

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Probate and Mental Health Advisory Committee
Hon. Thomas W. Stoever, Chair;
Douglas C. Miller, Committee Counsel, 415-865-7535,
douglas.miller@jud.ca.gov

DATE: August 9, 2004

SUBJECT: Proposal to revise *Spousal Property Petition* and *Spousal Property Order*, effective January 1, 2005. (Revise forms DE-221 and DE-226)
(Action Required)

Issue Statement

Effective January 1, 2005, Family Code section 297.5(c), added by the *Domestic Partner Rights and Responsibilities Act of 2003* (Act),¹ will confer the benefits now held by a decedent's surviving spouse on the surviving domestic partner of a decedent whose partnership was registered with the Secretary of State on or after that date.

A decedent's surviving spouse has the right to confirm his or her interest in the community or quasi-community property of the marriage or transfer without administration in a decedent's estate proceeding the deceased spouse's interest in such property or the decedent's separate property that passes to the survivor by intestate succession or under the decedent's will. The surviving spouse exercises this right by filing a petition, Judicial Council form DE-221. The form, and related form DE-226, the order on the petition, do not currently provide for a surviving domestic partner.

Recommendation

The Probate and Mental Health Advisory Committee recommends that forms DE-221 and DE-226 be revised effective January 1, 2005, to enable surviving domestic partners to use them to exercise their right under the Act to confirm or transfer partnership property without administration.

¹ Stats.2003, ch. 421 (AB 205), §§ 2, 4.

Attached at pages 4–5 is a copy of the proposed revised form DE-221.

Attached at pages 6–7 is a copy of existing form DE-221.

Attached at page 8 is a copy of the proposed revised form DE-226.

Attached at page 9 is a copy of existing form DE-226.

Rationale for Recommendation

Family Code section 299.3(a), added to the code by section 10 of the Act, identifies community property laws and laws relating to property transfer as among the rights and responsibilities that will be conferred or imposed on registered domestic partners when Family Code section 297.5 becomes effective.

Probate Code sections 13650–13660 confer on a surviving spouse the right to obtain a court order confirming his or her interest in marital property or transferring without administration the deceased spouse’s interest in such property or the deceased spouse’s separate property passing to the survivor by intestate succession or under the deceased spouse’s will. Family Code sections 297.5 and 299.3 will plainly apply to extend this right to a surviving registered domestic partner.

This proposal would revise forms DE-221 and DE-226 to comply with the Act. The revised forms would provide and refer to a surviving or deceased registered domestic partner in every circumstance where they now provide or refer to a surviving or deceased spouse.² The revised forms follow the Act, in that they characterize domestic partnership property or the property of one of the partners the same way that marital property or property of one of the spouses is characterized: as “community,” “quasi-community,” or “separate” property.³

The forms would also be revised in the following ways to improve their clarity:

1. Footnote 1 at the bottom of page 2 of current form DE-221 would be eliminated as redundant and unnecessary. The revised form would require all information about the decedent’s will to be placed in item 4c, not item 7. The statutory reference in the footnote, Probate Code section 13651(b), adds nothing to the form. That section merely states that a copy of the decedent’s

² See, e.g., page 1 of revised form DE-221, items 1a, and 2d–2f.

³ See, e.g., Family Code section 299(a)(6) and (7), which refer to partnership property as “community.” Section 299 is added by section 8 of the Act, effective January 1, 2005. The statutes that define each of these kinds of property are not expressly amended by the Act, and no separate definitions of domestic partnership property have been provided in the Act or in other law.

- will must be attached to the petition. The remaining footnote would be renumbered, moved to page 1, and placed next to the text to which it refers.
2. The instruction for Item 4c of form DE-221, which currently directs the petitioner to attach a copy of the decedent's will, would be revised to conform to the instructions for attaching a copy of the decedent's will to the petition that commences a decedent's estate proceeding.⁴ The revised instruction requests the petitioner to attach a typewritten copy of a handwritten will and an English translation of a foreign-language will, in addition to a copy of the will itself.
 3. The order, form DE-226, would be revised by changing item 10 to a request for the number of pages attached to the order and moving this request above the date and judicial officer signature line, the usual place for this item in other forms. The checkbox indicating an attachment for additional orders under item 9 of form DE-226 would be moved from existing item 10 to become part of item 9.

Alternative Actions Considered

No alternatives to revision of these forms were considered or are possible because of the requirements of the Act.

Comments From Interested Parties

This proposal was circulated to a special list of judicial officers, probate examiners or attorneys, and other court staff interested in probate matters, and probate interest sections of local bar associations, in addition to the AOC's standard list of interested court executives, individuals, and organizations. These persons and organizations were invited to comment on the proposed changes to forms DE-221 and DE-226.

Five comments were received. All were favorable and none requested additional changes. No commentators made specific recommendations concerning any of the proposed changes in either of the forms. A chart showing these comments is attached at page 10.

Implementation Requirements and Costs

No significant costs or unique requirements are anticipated beyond those ordinarily to be expected when a form is revised.

Attachments

⁴ See *Petition for Probate*, Judicial Council form DE-111, item 4e(2) at page 2.

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>): TELEPHONE NO.: _____ FAX NO. (<i>Optional</i>): _____ E-MAIL ADDRESS (<i>Optional</i>): _____ ATTORNEY FOR (<i>Name</i>): _____	FOR COURT USE ONLY <h2 style="margin: 0;">Draft 6</h2> <h2 style="margin: 0;">07/06/04</h2> <h3 style="margin: 0;">Not approved by the Judicial Council</h3>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	CASE NUMBER: _____ HEARING DATE: _____
ESTATE OF (<i>Name</i>): _____ <div style="text-align: right;">DECEDENT</div>	DEPT.: _____ TIME: _____
<input type="checkbox"/> SPOUSAL <input type="checkbox"/> DOMESTIC PARTNER PROPERTY PETITION	

1. **Petitioner (*name*):** _____ **requests**
 - a. determination of property passing to the surviving spouse or surviving registered domestic partner without administration (Fam. Code, § 297.5, Prob. Code, § 13500).
 - b. confirmation of property belonging to the surviving spouse or surviving registered domestic partner (Fam. Code, § 297.5, Prob. Code, §§ 100, 101).
 - c. immediate appointment of a probate referee.

 2. Petitioner is
 - a. surviving spouse of the decedent.
 - b. personal representative of (*name*): _____, surviving spouse.
 - c. guardian or conservator of the estate of (*name*): _____, surviving spouse.
 - d. surviving registered domestic partner of the decedent.
 - e. personal representative of (*name*): _____, surviving registered domestic partner.
 - f. conservator of the estate of (*name*): _____, surviving registered domestic partner.

 3. Decedent died on (*date*): _____
 4. Decedent was
 - a. a resident of the California county named above.
 - b. a nonresident of California and left an estate in the county named above.
 - c. intestate testate and a copy of the will and any codicil is affixed as Attachment 4c.
(Attach copies of will and any codicil, a typewritten copy of any handwritten document, and an English translation of any foreign-language document.)

 5. a. (*Complete in all cases*) The decedent is survived by
 - (1) no child. child as follows: natural or adopted natural, adopted by a third party.
 - (2) no issue of a predeceased child. issue of a predeceased child.
 - b. Decedent is is not survived by a stepchild or foster child or children who would have been adopted by decedent but for a legal barrier. (*See Prob. Code, § 6454.*)
-
6. (*Complete only if no issue survived the decedent. Check **only** the **first** box that applies.*)
 - a. The decedent is survived by a parent or parents who are listed in item 9.
 - b. The decedent is survived by a brother, sister, or issue of a deceased brother or sister, all of whom are listed in item 9.
-
7. Administration of all or part of the estate is not necessary for the reason that all or a part of the estate is property passing to the surviving spouse or surviving registered domestic partner. The facts upon which petitioner bases the allegation that the property described in Attachments 7a and 7b is property that should pass or be confirmed to the surviving spouse or surviving registered domestic partner are stated in Attachment 7.
 - a. Attachment 7a¹ contains the legal description (*if real property add Assessor's Parcel Number*) of the deceased spouse's or registered domestic partner's property that petitioner requests to be determined as having passed to the surviving spouse or partner from the deceased spouse or partner. This includes any interest in a trade or business name of any unincorporated business or an interest in any unincorporated business that the deceased spouse or partner was operating or managing at the time of death, subject to any written agreement between the deceased spouse or partner and the surviving spouse or partner providing for a non pro rata division of the aggregate value of the community property assets or quasi-community assets, or both.

¹ See Prob. Code, § 13658 for required filing of a list of known creditors of a business and other information in certain instances. If required, include in Attachment 7a.

ESTATE OF (Name):	CASE NUMBER:
DECEDENT	

7. b. Attachment 7b contains the legal description (if real property add Assessor's Parcel Number) of the community or quasi-community property petitioner requests to be determined as having belonged under Probate Code sections 100 and 101 and Family Code section 297.5 to the surviving spouse or surviving registered domestic partner upon the deceased spouse's or partner's death, subject to any written agreement between the deceased spouse or partner and the surviving spouse or partner providing for a non pro rata division of the aggregate value of the community property assets or quasi-community assets, or both.

8. There exists does not exist a written agreement between the deceased spouse or deceased registered domestic partner and the surviving spouse or surviving registered domestic partner providing for a non pro rata division of the aggregate value of the community property assets or quasi-community assets, or both. (If petitioner bases the description of the property of the deceased spouse or partner passing to the surviving spouse or partner or the property to be confirmed to the surviving spouse or partner, or both, on a written agreement, a copy of the agreement must be attached to this petition as Attachment 8.)

9. The names, relationships, ages, and residence or mailing addresses so far as known to or reasonably ascertainable by petitioner of (1) all persons named in decedent's will and codicils, whether living or deceased, and (2) all persons checked in items 5 and 6 are listed below are listed in Attachment 9.

<u>Name and relationship</u>	<u>Age</u>	<u>Residence or mailing address</u>
------------------------------	------------	-------------------------------------

10. The names and addresses of all persons named as executors in the decedent's will and any codicil or appointed as personal representatives of the decedent's estate are listed below are listed in Attachment 10 none

11. The petitioner is the trustee of a trust that is a devisee under decedent's will. The names and addresses of all persons interested in the trust who are entitled to notice under Probate Code section 13655(b)(2) are listed in Attachment 11.

12. A petition for probate or for administration of the decedent's estate
- a. is being filed with this petition.
 - b. was filed on (date):
 - c. has not been filed and is not being filed with this petition.

13. Number of pages attached: _____

Date: _____

(TYPE OR PRINT NAME)	(SIGNATURE OF ATTORNEY)
----------------------	-------------------------

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 PETITIONER)
----------------------	---------------------------

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, state bar number, and address):</i> TELEPHONE NO.: _____ FAX NO.: _____ ATTORNEY FOR <i>(Name):</i> _____	FOR COURT USE ONLY CASE NUMBER: _____ HEARING DATE: _____ DEPT.: _____ TIME: _____
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
ESTATE OF <i>(Name):</i> _____ <div style="text-align: right;">DECEDENT</div>	
SPOUSAL PROPERTY PETITION	

1. **Petitioner *(name):*** _____ **requests**
 - a. determination of property passing to the surviving spouse without administration (Prob. Code, § 13500).
 - b. confirmation of property belonging to the surviving spouse (Prob. Code, §§ 100, 101).
 - c. immediate appointment of a probate referee.

2. Petitioner is
 - a. surviving spouse of the decedent.
 - b. personal representative of *(name):* _____, surviving spouse.
 - c. guardian of the estate or conservator of the estate of *(name):* _____, surviving spouse.

3. Decedent died on *(date):* _____

4. Decedent was
 - a. a resident of the California county named above.
 - b. a nonresident of California and left an estate in the county named above.
 - c. intestate testate and a copy of the will and any codicil is affixed as Attachment 4c or 7. *(Attach will.)*

5. a. *(Complete in all cases)* The decedent is survived by
 - (1) child as follows: natural or adopted natural, adopted by a third party no child
 - (2) issue of a predeceased child no issue of a predeceased child.
 b. Decedent is is not survived by a stepchild or foster child or children who would have been adopted by decedent but for a legal barrier. *(See Prob. Code, § 6454.)*

6. *(Complete only if no issue survived the decedent. Check **only** the **first** box that applies.)*
 - a. The decedent is survived by a parent or parents who are listed in item 9.
 - b. The decedent is survived by a brother, sister, or issue of a deceased brother or sister, all of whom are listed in item 9.

7. Administration of all or part of the estate is not necessary for the reason that all or a part of the estate is property passing to the surviving spouse. The facts upon which petitioner bases the allegation that the property described in Attachments 7a and 7b is property that should pass or be confirmed to the surviving spouse are stated in Attachment 7 a.
 - a. Attachment 7a 5 contains the legal description *(if real property add Assessor's Parcel Number)* of the deceased spouse's property that petitioner requests to be determined as having passed to the surviving spouse from the deceased spouse. This includes any interest in a trade or business name of any unincorporated business or an interest in any unincorporated business that the deceased spouse was operating or managing at the time of death, subject to any written agreement between the deceased spouse and the surviving spouse providing for a non pro rata division of the aggregate value of the community property assets or quasi-community assets, or both.
 - b. Attachment 7b contains the legal description *(if real property add Assessor's Parcel Number)* of the community or quasi-community property petitioner requests to be determined as having belonged under Probate Code sections 100 and 101 to the surviving spouse upon the deceased spouse's death, subject to any written agreement between the deceased spouse and the surviving spouse providing for a non pro rata division of the aggregate value of the community property assets or quasi-community assets, or both.

(Continued on reverse, including footnotes)

ESTATE OF (Name): _____	CASE NUMBER: _____
DECEDENT	

8. There exists does not exist a written agreement between the deceased spouse and the surviving spouse providing for a non pro rata division of the aggregate value of the community property assets or quasi-community assets, or both. (If petitioner bases the description of the property of the deceased spouse passing to the surviving spouse or the property to be confirmed to the surviving spouse, or both, on a written agreement, a copy of the agreement must be attached to this petition as Attachment 8.)

9. The names, relationships, ages, and residence or mailing addresses so far as known to or reasonably ascertainable by petitioner of (1) all persons named in decedent's will and codicils, whether living or deceased, and (2) all persons checked in items 5 and 6 are listed below are listed in Attachment 9.

Name and relationship	Age	Residence or mailing address
-----------------------	-----	------------------------------

10. The names and address of all persons named as executors in the decedent's will or appointed as personal representatives are listed below are listed in Attachment 10 none

11. The petitioner is the trustee of a trust that is a devisee under decedent's will. The names and addresses of all persons interested in the trust who are entitled to notice under Probate Code section 13655(b)(2) are listed in Attachment 11.

12. A petition for probate or for administration of the decedent's estate

- a. is being filed with this petition.
- b. was filed on (date): _____
- c. has not been filed and is not being filed with this petition.

13. Number of pages attached: _____

Date: _____

(TYPE OR PRINT NAME)

▶

(SIGNATURE OF ATTORNEY)

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 PETITIONER)

¹ See Prob. Code, § 13651(b) for the requirement that a copy of the will be attached in certain instances. If required, include in Attachment 4c or 7.
² See Prob. Code, § 13658 for required filing of a list of known creditors of a business and other information in certain instances. If required, include in Attachment 7a.

Draft 4
06/15/04

Not approved by the
Judicial Council

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
After recording return to:

TELEPHONE NO.:
FAX NO. (Optional):
E-MAIL ADDRESS (Optional):
ATTORNEY FOR (Name):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

STREET ADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

FOR RECORDER'S USE ONLY

ESTATE OF (Name):

DECEDENT

CASE NUMBER:

SPOUSAL DOMESTIC PARTNER **PROPERTY ORDER**

FOR COURT USE ONLY

1. Date of hearing: _____ Time: _____
Dept.: _____ Room: _____

THE COURT FINDS

2. All notices required by law have been given.
3. Decedent died on (date):
a. a resident of the California county named above.
b. a nonresident of California and left an estate in the county named above.
c. intestate. testate.
4. Decedent's surviving spouse surviving registered domestic partner is (name):

THE COURT FURTHER FINDS AND ORDERS

5. a. The property described in Attachment 5a is property passing to the surviving spouse or surviving registered domestic partner named in item 4, and no administration of it is necessary.
b. See Attachment 5b for further order(s) respecting transfer of the property to the surviving spouse or surviving registered domestic partner named in item 4.
6. To protect the interests of the creditors of (business name):
an unincorporated trade or business, a list of all its known creditors and the amount owed each is on file.
a. Within (specify): _____ days from this date, the surviving spouse or surviving registered domestic partner named in item 4 shall file an undertaking in the amount of \$ _____
b. See Attachment 6b for further order(s) protecting the interests of creditors of the business.
7. a. The property described in Attachment 7a is property that belonged to the surviving spouse or surviving registered domestic partner under Family Code section 297.5 and Probate Code sections 100 and 101, and the surviving spouse's or surviving domestic partner's ownership upon decedent's death is confirmed.
b. See Attachment 7b for further order(s) respecting transfer of the property to the surviving spouse or surviving domestic partner.
8. All property described in the *Spousal or Domestic Partner Property Petition* that is not determined to be property passing to the surviving spouse or surviving registered domestic partner under Probate Code section 13500, or confirmed as belonging to the surviving spouse or surviving registered domestic partner under Probate Code sections 100 and 101, shall be subject to administration in the estate of decedent. All of such property is described in Attachment 8.
9. Other (specify):

Continued in Attachment 9.

10. Number of pages attached: _____

Date:

JUDICIAL OFFICER

SIGNATURE FOLLOWS LAST ATTACHMENT

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):
After recording return to:

TELEPHONE NO.:

FAX NO. (Optional):

E-MAIL ADDRESS (Optional):

ATTORNEY FOR (Name):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

STREET ADDRESS:

MAILING ADDRESS:

CITY AND ZIP CODE:

BRANCH NAME:

ESTATE OF (Name):

FOR RECORDER'S USE ONLY

DECEDENT

CASE NUMBER:

SPOUSAL PROPERTY ORDER

FOR COURT USE ONLY

- 1. Date of hearing: _____ Time: _____
 Dept.: _____ Room: _____

THE COURT FINDS

- 2. All notices required by law have been given.
- 3. Decedent died on (date):
 - a. a resident of the California county named above.
 - b. a nonresident of California and left an estate in the county named above.
 - c. intestate testate
- 4. Decedent's surviving spouse is (name): _____

THE COURT FURTHER FINDS AND ORDERS

- 5. a. The property described in Attachment 5a is property passing to the surviving spouse, and no administration of it is necessary.
- b. See Attachment 5b for further order respecting transfer of the property to the surviving spouse.
- 6. To protect the interests of the creditors of (business name): _____
 an unincorporated trade or business, a list of all its known creditors and the amount owed each is on file.
 - a. Within (specify): _____ days from this date, the surviving spouse shall file an undertaking in the amount of \$ _____, upon condition that the surviving spouse pay the known creditors of the business.
 - b. See Attachment 6b for further order protecting the interests of creditors of the business.
- 7. a. The property described in Attachment 7a is property that belonged to the surviving spouse under Probate Code sections 100 and 101, and the surviving spouse's ownership upon decedent's death is confirmed.
- b. See Attachment 7b for further order respecting transfer of the property to the surviving spouse.
- 8. All property described in the Spousal Property Petition that is not determined to be property passing to the surviving spouse under Probate Code section 13500, or confirmed as belonging to the surviving spouse under Probate Code sections 100 and 101, shall be subject to administration in the estate described in Attachment 8.
- 9. Other (specify): _____

Date:

10. Number of pages attached: _____

JUDGE OF THE SUPERIOR COURT

SIGNATURE FOLLOWS LAST ATTACHMENT

Comments for Proposal SPR04-36
Forms DE-221 and DE-226, *Spousal Property Petition* and *Spousal Property Order*

	Commentator	Position	Comment on behalf of group?	Comment	Probate and Mental Health Advisory Committee Response
1.	Ms. Sandy Almansa Supervising Legal Clerk II Stanislaus Superior Court 1100 I Street, Modesto, CA 95353	A	N	Agree with proposed changes.	No response necessary
2.	Ms. Mary Majich Davis Chief Deputy Executive Officer Superior Court of California County of San Bernardino 172 W. 3rd St., 2nd Floor San Bernardino, CA 92415	A	N	Agree with proposed changes.	No response necessary
3.	Mr. Robert Dimitrijevič Court Probate Examiner Superior Court of California County of San Luis Obispo 1035 Palm Street San Luis Obispo, CA 93401	A	N	Agree with proposed changes.	No response necessary
4.	Ms. Kim Hubbard President Orange County Bar Association P.O. Box 17777 Irvine, CA 92623-7777	A	Y	Agree with proposed changes.	No response necessary
5.	Ms. Margaret Middleton Probate Examiner Stanislaus County Superior Court 800 11th Street, Room 221 Modesto, CA 95357	A	N	Agree with proposed changes.	No response necessary