

Transferring Property When Someone Dies

Do I have to go to court to inherit property from someone who dies?

Not always. There is a simplified process you can use to transfer the property to your name. But this process is not for real property, like a house.

You may not have to go to court if you have the legal right to inherit property, like money in a bank account or stocks, and the estate is worth the following amounts:

\$166,250 or less (if died before April 1, 2022)

\$184,500 or less (if died after April 1, 2022)

How do I know if the how much the estate is worth?

To calculate the value of the estate:

Include:

- All real and personal property
- All like insurance or retirement benefits that will be paid to the estate

Do not include:

- Cars
- Real property outside of California
- Property held in trust, including a living trust
- Real or personal property that the person who died owned with someone else (joint tenancy)
- Property (community, quasi-community or separate) that passed directly to the surviving spouse
- Life insurance, death benefits or other assets not subject to probate that passes directly to the beneficiaries
- Unpaid salary or other compensation up to \$16,625 owed to the person who died
- The debts or mortgages of the person who died

For a complete list, see Probate Code §13050

Can I subtract the dead person's debts to calculate the value of the estate?

No. You are not allowed to subtract the debts of the person who died.

What if the estate is in Probate?

You cannot use this process unless the Personal Representative of the estate agrees in writing to let you do so.

Can anyone use this simplified process?

You qualify if you have the legal right to inherit property from the person who died. You must be a beneficiary in the Will or an heir if the person died without a Will. Other people may qualify too, like the guardian or conservator of the estate.

For a complete list, see Probate Code §13051

How do I transfer the property to my name?

If you have the right to inherit that property, give an affidavit to the person, company or bank that has the property now.

What if there are many assets to transfer?

You can list all assets in one affidavit. Or, you can do one affidavit for each asset.

How do I write the affidavit?

Many banks and other institutions have their own affidavit. So, check with them first and ask for one. If they don't have one, you can use the sample affidavit attached to this guide.

What if other people are also entitled to inherit property from the person who died?

All of you must sign the affidavit. This shows you all agree that the property listed on your affidavit can be transferred to you.

Do I have to notarize the affidavit?

No, but many institutions will ask you to do so. It is a good idea to notarize it.

Do I have to attach any other documents to the affidavit?

Yes. Attach:

- A certified copy of the death certificate of the person who died
- Proof that the person who died owned the property (like a bank passbook, storage receipt, stock certificate)
- Proof of your identity (like a driver's license or passport)
- An inventory and appraisal of all real property owned by the decedent in California

How long do I have to wait to transfer the property?

You must wait at least 40 days after the person dies.

Probate cases use special words. Here are some:

Administrator: the person (usually the spouse, domestic partner or close relative) that the court appoints to manage the estate of a person who dies without a Will. The administrator is also called the personal representative of the estate.

Beneficiary: a person who inherits when there is a Will.

Decedent: the person who died.

Decedent's Estate: all real and personal property that a person owned at the time of death.

Executor: a person named in a Will and appointed by the court to carry out the dead person's wishes. The executor is also called the personal representative of the estate.

Heir: a person who inherits when there is no Will.

Holographic Will: a Will that is handwritten, dated and signed by the person writing the Will.

Intestate: when someone dies without leaving a Will.

Intestate succession: the order of who inherits property when someone dies without a Will.

Living Trust: a trust set up during the life of a person to distribute money or property to another person or organization.

Personal Property: things like cash, stocks, jewelry, clothing, furniture, or cars.

Personal Representative: the administrator or executor that the court appoints to manage the estate.

Probate: the legal process of administering a Will in court. The court process for distributing a dead person's assets, paying debts owed by the dead person and settling the financial affairs of people when they die.

Real Property: buildings and land.

Successor: anyone who has the legal right to receive property of a person who dies, either under the Will or the Probate Code.

Testate: when someone dies leaving a Will.

Trust: an arrangement where property is given to someone to be held for the benefit of another person.

Will: a legal paper that lists a person's wishes about what will happen to his or her property after death

Declaration for Collection or Transfer of a Small Estate Without Administration
California Probate Code Section 13100 et seq.

The undersigned state(s) as follows:

1. _____ died on _____, 20____, in the County of _____, State of California.

2. 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.

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

4. 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:

If Decedent died prior to April 1, 2022: One hundred sixty-six thousand two hundred fifty dollars (\$166,250).

If Decedent died after April 1, 2022: One hundred eighty-four thousand five hundred dollars (\$184,500). *A copy of Maximum Values for Small Estate Set-Aside & Disposition of Estate Without Administration (DE-300) is attached hereto.*

5. (Check one):

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

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

8. The undersigned is:

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.

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

10. 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.

Dated: _____
Name _____

[If more than once declarant is entitled to receive the described property, all need to sign this affidavit. If this is the case, additional declarants can sign below.]

Dated: _____
Name _____

Dated: _____
Name _____

ACKNOWLEDGMENT

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

ACKNOWLEDGMENT

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____)

On _____ before me, _____
(insert name and title of the officer)

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I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

**MAXIMUM VALUES FOR SMALL ESTATE SET-ASIDE
& DISPOSITION OF ESTATE WITHOUT ADMINISTRATION**

This form lists the maximum dollar values of a decedent's estate or specific property in that estate, as of the date of the decedent's death, for purposes of determining eligibility for

- (1) an order setting the estate aside for the decedent's surviving spouse and minor children; or
- (2) disposition of the estate or specific real or personal property in the estate informally, without full administration.

NOTE: The values in the left column apply to the estate of a decedent who died before April 1, 2022. The values in the right column apply to property of a decedent who died on or after April 1, 2022.

The amount of the adjustment of the prior values is based on the change in the United States city average of the Consumer Price Index for All Urban Consumers for the three-year period ending December 31, 2021, with each adjusted value rounded to the nearest \$25. (See Prob. Code, § 890(b).) Unless otherwise provided by statute after April 1, 2022, these values will next be adjusted April 1, 2025.

<u>Probate Code Section</u>	<u>Description</u>	Amount (for death before Apr. 1, 2022)	Amount (for death on or after Apr. 1, 2022)
1. SMALL ESTATE SET-ASIDE UNDER PROBATE CODE SECTIONS 6600–6613			
§§ 6602, 6609	As of the date of the decedent's death, the net value of the decedent's estate, excluding all liens and encumbrances at the date of death and the value of any probate homestead set apart under Probate Code section 6520, must not exceed:	\$ 85,900	\$ 95,325
2. DISPOSITION OF ESTATE WITHOUT ADMINISTRATION UNDER SECTIONS 13000–13606			
a. PROPERTY EXCLUDED FROM DETERMINING VALUE OF ESTATE			
§ 13050(c)	The amount of any salary or other compensation owed to the decedent, not to exceed:	\$ 16,625	\$ 18,450
b. AFFIDAVIT FOR COLLECTION, RECEIPT, OR TRANSFER OF PERSONAL PROPERTY			
§§ 13100, 13101	The gross value of the decedent's real and personal property in California, excluding the property described in Probate Code section 13050, must not exceed:	\$ 166,250	\$ 184,500
c. PETITION & COURT ORDER DETERMINING SUCCESSION TO PROPERTY			
§§ 13151, 13152, 13154	The gross value of the decedent's real and personal property in California, excluding the property described in Probate Code section 13050, must not exceed:	\$ 166,250	\$ 184,500
d. AFFIDAVIT FOR SUCCESSION TO REAL PROPERTY OF SMALL VALUE			
§ 13200	The gross value of all real property in the decedent's estate located in California, excluding the real property described in Probate Code section 13050, must not exceed:	\$ 55,425	\$ 61,500
e. AFFIDAVIT FOR COLLECTION OF COMPENSATION OWED TO DECEASED SPOUSE			
§§ 13600, 13601	Net salary or other compensation owed, in aggregate, by one or more employers for personal services of the deceased spouse, must not exceed: <i>(This limit does not apply if the decedent was a firefighter or peace officer described in Government Code section 22820(a).)</i>	\$ 16,625	\$ 18,450

NOTICE

If the decedent died on or after April 1, 2022, this form must be attached to

- an affidavit or declaration furnished under Probate Code section 13101;
- a *Petition to Determine Succession to Real Property* (form DE-310) filed under Probate Code section 13151;
- an *Affidavit re: Real Property of Small Value* (form DE-305) filed under Probate Code section 13200; or
- an affidavit or declaration furnished under Probate Code section 13601.

VENTURA COUNTY PROBATE REFEREES
Per California Secretary of State Website as of February 6, 2023

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For updated information please https://sco.ca.gov/eo_probate.html

ESTATE OF *(Name)*:

CASE NUMBER:

 DECEDENT CONSERVATEE MINOR
DECLARATION OF PROBATE REFEREE

9. I have truly, honestly, and impartially appraised to the best of my ability each item set forth in Attachment 2.
 10. A true account of my commission and expenses actually and necessarily incurred pursuant to my appointment is:

Statutory commission: \$

Expenses (*specify*): \$**TOTAL:** \$

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

Date:

 (TYPE OR PRINT NAME)

 (SIGNATURE OF REFEREE)
INSTRUCTIONS

(See Probate Code sections 2610-2616, 8801, 8804, 8852, 8905, 8960, 8961, and 8963 for additional instructions.)

- See Probate Code section 8850 for items to be included in the inventory.
- If the minor or conservatee is or has been during the guardianship or conservatorship confined in a state hospital under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services, mail a copy to the director of the appropriate department in Sacramento. (Prob. Code, § 2611.)
- The representative, guardian, conservator, or small estate claimant shall list on Attachment 1 and appraise as of the date of death of the decedent or the date of appointment of the guardian or conservator, at fair market value, moneys, currency, cash items, bank accounts and amounts on deposit with each financial institution (as defined in Probate Code section 40), and the proceeds of life and accident insurance policies and retirement plans payable upon death in lump sum amounts to the estate, except items whose fair market value is, in the opinion of the representative, an amount different from the ostensible value or specified amount.
- The representative, guardian, conservator, or small estate claimant shall list in Attachment 2 all other assets of the estate which shall be appraised by the referee.
- If joint tenancy and other assets are listed for appraisal purposes only and not as part of the probate estate, they must be separately listed on additional attachments and their value excluded from the total valuation of Attachments 1 and 2.
- Each attachment should conform to the format approved by the Judicial Council. (*See Inventory and Appraisal Attachment* (form DE-161/GC-041) and Cal. Rules of Court, rules 2.100—2.119.)

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