



# SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CENTRAL DIVISION, CENTRAL COURTHOUSE, 1100 UNION ST., SAN DIEGO, CA 92101

## GENERAL INFORMATION FOR SELF-REPRESENTED LITIGANTS (DECEDENT'S ESTATE)

This document provides information intended to answer general questions a self-represented litigant may have about decedent's estate. This is not a complete reference or procedural guide, nor is it intended to take the place of legal advice from an attorney. It is your responsibility to read and comply with the applicable laws, use current forms, and be prepared to present your case.

### **What is a Decedent's Estate?**

A Decedent's Estate refers to all property left behind when a person dies. Probate is one way someone can obtain legal permission to manage a decedent's property. In a probate case, an executor (if there is a Will) or an administrator (if there is no Will) is appointed by the court as a personal representative to collect the assets, pay the debts and expenses, and then distribute the remainder of the estate to the heirs or beneficiaries under the supervision of the court. The entire case may take between nine months to one and a half years, or longer.

Probate is commonly used when a decedent's estate value exceeds \$208,850.00\*. However, exceptions may exist depending on whether the decedent was survived by a spouse or registered domestic partner, or the type of assets in the estate. These exceptions may allow you to achieve the same result of a formal Probate, but through a more simplified process, listed below.

Court Procedures:	Non-Court Procedures:
<b>Spousal or Domestic Partner Property Petition</b> ( <a href="#">JC Form #DE-221</a> )  If the surviving spouse/partner is legally entitled to all the property, a Petition for Probate may not be required. For example, a couple that was married for decades may only own "community property," which belongs to the surviving spouse/partner and is confirmed by the court in the spousal property petition case. This form may be found on the Judicial Council's website at <a href="http://www.courts.ca.gov/forms">www.courts.ca.gov/forms</a> .	<b>Affidavit for Collection of Property without Probate</b> ( <a href="#">SDSC Form #PR-132</a> )  If you have the legal right to inherit personal property, such as money in a bank account or stocks, and the estate is worth \$208,850.00 or less*, you may not have to go to court. The form listed above is a simplified process you can use to transfer the property to your name. This process CANNOT be used for real property. This form may be found on the court's website at <a href="http://www.sdcourt.ca.gov">www.sdcourt.ca.gov</a> .
<b>Petition to Determine Succession to Primary Residence</b> ( <a href="#">JC Form #DE-310</a> )  If the estate is \$750,000 or less*, it may not have to go through the probate process. The successor to an interest in real property, may file a petition requesting a court issue an order determining that they have succeeded to that real property. This form may be found on the Judicial Council's website at <a href="http://www.courts.ca.gov/forms">www.courts.ca.gov/forms</a> .	<b>Affidavit for Transfer Without Probate California Titled Vehicle or Vessels Only</b> ( <a href="#">DMV Form #REG 5</a> )  To transfer title of vehicles or vessels belonging to the decedent, a formal probate is not needed. This may be completed directly through the California Department of Motor Vehicles (DMV). This form may be found on the DMV's website at <a href="http://www.dmv.ca.gov">www.dmv.ca.gov</a> .
<b>Affidavit re: Real Property of Small Value</b> ( <a href="#">JC Form #DE-305</a> )  Real property valued at \$69,625.00 or less* may be transferred without a formal probate. If you need a marketable title to the property, a certified copy of the filed form may be recorded with the County Recorder of the county where the real property is located. This form may be found on the Judicial Council's website at <a href="http://www.courts.ca.gov/forms">www.courts.ca.gov/forms</a> .	<b>Transfer of Mobile or Manufactured Home</b>  For information and links to the forms needed for transferring a mobile or manufactured home, visit the <a href="http://www.hcd.ca.gov">California Department of Housing and Community Development</a> website at <a href="http://www.hcd.ca.gov">www.hcd.ca.gov</a> .
<small>*On April 1, 2022, and at each three-year interval ending on April 1 thereafter, the dollar amounts shall be adjusted based on the Consumer Price Index for All Urban Consumers. Adjustments do not apply when the decedent's death preceded the date of adjustment. Refer to the Maximum Values for Small Estate Set-Aside &amp; Disposition of Estate Without Administration (<a href="#">JC Form #DE-300</a>) to determine the maximum value based on the decedent's date of death.</small>	

### **Need legal advice?**

The court does not provide legal advice or offer assistance with completing these forms. It is your responsibility to do the research and determine which process would be best for your specific circumstances. For more complex estates or estates that may be challenged or contested it may be best to seek legal counsel. If you need help locating an attorney in San Diego County, you may contact the Lawyer Referral & Information Service of the San Diego County Bar Association at their website [www.sdcba.org](http://www.sdcba.org) or by calling (619) 231-8585.

### **What do I have to file to start an Estate proceeding?**

To open an estate proceeding, you first must file a petition and other forms with the court. You must fill out the following forms, available in the Probate Business Office and on the court's website at [www.sdcourt.ca.gov](http://www.sdcourt.ca.gov):

#### **Included in the Decedent's Estate Packet (SDSC #PKT-057):**

- Petition for Probate (Probate-Decedent's Estate) (JC Form #DE-111)
- Attachment to Initial or Competing Petition for Probate (SDSC Form #PR-198) (*Mandatory form, effective 03/01/2024*)
- Waiver of Bond by Heir or Beneficiary (JC Form #DE-142/DE-111(A-3e))\*
- Duties and Liabilities of Personal Representative (Probate) (JC Form #DE-147)
- Proof of Subscribing Witness (JC Form #DE-131)\*
- Proof of Holographic Instrument (JC Form #DE-135)\*

*\*Forms may not be applicable.*

### **Did the decedent have a last will and testament?**

If the decedent had a Will, then they are deemed to have died testate. The Will dictates who the beneficiaries are, as well as who might be appointed as the personal representative of the estate. The original Will and any Codicils (amendments to the Will) must be deposited with the court when an estate proceeding is commenced. A manuscript cover, or stiff backing, is required, as well as a fee for storage of the Will. A copy of the Will and any Codicils must be attached to the Petition for Probate. If the decedent died without a Will, then they are deemed to have died intestate. The Probate Code dictates the line of succession of heirs to which the decedent's estate will pass.

### **What do I have to do after I fill out the forms?**

You may file your documents by choosing one of the following options:

- E-Filing: [www.sdcourt.ca.gov/sdcourt/online services/efiling](http://www.sdcourt.ca.gov/sdcourt/online services/efiling)  
Refer to Electronic Filing Requirements (Probate) ([SDSC Form #PR-188](#))
- In Person or by Mail (*You will need the original documents and one copy*):  
Superior Court of California, County of San Diego  
Probate Business Office, Room 330  
1100 Union Street  
San Diego, CA 92101

### **Helpful Tips:**

- ✓ If e-filing, scanned documents must be in PDF format and must be text searchable (i.e., optical character recognition (OCR)).
- ✓ If e-filing, the original Will must be mailed or dropped off in the Probate Business Office with reference to the filed Petition for Probate (i.e., e-filing transaction number or case number).
- ✓ If filing in person or by mail, a copy of each completed form must be provided.
- ✓ If filing by mail, a self-addressed, stamped envelope must be provided for conformed copies to be returned.

### **Is there a fee to file a Petition for Probate?**

Yes. The current fee amounts may be found on the court's Fee Schedule (SDSC Form #ADM-001), available in the Probate Business Office and on the court's website at [www.sdcourt.ca.gov](http://www.sdcourt.ca.gov).

### **What if I don't have enough money to pay the fee?**

If you cannot afford the fees, you can request a fee waiver from the court. All the required forms are included in the Fee Waiver Packet (SDSC PKT #010) which is available in the Probate Business Office and on the court's website at [www.sdcourt.ca.gov](http://www.sdcourt.ca.gov) (select Probate, then Forms). If your request is granted, all court related fees will be waived.

## **BEFORE THE HEARING:**

### **Publication and Notice Requirements:**

The Notice of Petition to Administer Estate (JC Form #DE-121) must be published in a newspaper circulated in the city where the decedent lived at the time of death. All persons or entities (such as charities) named in the Will, including each person nominated as executor, and all persons who would be entitled to inherit as heirs by intestate succession (even if the decedent left a Will) are entitled to receive notice of the Petition for Probate.

- **Publication:**

A copy of the Notice of Petition to Administer Estate must be published three times in the legal notice section of a newspaper of general circulation in the city where the decedent resided. Refer to List of Approved Newspapers for Publication of Legal Notices ([SDSC Form #ADM-335](#)). The first publication date must be at least 15 days prior to the hearing with at least five days between the first and last publication (not counting the publication dates). After publication has been completed, an Affidavit of Publication must be filed with the court. Ask the newspaper whether it will file the Affidavit directly with the court or send it to you. It is your responsibility to make sure that the Affidavit is filed, even if the newspaper says they will do it for you.

- **Notice Requirements:**

Notice must be given by first class mail or by personally delivering a copy to each person or entity entitled to notice at least 15 days prior to the hearing. Each person should receive a copy of the "Notice of Petition to Administer Estate" showing the hearing date information. It is also recommended (but not required) that each person be sent a copy of the Petition for Probate with all attachments. *Note: If you are the person who is asking to be appointed as personal representative, you cannot mail the copies but must have someone else who is not a party mail the documents for you.* After the copies have been mailed or delivered, the person who mailed the documents must complete and sign the Proof of Service by Mail on the reverse side of the Notice of Petition to Administer Estate.

### **Order, Letters, and Bond, if applicable:**

A proposed Order for Probate and Letters should be submitted prior to the hearing, so that they may be reviewed by the probate examiner. If submitted by e-filing, an electronic copy will be returned via email after the hearing, if an email address was provided. If submitted in person or by mail, a self-addressed stamped envelope must be submitted, in addition to copies for conforming and return after the hearing. If a bond is required, the original must be submitted to the court. Bonds are not eligible of e-filing.

- **Order for Probate (JC Form #DE-140):**

The order appoints the personal representative of the estate and lists the powers and responsibilities granted.

- **Letters (Probate) (JC Form #DE-150):**

This form serves as the oath of office for the personal representative and may be given to anyone who needs proof that you have been appointed as the personal representative and have authority to act on behalf of the estate. Letters expire 18 months from the date of issuance.

- **Bond:**

A bond is required of all personal representatives to protect interested persons, including beneficiaries and creditors, against the wrongdoing of the personal representative. A bond is not required if the Will waives the bond requirement, or if all beneficiaries sign a waiver of the bond requirement. The court will ordinarily require a non-resident personal representative to file a bond even if the Will waives bond. If a bond is required, the amount of the bond will be fixed based on the estimated value of the decedent's estate.

### **Probate Examiner Notes:**

Before the court hearing date, a probate examiner will review the filings submitted and make notes for the judge. These notes are referred to as "probate notes." A copy of the probate notes will be available on the online Register of Actions on the court's website at [www.sdcourt.ca.gov](http://www.sdcourt.ca.gov) (select Online Services and then Access Court Records) about two weeks prior to the hearing.

If there are defects (things that are missing and/or corrections to be made), they will be noted by the probate examiner. Ordinarily the defects need to be corrected before the petition will be granted by the judge. Some defects may be corrected by providing an explanation on a Response to Probate Notes form (SDSC Form #PR-177). Contact the probate examiner listed on your probate notes for information on how to correct defects. All corrections must be made at least **four court days** before the hearing. If defects are noted and have not been corrected before the hearing date, the court may continue the hearing to a later date to allow time to correct the defects.

The probate examiners can be contacted by phone or email. Instructions are available on the court's website at [www.sdcourt.ca.gov](http://www.sdcourt.ca.gov) (click on the Probate tab, then Examiner Notes).

## **AFTER THE HEARING:**

### **Probate Referee and Inventory & Appraisal:**

At the time of appointment of the personal representative, the Court designates on the Order for Probate the name and contact information for the probate referee to be used in that estate to appraise the total value of the assets. Probate referees are qualified appraisers who have passed stringent education and testing requirements and are appointed by the California State Controller's Office to act as probate referees for each county. As personal representative, you must complete and sign the front side of the Inventory and Appraisal form (JC Form #DE-160), leaving the line for "Total Appraisal by Referee" blank, but otherwise answering each section. You must send the form to the appointed probate referee for completion.

### **Notice to Creditors and Allowance or Rejection of Creditors' Claims:**

As personal representative, you have a duty to notify both known and reasonably ascertainable creditors of the death of the decedent and that you have been appointed as personal representative. Complete and mail the Notice of Administration to Creditors (JC Form #DE-157).

In addition, you are required to notify the Franchise Tax Board of the decedent's death. The Department of Health Services must also be notified, if you know or have reason to believe that the decedent received Medi-Cal health benefits or was the surviving spouse of a person who received Medi-Cal health benefits. If an heir or beneficiary is currently incarcerated or was formerly incarcerated, the California Victim Compensation Board must be notified. If income was earned by the decedent prior to death, personal income state and federal taxes may need to be filed. If you are unsure, discuss your case with a lawyer or Certified Public Accountant.

If a creditor files a Creditor's Claim (JC Form #DE-172), you must review the claim carefully and either allow or reject the claim, in whole or in part, in writing, within 30 days of receiving the claim. Complete the Allowance or Rejection of Creditor's Claim form (JC Form #DE-174). Mail a copy of the Allowance or Rejection of Creditor's Claim form to the creditor. File the original Allowance and Rejection of Creditor's Claim with a copy of the Creditor's Claim attached. If certain criteria are met, the court will also review and either approve or reject the claim.

### **Final Accounting or Waiver of Final Accounting and Petition for Distribution of Assets:**

The personal representative is required to bring the estate to a close within one year after Letters are issued (or 18 months if a federal estate tax return is required). Before the estate can be closed, the personal representative must file a final account, report, and petition for final distribution. The petition will be set for hearing and notice of the hearing to interested persons must be given by completing a Notice of Hearing (Decedent's Estate or Trust) (JC Form #DE-120). This petition may be prepared in pleading format, or local form, First and Final Report of Personal Representative & Petition for Final Distribution (SDSC Form #PR-165) may be used.

### **Ex Parte Petition for Final Discharge and Order:**

Once the court approves the Petition for Final Distribution, you may begin to distribute property to persons entitled to receive said property from the estate. Each person must sign a receipt and all receipts must be filed with the court. Receipts must be prepared on pleading. After distribution is complete, you must request that the court discharge you as the personal representative and exonerate the bond, if one was posted. This can be accomplished by completing and filing an Ex Parte Petition for Final Discharge and Order (JC Form #DE-295/GC-395). There is no fee for filing and this is not set for hearing. Once signed by the judge, the administration of the estate is complete.