

## 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:

[saclaw.org/small-estate-affidavit](http://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 \$166,250 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](#)

### Real Estate Valued under \$166,250

Procedures in this guide apply only to personal property.

For Real Property valued under \$166,250, 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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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.

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/](http://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."

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

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](#).

If you are dealing with a securities transfer agent, politely ask the agent to read [Pro. Code §§ 13100\(c\)](#) and [13105\(a\)\(2\)](#).

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.

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\(b\)](#).

If further resistance is met, ask to speak to their manager.

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 \$166,250 or Less

[www.courts.ca.gov/10440.htm](http://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

<https://saclaw.org/wp-content/uploads/2015/03/ebook-how-to.pdf>

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, 2016**, in the County of **Sacramento**, State of California.

2. At least 40 days have elapsed since the death of the decedent and a death certificate attached to this affidavit or declaration.

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

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

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 affiant or declarant of the property described in the affidavit or declaration.

4. The current gross fair market value of the property described in Section 13100 is less than or equal to one hundred thousand two hundred fifty dollars.

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 decedent's estate is attached.  
 There is no real property in California, excluding the property that exceeds one hundred sixty-six thousand two hundred fifty dollars.

6. The following property to be transferred, delivered, or otherwise disposed of under 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**

b. **125 shares, Acme Corp., common stock**

7. The successor(s) of the decedent, as defined in Section 13006 of the California Probate Code:

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

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.

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.

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 has a claim to the described property.

10. The affiant or declarant affirms or declares that the property described in this affidavit or declaration will be transferred, 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.

Dated: **July 15, 2017**

Signed:

John Fielding

Rebecca Newton

Sign and date the Affidavit.