

1702 APPOINTMENT OF PERSONAL REPRESENTATIVES

(a) [Petition for Letters] The petition shall be filed on the approved Judicial Council form and shall conform with Probate Code section 8002.

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Deleted: have attached a legible copy of each document offered for probate as an exhibit. If the original will is attached to the petition, a legible copy is not required. In the case of a holographic will, a typed copy of the document shall be attached in addition to a copy of the handwritten original

[NEW] 1702(d) Declination to Serve / Consent to Serve

If a person nominated as personal representative in the will declines to act, a signed declination must be filed prior to the hearing on the petition for probate unless evidence is produced that the nominated person is not competent pursuant to Probate Code section 8402, refuses to act, or cannot be located.

Deleted: (d) [Foreign Wills; Ancillary Probate] A petition to probate a foreign will must have attached a certified copy of the will and a certified copy of the order or decree admitting the will to probate outside this jurisdiction. If the will has been admitted to probate in a foreign country, the copies must be certified in the manner set forth in Evidence Code section 1530 and Probate Code section 361. ¶ (Amended 07-01-09; adopted effective 07-01-98)

Similarly, a written declination must be filed by or on behalf of an individual who is entitled to priority for issuance of letters of administration but does not desire to act, or evidence must be produced that the person with priority is not competent under Probate Code section 8402 or refuses to act.

Where a petition seeks the appointment as personal representative of one or more persons other than the petitioner, a consent to serve as personal representative must be filed for each such proposed personal representative.

[New] 1702(e) Will Submitted for Safekeeping

The original will must be submitted at the time of filing unless previously lodged with the Court for safekeeping. If the will was previously lodged for safekeeping, it is petitioner’s responsibility to notify the clerk upon filing the petition for probate that the will was previously lodged.

[NEW] 1702(f) Lost Wills

If the original of an instrument being offered for probate has been lost or destroyed, the petition for probate must include a declaration regarding the circumstances of the inability to file the original instrument. The declaration must address the presumption of revocation described in Probate Code section 6124.

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1703 BOND OF PERSONAL REPRESENTATIVE

(a) [Submission of Duties of Personal Representative] Individual personal representatives shall read, sign, and file with the Clerk the Duties and Liabilities of Personal Representative (Judicial Council form DE-147).

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If a bond is not required, the proposed personal representative shall submit the form prior to the hearing on the petition for appointment. If a bond is required, the proposed personal representative may submit the form prior to the hearing or with the bond after the hearing.

Individual personal representatives are not required to complete the Confidential Supplement to Duties and Liabilities of Personal Representative (Judicial Council form DE-147(S)).

Corporate personal representatives are not required to submit the Duties and Liabilities of Personal Representative.

(c) [Bond Waiver for Sole Heir or Beneficiary] [Deleted]

(d) [Amount of Bond] [Moved to 1704(c)]

(c) [Submission of Letters of Personal Representative] If a bond is not required, the proposed personal representative shall take the prescribed oath of office and sign, date, and submit the letters prior to the hearing on the petition for appointment. If a bond is required, the proposed personal representative may submit the executed letters prior to the hearing or with the bond after the hearing.

(Amended 07-01-09; adopted effective 07-01-98; previously amended effective 07-01-00)

1704 INVENTORY & APPRAISAL

(a) [Deadline for Filing] Probate Code section 8800 requires the Inventory and Appraisal be filed within four (4) months after the appointment or within such further time as the court deems reasonable under the circumstances of the particular case. If the personal representative neglects or refuses to file the Inventory within the time prescribed, the court, upon notice, may revoke the personal representative's letters.

(b) [Preparation of Inventory] The Inventory and Appraisal shall conform to the requirements of Probate Code sections 8850 and 8900. The California Probate Referee's Association has published the Probate Referee's Guide, which may be consulted at www.probatereferes.org. Although not an official publication, this pamphlet is a good reference. In the case of real property, the full legal description, street address, and County Assessor's parcel number shall be included.

(Amended 07-01-09; adopted effective 07-01-98; previously amended effective 07-01-00)

(c) [Increase or Decrease of Bond] If required, upon filing the Inventory and Appraisal, the personal representative or the attorney for the estate shall apply to the court for an increase or reduction in the amount of the bond as required by California Rules of Court, rule 7.204.

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Deleted: Duties of Personal Representative form with their Social Security Number or Driver's License Numbers; these lines on this form shall be left blank. Corporate personal representatives are not required to file this form.

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1705 CREDITOR'S CLAIM

(b) [Claims Filed with the Court] The personal representative shall allow or reject the claim by filing a separate allowance or rejection of the claim on the appropriate Judicial Council form.

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(Amended 07-01-09; adopted effective 07-01-98; previously amended effective 01-01-03)

(d) [Appearance by Attorney for Sales Confirmation] In hearing petitions for confirmation of sale of real property and for sale of personal property where bidding is authorized, the court ordinarily will not proceed with confirmation of the sale in the absence of the attorney of record. Counsel should inform the original bidder and his or her agent of the time and place of hearing and advise that they be in court for the hearing.

(g) [Approval of Overbid on Credit Sales] If the sale of personal property returned for confirmation is upon credit, a higher bid pursuant to Probate Code section 10262, whether on the same or additional credit terms, shall not be approved unless the personal representative or the personal representative's attorney informs the court that the overbid is acceptable.

[NEW] (h) [Increased Bid Forms] When there is a successful overbid in open court on a sale of real property, an "Increased Bid in Open Court" form (local court form number (SC-6004), must be completed, signed, and filed with the court before the conclusion of the hearing; otherwise, confirmation is not effective. This form is available from the courtroom clerk or from the court's website.

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(Amended 07-01-09; adopted effective 07-01-98)

1707 ACCOUNTS OF PERSONAL REPRESENTATIVES

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The court will approve a final distribution without an account only when there has been strict compliance with Probate Code section 10954 and California Rules of Court, rule 7.550.

Deleted: (a)[Waiver of Account]

(Amended 07-01-09; adopted effective 07-01-98; previously amended 07-01-00)

1708 FEES OF PERSONAL REPRESENTATIVES

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(a) [Basis for Computation] The Petition for Distribution shall state the amount of the statutory commissions requested to be paid to the personal representative and to the attorney. The petition shall set forth the basis and the computation of the statutory fees in accordance with Probate Code sections 10800 and 10810.

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(b) [Allowance on Account of Fees] Allowances on account of statutory fees will be granted only in proportion to the actual work performed to date. See California Rules of Court, rule 7.701. In any event, the last 25% of the statutory fees will not ordinarily be allowed before the approval of the final account and decree of distribution.

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(c) [Extraordinary Fees] Any application for fees for extraordinary services must be set forth with particularity and in accordance with California Rules of Court, rules 7.702 and 7.703.

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(Amended 07-01-09; adopted effective 07-01-98)

1709 PRELIMINARY & FINAL DISTRIBUTION

(a) **[Petition Detail]** The Petition for Distribution must list and describe in detail all property to be distributed in the manner required by California Rule of Court, rule 7.651. Description by reference to the inventory is not acceptable.

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(b) **[Description of Distributees]** The Petition for Distribution must set forth in detail the precise manner in which the estate is to be distributed. A general allegation that the estate is to be distributed in accordance with the terms of the will is not sufficient. The petition must set forth the name of the distributee and a statement as to whether the distributee is a minor or adult. ~~(d)~~ **[NEW Minors]** If the distributee is a minor, the manner in which the funds are to be distributed must be identified. Probate Code section 3413 governs the distribution of money belonging to a minor. If money belonging to the minor is to be distributed to a fiduciary (e.g., a probate guardian, a trustee or custodian), the fiduciary must be identified in the petition.

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Deleted: If the distributee is a minor, the age and date of birth must also be listed and a guardian, trustee, or parent must be identified. ¶

In addition, the following documents must be submitted under the appropriate circumstances:

- (1) Declaration from the parent(s) that the minor's estate, including the bequest, does not exceed the statutory maximum if distribution is to be made under Probate Code section 3401;
- (2) A separate "Order To Deposit Money Into Blocked Account" (MC-355) if a blocked account is to be used. Within 15 court days following the date of the minute order, the "Receipt and Acknowledgment of Order for the Deposit of Money into Blocked Account" (MC-356) must be filed with the Probate Court. The court will set a review hearing to ensure that the Receipt and Acknowledgment has been filed;
- (3) A certified copy of the Letters of Guardianship, if distribution is to be made to a probate guardian;
- (4) The consent of the custodian to act, if distribution is to be made to a custodian under the California Uniform Transfers to Minors Act (Prob. Code, § 3900 et seq.).

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Deleted: (d) **[Character of Community/ Separate Property]** The Petitions for Distribution shall contain an allegation as to the separate or community character of the property. ¶

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(e) **[Order for Distribution]** Orders should be drawn so as to set forth the full plan of distribution. Orders may not contain distribution plans which refer to the petition or any other document.

Deleted: (f) **[Distribution to Minors]** If distribution to minors pursuant to Probate Code sections 3401 or 3412 is requested, documents indicating compliance with those sections must be filed before the Judgment of Distribution is signed. In all other cases of distribution to the guardian of the minor, the guardian shall sign the Receipt of Distribution. ¶

[NEW] 1709(e) Trustees

If distribution is to a trustee who is not the personal representative, the consent of the nominated trustee to act must be on file prior to the hearing on the petition for distribution to the trustee.

(g) [Debts] Each Petition for Final Distribution shall contain an allegation which will enable the court to determine whether the personal representative has complied with the provisions of Probate Code section 11640 concerning payment of the estate debts. ¶

[NEW] 1709 (f) Distribution Pursuant to Agreement

(h) [Non-Resident Beneficiaries] If distribution is to be made to a non-resident beneficiary, the certificate required by Revenue and Taxation Code section 19513 must be filed before Judgment of Distribution will be signed. ¶
(Amended 07-01-09; adopted effective 07-01-98)¶

If distribution is to be other than according to the terms of the will or the laws of intestate succession, there must be a written agreement on file and signed by all parties affected by the distribution.

[NEW] 1709(g) Distribution to Deceased Heir or Beneficiary

When an heir or beneficiary dies during administration of an estate, the order must provide for distribution to the personal representative of the estate of the heir or beneficiary, or, if applicable, to the person(s) entitled to the property in a summary proceeding pursuant to a declaration or affidavit under Probate Code section 13101.

If distribution is to be made to a person collecting assets under Probate Code section 13100, the required affidavit or declaration pursuant to Probate Code section 13101 must be filed before distribution will be ordered. If the required affidavit or declaration cannot be filed, the petition must state why it cannot be filed.

[NEW] 1709(h) Distribution Pursuant to Assignment

When distribution is requested pursuant to an assignment by a distributee, the assignment must be filed in the proceeding. The court may require additional information, including consideration paid, to assure that the assignor fully comprehends the effect of the assignment, that it was voluntarily made, and was not grossly unreasonable.

[NEW] 1709 (i) Distribution Pursuant to Disclaimer

A copy of a disclaimer must be on file prior to the hearing on a petition for distribution of an affected asset. The proposed distribution must comply with Probate Code sections 282 and 21110 as well as any other sections that may apply.

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1710 CONTESTED MATTERS; ORAL OBJECTIONS

If an oral objection is made at the hearing on any petition, the court shall continue the hearing for a reasonable time to allow the filing of written objections and shall further designate a briefing schedule, if appropriate. *(Amended 07-01-09; adopted effective 07-01-98; previously amended effective 07-01-00)*

Deleted: If the written objections are not filed within forty-eight (48) hours prior to the prescribed hearing date, the hearing will proceed.¶

1711 MISCELLANEOUS PETITIONS & ORDERS

[NEW] 1711(a) [Petition for Entitlement to Distribution] A petition under Probate Code section 11700 must set forth the specific determination which the petitioner believes the court should make and must provide for a complete disposition of the property of the estate.

(b) [Petition for Instructions] A Petition for Instructions is limited to those matters for which no other procedure is provided. The Petition for Instructions should set forth the matter on which the desires instructions in precise detail. If the petitioner is taking a position on the issue, the petition shall set forth the position as well as the legal basis for such position. The petition shall be accompanied by a proposed Order of Instructions which sets forth the instructions in clear and explicit language.

(b) [Orders Correcting Clerical Errors] If, through any inadvertence, the minute order or the decree fails to state the order actually made by the court, and such inadvertence is brought to the attention of the court by affidavit, the court will, on its own motion, make a *nunc pro tunc* order correcting the mistake. The *nunc pro tunc* order must not take the form of an amended order and should be in substantially the following form: "Upon consideration of the affidavit or declaration of _____, to correct a clerical error, the (title of order to be corrected), is corrected on the court's own motion by striking the following: ' _____ ' and by inserting *in lieu* thereof _____."

The original order shall not be changed by the clerk, but will be used in connection with the *nunc pro tunc* order correcting it. To prevent further errors, a complete clause or sentence should be stricken even if it is intended to correct only one word or a single figure.

(c) [Order Prescribing or Dispensing With Notice] An order prescribing or dispensing with notice should be submitted to the judicial officer assigned to the probate calendar before the petition is heard. A request for an order dispensing with notice should be accompanied by a declaration of due diligence. (See Calif. Rules of Court, rule 7.52; Local Court Form SC-6014.)

(d) [Spousal Property Petition],

If the basis for claim that property should pass or be confirmed to the surviving spouse is that the property is community or quasi-community property, then the following information must be included in the spousal property petition: (1) Date and place of marriage;

(2) Whether decedent owned any real and personal property on date of marriage, and if so, a description and approximation of values;

(3) For each asset for which a determination that it pass or be confirmed to the surviving spouse, a description of the manner in which the asset was acquired by decedent, including source of funds or loans, title to asset, etc.;

(4) Any additional facts upon which the claim that property is community or quasicommunity property is based.

If the claim is based on a document, a copy of the document must be attached to the petition and properly authenticated.

Deleted: (a) [Petition for Family Allowance] *Ex Parte* Petitions for Family Allowance for the benefit of the surviving spouse and/or minor disabled adult children will be accepted for review by the court if presented before the filing of the inventory. Except in unusual cases, the Order for Family Allowance will be made for a period commencing with the date of death and continuing until the inventory is filed, but not to exceed six (6) months. An *ex parte* petition from a person other than the personal representative will not be accepted for review by the court without the written consent of the personal representative. ¶

A Petition for Family Allowance for the benefit of persons other than the surviving spouse and/or minor children will be heard on the regular probate calendar and will be considered only if notice has been given as required by Probate Code section 6541(c). ¶

The petitioner must provide notice and schedule a hearing on a Petition for Family Allowance made more than six (6) months after qualification of the administrator or executor. An Order for Family Allowance must be limited to a specific period of time. The petition of the spouse seeking a family allowance shall contain a description of his or her separate property and a statement of such spouse's income from sources other than the estate. The petition must contain an itemized estimate of monthly expenses. Any petition for the benefit of any other person shall contain similar information. ¶

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Deleted: (c) [Ex Parte Probate Orders] All requests for *ex parte* orders must state whether a Request for Special Notice has been filed. If such a Request has been filed, notice must be given to the party requesting special notice or a duly executed waiver of notice must be filed. ¶

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[NEW] 1711(e) [Petition to Determine Title to Real or Personal Property (Prob. Code, § 850)] Petitions filed pursuant to Probate Code section 850 must be set for hearing at least 30 days from the date of filing. Because personal service is required, the hearing should be set more than 30 days from the date of filing to avoid continuances. See Probate Code section 851.

A Spousal Property Petition filed with the court must be supplemented with a separate Declaration Regarding Marital History and Property in support of the petition, including: date of the marriage of the deceased and surviving spouse, the court and case number of any legal proceeding regarding the marriage or assets of the deceased and surviving spouses, and, the history of the purchase of each assets itemized on the Spousal Property Petition including source of funds or loans, title to asset, etc. The declaration shall be executed by the surviving spouse under penalty of perjury.