

ACCOUNTINGS, DISTRIBUTIONS, AND COMPENSATION

An accounting is a detailed and formal written report filed with the court that sets forth all of the financial transactions carried out by the personal representative during the administration. It can be waived if ALL of the heirs/beneficiaries sign written waivers, which are then filed with the court. However, there are still certain requirements that must be met in the report of executor/administrator even when a waiver of account is filed. In addition, a waiver may not be filed if distribution of the estate is to a testamentary trust or a residual beneficiary.

Accountings are normally required whenever distribution is requested. By law, distribution should take place within one year of the date of appointment, so an accounting would be filed at the same time as a distribution request is made. Distribution cannot be made without court approval under any circumstances. Also, the estate attorney typically asks for allowance of his/her fees at this time. Statutory Fees are set by California law, and may not be paid without court approval.

The following are the things that generally are included in all accountings:

1. Money received and expended;
2. Creditors' Claims filed;
3. Value of assets on hand at the end of probate;
4. Sales of assets;
5. Disposition of other assets (trades, abandonments, lawsuits, etc.);
6. Estate Accounted For (for calculation of fees).

Since July 1, 1997, state law has dictated exactly what information must be contained in an accounting. Probate Code 1060 through 1064 was enacted because prior to that time, the format of accountings was usually set by local rule. Since local rules vary so greatly, the legislature was finally convinced that a set of standards was required. In addition to the standardization, new requirements were enacted which were thought would keep executors more in line.

A filing fee of around \$465.00 is required by the court (check local rules). Once the court sets the accounting for a hearing, the attorney gives notice in the usual manner. If the estate is not in a position to file a final accounting of the estate and more than a year has passed, the executor can file a partial accounting. The title of this partial accounting is typically "First Account Current", to distinguish it from later accountings. In most cases, however, there is only one accounting filed, so the title is "First and Final Account..." Since the request for attorney fees, executor's commissions, and distribution are usually requested at the same time, and a report of the condition of the estate is made, the title further reads "...and Report of Executor, and Petition for Its Settlement; Petition for Fees and Commissions; Petition for Final Distribution".

If the personal rep dies before the account can be filed, his/her personal rep can file it for the deceased executor. Otherwise, the estate attorney must file it.

In the accounting, the executor must allege that all expenses of the estate have been paid, including the bond (if any), probate referee, and any publication costs. Also, there must be an allegation that notice was given to each creditor that the executor knew about or should have reasonably been able to ascertain. The executor should allege that he/she has searched the decedent's bills, checkbook, mail, desk, etc. A list of all creditors that have filed claims must be included, along with the amount of each claim, the date filed (not after the four month period), and the disposition of each claim (paid, not paid, rejected, etc.).

There must be a statement that four months have passed since the Letters were issued. If four months have not passed, the court will reject the petition or continue the hearing for another month. That can be embarrassing to the attorney.

Other things that must be included in the account concern payment of taxes (if any) and a summary of the accounting. See the sample accounting for details on the allegations of a typical accounting petition. Also, since Probate Code Section 1064 has specific allegations that the probate examiners are looking for, it is usually a good idea to have the answers to these allegations on a separate schedule. If they're scattered throughout the accounting, the examiner may miss them, resulting in a defect note.

FEES AND COMMISSIONS

Attorney's fees and executor's commissions are fixed by California law. The statutory fee for ordinary services is laid out in P.C. 10800 & 10810 et seq. These are maximums, except that both the attorney and executor may ask for extraordinary fees for special services. No fees can be paid without court approval. Since fees are usually requested as part of the accounting (though not required), the court will require that a schedule showing the "Estate Accounted For" be included. This is the total gross value of the estate as shown on the Inventory and Appraisal, plus income receipts and gains on sales, and less any losses on sales. For this purpose you will ignore liens and encumbrances on any properties. The calculation of the fees and commissions (which are the same) must be set out. The percentage allowed by law is as follows (amended 1/1/02):

- 4% of the first \$100,000.00
- 3% of the second \$100,000.00
- 2% of the next \$800,000.00
- 1% of the next \$9,000,000.00
- 1/2% of the next \$15,000,000.00
- Court's discretion over \$25,000,000.00 (reasonable)

The testator can provide for compensation in his/her Will. Contracts for more than the statutory amounts are void. If the attorney also acts as the executor, he/she can receive only

executor's fee, but court has discretion to also award A/F.

Extraordinary fees/commissions can be granted for special services, such as sales of property, litigation, tax preparation, Will contests, carrying on the decedent's business, or other things. The basis for the extra charges must be laid out in detail for the court (check local rules). You must tell the court what you've done and the basis for the fee request. An hourly rate must be in conformity with the usual compensation for the area and dependent on the attorney's expertise and years in practice. In large firms, where paralegals do much of the work, extraordinary fees may be granted for their time, as well as for that of the attorney(s).

If the estate is insolvent (cash poor), it is common to ask the court for a lien on the estate property in the final decree. The court decree is then recorded. If the property is sold, the attorney (or executor) gets paid from escrow.

Sometimes a client changes attorneys, or there are successive executors. Only one fee can be granted either, so an allocation must be made in proportion to the work performed.

As in the case of a partial accounting, a request for partial payment may be made at the same time. By local rule, most courts will not allow more than 70 - 75% of the full (anticipated) fee. Most courts will not allow payment until the four month period of time has expired.

DISTRIBUTION OF ESTATE

By law, distribution of the estate assets must take place within one year of the date of appointment. However, if problems arise (taxes, litigation, etc.), the executor may have to keep the estate open longer. The heirs usually want their share, however, so a partial, or preliminary, distribution can be requested. When only two months have passed from the date of appointment, a preliminary distribution can be made, but only if the heir/beneficiary posts a distributee's bond. After the four month period, the court may still require a bond, although the main question is whether there will be enough money to pay any creditors. If it appears that there will be, bond is usually waived. The costs of requesting a preliminary distribution are apportioned between the distributee and the estate.

Under the IAEA, preliminary distribution can be requested ex parte after the four month period, but typically no more than 50% of the *net* estate can be distributed. This means the gross value of the estate minus liens, encumbrances, taxes, and creditors' claims. Also, under PC 10520, a preliminary distribution can be made with a Notice of Proposed Action (under IAEA) after the four month period if the property consists of income, household furniture, motor vehicles, clothing, and cash (up to \$10,000 per person). (See §10520 for the particulars.)

Generally, courts will require an accounting with the petition for preliminary distribution. Once distribution has been made, the distributees sign Receipts, which are then filed with the court.

Final distribution can be made after the court has approved the final accounting. In practice, the accounting petition and petition for final distribution are done in the same document, along with the fee request. Four months must have passed since the Letters were first issued, and there can be no pending litigation or tax problems. The final decree (order) signed by the judge must name each distributee and the asset that each gets **in detail**. If real property is distributed, the final decree (certified copy) must be recorded in the county in which the property is located. If an heir dies before distribution, it is proper to distribute to that person's personal representative (although summary probate may be available).

Certified copies of the final decree may also be necessary to transfer other assets, such as cars, boats, securities, mobile homes, etc. A "deed" is not necessary to transfer real property, but if an heir wants one, the executor can provide one anyway. The deed should recite that it's given pursuant to a court order and give the date of that order/deed.

Distribution to a testamentary trust: check the local rules of court. The final decree must lay out the terms of the Trust. Under L.A. rules, the decree must use language in the "third person" form.

Each person receiving property should sign a Receipt, which is then filed with the court. Once all Receipts are filed, the executor should sign an Affidavit or Declaration for Discharge. Once the judge signs the Discharge order, the executor is released from his/her duties. If a bond was required, a copy of the signed order should be sent to the bonding company so they will know they have been discharged from their responsibilities. Distribution to minors can be made to a guardian, a parent, or a custodian. The rules vary depending on the amount to be distributed. In general, if the amount is over \$20,000, a formal guardianship will have to be set up. Otherwise, distribution can be made under the Uniform Transfer to Minors Act, or to a blocked account.

If final distribution is not made within one year of appointment (18 months if a federal estate tax return is due) the personal rep should file a **Status Report** (PC §12200) and tell the court why distribution has not been made. Check the form Notice of Hearing for the special notice requirements (form DE-120). Each heir must be told that he/she has a right to an accounting. If the judge decides that no valid reason exists, the personal rep (or attorney) can be surcharged; that is, part of his/her fee can be ordered not paid. (Los Angeles County has a form *Status Report* that can be used instead of preparing a pleading.)

Occasionally, the executor discovers there are no assets to administer. In this case, you can petition to terminate the estate.

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5 Attorney for Estate Representative
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

10

11 Estate of:) CASE NO. BP 12345
12)
13 I.M. DECEASED,) FIRST AND FINAL ACCOUNT, REPORT OF
14) EXECUTOR, AND PETITION FOR ITS
15) SETTLEMENT; PETITION FOR STATUTORY
Fees and Commissions and Extra-
ORDINARY FEES; PETITION FOR
FINAL DISTRIBUTION AND A RESERVE.
[PC 10800, 10810, 10951, 11640]

16 Deceased.)
17 Mary Jones, Executor of the Estate of I.M. DECEASED, presents
her First and Final Account and Report of the Executor as follows:

18 1. Date and Place of Death

19 Decedent died testate on April 26, 1993, in the County of
20 Los Angeles, State of California, a resident of that County.

21 2. Will Admitted to Probate

22 Decedent's Will, dated January 31, 1988, was admitted to
23 probate on June 15, 1993. Letters Testamentary were issued to
24 petitioner on June 15, 1993, and have been continuously and still
25 are in full force and effect.

26 3. Creditor's Claim Period

27 More than four months have elapsed since that date and
28 the time for filing and presenting claims in this Estate has
expired. Written proof of due publication of notice of death was

1 filed herein.

2 4. Creditor's Claims

3 The petitioner has made a diligent search for reasonably
4 ascertainable creditors by searching the decedent's records, mail,
5 checkbook, and bills, and has made reasonable efforts to locate all
6 known or reasonably ascertainable creditors.

7 One formal Creditor's Claim has been filed:

8 California Medical Center
9 12345 S. Grand Avenue
10 Los Angeles, CA 90000
11 Amount: \$676.00 - approved and paid

12 No other creditor's claims have been filed. Notice of
13 Administration was not filed because petitioner, after a diligent
14 search and reasonable efforts to locate all known or reasonably
15 ascertainable creditors, has not discovered any other creditors.
16 All debts of the decedent that were paid within four months of the
17 first issuance of the Letters, without verified claims having been
18 filed or presented, were paid in good faith. To the best of
19 Petitioner's knowledge, there are no debts still owing and no
20 creditors remain to be paid.

21 5. Compliance with Probate Code § 9201 and 9202

22 Notice to the Director of Health Services was given and
23 no claim was filed. Decedent was not a recipient of Medi-Cal
24 benefits.

25 6. Inventory and Appraisement

26 An Inventory and Appraisement of the estate was returned
27 and filed on July 6, 1993, showing estate assets with a value of
28 \$243,000.00. Such inventory contains all of the assets of the
decedent's estate that have come to petitioner's knowledge or into
her possession.

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1 7. Administration of Estate Under IAEA

2 The estate has been administered under the Independent
3 Administration of Estates Act with full authority.

4 8. Estate Tax Return

5 No Federal estate tax return was prepared because no
6 estate taxes were due.

7 9. Personal Property Taxes

8 No personal property taxes are due or payable by the
9 estate.

10 10. Inheritance Taxes

11 No inheritance taxes are due, owing, or payable by the
12 estate as decedent's death occurred after June 8, 1982.

13 11. Estate Income Taxes

14 No California or Federal income taxes were due or payable
15 by the estate, but petitioner will have to file an income tax
16 return for the estate. Petitioner asks for a reserve of \$500.00 to
17 cover the cost of preparation and payment of possible income taxes.

18 12. Administration Completed

19 Petitioner has performed all duties required of her as
20 Executor of the estate. All debts of the decedent and of the
21 estate, and all expenses of administration, except attorney fees
22 and executor's commissions, have been paid, including publication
23 fees, bond (if any), and probate referee fees. The estate is ready
24 for distribution and is in a condition to be closed.

25 13. Summary of Account

26 Petitioner is chargeable with and is entitled to the
27 credits set forth in this summary of accounts. The supporting
28 Schedules are attached hereto and incorporated herein by this
reference. This account covers the period from the date of

1 decedent's death to January 15, 1998:

2 CHARGES

3	Inventory and Appraisement:	\$243,000.00
4	Non-Income Receipts (Schedule A):	\$1,531.00
5	Additional Property Received (Schedule D):	-0-
6	Gains on Sales (Schedule E):	-0-
7	Net Income from Trade/Business (Schedule F):	-0-
8	TOTAL CHARGES:	\$244,531.00

9 CREDITS

10	Disbursements (Schedule B):	\$1,531.00
11	Assets on Hand (Schedule C):	\$243,000.00
12	Losses on Sales (Schedule E):	-0-
13	Net Loss of Trade/Business (Schedule F):	-0-
14	Distributions (Schedule G):	-0-
15	TOTAL CREDITS:	\$244,531.00

16 14. Character of Estate Property

17 The estate consists entirely of the separate property of
18 the decedent. The estate has no liabilities, liens, notes, or
19 judgments that are due or payable.

20 15. Beneficiaries and Distribution of Estate

21 The devisees under the decedent's will, and the share
22 each is entitled to, are as follows:

23 <u>NAME/RELATIONSHIP</u>	<u>SHARE OF ESTATE</u>
24 Joseph Deceased - adult son	One-half of estate
25 Mary Jones - adult daughter	One-half of estate

26 16. Statutory Fees and Commissions

27 Petitioner alleges that the Estate Accounted For, for the
28 purposes of computing statutory commissions and fees, is:

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1	Inventory and Appraisement:	\$243,000.00
2	Plus Income Receipts:	\$0
3	Plus Gains:	\$0
4	Less Losses:	\$0
5	Estate accounted for:	\$243,000.00
6	The statutory fee is computed as follows:	
7	4% of first \$100,000.00:	\$4,000.00
8	3% of next \$100,000.00:	\$3,000.00
9	2% of \$43,000.00:	\$860.00
10	TOTAL FEE:	\$7,860.00

11 The petitioner requests the statutory commission of \$7,860.00.
12 Alan D. Davis, Attorney at Law, has rendered ordinary legal
13 services to petitioner and the fee provided by law for such
14 services is the sum of \$7,860.00, which has not been paid.
15 Petitioner requests authority to pay her attorney such sum in
16 discharge of the statutory fee.

17 17. Request for Special Notice

18 No requests for special notice have been filed in these
19 proceedings.

20 18. Allegations Required Under Probate Code §1064

21 The allegations required under Probate Code Section 1064
22 are contained in Schedule H hereto.

23 19. Extraordinary Fees

24 Attorney Alan D. Davis has performed extraordinary
25 services in connection with the litigation concerning the title to
26 the property owned by the estate. Said attorney represented the
27 estate in a lawsuit in which the decedent's former spouse alleged
28 that the real property was owned by her. Said attorney was
required to file an answer in the civil action and had to attend

1 numerous court hearings. Said attorney was finally successful in
2 having the lawsuit terminated in the estate's favor. Said attorney
3 expended approximately 25 hours on the lawsuit, and requests
4 \$2,500.00 for his services. A detailed schedule of these services
5 is contained in Schedule I.

6 20. Filing Fee

7 Since the date of filing was prior to August 18, 2003, no
8 additional filing fees are required in this estate.

9 **WHEREFORE**, petitioner prays for an order of this Court that:

10 1. The First and Final Account and Report of the Executor be
11 settled and allowed;

12 2. All the acts and proceedings of petitioner as Executor be
13 confirmed and approved;

14 3. Petitioner be authorized and directed to pay to Alan D.
15 Davis the sum of \$7,860.00 as statutory fees for services to
16 petitioner and this estate, and the sum of \$2,500.00 for
17 extraordinary services to petitioner and the estate;

18 4. Petitioner be authorized herself the sum of \$7,860.00 for
19 statutory executor's commissions;

20 5. Distribution of the estate of decedent in petitioner's
21 hands, and any other property hereinafter discovered, be made to
22 the persons entitled to it, as set forth herein;

23 6. For a reserve of \$500.00 for the preparation of an income
24 tax return and payment of any income taxes that may be due; and

25 7. For such further orders as the Court deems proper.

26 Dated: _____

27 _____
28 ALAN D. DAVIS
Attorney at Law

MARY JONES

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VERIFICATION

I am the petitioner in this action. I have read the foregoing First and Final Account and Petition for Final Distribution, etc., and it is true of knowledge. I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed on _____ at Los Angeles, California.

MARY JONES

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SCHEDULE A

NON-INCOME RECEIPTS

<u>DATE</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
5/8/99	Advanced by petitioner for costs	\$500.00
8/1/99	Advanced by petitioner to pay creditor's claim	\$676.00
11/12/99	Advanced by petitioner for costs	\$355.00
	TOTAL:	\$1,531.00

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SCHEDULE B

DISBURSEMENTS

<u>DATE</u>	<u>DESCRIPTION</u>	<u>AMOUNT</u>
5/9/99	County clerk - filing fee	\$182.00
6/8/99	Metropolitan News - publication fee	\$188.00
6/13/99	Bond Services of California	\$300.00
6/15/99	County Clerk - Letters	\$10.00
8/10/99	California Medical Center (creditor's claim)	\$676.00
11/20/99	Harry Houdini - probate referee	\$175.00
	TOTAL DISBURSEMENTS:	\$1,531.00

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SCHEDULE C

ASSETS ON HAND AT BEGINNING OF ACCOUNTING - CARRY VALUE

Improved real property located at 1234 Independence Avenue, Los Angeles, California, legally described as:

Lot 123, Tract 4567, as per map recorded in Book 35, Pages 84 and 85 of Maps, records of Los Angeles County, California
APN: 9876-543-210: \$243,000.00

TOTAL PROPERTY ON HAND: \$243,000.00

ASSETS ON HAND AT END OF ACCOUNTING - CARRY & ESTIMATED VALUE

Improved real property located at 1234 Independence Avenue, Los Angeles, California, legally described as:

Lot 123, Tract 4567, as per map recorded in Book 35, Pages 84 and 85 of Maps, records of Los Angeles County, California
APN: 9876-543-210: \$243,000.00

TOTAL PROPERTY ON HAND: \$243,000.00

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SCHEDULE D
ADDITIONAL PROPERTY RECEIVED

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SCHEDULE E
SALES AND OTHER DISPOSITIONS

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SCHEDULE F
INCOME/LOSS FROM TRADE OR BUSINESS

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SCHEDULE G
DISTRIBUTIONS

NONE

SCHEDULE H

ALLEGATIONS REQUIRED BY PROBATE CODE SECTION 1064

1. There was no change in the form of any asset on hand.
2. There were no unusual items in the accounting that require explanation.
3. No compensation has been paid to the executor or her attorney.
4. There is no relationship between the executor or the attorney for the executor and any agent hired by the executor during the administration of the estate.
5. The estate has not had a checking account because it has no income. No rent was received on the estate real property, which consists of a building that is falling due to earthquake damage.
6. The estate has no liabilities except for the monthly utility expenses and property taxes.

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SCHEDULE I

EXTRAORDINARY SERVICES

<u>DESCRIPTION</u>	<u>HOURS</u>
Prepare and file answer to quiet title action:	2.5
Interrogatories:	1.5
Answer Interrogatories:	2.5
Deposition:	4.0
Deposition:	3.0
Court hearing:	2.0
Court hearing:	2.5
Telephone calls and letters:	3.0
Motion to dismiss:	4.0
TOTAL:	25.00

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4 TEL: (714) 614-0422
FAX: (714) 285-1425
5 Attorney for Mary Jones
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8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF LOS ANGELES

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Estate of:) CASE NO. BP 123456
I.M. DECEASED,) SUPPLEMENT TO FIRST AND FINAL ACCOUNT
Deceased.)

Mary Jones, Executor of the estate of I.M. DECEASED, declares as follows:

- 1. I am the petitioner and executor in this matter.
- 2. The decedent was not a recipient of Medi-Cal benefits. No creditor's claim was filed against the estate and no money is due the State of California.
- 3. All of the estate assets were decedent's separate property, having been acquired by decedent prior to his marriage to, and divorce from, Lucy Lee Doe.

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

Executed on _____ at Los Angeles, California.

MARY JONES

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4 TEL: (714) 614-0422
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5 Attorney for Personal Representative
6
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8 ***SUPERIOR COURT OF THE STATE OF CALIFORNIA***
9 ***FOR THE COUNTY OF LOS ANGELES***

10

11 Estate Of:) CASE NO. P 123456
12 I. M. DECEASED,) RECEIPT ON DISTRIBUTION
13)
14 Deceased.)

15 I, the undersigned, being one of the heirs of the above-named
16 decedent, hereby acknowledge receipt of \$124,927.73, which
17 represents my one-half share of the estate.

18 Dated: _____

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GREE D. AIR

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8 ***SUPERIOR COURT OF THE STATE OF CALIFORNIA***
9 ***FOR THE COUNTY OF LOS ANGELES***

10

11 Estate of:) CASE NO. BP 12345
12 I.M. DECEASED,)
13) ORDER SETTLING FIRST AND FINAL
14) ACCOUNT AND REPORT OF EXECUTOR;
15) ORDER FOR PAYMENT OF STATUTORY
Fees AND COMMISSION AND EXTRAORDINARY
Fees; DECREE OF FINAL DISTRIBUTION;
ORDER FOR RESERVE.
Deceased.)

16 The First and Final Account and Report of Executor came on for
17 hearing on August 20, 2002, at 9:00 a.m. in Department L73 before
18 the Honorable Joe Judge, Judge Presiding. The court finds that all
19 notices required by law have been given; that the time to present
20 or file creditors' claims has expired; and that all of the
21 allegations in the report are true as supplemented. Good cause
22 appearing, it is ordered, adjudged, and decreed as follows:

23 1. The First and Final Account and Report of Executor is
24 approved and settled.

25 2. All acts and proceedings concerning the Executor are
26 allowed and confirmed.

27 3. The Executor, Mary Jones, is authorized and ordered to
28 pay Alan D. Davis the sum of \$7,860.00 as and for statutory

1 attorney fees and \$2,500.00 as and for extraordinary attorney fees.

2 4. The executor is authorized to pay herself the sum of
3 \$7,860.00 as and for statutory executor's commissions.

4 5. The beneficiaries of decedent's Last Will and Testament
5 are as follows:

6 <u>NAME/RELATIONSHIP</u>	<u>SHARE OF ESTATE</u>
7 Joseph Deceased - son	One-half of estate.
8 Mary Jones - daughter	One-half of estate.

9 6. The personal representative shall be discharged upon the
10 filing of proper receipts and an Affidavit for Final Discharge.

11 7. The property on hand at the end of probate, and its
12 value, is as follows:

13 Improved real property located at 1234 Indepen-
14 dence Avenue, Los Angeles, California, legally
described as:

15 Lot 123, Tract 4567, as per map recorded 16 in Book 35, Pages 84 and 85 of Maps, records of Los Angeles County, California 17 APN: 9876-543-210:	\$243,000.00
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18 TOTAL PROPERTY ON HAND:	\$243,000.00
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19 Dated: _____
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21 _____
22 JUDGE OF THE SUPERIOR COURT
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