



Superior Court of California
COUNTY OF ALAMEDA

Probate Clerk's Office
Berkeley Courthouse
2120 Martin Luther King Jr. Way
Berkeley, CA 94704
Telephone: (510) 647-4439

PROBATE PACKET - DECEDENT'S ESTATE

This packet contains the Judicial Council forms required to initiate a formal probate proceeding for a decedent's estate. It is recommended that you **bring 2 additional copies of the completed forms** when you file the petition and subsequent documents with the clerk of the court.

NOTE: The clerk will retain the original(s) and return two endorsed filed copies to you.

To begin your petition for appointment of a personal representative, please complete the following Judicial Council forms:

Description	Form No.	Date Revised
Petition for Probate (Probate - Decedent's Estate)	DE-111	Jul 1, 2017
Duties and Liabilities of Personal Representative (Probate)	DE-147	Jan 1, 2002
Notice of Petition to Administer Estate (Probate - Decedent's Estate)	DE-121	Jan 1, 2013
Waiver of Bond by Heir or Beneficiary (Probate - Decedent's Estate)	DE-142/ DE-111(A-3e)	Jul 1, 2017
Order for Probate	DE-140	Jan 1, 1998

Other Judicial Council forms which may be submitted before or after the date of the hearing:

Description	Form No.	Date Revised
Notice of Hearing - Decedent's Estate or Trust	DE-120	Jan 1, 2020
Proof of Personal Service of Notice of Hearing - Decedent's Estate or Trust (Probate - Decedent's Estate)	DE-120(P)	Jul 1, 2005
Proof of Subscribing Witness (Probate)	DE-131	Jan 1, 1998
Proof of Holographic Instrument (Probate)	DE-135	Jan 1, 1998
Letters (Probate)* <i>*Note: Only submit Letters to the clerk for issuance and filing <u>after</u> entry of the court's order.</i>	DE-150*	Jan 1, 1998

Filing fee required:

Petition for letters of administration, letters of testamentary, <u>or</u> letters of special administration (with powers of general representative)	Filing fee: \$435
Petition for letters of special administration (without powers of general representative)	Filing fee: \$200

NOTE: If you cannot afford to pay the filing fee(s), you may request a fee waiver:

Description	Form No.	Date revised
Request to Waive Court Fees	FW-001	Mar 14, 2022
Information Sheet on Waiver of Court Fees	FW-001-INFO	Jan 1, 2021

All Judicial Council forms are available online at: <http://www.courts.ca.gov/forms.htm>

For more information, please see: <http://www.alameda.courts.ca.gov/Pages.aspx/Probate>

Rev. 4.25.2022

Preparing the Petition

1. How do I get appointed as personal representative? Do you qualify and are you entitled to be appointed?

Qualifications:

If you are named in a Will to act as executor, you will be eligible to serve if you are over 18 years old and are not subject to a conservatorship or otherwise unable to perform the duties of a personal representative. If you are not named as executor, or if the decedent did not have a Will, you must also be a resident of the U.S. and have priority to be appointed as administrator (if there is no Will) or administrator-with-Will-annexed (if there is a Will but you are not named as executor).

Priority for appointment:

If there is no Will, or if the Will does not nominate an executor (or the persons nominated are unable to serve due to death or because they do not want to serve), then persons related to the decedent are entitled to be appointed in the following order

- Surviving Spouse (BUT: if a divorce action has been filed but not completed before the decedent's death and the surviving spouse was living separate and apart from the decedent at the date of death, then the surviving spouse is entitled to appointment after the decedent's brothers and sisters)
- Children
- Grandchildren
- Other issue
- Parents
- Brothers and sisters (including half brothers and sisters, but not stepbrothers and stepsisters – see issue of a predeceased spouse)
- Issue of brothers and sisters (nieces and nephews)
- Grandparents
- Issue of grandparents (aunts and uncles first, then cousins)
- Children of a predeceased spouse
- Other issue of a predeceased spouse
- Other next of kin
- Parents of a predeceased spouse
- Issue of parents of a predeceased spouse
- Conservator or guardian of the estate acting in that capacity at the time of death who has filed a first account and is not acting as conservator or guardian for any other person
- Public Administrator
- Creditors
- Any other person (neighbors, friends, other non-relatives)

A person who has priority for appointment but does not wish to serve may decline and nominate another person as personal representative. If you wish to be appointed but there are other family members higher in priority, each one of those persons must decline to serve, in writing. There is no special or printed form to nominate or decline to serve. You must prepare an attachment for each person as a part of the Petition for Probate. A person named as executor may

provide the missing information. See DOMAIN web for Public Access to Probate Examiner's Checklist.

The number of attachments required for your Petition will depend on the particular circumstances involved in each decedent's estate. See notice and wills (if the decedent left a Will) located below in this section.

Notice of Petition to Administer Estate:

This form is used for two purposes: 1) for newspaper publication, and 2) to notify the persons who are entitled to receive notice about the hearing date. Complete the front side of the form and submit it with the Petition for Probate. You will need the original and at least one copy.

The Filing Clerk will place the case number on it and return the original and copy (or copies) to you. Do not just put the copy in your file. You will need to use this form to give notice to interested persons and for publication.

Duties and liabilities of personal representative:

This form summarizes in general form the duties and obligations of the personal representative. Each person to be appointed must sign the reverse side of the form.

Confidential Supplement:

Each person to be appointed must provide the information requested on this form consisting of the Personal Representative's date of birth and driver's license number. If the personal representative does not drive, a California Identification number will suffice. Should the personal representative not drive, that should be indicated.

Order for probate:

The original and at least one copy of this form should be submitted to the court along with the other forms. You will not get any copies back until after the hearing. If the judge grants the Petition for Probate and appoints you as personal representative.

Letters:

This form serves as the oath of office for the personal representative and may be given to anyone who needs proof that you have been appointed as the personal representative and have authority to act on behalf of the estate. Each person to be appointed must sign the form. (If more than one person is to be appointed,

both or all of them must sign the same form.) This form should be given to the Filing Clerk along with all of the other forms, but the clerk will not file the Letters or return any copies to you at the time of filing.

The form will be placed in the judge's file for the Probate Examiner to review prior to the hearing. If you are appointed, the Letters will be filed and issued by the Filing Clerk. You can get as many copies as you need at that time or at any later time.

Institutions such as banks or title companies generally require certified copies, for which there is an additional fee. Some institutions, such as stock transfer agents, also require that the Letters be submitted within 60 days of the date when they are certified by the Filing Clerk.

• **Proof of holographic instrument:**

This form is required if the decedent left a holographic (handwritten) Will. A copy of the Will must be attached as Attachment 4.

• **Proof of subscribing witness:**

This form is required if the decedent left an attested Will (or codicil) that is not self-proving (this usually occurs on wills executed before 1985). You must locate one of the witnesses to the Will (or codicil) who can sign the form to prove the authenticity of the Will. A copy of the Will must be attached as Attachment 1.

4. **How do I "prove a will"?**

There are basically three types of wills: Attested Wills, Holographic Wills, and Statutory Wills. A Will is "proved" and will be admitted to probate if it has been prepared and executed correctly under California law by an adult who at the time of signing had testamentary capacity and was not acting under undue influence. General information about the different types of wills is as follows:

• **Attested Wills (also known as Witnessed Wills):**

Attested Wills are usually prepared by an attorney, in typewritten form, and are signed in front of two (or three) disinterested witnesses who are not receiving any gifts under the Will. An attested Will is self-proving if the attestation clause signed by the witnesses contains a statement that the witnesses are signing under penalty of perjury.

A self-proving Will can be admitted to probate without the testimony of any of the subscribing witnesses.

A pour-over Will is an attested Will (and may also be self-proving) that is prepared in connection with a revocable trust and gives all of the decedent's property that is subject to probate to the trustee of the revocable trust.

Holographic Wills:

Holographic Wills are handwritten wills prepared by a testator in his or her own handwriting. Holographic wills do not have to be signed in front of witnesses or notarized. A holographic Will may be admitted to probate if the testator's handwriting can be proved by the testimony of at least one witness who was personally acquainted with the testator and has personal knowledge of the testator's handwriting.

Statutory Wills:

Statutory Wills are fill-in-the-blank, pre-printed wills whose form and content is specifically prescribed under California law. A statutory Will is a form of attested Will that must be signed in front of (at least) two witnesses. It is self-proving because the required declaration under penalty of perjury is included in the printed form.

However, the testator must use great care to follow carefully the instructions for choosing an executor and deciding how property is to be distributed in order to complete the Will properly.

5 Who should get notice of the Petition for Probate?

Persons entitled to notice:

All persons or entities (such as churches or other charities) named in the Will, including each person or corporation nominated as executor, and all persons who would be entitled to inherit as heirs by intestate succession (even if the decedent left a Will) are entitled to receive notice of the Petition for Probate.

Additional information must be provided to the court if a person's address is unknown so that notice cannot be given. In that situation, you must make a reasonable effort to locate the missing person and file a declaration or affidavit to tell the court what steps you have taken.

If a citizen of a foreign country dies without leaving a Will or leaves a Will that does not name an executor, or if it appears from the Will that property will pass to a citizen of a foreign country, then notice must also be given to a recognized diplomatic or consular official of the foreign country, if that official maintains an office in the United States.

Notice requirements:

Notice must be given by first class mail or by personally delivering a copy to each person or entity at least 15 days prior to the hearing. Each person should receive a copy of the "Notice of Petition to Administer Estate" showing the hearing date information. It is also recommended (but not required) that each

person be sent a copy of the Petition for Probate with all attachments.

Note: If you are the person who is asking to be appointed as personal representative, you cannot mail the copies but must have someone else who is not a party mail the documents for you. After the copies have been mailed or delivered, have the person who mailed the documents complete the Proof of Service by Mail on the reverse side of the Notice of Petition to Administer Estate and sign the Proof of Service by Mail.

Check to make sure that all of the persons and entities listed under 9 of the Petition for Probate have been given notice. If additional space is needed, attach a separate page. File the signed Proof of Service by Mail with the court.

6. How do I publish the Notice of Petition to Administer Estate?

Time and manner of publication:

A copy of the Notice of Petition to Administer Estate must be published three times in the legal notice section of a newspaper of general circulation in the city where the decedent resided, with at least five days between the first and last publication (not counting the publication dates). The first publication date must be at least 15 days prior to the hearing.

Proper newspaper:

It is very important to publish the Notice of Petition to Administer Estate in the proper newspaper since the cost of publication is expensive and may be several hundred dollars. If the city where the decedent resided publishes a qualified newspaper, that newspaper must be used, even if other newspapers are also sold or distributed within the city and the decedent never read the designated newspaper.

You must contact the newspaper and provide them with a copy of the Notice of Petition to Administer Estate. Pay close attention to the publishing schedule and deadlines so that the publication can be completed within the time required by law, especially if the newspaper is published only once a week. Make sure the front side of the Notice has been completely filled out. Missing or incorrect information could result in defective publication and extra cost to have the Notice re-published.

After publication has been completed, an Affidavit of Publication must be filed with the court. Ask the newspaper whether it will file the Affidavit directly with the court or send it to you. Remember, it is your responsibility to make sure that the Affidavit is filed, even if the newspaper says they will do it for you.

7 What happens if an emergency arises before a personal representative is appointed?

Appointment of a Special Administrator:

It generally takes four to six weeks from the time a petition for probate is filed until Letters can be issued to the personal representative. If an emergency situation exists so that appointment is urgently needed before the Petition for Probate can be heard by the Probate Judge, you may file a separate Petition for Letters of Special Administration. Letters of Special Administration are temporary Letters that can be approved by the Probate Judge for a specific purpose on an ex parte basis (without a hearing).

Typical situations where Letters of Special Administration would be appropriate include where the decedent owned a business and a legal representative must be appointed to run the business and sign payroll checks. Letters of Special Administration could also be issued if the decedent sold real property and opened an escrow but died before the escrow was closed.

A Petition for Letters of Special Administration will not be approved unless a Petition for Probate has also been filed. You should use the Petition for Probate form, Judicial Council Form DE-111, including an Attachment under Section 3.f.(3) specifying the reason why Letters of Special Administration are needed and the specific powers needed. These documents, along with the Duties and Liabilities of the Personal Representative, and the Confidential Supplement, will be filed in the Clerk's Office.

You must also bring an Order Appointing Special Administrator and signed Letters of Special Administration. 48 hours notice of your petition for Special Administration is required to all persons who are heirs or beneficiaries of the decedent, or named as executor in decedent's will (if any).

The Probate Examiner will review the documents to make sure they are properly completed and that they are clear as to the specific authority needed. The Probate Examiner will then present the Petition for Letters of Special Administration to the Probate Judge.

If the Probate Judge approves the petition, you can pick up the signed Order and Letters at the Probate Filing Window. If you would like certified copies of the Letters, a separate fee will need to be paid.

Letters of Special Administration are valid only for a limited period of time, generally until the hearing date on the Petition for Probate. During the period when the Letters of Special Administration are in effect, the personal representative will be referred to as a Special Administrator, even though he or she may be nominated in the decedent's Will as executor.

In addition, Letters of Special Administration will ordinarily be approved only for the specific purpose requiring immediate attention, and the Order Appointing Special Administrator must include an attachment identifying the specific powers given to the Special Administrator. A Special Administrator will be given general powers of a personal representative only in rare situations where a general personal representative cannot be appointed for a lengthy period of time (for example, because of a Will contest or litigation over who should be appointed as personal representative).



SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA

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Probate Court

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Probate Process Diagram

NOTE: This is a very simplified diagram of the probate process and is not intended to cover all possible situations arising in a particular estate. Please consult a qualified attorney if you have any questions about what is required in your particular estate.

Diagram of the Probate Process

