

INVENTORY & APPRAISAL

Once the personal representative has been appointed, he or she has four months in which to file an inventory of the estate assets, with their appraised values. The inventory should list **all** probatable assets, though it can also list non-probatable assets if the personal rep wants them appraised - for information purposes only, or for tax purposes.

The assets are appraised as of the date of death. Once the inventory has been completed, and the assets appraised, the form "Inventory and Appraisal" ("I&A") is filed with the court. Also, under Probate Code Section 8800, the personal rep is required to certify (on the form) that a Change of Ownership form has been sent to the county assessor's office, or, in the alternative, that the estate contained no real property. The Change of Ownership Report alerts the assessor's office that the owner has died and that reassessment may then be possible. If, however, the beneficiaries of the estate are the decedent's children, a form can be filed with the assessor asking for an exclusion from reassessment. This form is called a Proposition 58 (or now Proposition 19) form, or, more formally, a Request for Exclusion From Reassessment.

Because the I&A generally includes only probatable property, it excludes community property, out-of-state assets, and, of course, property not passing by Will or inheritance. The latter means the following are typically *not* listed:

- Life insurance (unless payable to the decedent)
- IRA's and other death benefits
- Annuities
- Pension benefits
- Pay-on-death bank accounts
- Joint tenancies
- Trust assets

Although some, or all, of a decedent's assets may not be probatable, they may, however, still be subject to federal (and state) estate taxes. Therefore, if the estate is large enough to require an estate tax return, the personal rep should list these assets separately on the I&A. It's important that these assets be listed correctly to show that they are not being probated.

If the entire estate is not known at the time the I&A is prepared, a partial inventory can be filed. At a later time, when the rest of the assets become known, the personal rep can file a final I&A. Additionally, if the final inventory has been filed, and assets are discovered later, a Supplemental I&A can be filed with the court.

Once the personal rep has completely filled out the I&A, it is mailed to the probate referee who has been designated for the case. In some counties, the probate referee is appointed automatically when the Order for Probate is signed by the judge. In other counties, a separate form, typically entitled "Application and Order for Appointment of Probate Referee" is required. Regardless of the procedure, the completed I&A is mailed to the probate referee with a request

that he or she appraise the assets, return the form (signed), and include a bill for the service. The minimum fee is \$75.00, though some referee's will also charge for maps of the real property and mileage to drive to the property. Otherwise, their fee is one-tenth of one percent up to a fee of \$10,000, then half of that.

Not all of the assets on the I&A are appraised by the referee. The personal rep appraises all of the assets that go on Attachment One. These include: cash, bank accounts, and uncashed checks. The referee appraises everything else on Attachment Two. Although there is no rule about the order the assets should be listed, the Probate Referee's Guide suggests listing them in the following order:

- Real property
- Stocks and bonds
- Trust deeds
- Mortgages and notes
- Automobiles
- Other assets

While the I&A should be a detailed description of each asset - so that the referee can identify the asset accurately and the court can pass title - sometimes a little more information is necessary. If that is the case, send a letter to the referee detailing any additional information you think the referee might be interested in. This might include the condition of a house or car, or the car's mileage, or the fact that it's considered a classic. Pictures help. In the case of jewelry, an independent appraisal is a necessity, as it would be for income property (farm, apartment building, business); or stock held in a closely held corporation (or a partnership); or unique items such as antiques, art objects, or collections of any kind.

Under the probate code, the court can waive an appraisal by the referee if the executor petitions the court for a waiver. The executor must show good cause and include a copy of the proposed I&A. The clerk must set the petition for a hearing and notice is required to be given, including notice to the referee. In addition, if the executor prefers to have an expert appraise certain property, he/she can send the I&A to the referee with a notation as to which property the expert is appraising. The referee has five days to object (by filing a petition with the court).

Anyone can file objections to the appraisal by filing a petition with the court. This must be done prior to filing the petition for final distribution. In practice, objections are usually handled informally between attorney and referee. If the attorney or personal rep feels the appraisal is way off, a phone call or letter can generally clear up any differences of opinion. It doesn't hurt to have independent evaluation or some other evidence if you want to make your point.

I&A's are required for sales of real property where the date of death was more than a year before the sale (assuming no IAEA or limited IAEA). The code requires a recent appraisal so that it will know the value of the property at the time of the sale, not the date of death. If

the sale price is not at least 90% of the appraised value, the court must deny confirmation of the sale. Therefore, if the referee's appraisal is too high, a sale may be impossible. Either get an outside appraiser to do a more complete evaluation, or show the referee that after a certain period of time (say, three months), no one has offered even close to the appraised value. The referee may then lower his estimate. Of course, the referee will want to be paid again to do a reappraisal, but it's worth it if this is the only way the property can be sold. The alternate way is to do your independent appraisal before you send the I&A to the referee.

Sometimes, getting bank balances (as of the date of death) can be a little tough if the checkbook/savings passbook are missing. Statements can help, but again, they may be missing. Try calling the bank and ask for the balances as of the DOD. If they're uncooperative, you may have to subpoena their records. Remember, both principal AND interest are assets up to the DOD.

Problem areas: Closely held businesses/stock in small corporations. Appraising these can be tough, so outside assistance is a necessity. This is particularly true if you are dealing with large pieces of real estate with a dual nature: that is, property that is, for example, farm land, but could also be sold for commercial purposes.

Remember, the IRS is not bound by the referee's appraisals, but if the personal rep relies on them, it would be difficult to prove fraud (tax fraud, that is) if there's a hint of impropriety. An appraisal can be obtained even if no probate is necessary merely because the personal rep wants to establish the property's "basis". Basis is, loosely, the initial cost of something, plus any added improvements. Although many tax situations call for determining an item's tax basis, property in probate (or even non-probate) situations is stepped up in basis to the date of death value. This gives the heirs an instant tax break. If an heir sells the property at a substantially higher price than it was purchased for, there is no gain (for income tax purposes).

By local court rule in most jurisdictions, the estate attorney must certify that the bond, if any, is sufficient at the time the I&A is filed. If it is not, a request to increase bond must be filed with the court (usually done ex parte). The bond company will write a supplemental bond, but it needs the court order first.

SUMMARY PROBATE

There are a couple of different summary probate actions that require I&A's. The first is a PC 13150 Petition to Determine Succession to Real Property. This is a petition to avoid a formal probate action if the real property is worth less than \$184,500.00 (if the decedent died after 4-1-2022; for deaths before that date, the amount is \$166,250.00). Prior to filing the petition, you must have a Probate Referee appraise the property. Just pick one from whatever county you're dealing with (you can google that) and send him/her your Inventory & Appraisal form. Send a cover letter explaining that you're going to be filing a summary probate and that you need to have the appraisal come in under the statutory amount. If there's a question about that, a phone call or letter can clear up any problems. This often comes up with fractional

interests in real property. For example, if the interest is only 50% of the property, the real value of the property, for appraisal purposes, is often much less than half the value. The reason for this is that it is next to impossible to sell a half interest in real property, so the marketable value is considerably less than one-half. The IRS will generally allow a discount of 30-35%, and the Probate Referee should be reminded of that.

Once you get the I&A from the referee, you file it with your petition and have the clerk set it for a hearing.

The other summary probate action is under PC 13200 - an Affidavit re Real Property of Small Value. In this case, small value means under \$61,500.00 (\$55,425.00 if the decedent died before 4-1-2022). The procedure is basically the same. You send an I&A to the Probate Referee and ask for an evaluation that you can file with the court. In this type of action, there is no hearing. The clerk merely forwards the affidavit and I&A to a probate examiner, who can then peruse it for any deficiencies. If it's accepted, then the clerk will issue a certified copy, which can be recorded.

PROBATE REFEREE'S GUIDE

The Probate Referee Guide is a valuable tool that tells you how to list various types of assets on your Inventory and Appraisal forms. The guide can be downloaded from the website:

https://www.sco.ca.gov/Files-EO/probate_guide.pdf

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Alan D. Davis, #81783 Law Office of Alan D. Davis 1323 N. Broadway Santa Ana, CA 92706 TELEPHONE NO.: (714) 614-0422 FAX NO. (Optional): (714) 285-1425 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): I. L. GETRICH	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE STREET ADDRESS: 700 Civic Center Drive West MAILING ADDRESS: same CITY AND ZIP CODE: Santa Ana, CA 92701 BRANCH NAME: Central Judicial Center	
ESTATE OF (Name): I. M. DECEASED, <input checked="" type="checkbox"/> DECEDENT <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> MINOR	
INVENTORY AND APPRAISAL <input type="checkbox"/> Partial No.: <input type="checkbox"/> Corrected <input checked="" type="checkbox"/> Final <input type="checkbox"/> Reappraisal for Sale <input type="checkbox"/> Supplemental <input checked="" type="checkbox"/> Property Tax Certificate	CASE NUMBER: 30-2022-12345678 Date of Death of Decedent or of Appointment of Guardian or Conservator: 12-1-04

APPRAISALS

- | | |
|--------------------------------------------------------------------------------|-------------------------------|
| 1. Total appraisal by representative, guardian, or conservator (Attachment 1): | \$ 218,731.17 |
| 2. Total appraisal by referee (Attachment 2): | \$ 835,000.00 |
| | TOTAL: \$ 1,053,731.17 |

DECLARATION OF REPRESENTATIVE, GUARDIAN, CONSERVATOR, OR SMALL ESTATE CLAIMANT

3. Attachments 1 and 2 together with all prior inventories filed contain a true statement of
☒ all ☐ a portion of the estate that has come to my knowledge or possession, including particularly all money and all just claims the estate has against me. I have truly, honestly, and impartially appraised to the best of my ability each item set forth in Attachment 1.
4. ☐ No probate referee is required ☐ by order of the court dated (specify):
5. **Property tax certificate.** I certify that the requirements of Revenue and Taxation Code section 480
- a. ☐ are not applicable because the decedent owned no real property in California at the time of death.
- b. ☒ have been satisfied by the filing of a change of ownership statement with the county recorder or assessor of each county in California in which the decedent owned property at the time of death.

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

Date:

I. L. GETRICH

(TYPE OR PRINT NAME; INCLUDE TITLE IF CORPORATE OFFICER)

(SIGNATURE)

STATEMENT ABOUT THE BOND

(Complete in all cases. Must be signed by attorney for fiduciary, or by fiduciary without an attorney.)

6. ☒ Bond is waived, or the sole fiduciary is a corporate fiduciary or an exempt government agency.
7. ☐ Bond filed in the amount of: \$ ☐ Sufficient ☐ Insufficient
8. ☐ Receipts for: \$ have been filed with the court for deposits in a blocked account at (specify institution and location):

Date:

Alan D. Davis, #81783

(TYPE OR PRINT NAME)

(SIGNATURE OF ATTORNEY OR PARTY WITHOUT ATTORNEY)

ESTATE OF (Name): I. M. DECEASED,		CASE NUMBER:
<input checked="" type="checkbox"/> DECEDENT <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> MINOR		30-2022-12345678

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: | \$ | 450 |
| Expenses (specify): | \$ | 50 |
| TOTAL: | \$ | 500 |

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

Date:

HI GESS

(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.)

ESTATE OF (Name): I. M. DECEASED,

CASE NUMBER:

30-2022-12345678

INVENTORY AND APPRAISAL**ATTACHMENT NO:** 1*(In decedents' estates, attachments must conform to Probate**Code section 8850(c) regarding community and separate property.)*Page: 1 of: 1 total pages.*(Add pages as required.)*Item No.DescriptionAppraised value

- | | | |
|----|---------------------------------------------------------------------------------------|--------------|
| 1. | Checking account at Bank of Santa Ana, Santa Ana, CA;
account number 123-45678: | \$50,000.00 |
| 2. | Cash found at Decedent's home: | \$130.43 |
| 3. | Certificate of Deposit, account #33-10-5669 at Wells Fargo Bank, Santa
Ana, CA: | \$100,000.00 |
| | Accrued interest: | \$23.47 |
| 4. | Money Market Fund at Smith Barney, account #999888AD;
Santa Ana, CA: | \$43,559.32 |
| | Accrued interest: | \$5.33 |
| 5. | Uncashed check from Fullerton Life Insurance Company on the life of
I.M. Deceased: | \$25,000.00 |
| 6. | Refund from Southern California Edison: | \$12.62 |

TOTAL:**\$218,731.17**

ESTATE OF (Name): I. M. DECEASED,

CASE NUMBER:

30-2022-12345678

INVENTORY AND APPRAISAL**ATTACHMENT NO: 2***(In decedents' estates, attachments must conform to Probate*

Page: 1 of: 1 total pages.

*Code section 8850(c) regarding community and separate property.)**(Add pages as required.)*Item No.DescriptionAppraised value

1.	Improved real property located at 123 S. Main Street, Santa Ana, CA, legally described as: Lot 1 of Tract 12345, as per map recorded in Book 600, Page 6 of Maps, records of Orange County, CA. APN: 666-1110-001:	\$200,000.00
2.	1000 shares of IBM common stock; stock symbol: IBM; CUSIP: 44455:	\$90,000.00
3.	2015 Lexus SC 300; CL# EEE444; VIN: ABCD1234EFG5678:	\$35,000.00
4.	Star of Fullerton diamond ring (approximately 5 carats):	\$75,000.00
5.	Golden Rain Foundation of Laguna Hills Membership Certificate No. 24000 and United Laguna Hills Membership Certificate #1-4-93 with the right to reside at 888-A Calle Seville, Laguna Hills, CA 92653; APN: 444-555-123:	\$300,000.00
6.	A life estate interest in improved real property at 111 Maple St., Santa Ana, CA, and legally described as: Lot 1 of Tract 2, as per maps, records of Orange County, CA. APN: 555-222-111:	\$100,000.00
7.	Ten shares of AD Davis Paving Company of Santa Ana, CA, an unlisted closely held corporation:	\$25,000.00
8.	1861 "S" \$20.00 gold piece (U.S.) in uncirculated condition:	\$10,000.00
TOTAL:		\$835,000.00