

SUMMARY PROBATE

SPOUSAL PROPERTY

Spousal Property concerns property that either already belongs to the surviving spouse or passes to the surviving spouse (in whole or in part) in probate. Under California law, when a spouse dies and all or part of his or her property goes to the surviving spouse, it passes without going through formal probate administration. There are exceptions to this. Probate administration **should** be filed if:

- a. The property passes to someone other than the surviving spouse (maybe the decedent's girlfriend or children?);
- b. The property is disposed of in trust under the decedent's Will;
- c. The surviving spouse gets only a qualified ownership interest by the Will (such as a life estate).

In order to confirm title to the surviving spouse, it may be necessary to file a Spousal Property Petition (PC 13650, et seq. - DE-221). This petition can do one of two things: it can pass title to the survivor, and it can be used to determine that property is already owned by the survivor (as community property). See p. 1-11 & 1-12.

After 40 days from the death of a spouse, the survivor has full power to sell, lease, mortgage, or otherwise deal with and dispose of the community real property. Typically, the survivor records an affidavit regarding the fact of the death (similar to an Affidavit - Death of Joint Tenant). A certified copy of the decedent's death certificate must be attached. However, if someone else claims an interest in the property, that person can record a notice of that claim (similar to a Lis Pendens).

With certain exceptions and limitations, the surviving spouse is liable for the deceased spouse's debts. There is *no* liability, however, if the surviving spouse elects to have all of the community property administered in probate court. (If the surviving spouse chooses to probate the deceased spouse's estate, an election under PC 13502 must be filed in the probate court.)

Sometimes, a spouse dies owning property in his or her name alone. Perhaps the survivor's name is left off a deed, or a pension plan is listed by the decedent's employer only in the decedent's name. If it is obvious that the asset is (or would have been) community property, probate is unnecessary to pass title. The Spousal Property Petition, under Section 13650, can determine if the property is, in fact, community property, which would then pass as follows: one-half passes to the survivor (if there is a Will that says so, or under the laws of intestacy); the other half, under the laws of community property, is determined to already belong to the survivor. Use of the judicial council form is mandatory. Such a petition can

be filed with the Petition for Probate where appropriate. The petition must describe the asset in detail and give facts upon which the spouse can prove that the asset is community property or passes to the surviving spouse. See the local rules of court for the specific requirements for the various counties. Los Angeles and Orange Counties, for example, have certain questions that must be answered in order for the judge to make an appropriate determination. (See OC Rule 607.10; p. 1-8 & 1-9.)

In addition, if an asset is held by husband and wife without showing title (perhaps tenants-in-common), a Spousal Property Petition may be useful in passing title if it can be proved that the property was, in fact, community property or joint tenancy property. Sometimes, the proper form of title is changed or omitted. In this case, the survivor already owns one-half (the title says so). The other half is the problem. If there's a Will, there's no problem. If not, you must prove to the court that the property was bought by the parties during marriage with community funds.

These petitions are set for hearing by the clerk and 15 days notice to interested persons must be given. If the petition is filed with a Petition for Probate, the publication and notices must so specify.

After the judge has granted the petition, you must prepare and file a Spousal Property Order (DE-226 - p. 1-13). You should obtain a certified copy and record it in the county where the property is located.

Spousal Property Petitions can also be filed for domestic partners if they have registered as such with the Secretary of State pursuant to the Family Code.

The surviving spouse can collect up to \$16,625.00 net in salary and unused vacation time owed to the decedent by furnishing an affidavit to the employer (there's no form for this). If the employer refuses to pay, the spouse can sue the employer and can get attorney fees if the employer is unreasonable about not paying. (PC 13600 - 13606.) After April 1, 2022, the amount may be adjusted to reflect an increase in the cost of living.

JOINT TENANCIES

Property held in joint tenancy is owned by all of the parties equally. Upon the death of one joint tenant, the others become the owners of that person's share by right of survivorship. Under California law, and title company procedures, it is only necessary to record an Affidavit - Death of Joint Tenant (p. 1-10), with death certificate, to clear the title (PC 210 - 212). The law does, however, provide a judicial procedure to do the same thing. The procedure is to file a Petition to Establish Fact of Death under PC 200 - 204. If the petition states that there will be no opposition to the petition, the court can hear it ex parte; that is, without a formal hearing or notice. The reason for getting this type of order is that occasionally there may be a problem reconciling the name on the deed with the name on the death certificate. By filing the petition and obtaining a court order, you can terminate

the joint tenancy and clear up any discrepancies.

AVOIDING PROBATE (SUMMARY PROBATE)¹

The California probate code offers several methods for avoiding probate after a person's death. Some of these provide for transferring real property and some for personal property. Let's look at these:

1. A 6600 Petition is also called a Small Estate Set Aside. This petition affords "summary probate" where the decedent's estate (real and/or personal property) is worth less than \$85,900 **net** (over and above and liens, mortgages, etc.). The petition is limited to the surviving spouse and/or minor children, and can include the decedent's one-half of the community property. (There's no form petition available.) Since the \$85,900 doesn't include the value of any joint tenancy property, life estates, or pay-on-death accounts, and is a **net** figure, potentially it could be the entire estate. Prior to the hearing, the property being set aside must be appraised and an Inventory and Appraisal form must be filed with the court. The liens and encumbrances on the property must be listed in the petition.

The court must consider the needs of the surviving spouse and/or minor children, the liens and encumbrances on the property, the claims of creditors, the decedent's overall estate plan and intent, and any other relevant considerations. If the surviving spouse has re-married, the court can presume that the spouse's needs have been met.

This type of petition can be filed with a Petition for Probate or subsequent to a probate being filed. It can also be filed independently of a probate action. Generally, 15 days notice is required of the hearing, but the *type* of notice depends on when the petition is filed. If filed with a Petition for Probate, the form Notice of Petition to Administer Estate must be used, and the notice must indicate that a PC 6600 petition is being filed concurrently. Otherwise, the usual Notice of Hearing form can be used.

The persons taking title to the property are personally liable for the unsecured debts of the decedent, with certain limitations. Further, the court may make orders concerning the payment of other liabilities, such as the expenses of last illness, funeral expenses, and expenses of administration.

After the hearing, you should prepare an order granting the petition and have the clerk issue a certified copy. The copy must be recorded with the county recorder if title to real property is affected.

2. PC 13100: An Affidavit to Transfer Personal Property Worth Less Than

¹ See table on page 1-6.

\$166,250.00 can be used to transfer any type of asset (except real property), as long as it's worth less than \$166,250.00. It can be used any time after 40 days from the decedent's death. The probate code requires the exact wording as used in the statutes for the affidavit, so check the sections carefully. The asset(s) must be described in the affidavit and all of the heirs/beneficiaries must sign it (and have it notarized). Each affiant (signer) is liable for the decedent's unsecured debts up to the amount received. (See sample on p. 1-7)

In determining the \$166,250.00 limit, you can exclude various types of assets, including joint tenancy property, pay-on-death accounts, community property, motor vehicles, vessels, manufactured homes, mobilehomes, campers, up to \$16,625.00 in salary owed at the time of death, and some other assets (see PC 13050). Therefore, you could have a lot of property, but still come under \$166,250.00. (This value is scheduled to change on April 1, 2022, in accordance with the Consumer Price Index.)

Types of property that are generally transferred under this statute include bank accounts, stocks and bonds, vehicles (DMV has their own form), mobile homes (use the Dept. of Housing form), and mortgages (deeds of trust - see PC 13106.5). Some banks have their own form Affidavit, so you might have your client inquire about that. Most attorneys use their own form, but you can also find samples on the Internet.

3. Under Probate Code Section 13150, if the decedent owned real estate worth less than \$166,250.00 (gross), a Petition to Determine Succession to Real Property can be used to transfer title. (See DE-310, p. 1-14 & 1-15.) An appraisal from a California Probate Referee must be obtained before the filing using the Judicial Council form "Inventory and Appraisal". All of the heirs must sign the Petition, but only one has to sign the Inventory. (If you've never used a Probate Referee, you can check the California Probate Referee's website and find one in the county you're filing in.) This procedure is typically used where the real property interest is only a portion of the property, or is located in a rural area.

40 days must have passed since the decedent's death. A court hearing is required and notice must be given to the heirs/beneficiaries at least 15 days before the hearing using form DE-120 (Notice of Hearing). As in the case above, the heirs/beneficiaries are personally liable for the unsecured debts of the decedent up to the fair market value of the property received by a petitioner, less liens and encumbrances.

After the judge grants the petition, you should prepare the Order Determining Succession to Real Property (DE-315 - p. 1-16). After the judge has signed the order and it's been filed with the court, you will need a certified copy for recording purposes. Until the Order is recorded, title to the property won't pass to the heirs.

4. PC 13200. Where the real estate is worth under \$55,425.00, an Affidavit to Transfer Real Property Worth Less Than \$55,425.00 can be used (DE-305). No court hearing is involved. Instead, you simply complete the form, have all the heirs or beneficiaries sign (and have their signatures notarized), attach a certified copy of the death

certificate (and Will, if appropriate) and file it with the court clerk. An Inventory and Appraisal form must accompany the affidavit. The clerk usually keeps the affidavit and forwards it to the probate examiner, who checks over the affidavit for completeness.

Once the probate examiner has determined that the affidavit is correctly completed, the clerk will mail a certified copy of the affidavit back to you. This copy should then be recorded in the county where the property is located. Keep in mind that the affidavit cannot be filed until *six months* after the death, unlike the other procedures discussed above, which only require a 40 day waiting period. Also, all debts of the decedent must have been paid by the time of filing.

What type of property would be worth less than \$55,425.00? Mining claims, desert lots, right-of-ways, easements, partial interests in real estate, etc. (See p. 1-17)

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SUMMARY PROBATE

TABLE OF ACTIONS AND REQUIREMENTS

ACTION	PC 6600	PC 13100	PC 13150	PC 13200
TYPE OF PROPERTY TRANSFERRED	ANY	PERSONAL PROPERTY	REAL PROPERTY	REAL PROPERTY
AMOUNT TO QUALIFY FOR PETITION/ AFFIDAVIT	<\$85,900 NET OVER LIENS	<\$166,250, EXCLUSIVE OF PC 13050 PROPERTY	<\$166,250, EXCLUSIVE OF PC 13050 PROPERTY	<\$55,425
WAITING PERIOD	N/A	40 DAYS FROM DOD	40 DAYS FROM DOD	6 MONTHS
AVAILABLE TO:	SPOUSE &/OR MINOR KIDS	HEIRS/ BENEFS.	HEIRS/ BENEFS.	HEIRS/ BENEFS.
COURT PROCEEDINGS OKAY?	PETITION	NO	PETITION	NO - AFFIDAVIT
PROBATE FILING?	OK	NO	NO	NO
I&A	YES	ONLY IF R/P IS PART OF ESTATE	YES	YES
UNSECURED DEBT LIABILITY	YES	YES	YES	YES
DEATH CERTIFICATE	NO	YES	NO	YES

AFFIDAVIT UNDER PROBATE CODE SECTION 13100

1. Mary Jones, died intestate on February 1, 2020, in the City of Encinitas, County of San Diego, State of California.

2. At least 40 days have elapsed since the death of the decedent, as shown in a certified copy of the decedent's death certificate attached to this affidavit or declaration.

3. No probate proceeding is now being or has been conducted in California for administration of the decedent's estate.

4. The current gross fair market value of decedent's real and personal property in California, excluding the property described in Section 13050 of the California Probate Code, does not exceed one hundred sixty-six thousand, two hundred fifty dollars (\$166,250.00).

5. Affiant or declarant, as the decedent's heir, hereby requests that the following property of decedent be transferred to affiant or declarant:

Bank account at Bank of America, account #123-456789;

6. The affiant or declarant, Jennifer Jones, is the successor of the decedent (as defined in Section 13006 of the California Probate Code) to the decedent's interest in the described property.

7. No other person has a superior right to the interest of the decedent in the described property.

8. The affiant or declarant requests that the described property be paid, delivered, or transferred to the affiant or declarant, Jennifer Jones, residing at 12345 N. Main Street, San Diego, California 91111. Jennifer Jones' social security number is: 123-45-6789.

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

Executed on _____ at San Diego, California.

Jennifer Jones

A Notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On _____ before me, Mary N. Otary, a notary public, personally appeared Jennifer Jones, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. WITNESS my hand and official seal.

NOTARY PUBLIC

**RULE 607.10 SPOUSAL PROPERTY PETITIONS
(PROBATE CODE SECTIONS 13650-13660)**

A petition containing an allegation that the character of any property was transmuted after December 31, 1984, by decedent and surviving spouse must be based on a writing (Family Code Section 852). A photocopy of the writing showing signatures must be attached to the petition.

If a petition contains an allegation that the character of any property was transmuted before January 1, 1985, by decedent and surviving spouse, such claim may be proved either by a writing or by other supporting facts which must be set forth in the petition.

A petition must list, on separate schedules, the decedent's interest and the surviving spouse's interest in the property. For example, if it is alleged the decedent and surviving spouse owned as community property a piece of real property, the decedent's undivided one-half (1/2) interest in such property should be listed on one schedule and the surviving spouse's undivided one-half (1/2) interest in the same property listed on another schedule.

(CONT.)

(issued 07/01/01)

The following requirements do not apply to a petition if the entire estate of the decedent passes to the surviving spouse either under a will or pursuant to intestate succession and one of the following applies: (a) the petition only seeks determination of the passing of the property without a finding of the character (community or separate) of the property; or (b) the decedent and surviving spouse executed a written agreement transmuting or confirming all property owned at the date of the agreement and all after-acquired property into community property; or (c) the decedent and surviving spouse executed a written agreement which transmuted or confirmed the subject property to community property and the date of acquisition of the subject property is alleged. If (b) and/or (c) apply, copies of all agreements must be attached to the petition. In all other cases, the petition must be supplemented to include the following allegations:

- A. Date and place of marriage; and domicile at the time of marriage;
- B. Dates decedent and a surviving spouse came to California, if not domiciled in California at time of marriage or resided in another state after marriage;
- C. If decedent owned any real or personal property on the date of marriage, a description of such property and the approximate value;
- D. Decedent's occupation and net worth at the time of marriage;
- E. Whether or not the decedent received any property after the date of marriage by gift, bequest, devise, descent, proceeds of life insurance or joint tenancy survivorship and, if so, a description of such property, giving approximate values and dates of receipt;
- F. If any property was received by decedent under E above and is part of the estate, identify the property;
- G. The exact title vesting as of the decedent's date of death for each item of property and a statement whether it was acquired after December 31, 1984;
- H. If claims are based on any document, attach a photocopy of the document showing signatures; and
- I. In addition to the above, set forth any additional facts upon which claim of character of property is based.

(Revised effective January 1, 1994)

(issued 07/01/01)

Recording requested by:

Alan D. Davis, Esq.

WHEN RECORDED MAIL DOCUMENT TO:

Alan D. Davis, Esq.
1323 N. Broadway
Santa Ana, CA 92706

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(Space above this line for Recorder's use only)

AFFIDAVIT - DEATH OF JOINT TENANT

STATE OF CALIFORNIA,)
) ss.
COUNTY OF ORANGE)

I, Jane Doe, being of legal age, being first duly sworn, depose and say:

That I.M. Deceased, the decedent mentioned in the attached certified copy of Certificate of Death, is the same person as I.M. Deceased, named as one of the parties in that certain Individual Grant Deed executed by John J. Jones to I.M. Deceased, a single man, and Jane Doe, a single woman, as Joint Tenants, and recorded as Document No. 90-12345, on January 31, 1990, Official Records of Orange County, California, covering the following described property:

Lot 1 of Tract No. 12345, as shown on a map recorded in Book 123, Pages 45-46 inclusive of Miscellaneous Maps, in the Office of the Orange County Recorder, State of California.

More commonly known as: 12345 Main Street, Anaheim, CA 92800
APN: 987-654-321

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

EXECUTED on _____, in Orange County, California.

Jane Doe

A Notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss.
County of Orange)

Subscribed and sworn to (or affirmed) before me on this _____ day of _____, 2021, by Jane Doe proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Signature: _____
Notary Public

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	CASE NUMBER: _____ HEARING DATE: _____
ESTATE OF (Name): _____ <div style="text-align: right;">DECEDENT</div>	DEPT.: _____ TIME: _____
<input type="checkbox"/> SPOUSAL <input type="checkbox"/> DOMESTIC PARTNER PROPERTY PETITION	

1. **Petitioner (name):** _____ requests
 - a. ☐ determination of property passing to the surviving spouse or surviving registered domestic partner without administration (Fam. Code, § 297.5, Prob. Code, § 13500).
 - b. ☐ confirmation of property belonging to the surviving spouse or surviving registered domestic partner (Fam. Code, § 297.5, Prob. Code, §§ 100, 101).
 - c. ☐ immediate appointment of a probate referee.
2. **Petitioner is**
 - a. ☐ surviving spouse of the decedent.
 - b. ☐ personal representative of (name): _____, surviving spouse.
 - c. ☐ guardian or conservator of the estate of (name): _____, surviving spouse.
 - d. ☐ surviving registered domestic partner of the decedent.
 - e. ☐ personal representative of (name): _____, surviving registered domestic partner.
 - f. ☐ conservator of the estate of (name): _____, surviving registered domestic partner.
3. **Decedent died on (date):** _____
4. **Decedent was**
 - a. ☐ a resident of the California county named above.
 - b. ☐ a nonresident of California and left an estate in the county named above.
 - c. ☐ intestate ☐ testate and a copy of the will and any codicil is affixed as Attachment 4c.
 (Attach copies of will and any codicil, a typewritten copy of any handwritten document, and an English translation of any foreign-language document.)
5. a. (Complete in all cases) The decedent is survived by
 - (1) ☐ no child. ☐ child as follows: ☐ natural or adopted ☐ natural, adopted by a third party.
 - (2) ☐ no issue of a predeceased child. ☐ issue of a predeceased child.
- b. Decedent ☐ is ☐ is not survived by a stepchild or foster child or children who would have been adopted by decedent but for a legal barrier. (See Prob. Code, § 6454.)
6. (Complete only if no issue survived the decedent. Check only the first box that applies.)
 - a. ☐ The decedent is survived by a parent or parents who are listed in Item 9.
 - b. ☐ The decedent is survived by a brother, sister, or issue of a deceased brother or sister, all of whom are listed in Item 9.
7. Administration of all or part of the estate is not necessary for the reason that all or a part of the estate is property passing to the surviving spouse or surviving registered domestic partner. The facts upon which petitioner bases the allegation that the property described in Attachments 7a and 7b is property that should pass or be confirmed to the surviving spouse or surviving registered domestic partner are stated in Attachment 7.
 - a. ☐ Attachment 7a contains the legal description (if real property add Assessor's Parcel Number) of the deceased spouse's or registered domestic partner's property that petitioner requests to be determined as having passed to the surviving spouse or partner from the deceased spouse or partner. This includes any interest in a trade or business name of any unincorporated business or an interest in any unincorporated business that the deceased spouse or partner was operating or managing at the time of death, subject to any written agreement between the deceased spouse or partner and the surviving spouse or partner providing for a non pro rata division of the aggregate value of the community property assets or quasi-community assets, or both.

¹ See Prob. Code, § 13658 for required filing of a list of known creditors of a business and other information in certain instances. If required, include in Attachment 7a.

ESTATE OF (Name):	CASE NUMBER:
DECEDENT	

7. b. ☐ Attachment 7b contains the legal description (if real property add Assessor's Parcel Number) of the community or quasi-community property petitioner requests to be determined as having belonged under Probate Code sections 100 and 101 and Family Code section 297.5 to the surviving spouse or surviving registered domestic partner upon the deceased spouse's or partner's death, subject to any written agreement between the deceased spouse or partner and the surviving spouse or partner providing for a non pro rata division of the aggregate value of the community property assets or quasi-community assets, or both.
8. There ☐ exists ☐ does not exist a written agreement between the deceased spouse or deceased registered domestic partner and the surviving spouse or surviving registered domestic partner providing for a non pro rata division of the aggregate value of the community property assets or quasi-community assets, or both. (If petitioner bases the description of the property of the deceased spouse or partner passing to the surviving spouse or partner or the property to be confirmed to the surviving spouse or partner, or both, on a written agreement, a copy of the agreement must be attached to this petition as Attachment 8.)
9. The names, relationships, ages, and residence or mailing addresses so far as known to or reasonably ascertainable by petitioner of (1) all persons named in decedent's will and codicils, whether living or deceased, and (2) all persons checked in items 5 and 6 ☐ are listed below ☐ are listed in Attachment 9.

Name and relationship

Age

Residence or mailing address

10. The names and addresses of all persons named as executors in the decedent's will and any codicil or appointed as personal representatives of the decedent's estate ☐ are listed below ☐ are listed in Attachment 10 ☐ none

11. ☐ The petitioner is the trustee of a trust that is a devisee under decedent's will. The names and addresses of all persons interested in the trust who are entitled to notice under Probate Code section 13655(a)(2) are listed in Attachment 11.

12. A petition for probate or for administration of the decedent's estate

- a. ☐ is being filed with this petition.
- b. ☐ was filed on (date):
- c. ☐ has not been filed and is not being filed with this petition.

13. Number of pages attached: _____

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF ATTORNEY)

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 PETITIONER)

ATTORNEY OR PARTY WITHOUT ATTORNEY (name, address, and State Bar number):
After recording, return to:

TEL 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 ONLY

ESTATE OF (Name):

CASE NUMBER:

DECEDENT

☐ SPOUSAL ☐ DOMESTIC PARTNER ☐ PROPERTY ORDER

FOR COURT USE ONLY

1. Date of hearing: Time:
Dept.: Room:

THE COURT FINDS

2. All notices required by law have been given.
3. Decedent died on (date):
a. ☐ a resident of the California county named above.
b. ☐ a nonresident of California and left an estate in the county named above.
c. ☐ intestate. ☐ testate.
4. Decedent's ☐ surviving spouse ☐ surviving registered domestic partner is (name):

THE COURT FURTHER FINDS AND ORDERS

5. a. ☐ The property described in Attachment 5a is property passing to the surviving spouse or surviving registered domestic partner named in item 4, and no administration of it is necessary.
b. ☐ See Attachment 5b for further order(s) respecting transfer of the property to the surviving spouse or surviving registered domestic partner named in item 4.
6. ☐ To protect the interests of the creditors of (business name):
an unincorporated trade or business, a list of all its known creditors and the amount owed each is on file.
a. ☐ Within (specify): days from this date, the surviving spouse or surviving registered domestic partner named in item 4 shall file an undertaking in the amount of \$
b. ☐ See Attachment 6b for further order(s) protecting the interests of creditors of the business.
7. a. ☐ The property described in Attachment 7a is property that belonged to the surviving spouse or surviving registered domestic partner under Family Code section 297.5 and Probate Code sections 100 and 101, and the surviving spouse's or surviving domestic partner's ownership upon decedent's death is confirmed.
b. ☐ See Attachment 7b for further order(s) respecting transfer of the property to the surviving spouse or surviving domestic partner.
8. ☐ All property described in the Spousal or Domestic Partner Property Petition that is not determined to be property passing to the surviving spouse or surviving registered domestic partner under Probate Code section 13500, or confirmed as belonging to the surviving spouse or surviving registered domestic partner under Probate Code sections 100 and 101, shall be subject to administration in the estate of decedent. ☐ All of such property is described in Attachment 8.
9. ☐ Other (specify):

☐ Continued in Attachment 9.

10. Number of pages attached:

Date:

JUDICIAL OFFICER

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

Page 1 of 1

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (name):		FOR COURT USE ONLY	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:			
MATTER OF (name): <div style="text-align: right;">DECEDENT</div>		CASE NUMBER:	
PETITION TO DETERMINE SUCCESSION TO REAL PROPERTY <input type="checkbox"/> and Personal Property (Estates of \$166,250 or Less)		HEARING DATE AND TIME:	DEPT.:

1. Petitioner (name of each person claiming an interest):

requests a determination that the real property ☐ and personal property described in item 11 is property passing to petitioner and that no administration of decedent's estate is necessary.

2. Decedent (name):

a. Date of death:

b. Place of death (city and state or, if outside the United States, city and country):

3. At least 40 days have elapsed since the date of decedent's death.

4. a. ☐ Decedent was a resident of this county at the time of death.b. ☐ Decedent was not a resident of California at the time of death. Decedent died owning property in this county.5. Decedent died ☐ intestate ☐ testate and a copy of the will and any codicil is affixed as Attachment 5 or 12a.6. a. ☐ No proceeding for the administration of decedent's estate is being conducted or has been conducted in California.b. ☐ Decedent's personal representative's consent to use the procedure provided by Probate Code section 13150 et seq. is attached as Attachment 6b.7. Proceedings for the administration of decedent's estate in another jurisdiction: a. ☐ Have not been commenced.b. ☐ Have been commenced ☐ and completed. (Specify state, county, court, and case number):

8. The gross value of decedent's interest in real and personal property located in California as shown by the *Inventory and Appraisal* attached to this petition—excluding the property described in Probate Code section 13050 (property held in joint tenancy or as a life estate or other interest terminable upon decedent's death, property passing to decedent's spouse, property in a trust revocable by decedent, etc.)—did not exceed \$166,250 as of the date of decedent's death. (Prepare and attach an *Inventory and Appraisal* as Attachment 8 (use Judicial Council forms DE-160 and DE-161 for this purpose). A probate referee appointed for the county named above must appraise all real property and all personal property other than cash or its equivalent. See Prob. Code, §§ 8901, 8902.)

9. a. Decedent is survived by (check items (1) or (2), and (3) or (4), and (5) or (6), and (7) or (8))

(1) ☐ spouse(2) ☐ no spouse as follows: (a) ☐ divorced or never married (b) ☐ spouse deceased(3) ☐ registered domestic partner(4) ☐ no registered domestic partner (See Fam. Code, § 297.5(c); Prob. Code, §§ 37(b), 6401(c), and 6402.)(5) ☐ child as follows: (a) ☐ natural or adopted (b) ☐ natural adopted by a third party(6) ☐ no child(7) ☐ issue of a predeceased child(8) ☐ no issue of a predeceased child

b. Decedent ☐ is ☐ is not survived by a stepchild or foster child or children who would have been adopted by decedent but for a legal barrier. (See Prob. Code, § 6454.)

MATTER OF (name):	CASE NUMBER:
DECEDENT	

10. ☐ Decedent is survived by (complete if decedent was survived by (1) a spouse or registered domestic partner described in Prob. Code, § 37 but no issue (only a or b apply); or (2) no spouse or registered domestic partner described in Prob. Code, § 37, or issue. Check the first box that applies.):
- ☐ A parent or parents who are listed in item 14.
 - ☐ A brother, sister, or issue of a deceased brother or sister, all of whom are listed in item 14.
 - ☐ Other heirs under Probate Code section 6400 et seq., all of whom are listed in item 14.
 - ☐ No known next of kin.
11. Attachment 11 contains (1) the legal description of decedent's real property and its Assessor's Parcel Number (APN) and ☐ a description of personal property in California passing to petitioner; (2) decedent's interest in the property; and, (3) if a petitioner's claim to the property is based on succession under Probate Code sections 6401 and 6402, facts that show the character of the property as community, separate, or quasi-community property.
12. Each petitioner is a successor of decedent (as defined in Probate Code section 13006) and a successor to decedent's interest in the real property ☐ and personal property described in item 11 because each petitioner is:
- ☐ (will) A beneficiary who succeeded to the property under decedent's will.¹
 - ☐ (no will) A person who succeeded to the property under Probate Code sections 6401 and 6402.
13. The specific property interest claimed by each petitioner in the real property ☐ and personal property ☐ is stated in Attachment 13 ☐ is as follows (specify):
14. The names, relationships to decedent, ages, and residence or mailing addresses so far as known to or reasonably ascertainable by petitioner of (1) all persons named or checked in items 1, 9, and 10; (2) all other heirs of decedent; and (3) all devisees of decedent (persons designated in the will to receive any property) are listed in Attachment 14.
15. The names and addresses of all persons named as executors in decedent's will ☐ are listed below ☐ are listed in Attachment 15 ☐ No executor is named. ☐ There is no will.
16. ☐ Petitioner is the trustee of a trust that is a devisee under decedent's will. The names and addresses of all persons interested in the trust, as determined in cases of future interests under paragraphs (1), (2), or (3) of subdivision (a) of Probate Code section 15804, are listed in Attachment 16.
17. ☐ Decedent's estate was under a ☐ guardianship ☐ conservatorship at decedent's death. The names and addresses of all persons serving as guardian or conservator ☐ are listed below ☐ are listed in Attachment 17.

18. 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)²

(TYPE OR PRINT NAME OF PETITIONER)

(SIGNATURE OF PETITIONER)²

☐ SIGNATURE(S) OF ADDITIONAL PETITIONERS ATTACHED

¹ See Probate Code section 13152(c) for the requirement that a copy of the will be attached in certain instances. If required, include as Attachment 5 or 12a.

² Each person named in item 1 must sign.

PETITION TO DETERMINE SUCCESSION TO REAL PROPERTY
(Estates of \$166,250 or Less)

ATTORNEY OR PARTY WITHOUT ATTORNEY (name, address, and State Bar number):
After recording, return to:

TEL NO.:

FAX NO.:

EMAIL ADDRESS:

ATTORNEY FOR (name):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

STREET ADDRESS:

MAILING ADDRESS:

CITY AND ZIP CODE:

BRANCH NAME:

FOR RECORDER'S USE ONLY

MATTER OF (name):

CASE NUMBER:

DECEDENT

ORDER DETERMINING SUCCESSION TO REAL PROPERTY

☐ And Personal Property
(Estates of \$166,250 or Less)

FOR COURT USE ONLY

1. Date of hearing: _____ Time: _____
Dept./Room: _____
Judicial Officer (name): _____
- THE COURT FINDS**
2. All notices required by law have been given.
3. Decedent died on (date): _____
 - a. ☐ a resident of the California county named above.
 - b. ☐ a nonresident of California and owned property in the county named above.
 - c. ☐ Intestate. ☐ testate.
4. At least 40 days have elapsed since the date of decedent's death.
5. a. ☐ No proceeding for the administration of decedent's estate is being conducted or has been conducted in California.
b. ☐ Decedent's personal representative has filed a consent to use the procedure provided in Probate Code section 13150 et seq.
6. The gross value of decedent's real and personal property in California, excluding property described in Probate Code section 13050, did not exceed \$166,250 as of the date of decedent's death.
7. Each petitioner is a successor of decedent (as defined in Probate Code section 13006) and a successor to decedent's interest in the real ☐ and personal property ☐ described in item 9a because each petitioner is:
 - a. ☐ (will) a beneficiary who succeeded to the property under decedent's will.
 - b. ☐ (no will) a person who succeeded to the property under Probate Code sections 6401 and 6402.
- THE COURT FURTHER FINDS AND ORDERS**
8. No administration of decedent's estate is necessary in California.
9. a. The real ☐ and personal property ☐ described in Attachment 9a ☐ described as follows ☐ is property of decedent passing to each petitioner (give legal description of real property).

b. Each petitioner's name and specific property interest ☐ is stated in Attachment 9b. ☐ is as follows (specify):

10. ☐ Other orders are stated in Attachment 10.

11. Number of pages attached:

Date:

JUDICIAL OFFICER

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

Page 1 of 1

ATTORNEY OR PARTY WITHOUT ATTORNEY (name, address, and State Bar number):

After recording return to:

TEL NO.:

FAX NO.:

EMAIL ADDRESS:

ATTORNEY FOR (name):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

STREET ADDRESS:

MAILING ADDRESS:

CITY AND ZIP CODE:

BRANCH NAME:

FOR RECORDER'S USE ONLY

MATTER OF (name):

CASE NUMBER:

DECEDENT

**AFFIDAVIT RE REAL PROPERTY OF SMALL VALUE
(\$55,425 or Less)**

FOR COURT USE ONLY

1. Decedent (name):
died on (date):
2. Decedent died at (city, state):
3. At least six months have elapsed since the date of death of decedent as shown in the certified copy of decedent's death certificate attached to this affidavit.
(Attach a certified copy of decedent's death certificate.)
4. a. ☐ Decedent was domiciled in this county at the time of death.
b. ☐ Decedent was not domiciled in California at the time of death.
Decedent died owning real property in this county.
5. a. The legal description and the Assessor's Parcel Number (APN) of decedent's real property claimed by the declarant(s) are provided on an attached page labeled Attachment 5a, "Legal Description." (Copy legal description exactly from deed or other legal instrument.)
b. Decedent's interest in this real property is as follows (specify):
6. Each declarant is a successor of decedent (as defined in Probate Code section 13006) and a successor to decedent's interest in the real property described in item 5a, or signs this declaration on behalf of an entity that is a successor of decedent and to decedent's interest in the real property, and no other person or entity has a superior right, because each declarant or entity is:
 - a. ☐ (will) a beneficiary that succeeded to the property under decedent's will. (Attach a copy of the will.)
 - b. ☐ (no will) a person who succeeded to the property under Probate Code sections 6401 and 6402.
7. Names and addresses of each guardian or conservator of decedent's estate at date of death: ☐ none ☐ are as follows:*

NamesAddresses

(*You must mail [or serve, per Prob. Code, § 1216] a copy of this affidavit and all attachments to each guardian or conservator listed above. You may use Judicial Council form POS-030 for a proof of mailing or form POS-020 for a proof of personal service.)

8. The gross value of decedent's interest in all real property located in California as shown by the attached Inventory and Appraisal—excluding the real property described in Probate Code section 13050 (property held in joint tenancy or as a life estate or other interest terminable upon decedent's death, property passing to decedent's spouse, property in a trust revocable by the decedent, etc.)—did not exceed \$55,425 as of the date of decedent's death.

Page 1 of 2

MATTER OF (Name):	CASE NUMBER:
DECEDENT	

9. An Inventory and Appraisal of all of decedent's interests in real property in California is attached. The appraisal was made by a probate referee appointed for the county in which the property is located. (You must prepare the Inventory on Judicial Council forms DE-160 and DE-161. You may select any probate referee appointed for the county for the appraisal. The California State Controller's Office has a list of all probate referees, shown by county on its website, and each court has a list of probate referees appointed for its county. Check with the probate referee you select or consult an attorney for help in preparing the Inventory.)
10. No proceeding is now being or has been conducted in California for administration of decedent's estate.
11. Funeral expenses, expenses of last illness, and all known unsecured debts of the decedent have been paid. (NOTE: You may be personally liable for decedent's unsecured debts up to the fair market value of the real property and any income you receive from it.)

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 DECLARANT)

Date:

	▶	
(TYPE OR PRINT NAME)		(SIGNATURE OF DECLARANT)

☐ SIGNATURE OF ADDITIONAL DECLARANTS ATTACHED

* A declarant claiming on behalf of a trust or other entity should also state the name of the entity that is a beneficiary under the decedent's will, and declarant's capacity to sign on behalf of the entity (e.g., trustee, Chief Executive Officer, etc.).

NOTARY ACKNOWLEDGMENT

(NOTE: No notary acknowledgment may be affixed as a rider (small strip) to this page. If additional notary acknowledgments are required, they must be attached as 8-1/2-by-11-inch pages.)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA, COUNTY OF (specify):

On (date): , before me (name and title):

personally appeared (name(s)):

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the instrument in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(NOTARY SEAL)

(SIGNATURE OF NOTARY PUBLIC)

(SEAL)

CLERK'S CERTIFICATE

I certify that the foregoing, including any attached notary acknowledgments and any attached legal description of the property (but excluding other attachments), is a true and correct copy of the original affidavit on file in my office. (Certified copies of this affidavit do not include the (1) death certificate, (2) will, or (3) inventory and appraisal. See Probate Code section 13202.)

Date:

Clerk, by _____, Deputy