



AFFIDAVIT FOR COLLECTION OF PERSONAL PROPERTY, CALIFORNIA PROBATE CODE §13100-13115: Step-by-step

Sacramento County Public Law Library

Main Law Library: 813 Sixth St., Sacramento, CA 95814 -- (916) 874-6012

Branch Library: William R. Ridgeway Family Relations Courthouse, 3341 Power Inn Rd., Rm. 112, Sacramento, CA 95826 -- (916) 875-3490

www.saclaw.org

Disclaimer: The Sacramento County Public Law Library provides this guide for informational purposes only. Information found in this guide should not be considered legal advice. Please consult an attorney if you have questions concerning any specific situation.

In certain circumstances, personal property may be transferred to the decedent's successors without a formal probate. If the decedent's estate qualifies under Sections 13100-13115 of the California Probate code, the person(s) entitled to the property must present an Affidavit for Collection of Personal Property to the person or institution having custody property, requesting that the property be delivered or transferred to the successor.

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 \$100,000 in value. Many types of property are excluded when calculating the value of the estate.

Although 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 form is available from the Law Library's website at <http://www.saclaw.org/pages/forms.aspx>.

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 persons signing the affidavit (e.g., notarized affidavit, driver's license)
- An Inventory and Appraisal of all real property owned by the decedent in California, if any

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

Instructions for completing the Affidavit for Collection of Personal Property

- 1** Insert the decedents name, date, and place of death.
- 3** Check the appropriate box, and attach a letter of consent if applicable.
- 5** If the estate contains real property, check the first box and attach an Inventory and Appraisal form. If there is no real property, check the second box.
- 6** 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.
- 7** 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** 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.

Affidavit for Collection of Personal Property California Probate Code Section 13100

The undersigned state(s) as follows:

① 1. David Fielding died on May 12, 20 06, 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 3. 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 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 real and personal property owned by the decedent, less property described in Section 13050 of the California Probate Code, does not exceed \$100,000.

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

⑥ 6. The following property to be transferred, delivered, or paid to the affiant under the provisions of California Probate Code section 13100:

a. **Savings account number 12-345 at Sacramento Savings, 987 Main Ave, Sacramento, CA**

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

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

John Fielding and 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 decedent's interest in the described property.

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

10. The undersigned request(s) that the described property be paid, delivered or transferred to the undersigned.

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

Dated: July 15, 2006

Signed:

John Fielding

Rebecca Newton

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" (ie, 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:

1. Cal. Probate Code 13100-13115. You can find copies at www.leginfo.ca.gov/calaw.html.
2. 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.
3. If you are dealing with a securities transfer agent, politely ask the agent to read Probate Code 13100(c) and 13105(a)(2).
4. 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.
5. 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. Cal. Probate Code 13105(b).
6. If further resistance is met, ask to speak to their manager.
7. 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 (eg, Bank of America, US Bank, WaMu, etc.), and
- East coast (particularly New York) securities transfer agents.