



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: November 14, 2019

Title	Agenda Item Type
Rules and Forms: Disposition of Small Estates	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Revise forms DE-305, DE-310, and DE-315	January 1, 2020
Recommended by	Date of Report
Probate and Mental Health Advisory Committee	October 18, 2019
Hon. Jayne Chong-Soon Lee, Chair	Contact
	Corby Sturges, 415-865-4507 corby.sturges@jud.ca.gov

Executive Summary

The Probate and Mental Health Advisory Committee recommends revising three forms for use in proceedings to dispose of property in small estates without administration. The revisions are needed to implement legislation, effective January 1, 2020, that increases the threshold values triggering the probate court's authority to dispose of small estates without full probate administration. These technical changes replace the existing amounts on the three forms with the new amounts to ensure that the forms remain accurate when the new law takes effect.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2020, revise:

1. *Affidavit re Real Property of Small Value (\$50,000 or Less)* (form DE-305) to replace "\$50,000" with "\$55,425";
2. *Petition to Determine Succession to Real Property (Estates of \$150,000 or Less)* (form DE-310) to replace "\$150,000" with "\$166,250"; and

3. *Order Determining Succession to Real Property (Estates of \$150,000 or Less)* (form DE-315) to replace “\$150,000” with “\$166,250.”

The revised forms are attached at pages 4–8.

Relevant Previous Council Action

Effective July 1, 1987, the Judicial Council adopted the *Affidavit re Real Property of Small Value* and approved the *Petition to Determine Succession to Real Property* and the *Order Determining Succession to Real Property* in response to amendments to the Probate Code.

Effective January 1, 1989, the Judicial Council revised these forms and assigned their current numbers. The council has approved minor revisions to these forms several times since then in response to statutory amendments, including increases to the threshold value of the property.

Analysis/Rationale

The Probate and Mental Health Advisory Committee recommends revising forms DE-305, DE-310, and DE-315 in response to amendments to the Probate Code¹ by Assembly Bill 473 (Stats. 2019, ch. 122). Currently, if the gross value of a decedent’s property in California does not exceed \$150,000, section 13151 authorizes the successor to the decedent’s interest in a particular item of real property, without getting letters of administration or waiting for probate of the will, to petition for a court order determining that the petitioner has succeeded to that property. Section 13152 specifies the required contents of a petition filed under section 13151. Section 13154 authorizes the court to make the requested order if it first makes certain specified determinations. Effective January 1, 2020, sections 10, 11, and 12 of AB 473 amend Probate Code sections 13151, 13152, and 13154 to increase the threshold amount from \$150,000 to \$166,250.

Form DE-310, the *Petition to Determine Succession to Real Property*, and form DE-315, *Order Determining Succession to Real Property*, refer several times to \$150,000. The recommended revisions to these forms replace \$150,000 with \$166,250 to provide accurate information that will enable prospective litigants, particularly self-represented litigants, to choose the proper method with which to seek access to the probate court.

In addition, current section 13200 authorizes a person or persons claiming as the successor of a decedent to a particular item of real property in California to file with the probate court an affidavit of succession to that property if the gross value of the decedent’s real property in California does not exceed \$50,000. Section 13 of AB 473 amended section 13200 to increase the threshold value to \$55,425. Form DE-305, the *Affidavit re Real Property of Small Value*, refers several times to \$50,000. The recommended revisions to form DE-305 replace \$50,000 with \$55,425 to provide accurate information that will enable prospective litigants, particularly

¹ All further statutory references are to the Probate Code unless otherwise specified.

self-represented litigants, to choose the proper method with which to seek access to the probate court.

Policy implications

The recommended revisions promote at least two Judicial Council policy objectives—modernization of the rules of court and promotion of access to the courts—by ensuring that the Judicial Council forms reflect accurate legal information that will make it easier for litigants to gain access to the probate court.

Comments

The recommendation has not circulated for public comment. The committee recommends that the council adopt the recommended revisions without circulation for comment because the proposal presents a minor substantive change that is unlikely to create controversy. (See Cal. Rules of Court, rule 10.22(d)(2).)

Alternatives considered

The committee did not consider any alternatives to the recommended action because the revisions are required to conform to statutory changes affecting litigants, including self-represented litigants, effective January 1, 2020.

Fiscal and Operational Impacts

This proposal should not have any fiscal or operational impacts on courts or litigants other than the costs of replacing outdated forms and reprogramming digital case management systems. These impacts arise from the legislation amending the Probate Code.

Attachments and Links

1. Forms DE-305, DE-310, and DE-315, at pages 4–8
2. Link A: Assem. Bill 473 (Stats. 2019, ch. 122),
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB473

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):

DECEDENT

CASE NUMBER:

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

FOR COURT USE ONLY

**DRAFT
Not approved by
the Judicial Council**

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:*

<u>Names</u>	<u>Addresses</u>
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(*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.

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.

(SIGNATURE OF NOTARY PUBLIC)

(NOTARY SEAL)

(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

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 DRAFT Not approved by the Judicial Council
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: HEARING DATE AND TIME: DEPT.:
PETITION TO DETERMINE SUCCESSION TO REAL PROPERTY <input type="checkbox"/> and Personal Property (Estates of \$166,250 or Less)	

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. 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.

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:

- 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 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): _____

DECEDENT

CASE NUMBER: _____

ORDER DETERMINING SUCCESSION TO REAL PROPERTY
 And Personal Property
 (Estates of **\$166,250** or Less)

FOR COURT USE ONLY

DRAFT
Not approved by
the Judicial Council

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