

Rule 4.2.12 Petitions for Distribution

- (a) Ex Parte Preliminary Distribution Petitions: Ex parte petitions for distribution must set forth the justification for such urgent action as required under California Rule of Court 3.1201.
- (b) Description of Assets: Property to be distributed shall be listed and described in detail; description by reference to the will or inventory is not acceptable. This applies to preliminary and final distributions with or without an accounting. If the distribution includes any interest in real property, the legal description, including the assessor's parcel number, must be included in the body of the decree or in an attachment incorporated by reference.
- (c) Specifically Bequeathed Property: If specifically bequeathed property is not in existence at the time of final distribution, the petition shall set forth a full explanation concerning that fact.
- (d) Description of Distributees: The names and present addresses of all persons entitled to receive property of the estate must appear in the petition for final distribution.
- (e) Allegations re Health Care Benefits: The first report of administration of a decedent's estate must contain allegations either that notice of decedent's death has been provided to the Director of Health Services required by Probate Code §§ 9202 and 215 or that no such notice is required.
- (f) Distribution to Intestate Heirs: The relationship of heirs who take by intestacy should be sufficiently described in the petition for distribution to permit the Court to determine whether the laws of interstate succession have been properly applied. If an heir takes by right of representation, the petition must indicate parentage and the approximate date of the parent's death.
- (g) Interest on General Pecuniary Legacies: The Court will strictly enforce Probate Code § 12003 and will order payment of interest at the statutory rate on all general pecuniary legacies not paid within one year from the date of decedent's death unless payment of interest is waived in the will. Attorneys are responsible for determining the correct rate and computing the amount of interest.
- (h) Payment of Taxes: The petition for final distribution must address the question of the source of the payment of the federal estate tax if any. If prorated, the final report must show the computation and the order for final distribution must include the proration. All persons sharing the tax obligation shall be given notice of the hearing on the petition.

- (i) Allegation re Character of Assets: The petition for distribution must contain an allegation as to the separate or community character of the property.
- (j) Closing Expenses: When closing expenses are requested, the petition and order must set forth the distribution of any unused portion thereof.
- (k) When there is insufficient cash in the estate to pay the statutory attorney's fees, the petition shall address the method of payment of the fees (e.g., via a lien on real property, or pursuant to outside agreement between the attorney and all residual beneficiaries, etc.). There shall be sufficient evidence to indicate that all beneficiaries affected are aware of the arrangement.

(Rev. 7/1/01) (Rev. 7/1/03) (Rev. 1/1/09)
(Rev. 1/1/13)