

SPOUSAL PROPERTY

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

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

In order to confirm title to the surviving spouse or DP, it may be necessary to file a Spousal Property Petition. This petition can do one of two things: it can pass title to the survivor, and it can be used to determine that a particular item of property is already owned by the survivor (as community or spousal property).

At any time after 40 days from the death of a spouse or DP, 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 below). 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 or DP 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 a probate is filed, the survivor must file an *election* with the 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) spousal property, probate is unnecessary to pass title. The Spousal Property Petition, under Section 13650, can determine if the property is, in fact, spousal property, which would then pass as follows: one-half passes to the survivor (under a Will that says so, or under the laws of intestacy); the other half, under community property law, is determined to already belong to the survivor. Use of the judicial council form is mandatory. This type of 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 spousal property

or passes to the surviving spouse (or DP). See the local rules of court for the specific requirements for the various counties. Los Angeles, for example, has certain questions that must be answered in order for the judge to make an appropriate determination.

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 on the deed 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. Remember, the burden of proving that the asset was community property is on the petitioner.

After the judge has granted the petition, you must prepare and file a Spousal Property Order. You should obtain a certified copy and record it in the county where the real property is located. If you're dealing with personal property, such as stocks, you should provide a certified copy of the order to the broker, transfer agent, or other agency responsible for transferring the item.

In addition to the above procedure, the surviving spouse can collect up to \$5,000 net in salary and unused vacation time owed to the decedent simply by furnishing an affidavit to the employer. If the employer refuses to pay, the spouse can sue the employer and get attorney fees if the employer is unreasonable about not paying. (PC 13600 - 13606.)

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, 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)

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 \$20,000 **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. Since the \$20,000 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 \$150,000 can be used to transfer any type of asset (except real property), as long as it's worth less than \$150,000. 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.

In determining the \$150,000 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 \$15,000 in salary owed at the time of death, and some other assets. Therefore, you could have a lot of property, but still come under \$150,000.

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).

3. Under Probate Code Section 13150, if the decedent owned real estate worth less than \$150,000 (gross), a Petition to Determine Succession to Real Property can be used to transfer title. An appraisal from the probate referee must be obtained before the filing and all the heirs must sign the form. 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. 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 an Order Determining Succession to Real Property. After the judge has signed the order, you will need a certified copy for recording purposes.

4. PC 13200. Where the real estate is worth under \$50,000, an Affidavit to Transfer Real Property Worth Less Than \$50,000 can be used. 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. 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 \$50,000? Mining claims, desert lots, right-of-ways, easements, etc.

5. Under Probate Code Section 13601, the surviving spouse of the decedent (or guardian or conservator of his/her estate) may collect up to \$15,000 in salary or other money owed to the decedent simply by furnishing an affidavit to the decedent's employer.

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	<\$20k NET OVER LIENS	<\$150K, EXCLUSIVE OF PC 13050 PROPERTY	<\$150k, EXCLUSIVE OF PC 13050 PROPERTY	<\$50K
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 ?	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

Recording Requested By:
Alan D. Davis, Esq.

WHEN RECORDED, MAIL TO:

Alan D. Davis
Attorney at Law
1323 N. Broadway
Santa Ana, CA 92706

AFFIDAVIT - DEATH OF SPOUSE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

Mary Doe, of legal age, being first duly sworn, deposes and says:
That John Doe, the decedent mentioned in the attached certified copy of Certificate of Death, is the same person as John Doe named as one of the parties in that certain Grant Deed dated October 1, 1991, executed by Frank Smith to John and Mary Doe, husband and wife, as community property, recorded as Instrument 90-123456 on November 1, 1991, Official Records of Los Angeles County, covering the following described property situated in the City of Lakewood, County of Los Angeles, State of California:

Lot 1 of Tract No. 23456, as per map recorded in Book 789, Pages 1-3 inclusive of Maps in the Office of the County Recorder of said county.

More commonly known as: 9876 Main St., Lakewood, California.

APN: 123-45-678

I declare under penalty of perjury that the foregoing is true and correct. Executed on _____ in Los Angeles County, California.

Mary Doe

Subscribed and sworn to (or affirmed) before me on this _____ day of _____, 2011, by _____ proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Signature: _____
Notary Public

(seal)

Recording requested by:

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Alan D. Davis, Esq.

WHEN RECORDED MAIL TO:

Alan D. Davis, Esq.
P.O. Box 3476
Fullerton, CA 92834-3476

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

AFFIDAVIT - DEATH OF TRUSTEE

State of California,)
)ss.
County of San Diego)

Kenneth Smith and John Smith, Successor Co-Trustees of The Marie M. Smith Family Trust, dated March 1, 1989, being of legal age and being first duly sworn, depose and say: That Marie M. Smith, the decedent mentioned in the attached certified copy of Certificate of Death, is the same person as Marie M. Smith, named as the Trustee in that certain declaration of trust known as The Marie M. Smith Family Trust, dated March 1, 1989. The trust estate consists of real property located in the City of Encinitas, San Diego County, California, recorded on March 24, 1999, as document number 1999-0999999, which is legally described as follows:

An undivided 1/150th fractional fee interest in and to a portion of the south half of Section 1111, Township 33 South, Range 44 West, San Bernardino Meridian, and as more particularly described in Exhibit "A" attached hereto and made a part hereof by this reference.

APN: 666-777-88-99

More commonly known as: 9999 N. El Camino Real, Encinitas, CA

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

EXECUTED on _____, in San Diego County, California.

KENNETH SMITH, Successor Co-Trustee

JOHN SMITH, Successor Co-Trustee

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2004.

Signature: _____
Notary Public

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Alan D. Davis, #81783 Law Office of Alan D. Davis P.O. Box 3476 Fullerton, CA 92834-3476 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: 341 THE CITY DRIVE MAILING ADDRESS: P.O. BOX 14169 CITY AND ZIP CODE: ORANGE, CA 92613-1569 BRANCH NAME: LAMOREAUX JUSTICE CENTER	
ESTATE OF (Name): I. M. DECEASED,	CASE NUMBER: A 123456 HEARING DATE: 1-31-05
DECEDENT	DEPT.: L73 TIME: 9:00 A.M.
<input checked="" type="checkbox"/> SPOUSAL <input type="checkbox"/> DOMESTIC PARTNER PROPERTY PETITION	

1. Petitioner (name): I. L. GETRICH 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): 12-1-04
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 7a¹ 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): I. M. DECEASED,	CASE NUMBER: A 123456
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.

<u>Name and relationship</u>	<u>Age</u>	<u>Residence or mailing address</u>
Ima Heir - daughter	28	54321 Main St., Santa Ana, CA 92701

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
I. L. Getrich, 12345 Main St., Santa Ana, CA 92701

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(b)(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: 2

Date: 12/5/04

Alan D. Davis, #81783
(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: 12/5/04

I. L. GETRICH
(TYPE OR PRINT NAME)



(SIGNATURE OF PETITIONER)

ATTACHMENT 7

1
2 Decedent and petitioner were married on November 27, 1975, and lived as husband and
3 wife until the death of the decedent. (See attached copy of Marriage Certificate, incorporated
4 herein as Exhibit A.)

5 During our marriage, decedent was named as a defendant in a personal injury action, and
6 a judgment was issued against him. Thereafter, we purchased the real property described herein
7 on Main Street in Santa Ana and it was deeded to us as husband and wife as joint tenants. A
8 couple of days later, we each deeded this property to my sister, Jane Doe, in order to avoid the
9 judgment against my husband. Copies of these deeds are attached as Exhibits B and C.

10 The following year, my sister deeded the Main Street property back to my husband. A
11 copy of that deed is attached as Exhibit D.

12 In reality this property was, and still is, community property. It was purchased during
13 our marriage using community funds and was deeded to us as husband and wife. At no time
14 did we intend to change the character of the property. We both made payments on this property
15 until it was paid off.

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ATTACHMENT 7a

A 50% interest in real property located at 12345 Main Street, Santa Ana, California,
legally described as:

Lot 1, Tract 12345, as per map recorded in Book 30, pages 1 - 5, inclusive, of Maps in
the Office of the Orange County Recorder.

APN: 1031-04-001

ATTACHMENT 7b

A 50% interest in real property located at 12345 Main Street, Santa Ana, California,
legally described as:

Lot 1, Tract 12345, as per map recorded in Book 30, pages 1 - 5, inclusive, of Maps in
the Office of the Orange County Recorder.

APN: 1031-04-001

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
 After recording return to:
 Alan D. Davis, #81783
 Law Office of Alan D. Davis
 P.O. Box 3476
 Fullerton, CA 92834-3476

TELEPHONE NO.: (714) 614-0422
 FAX NO. (Optional): (714) 285-1425

E-MAIL ADDRESS (Optional):
 ATTORNEY FOR (Name): I. L. GETRICH

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
 STREET ADDRESS: 341 THE CITY DRIVE
 MAILING ADDRESS: P.O. BOX 14169
 CITY AND ZIP CODE: ORANGE, CA 92613-1569
 BRANCH NAME: LAMOREAUX JUSTICE CENTER

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

FOR RECORDER'S USE ONLY
 CASE NUMBER:
 A 123456

SPOUSAL **DOMESTIC PARTNER** **PROPERTY ORDER**

FOR COURT USE ONLY

1. Date of hearing: 1-31-05 Time: 9:00 A.M.
 Dept.: L73 Room:

THE COURT FINDS

2. All notices required by law have been given.
3. Decedent died on (date): 12-1-04
 - 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): I. L. Getrich

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: 1

Date:

 JUDICIAL OFFICER

SIGNATURE FOLLOWS LAST ATTACHMENT

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ATTACHMENT 5a

A 50% interest in the real property located at 12345 Main Street, Santa Ana, California,
legally described as:

Lot 1, Tract 12345, as per map recorded in Book 30, pages 1 - 5, inclusive, of Maps in
the Office of the Orange County Recorder.

APN: 1031-04-001

ATTACHMENT 7a

A 50% interest in the real property located at 12345 Main Street, Santa Ana, California,
legally described as:

Lot 1, Tract 12345, as per map recorded in Book 30, pages 1 - 5, inclusive, of Maps in
the Office of the Orange County Recorder.

APN: 1031-04-001

Dated: _____

JUDGE OF THE SUPERIOR COURT

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:	
MATTER OF _____ (Name): _____ DECEDENT	CASE NUMBER: _____
PETITION TO DETERMINE SUCCESSION TO REAL PROPERTY <input type="checkbox"/> And Personal Property (Estates of \$150,000 or Less)	HEARING DATE: _____ 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, state, 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.), does not exceed \$150,000. (Prepare and attach an *Inventory and Appraisal (forms DE-160 and DE-161)* as Attachment 8. A probate referee appointed for the county named above must appraise all non-cash assets.)

9. a. Decedent is survived by (check at least one box in each of items (1)-(3))

- (1) spouse no spouse as follows: divorced or never married spouse deceased
- (2) child as follows: natural or adopted natural adopted by a third party no child
- (3) issue of a predeceased child 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.)

10. Decedent is survived by (complete if decedent was survived by (1) a spouse but no issue (only a or b apply); or (2) no spouse or issue. Check the **first** box that applies.):

- a. A parent or parents who are listed in item 14.
- b. A brother, sister, or issue of a deceased brother or sister, all of whom are listed in item 14.
- c. Other heirs under Probate Code section 6400 et seq., all of whom are listed in item 14.
- d. No known next of kin.

MATTER OF (Name):	CASE NUMBER
DECEDENT	

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 and (2) decedent's interest in the 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:
- a. (**will**) A beneficiary who succeeded to the property under decedent's will.¹
- b. (**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 described in item 11 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 below. are listed in Attachment 14.

Name and relationship	Age	Residence or mailing address
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15. The names and addresses of all persons named as executors in decedent's will are listed below are listed in Attachment 15 none named 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 PETITIONER²)

(TYPE OR PRINT NAME OF PETITIONER)

▶ _____
(SIGNATURE OF PETITIONER²)

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.

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

TELEPHONE 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

MATTER OF (Name): _____ DECEDENT

CASE NUMBER: _____

ORDER DETERMINING SUCCESSION TO REAL PROPERTY
 And Personal Property
(Estates of \$150,000 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, does not exceed \$150,000.
- 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

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

TELEPHONE 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:

MATTER OF

(Name):

FOR RECORDER'S USE ONLY

DECEDENT

CASE NUMBER:

**AFFIDAVIT RE REAL PROPERTY OF SMALL VALUE
(\$50,000 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** of decedent's real property claimed by the declarant(s) (copy description from deed or other legal instrument): is as follows:

is described in an attached page labeled Attachment 5a, "Legal Description."

- 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, and no other person has a superior right, because each declarant is:
 - a. (**will**) A beneficiary who 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* (specify):

(*You must mail (or serve, per Prob. Code, § 1216) a copy of this affidavit and all attachments to each person named in item 7.)

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.)—does not exceed \$50,000.

MATTER OF _____ (Name): DECEDENT	CASE NUMBER:
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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)
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Date:

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

Date:

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

SIGNATURE OF ADDITIONAL DECLARANTS ATTACHED

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.)

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