



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 28, 2016

Title	Agenda Item Type
Probate: Decedents' Estate Proceedings and a Substitute for Those Proceedings	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Forms DE-111 and DE-310	January 1, 2017
Recommended by	Date of Report
Probate and Mental Health Advisory Committee	October 3, 2016
Hon. John H. Sugiyama, Chair	Contact
	Douglas C. Miller, Attorney, Legal Services, JCC 818-558-4178 douglas.c.miller@jud.ca.gov

Executive Summary

The Probate and Mental Health Advisory Committee proposes revising two forms. One form commences a decedent estate proceeding; the other form is used to convey title to a decedent's real and connected personal property when an estate proceeding is not required. The *Petition for Probate* would be revised to inquire whether a decedent was a citizen of a foreign country, whether the original of the decedent's will or a codicil offered for probate has been lost, and whether the proposed appointment of a personal representative is the appointment of a successor in that office. The *Petition to Determine Succession to Real Property (Estates of \$150,000 or Less)* would be revised to require the petitioner to state facts showing the character of the subject property as separate, community, or quasi-community if his or her claim to the property is based on inheritance. These revisions will ensure that the additional information requested by these changes will be provided by the petitioners in both of these proceedings.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2017:

1. Revise the *Petition for Probate* (form DE-111) to:
 - a. Ask the petitioner whether the decedent was a citizen of a country other than the United States and, if so, to identify the country;
 - b. Require the petitioner to disclose whether the original of the will or a codicil offered for probate has been lost and, if so, to attach to the petition a copy of the lost document or a written statement of its dispositive provisions; and state reasons why the statutory presumption of the testator's intentional destruction of the document does not apply or has been overcome; and
 - c. Ask the petitioner if the personal representative proposed for appointment in the petition would be a successor; and
2. Revise the *Petition to Determine Succession to Real Property (Estates of \$150,000 or Less)* (form DE-310) to require the petitioner to state, if his or her claim to the subject property is based on an inheritance, facts that show the character of the subject property to be community, separate, or quasi-community property.

Copies of the revised forms are attached at pages 8–13.

Previous Council Action

Forms DE-111 and DE-310 are mandatory forms under California Rules of Court, rule 1.31. The *Petition for Probate* (form DE-111) must be filed to commence a decedent estate proceeding. It was adopted effective on January 1, 1985, and has been revised nine times, most recently effective on March 1, 2008. The *Petition to Determine Succession to Real Property (Estates of \$150,000 or Less)* (form DE-310) is the form that must be filed to seek an order transferring a decedent's real property and associated personal property to his successors without an estate proceeding if the gross value of decedent's property in this state is less than \$150,000. The form was adopted effective July 1, 1987. It has been revised four times since then, most recently effective on July 1, 2012. No prior revisions of either form addressed the topics of the revisions proposed in this report.

Rationale for Recommendation

The proposed changes to both forms were recommended by a court's managing probate staff attorney. They are designed to ensure that courts that receive these filed forms are alerted as soon as possible to important issues that would arise if one or more of the unique factual situations indicated exist, and that petitioners are made aware before they complete and file their petitions that these issues must be addressed, not only in the petitions, but also in any litigation about those issues that may occur after the petitions are filed.

Form DE-111

Decedent a citizen of a foreign country. The proposed first change is the addition of new item 3b on page 1, which requires the petitioner to advise if the decedent was a citizen of a foreign country and, if so, to identify the country. This item advises court staff and judicial officers reviewing the filed petition that notice issues under Probate Code section 8113 may be present.¹ Existing items 3b through 3g on pages 1 and 2 of the form are relettered as items 3c through 3h.

Lost will. The second proposed change is to add new item 3f(3) on page 2, as follows:

The original of the will or codicil identified above [in item 3f(2) of the proposed revised form, item 3e(2) of the existing form] has been lost. (*Affix a copy of the lost will or codicil or a written statement of the testamentary words or their substance in Attachment 3f(3), and state reasons in that attachment why the presumption in Prob. Code, § 6124 of the testator's intentional destruction of will or codicil does not apply.*)

A lost or destroyed will or codicil may be offered for probate if its contents and due execution can be proved (see Prob. Code, § 8223). However, if a lost will or codicil was last in the possession of the testator, he or she was competent until death, and neither the original nor a duplicate original copy can be found after the testator's death, the document is subject to a presumption that it was destroyed by the testator with intent to revoke (Prob. Code, § 6124).²

Form DE-111 does not now refer to or request any information about a lost will. It does not alert a proposed petitioner, particularly one who is contemplating self-representation, that he or she may attempt to offer a lost will or codicil for probate and, if so, must overcome the presumption of section 6124. Requiring, at the time of filing of the petition, disclosure that the matter is a lost-will case and a statement of the facts rebutting or showing the inapplicability of the presumption would prepare a proposed petitioner for what may lay ahead, perhaps suggesting the need to retain counsel; would alert the court at the earliest possible time that a lost will or codicil is involved; and would also give fair notice to other persons interested in the estate of these facts. Even if the matter is ultimately not contested, facts alleged in the petition showing the rebuttal or inapplicability of the presumption would support the admission of the lost will in the unopposed

¹ Unless otherwise stated, all code citations are to the Probate Code. Section 8113 requires notice of the hearing on the petition for probate to be given to the foreign decedent's country's recognized diplomatic or consular office in the United States if there is no will or if the will does not name an executor. If, by intestacy or under the decedent's will, property of the estate is distributable to a citizen of a foreign country, such notice must also be given to that country's representative in the United States. In many if not most cases, some or all heirs or beneficiaries of a foreign decedent are citizens of the same country as the decedent.

² A "duplicate original of the will" under section 6124 is not a mere photocopy of a signed will or codicil or an unsigned copy. It is a duplicate, but it must contain original signatures of the testator and of any witnesses. (See *Lauermann v. Superior Court (Muongpruan)* (2005) 127 Cal.App.4th 1327, 1330–1331.) Thus the reference in the revised form to the attachment of a copy of the lost will or codicil to the petition is as a method of showing what the lost original document provides, not the offer of a duplicate original copy, which would not be a lost will or codicil at all.

matter (see Prob. Code, § 1022: “An affidavit or verified petition shall be received as evidence when offered in an uncontested proceeding under this code.”)

The title caption of this form is also revised to permit the petitioner to indicate that the will (or a codicil) offered for probate is a lost will. This change follows and improves on the recommendation in California Decedent Estate Practice (Cont.Ed.Bar 2d ed. 2015) § 7.66, to interlineate the word “lost” or “destroyed” before “will” in the title of the form.³

Proposed personal representative a successor. A new option 3(g)(4) is added at page 2 to indicate that the proposed appointment of a personal representative is the appointment of a successor to that office.⁴ Such petitions are filed with or shortly after petitions for removal of the prior representative or upon a vacancy in the position caused by the prior representative’s death or resignation.

The court staff attorney who recommended this proposal to the committee advises that attorneys sometimes file self-drafted petitions for appointment of successor administrators, assuming that the Judicial Council form should not be used because it does not refer to successor appointments. This practice may present difficulties that result in postponements, additional court and staff time, and the filing of revised petitions or supplements because these petitions often fail to include all the information required by the mandatory form (e.g., item 8, the identity, relationship to decedent, and address of all heirs and beneficiaries). The proposed change will eliminate this problem.

This change will also help courts to match the petition for a successor’s appointment with a removal petition against the prior personal representative—which might have been filed by a different party or could reveal the possible need for a temporary appointment on the effective date of the vacancy, pending the hearing on the permanent successor’s appointment (see § 8523). Selecting option 3(g)(4) will also alert the court that neither notice of hearing by publication under section 8120 nor notice of administration to creditors under section 9050 will be required (see § 8522(b)).

Form DE-310

The *Petition to Determine Succession to Real Property (Estates of \$150,000 or Less)* is used to commence an expedited proceeding as a substitute for a full decedent estate administration to transfer real and associated personal property to a decedent’s successors in interest, by intestacy

³ Space limitations prevent the addition of “destroyed” and “codicil” to “lost” in the title of the form. But a will destroyed by accident or by anyone other than the competent testator with an intent to revoke is “lost” within the meaning of section 8223, and a codicil is a revision of a will. It is taken together with the will it modifies to become the last will of the decedent.

⁴ Item 3g of the revised form is item 3f of the current form.

or will, when the total value of all property held by a decedent in this state is less than \$150,000.⁵ (See §§ 13151–13158.)

A single change is proposed for this form. Item 11 is revised on page 2, to add the following:

(3) [A]nd, 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.

The character of the property has relevance if there is no will. A surviving spouse or domestic partner either is or is not the sole heir, depending on the character of the property and the relationship of the other survivors to the decedent. If contested, a petitioner would be required to establish the proper character of the property to establish the proper share of it that would come to him or her. This change would require the petitioner to show in the petition, not merely at a contested hearing, those facts that would determine his or her proper share in cases in which the character of the property is relevant to determination of that issue.

Comments, Alternatives Considered, and Policy Implications

No alternatives were considered, other than declining to take action in response to the request. The committee believes that the request from a particularly highly respected and very experienced probate department staff attorney is a worthy one and would address and potentially resolve issues that often occur in decedent estates or in the substitute proceedings addressed in form DE-310. Modification of the two mandatory forms is the only way to ensure that the additional information requested by these changes will be provided by the petitioners in both of these types of proceedings.

Seven comments were received in response to the invitation to comment circulated as spring proposal SPR16-24. One commentator, the California Judges Association (CJA), did not indicate approval or disapproval but called for the lost-will item in form DE-111 to merely request a statement that the original will is lost. The committee’s response follows:

The committee believes that the requirement of stating facts in the appointment petition to rebut the presumption that a lost will or codicil was intentionally revoked by the testator would tend to make petitioners exercise due diligence to find the lost will before rather than after they file their appointment petitions.

CJA also commented on form DE-310 as follows:

⁵ Exclusive of many kinds of commonly held interests in property, including joint tenancy interests; certain types of multiparty accounts; vehicles, boats, and trailer homes with state-issued title documentation under the Vehicle or Health and Safety Codes; and modest amounts of compensation owed to the decedent (see Prob. Code, §§ 13050, 13151).

With respect to Form DE-310, it may pose a difficult if not impossible burden for the petitioner to state under penalty of perjury what the character (community, separate or quasi-community) of the subject property is. Because that character is relevant only in certain cases, to require the petitioner in every case to ascertain and state it in the petition (even where irrelevant) seems unnecessary. Additionally, self-represented litigants may not understand the distinctions between community, separate, and quasi-community property; judicial officers would prefer to receive the facts and circumstances of each acquisition of property to enable the judicial officer to draw the legal conclusions to the character of the property.

Also, existing paragraphs 12 and 13 of the form require the petitioner to state the requested disposition of the subject property; perhaps it should be left to anyone who contests the petition to raise a dispute over whether that proposed distribution is correct.

In response to this and other comments, the committee notes that item 11 of form DE-310 has been revised to ask the petitioner to state facts concerning the character of the subject property only if his or her claim is based on inheritance, and then concludes as follows in response to the second paragraph of the CJA comment:

The committee believes that the petitioner has the burden of showing entitlement to the distribution, whether or not there is opposition. Especially if there is no opposition, that showing should be made in the petition, which will be the only evidence in the case. (See Prob. Code, § 1022.)

Other modifications proposed were in response to a specific request for comment from courts as to whether form DE-310 should inquire about the character of the subject property as separate, community, or quasi-community in all cases or only when the property's character is relevant to the right to receive it. Court respondents addressed this comment on both sides.⁶ As noted above, the committee resolved this question by concluding that facts demonstrating the character of the property should be required only if the petitioner's claim to the property is based on inheritance.

Implementation Requirements, Costs, and Operational Impacts

This proposal will incur the costs associated with the distribution of and training concerning any new or revised form. However, all court commentators that stated a position on costs advised that the proposal would either reduce them, because the greater disclosure required in both petitions would reduce postponements and contested matters, or at least impose no greater costs.

⁶ The comment of the Superior Court of San Diego County was in favor of requiring evidence of the character of the property in all cases to ensure consistency in all of them, and also to demonstrate to some potential petitioners that they may not meet the requirements to make a claim to the subject property.

Attachments and Links

1. Forms DE-111 and DE-310, at pages 8–13
2. Chart of comments, at pages 14–25

ATTORNEY OR PARTY WITHOUT ATTORNEY: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS: ATTORNEY FOR (<i>name</i>):		<div><i>FOR COURT USE ONLY</i></div> <div>DRAFT</div> <div>Not Approved by the Judicial Council</div>	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:			
ESTATE OF (<i>name</i>): <div>DECEDENT</div>			
PETITION FOR <input type="checkbox"/> Probate of <input type="checkbox"/> Lost Will and for Letters Testamentary <input type="checkbox"/> Probate of <input type="checkbox"/> Lost Will and for Letters of Administration with Will Annexed <input type="checkbox"/> Letters of Administration <input type="checkbox"/> Letters of Special Administration <input type="checkbox"/> with general powers <input type="checkbox"/> Authorization to Administer Under the Independent Administration of Estates Act <input type="checkbox"/> with limited authority		CASE NUMBER:	
		HEARING DATE AND TIME:	
		DEPT.:	

1. Publication will be in (*specify name of newspaper*):
 - a. ☐ Publication requested.
 - b. ☐ Publication to be arranged.
2. **Petitioner** (*name each*):

requests that

- a. ☐ decedent's will and codicils, if any, be admitted to probate.
- b. (name): be appointed
- (1) ☐ executor
- (2) ☐ administrator with will annexed
- (3) ☐ administrator
- (4) ☐ special administrator ☐ with general powers
- and Letters issue upon qualification.
- c. ☐ full ☐ limited authority be granted to administer under the Independent Administration of Estates Act.
- d. (1) ☐ bond not be required for the reasons stated in item 3d.
- (2) ☐ \$ bond be fixed. The bond will be furnished by an admitted surety insurer or as otherwise provided by law. (Specify reasons in Attachment 2 if the amount is different from the maximum required by Prob. Code, § 8482.)
- (3) ☐ \$ in deposits in a blocked account be allowed. Receipts will be filed. (Specify institution and location):
3. a. Decedent died on (date): at (place):
- (1) ☐ a resident of the county named above.
- (2) ☐ a nonresident of California and left an estate in the county named above located at (specify location permitting publication in the newspaper named in item 1):
- b. ☐ Decedent was a citizen of a country other than the United States (specify country):
- c. Street address, city, and county of decedent's residence at time of death (specify):

ESTATE OF (name):

DECEDENT

CASE NUMBER:

3. d. **Character and estimated value of the property of the estate** (complete in all cases):

- (1) Personal property: \$ _____
- (2) Annual gross income from
- (a) real property: \$ _____
- (b) personal property: \$ _____
- (3) **Subtotal** (add (1) and (2)): \$ _____
- (4) Gross fair market value of real property: \$ _____
- (5) (Less) Encumbrances: (\$ _____)
- (6) Net value of real property: \$ _____
- (7) **Total** (add (3) and (6)): \$ _____

- e. (1) ☐ Will waives bond. ☐ Special administrator is the named executor, and the will waives bond.
- (2) ☐ All beneficiaries are adults and have waived bond, and the will does not require a bond. (Affix waiver as Attachment 3e(2).)
- (3) ☐ All heirs at law are adults and have waived bond. (Affix waiver as Attachment 3e(3).)
- (4) ☐ Sole personal representative is a corporate fiduciary or an exempt government agency.

- f. (1) ☐ Decedent died intestate.
- (2) ☐ Copy of decedent's will dated: ☐ codicil dated (specify for each):

are affixed as Attachment 3f(2). (Include typed copies of handwritten documents and English translations of foreign-language documents.)

☐ The will and all codicils are self-proving (Prob. Code, § 8220).

- (3) ☐ The original of the will and/or codicil identified above has been lost. (Affix a copy of the lost will or codicil or a written statement of the testamentary words or their substance in Attachment 3f(3), and state reasons in that attachment why the presumption in Prob. Code, § 6124 does not apply.)

g. **Appointment of personal representative** (check all applicable boxes):

- (1) Appointment of executor or administrator with will annexed:
- (a) ☐ Proposed executor is named as executor in the will and consents to act.
- (b) ☐ No executor is named in the will.
- (c) ☐ Proposed personal representative is a nominee of a person entitled to Letters. (Affix nomination as Attachment 3g(1)(c).)
- (d) ☐ Other named executors will not act because of ☐ death ☐ declination ☐ other reasons (specify):

☐ Continued in Attachment 3g(1)(d).

- (2) Appointment of administrator:
- (a) ☐ Petitioner is a person entitled to Letters. (If necessary, explain priority in Attachment 3g(2)(a).)
- (b) ☐ Petitioner is a nominee of a person entitled to Letters. (Affix nomination as Attachment 3g(2)(b).)
- (c) ☐ Petitioner is related to the decedent as (specify):
- (3) ☐ Appointment of special administrator requested. (Specify grounds and requested powers in Attachment 3g(3).)
- (4) ☐ Proposed personal representative would be a successor personal representative.

h. Proposed personal representative is a

- (1) ☐ resident of California.
- (2) ☐ nonresident of California (specify permanent address):

- (3) ☐ resident of the United States.
- (4) ☐ nonresident of the United States.

ESTATE OF (name):

DECEDENT

CASE NUMBER:

4. ☐ Decedent's will does not preclude administration of this estate under the Independent Administration of Estates Act.
5. a. Decedent was 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 ☐ was ☐ was 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 if decedent was survived by (1) a spouse or registered domestic partner but no issue (only a or b apply), or (2) no spouse, registered domestic partner, or issue. (Check the **first** box that applies):
- a. ☐ Decedent was survived by a parent or parents who are listed in item 8.
- b. ☐ Decedent was survived by issue of deceased parents, all of whom are listed in item 8.
- c. ☐ Decedent was survived by a grandparent or grandparents who are listed in item 8.
- d. ☐ Decedent was survived by issue of grandparents, all of whom are listed in item 8.
- e. ☐ Decedent was survived by issue of a predeceased spouse, all of whom are listed in item 8.
- f. ☐ Decedent was survived by next of kin, all of whom are listed in item 8.
- g. ☐ Decedent was survived by parents of a predeceased spouse or issue of those parents, if both are predeceased, all of whom are listed in item 8.
- h. ☐ Decedent was survived by no known next of kin.
7. (Complete only if no spouse or issue survived decedent.)
- a. ☐ Decedent had no predeceased spouse.
- b. ☐ Decedent had a predeceased spouse who
- (1) ☐ died not more than 15 years before decedent and who owned an interest in **real property** that passed to decedent,
- (2) ☐ died not more than five years before decedent and who owned **personal property** valued at \$10,000 or more that passed to decedent, (If you checked (1) or (2), check only the **first** box that applies):
- (a) ☐ Decedent was survived by issue of a predeceased spouse, all of whom are listed in item 8.
- (b) ☐ Decedent was survived by a parent or parents of the predeceased spouse who are listed in item 8.
- (c) ☐ Decedent was survived by issue of a parent of the predeceased spouse, all of whom are listed in item 8.
- (d) ☐ Decedent was survived by next of kin of the decedent, all of whom are listed in item 8.
- (e) ☐ Decedent was survived by next of kin of the predeceased spouse, all of whom are listed in item 8.
- (3) ☐ neither (1) nor (2) apply.
8. Listed on the next page are the names, relationships to decedent, ages, and addresses, so far as known to or reasonably ascertainable by petitioner, of (1) all persons mentioned in decedent's will or any codicil, whether living or deceased; (2) all persons named or checked in items 2, 5, 6, and 7; and (3) all beneficiaries of a trust named in decedent's will or any codicil in which the trustee and personal representative are the same person.

ESTATE OF *(name)*:

DECEDENT

CASE NUMBER:

8. Name and relationship to decedent Age Address

☐ Continued on Attachment 8.

9. Number of pages attached: _____

Date:

(TYPE OR PRINT NAME OF ATTORNEY)



(SIGNATURE OF ATTORNEY) *

* (Signatures of all petitioners are also required. All petitioners must sign, but the petition may be verified by any one of them (Prob. Code, §§ 1020, 1021; Cal. Rules of Court, rule 7.103).)

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)

(TYPE OR PRINT NAME OF PETITIONER)



(SIGNATURE OF PETITIONER)

Signatures of additional petitioners follow last attachment.

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL 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:	
PETITION TO DETERMINE SUCCESSION TO REAL PROPERTY <input type="checkbox"/> and Personal Property (Estates of \$150,000 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 \$150,000 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):

DECEDENT

CASE NUMBER:

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.

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Probate: Revision of Forms Used in Decedent Estate Proceedings and in a Substitute for Those Proceedings

(revise DE-111 and DE-310)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	California Judges Association, by Lexi Purich Howard, Legislative Director Sacramento	NI	<p>This proposal proposes revisions to two Judicial Council forms:</p> <p>1. Form DE-111 (<i>Petition for Probate</i>). Fundamentally, the proposed revisions to this form have three goals:</p> <p>—To add to the form an item stating whether or not the decedent was a citizen of a foreign country. The purpose of this revision is (1) to notify petitioners that the decedent's foreign citizenship may be important and (2) to advise court staff reviewing the petition that notice issues may be present.</p> <p>—To expressly enable the form to be used to probate a lost will or codicil.</p> <p>—To state in the form if the proposed personal representative is a successor.</p> <p>2. Form DE-310 (<i>Petition to Determine Succession to Real Property - Estates of \$150,000 or less</i>). The proposed revision to this form would require the petitioner to state whether the subject property is community, separate or quasi-community. The goal of this addition to let court staff know whether the existing allegations in the form asserting who the subject property is to pass to (existing paragraphs 12b and 13) are correct—this, because in certain situations the character of the</p>	

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			<p>property (community, separate or quasi-community) affects who is entitled to it upon the death of the owner.</p> <p>With particular regard for the needs of self-represented litigants, we are concerned that though the proposed forms may serve the interests of court staff, they may not adequately meet the needs of self-represented litigants.</p> <p>With respect to the proposed revisions to DE-111 regarding lost wills/codicils, it seems that the percentage of cases in which the form will be used to seek probate of a lost will or codicil is quite small, and the four additions proposed concerning a lost will or codicil make the form somewhat more difficult to maneuver. For this reason, it may be that the added effort in filling out the form with the proposed additions outweighs the potential benefit given that the fact that the will/codicil offered for probate is lost will likely surface soon enough. We suggest that the form simply be modified to provide a box in new Paragraph 3(f) stating "The will/codicil is lost."</p> <p>With respect to Form DE-310, it may pose a difficult if not impossible burden for the petitioner to state under penalty of perjury what the character (community, separate or quasi-community) of the subject property is. Because that character is relevant only in certain cases, to</p>	<p>The committee believes that the requirement of stating facts in the appointment petition to rebut the presumption that a lost will or codicil was intentionally revoked by the testator would tend to make petitioners exercise due diligence to find the lost will before rather than after they file their appointment petitions.</p> <p>In response to this and other similar comments, the committee has decided not to require a</p>

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			<p>require the petitioner in every case to ascertain and state it in the petition (even where irrelevant) seems unnecessary. Additionally, self-represented litigants may not understand the distinctions between community, separate, and quasi-community property; judicial officers would prefer to receive the facts and circumstances of each acquisition of property to enable the judicial officer to draw the legal conclusions to the character of the property.</p> <p>Also, existing paragraphs 12 and 13 of the form require the petitioner to state the requested disposition of the subject property; perhaps it should be left to anyone who contests the petition to raise a dispute over whether that proposed distribution is correct.</p> <p>Our comments here are intended to assist with this proposal at this stage and are not representative of a position on the proposal. Thank you for the opportunity to provide these comments; we welcome any questions and further discussion.</p>	<p>statement of the character of the property as community, quasi-community, or separate unless the character of the property is necessary to support the petitioner's claim to the property: that is, the petitioner claims a right to inherit the property under the law of intestate succession (Prob. Code, §§ 6401 and 6402). The form has also been revised to request facts that show the character of the property, not merely conclusory statements.</p> <p>The committee believes that the petitioner has the burden of showing entitlement to the distribution, whether or not there is opposition. Especially if there is no opposition, that showing should be made in the petition, which will be the only evidence in the case. (See Prob. Code, § 1022.)</p>
2.	Robert Denham Publications Attorney CEB Oakland	N	<p>First, on form DE-111. Although it seems worthwhile to indicate on the form that the will is lost or destroyed, this may not be needed in the title of the form as suggested in DEP §7.66.</p> <p>It seems enough to add 3f(3) as an alternative to (1) decedent died intestate, or (2) copy of will attached. Note: The box for this alternative (3)</p>	<p>The committee believes the revised title that permits immediate identification of a lost-will estate situation is useful, and will continue to recommend its retention.</p> <p>The Note concerning alignment of the checkbox for item 3f(3)) is correct. The form has been changed.</p>

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			<p>should be aligned with the boxes for (1) and (2). The proposed revised form has it aligned with the box for self-proving wills.</p> <p>Also, it seems unnecessary and confusing to have anything about lost or destroyed wills under 3f(2) (as shown in the proposed revised form).</p> <p>Further, it seems undesirable to request reasons why the presumption does not apply. This anticipates a problem that may not arise. If no one objects, or if the disposition of the estate is substantially unaffected by revocation of the will, there may be no need to consider the question. The statutory presumption is of somewhat dubious value. In the CEB Estate Planning Reporter we have suggested that the statute should be repealed, because it is unlikely in most cases that failure to find the will is in fact the result of destruction with intent to revoke.</p>	<p>The committee agrees with this comment and will move the reference to an attached statement of the terms of a lost will to item 3f(3), to be part of the statement that contains the facts showing that the presumption is inapplicable. The instruction in item 3f(3) would now read as follows: “(Affix a copy of the lost will or codicil or a written statement of the testamentary words or their substance in Attachment 3f(3), and state reasons in that attachment why the presumption in Prob. Code, § 6124 of the testator's intentional destruction of will or codicil does not apply.)”</p> <p>The committee believes the statement is useful under current law. In most cases, the statement would be brief (e.g., in cases in which the original will was not last in the decedent’s possession because it had been stored with the decedent’s attorney or with someone else until after the decedent’s death, or the decedent was not competent until his or her death.) The requirement would force the petitioner to prepare to address the potential consequences of a lost will sooner rather than later, whether or not the will is ultimately challenged or its dispositive provisions do not materially affect distribution of the estate. Of course, if the statute is repealed, the form</p>

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			<p>Historically, the problem most often arose from duplicate wills which have become less common with the advent of photocopies. Indeed, another suggestion would be to invite the petitioner to attach a photocopy of the will in this context if the original is unavailable. So I would revise 3f(3) to read as follows: “The original of the will or codicil has been lost. This relates to decedent’s will dated: _____ [] codicil dated: _____. A written statement of the testamentary words or their substance is affixed as Attachment 3f(3) (include photocopies if available).”</p> <p>Second, on Form DE-310. Again, requesting the character of the property anticipates a problem that may not arise. It may not be known or evident whether property is entirely community or separate, and it makes no difference whether property is community or quasi-community.</p> <p>If no one objects, or if the disposition of the estate is unaffected, there may be no need to consider these questions. Presumably, the description of the decedent’s interest in the property in Attachment 11 and the statement of facts supporting the petitioner’s succession to the property in Attachment 13 combined with the family relationship questions in Item 9 should contain the necessary information. For example, both separate and community property</p>	<p>would be revised again accordingly.</p> <p>The revised instruction in item 3f(3), quoted above in full, includes a request for attachment of a photocopy of the lost will or codicil as a substitute for the written statement of the testamentary words in the original lost testamentary document.</p> <p>In response to this and other similar comments, the committee has decided not to require a statement of the character of the property as community, quasi-community, or separate unless the character of the property is necessary to support the petitioner’s claim to the property: that is, the petitioner claims a right to inherit the property under the law of intestate succession (Prob. Code, §§ 6401 and 6402). The form has also been revised to request facts that show the character of the property, not merely conclusory statements.</p>

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			pass to the surviving spouse in case of intestacy if there are no children. If there are children, they or the spouse can dispute whether property is separate or community. I would not make this change.	
3.	Orange County Bar Association by Todd G. Friedland, President, Newport Beach	A	No specific comments made.	No response is necessary.
4.	Superior Court, County of Los Angeles	AM	<p>Does the proposal appropriately address the stated purpose?</p> <p>Yes, the proposal appropriately addresses the stated purpose.</p> <p>Should a statement of the character of the property as community, separate, or quasi-community in form DE-310 be required if the property's character is not relevant to the proposed distribution under the facts shown in the petition?</p> <p>No. It is the feeling of the bench that this statement should not be added to the forms. Most self-represented litigants do not know how to assess this issue, and it will only serve to cause continuances when they fill it out incorrectly, or leave it blank. There is no reason why this characterization of the property should be on this form. Where it is relevant, it is generally raised during the course of the action</p>	<p>In response to this and other similar comments, the committee has decided not to require a statement of the character of the property as community, quasi-community, or separate unless the character of the property is necessary to support the petitioner's claim to the property: that is, the petitioner claims a right to inherit the property under the law of intestate succession (Prob. Code, §§ 6401 and 6402). The form has also been revised to request facts that show the character of the property, not merely conclusory statements.</p>

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			<p>in a separate petition.</p> <p>Would the proposal provide cost savings? If so, please quantify.</p> <p>As stated in the summary, while there may be some costs incurred training staff, the proposal will lead to lower costs by reducing postponements and contested matters. What would the implementation requirements be for courts? Distribution of forms and training for staff will be required after adoption of the proposal.</p> <p>Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p> <p>Two months is sufficient to implement the proposal.</p> <p>How well would this proposal work in courts of different sizes?</p> <p>The impact of this proposal should not vary based on the size of the Court.</p>	

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5.	State Bar of California, Trusts and Estates Section Executive Committee (TEXCOM), by Herb Stroh, San Francisco	A	TEXCOM believes that the proposed revisions to the Petition for Probate (form DE-111) and Petition to Determine Succession to Real Property (form DE-310) are appropriate and sensible.	No response is necessary.
6.	Superior Court, County of Riverside, by Marita Ford,	A	<p>We support this proposal. The proposal is needed for the court to begin enforcing the requirement in Probate Code 8113 when a decedent was a citizen of a foreign country. It will also improve access to justice, court efficiency, and statutory compliance by providing an easy, clear, and consistent procedure for admitting a lost will to probate or seeking appointment of a successor personal representative. It should eliminate the common practice of modifying the judicial council forms when dealing with a lost will as recommended by popular treatises. It will reduce continuances by requesting required information (e.g. presumption of revocation or separate/community characterization) in the initial petition rather than having these issues come up first in the probate notes or at the first hearing.</p> <p>• Does the proposal appropriately address the stated purpose?</p> <p>Yes.</p>	No response is necessary.

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			<ul style="list-style-type: none">• Should a statement of the character of the property as community, separate, or quasi-community in form DE-310 be required if the property's character is not relevant to the proposed distribution under the facts shown in the petition? <p>No.</p> <ul style="list-style-type: none">• Would the proposal provide cost savings? If so, please quantify. <p>Yes. It should reduce continuances due to lack of sufficient information in initial petitions.</p> <ul style="list-style-type: none">• What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? <p>These changes should not require any implementation costs.</p> <ul style="list-style-type: none">• Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for	<p>In response to this and other similar comments, the committee has decided not to require a statement of the character of the property as community, quasi-community, or separate unless the character of the property is necessary to support the petitioner's claim to the property: that is, the petitioner claims a right to inherit the property under the law of intestate succession (Prob. Code, §§ 6401 and 6402). The form has also been revised to request facts that show the character of the property, not merely conclusory statements.</p>

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			<p>implementation?</p> <p>Yes.</p> <p>• How well would this proposal work in courts of different sizes?</p> <p>It should be helpful for courts of all sizes.</p>	
7.	Superior Court, County of San Diego, by Michael Roddy, Court Executive Officer, San Diego	AM	<p>Q: Does the proposal appropriately address the stated purpose?</p> <p>A: Yes. It would also be helpful if the <i>Order for Probate</i> (DE-140) were also revised to include a statement that the court finds that the presumption of revocation has been overcome, the will is admitted as a lost will, and a requirement for an attachment that includes a copy of the will or a statement of its testamentary provisions. Suggestion:</p> <p>Item 2c.(2) – add another line with the following:</p> <p>THE COURT FINDS...</p> <p>c. Decedent died</p> <p>(1) <input type="checkbox"/> intestate</p> <p>(2) <input type="checkbox"/> testate</p> <p><input type="checkbox"/> Petitioner has overcome the presumption of revocation per Prob. Code 6124</p> <p>and decedents will dated: _____</p> <p>and each codicil dated: _____</p>	<p>The committee will consider revisions of the <i>Order for Probate</i>, but these changes could not be part of the current proposal without creating a significant delay in its adoption.</p>

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			<p>was admitted to probate by Minute Order on (date): _____</p> <p><input type="checkbox"/> as a lost instrument. Attachment 2c.(2) includes a copy of the lost will or a statement of testamentary provisions per Prob. Code 8223.</p> <p>Q: Should a statement of the character of the property as community, separate, or quasi-community in form DE-310 be required if the property's character is not relevant to the proposed distribution under the facts shown in the petition?</p> <p>A: [Yes] There are some instances when the character of the property will have no effect on the disposition but, for the sake of consistency, the information should be required in all cases. Having that as a requirement may also serve as a notification to some parties that they do not meet the requirements to file the petition in the first place.</p> <p>Q: Would the proposal provide cost savings?</p> <p>A: No.</p> <p>Q: What would the implementation requirements be for the courts?</p>	<p>The committee has decided not to require a statement of the character of the property as community, quasi-community, or separate unless the character of the property is necessary to support the petitioner's claim to the property: that is, the petitioner claims a right to inherit the property under the law of intestate succession (Prob. Code, §§ 6401 and 6402). The form has also been revised to request facts that show the character of the property, not merely conclusory statements.</p>

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			<p>A: Training of staff, including front-line staff, Examiners and Judicial Officers. Possible reconfiguration of case management systems for courts that want to distinguish lost wills from other petitions for Probate, based on the filing.</p> <p>Q: Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p> <p>A: Yes.</p> <p>Q: How well would this proposal work in courts of different sizes?</p> <p>A: Court-size should not make a difference.</p>	