

Either of the following, as appropriate:

"The affiant or declarant is the successor of the decedent (as defined in Section 13006 of the California Probate Code) to the decedent's interest in the described property."

or

"The affiant or declarant is authorized under Section 13051 of the California Probate Code to act on behalf of the successor of the decedent (as defined in Section 13006 of the California Probate Code) with respect to the decedent's interest in the described property."

"No other person has a superior right to the interest of the decedent in the described property."

"The affiant or declarant requests that the described property be paid, delivered, or transferred to the affiant or declarant."

"The affiant or declarant affirms or declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct."

**Execution of Affidavit:** The affidavit must be executed by all of the decedent's successors who have an interest in the property sought to be collected, received or transferred.

**Attachments to Affidavit:** The following attachments to the affidavit are required:

- A certified copy of the decedent's death certificate.
- Evidence of ownership: In certain situations, if the decedent had evidence of ownership of the property described in the affidavit, it must be attached to the affidavit, if available. Otherwise, the holder of the property may be permitted to require that the successor of the decedent furnish an indemnification bond or undertaking as a condition to the transfer of the property.
- Copy of consent: If a probate of the decedent's estate is pending and the decedent's personal representative consented to the transfer of the property, a copy of the consent and the court letters issued to the personal representative must be attached to the affidavit.

### **Successors Remedy for Refusal to Transfer**

If the holder of the property refuses to honor an affidavit (assuming that it is not defective), the affiant may file a statutory action against the holder to compel payment, delivery or transfer of the property.

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA BARBARA**

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# **SUPERIOR COURT OF CALIFORNIA COUNTY OF SANTA BARBARA**



## **TRANSFER OF SMALL ESTATES WITHOUT PROBATE**

### **Overview**

In certain circumstances, a decedent's personal property may be transferred to the "successors" of the decedent without the need to open a probate with the probate court. The decedent's entire estate must qualify as a small estate and must meet all of the requirements of sections 13100-13115 of the California Probate Code. The decedent's successors may make their claims to the property and take title (assuming no conflicting claims) by presenting an affidavit which meets certain requirements to the holders of the property. Title to real property may not be transferred under this procedure.

### **DISCLAIMER**

The purpose of this brochure is to provide general information on the law, which is subject to change. It is not intended as a substitute for legal advice. If you have legal questions, you should consult an attorney.

## Specific Requirements

**No Probate Proceeding or personal representative consents:** The affidavit procedure may be used only if (a) no probate proceeding is currently pending or has taken place for the estate in California; or (b) the decedent's personal representative consents in writing to transfer of the property pursuant to the affidavit procedure.

**40-day Wait:** The affidavit procedure may not be used until at least 40 days have elapsed since the date of the decedent's death.

**Estate may not exceed \$150,000 in value:** Personal property qualifies for the affidavit procedure only if the total current gross fair market value of the decedent's real and personal property in California does not exceed \$150,000.

- Title to real property in the estate may not be cleared using the affidavit procedure. The affidavit procedure is limited to the transfer of the decedent's personal property only. Nevertheless, both the decedent's real and personal property in California must be considered in determining whether the total value of the estate exceeds \$150,000.
- Insurance policy or retirement plan proceeds payable to the estate as the designated beneficiary must be included in determining whether the total value of the estate exceeds \$150,000.
- The following property is excluded in determining whether the total value of the estate exceeds \$150,000:
  - Vehicles and other state-registered property: automobiles, "nonmotor" vehicles such as trailers, mobilehomes, manufactured homes, commercial coaches, truck campers, floating homes and undocumented vessels;
  - Unpaid salary: any amounts due to the decedent for services in the armed forces and up to \$15,000 in unpaid salary or other compensation (including compensation for unused vacation) owing to the decedent for personal services from any employment;
  - Joint tenancy interests, life estates, and property passing outright to surviving spouse: all property held by the decedent in joint tenancy, or in which the decedent had a life estate or other interest which terminated at death, or that passes outright to the decedent's surviving spouse under Probate Code section 13500;
  - Multiple-party accounts: any multiple-party account to which the decedent was a party at death to the extent the funds pass directly to a surviving party, payable-on-death payee or beneficiary; and
  - Inter vivos trust assets: all property held in a living trust.

## Successors of the Decedent

The affidavit procedure may be used by any "successor of the decedent." This term includes anyone entitled to succeed to the claimed property under the decedent's will or by the laws of intestacy in California. Specifically, the term encompasses:

**Testate beneficiaries:** The sole beneficiary under decedent's last will or, if more than one beneficiary, all beneficiaries under the will, regardless whether any beneficiary is related to decedent. This would include a trustee of the decedent's inter vivos or testamentary trust where the trust succeeds to the particular item of property under decedent's will.

**Intestate heirs:** If decedent died without a will, the successors of the decedent are the decedent's heirs. California's laws of intestate succession are set forth in Probate Code sections 6401-6402.

**Representatives:** Certain persons in a representative capacity are eligible §13100 claimants:

**Guardian, conservator or trustee of eligible claimant:** The trustee of a trust is an eligible transferee as to items passing from decedent to the trust. Likewise, guardians or conservators of the estates of eligible transferees are themselves eligible to use the affidavit procedure on such persons' behalf without authorization by the court where the guardianship or conservatorship is pending.

**Attorney-in-fact under durable power of attorney:** An Attorney-in-fact acting under a durable power of attorney may use the affidavit procedure on behalf of the beneficiary giving the power of attorney.

## Affidavit Procedure

An affidavit which meets the specific requirements of the California Probate Code must be presented to the holder of the property to be transferred. Attached is a sample affidavit. *Many banks and brokerage houses have their own affidavit.*

**Contents of the Affidavit:** Specifically, the affidavit must contain all of the following:

Decedent's name.

Date and place of decedent's death.

The following statements:

"At least 40 days have elapsed since the death of the decedent, as shown in a certified copy of the decedent's death certificate attached to this affidavit or declaration."

Either of the following, as appropriate:

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

or

"The decedent's personal representative has consented in writing to the payment, transfer, or delivery to the affiant or declarant of the property described in the affidavit or declaration."

"The current gross fair market value of the decedent's real and personal property in California, excluding the property described in Section 13050 of the California Probate Code, does not exceed \$150,000."