



## Judicial Council of California · Administrative Office of the Courts

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on April 24, 2012

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Title	Agenda Item Type
Probate: Substitutes for Decedent Estate Administration	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Revise forms DE-305, DE-310, and DE-315	July 1, 2012
Recommended by	Date of Report
Probate and Mental Health Advisory Committee	March 15, 2012
Hon. Mitchell L. Beckloff, Chair	Contact
	Douglas C. Miller, 818-558-4178 <a href="mailto:douglas.miller@jud.ca.gov">douglas.miller@jud.ca.gov</a>

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### Executive Summary

The Probate and Mental Health Advisory Committee recommends revising three forms that are used to transfer the property of a decedent to his or her successors in interest when a full estate administration is not required.

### Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective July 1, 2012, revise the following Judicial Council forms:

1. *Affidavit re Real Property of Small Value (\$50,000 or Less)* (form DE-305);
2. *Petition to Determine Succession to Real Property (Estates of \$150,000 or Less)* (form DE-310); and
3. *Order Determining Succession to Real Property (Estates of \$150,000 or Less)* (form DE-315)

Copies of the revised forms are attached at pages 10–14.

### **Previous Council Action**

The Judicial Council initially approved forms DE-305, DE-310, and DE-315 as optional forms effective July 1, 1987, in response to the legislation that created the summary property transfer procedures the forms implement. The forms were converted to mandatory forms effective January 1, 2000, together with all other Judicial Council probate forms then in existence.

Effective January 1, 2012, the Judicial Council revised these forms to reflect changes in the law governing the transfer procedures made by legislation effective on that date. The council adopted the revisions before the forms were circulated for public comment in the winter 2012 comment cycle so the changes would become effective on the same date as the legislation. The comment period extended until after that date. Before the January 2012 changes, form DE-305 was last revised in 2008, form DE-310 in 1998, and form DE-315 in 2003.

Comments on the latest revisions have been received that support additional improvements in the forms.

### **Rationale for Recommendation**

#### **Form DE-305**

- The form should provide for possible successors in interest to a decedent’s real property that are entities, not individuals.

This form must be used for the summary real property transfer procedure authorized by Probate Code section 13200. Authorized claimants for a decedent’s real property include beneficiaries of that property under the decedent’s will.<sup>1</sup>

Entities other than individual persons may be beneficiaries of particular property under a will.<sup>2</sup> But form DE-305 speaks only of a signing declarant’s personal claim to the decedent’s real property and does not provide a means for the declarant to identify an entity beneficiary, request transfer of the property to that beneficiary, or show authority to make that request.

The form’s lack of clarity on this issue may cause title difficulties for some entity beneficiaries, particularly because of a unique feature of the procedure authorized by section 13200. The

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<sup>1</sup> Unless otherwise stated, all code citations are to the Probate Code. See sections 13200(a)(9) and 13006. The latter section defines “Successor of the decedent” for purposes of the property transfer procedures in which forms DE-305, DE-310, and DE-315 are used. Section 13006(a) includes within that definition beneficiaries of particular items of property under the decedent’s will.

<sup>2</sup> Sections 6102 and 13006(a). A trust is not an authorized beneficiary of a will under section 6102; property transfers to a trust, including those made by a will, are ordinarily made to the trustee. But section 13006(a) includes a trust as a beneficiary of a decedent’s will for purposes of the summary transfer procedures involved here.

property is transferred by recording a certified copy of form DE-305 after its filing; there is no court hearing on the affidavit and no court order that could correct an incorrect vesting.<sup>3</sup>

This point was raised by Santa Rosa attorney Robert K. Maize, Jr., a State Bar of California–certified specialist in estate planning, probate, and taxation. He requested that space be provided in item 6 of the form for entry of the name of an entity claimant. As an alternative, he asked that a declarant on behalf of an entity beneficiary be invited to identify the entity and the declarant’s authority to speak for the entity at the end of the form, in the line for the declarant’s name opposite the place for his or her signature.

The advisory committee supports Mr. Maize’s comment but has concluded that the limited amount of available space prevents the addition of a field in item 6 for entry of an entity beneficiary’s name and the declarant’s authority to speak for it. The committee instead proposes a revision of the item to read (new text in Italics):

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, *or signs this declaration on behalf of an entity that is a successor of decedent and to decedent’s interest in the real property*, and no other person *or entity* has a superior right, because each declarant *or entity* is:

The committee also proposes to add an asterisk after the first line for a declarant’s typed name on page 2 of the form, leading to a note after the last name and signature lines for declarants, reading as follows:

**\* A declarant claiming on behalf of a trust or other entity should also state the name of the entity that is a beneficiary under the decedent’s will, and declarant’s capacity to sign on behalf of the entity (e.g., trustee, Chief Executive Officer, etc.).**

- The space in item 5a for the legal description of the real property to be transferred should be eliminated, in favor of an attachment for the legal description in all cases.

The existing form, before and after the January 2012 revision, provides two options for the legal description of the real property to be transferred. The first is to place the description in a space in item 5a of the form; the second is to place it on an attached page.

In response to a comment from the Superior Court of Kern County that requested placement of the attachment option as first choice, the committee proposes to entirely eliminate the option to place the legal description directly on the form. The space available for this purpose permits only two full lines of text if filled in by computer and less than that if filled in by hand, as some self-represented declarants do, or by typewriter. All but the shortest legal descriptions must be placed

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<sup>3</sup> See section 13202.

on an attached page. The real property eligible for transfer by this form often consists of fractional interests, undeveloped or rural land, or oil and mineral rights, which commonly feature legal descriptions too long to fit in the space available on the form.

A mandatory attachment page for the transferred property's legal description should reduce the number of errors made in transcribing or rewriting the description. There will always be enough room to place the description on a full page without concern about available space leading to cramped handwriting or a reduced font size. Some legal descriptions can even be scanned off a source document and placed directly on the attached page without extensive rewriting or retyping.

This change also permits additional space to be provided for responses to item 5b, the statement of the decedent's interest in the property to be transferred, and item 7, the names and addresses of the decedent's estate guardian or conservator.

The committee proposes also to encourage full and accurate legal descriptions by modifying item 5a to request the Assessor's Parcel Number of the property in addition to its legal description and changing the instruction accompanying item 5a to emphasize that an *exact* copy of the legal description from a deed or other legal instrument is necessary.

- Other changes in the form follow.
  - The Superior Court of Kern County requested that a proof of service be added to the form for a declarant to use to show that the decedent's estate guardian or conservator has been served with a copy of the completed form, an act required by sections 13200(a)(4) and (f). The committee declined to attach a proof of service to the form for this relatively infrequently encountered requirement but proposes to modify the instruction to item 7 to refer affected declarants to the Judicial Council optional forms for proving service by mail or personal delivery of any document.
  - Los Angeles attorney Marc L. Sallus requested more space for the notarial seal on page 2 of the form. The committee agrees with this request. A larger space for this purpose is proposed, to be accomplished by reducing the space for the clerk's certificate, although the space for the clerk's seal would not be reduced.
  - In response to a request concerning form DE-310 from the Superior Court of Riverside County, discussed below, the committee changed item 8 of form DE-305, to clarify that the maximum value of the decedent's California real property permitted under section 13200 is its value as of the date of decedent's death.<sup>4</sup>

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<sup>4</sup> See section 13052, applicable to the property transfer procedures authorized by section 13200 (form DE-305) and sections 13150–13158 (forms DE-310 and DE-315).

## Forms DE-310 and DE-315

- Items 9 and 10 of form DE-310 should be revised to provide for registered domestic partners.

The Superior Court of Riverside County requested that items 9 and 10 of form DE-310 be revised to refer to registered domestic partners as successors to the decedent in the same way they are referred to in the *Petition for Probate* (form DE-111), the form used to commence a full decedent estate proceeding. The January 2012 revisions of form DE-310 did not include changes to refer to registered domestic partners because of space concerns and the committee's reliance on the general statement in Family Code section 297.5(c) that surviving registered domestic partners have the same rights, protections, and benefits as surviving spouses as sufficient assurance that registered domestic partners could succeed to property of a decedent under section 13151 and could use form DE-310 for that purpose.

The court's request caused the committee to revisit this issue. It has decided to make the changes requested by the court.<sup>5</sup>

The changes have been made possible without increasing the overall length of the form by eliminating the space for the names and addresses of the decedent's heirs and beneficiaries in item 14 of the form. The revised form would require these persons to be identified in an attached page in every case. Item 10 would be moved from the bottom of page 1 to the top of page 2 of the form and item 9, containing the statement of the relationships to decedent of his or her survivors, expanded to ask for the same information that is requested in item 5 of form DE-111, including inquiries about a decedent's registered domestic partner. The instructions to item 10, concerning possible heirs if there is no surviving spouse or issue, would be revised to refer to a registered domestic partner in addition to a spouse.

- Forms DE-310 and DE-315 should be revised to state that the valuation date for the maximum value limitation of a decedent's real and personal property under section 13151 is the value of that property on the date of the decedent's death.

The Superior Court of Riverside County questioned whether a petitioner should be permitted to trace a claim to property under section 13151 through multiple decedents on a single petition.

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<sup>5</sup> The committee's decision is also based on an apparent inconsistency between the general statement of the equality of rights and obligations of surviving spouses and surviving registered domestic partners in Family Code section 297.5(c) and the definition of a registered domestic partner in Probate Code section 37. Subdivision (b) of the latter section provides that if a registered domestic partnership is terminated by the death of one of the partners without a Notice of Termination of the partnership having been filed during their joint lives, the surviving partner retains the rights of a surviving partner provided in the Probate Code "[n]otwithstanding Section 299 of the Family Code." The latter section provides for termination of many registered domestic partnerships by dissolution proceedings, not by the filing of a Notice of Termination with the Secretary of State. Thus, despite Family Code section 297.5, the rights and obligations of surviving spouses and some surviving registered domestic partners under the Probate Code are not the same; reliance merely on the general statement of equality of rights and obligations in section 297.5 is potentially misleading.

The court made a strong case for its policy of requiring separate petitions for each decedent. However, the court made no specific request of the committee concerning that issue or these forms, and the committee concluded that a general instruction concerning this topic would be inappropriate, in the absence of a clear prohibition against the practice in the statute or in an appellate decision. The committee asked the court to consider requesting the development of a rule of court or Judicial Council sponsorship of clarifying legislation to address the problem if it considers that the issue merits either step. But the committee decided also to address the issue indirectly.

Section 13151 limits the transfer procedure authorized by sections 13150–13158 to decedents whose real and personal property in California does not exceed \$150,000 in gross value (exclusive of exempt property listed in section 13050). Neither sections 13150–13158 nor forms DE-310 and DE-315 identify the date of that valuation.

But section 13052 provides that the valuation date the probate referee must use in making his or her appraisal “for the purposes of this part” is the value of the property on the date of the decedent’s death. “[T]his part” refers to Part 1 of Division 8 of the Probate Code, sections 13000–13210, including sections 13150–13158 (forms DE-310 and DE-315) and 13200 (form DE-305). An appraisal by a probate referee is required for both transfer proceedings.<sup>6</sup>

The only purpose of this requirement is to ascertain whether the value of decedent’s California property exceeds the maximum limit applicable to the transfer procedure employed, \$50,000 for real property under section 13200 or \$150,000 for real and personal property under section 13151. Section 13052 establishes that the only important date for that purpose is the date of the decedent’s death.

The committee proposes to modify form DE-310 to state, in item 8, that the gross value of the decedent’s interest in real and personal property, exclusive of exempt property under section 13050, “did not exceed \$150,000 as of the date of decedent’s death.” A similar change would be made in item 6 of form DE-315, the order on the petition.

The effect of this small change should be to more clearly indicate to petitioners and courts that separate appraisals for each decedent are required in multiple-decedent situations unless all decedents died on or close to the same date. This in turn should cause most petitioners to abandon attempts to transfer property through more than one decedent in a single petition, except in a simultaneous or nearly simultaneous death situation involving both parents of children who claim as their parents’ direct successors in interest, which is perhaps an appropriate use of a single petition.

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<sup>6</sup> See sections 13200(c) and 13152(b). The required appraisal for a transfer of real property under section 13200(c) is of all of the decedent’s interest in California real property. The required appraisal under section 13152(b) is of all of the decedent’s real and personal property in California, in each case excepting exempt property described in section 13050.

- Other changes proposed for form DE-310 follow.
  - The instruction accompanying item 8 of the form, concerning preparation of the inventory and appraisal, has been changed to read:

*(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.)*

This change is a response to a comment from the Superior Court of Kern County, which requested an instruction similar to the one provided in item 9 of form DE-305. That instruction advises how to find and select a probate referee for the appraisal that must be filed with that form. The longer instruction provided in that form would not fit in the space available in this form. This instruction, unlike the instruction in form DE-305, which concerns the appraisal of real property only, emphasizes that a probate referee's appraisal is not required for personal property that is cash or its equivalent.<sup>7</sup>

- An instruction concerning the place of death in item 2b of form DE-310 is modified to request the city and state where a death inside the United States occurred but only a city and country for a death occurring outside the United States.

The current instruction requests the city, state, and country where the decedent died. The Executive Committee of the Trusts and Estates Section of the State Bar of California requested that this instruction be modified to eliminate potential confusion on the part of self-represented persons because many foreign countries do not have the equivalent of American states.

### **Comments, Alternatives Considered, and Policy Implications**

The revisions to the forms adopted by the Judicial Council effective on January 1, 2012 were circulated for comment as part of the winter 2012 public comment cycle, which ended after that date.

Seven individuals or organizations submitted comments concerning those revisions, including staff representatives of the Superior Courts of Kern and Riverside Counties and the Executive Committee of the Trusts and Estates Section of the State Bar of California. All commentators

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<sup>7</sup> Section 8901, cited in the revised instruction, lists the kinds of personal property that may be appraised by the personal representative of a decedent's estate or, in this situation, by a petitioner under section 13151 (see section 13152(b)). Section 8902(b) requires all other property to be appraised by a probate referee.

The revised instruction would be supplemented by detailed information about the preparation of an inventory and the appraisal responsibilities of petitioners and probate referees, which is contained in Judicial Council mandatory form DE-160, the inventory cover sheet identified in the instruction.

approved the revisions. Five commentators recommended additional changes. A chart summarizing the comments received and the committee's responses is attached at pages 15–23.

All changes in forms DE-305, DE-310, and DE-315 recommended in this report were made in response to the comments received. The most important changes are discussed above. Other minor changes were also recommended and made, and additional changes were proposed that the advisory committee declined to make, for the reasons stated in the chart.

The advisory committee considered not making changes at this time in response to the comments received because any change would require the distribution of revised forms twice within six months. However, the 2011 legislation that amended sections 13151 and 13200 to increase the maximum value of property eligible for the summary transfer procedures involved should lead to a greater use of these forms in the near term. Word is just now getting out into the larger community that more property and more potential transferees than formerly are eligible for these procedures. The committee concluded that the forms should be improved sooner rather than later to accommodate this larger public just as it becomes aware of these facts.

The committee also decided to proceed now instead of waiting until some future time when other changes to the forms must be made because the transfer procedures in which these forms are used are stable and unlikely to be modified again in the foreseeable future, and the one-time implementation costs courts will incur are the same now as they would be later. The committee concluded that the additional changes recommended by commentators—including courts—and accepted by the committee justify prompt action. Small but potentially significant improvements in the forms have been made.

Most of the changes are to instructions and information provided to form users, many of whom are self-represented. These modifications should reduce errors and title difficulties, and should generally improve the results obtained by these users. In the case of petitions under section 13151, these changes should reduce the number of postponements, refilings, supplemental filings, and continuances, along with the increased costs to the parties and the courts that accompany those events.

### **Implementation Requirements, Costs, and Operational Impacts**

This proposal will incur the ordinary production and distribution costs associated with the revision of Judicial Council forms. The revised forms will assist the courts in implementing the 2011 legislation, which should increase the number of expedited low-cost property transfer procedures authorized by the law and decrease the number of more expensive full decedent estate administrations.

### **Relevant Strategic Plan Goals and Operational Plan Objectives**

This proposal supports the case management policies underlying Strategic Goal III, Modernization of Management and Administration (Goal III.B., Trial and Appellate Case



Management) and Objective III.B.5<sup>8</sup> of the Operational Plan, in that it will help ensure that court forms promote the fair, timely, effective, and efficient processing of cases and make court procedures easier to understand.

### **Attachments**

1. Form DE-305, at pages 10–11
2. Form DE-310, at pages 12–13
3. Form DE-315, at page 14
4. Chart of comments, at pages 15–23

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<sup>8</sup> Objective 5 addresses the need to “[d]evelop and implement effective trial and appellate case management rules, procedures, techniques, and practices to promote the fair, timely, consistent, and efficient processing of all types of cases.”



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):

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):

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** and the Assessor's Parcel Number (APN) of decedent's real property claimed by the declarant(s) are provided on an attached page labeled Attachment 5a, "Legal Description." (Copy legal description **exactly** from deed or other legal instrument.)  
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, or signs this declaration on behalf of an entity that is a successor of decedent and to decedent's interest in the real property, and no other person or entity has a superior right, because each declarant or entity is:
  - a.  (**will**) A beneficiary that 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:\*  

<u>Names:</u>	<u>Addresses:</u>
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(\*You must mail (or serve, per Prob. Code, § 1216) a copy of this affidavit and all attachments to each guardian or conservator listed above. You may use Judicial Council form POS-030 for a proof of mailing or form POS-020 for a proof of personal service.)

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.)—did not exceed \$50,000 as of the date of decedent's death.

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)
(TYPE OR PRINT NAME)	(SIGNATURE OF DECLARANT)
(TYPE OR PRINT NAME)	(SIGNATURE OF DECLARANT)

SIGNATURE OF ADDITIONAL DECLARANTS ATTACHED

\* A declarant claiming on behalf of a trust or other entity should also state the name of the entity that is a beneficiary under the decedent's will, and declarant's capacity to sign on behalf of the entity (e.g., trustee, Chief Executive Officer, etc.).

**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)

(SEAL)

(NOTARY SEAL)

**CLERK'S CERTIFICATE**

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. *(Certified copies of this affidavit do not include the (1) death certificate, (2) will, or (3) inventory and appraisal. See Probate Code section 13202.)*

Date: \_\_\_\_\_ Clerk, by \_\_\_\_\_, Deputy

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY  <p style="text-align: center;"><b>Draft</b></p> <p style="text-align: center;"><b>Not Approved by the Judicial Council</b></p>
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</b>  STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
MATTER OF _____ (Name): _____ DECEDENT	CASE NUMBER: _____
<b>PETITION TO DETERMINE SUCCESSION TO REAL PROPERTY</b> <input type="checkbox"/> <b>And Personal Property (Estates of \$150,000 or Less)</b>	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 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 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.<sup>1</sup>
  - 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 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<sup>2</sup>)

\_\_\_\_\_  
 (TYPE OR PRINT NAME OF PETITIONER)

▶ \_\_\_\_\_  
 (SIGNATURE OF PETITIONER<sup>2</sup>)

SIGNATURE(S) OF ADDITIONAL PETITIONERS ATTACHED

<sup>1</sup> 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.  
<sup>2</sup> 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):

**Draft**  
**Not Approved by the**  
**Judicial Council**

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF**

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

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, did not exceed \$150,000 as of the date of decedent's death.
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





**W12-07**

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

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Advisory Committee Response</b>
1.	Executive Committee of the Trusts and Estates Section of the State Bar of California (TEXCOM), by Michael C. Gerson, Hartog & Associates, Inc. Orinda	AM	<p>The Executive Committee of the Trusts &amp; Estates Section of the State Bar (TEXCOM) recommends that item 2b in Form DE-310 be clarified. That item currently states: “Place of death (<i>city, state, and country</i>)”. TEXCOM believes the item should be modified to state: “Place of death (<i>city and state, or if the decedent died outside the United States, country</i>)”</p> <p>TEXCOM believes that “city, state, and country” may confuse a non-lawyer, and people may be struggling to determine the “state” in a foreign country, which may not have any states. It is also not clear to TEXCOM whether all foreign death certificates would include the city.</p>	<p>The committee supports this recommendation. The item has been changed to read:</p> <p>“Place of death (<i>city and state or, if outside the United States, city and country</i>):”</p> <p>If the place of death was not in a city, either in or out of the United States, or none is identified in a death certificate, the petitioner is unlikely to be so misled as to name one.</p>
2.	Robert K. Maize, Jr. Attorney at Law Robert Maize, a Legal Corporation Santa Rosa	AM	<p>I recently used form DE-305 to claim a partial interest in real property on behalf of a trust because the entire property was being sold. I may have to file a corrected affidavit solely to add the name of the trust where the declarant’s name is printed.</p> <p>To minimize that difficulty, I would ask that item 6 be modified to read as follows:</p> <p>6. The declarant(s), and the trust, estate or entity that they represent if any, is/are:</p> <p>_____</p> <p>_____</p>	<p>There is insufficient room in item 6 of the form to permit one or two lines for entry of the name of a trust or other entity that is a beneficiary under the decedent’s Will, but in response to this comment,</p>

**W12-07**

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

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	Commentator	Position	Comment	Advisory Committee Response
			<p>Each declarant is a successor of the decedent (as defined in Probate Code section 13006) and a successor to the decedent's interest in the real property described in item 5a, and no other person has a superior right because each declarant is:</p> <p>a. ....</p> <p>b. ....</p> <p>If paragraph 6 is not so modified, then the description for the line for printing the declarant's name should be modified to read as follows:</p> <p>(TYPE OR PRINT NAME, AND TITLE AND TRUST/ENTITY AS APPLICABLE)</p>	<p>the committee has changed item 6 to read as follows:</p> <p>“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, <i>or signs this declaration on behalf of an entity that is a successor of decedent and to decedent’s interest in the real property</i>, and no other person has a superior right, because each declarant <i>or entity</i> is: . . .” (Italics added.)</p> <p>The committee has adopted the commentator’s alternative recommendation. It has added an asterisk after the first line for a petitioner’s typed name adjacent to the first signature line on page 2 of the form, leading to the following note below all lines for the petitioners’ names and signatures:</p> <p><b>* A declarant claiming on behalf of a trust or other entity should also state the name of the trust or other entity that is a beneficiary under the decedent's Will, and declarant's capacity to represent the trust or entity (e.g., trustee, Chief Executive Officer, etc.)</b></p>
3.	Orange County Bar Association, by Dimetria Jackson, president Newport Beach	A	No comments.	No response necessary.

**W12-07****Probate: Substitutes for Decedent Estate Administration** (Revise forms DE-305, DE-310, and DE-315)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Advisory Committee Response</b>
4.	Marc L. Sallus Attorney at Law Oldman, Cooley, Sallus, Gold, Birnberg & Coleman, LLP Los Angeles	AM	I agree with the changes proposed except: the space for the notary on DE-305 is too small for many of the notary seals. I would increase the size of that box and reduce the size of the clerk's certificate (there is space between the text and the signature line that can be reduced).	The advisory committee agrees with this comment, and has increased the space for the notary seal. The space for the clerk's certificate has been reduced to make this change possible, but the space for the clerk's seal has been maintained at its original size.
5.	Superior Court of Kern County, by Ms. Marisol Alcantar, Court Supervisor—Probate Department Bakersfield	AM	Form DE-305 Agree with proposed changes and suggested modifications:  Item 5a: Modify by reversing the order of the options, with the option of placing the legal description in an attachment first, followed by the option of placing the description in the space provided.	Item 5a: This comment led to a greater change than that requested by this commentator. The option of placing the real property's legal description in the form rather than in an attachment has been eliminated entirely. The committee concluded that there would be less chance of making an error in a legal description if it is placed on a separate full page instead of in a possibly cramped space in the form. This change also allows greater space to be provided in the form for responses to item 5b (the statement of the decedent's interest in the property) and item 7 (the names and addresses of the decedent's guardian or conservator).  The committee also added an instruction in the item asking the affiant to copy the legal description of the property <b>exactly</b> from a deed or other legal instrument, and to include the Assessor's Parcel Number (APN) with the legal description.

**W12-07**

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

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	Commentator	Position	Comment	Advisory Committee Response
			<p>Item 7: Move “<input type="checkbox"/> are as follows (<i>specify</i>):” up to the line with the first option of “<input type="checkbox"/> none.” In the space, add headings for names and addresses of guardians or conservators.</p> <p>Item 7: Good idea to add the information on service. Would like to see a proof of service as part of the form to eliminate the need for the verbiage in the item.</p> <p>tem 9: Bold the first “must” in the parenthesized italicized section to reinforce the requirement.</p> <p>Notary Acknowledgement: Add a checkbox to indicate additional attached notary acknowledgements, as the second acknowledgement has been removed from the existing form.</p>	<p>Item 7: The committee accepts this recommendation and has made these changes. To make the selection option “are as follows” fit in the upper line, the instruction “(<i>specify</i>)” has been deleted.</p> <p>Item 7: The committee has decided not to add a proof of service to the form. Adding a separate page for a proof of service to this form is not justified for the relatively few cases in which the decedent had an estate guardian or conservator. In such cases, a generic form proof of service, such as form POS-030 for mail delivery or form POS-020, for personal service, is available.</p> <p>The instruction in item 7 has, therefore, been modified to read:</p> <p><i>(*You must mail (or serve, per Prob. Code, § 1216) a copy of this affidavit and all attachments to each guardian or conservator listed above. You may use <b>Judicial Council form POS-030 for a proof of mailing or form POS-020 for a proof of personal service.</b> (Bold text added.)</i></p> <p>The committee has concluded that this emphasis is unnecessary.</p> <p>The committee has decided that the instruction above the notary acknowledgement, which is unchanged from the prior version of the form, is sufficient. Even with two acknowledgements in the previous version of that form, attached</p>

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

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	Commentator	Position	Comment	Advisory Committee Response
			<p>Form DE-310 Agree with proposed changes and suggested modifications:</p> <p>Item 1: Recommend adding verbiage indicating each person listed in item 1 is required to sign page 2, per Prob. Code, §1020.</p> <p>Item 8: Remove and replace the verbiage in parenthesis/italicized with verbiage consistent and as listed in Form DE-305, item 9 as it relates to forms DE-160 and DE-161 accentuating the “must” requirement of using the forms as is stated in DE-305, item 9.</p>	<p>additional acknowledgements were not uncommon.</p> <p>Item 1: The requested admonition appears above the petitioner signature blocks on page 2. That should be sufficient.</p> <p>Item 8: There is insufficient space available in form DE-310 to repeat the full instruction concerning use of the Judicial Council forms for an Inventory and Appraisal contained in item 9 of form DE-305, which primarily provides information about how to select a referee. But the committee has revised the instruction to read:</p> <p><i>(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.)</i></p> <p>A major difference between appraisals and inventories attached to form DE-305 and those attached to form DE-310 is that the latter includes personal property. Therefore, the instruction concerning which personal property must be appraised by the referee, and the citation of the Probate Code sections that define that property, is appropriate in this form. The committee has concluded that a higher percentage of affiants</p>

**W12-07****Probate: Substitutes for Decedent Estate Administration** (Revise forms DE-305, DE-310, and DE-315)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Advisory Committee Response</b>
			<p>Item 10: Appears confusing both in new and previous versions. The previous version on its face may be easier for self represented litigants to understand what is needed and/or required.</p> <p>Reference number 2, bottom of page 2, has “named” and “item” misspelled.</p> <p>Form DE-315 Agree with proposed changes.</p>	<p>using form DE-305 than petitioners using form DE-310 are self-represented. Therefore, citing Probate Code provisions in instructions to petitioners instead of long explanations in limited space in the latter form is more appropriate</p> <p>Item 10: The committee has concluded that the revised version of item 10 is preferable. It features a selection box at the beginning of the item, which provides immediate emphasis that a petitioner has one or more of the designated relatives. The new version also avoids repeating “Decedent was survived by . . .” in each subpart.</p> <p>Noted and corrected. These identical typos (“rn” instead of “m”) were in the previous version in the form replaced in January and were not picked up during the revision process because this part of the form was not otherwise changed and “rn” looks very much like “m.” Thank you.</p> <p>No response necessary.</p>
6.	Superior Court of Riverside County Riverside	AM	<p>Modification of revised form DE-310:</p> <p>Items 9 and 10 of the revised form DE-310 should be amended to include registered domestic partners (similar to that which already appears in form DE-111). It further appears the revised DE-310 was last updated in 1998 and before the recognition of the legal status of “registered domestic partners.”</p>	<p>Modification of revised form DE-310:</p> <p>The committee’s concern was a lack of space in the form for petitioners to refer to registered domestic partners in addition to spouses. The committee intended to rely on the general equivalence between spouses and such partners stated in Family Code section 297.5.</p> <p>In response to this comment, however, the committee has changed form DE-310 in the</p>

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

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	Commentator	Position	Comment	Advisory Committee Response
			<p>Separate Petitions – Recommendation</p> <p><i>Multiple Decedents in Chain of Title:</i>            Assume, by way of example, grandfather died leaving the property to his son (father) who survived him. Before distribution, father dies leaving the property to son. Litigants and attorneys attempt to combine both successions into a single petition. It is the Court’s view that</p>	<p>following respects:</p> <ol style="list-style-type: none"> <li>1. Space for the names and addresses of the decedent’s heirs and beneficiaries is deleted from item 14 on page 2 of form DE-310. These persons are to be listed in an attachment.</li> <li>2. The space made available by this change enables item 10 to be moved to page 2 and item 9 at the bottom of page 1 to be expanded to call for the same information about spouses and registered domestic partners as is currently requested in the Petition for Probate (form DE-111), used to commence full decedent estate administrations.</li> <li>3. The instruction in item 10 is changed to read:   <i>“(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, or issue. Check the <b>first</b> box that applies.)”</i></li> </ol> <p>This recommendation is apparently not directed to any specific statement in the form. If it is a request for a general instruction about how petitioners should address chains of title with multiple decedents, there is no place in the current form for such a detailed instruction. The court’s reasoning appears sound, but in the absence of clear appellate decisional authority for or against the court’s position, it is unclear</p>

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Advisory Committee Response</b>
			<p>these events must be separated into two petitions. The Court’s reasoning is as follows:</p> <p>Separate inventories must be filed for each death to confirm that the value of each estate is within the statutory limit.</p> <p>The Court requires allegations concerning the decedent’s name, date of death, value of assets, and the identity of all heirs, beneficiaries, conservator(s) and/or guardians for each decedent.</p> <p>Each petition will have its own parties entitled to notice.</p> <p>Son will not have standing to file as a successor of grandfather’s estate until the petition is granted concerning father (though both could be filed, noticed, and granted concurrently).</p>	<p>what instructions could or should be given on the point raised.</p> <p>If this is a frequent occurrence, the advisory committee suggests that the commentator consider requesting the committee to consider development of a statewide rule of court or proposing Judicial Council sponsorship or support of legislation to address the problem, not only for the summary property transfer procedure of Probate Code section 13150, et seq., but also for the transfer procedure authorized by section 13200 that is implemented by form DE-305.</p> <p>This comment did cause the committee to revise forms DE-305, DE-310, and DE-315 to clarify that the appropriate date that the decedent’s nonexempt property must not exceed the maximum total value of \$50,000 for form DE-305 (real property) and \$150,000 for forms DE-310 and DE-315 (real and personal property) is the date of the decedent’s death, not the date the affidavit or petition is filed or the date of the order on the petition.</p> <p>Probate Code section 13052 requires the probate referee to use the date of the decedent’s death as the valuation date in both the affidavit procedure of section 13200 (form DE-305) and the petition and order procedure of section 13151 (forms DE-310 and DE-315). The only purpose of the appraisal is to establish that the declarant or petitioner qualifies for the summary procedure</p>



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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Advisory Committee Response</b>
				<p>because his or her decedent's nonexempt property does not exceed the maximum value permitted under the particular procedure employed. The only authorized valuation date is the decedent's date of death; stating so explicitly in each form adds appropriate clarity.</p> <p>If the forms clarify that the decedent's date-of-death valuation must be used, separate affidavits or petitions and orders for each decedent in a multiple-death scenario are much more likely to be required by courts, as separate appraisals for each date of death valuation would clearly be required. The problem raised by the court should occur less frequently if this change is made.</p>
7.	Superior Court of San Diego County, by Michael Roddy, Executive Officer San Diego	A	No comments.	No response necessary.

