

AFFIDAVIT FOR COLLECTION OF PERSONAL PROPERTY

Small Estate Affidavit

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 the Sacramento County. Please keep in mind that each county may have different requirements. If you need further assistance, consult a lawyer.

FORMS

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

- *Affidavit for Collection of Personal Property*
www.saclaw.org/Uploads/files/forms/AffidavitCollectionPersonalProperty.rtf

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 Probate Code §§ 13100-13116](#), the person(s) entitled to the property may present an *Affidavit for Collection of Personal Property*, also known as a *Small Estate Affidavit*, to the person or institution having custody of the property, requesting that the property be delivered or transferred to the successor.

Personal property refers 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. The procedures described in this guide apply only to personal property. Real estate with a value under \$150,000 may also be transferred without a formal probate, using different forms. Those procedures and forms are described in *How to Probate an Estate in California* ([KFC 205 .N57](#); Self-Help), put out by Nolo Press, a highly respected publisher of plain English, do-it-yourself books. You may read in *How to Probate an Estate in California* from any computer with Internet access, at the Law Library or from your home or office, via the Legal Information Reference Center. Instructions are available on our website at www.saclaw.org/pages/nolo-ebooks.aspx.

Step-by-Step Instructions

STEP 1: DETERMINE IF THIS IS THE APPROPRIATE PROCEDURE

Personal property may be collected using an 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 [Probate Code § 13050](#) for exclusions)

STEP 2: COMPLETE THE AFFIDAVIT

Instructions for completing the *Affidavit for Collection of Personal Property* are available at the end of this Guide.

Although [Section 13101 of the Probate Code](#) 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.

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*.

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

Samples of these additional attachments are available from *How to Probate an Estate in California*.

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 "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):

- 1) To prepare for the transfer, download and print out a copy of the relevant statutes: [Probate Code § 13100-13116](http://www.leginfo.ca.gov/faces/codes.xhtml). You can find copies at www.leginfo.ca.gov/faces/codes.xhtml. Click on "Probate Code" to retrieve a table of contents to the code. Click on "DIVISION 8. DISPOSITION OF ESTATE WITHOUT ADMINISTRATION [13000 - 13660]." Then click on "CHAPTER 3. Affidavit Procedure for Collection or Transfer of Personal Property." Include the copies in your written request or hand the copies to the agent and politely ask the agent to read them, especially [Probate Code § 13100](http://www.leginfo.ca.gov/faces/codes.xhtml).
- 2) If you are dealing with a securities transfer agent, politely ask the agent to read [Probate Code §§ 13100\(c\)](http://www.leginfo.ca.gov/faces/codes.xhtml) and [13105\(a\)\(2\)](http://www.leginfo.ca.gov/faces/codes.xhtml).
- 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. [Probate Code §13105\(b\)](http://www.leginfo.ca.gov/faces/codes.xhtml).
- 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, WaMu, etc.), and East Coast (particularly New York) securities transfer agents.

FOR MORE INFORMATION

On the Web:

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

California Courts Self-Help Website

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.

Affidavit for Collection of Personal Property
California Probate Code Section 13100

Insert the decedent's name, date, and place of death.

The undersigned state(s) as follows:

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

2. At least 40 days have elapsed since the death of the decedent, as shown by the attached certified copy of the decedent's death certificate.

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.

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

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.

5. An inventory and appraisal of the property described in item 4 is attached to this affidavit.
 There is no real property described in item 4.

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

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.

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

7. The successor(s) of the decedent, as defined in California Probate Code section 13101:

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).

John Fielding & Rebecca Newton

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 persons are entitled to the described property.

10. The undersigned, as successor(s) of the decedent, delivered or transferred to the undersigned, the property described in item 6.

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.