

Transferring property when someone dies...

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

Not always. If you have the legal right to inherit personal property, like money in a bank account or stocks, and the estate is worth \$100,000 or less, you may not have to go to court.

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.

How do I know if the estate is worth \$100,000 or less?

To calculate the value of the estate:

Include:

- All real and personal property
- All life 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 pass directly to the beneficiaries
- Unpaid salary or other compensation up to \$5,000 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. 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.

What if I need help?

You can talk to a lawyer. Call the Lawyer Referral Service of the San Francisco Bar Association:
415-989-1616

Or, go to the ACCESS Center:
Civic Center Courthouse, Room 208
400 McAllister Street, San Francisco
415-551-5880

Or, read the law on property transfers. See California Probate Code, §§ 13100-13115.

Declaration Pursuant to California Probate Code §13100-13115

I, _____ state as follows:

- 1. _____ (name of decedent), died on _____ (date of death) in the County of San Francisco, California.
- 2. At least 40 days have passed since the death of the decedent, as shown by the attached certified copy of the decedent's death certificate.
- 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 of the property described in this declaration.
- 4. The current gross value of the decedent's real and personal property in California, excluding the property described in Probate Code § 13050, does not exceed \$100,000.
- 5. An inventory and appraisal of the real property included in the decedent's estate is attached; **OR** There is no real property in the estate.
- 6. The following property is to be paid, transferred or delivered to the undersigned according to Probate Code § 13100: *[describe the property to be transferred]*

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

- 8. I am:
 a successor(s) of the decedent to the decedent's interest in the described property **OR** authorized under Probate Code § 13051 to act on behalf of the decedent's successor(s) 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. I request that the above-described property be paid, delivered or transferred to the undersigned.

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

Date _____ Sign Name _____ Print Name _____

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

Date _____ Sign Name _____ Print Name _____

Date _____ Sign Name _____ Print Name _____

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.