

Chapter 9

Joint Tenancies and Life Estates

Rule 609.01 Proceedings Must Be in Name of Decedent

A petition to establish fact of death must be filed in a proceeding in the name of the deceased person whose interest is being terminated.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

Rule 609.02 Separate Petition Preferred

Sections 201 and 202 of the Probate Code authorize a petition to establish fact of death to be included in a verified petition for probate of will or for letters of administration. Whenever possible, attorneys are encouraged to file separate petitions under the same number in order to avoid procedural difficulties. A petition may not be filed in the estate proceeding after the filing of a petition for final distribution. A petition to establish fact of death which is filed after a petition for final distribution must be filed in a new proceeding under a new case number.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

Rule 609.03 Hearings

Under section 203 of the Probate Code, the court can make an ex parte order establishing the fact of a joint tenant or life tenant if the petitioner executed an affidavit stating the petitioner has no reason to believe that there is any opposition to, or contest of, the petition.

(Adopted effective July 1, 1992)

Rule 609.04 Inventories Unnecessary

It is not necessary to list joint tenancy assets or assets subject to a life estate in the form of an inventory and appraisal, as in the case of assets subject to a probate administration proceeding. Assets should be described in the petition for decree establishing fact of death or in an exhibit thereto and made a part thereof.

(Adopted effective July 1, 1992; revised effective July 1, 2008)

LOCAL RULES – SUPERIOR COURT of CALIFORNIA, COUNTY of ORANGE

Rule 609.05 Attorney Fees

There is no provision in the Probate Code for determination by the Probate Court of attorney's fees in proceedings for termination of joint tenancy or a life estate. No request for fees for services of this character shall be included in any petition for fees in a probate estate matter, and, if so included, will not be granted. However, where the termination of a joint tenancy with a previously deceased joint tenant is necessary to clear title to property in the decedent's estate, a fee for extraordinary services may be proper in the probate estate matter.

(Adopted effective July 1, 1992; revised effective July 1, 2008)