

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR16-24

Title

Decedent Estates: Revision of Forms Used to Commence a Decedent's Estate Proceeding and a Substitute for That Proceeding

Action Requested

Review and submit comments by June 14, 2016

Proposed Rules, Forms, Standards, or Statutes

Revise forms DE-111 and DE-310

Proposed Effective Date

January 1, 2017

Proposed by

Probate and Mental Health Advisory Committee
Hon. John H. Sugiyama, Chair

Contact

Douglas C. Miller, Attorney
Legal Services
818-558-4178
douglas.c.miller@jud.ca.gov

Executive Summary and Origin

At the request of a superior court probate department's managing staff attorney, the Probate and Mental Health Advisory Committee proposes revisions of the *Petition for Probate* (form DE-111) and the *Petition to Determine Succession to Real Property* (form DE-310) to add inquiries about information that may be important in many decedents' estates. These forms are used to commence a full decedent estate proceeding or to convey title to a decedent's real and connected personal property of moderate value to the decedent's proper successors in an expedited manner, as an alternative to such a proceeding.

Form DE-111 would be modified to inquire whether the decedent was a citizen of a foreign country and, if so, which one; whether the original will or any codicil to it offered for probate has been lost; and whether the proposed personal representative of the estate would be a successor in that role. Form DE-310 would be revised to require the petitioner to identify the character of the property to be transferred as community, separate, or quasi-community.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

The Proposal

Petition for Probate (form DE-111)

Decedent's citizenship. This proposal would add a new item 3b to form DE-111 on page 1. The new item would ask whether the decedent was a citizen of a country other than the United States and, if so, which country. Existing items 3b through 3g on pages 1 and 2 of the form would be redesignated as items 3c through 3h.

This change is proposed to (1) give the earliest possible notice to petitioners, particularly those who are self-represented, that the decedent's foreign citizenship may be important in the case, and (2) advise court staff and judicial officers reviewing the filed petition that notice issues under Probate Code section 8113 may be present.¹

Lost will or codicil. A lost or destroyed will or codicil may be offered for probate if its contents and due execution can be proved (see § 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 (§ 6124).²

Form DE-111 does not now refer to or request any information about a lost will. This proposal would revise the form to require the petitioner to state that the original will or any codicil identified in the form has been lost. If so, the petitioner would be required to state reasons why the lost-will presumption of section 6124 does not apply. See new item 3f(3) on page 2 of the form.

Item 3f(2) of the revised form would also be modified to require a written statement of the testamentary words or their substance if the will or any codicil is lost. (A photocopy of a signed or unsigned lost original will or codicil would qualify as the written statement.)

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 copy" under section 6124 is not a mere photocopy of a signed will. It is a duplicate, but it contains original signatures of the testator and of any witnesses. See *Lauermann v. Superior Court (Muongpruan)* (2005) 127 Cal.App.4th 1327, 1330–1331.

The title caption of this form would also be revised to permit the petitioner to indicate that the will (or codicil) offered for probate is a lost will. This change would follow and improve 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

Successor personal representative. A new item 3g(4) would be added to the form requiring the petitioner to advise if the petition seeks the appointment of a successor personal representative. 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, on the assumption that the Judicial Council form should not be used because it does not refer to successor appointments. This practice may present difficulties requiring postponements, additional court and staff time, and 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). This proposed change would eliminate this problem.

This change would also help courts to match the petition for a successor’s appointment with the prior representative’s removal petition—which might have been filed by a different party or could reveal the possible need for a temporary appointment upon the effective date of the vacancy, pending the hearing on the permanent successor’s appointment (see § 8523). The advice would 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)).

Petition to Determine Succession to Real Property (Estates of \$150,000 or Less)
(form DE-310)

This form 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 or will, when the total value of all property held by a decedent in this state is less than \$150,000.⁴ (See §§ 13151–13158.)

The advisory committee proposes to add a new sub-item (3) to item 11 on page 2 of the form, concerning the contents of required attachments to the form, to read: “and (3) the character of the

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 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 §§ 13050, 13151).

property [to pass from the decedent to the petitioner(s)] as community, separate, or quasi-community.”

The character of the property has particular relevance if there is no will and a surviving spouse or domestic partner is or is not the sole heir, depending on the character of the property and the relationship to the decedent of the other survivors. In other cases, such as when the spouse or partner is left the entire estate or the specific property sought in the petition under the decedent’s will or there is no surviving spouse or partner, the character of the property may not be important.

Alternatives Considered

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 court 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 all petitioners in both of these proceedings.

Implementation Requirements, Costs, and Operational Impacts

This proposal will incur the modest costs of distribution of any new or revised form. There will be some court staff costs incurred training for these changes in the first year or so after their adoption, but these costs should be insignificant. On the other hand, the additional information requested in both forms, but particularly in form DE-111, should ultimately lead to lower costs because the information will disclose issues to be addressed at the earliest possible time in the cases, leading to fewer postponements and fewer contested matters.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- 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?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- 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?
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Proposed revised forms DE-111 and DE-310, at pages 6–11

| | | | |
|---|---|------------------------|--------|
| 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: | | | |
| ESTATE OF (name): | DECEDENT | | |
| 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: <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:70%;">HEARING DATE AND TIME:</td> <td style="width:30%;">DEPT.:</td> </tr> </table> | HEARING DATE AND TIME: | DEPT.: |
| 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): | CASE NUMBER: |
| DECEDENT | |

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, or a written statement of the testamentary words or their substance if will or any codicil is lost.)

- 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. (State reasons in Attachment 3f(3) why the presumption in Prob. Code, § 6124 of the testator's intentional destruction of will or codicil 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 <i>(name)</i> : | CASE NUMBER: |
| DECEDENT | |

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): | 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) 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.