

Assembly Bill No. 1305

CHAPTER 117

An act to amend Sections 7620, 7660, 13050, 13100, 13101, 13151, 13152, 13154, 13200, 13600, 13601, and 13602 of the Probate Code, relating to decedents' estates.

[Approved by Governor July 25, 2011. Filed with
Secretary of State July 25, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1305, Huber. Decedents' estates: smaller estates.

Existing law establishes simplified procedures for addressing a decedent's estate valued under \$100,000, including authorizing the successor of the decedent to collect property due to the decedent without letters of administration or awaiting probate of a will. Existing law excludes certain property from the determination of the value of the estate, including salary or other compensation owed to the decedent, not to exceed \$5,000. Existing law permits a court, pursuant to a petition, to determine succession to property in an estate valued under \$100,000, as specified. Existing law establishes an affidavit procedure by which a person may be designated as a successor to a decedent to a particular item of real property valued at no more than \$20,000. Existing law establishes an affidavit procedure by which a surviving spouse may collect salary or other compensation owed the deceased spouse when the amount does not exceed \$5,000, as specified.

This bill would increase the amount of salary or other compensation to be excluded from the determination of the value of the estate from \$5,000 to \$15,000. The bill would also increase the values in the succession and transfer provisions described above from \$100,000 to \$150,000 for an estate, from \$20,000 to \$50,000 for real property, and from \$5,000 to \$15,000 for salary or compensation. The bill would also make conforming changes.

The people of the State of California do enact as follows:

SECTION 1. Section 7620 of the Probate Code is amended to read:

7620. The public administrator of the county in which the estate of a decedent may be administered shall promptly:

(a) Petition for appointment as personal representative of the estate if no person having higher priority has petitioned for appointment and the total value of the property in the decedent's estate exceeds one hundred fifty thousand dollars (\$150,000).

(b) Petition for appointment as personal representative of any other estate the public administrator determines is proper.

(c) Accept appointment as personal representative of an estate when so ordered by the court, whether or not on petition of the public administrator, after notice to the public administrator as provided in Section 7621.

(d) Proceed with summary disposition of the estate as authorized by Article 4 (commencing with Section 7660), if the total value of the property in the decedent's estate does not exceed the amount prescribed in Section 13100 and a person having higher priority has not assumed responsibility for administration of the estate.

SEC. 2. Section 7660 of the Probate Code is amended to read:

7660. (a) If a public administrator takes possession or control of an estate pursuant to this chapter, the public administrator may, acting as personal representative of the estate, summarily dispose of the estate in the manner provided in this article in either of the following circumstances:

(1) The total value of the property in the decedent's estate does not exceed the amount prescribed in Section 13100. The authority provided by this paragraph may be exercised only upon order of the court. The order may be made upon ex parte application. The fee to be allowed to the clerk for the filing of the application is two hundred five dollars (\$205). The authority for this summary administration of the estate shall be evidenced by a court order for summary disposition.

(2) The total value of the property in the decedent's estate does not exceed fifty thousand dollars (\$50,000). The authority provided by this paragraph may be exercised without court authorization.

(A) A public administrator who is authorized to summarily dispose of property of a decedent pursuant to this paragraph may issue a written certification of Authority for Summary Administration. The written certification is effective for 30 days after the date of issuance.

(B) A financial institution, government or private agency, retirement fund administrator, insurance company, licensed securities dealer, or other person shall, without the necessity of inquiring into the truth of the written certification of Authority for Summary Administration and without court order or letters being issued do all of the following:

(i) Provide the public administrator complete information concerning any property held in the name of the decedent, including the names and addresses of any beneficiaries or joint owners.

(ii) Grant the public administrator access to a safe-deposit box or storage facility rented in the name of the decedent for the purpose of inspection and removal of property of the decedent. Costs and expenses incurred in accessing a safe-deposit box or storage facility shall be borne by the estate of the decedent.

(iii) Surrender to the public administrator any property of the decedent that is held or controlled by the financial institution, agency, retirement fund administrator, insurance company, licensed securities dealer, or other person.

(C) Receipt by a financial institution, government or private agency, retirement fund administrator, insurance company, licensed securities dealer, or other person of the written certification provided by this article shall do both of the following:

(i) Constitute sufficient acquittance for providing information or granting access to a safe-deposit box or a storage facility and for surrendering any property of the decedent.

(ii) Fully discharge the financial institution, government or private agency, retirement fund administrator, insurance company, licensed securities dealer, or other person from liability for any act or omission of the public administrator with respect to the property, a safe-deposit box, or a storage facility.

(b) Summary disposition may be made notwithstanding the existence of the decedent's will, if the will does not name an executor or if the named executor refuses to act.

(c) Nothing in this article precludes the public administrator from filing a petition with the court under any other provision of this code concerning the administration of the decedent's estate.

(d) Petitions filed pursuant to this article shall contain the information required by Section 8002.

(e) If a public administrator takes possession or control of an estate pursuant to this chapter, this article conveys the authority of a personal representative as described in Section 9650 to the public administrator to summarily dispose of the estates pursuant to the procedures described in paragraphs (1) and (2) of subdivision (a).

(f) The fee charged under paragraph (1) of subdivision (a) shall be distributed as provided in Section 68085.4 of the Government Code. When an application is filed under that paragraph, no other fees shall be charged in addition to the uniform filing fee provided for in Section 68085.4 of the Government Code.

SEC. 3. Section 13050 of the Probate Code is amended to read:

13050. (a) For the purposes of this part:

(1) Any property or interest or lien thereon which, at the time of the decedent's death, was held by the decedent as a joint tenant, or in which the decedent had a life or other interest terminable upon the decedent's death, or which was held by the decedent and passed to the decedent's surviving spouse pursuant to Section 13500, shall be excluded in determining the property or estate of the decedent or its value. This excluded property shall include, but not be limited to, property in a trust revocable by the decedent during his or her lifetime.

(2) A multiple-party account to which the decedent was a party at the time of the decedent's death shall be excluded in determining the property or estate of the decedent or its value, whether or not all or a portion of the sums on deposit are community property, to the extent that the sums on deposit belong after the death of the decedent to a surviving party, P.O.D. payee, or beneficiary. For the purposes of this paragraph, the terms "multiple-party account," "party," "P.O.D. payee," and "beneficiary" are defined in Article 2 (commencing with Section 5120) of Chapter 1 of Part 2 of Division 5.

(b) For the purposes of this part, all of the following property shall be excluded in determining the property or estate of the decedent or its value:

(1) Any vehicle registered under Division 3 (commencing with Section 4000) of the Vehicle Code or titled under Division 16.5 (commencing with Section 38000) of the Vehicle Code.

(2) Any vessel numbered under Division 3.5 (commencing with Section 9840) of the Vehicle Code.

(3) Any manufactured home, mobilehome, commercial coach, truck camper, or floating home registered under Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code.

(c) For the purposes of this part, the value of the following property shall be excluded in determining the value of the decedent's property in this state:

(1) Any amounts due to the decedent for services in the Armed Forces of the United States.

(2) The amount, not exceeding fifteen thousand dollars (\$15,000), of salary or other compensation, including compensation for unused vacation, owing to the decedent for personal services from any employment.

SEC. 4. Section 13100 of the Probate Code is amended to read:

13100. Excluding the property described in Section 13050, if the gross value of the decedent's real and personal property in this state does not exceed one hundred fifty thousand dollars (\$150,000) and if 40 days have elapsed since the death of the decedent, the successor of the decedent may, without procuring letters of administration or awaiting probate of the will, do any of the following with respect to one or more particular items of property:

(a) Collect any particular item of property that is money due the decedent.

(b) Receive any particular item of property that is tangible personal property of the decedent.

(c) Have any particular item of property that is evidence of a debt, obligation, interest, right, security, or chose in action belonging to the decedent transferred, whether or not secured by a lien on real property.

SEC. 5. Section 13101 of the Probate Code is amended to read:

13101. (a) To collect money, receive tangible personal property, or have evidences of a debt, obligation, interest, right, security, or chose in action transferred under this chapter, an affidavit or a declaration under penalty of perjury under the laws of this state shall be furnished to the holder of the decedent's property stating all of the following:

(1) The decedent's name.

(2) The date and place of the decedent's death.

(3) "At least 40 days have elapsed since the death of the decedent, as shown in a certified copy of the decedent's death certificate attached to this affidavit or declaration."

(4) Either of the following, as appropriate:

(A) "No proceeding is now being or has been conducted in California for administration of the decedent's estate."

(B) "The decedent's personal representative has consented in writing to the payment, transfer, or delivery to the affiant or declarant of the property described in the affidavit or declaration."

(5) “The current gross fair market value of the decedent’s real and personal property in California, excluding the property described in Section 13050 of the California Probate Code, does not exceed one hundred fifty thousand dollars (\$150,000).”

(6) A description of the property of the decedent that is to be paid, transferred, or delivered to the affiant or declarant.

(7) The name of the successor of the decedent (as defined in Section 13006 of the California Probate Code) to the described property.

(8) Either of the following, as appropriate:

(A) “The affiant or declarant is the successor of the decedent (as defined in Section 13006 of the California Probate Code) to the decedent’s interest in the described property.”

(B) “The affiant or declarant is authorized under Section 13051 of the California Probate Code to act on behalf of the successor of the decedent (as defined in Section 13006 of the California Probate Code) with respect to the decedent’s interest in the described property.”

(9) “No other person has a superior right to the interest of the decedent in the described property.”

(10) “The affiant or declarant requests that the described property be paid, delivered, or transferred to the affiant or declarant.”

(11) “The affiant or declarant affirms or declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct.”

(b) Where more than one person executes the affidavit or declaration under this section, the statements required by subdivision (a) shall be modified as appropriate to reflect that fact.

(c) If the particular item of property to be transferred under this chapter is a debt or other obligation secured by a lien on real property and the instrument creating the lien has been recorded in the office of the county recorder of the county where the real property is located, the affidavit or declaration shall satisfy the requirements both of this section and of Section 13106.5.

(d) A certified copy of the decedent’s death certificate shall be attached to the affidavit or declaration.

(e) If the decedent’s personal representative has consented to the payment, transfer, or delivery of the described property to the affiant or declarant, a copy of the consent and of the personal representative’s letters shall be attached to the affidavit or declaration.

SEC. 6. Section 13151 of the Probate Code is amended to read:

13151. Exclusive of the property described in Section 13050, if a decedent dies leaving real property in this state and the gross value of the decedent’s real and personal property in this state does not exceed one hundred fifty thousand dollars (\$150,000) and 40 days have elapsed since the death of the decedent, the successor of the decedent to an interest in a particular item of property that is real property, without procuring letters of administration or awaiting the probate of the will, may file a petition in the superior court of the county in which the estate of the decedent may be

administered requesting a court order determining that the petitioner has succeeded to that real property. A petition under this chapter may include an additional request that the court make an order determining that the petitioner has succeeded to personal property described in the petition.

SEC. 7. Section 13152 of the Probate Code is amended to read:

13152. (a) The petition shall be verified by each petitioner, shall contain a request that the court make an order under this chapter determining that the property described in the petition is property passing to the petitioner, and shall state all of the following:

(1) The facts necessary to determine that the petition is filed in the proper county.

(2) The gross value of the decedent's real and personal property in this state, excluding the property described in Section 13050, as shown by the inventory and appraisal attached to the petition, does not exceed one hundred fifty thousand dollars (\$150,000).

(3) A description of the particular item of real property in this state which the petitioner alleges is property of the decedent passing to the petitioner, and a description of the personal property which the petitioner alleges is property of the decedent passing to the petitioner if the requested order also is to include a determination that the described personal property is property passing to the petitioner.

(4) The facts upon which the petitioner bases the allegation that the described property is property passing to the petitioner.

(5) Either of the following, as appropriate:

(A) A statement that no proceeding is being or has been conducted in this state for administration of the decedent's estate.

(B) A statement that the decedent's personal representative has consented in writing to use of the procedure provided by this chapter.

(6) Whether estate proceedings for the decedent have been commenced in any other jurisdiction and, if so, where those proceedings are pending or were conducted.

(7) The name, age, address, and relation to the decedent of each heir and devisee of the decedent, the names and addresses of all persons named as executors of the will of the decedent, and, if the petitioner is the trustee of a trust that is a devisee under the will of the decedent, the names and addresses of all persons interested in the trust, as determined in cases of future interests pursuant to paragraph (1), (2), or (3) of subdivision (a) of Section 15804, so far as known to any petitioner.

(8) The name and address of each person serving as guardian or conservator of the estate of the decedent at the time of the decedent's death, so far as known to any petitioner.

(b) There shall be attached to the petition an inventory and appraisal in the form set forth in Section 8802 of the decedent's real and personal property in this state, excluding the property described in Section 13050. The appraisal shall be made by a probate referee selected by the petitioner from those probate referees appointed by the Controller under Section 400 to appraise property in the county where the real property is located. The

appraisal shall be made as provided in Part 3 (commencing with Section 8800) of Division 7. The petitioner may appraise the assets which a personal representative could appraise under Section 8901.

(c) If the petitioner bases his or her claim to the described property upon the will of the decedent, a copy of the will shall be attached to the petition.

(d) If the decedent's personal representative has consented to use of the procedure provided by this chapter, a copy of the consent shall be attached to the petition.

SEC. 8. Section 13154 of the Probate Code is amended to read:

13154. (a) If the court makes the determinations required under subdivision (b), the court shall issue an order determining (1) that real property, to be described in the order, of the decedent is property passing to the petitioners and the specific property interest of each petitioner in the described property and (2) if the petition so requests, that personal property, to be described in the order, of the decedent is property passing to the petitioners and the specific property interest of each petitioner in the described property.

(b) The court may make an order under this section only if the court makes all of the following determinations:

(1) The gross value of the decedent's real and personal property in this state, excluding the property described in Section 13050, does not exceed one hundred fifty thousand dollars (\$150,000).

(2) Not less than 40 days have elapsed since the death of the decedent.

(3) Whichever of the following is appropriate:

(A) No proceeding is being or has been conducted in this state for administration of the decedent's estate.

(B) The decedent's personal representative has consented in writing to use of the procedure provided by this chapter.

(4) The property described in the order is property of the decedent passing to the petitioner.

(c) If the petition has attached an inventory and appraisal that satisfies the requirements of subdivision (b) of Section 13152, the determination required by paragraph (1) of subdivision (b) of this section shall be made on the basis of the verified petition and the attached inventory and appraisal, unless evidence is offered by a person opposing the petition that the gross value of the decedent's real and personal property in this state, excluding the property described in Section 13050, exceeds one hundred fifty thousand dollars (\$150,000).

SEC. 9. Section 13200 of the Probate Code is amended to read:

13200. (a) No sooner than six months from the death of a decedent, a person or persons claiming as successor of the decedent to a particular item of property that is real property may file in the superior court in the county in which the decedent was domiciled at the time of death, or if the decedent was not domiciled in this state at the time of death, then in any county in which real property of the decedent is located, an affidavit in the form prescribed by the Judicial Council pursuant to Section 1001 stating all of the following:

- (1) The name of the decedent.
- (2) The date and place of the decedent's death.
- (3) A legal description of the real property and the interest of the decedent therein.
- (4) The name and address of each person serving as guardian or conservator of the estate of the decedent at the time of the decedent's death, so far as known to the affiant.
- (5) "The gross value of all real property in the decedent's estate located in California, as shown by the inventory and appraisal attached to this affidavit, excluding the real property described in Section 13050 of the California Probate Code, does not exceed fifty thousand dollars (\$50,000)."
- (6) "At least six months have elapsed since the death of the decedent as shown in a certified copy of decedent's death certificate attached to this affidavit."
- (7) Either of the following, as appropriate:
 - (A) "No proceeding is now being or has been conducted in California for administration of the decedent's estate."
 - (B) "The decedent's personal representative has consented in writing to use of the procedure provided by this chapter."
- (8) "Funeral expenses, expenses of last illness, and all unsecured debts of the decedent have been paid."
- (9) "The affiant is the successor of the decedent (as defined in Section 13006 of the Probate Code) and to the decedent's interest in the described property, and no other person has a superior right to the interest of the decedent in the described property."
- (10) "The affiant declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct."
- (b) For each person executing the affidavit, the affidavit shall contain a notary public's certificate of acknowledgment identifying the person.
- (c) There shall be attached to the affidavit an inventory and appraisal of the decedent's real property in this state, excluding the real property described in Section 13050. The inventory and appraisal of the real property shall be made as provided in Part 3 (commencing with Section 8800) of Division 7. The appraisal shall be made by a probate referee selected by the affiant from those probate referees appointed by the Controller under Section 400 to appraise property in the county where the real property is located.
- (d) If the affiant claims under the decedent's will and no estate proceeding is pending or has been conducted in California, a copy of the will shall be attached to the affidavit.
- (e) A certified copy of the decedent's death certificate shall be attached to the affidavit. If the decedent's personal representative has consented to the use of the procedure provided by this chapter, a copy of the consent and of the personal representative's letters shall be attached to the affidavit.
- (f) The affiant shall mail a copy of the affidavit and attachments to any person identified in paragraph (4) of subdivision (a).

SEC. 10. Section 13600 of the Probate Code is amended to read:

13600. (a) At any time after a husband or wife dies, the surviving spouse or the guardian or conservator of the estate of the surviving spouse may, without procuring letters of administration or awaiting probate of the will, collect salary or other compensation owed by an employer for personal services of the deceased spouse, including compensation for unused vacation, not in excess of fifteen thousand dollars (\$15,000) net.

(b) Not more than fifteen thousand dollars (\$15,000) net in the aggregate may be collected by or for the surviving spouse under this chapter from all of the employers of the decedent.

(c) For the purposes of this chapter, a guardian or conservator of the estate of the surviving spouse may act on behalf of the surviving spouse without authorization or approval of the court in which the guardianship or conservatorship proceeding is pending.

(d) The fifteen thousand-dollar (\$15,000) net limitation set forth in subdivisions (a) and (b) does not apply to the surviving spouse or the guardian or conservator of the estate of the surviving spouse of a firefighter or peace officer described in subdivision (a) of Section 22820 of the Government Code.

(e) On January 1, 2003, and on January 1 of each year thereafter, the maximum net amount of salary or compensation payable under subdivisions (a) and (b) to the surviving spouse or the guardian or conservator of the estate of the surviving spouse may be adjusted to reflect any increase in the cost of living occurring after January 1 of the immediately preceding year. The United States city average of the “Consumer Price Index for all Urban Consumers,” as published by the United States Bureau of Labor Statistics, shall be used as the basis for determining the changes in the cost of living. The cost-of-living increase shall equal or exceed 1 percent before any adjustment is made. The net amount payable may not be decreased as a result of the cost-of-living adjustment.

SEC. 11. Section 13601 of the Probate Code is amended to read:

13601. (a) To collect salary or other compensation under this chapter, an affidavit or a declaration under penalty of perjury under the laws of this state shall be furnished to the employer of the deceased spouse stating all of the following:

- (1) The name of the decedent.
- (2) The date and place of the decedent’s death.
- (3) Either of the following, as appropriate:
 - (A) “The affiant or declarant is the surviving spouse of the decedent.”
 - (B) “The affiant or declarant is the guardian or conservator of the estate of the surviving spouse of the decedent.”
- (4) “The surviving spouse of the decedent is entitled to the earnings of the decedent under the decedent’s will or by intestate succession and no one else has a superior right to the earnings.”
- (5) “No proceeding is now being or has been conducted in California for administration of the decedent’s estate.”
- (6) “Sections 13600 to 13605, inclusive, of the California Probate Code require that the earnings of the decedent, including compensation for unused

vacation, not in excess of fifteen thousand dollars (\$15,000) net, be paid promptly to the affiant or declarant.”

(7) “Neither the surviving spouse, nor anyone acting on behalf of the surviving spouse, has a pending request to collect compensation owed by another employer for personal services of the decedent under Sections 13600 to 13605, inclusive, of the California Probate Code.”

(8) “Neither the surviving spouse, nor anyone acting on behalf of the surviving spouse, has collected any compensation owed by an employer for personal services of the decedent under Sections 13600 to 13605, inclusive, of the California Probate Code except the sum of ____ dollars (\$____) which was collected from ____.”

(9) “The affiant or declarant requests that he or she be paid the salary or other compensation owed by you for personal services of the decedent, including compensation for unused vacation, not to exceed fifteen thousand dollars (\$15,000) net, less the amount of ____ dollars (\$____) which was previously collected.”

(10) “The affiant or declarant affirms or declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct.”

(b) Reasonable proof of the identity of the surviving spouse shall be provided to the employer. If a guardian or conservator is acting for the surviving spouse, reasonable proof of the identity of the guardian or conservator shall also be provided to the employer. Proof of identity that is sufficient under Section 13104 is sufficient proof of identity for the purposes of this subdivision.

(c) If a person presenting the affidavit or declaration is a person claiming to be the guardian or conservator of the estate of the surviving spouse, the employer shall be provided with reasonable proof, satisfactory to the employer, of the appointment of the person to act as guardian or conservator of the estate of the surviving spouse.

SEC. 12. Section 13602 of the Probate Code is amended to read:

13602. If the requirements of Section 13600 are satisfied, the employer to whom the affidavit or declaration is presented shall promptly pay the earnings of the decedent, including compensation for unused vacation, not in excess of fifteen thousand dollars (\$15,000) net, to the person presenting the affidavit or declaration.