paid by trustee to beneficiary
  - Allocation or proration of estate tax (see Decedent Estate Prac §§31.47-31.48)

**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 47 Final Account, Report, and Petition for Final Distribution

APPENDIX 47  
Final Account, Report, and Petition for Final Distribution

*Note:* In the following form, the paragraph numbers and accompanying headings correspond to paragraph numbers of the form as printed in Decedent Estate Prac, chap 31.

[Add one of the following alternatives]

[Alternative 1: Account is presented]

[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*] \_ \_  
)  
)  
)

[Alternative 2: Account is waived]

[Title of court]

Estate of \_ \_[*name*], ) No. \_ \_ \_ \_ \_  
Decedent )  
)  
) \_ \_[*FIRST AND FINAL*] \_ \_ REPORT  
) OF \_ \_[*EXECUTIVE/ADMINISTRATOR/*  
) (*ETC.*)] \_ \_ ON WAIVER OF  
) ACCOUNT AND PETITION FOR  
) FINAL DISTRIBUTION  
) \_ \_[*,/AND*] \_ \_ 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)]\_ \_  
)  
)  
)

[Continue]

Petitioner, \_ \_ [name] \_ \_ , the \_ \_ [executor/administrator/(etc.)] \_ \_ of the \_ \_ [will/estate] \_ \_ of \_ \_ [name] \_ \_ , deceased, alleges:

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)] \_ \_ .

[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] \_ \_ .

[Add one of the following alternatives]

[Alternative 1: Appointment of executor/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 and was appointed \_ \_ [executor of the will/administrator with the will annexed] \_ \_ . \_ \_ [On filing of bond in the amount of \$ \_ \_ [amount] \_ \_ ] \_ \_ , 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 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 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]

*Authority Granted Under Independent Administration of Estates Act.* On \_ \_ [date] \_ \_ , petitioner was granted full 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.

*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.

[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] \_ \_ ] \_ \_ .

[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]

[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]

[Add one of the following alternatives]

[Alternative 1: Notice to Director of California Victim Compensation and Government Claims Board required]

*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 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 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]

*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]\_\_.

[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]

*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 of 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.

[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] \_\_, the decedent's surviving \_\_ [spouse/registered domestic partner] \_\_, which is described in Attachment \_\_ [letter] \_\_.

[If applicable, add one or both of the following options]

[Option 1: Prob C §13502(a)(2) election to probate surviving spouse's or surviving 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.

*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	\$_____

*Waiver of Account.* \_\_[Name(s)]\_\_, the 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]\_\_ \_\_[on file in the proceeding/attached as Exhibit(s) \_\_\_-\_\_\_]\_\_.

[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]\_\_.

[Continue]

[Add one of the following alternatives]

[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]

*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]

[Alternative 1: No person hired with family or affiliate relationship]

During the account period, petitioner has not hired any person or entity who has a relationship to petitioner or to petitioner's attorney (Probate Code §1064(a)(4)).

[Alternative 2: Disclosure of family or affiliate relationship]

During the account period petitioner hired the following agent(s) who \_\_[has/have]\_\_ a family or affiliate relationship with petitioner (Probate Code §1064(a)(4)): \_\_[name, title, and relationship of agent]\_\_.

[Continue]

*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 of 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]\_\_.

[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]

[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: \_\_[List and describe actions; see 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 notice of proposed action: \_\_[List and describe]\_\_.

*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 creditors' claims expired on \_\_[date]\_\_].

[Add one of the following alternatives]

[Alternative 1: No debts paid without creditors' claims]

*No Debts Paid Without Creditors' Claims.* No creditors have been paid except those creditors who have properly filed and served formal claims.

[Alternative 2: Some debts paid without creditors' claims]

*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.

[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. 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 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	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. 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 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 of 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]

*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 are shown on the attachment] \_ \_ .

*Interest on Claims.* 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]

[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]

*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]

*Other Claims.* No other claims have been filed with the court except for those listed above.

[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 \$ \_ \_ [amount] \_ \_ \_ \_ [and \_ \_ [name of state] \_ \_ taxes 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] \_ \_ 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 taxes 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.

[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 tax paid]

*Income Taxes.* All California and federal income taxes due and payable by the estate have been paid or are adequately secured.

[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 assets of the estate at the date of the decedent's death exceeded \$1 million and assets of at least \$250,000 are distributable to the following nonresident beneficiary \_\_[*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*]\_\_.

[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]

*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.

[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*]\_\_.

[Continue]

*Reserve for Closing Expenses.* Petitioner anticipates additional expenses, including 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)]\_\_.

[Continue]

[Add one of the following alternatives]

[Alternative 1: 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 (over or under 18), relationship to decedent, and residence address]\_\_.

[Add one of the following alternatives]

[Alternative 2: Testate 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]\_\_.

[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]\_\_.

[Continue]

[Add one of the following alternatives]

[Alternative 1: No advance distribution made]

*Advance Distributions.* No advance distributions have been made.

[Alternative 2: Advance distribution 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 devise]

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.

*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 \_\_.

[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 distributees and the share to which each is entitled*]\_\_.

[Add one of the following alternatives]

[Alternative 1: Gifts 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.

[Alternative 2: Will directs distribution under Uniform Transfers to Minors Act (no dollar limit)]

[Add one of the following alternatives to Alternative 2]

[Alternative 2a: 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 2b: 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 25*]\_\_ under the California Uniform Transfers to Minors Act: \_\_[*Specify*]\_\_.

[Alternative 3: Gifts exceeding \$5000]

[Add one of the following alternatives to Alternative 3]

[Alternative 3a: 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 3b: Distribution to guardian]

*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*]\_\_.

[If appropriate, add court-ordered conditions on distributions under Alternative 3]

*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*]\_\_.

*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*]\_\_.

[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 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]

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]\_\_.

*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]\_\_.

[Add one of the following alternatives]

[Alternative 1: Compensation waived]

*Representative's 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: Ordinary compensation waived]

*Representative's Compensation Waived.* Petitioner hereby waives all rights to ordinary compensation as \_\_[executor/administrator/(etc.)]\_\_.

[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 ordinary \_\_[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 ordinary 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 \$9,000,000:	\$ _____
0.5% of next \$15,000,000:	\$ _____
Compensation requested for the estate in excess of \$25,000,000:	\$ _____
Total Fee:	\$ _____

[If applicable, add the following option]

[Option: Estate in excess of \$25,000,000]

Petitioner believes that the amount of \$ \_ [amount] \_ \_ stated above is reasonable compensation for administration of the estate, which is in excess of \$25,000,000, because of the additional responsibility and complexity resulting from the size of the estate.

[Continue]

[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] \_ \_ as compensation for ordinary services. A balance of \$ \_ [amount] \_ \_ is due to the \_ [executor/administrator/(etc.)] \_ \_ , and a balance of \$ \_ [amount] \_ \_ is due to the attorney.

[Continue]

[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 fee allowed by the court for legal services, rendered by such firm to the above-captioned 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.

[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 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 attorney] \_ . Petitioner requests that the statutory fee of \$ \_ [amount] \_ be allocated and paid (i) \$ \_ [amount] \_ to \_ [name of former attorney] \_ , and (ii) \$ \_ [amount] \_ to \_ [name of current attorney] \_ .

[Add one or both of the following options]

[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 Compensation, attached as Exhibit \_ . 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] \_ , attorney for petitioner, has rendered extraordinary services to the estate, which are described in the Declaration in Support of Attorney's Compensation, attached as Exhibit \_ . The attorney should be allowed reasonable compensation for these services, and a reasonable sum is \$ \_ [amount] \_ , which has not been paid.



**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 48 Order Settling Final Account and Judgment of Final Distribution

APPENDIX 48  
Order Settling Final Account and Judgment of Final Distribution

*Note:* In the following form, the paragraph numbers and accompanying headings correspond to paragraph numbers of the form as printed in Decedent Estate Prac §§31.102-31.132.

[Title of court]

[Add one of the following alternatives]

[Alternative 1: Account is presented]

Estate of \_\_[name]\_\_ , ) No. \_\_\_\_\_  
Decedent )  
)  
) ORDER SETTLING  
) \_\_[FIRST/SECOND/  
) (ETC.)] AND FINAL ACCOUNT  
) AND  
) REPORT OF \_\_[EXECUTOR/  
) ADMINISTRATOR/ETC.]\_\_ ,  
)  
) ALLOWING COMPENSATION TO  
) \_\_[EXECUTOR/ADMINISTRATOR/  
) (ETC.)]\_\_ AND ATTORNEY(S) FOR  
) ORDINARY \_\_[AND  
) EXTRAORDINARY]\_\_ SERVICES  
) \_\_[AND FOR ALLOCATION OF  
) 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  
) ACCOUNTING AND  
) ALLOWING COMPENSATION TO  
) \_\_[EXECUTOR/ADMINISTRATOR/  
) (ETC.)]\_\_ AND ATTORNEY(S) FOR  
) ORDINARY \_\_[AND  
) EXTRAORDINARY]\_\_ SERVICES  
) \_\_[AND FOR, specify, e.g.,  
) ALLOCATION OF ESTATE TAXES/AND  
) FOR DISTRIBUTION TO  
) TESTAMENTARY TRUST]\_\_  
)  
)

)

)

[Continue]

\_\_[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 report and petition coming on regularly for hearing on \_\_[date]\_\_, in Department \_\_[number/letter]\_\_, the court finds:

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.

All acts and transactions of the \_\_[executor/administrator/(etc.)]\_\_ of the \_\_[estate/will]\_\_ 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 \$ \_\_[amount]\_\_ has been received and the sum of \$ \_\_[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.

\_\_[Name]\_\_ died \_\_[testate/intestate/partially intestate]\_\_ on \_\_[date]\_\_, in \_\_\_\_\_ 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)]\_\_ .

[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 or county]\_\_ .

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]\_\_ .

[If appropriate, add]

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.

Letters \_\_[testamentary/of administration/(etc.)]\_\_ were issued on \_\_[date]\_\_ . 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 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.

[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: Community and separate property]

The decedent was survived by a \_\_[spouse/registered domestic partner]\_\_ . The estate consists entirely 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] \_\_.

[If applicable, add one or both of the following options]

[Option 1: Prob C §13502(a)(2) election to probate surviving spouse's or surviving registered domestic partner's interest in community or quasi-community property, or in both]

By document filed in this proceeding 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 and interest in community or quasi-community property, or in both]

By document filed in this proceeding 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.

[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 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.

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] \_\_.

[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: 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 taxes due in the amount of \$ \_\_ [amount] \_\_ \_\_ [and \_\_ [name of state] \_\_ taxes 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/(etc.)] \_\_ has \_\_ [not] \_\_ been released from personal liability for estate taxes. The federal return has \_\_ [not] \_\_ been audited \_\_ [and] \_\_ a closing letter has \_\_ [not] \_\_ been issued.

[Add one of the following alternatives]

[Alternative 1: Estate taxes charged against residue of estate]

Article \_\_ [number/letter] \_\_ of the will provides that all estate taxes \_\_ [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 taxes paid; estate tax allocation necessary]

The estate taxes paid on behalf of the estate should be prorated and charged to the estate distributees as set forth in the order for distribution.

[Add one of the following alternatives]

[Alternative 1: No income taxes 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 beneficiary \_ \_ [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.

[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.

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 \$ \_ \_ [amount] \_ \_ , and the \_ \_ [executor/administrator/(etc.)] \_ \_ should be authorized to withhold that sum from distribution. The \_ \_ [executor/administrator/(etc.)] \_ \_ shall distribute the balance of the reserve account to \_ \_ [name(s)] \_ \_ 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 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)] \_ \_.

Distribution should be ordered as \_ \_ [requested/specified below] \_ \_.

[If applicable, add one or more of the following options]

[Option 1: Personal representative's compensation waived]

The \_ \_ [executor/administrator/(etc.)] \_ \_ has waived all rights to compensation.

[Option 2: Ordinary compensation allowed]

The \_\_[*executor/administrator/etc.*]]\_\_ \_\_[*and the*]]\_\_ attorney for the \_\_[*executor/administrator*]]\_\_ have rendered valuable services to the estate, and ordinary compensation should be allowed as ordered below.

[Option 3: Extraordinary compensation—personal representative]

The \_\_[*executor/administrator/etc.*]]\_\_ has rendered extraordinary services, and compensation for such services should be allowed as ordered below.

[Option 4: Extraordinary compensation—attorney]

The attorney for the \_\_[*executor/administrator/etc.*]]\_\_ has rendered extraordinary services to the \_\_[*executor/administrator/etc.*]]\_\_ and the estate, and compensation for such services should be allowed as ordered below.

IT IS ORDERED that:

[Add one of the following alternatives]

[Alternative 1: Account is presented]

The administration of the estate be brought to a close.

[Alternative 2: Account is waived]

The administration of the estate be brought to a close without the requirement of an account.

[Add one of the following alternatives]

[Alternative 1: Account is presented]

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 \$ \_\_[*amount*]]\_\_, at the appraised value, of which \$ \_\_[*amount*]]\_\_ is in cash. The \_\_[*first/other*]]\_\_ and final \_\_[*and supplemental*]]\_\_ account(s), covering the period beginning \_\_[*date*]]\_\_ and continuing through \_\_[*date*]]\_\_, and report of the \_\_[*executor/administrator/etc.*]]\_\_ is settled, allowed, and approved as filed.

[Alternative 2: Account is waived]

The \_\_[*executor/administrator/etc.*]]\_\_ has in \_\_[*his/her*]]\_\_ possession belonging to the estate a balance of \$ \_\_[*amount*]]\_\_, at the appraised value, of which \$ \_\_[*amount*]]\_\_ is in cash.

[Add one of the following alternatives]

[Alternative 1: Account is presented]

All acts and transactions of the \_\_[*executor/administrator/etc.*]]\_\_ relating to the matters set forth in the account, petition, and report are confirmed and approved.

[Alternative 2: Account is waived]

All acts and transactions of the \_\_[*executor/administrator/etc.*]]\_\_ relating to the matters set forth in the waiver and petition are confirmed and approved.

[Option 1: Ordinary compensation]

The \_\_[*executor/administrator/etc.*]]\_\_ is authorized and directed to pay to \_\_[*himself/herself*]]\_\_ the amount of \$ \_\_[*amount*]]\_\_ as ordinary compensation for services rendered in administering this estate[./,]

[If applicable, add the following to Option 1]

and the amount of \$ \_\_[*amount*]]\_\_ as compensation for extraordinary services rendered in the administration of this estate.

[Option 2: Waiver of compensation]

The \_\_[*executor/administrator/etc.*]]\_\_ has waived \_\_[*his/her*]]\_\_ right to compensation for ordinary and extraordinary services rendered in administering this estate.

The \_\_[*executor/administrator/etc.*]]\_\_ is authorized and directed to pay \_\_[*his/her*]]\_\_ attorney, \_\_[*name of attorney*]]\_\_, the amount of \$ \_\_[*amount*]]\_\_ as statutory compensation for services rendered in administration of this estate.

[add, if applicable]

and the amount of \$ \_\_[*amount*]]\_\_ as compensation for extraordinary services rendered in the administration of this estate.

The \_\_[*executor/administrator/etc.*]]\_\_ is authorized to retain cash in the amount of \$ \_\_[*amount*]]\_\_ from distribution at this time to defray closing expenses \_\_[*and as a reserve for additional liabilities (including estate taxes that will be due)*]]\_\_. Any unexpended portion of such reserve \_\_[*and additional liabilities (and estate taxes)*]]\_\_ shall be distributed to \_\_[*list name(s) of distributee(s) and percentage interest of each if more than one distributee*]]\_\_ without further order of this court.

[If appropriate, add]

The trustee(s) named below shall be authorized and directed to pay out of trust corpus any and all tax deficiencies that may be assessed against the estate. \_\_[*List trustee(s)*]]\_\_.

[If appropriate, add]

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 property not otherwise disposed of, consisting of the following: \_\_[*List Property*]]\_\_.

[If applicable, add one or more of the following options]

[Option 1: Distribution according to will]

In accordance with 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: \_\_[*List each beneficiary by name, age, relationship, and residence*]]\_\_.

The property to be distributed to each beneficiary is as follows: \_\_[*List specific property to be distributed with name of each distributee*]]\_\_.

[Option 2: No will, or partial intestacy]

The decedent died \_\_[*intestate/partially intestate*]]\_\_, leaving the following persons as the only heirs at law: \_\_[*List names, ages, relationships to the decedent, and addresses*]]\_\_.

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*]]\_\_ [./]

[Continue]

[If applicable, add one or more of the following options]

[Option 1: Estate tax allocation]

less \$ \_\_[*amount*]]\_\_, which is \_\_[*his/her*]]\_\_ prorata share of the federal estate tax paid by the \_\_[*executor/administrator/etc.*]]\_\_ and chargeable to the distributee.

[Option 2: Interest on general pecuniary devise]

plus interest at the rate of \_\_ percent per year for the period commencing \_\_[*date*]]\_\_, until the date of payment.

[If applicable, add one or more of the following options]

[Option 1: Distribution to county treasurer]

The property that is to be distributed to \_\_[*name of distributee*]]\_\_, whose whereabouts are unknown, shall 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 shall, 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 shall 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 distributees and the share to which each is entitled*]]\_\_.

[Add one of the following alternatives]



**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 49 Documents Required for Transfer of Stock

APPENDIX 49

Documents Required for Transfer of Stock

The following table 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. See Decedent Estate Prac, chap 32, for a more detailed description of requirements.

	Stock Power Signed by	Letters Certified Within 60 Days)	Death Certificate
From Name of Decedent to (see Note):			
a. Representative	Representative	Yes	Yes
b. Purchaser from estate	Representative	Yes	No
c. Distributee of estate	Representative	Yes	No
d. Real owner	Representative	Yes	No
e. Surviving joint tenant	Surviving joint tenant	N/A	Yes
f. Beneficiary of security registered in beneficiary form	Beneficiary	N/A	Yes
g. Representative and tenant in common (two new certificates)	Representative and tenant in common	Yes	May be required
h. Remainderman	Remainderman	Yes, with certain conditions	Yes
From Representative to:			
a. Purchaser from estate	Representative	No	No
b. Distributee of estate	Representative	No	No
c. Successor as representative	Successor	Yes	No

**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 50 Receipt on Distribution

APPENDIX 50

Receipt on Distribution

[Title of court]

Estate of \_\_[name]\_\_, ) No. \_\_\_\_\_

Deceased )

) RECEIPT ON DISTRIBUTION

Received from \_\_[name]\_\_, the \_\_[executor/administrator]\_\_ of the \_\_[will/estate]\_\_ of the above-named decedent, the property distributed to the undersigned by judgment of distribution in this estate made on \_\_[date]\_\_, consisting of the following:

\_\_[Describe]\_\_

Date: \_\_\_\_\_

\_\_[Signature]\_\_

\_\_[Typed name]\_\_

Distributee

*Copies:* Original for filing; one copy for each distributee; office copies.

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**Source:** Estate Planning/Handling a Probate (Action Guide)/Appendixes/APPENDIX 51 Ex Parte Petition for Final Discharge and Order (Judicial Council Form DE-295)

APPENDIX 51

Ex Parte Petition for Final Discharge and Order (Judicial Council Form DE-295)



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):   TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	<b>FOR COURT USE ONLY</b>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b>  STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
<input type="checkbox"/> ESTATE <input type="checkbox"/> CONSERVATORSHIP <input type="checkbox"/> GUARDIANSHIP OF (Name): _____ <div style="text-align: right; margin-right: 100px;"> <input type="checkbox"/> DECEDENT    <input type="checkbox"/> CONSERVATEE    <input type="checkbox"/> MINOR                 </div>	
<b>EX PARTE PETITION FOR FINAL DISCHARGE AND ORDER</b>	
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.

*Copies:* Original for filing; one copy for surety company; one copy for certification and mailing to Internal Revenue Service, if necessary; office copies.

**Source:** Estate Planning/Handling a Probate (Action Guide)/TABLE OF STATUTES, REGULATIONS, AND RULES

TABLE OF STATUTES, REGULATIONS, AND RULES

CALIFORNIA

Statutes

CIVIL CODE

682.1: [Step 4](#)

4800(d) (former): [Step 21](#)

CODE OF CIVIL PROCEDURE

366.2: [Step 21](#)

366.2-366.3: [App 28](#)

366.3: [Step 21](#)

377.20: [Step 5](#)

413.30: [Step 8](#)

446: [Step 6](#)

2009: [Steps 3, 6, 24](#)

2010: [App 28](#)

2015.5: [Steps 3, 6, App 28](#)

COMMERCIAL CODE

8402: [Step 25](#)

ELECTIONS CODE

2194: [Step 3](#)

EVIDENCE CODE

1530-1532: [Step 9](#)

1530(a)(2): [Step 9](#)

1530(a)(3): [Step 9](#)

FAMILY CODE

297.5(a)-(c): [Step 3](#)

297.5(c): [Steps 4-6, 8, 18, 21, App 46](#)

297.5(d): [Steps 3, 6](#)

2621: [Step 21](#)

2622: [Step 21](#)

2625: [Step 21](#)

7540: [Step 6](#)

7611: [Step 6](#)

7611(f): [Step 3](#)

#### GOVERNMENT CODE

6063: [Step 22](#)

6063a: [Step 22](#)

6254.4: [Step 3](#)

70650(a): [Step 7](#)

70650(b): [Step 7](#)

70650(c): [Step 7](#)

70650(d): [Step 7](#)

#### HEALTH AND SAFETY CODE

7100(a): [Step 3](#)

103525-103527: [Step 3](#)

#### PENAL CODE

12000-12101: [Step 17](#)

#### PROBATE CODE

24: [Step 3](#)

24(a): [Step 14](#)

26: [Step 6](#)

44: [Step 3](#)

50: [Step 6](#)

78: [Step 4](#)

140-147: [Step 5](#)

141: [Step 5](#)

142: [Step 5](#)

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