

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT

W12-07

Title	Action Requested
Probate: Substitutes for Decedent Estate Administration	Review and submit comments by January 24, 2012
Proposed Rules, Forms, Standards, or Statutes (Revise forms DE-305, DE-310, and DE-315)	Proposed Effective Date January 1, 2012
Proposed by Probate and Mental Health Advisory Committee Hon. Mitchell L. Beckloff, Chair	Contact Douglas C. Miller 818-558-4178, douglas.miller@jud.ca.gov

Summary

Legislation effective on January 1, 2012 will change the maximum dollar-value limits on two summary procedures for the transfer of a decedent's property, alternatives to full decedent estate administration. The Probate and Mental Health Advisory Committee has proposed the revision of three Judicial Council forms used in these procedures to reflect the changes made by the legislation, and also to make other improvements in the forms. The Judicial Council will consider this proposal at its meeting of December 13, 2011, and is expected to adopt it effective on January 1, 2012, but public comments concerning the revised forms are requested even after the effective date of the revisions.

Discussion

Form DE-305

The *Affidavit re Real Property of Small Value* (form DE-305) must be used to transfer real property of a decedent under the summary procedure authorized by Probate Code section 13200.¹ The form, an affidavit to be signed by all persons claiming an interest in the property under decedent's will or by intestate succession, must be filed with the superior court in the county where the decedent was domiciled at death or, if he or she was not then domiciled in

¹ Unless otherwise specified, all code references are to the Probate Code.

California, in the county where the real property is located. After filing, a certified copy of the affidavit is recorded to complete the transfer; no court hearing or court order is involved.

Until January 1, 2012, this procedure is available to transfer a decedent's interest in particular real property if the value of all of decedent's real property in this state (with certain exceptions²) does not exceed \$20,000. This maximum value limitation is prominently displayed in the name caption of the form and is repeated in the body of the form, in item 8 on page 1.

Legislation signed by the Governor on July 25, 2011, effective January 1, 2012, will increase the maximum dollar value limit of section 13200 from \$20,000 to \$50,000.³ Form DE-305 must be revised to reflect the new limit. The title of the form and item 8 would be modified to show that limit.

The advisory committee proposes the following additional changes in the form:

1. Item 5a would be modified by adding a selection option for placing the legal description in the form rather than in an Attachment 5a. The omission of this option appears to have been inadvertent in the existing form, as space is there provided for stating the legal description in the form.
2. The title to be placed on Attachment 5a would be modified by adding "Legal Description" to the designation of the attachment.
3. In item 7, additional space would be provided for listing the name and address of the decedent's estate guardian or conservator (as required by § 13200(a)(4)) and the footnote identified with an asterisk advising of the duty to mail or serve copies on those fiduciaries would be moved up from the bottom of the page, increased in font size, italicized, and placed in parentheses to match other advice given in the form.

The existing form says that the affiant must "have a copy of the affidavit personally served or mailed," implying that the affiant must have someone else do the service or mailing, as in a regular civil action in which the affiant is a party. This advice would be changed to "You must mail (or serve, per Prob. Code, § 1216)" because section 13200(f) expressly provides that "the affiant shall mail" the affidavit. (§ 1216 permits personal service where service by mail is specified in the Probate Code.)

4. One of the two notary acknowledgements on page 2 would be eliminated to create additional space for items 8, 9, and 10, now placed at the bottom of page 1 of the form. Items 9 and 10 would be moved to the top of page 2 and all three items revised to fully

² The exceptions are specified in section 13050, incorporated by section 13200(a)(5). In this context, the exceptions are real property interests (1) held by a decedent as a joint tenant or as a life estate or other interest terminable at death; (2) passing to the decedent's surviving spouse (or registered domestic partner under Fam. Code, § 297.5) under section 13500; or (3) held by the decedent in a revocable trust.

³ Assem. Bill 1305, enacted as Stats. 2011, ch. 117, is available online at www.leginfo.ca.gov/pub/11-12/bill/asm/ab_1301-1350/ab_1305_bill_20110725_chaptered.html. Section 13200 was amended by section 9 of the bill.

occupy the space available in the form across the page. The parenthetical in item 8 containing references to some kinds of real property interests that are excluded from the \$50,000 maximum limit of property value under Probate Code section 13050 would be expanded to include life estates or other property interests terminable upon decedent's death, and property in a trust revocable by the decedent.

5. Item 9 would be revised to read in full:

An Inventory and Appraisal of all of decedent's interests in real property in California is attached. The appraisal was made by a probate referee appointed for the county in which the property is located. *(You must prepare the Inventory on Judicial Council forms DE-160 and DE-161. You may select any probate referee appointed for the county for the appraisal. The California State Controller's Office has a list of all probate referees, shown by county on its website, and each court has a list of probate referees appointed for its county. Check with the probate referee you select or consult an attorney for help in preparing the Inventory.)*

The inventory forms, DE-160, the inventory cover sheet, and DE-161, the asset schedule, are mandatory forms; they must be used for all probate-related inventories filed with the court. The existing form refers only to the cover sheet and suggests that use of the Judicial Council inventory forms is optional. The existing form also does not advise potential petitioners, many of whom are self-represented, that they must prepare the inventory for the probate referee's use in making his or her appraisal of the property, and that a petitioner may select any of the referees appointed for the county where the real property is located.⁴ The revised instruction would clarify those issues and also advise petitioners where they can find information about probate referees and assistance in the preparation of an inventory.

6. The dollar-value limitation would be added to the footer at the bottom of both pages of the form, to make the full name of the form consistent with the name shown in the title caption box.

Forms DE-310 and DE-315

The *Petition to Determine Succession to Real Property* (form DE-310) and the *Order Determining Succession to Real Property* (form DE-315) are, respectively, the petition and order for the summary procedure authorized by sections 13151–13154. These sections authorize the transfer of a decedent's real (and, if requested, personal) property without a full estate administration if the total value of the decedent's property in California does not exceed \$100,000.⁵ Sections 6–8 of Assembly Bill 1305 will increase this maximum limit to \$150,000. The forms must be revised to refer to the new upper limit in the title and item 8 of form DE-310, and in the title and item 6 of form DE-315.

⁴ See section 13200(c).

⁵ Not including the value of property described in section 13050, including in this instance the personal as well as the real property interests listed in that section. See section 13151.

The following additional changes are proposed for form DE-310:

1. The case number, hearing date and time, and department caption boxes would be moved up to align with the bottom of the name caption box. This change would permit additional space for listing petitioners in item 1.
2. The place of death, item 2b, would be expanded to include the country of death (if not the United States).
3. Additional space would be provided for identifying a foreign estate administration for decedent in item 7b.
4. As noted above in connection with form DE-305, the partial list of types of property in item 8 that are excluded from the \$150,000 maximum value limitation of this remedy would be augmented by adding property held in a revocable trust by decedent and property in which decedent had a life estate or other interest terminable at death, per section 13050.
5. The instruction at the end of item 8, to attach an Inventory and Appraisal as Attachment 8, would be modified to advise that the petitioner must prepare it, must use both forms DE-160 and DE-161, and that a probate referee appointed for the county must appraise all non-cash assets. (See §§ 8901–8902, 13152(b).)
6. Item 10 would be modified by adding an initial checkbox, highlighting that the item does not apply to all petitioners and, when selected, that it does apply in the particular case; and by adding the phrase “Decedent is survived by . . .” once at the beginning of the item rather than repeating the phrase for each subpart, to parallel the structure of item 9.
7. A checkbox would be added following the last signature line for petitioners on page 2, indicating that there are signatures of additional petitioners attached, similar to the provision for additional declarants in form DE-305.

All petitioners named in item 1 must sign and all persons with interests in the property that are not in conflict would ordinarily join as petitioners; a fairly large number of them may sometimes be involved.

8. The dollar-value limitation would be added to the footer at the bottom of the form, to be consistent with the full name of the form in the title caption box and the name of the form as shown on the judicial branch public website.

The following additional changes are proposed for form DE-315:

1. The case caption box would be narrowed (and the “notch” for the recorder’s space removed) to provide more space in the attorney caption box for the attorney’s or petitioner’s address and to bring the form designator at the top of the page within the margin of the page.

2. The date, time, and place of the hearing would be combined in the first line of item 1 to permit a full line for the judicial officer's name.
3. Item 3b would be changed to refer to a nonresident decedent who owned property in the county rather than one who "left an estate" in the county.
4. Item 9a would be changed to add a selection box for placing the property description in the form instead of in the referenced attachment. As in the case of a similar item in form DE-305, this omission in the existing form appears inadvertent.
5. All "Other Orders" in item 10 would be removed to an attachment. The single line available for other orders in the existing form is insufficient for any practical use.
6. Item 11, the number of additional pages attached, would be moved above the judicial officer's signature so that the signature is the last thing on the page.
7. The dollar-value limitation would be added to the footer at the bottom of the form, to be consistent with the full name of the form in the title caption box.

Requests for Comments

The changes in the forms required by the enactment of AB 1305 are mandatory; references to the new dollar-amount limitations in these forms must be made. However, comments are requested concerning the additional proposed changes listed above, and concerning any other recommendations for changes in the forms.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
After recording return to:

TELEPHONE NO.:
FAX NO. (Optional):
E-MAIL ADDRESS (Optional):
ATTORNEY FOR (Name):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

STREET ADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

MATTER OF
(Name):

FOR RECORDER'S USE ONLY

DECEDENT

CASE NUMBER:

**AFFIDAVIT RE REAL PROPERTY OF SMALL VALUE
(\$50,000 or Less)**

FOR COURT USE ONLY

1. Decedent (name):
died on (date):
2. Decedent died at (city, state):
3. At least **six months** have elapsed since the date of death of decedent as shown in the certified copy of decedent's death certificate attached to this affidavit. (*Attach a certified copy of decedent's death certificate.*)
4. a. Decedent was domiciled in this county at the time of death.
b. Decedent was **not** domiciled in California at the time of death. Decedent died owning real property in this county.
5. a. The **legal description** of decedent's real property claimed by the declarant(s) (*copy description from deed or other legal instrument*): is as follows:

is described in an attached page labeled Attachment 5a, "Legal Description."
b. Decedent's interest in this real property is as follows (*specify*):

6. Each declarant is a successor of decedent (as defined in Probate Code section 13006) and a successor to decedent's interest in the real property described in item 5a, and no other person has a superior right, because each declarant is:
 - a. (**will**) A beneficiary who succeeded to the property under decedent's will. (*Attach a copy of the will.*)
 - b. (**no will**) A person who succeeded to the property under Probate Code sections 6401 and 6402.
7. Names and addresses of each guardian or conservator of decedent's estate at date of death: none.
 are as follows* (*specify*):

(*You must mail (or serve, per Prob. Code, § 1216) a copy of this affidavit and all attachments to each person named in item 7.)

8. The **gross value** of decedent's interest in all real property located in California as shown by the attached *Inventory and Appraisal*—excluding the real property described in Probate Code section 13050 (property held in joint tenancy or as a life estate or other interest terminable upon decedent's death, property passing to decedent's spouse, property in a trust revocable by the decedent, etc.)—does not exceed \$50,000.

MATTER OF _____ (Name): _____ <div style="text-align: right; margin-top: 10px;">DECEDENT</div>	CASE NUMBER: _____
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9. An *Inventory and Appraisal* of all of decedent's interests in **real property** in California is attached. The appraisal was made by a probate referee appointed for the county in which the property is located. *(You must prepare the Inventory on Judicial Council forms DE-160 and DE-161. You may select any probate referee appointed for the county for the appraisal. The California State Controller's Office has a list of all probate referees, shown by county on its website, and each court has a list of probate referees appointed for its county. Check with the probate referee you select or consult an attorney for help in preparing the Inventory.)*
10. No proceeding is now being or has been conducted in California for administration of decedent's estate.
11. Funeral expenses, expenses of last illness, and all known unsecured debts of the decedent have been paid. *[NOTE: You may be personally liable for decedent's unsecured debts up to the fair market value of the real property and any income you receive from it.]*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____
 (TYPE OR PRINT NAME)

▶ _____
 (SIGNATURE OF DECLARANT)

Date: _____
 (TYPE OR PRINT NAME)

▶ _____
 (SIGNATURE OF DECLARANT)

Date: _____
 (TYPE OR PRINT NAME)

▶ _____
 (SIGNATURE OF DECLARANT)

SIGNATURE OF ADDITIONAL DECLARANTS ATTACHED

NOTARY ACKNOWLEDGMENT *(NOTE: No notary acknowledgment may be affixed as a rider (small strip) to this page. If additional notary acknowledgments are required, they must be attached as 8-1/2- by 11-inch pages.)*

STATE OF CALIFORNIA, COUNTY OF *(specify):* _____

On *(date):* _____, before me *(name and title):* _____

personally appeared *(name(s)):* _____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the instrument in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

 (SIGNATURE OF NOTARY PUBLIC)

(NOTARY SEAL)

(SEAL)	<p style="text-align: center;">CLERK'S CERTIFICATE</p> <p>I certify that the foregoing, including any attached notary acknowledgments and any attached legal description of the property (but excluding other attachments), is a true and correct copy of the original affidavit on file in my office. <i>(Certified copies of this affidavit do not include the (1) death certificate, (2) will, or (3) inventory and appraisal. See Probate Code section 13202.)</i></p> <p>Date: _____ Clerk, by _____, Deputy</p>
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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	<p style="text-align: center;">FOR COURT USE ONLY</p> <p style="text-align: center;">Draft</p> <p style="text-align: center;">Not Approved by the Judicial Council</p>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
MATTER OF _____ (Name): _____ DECEDENT	CASE NUMBER: _____
<p style="text-align: center;">PETITION TO DETERMINE SUCCESSION TO REAL PROPERTY</p> <input type="checkbox"/> And Personal Property (Estates of \$150,000 or Less)	HEARING DATE: _____ 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, state, 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.), does not exceed \$150,000. (Prepare and attach an *Inventory and Appraisal (forms DE-160 and DE-161)* as *Attachment 8*. A probate referee appointed for the county named above must appraise all non-cash assets.)
9. a. Decedent is survived by (check at least one box in each of items (1)-(3))
 (1) spouse no spouse as follows: divorced or never married spouse deceased
 (2) child as follows: natural or adopted natural adopted by a third party no child
 (3) issue of a predeceased child 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.)
10. Decedent is survived by (complete if decedent was survived by (1) a spouse but no issue (only a or b apply); or (2) no spouse 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.

MATTER OF (Name):	CASE NUMBER
DECEDENT	

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 and (2) decedent's interest in the 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 described in item 11 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 below. are listed in Attachment 14.

<u>Name and relationship</u>	<u>Age</u>	<u>Residence or mailing address</u>
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15. The names and addresses of all persons named as executors in decedent's will are listed below are listed in Attachment 15 none named 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 PETITIONER²)

(TYPE OR PRINT NAME OF PETITIONER)

▶ _____

(SIGNATURE OF PETITIONER²)

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.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
After recording return to:

TELEPHONE NO.:
FAX NO. (Optional):
E-MAIL ADDRESS (Optional):
ATTORNEY FOR (Name):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

STREET ADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

Draft
Not Approved by the
Judicial Council

FOR RECORDER'S USE ONLY

MATTER OF (Name):

DECEDENT

CASE NUMBER:

ORDER DETERMINING SUCCESSION TO REAL PROPERTY

And Personal Property
(Estates of \$150,000 or Less)

FOR COURT USE ONLY

1. Date of hearing: _____ Time: _____ Dept./Room: _____
Judicial Officer (name): _____

THE COURT FINDS

- 2. All notices required by law have been given.
- 3. Decedent died on (date):
 - a. a resident of the California county named above.
 - b. a nonresident of California and owned property in the county named above.
 - c. intestate testate.
- 4. At least 40 days have elapsed since the date of decedent's death.
- 5. a. No proceeding for the administration of decedent's estate is being conducted or has been conducted in California.
 - b. Decedent's personal representative has filed a consent to use the procedure provided in Probate Code section 13150 et seq.
- 6. The gross value of decedent's real and personal property in California, excluding property described in Probate Code section 13050, does not exceed \$150,000.
- 7. Each petitioner is a successor of decedent (as defined in Probate Code section 13006) and a successor to decedent's interest in the real and personal property described in item 9a because each petitioner is:
 - a. (will) A beneficiary who succeeded to the property under decedent's will.
 - b. (no will) A person who succeeded to the property under Probate Code sections 6401 and 6402.

THE COURT FURTHER FINDS AND ORDERS

- 8. No administration of decedent's estate is necessary in California.
- 9. a. The real and personal property described in Attachment 9a described as follows is property of decedent passing to each petitioner (give legal description of real property).

b. Each petitioner's name and specific property interest is stated in Attachment 9b. is as follows (specify):

10. Other orders are stated in Attachment 10.

11. Number of pages attached: _____

Date:

JUDICIAL OFFICER

SIGNATURE FOLLOWS LAST ATTACHMENT

Item W12-07 Response Form

Title: Probate: Substitutes for Decedent Estate Administration (Revise forms DE-305, DE-310, and DE-315)

- Agree with proposed changes
- Agree with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ Title: _____

Organization: _____

- Commenting on behalf of an organization

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

Internet: www.courts.ca.gov/policyadmin-invitationstocomment.htm

Email: invitations@jud.ca.gov

Mail: Ms. Camilla Kieliger
Judicial Council, 455 Golden Gate Avenue
San Francisco, CA 94102

Fax: (415) 865-7664, Attn: Camilla Kieliger

DEADLINE FOR COMMENT: 5:00 p.m., Tuesday, January 24, 2012

Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.