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ALERT: COVID-19 has temporarily changed the way courts are providing services. Our guides do not reflect these temporary changes. Contact the court directly for the most up to date information on court processes and procedures. www.saccourt.ca.gov

SMALL ESTATE AFFIDAVIT

Affidavit for Collection of Personal Property

This Guide includes instructions and a sample form. The Guide and related form may be downloaded from:

saclaw.org/small-estate-affidavit

BACKGROUND

In certain circumstances, personal property may be transferred to the decedent's successors without a formal probate. If the decedent's estate qualifies under California Pro. Code §§ 13100-13116, the person(s) entitled to the property may present a *Small Estate Affidavit*, commonly known as an *Affidavit for Collection of Personal Property*, to the person or institution having custody of the property, requesting that the property be delivered or transferred to the successor.

Personal property refers to anything that isn't real estate. Common types of personal property include furniture, jewelry, and household goods, as well as bank accounts, stocks, and money due to the decedent.

Real Estate Valued under \$166,250/\$184,500

Procedures in this guide apply only to personal property.

For Real Property valued under \$166,250, (if death occurred before April 1, 2022) or \$184,500 (if death occurred on or after April 1, 2022), formal probate may not be needed.

Read *How to Probate an Estate in California* from the following link:

- [Nolo E-books](#)

STEP-BY-STEP INSTRUCTIONS

Step 1: Determine If This Is the Appropriate Procedure

Personal property may be collected using the Affidavit for Collection of Personal Property if:

- At least 40 days have elapsed since the death of the decedent
- No administrative proceedings are pending or have been conducted for the decedent's estate
- Estate does not exceed \$166,250 in value (if death occurred before April 1, 2022) or \$184,500 (if death occurred on or after April 1, 2022). Many types of property are excluded when calculating the value of the estate (see Pro. Code § 13050 for exclusions)

Step 2: Complete the Affidavit

Instructions for completing the *Affidavit for Collection of Personal Property* are included at the end of this guide.

Form - Affidavit for Collection of Personal Property

Disclaimer: This Guide is intended as general information only. Your case may have factors requiring different procedures or forms. The information and instructions are provided for use in Sacramento County. Please keep in mind that each county may have different requirements. If you need further assistance consult a lawyer.

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Although [Pro. Code § 13101](#) states that a declaration under penalty of perjury is sufficient, many institutions require a notarized affidavit, especially when securities are involved. Contact the institution to determine if notarization is necessary.

If there are several assets to be transferred, they may all be included on one affidavit, or a separate affidavit may be used for each. If more than one person is entitled to inherit a particular asset, all beneficiaries must sign a single affidavit.

The *Affidavit for Collection of Personal Property* must be accompanied by:

- [DE 300 Maximum Values for Small Estate Set-Aside & Disposition of Estate Without Administration](#)
- A certified copy of the death certificate
- Evidence that the decedent owned the property (e.g., stock certificate, bank passbook, storage receipt)
- Reasonable proof of the identity of the person(s) signing the affidavit (e.g., driver's license, passport)
- An Inventory and Appraisal of all real property owned by the decedent in California, if any. This appraisal must be performed by an approved probate referee. [Pro. Code § 13103](#)
The court can provide you a list of approved referees. For more information about the Inventory and Appraisal, see *How to Probate an Estate in California* (KFC 205 .N57).

If stocks or bonds are being transferred, you will also need to attach:

- An *Affidavit of Domicile* signed by the person(s) entitled to the securities
- A *Transmittal Letter* signed by the person(s) entitled to the securities
- A *Stock or Bond Power*, signed by the person(s) entitled to the securities

More Information:

Samples of these additional attachments are available in *How to Probate an Estate in California* from the following link:

- [Nolo E-books](#)

Step 3: Collect the Decedent's Property

Present the completed Affidavit and required attachments to the person or institution having custody of the property.

WHEN THE BANK INSISTS ON THE "LETTERS"

Adapted, with the kind permission of author Richard Wills, from "Washington State Probate," at www.wa-probate.com/.

Probably the most popular use of a "Small Estate Affidavit," also called "Affidavit for Collection of Personal Property," is to access a Decedent's bank or securities account. The practical (as opposed to legal) problem is that banks, brokerages, transfer agents, and institutions in general are used to transferring such accounts through a probate proceeding, in which the Personal Representative delivers a copy of his/her Letters to the institution and requests the transfer. That's the method that institutions are familiar with, and they have come to see it as "the proper (and only) procedure" for

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making the transfer. Consequently, far too often, when a Successor presents a Small Estate Affidavit to an institution, the institution responds "We need Letters to make the transfer."

How to respond? In a word, be persistent and play "broken record" (repeat items 2 through 7 below over and over to the agent):

To prepare for the transfer, download and print out a copy of the relevant statutes:

Pro. Code § 13100-13116. Include the copies in your written request or hand the copies to the agent and politely ask the agent to read them, especially Pro. Code § 13100.

If you are dealing with a securities transfer agent, politely ask the agent to read Pro. Code §§ 13100(c) and 13105(a)(2).

Politely inform the agent that your use of a Small Estate Affidavit complies with California law, and that California law does not require either a probate proceeding or the delivery of Letters for the transfer to be made.

If further resistance is met, politely inform the agent that if the institution refuses to make the transfer, California law allows you to bring an action in Court against the institution to compel the transfer and for it to reimburse you for your attorney's fees and costs to obtain a Court Order to Compel the Transfer. Pro. Code §13105(b).

If further resistance is met, ask to speak to their manager.

If further resistance is met, ask to speak to their legal department.

Be forewarned, so that you may properly prepare. In your author's experience, the grand champions of resistance to Small Estate Affidavits are downtown branches of large banks (e.g., Bank of America, US Bank, etc.), and East Coast (particularly New York) securities transfer agents.

FOR MORE INFORMATION

On the Web:

California Courts Self-Help Website
Simplified Procedures to Transfer An Estate
www.courts.ca.gov/10440.htm

At the Law Library:

How to Probate an Estate in California KFC 205 .N57 (Self Help)

Electronic Access: From any computer (Library or home) via the Legal Information Reference Center. Instructions are available on our website at

<https://saclaw.org/wp-content/uploads/2015/03/ebook-how-to.pdf>

IF YOU HAVE QUESTIONS ABOUT THIS GUIDE, OR IF YOU NEED HELP FINDING OR USING THE MATERIALS LISTED, DON'T HESITATE TO ASK A REFERENCE LIBRARIAN.

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ATTACHMENTS: FORMS AND INSTRUCTIONS

There is no Judicial Council form for this procedure. A customizable template may be downloaded from this link:

[Form - Affidavit for Collection of Personal Property](#)

[DE 300 Maximum Values for Small Estate Set-Aside & Disposition of Estate Without Administration](#)

A sample filled-in form with instructions is available at the end of this Guide.

Affidavit for Collection of Personal Property
California Probate Code Section 13100

The undersigned state(s) as follows:

1. **David Fielding** died on **May 10, 2016**, in the County of **Sacramento**, State of California.

2. At least 40 days have elapsed since the death of the decedent, and a death certificate attached to this affidavit or declaration states the date and place of death.

3. ☒ No proceeding is now being or has been conducted in California for administration of the decedent's estate.

☐ The decedent's personal representative has consented in writing to the payment, transfer, or delivery to the affiant or declarant of the property described in the affidavit or declaration.

4. The current gross fair market value of the real property described in Section 13100, excluding the personal property in California, excluding the property that does not exceed one hundred sixty-six thousand two hundred fifty dollars as of April 1, 2022 or one hundred eighty-four thousand five hundred dollars as of April 1, 2022.

5. ☐ An inventory and appraisal of the real property included in the decedent's estate is attached.
☒ There is no real property in the estate.

6. The following property to be transferred, delivered, or otherwise disposed of by the affiant or declarant under Probate Code section 13100:

- a. **Savings Account Number 12-345**
Sacramento Savings Bank, 987 Main Ave. Sacramento, CA 95811
- b. **125 shares, ACME Corporation, common stock**

Describe the property you wish to collect. Use enough detail to make the property easily identifiable. If the form does not provide enough space, write in "See Attachment 6," and on a blank piece of paper (labeled Attachment 6) describe the property to be collected.

7. The successor(s) of the decedent, as defined in Probate Code Section 13006 is/are:

John Fielding & Rebecca Newton

Insert the name(s) of the person(s) entitled to the property. If a living trust is the beneficiary, list the names of the successor trustees and the name of the trust (e.g., John Smith, successor trustee of the Smith Family Trust).

8. The undersigned

☒ The affiant or declarant is the successor of the decedent (as defined in Probate Code) to the decedent's interest in the described property.

☐ The affiant or declarant is authorized under Section 13051 of the California Probate Code to act on behalf of the successor of the decedent (as defined in Probate Code) with respect to the decedent's interest in the described property.

9. No other person has a claim to the described property.

10. The affiant or declarant affirms or declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: **July 15, 2017**

Signed:

John Fielding

Rebecca Newton

Sign and date the Affidavit.