

PROCEEDINGS TO DECLARE HEIRSHIP (PDH)

25. If **proceedings to declare heirship (PDH)** is not the proper probate procedure, mark Items 25 and 26 of this Checkplan as not applicable and go to Item 27. If PDH is the proper probate procedure, go to Items 27 through 45, indicate that they are not applicable, and return here to do the following:
 - a. See Special Instruction 60—Proceedings to Declare Heirship (PDH).
 - b. See Special Instruction 58—Who Inherits When There Is No Will and determine the identity of D’s heirs to whom D’s estate is to be distributed.
 - c. See Special Instruction 15—Jurisdiction and Venue and prepare Application to Declare Heirship (Form 77). Make one more copy than there are heirs.
 - d. Arrange for one heir to sign and swear to Application to Declare Heirship (Form 77). If mailing, prepare and send Letter 48 to the heir, together with two copies of Application to Declare Heirship (Form 77).
 - e. When Application to Declare Heirship (Form 77) has been signed, place in file folder entitled “Court Proceedings.”
 - f. If court does not automatically appoint an attorney ad litem, prepare Motion to Appoint Attorney Ad Litem and Order thereon (Form 78) and place in file folder entitled “Court Proceedings.”
 - g. File Application to Declare Heirship (Form 77) and, if applicable, Motion to Appoint Attorney Ad Litem and Order thereon (Form 78) with clerk of court, have clerk of court issue proper citation, enter date of filing Application to Declare Heirship (Form 77) as Item 6.23 of MIL, and complete Items 18 and 19 of SDL.
 - h. Obtain court docket number, enter it on Probate Chart (Worksheet 15), on cover page of MIL, and as Item 6.01 of MIL, and conform office file copies.
 - i. For citation by publication, see Special Instruction 16—Citation and Notice.

If publishing in newspaper and if clerk of court does not send the citation directly to the newspaper, do the following:

- (1) Select newspaper in which to publish citation.

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(2) Determine charge for publication, arrange for payment, and charge to client's account.					
(3) Prepare and send Letter 84 to newspaper, together with citation and payment of charges for publication.					
(4) When citation has been published and publisher's affidavit has been received, file with clerk of court.					
j. Calculate the return date for the citation by posting and enter as Item 20 of SDL (see Special Instruction 16—Citation and Notice).					
k. Prepare [Distributee's/Defendant's] Waiver of Citation and Notice Regarding Proceeding to Declare Heirship (Form 107). Prepare and send Letter 48 to each distributee other than applicant and to any owner of a real property interest not a distributee ("Defendant"), together with two copies of [Distributee's/Defendant's] Waiver of Citation and Notice Regarding Proceeding to Declare Heirship (Form 107). Enclose one copy of the Application to Declare Heirship (Form 77).					
l. On receipt of all properly signed and sworn [Distributee's/Defendant's] Waiver of Citation and Notice Regarding Proceeding to Declare Heirship (Form 107), file with clerk of court.					
m. Calculate the return date for the citation by publication by determining earlier of date of newspaper in which the notice was published and date of publication on the public information Internet website and enter as Item 21 of SDL. Complete Items 22 and 23 of SDL.					
n. Review clerk's file to ensure that a copy of all citations required by Estates Code, Chapter 202, and proof of delivery have been filed. If D died on or after January 1, 2014 , do the following:					
(1) Determine whether applicant will sign the Affidavit of Service of Citation (Form 104) or if attorney will sign the Certificate of Service of Citation (Form 105).					
(a) If applicant is to sign, prepare Affidavit of Service of Citation (Form 104). If mailing, prepare and send with Letter 48.					
(b) If attorney is to sign, prepare Certificate of Service of Citation (Form 105).					
(2) File signed Affidavit of Service of Citation (Form 104) or Certificate of Service of Citation (Form 105) with clerk of court.					

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o. Coordinate schedules with client(s), other witnesses, and attorney ad litem. Arrange for date and time for hearing on Application to Declare Heirship (Form 77); determine method of appearance for the hearing; and if remote, prepare Notice of Court Proceeding (Form 150), Motion for Remote Proceeding (Form 151), and Certificate of Service (Form 152). Provide notice to all affected parties, and complete Items 24 and 25 of SDL and Items 6.24 and 6.24A of MIL.					
p. Determine the identity of two disinterested and credible witnesses who will testify as to D's death and other personal history and also determine if each witness will be available to testify before the court. <i>Note:</i> Only one such witness will be required if it is shown that only one can be found after a diligent search.					
(1) For <i>both</i> of these witnesses who will testify before the court, do the following:					
(a) Prepare Statement of Facts (Form 80) for each witness and place in file folder entitled "Court Proceedings."					
(b) Prepare and send Letter 13 to each witness, together with a copy of Statement of Facts (Form 80) for that witness, to advise of the date and time of the hearing, the need for the witness to appear before the court, and the method of appearance.					
(2) For each witness who will not be available to testify before the court, determine an alternate method of proving these facts and take appropriate action (forms not provided in this System).					
q. Prepare Judgment Declaring Heirship (Form 81) and place in file folder entitled "Court Proceedings."					
r. Prepare and send Letter 57 to attorney ad litem, together with copies of Application to Declare Heirship (Form 77), Motion to Appoint Attorney Ad Litem (if applicable) and Order thereon (Form 78), Statement of Facts (Form 80) for each witness, and Judgment Declaring Heirship (Form 81).					
s. If hearing must be rescheduled, enter rescheduled date and time as Items 6.24 and 6.24A of MIL and Item 26 of SDL; revise Item 25 of SDL; and notify client, attorney ad litem, and all witnesses of new date. If method of appearance is changed, notify client, attorney ad litem, and all witnesses and provide revised information.					
t. One business day before the hearing, call to remind client, attorney ad litem, and all witnesses of date and time of hearing and the place of hearing or electronic access information.					

26. For the **hearing**, do the following:

- a. Assemble the following documents and have available at hearing:
 - (1) Original copy of Statement of Facts (Form 80) for each witness who will testify in court.
 - (2) Original copy of Judgment Declaring Heirship (Form 81).
- b. Determine if local rules of court require different or additional documents or procedures and, if so, take appropriate action.
- c. Attend hearing (see Special Instruction 18—What to Do at Hearing) and enter actual date of hearing as Item 6.25 of MIL and Item 27 of SDL.
- d. Enter the date judgment was signed by judge as Item 6.26 of MIL and Item 28 of SDL.
- e. Order certified copy of Judgment Declaring Heirship (Form 81) from clerk of court and, if you paid for it, charge to client's account. If ordering by mail, determine correct charge, arrange for payment, charge to client's account, and prepare and send Letter 86 to clerk of court. When received, place in file folder entitled "Court Proceedings."
- f. Prepare and send Letter 22 to thank each witness, other than client, who appeared before the court.
- g. Conform file copies of all documents for dates and signatures.
- h. Collect all of D's records, books, title papers, and business papers. If anyone refuses to deliver the same, file a complaint.
- i. Skip to Item 62 of this Checkplan.

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