

SMALL ESTATE AFFIDAVIT

Affidavit for Collection of Personal Property

This Guide includes instructions and a sample form. The Guide and related form may be downloaded from:

www.saclaw.org/small-estate-affidavit

BACKGROUND

In certain circumstances, personal property may be transferred to the decedent's successors without a formal probate. If the decedent's estate qualifies under [California Pro. Code §§ 13100-13116](#), the person(s) entitled to the property may present a *Small Estate Affidavit*, commonly known as an *Affidavit for Collection of Personal Property*, to the person or institution having custody of the property, requesting that the property be delivered or transferred to the successor.

Personal property refers to anything that isn't real estate. Common types of personal property include furniture, jewelry, and household goods, as well as bank accounts, stocks, and money due to the decedent.

STEP-BY-STEP INSTRUCTIONS

Step 1: Determine If This Is the Appropriate Procedure

Personal property may be collected using the Affidavit for Collection of Personal Property if:

- At least 40 days have elapsed since the death of the decedent
- No administrative proceedings are pending or have been conducted for the decedent's estate
- Estate does not exceed \$150,000 in value. Many types of property are excluded when calculating the value of the estate (see [Pro. Code § 13050](#) for exclusions)

Step 2: Complete the Affidavit

Instructions for completing the *Affidavit for Collection of Personal Property* are included at the end of this guide.

- [Affidavit for Collection of Personal Property](#)

Although [Pro. Code § 13101](#) states that a declaration under penalty of perjury is sufficient, many institutions require a notarized affidavit, especially when securities are involved. Contact the institution to determine if notarization is necessary.

Real Estate Valued under \$150,000

Procedures in this guide apply only to personal property.

For Real Property valued under \$150,000, formal probate may not be needed. Read *How to Probate an Estate in California* from the following link:

- [Nolo E-books](#)

Disclaimer: This Guide is intended as general information only. Your case may have factors requiring different procedures or forms. The information and instructions are provided for use in Sacramento County. Please keep in mind that each county may have different requirements. If you need further assistance consult a lawyer.

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If there are several assets to be transferred, they may all be included on one affidavit, or a separate affidavit may be used for each. If more than one person is entitled to inherit a particular asset, all beneficiaries must sign a single affidavit.

The *Affidavit for Collection of Personal Property* must be accompanied by:

- A certified copy of the death certificate
- Evidence that the decedent owned the property (e.g., stock certificate, bank passbook, storage receipt)
- Reasonable proof of the identity of the person(s) signing the affidavit (e.g., driver's license, passport)
- An Inventory and Appraisal of all real property owned by the decedent in California, if any. This appraisal must be performed by an approved probate referee. The court can provide you a list of approved referees. For more information about the Inventory and Appraisal, see *How to Probate an Estate in California* (KFC 205 .N57).

If stocks or bonds are being transferred, you will also need to attach:

- An *Affidavit of Domicile* signed by the person(s) entitled to the securities
- A *Transmittal Letter* signed by the person(s) entitled to the securities
- A *Stock or Bond Power*, signed by the person(s) entitled to the securities

More Information:

Samples of these additional attachments are available in *How to Probate an Estate in California* from the following link:

- [Nolo E-books](#)

Step 3: Collect the Decedent's Property

Present the completed Affidavit and required attachments to the person or institution having custody of the property.

When the Bank Insists on the "Letters"

Adapted, with the kind permission of author Richard Wills, from "Washington State Probate," at www.wa-probate.com/.

Probably the most popular use of a "Small Estate Affidavit," also called "Affidavit for Collection of Personal Property," is to access a Decedent's bank or securities account. The practical (as opposed to legal) problem is that banks, brokerages, transfer agents, and institutions in general are used to transferring such accounts through a probate proceeding, in which the Personal Representative delivers a copy of his/her Letters to the institution and requests the transfer. That's the method that institutions are familiar with, and they have come to see it as "the proper (and only) procedure" for making the transfer. Consequently, far too often, when a Successor presents a Small Estate Affidavit to an institution, the institution responds "We need Letters to make the transfer."

How to respond? In a word, be persistent and play "broken record" (repeat items 2 through 7 below over and over to the agent):

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- 1) To prepare for the transfer, download and print out a copy of the relevant statutes: [Pro. Code § 13100-13116](#). Include the copies in your written request or hand the copies to the agent and politely ask the agent to read them, especially [Pro. Code § 13100](#).
- 2) If you are dealing with a securities transfer agent, politely ask the agent to read [Pro. Code §§ 13100\(c\)](#) and [13105\(a\)\(2\)](#).
- 3) Politely inform the agent that your use of a Small Estate Affidavit complies with California law, and that California law does not require either a probate proceeding or the delivery of Letters for the transfer to be made.
- 4) If further resistance is met, politely inform the agent that if the institution refuses to make the transfer, California law allows you to bring an action in Court against the institution to compel the transfer and for it to reimburse you for your attorney's fees and costs to obtain a Court Order to Compel the Transfer. [Pro. Code §13105\(b\)](#).
- 5) If further resistance is met, ask to speak to their manager.
- 6) If further resistance is met, ask to speak to their legal department.

Be forewarned, so that you may properly prepare. In your author's experience, the grand champions of resistance to *Small Estate Affidavits* are downtown branches of large banks (e.g., Bank of America, US Bank, etc.), and East Coast (particularly New York) securities transfer agents.

FOR MORE INFORMATION

On the Web:

California Courts Self-Help Website

Affidavit for Transfer of Personal Property Worth \$150,000 or Less

www.courts.ca.gov/10440.htm

At the Law Library:

How to Probate an Estate in California [KFC 205 .N57](#) (Self Help)

Electronic Access: From any computer (Library or home) via the Legal Information Reference Center. Instructions are available on our website at www.saclaw.org/pages/nolo-ebooks.aspx.

IF YOU HAVE QUESTIONS ABOUT THIS GUIDE, OR IF YOU NEED HELP FINDING OR USING THE MATERIALS LISTED, DON'T HESITATE TO ASK A REFERENCE LIBRARIAN.

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ATTACHMENTS: FORMS AND INSTRUCTIONS

There is no Judicial Council form for this procedure. A customizable template may be downloaded from this link:

- [Affidavit for Collection of Personal Property](#)

A sample filled-in form with instructions is available at the end of this Guide.

Affidavit for Collection of Personal Property

California Probate Code Section 13100

The undersigned state(s) as follows:

1. David Fielding died on May 10, 2011, in the County of Sacramento, State of California.

Insert the name of the deceased person and the date and place of death.

2. At least 40 days have elapsed since the death of the decedent and a copy of the decedent's death certificate is attached to this affidavit.

3. No proceeding is now being or has been conducted in California for administration of the decedent's estate.

OR
Check the appropriate box, and attach a letter of consent if applicable.

The decedent's personal representative has consented in writing to the payment, transfer, or delivery to the declarant of the property described below, and a copy of the consent and of the personal representative's letter is attached to this affidavit.

If the estate contains real property, check the first box and attach an Inventory and Appraisal. If there is no real property, check the second box.

4. The current fair market value of the real property owned by the decedent, less property described in Section 13050 of the Probate Code, is \$150,000.

5. An inventory and appraisal of the real property in the decedent's estate is attached.
 There is no real property in the decedent's estate.

Describe the property you wish to collect. Use enough detail to make the property easily identifiable. If the form does not provide enough space, write in "See Attachment 6," and on a blank piece of paper (labeled Attachment 6) describe the property to be collected.

6. The following property to be transferred, delivered, or otherwise disposed of under Probate Code section 13100:

- a. **Savings account number 12-345**
Sacramento Savings, 987 Main Ave, Sacramento
- b. **125 shares, Acme Corp., common stock**

7. The successor(s) of the decedent, as defined in California Probate Code section 13100, is/are John Fielding & Rebecca Newton. Insert the name(s) of the person(s) entitled to the property. If a living trust is the beneficiary, list the names of the successor trustees and the name of the trust (e.g., John Smith, successor trustee of the Smith Family Trust).

8. The undersigned is/are successor(s) of the decedent to the decedent's interest in the described property.
 is/are authorized under California Probate Code Section 13051 to act on behalf of the successor(s) of the decedent with respect to the described property.

Check the first box if the person(s) named in item 7 will sign the affidavit. Check the second box if a guardian, conservator or custodian will sign the affidavit on their behalf.

9. No other person is entitled to the described property.

10. The undersigned is/are the declarant, delivered or transferred to the undersigned.

I/we declare under penalty of perjury that the foregoing is true and correct.

Dated: July 15, 2011

Signed:

John Fielding
Rebecca Newton

Sign and date the Affidavit.