

INVENTORY & APPRAISEMENT

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 Appraisalment" is filed with the court. Many courts require an original and one copy to be filed because the copy is then forwarded to the county tax assessor's office for reassessment of any real property. Also, under Probate Code Section 8800, the personal rep is required to file, at the same time, a certificate stating that a change of ownership form has been sent to the 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 form, or, more formally, a Request for Exclusion From Reassessment Under Proposition 58.

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, like Los Angeles, 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); 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 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 unco-operative, 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).

ESTATE OF (Name): I. M. DECEASED,	CASE NUMBER: A 123456
<input checked="" type="checkbox"/> DECEDENT <input type="checkbox"/> CONSERVATEE <input type="checkbox"/> MINOR	

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: A 123456
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**INVENTORY AND APPRAISAL
ATTACHMENT NO.: 1**

(In decedents' estates, attachments must conform to Probate Code section 8850(c) regarding community and separate property.)

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(Add pages as required.)

<u>Item No.</u>	<u>Description</u>	<u>Appraised value</u>
1. 1.	Checking account at Bank of America, Anaheim, CA; account #123-45678:	\$50,000.00

ESTATE OF (Name): I. M. DECEASED,	CASE NUMBER: A 123456
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**INVENTORY AND APPRAISAL
ATTACHMENT NO.: 2**

(In decedents' estates, attachments must conform to Probate Code section 8850(c) regarding community and separate property.)

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(Add pages as required.)

<u>Item No.</u>	<u>Description</u>	<u>Appraised value</u>
1. 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: 666-1110-000:	\$200,000.00
2.	1000 shares of common stock of IBM:	\$90,000.00
3.	1995 Lexus SC 300; CL# E666123; VIN: JT8JZ31CS123456:	\$35,000.00
4.	Household furniture and furnishings (including antiques and artwork):	\$75,000.00
	TOTAL:	\$400,000.00