

## MISSING PERSONS

### PC 12400 - 12409

A missing person is a person presumed dead. One is presumed dead if not heard from for a continuous period of five years by those likely to have seen or heard from that person, AND whose absence is not satisfactorily explained AFTER DILIGENT SEARCH OR INQUIRY. (Previous California law required seven years!)

The presumption is that the person died at the END of the period, unless there's sufficient evidence to show that death occurred earlier. The estate can be probated as in other cases, once the court is satisfied that the person is, in fact, a missing person who should be presumed dead. The Petition for Probate should be modified to show that the person is PRESUMED dead, not that he/she IS dead. Following the hearing, at which the judge makes a determination as to the missing person's death, the court will make a ruling that the date of death is such-and-such. The Order for Probate should also be modified to show the presumption of death, as found by the court.

Jurisdiction exists if the missing person was a California resident or had property here.

The attorney files a Petition for Probate to get the probate started. He/she will need to supply the court with additional information relevant to the missing person, including:

- a. Last know residence/address of the missing person;
- b. Time and circumstances when the person was last heard from;
- c. That the missing person has not been heard from for five continuous years by the persons who would have heard or seen him/her (naming them and their relationship, if any, to the person); and that missing person's address is unknown;
- d. A description of any search or inquiry for the missing person.

Notice also goes by registered mail to the missing person's last known address. Proof of service must be filed with the court. Usually the proof shows that the post office was unable to deliver the Notice. The original letter with attached registered mail form can be filed with the court.

The Court determines whether the missing person is presumed dead. It can receive affidavits from people who knew the missing person, and can require the petitioner to conduct a diligent search and report the results, including:

- a. Newspaper ads;
- b. Notifying law enforcement officials and public welfare agencies;
- c. Hiring a private investigator;

The costs of the search are to be paid by the estate. The court also determines the date of death and appoints a personal representative.

If the missing person reappears, he/she can recover any property in the possession of the personal representative, less costs, fees, and expenses incurred. He or she can also recover property from the distributees, or the value thereof, if recovery is inequitable. However, there is a five year time limit after distribution for recovery. This is the exclusive remedy available to the missing person unless he/she can prove there was fraud or intentional wrongdoing.

If the identity of the person claiming to be the missing person arises, the missing person can file a PC 11700 petition (Petition to Determine Entitlement to Distribution) to determine his/her identity.