



UNITED STATES GOVERNMENT

FORM G-115f (1-92)


MEMORANDUM

RAILROAD RETIREMENT BOARD

AUG 14 2001

L-2001-11

TO : Philip H. Arnold
Chief of Records Analysis and Systems
Through: Ronald Russo
Director of Policy and Systems

FROM : Steven A. Bartholow
General Counsel 

SUBJECT : California Probate Code

This is in response to your June 5, 2001 inquiry as to revisions to the California Probate Code as it relates to the procedure to be followed in the handling of "No Administration" cases.

The attachments to your memo indicate that current manual procedure refers to sections 630 and 631 of the California Probate Code. As stated in Legal Opinion L-88-77 issued August 4, 1988, sections 630 and 631 of the California Probate Code were superseded by sections 13100 and 13101, respectively, effective July 1, 1987. (A copy of Legal Opinion L-88-77 is attached for your reference.) Consequently, FOM and RCM procedure should be revised.

As outlined below, the California legislature has made changes to the above-noted sections since Legal Opinion L-88-77 was issued. The most notable change occurred in 1996 when California amended section 13100 such that "one hundred thousand dollars (\$100,000)" was substituted for "sixty thousand dollars (\$60,000)." As a result, section 13100 provides that after 40 days have elapsed following a decedent's death, if the gross value of the decedent's real and personal property does not exceed \$100,000, the successor may collect money or receive property due the decedent by executing an affidavit as specified by section 13101.

Changes have also been made to the affidavit requirements found in section 13101. For ease of reference, the entire text of section 13101 follows.

§ 13101. *Affidavit or declaration; contents; requirements; attachments*

(a) To collect money, receive tangible personal property, or have evidences of a debt, obligation, interest, right, security, or chose in action, transferred under this chapter, an affidavit or declaration under penalty of perjury under the laws of this state shall be furnished to the holder of the decedent's property stating all of the following:

(1) The decedent's name.

(2) The date and place of the decedent's death.

(3) "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."

(4) Either of the following, as appropriate: (A) "No proceeding is now being or has been conducted in California for administration of the decedent's estate." (B) "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."

(5) "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 one hundred thousand dollars (\$100,000)."

(6) A description of the property of the decedent that is to be paid, transferred, or delivered to the affiant or declarant.

(7) The name of the successor of the decedent (as defined in Section 13006 of the California Probate Code) to the described property.

(8) Either of the following, as appropriate: (A) "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." (B) "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."

(11) "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."

(b) Where more than one person executes the affidavit or declaration under this section, the statements required by subdivision (a) shall be modified as appropriate to reflect that fact.

(c) If the particular item of property to be transferred under this chapter is a debt or other obligation secured by a lien on real property and the instrument creating the lien has been recorded in the office of the county recorder of the county where the real property is located, the affidavit or declaration shall satisfy the requirements both of this section and of Section 13106.5.

(d) A certified copy of the decedent's death certificate shall be attached to the affidavit or declaration.

(e) If the decedent's personal representative has consented to the payment, transfer, or delivery of the described property to the affiant or declarant, a copy of the consent and of the personal representative's letters shall be attached to the affidavit or declaration.

It should be noted that the California Probate Code no longer requires that the decedent own no real estate in California. Rather, the gross value of the decedent's estate includes the gross value of the decedent's real and personal property, excluding property described in section 13050 of the Probate Code. Excluded property includes property held by the decedent in joint tenancy, property which passes to the surviving spouse pursuant to section 13500 of the Code, and property in a trust revocable by the decedent during his or her lifetime.

This opinion supersedes Legal Opinion L-88-77.

Attachment