

09-09-24
Dept. 9
Probate Tentative Rulings

1.	24PR0198	ESTATE OF CHAU
Letters of Administration		

Decedent died intestate on March 2, 2024, survived by his wife, two adult sisters, two adult brothers, and issue of a deceased sister (two adult nieces and one adult nephew). Petitioner is nominated by one of Decedent's sisters. Pursuant to Probate Code §8461, the order of priority for administrator is Decedent's wife, followed by his siblings, and then nieces and nephews. There is no appointment by Decedent's wife. Since the nomination is from one of the sisters, the Petitioner has priority only after Decedent's wife, Decedent's other sister, and Decedent's two brothers. (Probate Code §8465) However, if those with priority do not accept appointment as administrator, then Petitioner may be appointed.

The Petition requests full authority under the Independent Administration of Estates Act.

The Petition requests that bond be fixed at \$597,000, which is calculated as the net value of the real property.

A Duties/Liabilities statement (DE 147/DE 147s) was filed on July 16, 2024.

Proof of service of notice of the hearing on the Petition was filed on August 8, 2024.

Proof of publication was filed on August 16, 2024.

TENTATIVE RULING #1:

ABSENT OBJECTION THE PETITION IS GRANTED AS REQUESTED. ANY PERSON WHO HAS AN OBJECTION MAY MAKE IT ANY TIME, EVEN ORALLY AT THE HEARING (PROBATE CODE § 1043)

A STATUS OF ADMINISTRATION HEARING IS SET FOR 8:30 A.M. ON MONDAY, SEPTEMBER 8, 2025, IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

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2.	PP20210078	ESTATE OF SCHOTT
Final Distribution		

Letters of Administration were issued on August 25, 2021, granting Petitioner full authority under the Independent Administration of Estates Act.

A Final Inventory and Appraisal was filed on March 11, 2022. At the time the inventory and appraisal is filed, you must also file a change of ownership statement with the county recorder or assessor in each county where the decedent owned real property at the time of death, as provided in section 480 of the California Revenue and Taxation Code.

Waivers of Account were executed by all the heirs entitled to distributions under the estate. Proof of Service of Notice of the hearing on the Petition was filed on July 26, 2024. No one has filed a request for special notice in this proceeding. The proposed distribution of the estate includes equal division between Decedent's two adult children.

The Petition complies with Local Rule 10.07.12 regarding income taxes and estate taxes.

The Petition requests:

1. The administration of the estate be brought to a close without the requirement of an accounting;
2. All acts, transactions, sales and investments of the personal representative be ratified, confirmed and approved;
3. The property in the estate be distributed as set for in the Petition; and,
4. The Administrator be authorized to pay statutory attorney fees in the amount of \$14,103.06, plus \$1,630.71 for costs advanced to the estate.

TENTATIVE RULING #2:

ABSENT OBJECTION THE PETITION IS GRANTED AS REQUESTED. ANY PERSON WHO HAS AN OBJECTION MAY MAKE IT ANY TIME, EVEN ORALLY AT THE HEARING (PROBATE CODE § 1043).

A STATUS OF ADMINISTRATION HEARING IS SET FOR 8:30 A.M. ON MONDAY, SEPTEMBER 8, 2025, IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

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3.	23PR0165	ESTATE OF HENDERSON
Status		

Order for Final Distribution was signed on June 24, 2024. Receipts and ex parte Petition for Final Discharge have not been filed.

TENTATIVE RULING #3:

AN ORDER FOR FINAL DISTRIBUTION HAVING BEEN ENTERED BY THE COURT ON JUNE 24, 2024, THE MATTER IS CONTINUED TO 8:30 A.M. ON MONDAY, JUNE 23, 2025, IN DEPARTMENT NINE, BY WHICH TIME THE COURT EXPECTS RECEIPTS AND AN EX PARTE PETITION FOR FINAL DISCHARGE (JUDICIAL COUNCIL FORM DE-295) TO BE FILED WITH THE COURT.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

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4.	24PR0188	ESTATE OF SCHWOERER
Letters Testamentary		

Decedent died testate on May 10, 2024, survived by two adult children and three adult stepchildren. Petitioner is decedent's son. The Petition requests full authority under the Independent Administration of Estates Act.

Petitioner was named as Executor in the Will. The Will was lodged with the court on July 12, 2024, and is admitted to probate. The Will waives bond.

A Duties/Liabilities statement (DE 147/DE 147s) was filed on July 12, 2024.

Proof of service of notice of the hearing on the Petition was filed on August 14, 2024.

Proof of publication was filed on September 4, 2024, as required by Probate Code §§ 8120, 8121.

TENTATIVE RULING #4:

ABSENT OBJECTION THE PETITION IS GRANTED AS REQUESTED. ANY PERSON WHO HAS AN OBJECTION MAY MAKE IT ANY TIME, EVEN ORALLY AT THE HEARING (PROBATE CODE § 1043).

A STATUS OF ADMINISTRATION HEARING IS SET FOR 8:30 A.M. ON MONDAY, SEPTEMBER 8, 2025, IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

5.	23PR0285	ESTATE OF HALLIDAY
Final Distribution		

Letters of Administration were issued on January 29, 2024, granting Petitioner full authority under the Independent Administration of Estates Act.

A Final Inventory and Appraisal was filed on March 7, 2024.

Waivers of Account were executed by all the heirs entitled to distributions under the estate.

Proof of Service of Notice of the hearing on the Petition was not filed.

The proposed distribution of the estate includes division of the estate into three shares. Decedent was survived by two adult daughters and three minor grandchildren from her predeceased child. Each daughter will receive 1/3 of the estate, and the remaining 1/3 will be divided equally amongst the three minor grandchildren.

The Petition complies with Local Rule 10.07.12 regarding income taxes and estate taxes.

The Petition requests:

1. The administration of the estate be brought to a close without the requirement of an accounting;
2. All acts, and proceedings of the Administrator be confirmed and approved;
3. That Petitioner be authorized to retain \$10,000.00 in closing expenses and to pay liabilities, and to deliver the unused part to the beneficiaries of the estate without further court order after closing expenses have been paid;
4. The Administrator be authorized to pay herself \$15,238.61 in statutory compensation;
5. Approval of distribution of the estate to the persons entitled to it pursuant to the Petition for Final Distribution;
6. Distribution of the estate in Petitioner's hands and any other property of the estate not now known or later discovered be distributed to the beneficiaries as set forth in the Petition; and,
7. Upon filing of receipts that Petition may apply to be discharged and released from all liability that may be incurred hereafter.

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TENTATIVE RULING #5:

APPEARANCES REQUIRED ON MONDAY, SEPTEMBER 9, 2024, AT 8:30 AM IN DEPARTMENT NINE.

A STATUS OF ADMINISTRATION HEARING IS SET FOR 8:30 A.M. ON MONDAY, SEPTEMBER 8, 2025, IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

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6.	23PR0079	ESTATE OF DANIELSON
Status		

Letters Testamentary were issued on September 11, 2023.

There is no Inventory and Appraisal on file with the court.

There is no Petition for Final Distribution on file with the court.

TENTATIVE RULING #6:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, SEPTEMBER 9, 2024, IN DEPARTMENT NINE.

A STATUS OF ADMINISTRATION HEARING IS SET FOR 8:30 A.M. ON MONDAY, SEPTEMBER 8, 2025, IN DEPARTMENT NINE.

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7.	23PR0119	ESTATE OF SKINNER
Final Distribution		

Letters of Administration were issued on August 10, 2023, granting Petitioner full authority under the Independent Administration of Estates Act. A Final Inventory and Appraisal was filed on June 6, 2024.

Proof of Service of Notice of the hearing on the Petition was filed on July 24, 2024. No one has filed a request for special notice in this proceeding.

The intestate distribution of the estate includes equal division into five shares – one for each of his four surviving siblings, and one for the issue of his predeceased sister. All beneficiaries are adult.

The Petition complies with Local Rule 10.07.12 regarding income taxes and estate taxes.

The Petition requests:

1. The administration of the estate be brought to a close;
2. The First and Final Account and Report, and Petition be settled, allowed and approved;
3. All acts and proceedings of the Administrator be ratified, and approved;
4. The Administrator be authorized to pay statutory attorney fees in the amount of \$12,424.29, plus \$2,559.24 for costs advanced to the estate;
5. The Administrator be authorized to pay herself \$16,346.74 as reimbursement for costs of administration advanced to the estate;
6. The Administrator be authorized to retain \$2,000.00 in closing expenses and to pay liabilities, and to deliver the unused part to the beneficiaries of the estate without further court order after closing expenses have been paid; and,
7. Approval of distribution of the estate to the persons entitled to it pursuant to the Petition for Final Distribution.

TENTATIVE RULING #7:

ABSENT OBJECTION THE PETITION IS GRANTED AS REQUESTED. ANY PERSON WHO HAS AN OBJECTION MAY MAKE IT ANY TIME, EVEN ORALLY AT THE HEARING (PROBATE CODE § 1043).

A STATUS OF ADMINISTRATION HEARING IS SET FOR 8:30 A.M. ON MONDAY, SEPTEMBER 8, 2025, IN DEPARTMENT NINE, BY WHICH TIME THE COURT EXPECTS RECEIPTS AND AN EX PARTE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

8.	24PR0203	ESTATE OF TAYLOR
Spousal Property Petition		

The surviving spouse brings this Petition. Decedent died on December 12, 2019, and was a nonresident of California. Decedent was also survived by two brothers.

Decedent had a Pour-Over Will and a Trust, which were established in 2017. His wife, Petitioner, was nominated as executor and is the remaining trustee. In the Will, Decedent gives all his property to the Trust.

Attached to the Trust is a Schedule of Assets, which includes a piece of real property that was community property and an interest in real property that was Decedent's separate property. This Petition involves Decedent's 1/6 interest in a piece of real property, which he received from his father in 1999; however, it is not listed on the Schedule of Assets and was not transferred to the Trust. The purpose of the Trust was to support the Settlers and to maximize the marital exemption.

Further, the Trust states that the surviving spouse has the authority to withdraw as much of the principal of the Trust as she wishes. Pursuant to this Petition, Decedent's wife seeks to receive Decedent's 1/6 separate property interest in the South Lake Tahoe Property.

Notice was given to the contingent beneficiary and Decedent's two siblings.

Probate Code 13650 authorizes a surviving spouse to file a petition requesting an order that administration of all or part of an estate is not necessary because all or part of the estate is property passing to the surviving spouse.

TENTATIVE RULING #8:

ABSENT OBJECTION THE PETITION IS GRANTED AS REQUESTED. ANY PERSON WHO HAS AN OBJECTION MAY MAKE IT ANY TIME, EVEN ORALLY AT THE HEARING (PROBATE CODE § 1043).

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9.	22PR0159	ESTATE OF CHISHOLM
Status		

Letters of Administration were issued on March 10, 2023.

There is no Inventory and Appraisal on file with the court. A partial Inventory and Appraisal was filed on August 15, 2023.

There is no Petition for Final Distribution on file with the court.

TENTATIVE RULING #9:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, SEPTEMBER 9, 2024, IN DEPARTMENT NINE.

A STATUS OF ADMINISTRATION HEARING IS SET FOR 8:30 A.M. ON MONDAY, SEPTEMBER 8, 2025, IN DEPARTMENT NINE.

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10.	23PR0042	ESTATE OF GOOD
Status		

At the hearing on June 3, 2024, Petitioner was ordered to file and serve a status report by August 9, 2024. No such report was filed.

TENTATIVE RULING #10:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, SEPTEMBER 9, 2024, IN DEPARTMENT NINE.

A STATUS OF ADMINISTRATION HEARING IS SET FOR 8:30 A.M. ON MONDAY, SEPTEMBER 8, 2025, IN DEPARTMENT NINE.

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11.	24PR0137	HIGHTOWER 2017 LIVING TRUST
Petition		

Petitioner claims to be the Trustee of the Hightower 2017 Living Trust and petitions the Court for Instructions and an Order to Administer Trust and Determination of Validity of Trust pursuant to Probate Code §17200.

The settlor created the Trust on August 30, 2017, and amended it on three occasions – February 1, 2018, October 27, 2022, and October 17, 2023. Petitioner is named successor trustee of the Trust and is the primary beneficiary of the trust, under the Third Amendment.

The settlor executed a new Will three days prior to her death, along with a Certification of Trust. Petitioner questions the validity of these documents, and it is argued that the settlor did not have capacity to make these changes. These two documents were signed April 17, 2024, and the settlor died on April 20, 2024. No copy of the new Certification of Trust has been obtained.

The 2017 Trust notes that the settlor was not married and had no children at the time the Trust was executed. The successor trustees were: (1) Mark T. Wolny AND Robin M. Patterson; (2) Lyndell J. Deatherage. The distribution provided for equal distribution, by right of representation, to Mark T. Wolny and Robin M. Patterson. The Trust was notarized by attorney David R. Morris. Schedule A specifically noted two pieces of real property, two bank accounts, several vehicles, and a sole proprietorship.

In the First Amendment, the successor trustees are amended to: (1) Lyndell J. Deatherage; (2) Darria L. Deatherage. It specifically noted that Mark T. Wolny and Robin M. Patterson were no longer nominated. The distribution was changed to provide for equal representation, by right of representation, to Lyndell J. Deatherage and Darria L. Deatherage. The First Amendment was notarized by attorney David R. Morris.

In the Second Amendment, the successor trustees are amended to: (1) Garrett S. Miller. It specifically noted that Lyndell J. Deatherage and Darria L. Deatherage were no longer nominated. The distribution was amended to provide for full distribution, by right of representation, to Garrett S. Miller. The Second Amendment was notarized by attorney David R. Morris.

In the Third Amendment, the successor trustees are amended to: (1) Donna Lois Bacigalupi AND/OR Jenna Lynn Bacigalupi Cosco. It specifically noted that Garrett S. Miller was no longer nominated. The distribution was changed to provide for equal representation, by right of representation, to Donna Lois Bacigalupi and Jenna Lynn Bacigalupi Cosco. The Third Amendment was notarized by attorney David R. Morris.

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Decedent's Last Will was lodged with the Court on April 23, 2024. It revokes all prior Wills. The entire estate is left to Mary Jane Rayfield, who is nominated as Executor to serve without bond. The Will does not make mention to the Hightower 2017 Family Trust and is not a pour over will. It is witnessed by two disinterested parties, who provided their names and addresses. It was signed and witnessed on April 17, 2024.

The April 17, 2024, Certification of Trust indicates that the settlor created The Christine Hightower Revocable Living Trust. The successor Trustee is Mary Jane Rayfield. The Certification of Trust is notarized.

Probate Code § 17200 provides, in pertinent part:

(a) Except as provided in Section 15800, a trustee or beneficiary of a trust may petition the court under this chapter concerning the internal affairs of the trust or to determine the existence of the trust.

(b) Proceedings concerning the internal affairs of a trust include, but are not limited to, proceedings for any of the following purposes:

* * *

(3) Determining the validity of a trust provision.

No documentation is provided to controvert the validity of the April 17, 2024, Will or Certification of Trust. No medical reports or declarations are filed to support Petitioner's contention that the settlor lacked capacity. No death certificate is included, indicating Petitioner's cause of death. The Petition is merely an assertion by Petitioner disputing that she was removed as trustee and beneficiary. Even if the Third Amendment is the controlling document, there is no representation by Darria L. Deatherage indicating whether they accept nomination as successor Trustee. Absent evidence supporting Petitioner's stance, the Court plans to deny the Petition.

Case was heard on July 15, 2024, and parties requested a continuance due to potential settlement.

TENTATIVE RULING #11:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON MONDAY, SEPTEMBER 9, 2024, IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

12.	24PR0194	EMERSON REVOCABLE TRUST
Petition for Instruction		

Co-Trustees of the John P. Emerson Revocable Trust (“Trust”), Shannon Yebra and Melissa Bebee, (“Petitioners” or “Co-Trustees”) petition the Court for instructions as to distribution and interpretation of life estate language, pursuant to Probate Code §17200. John Emerson executed the Trust on September 14, 1998. The three beneficiaries of the Trust are Melissa Bebee (Settlor’s daughter), Shannon Yebra (Settlor’s daughter), and Laurie Neal (Settlor’s registered domestic partner and “Respondent”).

The initial Trust named Settlor’s two daughters as co-trustees. The Trust was funded, in part, by Settlor’s residence at 8542 Loretto Avenue in Cotati (“property”). On September 21, 2021, Settlor executed a First Amendment to the Trust, which added a gift of the property to Respondent. A little over one month later, on October 26, 2021, Settlor executed the Second Amendment to the Trust, which clarified the gift of the property to Respondent as a life estate. The heading changed from “Special Gift of 8542 Loretto Avenue” in the First Amendment, to “Special Gift of Life Estate of 8542 Loretto Avenue” in the Second Amendment. Section 5.3(a) of the Trust provides that upon Settlor’s death, the trustees shall divide the trust property into equal shares among the surviving children and to distribute one share outright to each surviving child.

Settlor died on February 4, 2024. While Petitioners recognize the life estate, Respondent has requested to have the life estate formally deeded to her through a recorded deed. Petitioners disagree and worry that would cloud title. Petitioners argue that the language of section 5.3(a) would be obviated by a life estate deed.

Respondent argues that the Trust language is clear. Section 5.0 of the Second Amendment states:

"On the settlor's death, the trustee shall distribute the real property known as 8542 Loretto Avenue, Cotati, Sonoma County, California (APN 144-523-018), including all improvements on that property and all of the settlor's interest in the insurance on that property, to Laurie E. Neal, the settlor's State Registered Domestic Partner, for her life. Upon the death of Laurie E. Neal this property shall be distributed in equal shares to the settlor's children, Shannon M. Yebra and Melissa A. Bebee. If Laurie E. Neal does not survive the settlor, or if this property is not in the trust on the date of the settlor's death, this gift shall lapse. This property shall pass subject to any liens and encumbrances, without exoneration. **The purpose of this section is to create a life estate in Laurie E. Neal with the remainder vested in the settlor's children.**" (the underline and bold appear in the Trust)

Pursuant to the deed, the Trust is currently the legal owner of the property. As stated by Respondent, "In construing trust instruments, as in the construction and interpretation of all documents, the duty of the court is to first ascertain and then, if possible, give effect to the intent of the maker." *Gardenhire v. Superior Ct.* (2005) 127 Cal. App. 4th 882. Respondent argues that if Co-Trustees grant her a "right to occupy" the property, that they retain the power encumber or even sell the real property.

An interest in fee simple means that the possessor of a life estate has all of the rights of the grantor except for those that are excluded from the conveyance. "The owner of a life estate may use the land in the same manner as the owner of a fee simple, except that he must do no act to the injury of the inheritance". Civ. Code, § 818. Respondent argues that a certificate of trust, as offered by Petitioners, is not commonly used to convey or distribute an interest in real property. Respondent further argues that the use of the word "shall" in the language of the Second Amendment makes the distribution of the life estate mandatory and that there is no ambiguity in the Settlor's intent. Cal. Gov't Code § 14. Respondent argues that the distribution is not optional and up to the interpretation or preference of the trustees.

Petitioners reply and argue that by deeding a life estate to Respondent, that Settlor's intent that the Trust estate be divided and distributed to his children is being ignored. The Court notes, that in the Second Amendment, the gift of the life estate is to be Section 5.0 of the Trust. The division and distribution of the Trust estate to the daughters is in Section 5.3 and is titled "Disposition of *Remaining* Trust Estate." (court added emphasis) Further, by declaration signed under penalty of perjury, the drafting estate planning attorney is willing to testify to Settlor's intent to devise a life estate that was to be granted by deed to Respondent.

The Court is satisfied that a specific gift of the life estate does not obviate Settlor's intent as to the remaining trust estate, which was to be distributed outright to his daughters. Respondent included a copy of the Grant Deed, which transferred the property into the Trust. It is unclear whether the property has since transferred to Co-Trustees.

TENTATIVE RULING #12:

THE ORDER AS DRAFTED BY COUNSEL FOR RESPONDENT IS GRANTED. ANY PERSON WHO HAS AN OBJECTION MAY MAKE IT ANY TIME, EVEN ORALLY AT THE HEARING (PROBATE CODE § 1043).

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

13.	PP20160118	PARKHURST TRUST
Petition to Approve Settlement, etc.		

The Parkhurst Revocable Living Trust (“Trust”) was established on March 22, 1995, by Ray and Joyce Parkhurst. Ray died on January 8, 2004, and Joyce died on August 10, 2014. Under the terms of the Trust, each of the Settlers’ four children – Ray, Mickell, Robert, and Linda – are successor co-trustees and the residual beneficiaries.

There have been numerous disputes throughout the administration, and even prior settlements. The 2023 Stipulated Order appointed a third-party as Trustee and directed her to take a number of actions.

After the 2023 Stipulated Order, two issues remained and were set for trial – the approval of the First Account, specifically as to the attorney fees paid during the First Account Period; and, approval of the Second Account, specifically as to the attorney fees paid during the Second Account Period. The dispute was between Ray, Mickell and Robert, who have now reached a settlement on these two issues, which they request that the Court approve.

TENTATIVE RULING #13:

ABSENT OBJECTION THE PETITION IS GRANTED AS REQUESTED. ANY PERSON WHO HAS AN OBJECTION MAY MAKE IT ANY TIME, EVEN ORALLY AT THE HEARING (PROBATE CODE § 1043).

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.