

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.

NEW

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).

NEW

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.

NEW

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.

NEW

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

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Alan D. Davis, #81783 Law Office of Alan D. Davis 1323 N. Broadway Santa Ana, CA 92706 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 <input type="checkbox"/> 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. Page 1 of 2

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 Aer - daughter	adult	98765 Main St., Santa Ana, CA 92700

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

Al Turnette
555 American Way
Anytown, CA 90000

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: 12-15-04

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: 12-15-04

I. L. GETRICH
(TYPE OR PRINT NAME)

(SIGNATURE OF PETITIONER)

ATTACHMENT 7

Decedent's Last Will and Testament leaves his entire estate to his wife, petitioner herein.

ATTACHMENT 7a

A one-half interest in Rockwell International Corporation stock: 1,000 shares of common stock; CUSIP: 774340000.

ATTACHMENT 7b

A one-half interest in Rockwell International Corporation stock: 1,000 shares of common stock; CUSIP: 774340000.

10.66 REQUIRED ALLEGATIONS IN SUPPORT OF CLAIM THAT PROPERTY IS COMMUNITY

A petition to determine and/or confirm community property must contain the following information:

- 1) Date and place of marriage.
- 2) Did decedent own any real or personal property on date of marriage? If so, describe and give approximate values.
- 3) Decedent's occupation at time of marriage.
- 4) Decedent's net worth at time of marriage.
- 5) Did decedent ever receive any property after date of marriage by gift, bequest, devise, descent, proceeds of life insurance or joint tenancy survivorship? If so, (a) describe and give approximate values and date of receipts, and (b) is it still a part of this estate? If so, identify.
- 6) Date decedent first came to California.
- 7) Decedent's net worth upon arrival in California.
- 8) In addition to the above, any additional facts upon which claim of community property is based.

If the claimed community character of the property is based on any document, a photocopy of that document, showing signatures, should be attached to and authenticated by the petition or by a supporting affidavit or declaration.

(Rule 10.66 [1/1/95] amended and effective 1/1/98.)

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ATTACHMENT 5a

A one-half interest in Rockwell International Corporation stock: 1,000 shares of common stock: CUSIP: 774340000.

ATTACHMENT 7a

A one-half interest in Rockwell International Corporation stock: 1,000 shares of common stock: CUSIP: 774340000.

Dated: _____

JUDGE OF THE SUPERIOR COURT

1 Alan D. Davis Bar# 81783
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5 Attorney for I. L. GETRICH
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8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF ORANGE

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Estate of:) CASE NO. A 123456
)
I. M. DECEASED,) PETITION FOR ORDER TO SET
) ASIDE ESTATE NOT EXCEEDING
) \$20,000
)
Deceased.) [P.C. SECTION 6600, et seq.]

Petitioner, I. L. Getrich, alleges as follows:

1. Decedent died testate on December 1, 2004, a resident of Orange County, California. Petitioner is her surviving spouse. At the time of her death, decedent left an estate, the net value of which, above all liens and encumbrances at the date of death and the value of any homestead interest, does not exceed \$20,000.

2. At the time of her death, decedent's estate consisted of unimproved real property in Anaheim, California, in her name legally described as:

Lot 1111, Tract 2222, as per map recorded in Book 3333, Page 4444, of Maps, records of Orange County.

Said property was appraised at \$100,000, but is subject to liens and encumbrances of \$85,000. Said liens and encumbrances are as follows:

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Bank of Northern Tarzana, CA;

(First Mortgage): \$85,000.00

3. Petitioner, as the decedent's surviving spouse, is entitled to the entire estate under the provisions of Probate Code Sections 6600 - 6615. Decedent had no issue.

4. All expenses of the last illness, the funeral, and administration have been paid.

WHEREFORE, petitioner prays that the entire estate be set aside to petitioner as the decedent's surviving spouse, and for such other orders as the court deems proper.

Dated: _____

I. L. GETRICH

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

Executed on _____ at Anaheim, California.

I. L. GETRICH