

County of San Bernardino

Auditor-Controller/Treasurer/Tax Collector
Internal Audits Section

**Sheriff/Coroner/
Public Administrator:
Estate Administration Audit**



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Auditor-Controller/Treasurer/Tax Collector

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SUBJECT: ESTATE ADMINISTRATION AUDIT

In compliance with Article V, Section 6, of the San Bernardino County Charter and County Policy 05-20 entitled Internal Operational Auditing, we have completed an audit of the Sheriff/Coroner/Public Administrator (Department)'s Estate Administration for the period of July 1, 2016 through June 30, 2017. The primary objective of the audit was to determine whether the Department is compliant with applicable regulations associated with the management of estates for which the Department is responsible. We conducted our audit in accordance with the International Standards for the Professional Practice of Internal Auditing established by the Institute of Internal Auditors.

We identified several procedures and practices that could be improved. We have listed these areas for improvement in the Audit Findings and Recommendations section of this report.

We sent a draft report to the Department on February 20, 2018 and discussed our observations with management on March 5, 2018. The Department's responses to our recommendations are included in this report.

We would like to express our appreciation to the personnel at the Department who assisted and cooperated with us during this engagement.

Respectfully submitted,

Oscar Valdez

Auditor-Controller/Treasurer/Tax Collector
San Bernardino County

By:



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Sheriff/Coroner/Public Administrator: Estate Administration Audit

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Summary of Audit Results

Our findings and recommendations are provided to assist management in achieving compliance with the California Probate Code.

The table below summarizes the audit findings and recommendations for this audit engagement. For further discussion, refer to the *Audit Findings and Recommendations* section of this report.

Finding No.	Findings and Recommendations	Page No.
1	Compliance with the California Probate Code's timeliness requirements needs improvement.	4
	The Department should implement procedures to ensure compliance with the timeliness requirements of the California Probate Code.	
2	Compliance with the California Probate Code's disclosure requirements needs improvement.	5
	The Department should review and implement procedures to ensure compliance with the disclosure requirements of the California Probate Code.	
3	Compliance with the California Probate Code's documentation requirements needs improvement.	6
	The Department should review and implement procedures to ensure compliance with the documentation requirements of the California Probate Code.	



Estate Administration

The primary function of the Public Administrator is to administer decedents' estates, including: collecting and safeguarding assets, paying debts, and if assets remain after paying debts and expenses, to distribute assets to those legally entitled. Cases are generally referred to the Public Administrator by the Coroner, but referrals are also received from public service agencies, friends, neighbors, creditors, hospitals, nursing homes, funeral directors and others.

Pursuant to California statute, if the value of an estate does not exceed \$150,000, it is considered a small estate. The option to use a simplified probate process exists for small estates in California. To use this simplified process, the executor must file a written request with the probate court requesting authorization to use the simplified procedure, or summary probate. The primary difference between summary and formal probate proceedings is that asset transfer procedures are simpler for summary probate proceedings.

Estates valued at more than \$150,000 must be distributed via formal probate proceedings. Formal probate proceedings are generally supervised by the probate court and a judge. The steps taken in a formal probate proceeding consist of notifying creditors, determining what the decedent owned upon death, and determining which assets will have to go through probate. The estate administrator is also responsible for paying bills, terminating credit cards, notifying state agencies, and paying taxes. Finally, the administrator is responsible for obtaining the court's permission to distribute property to the decedent's beneficiaries and closing probate.



Scope and Objectives

Our audit examined estates administered by the Public Administrator and closed between July 1, 2016 and June 30, 2017.

The objective of this audit was to determine whether the Department is compliant with applicable regulations associated with the management of estates for which the Department is responsible.

Methodology

In achieving the audit objective, the following audit procedures were performed, including but not limited to:

- Interviews of Public Administrator personnel.
- Review of policies and procedures.
- Review of legislation.
- Examination of source documents.



Finding 1: Compliance with the California Probate Code's timeliness requirements needs improvement.

California Probate Code Section 8801 requires the Public Administrator to file a supplemental inventory and appraisal within four months after knowledge of property to be administered in the decedent's estate that is not included in a prior inventory and appraisal is acquired. Additionally, California Probate Code Section 9054 requires the Public Administrator to notify the known or reasonably ascertainable creditors of the decedent of administration of the estate within four months after the date letters are first issued, or thirty days after the personal representative first has knowledge of the creditor, whichever is later.

The following conditions were noted:

- In one case, the Public Administrator took approximately ten months to file a supplemental inventory and appraisal after receiving knowledge of additional property to be administered in the decedent's estate.
- In one case, the Public Administrator took approximately nine months to notify creditors of estate administration from the date letters were issued.

The Department does not have an enforced timeframe within which to file initial and supplemental inventories and appraisals or notify creditors of estate administration. Further, the Public Administrator may be liable for damage to the estate or to an interested person that results from the failure to file an inventory and appraisal or provide notice to creditors within the time allowed.

Recommendation:

We recommend that the Department implement procedures to ensure compliance with the timeliness requirements of California Probate Code Sections 8801 and 9054.

Management's Response:

We concur with the recommendation. The Department will implement written policies and procedures to ensure staff understands and complies with these policies and procedures.

Auditor's Response:

The Department's planned actions will correct the deficiencies noted in this finding.



Finding 2: Compliance with the California Probate Code's disclosure requirements needs improvement.

California Probate Code Section 7661 requires publication of the sale of real property. Further, California Probate Code Section 8803 requires the personal representative to, on filing, mail a copy of any inventory and appraisal or supplemental inventory and appraisal to each person who has requested special notice.

The following conditions were noted:

- In one case, notice of the sale of real property was not published.
- In one case, there was no documentation in file to indicate that a copy of the filed supplemental inventory and appraisal was mailed to a party that requested special notice.

In the instance of the sale not being published, the Public Administrator was incorrectly advised by outside legal counsel that publication of the sale of real property was not required because the sale was not going to be confirmed by the court. In the instance of requested special notice, the department depended upon their outside legal counsel to perform the mailing of the notice. Without proper disclosures made, the Public Administrator may be liable for any damage to the decedent's estate or to an interested party as a result of lack of notice.

Recommendation:

We recommend that the Department implement procedures to ensure compliance with the disclosure requirements of California Probate Code Sections 7661 and 8803. Furthermore, we recommend that tasks expected to be completed by outside counsel be clearly documented in writing and provided to any outside counsel performing tasks on behalf of the Public Administrator.

Management's Response:

We concur with the findings and recommendations. It bears notice here that the contract with outside counsel for the PA has never been amended. We suggest a review of the contract to ensure, in part, that the list of tasks the County expects that attorney to perform is current.

Auditor's Response:

The Department's planned actions will correct the deficiencies noted in this finding.



Finding 3: Compliance with the California Probate Code's documentation requirements needs improvement.

California Probate Code Section 11753 requires the personal representative to, before or at the time of the petition for discharge, file receipts for all property in the estate with the court clerk. Further, California Probate Code section 7665 requires the public administrator to file receipts for all distributions with the court clerk for summary dispositions.

The following conditions were noted:

- In one formal case, two receipts and two canceled checks in lieu of receipts were not filed with the court.
- In one summary case, one receipt was not filed with the court.

The Public Administrator only files receipts for distributions expressly ordered by the court, and it is not the practice of the Public Administrator to file receipts for distributions of property disposed of summarily. In addition, receipts are not always filed for reserve funds. We further noted that the filing and documentation system used by the Department could be improved. Without the filing of receipts, there will not be an official court record to support the distribution of all property in the estate.

Recommendation:

We recommend that the Department implement procedures to ensure compliance with the documentation requirements of California Probate Code Sections 7665 and 11753. In addition, we recommend that the Department establish and enforce written policies and procedures regarding the filing and safeguarding of documents.

Management's Response:

We concur with the finding. However, we will not amend our practices. It is the direction of the Probate Court judges of the Superior Court in San Bernardino County *not* to submit receipts on funds held in reserve. We will develop procedures for filing and safeguarding of receipts and other relevant documents within our case files.

Auditor's Response:

Although the Department has accepted the risks of not amending their current practices, we recommend they comply with California Probate Code Sections 7665 and 11753. The Department's planned actions to improve filing and



safeguarding procedures will help to ensure that there is support that documentation requirements have been met.