

## **CHAPTER 9 SUMMARY PROCEEDINGS**

### **Rule 4.9.1**

#### **Petition to Set Aside Small Estate**

A petition to set aside a small estate (under Prob. Code, § 6602) must be filed as a separate petition and must not be worded in the alternative with a petition for probate. If a petition to set aside a small estate is filed concurrently with a petition for probate, the petitions may be set for hearing for the same date and time.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2012)

### **Rule 4.9.2**

#### **Spousal Property Petition**

**A.** If the basis for determining that property should pass or be confirmed to the surviving spouse is that the property is community property or quasi-community property, the following information must be included in the spousal property petition:

1. Date and place of marriage;
2. Ownership of any real and personal property on date of marriage and a description and approximation of values;
3. Decedent's net worth at time of marriage;
4. Decedent's occupation at time of marriage;
5. A description of any property acquired after date of marriage by gift, devise, descent, proceeds of life insurance or joint tenancy survivorship, and dates of receipt and approximation of values;
6. The identification of any property described in 2 or 5 above which is still a part of this estate;
7. A copy (preferably a photocopy, showing signatures) of any document establishing the character of the property; and
8. Any additional facts upon which the claim that property is community or quasi-community property is based.
9. Facts that rebut Evidence Code § 662.

**B.** If a Petition references a will, the will must be on deposit with the court pursuant to Probate Code section 8200.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Renum. 1/1/2006; Rev. 1/1/2009; Rev. 1/1/2011; Rev. 1/1/2014)

### **Rule 4.9.3**

#### **Proceedings to Establish Fact of Death**

**A.** A petition to establish the fact of death (under Prob. Code, § 200), where title to or any interest in property is affected by the death of a person (as in the case of death of a joint tenant or life tenant), must be filed as a separate petition from a petition for probate.

**B.** There is no provision in the Probate Code for the determination by the court of attorneys' fees in proceedings to establish the fact of death. No request for fees for services of this character may be included in any probate proceeding relating to the person whose fact of death is determined. Where, however, proceedings are necessary to establish the fact of death of a person who predeceased the decedent, a fee for extraordinary attorney's services may be proper in connection with administration of the latter decedent's estate.

**C.** A petition to establish the fact of death must be filed in a proceeding in the name of the deceased person whose interest is to be terminated, and the petition will not be acted upon if it is filed in any other proceeding.

**D.** A petition to establish the fact of death will be set for hearing at the time of filing unless otherwise requested by the person filing the petition.

**E.** In proceedings to establish the fact of death, the judgment may recite that the interest of the deceased person in the property has terminated. Recitals as to vesting of title must not be included.

**F.** A petition to establish the fact of death of an individual under Health & Safety Code section 103450 is a separate proceeding from the petition identified in A., above. Upon filing a petition under Health & Safety Code section 103450, a hearing will be set not less than five nor more than ten days after the filing of a petition.

**G.** The court may make an order on the petition filed under F., determining the death did in fact occur at the time and place shown by the proofs adduced at the hearing. The order must be made in the form prescribed and furnished by the State Registrar, and will become effective upon a filing of a certified copy with the State Registrar.

**H.** Petitions to establish the fact of birth or marriage under Health & Safety Code section 103450 are set in the same manner as F.

(Adopted 1/1/1990; Renum. 7/1/2001; Rev. 7/1/2002; Rev. 7/1/2003; Rev. 1/1/2005; Renum. 1/1/2006; Rev. 1/1/2011)