Study L-4130 November 17, 2017

Memorandum 2017-58

Disposition of Estate Without Administration: Dollar Limits

In this study, the Commission[1] is examining Probate Code provisions that establish procedures for the disposition of a person's estate, without formal probate administration.

The study was prompted by comments from the Executive Committee of the State Bar Trusts and Estates Section ("TEXCOM"). Among other things, TEXCOM was commenting on perceived deficiencies in the creditor claim provisions of the Revocable Transfer on Death Deed ("RTODD") statute.[2] The RTODD statute was largely based on a Commission recommendation,[3] and the Commission has been charged with conducting a follow-up study of its efficacy.[4]

In reviewing the issues raised by TEXCOM, the staff spotted an additional matter that had *not* been raised by TEXCOM but nonetheless warrants attention — the apparent obsolescence of the existing dollar amounts used to limit the application of certain procedures for the disposition of a small estate without administration. That issue is discussed in this memorandum.

Unless otherwise indicated, all statutory references in this memorandum are to the Probate Code.

BACKGROUND

The Probate Code provides special procedures that can be used to dispose of a decedent's estate without probate administration (or with substantially simplified administration). Some of those procedures are limited to estates or assets that are below a specified dollar amount in value. They include:

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1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. See Memorandum 2017-35.
3. *Revocable Transfer on Death (TOD) Deed*, 36 Cal. L. Revision Comm'n Reports 103 (2006).
4. 2015 Cal. Stat. ch. 293, § 21.

- *Small Estate Set-Aside* (Sections 6600-6615). These provisions allow the decedent's spouse or minor children to petition the court to set the decedent's estate aside for them. The procedure is only applicable when the value of the estate does not exceed $20,000 (with some qualifications).
- *Affidavit Procedure for Collection or Transfer of Personal Property* (Sections 13100-13116). These provisions permit a decedent's successor[5] to collect certain property without administration, when the gross value of the decedent's real and personal property in this state does not exceed $150,000 (subject to Section 13050, described below).
- *Transfer of Real Property Without Administration* (Sections 13150-13158). Under these provisions, a court may order the transfer of real property to a decedent's successor[6] if the gross value of the decedent's real and personal property in this state does not exceed $150,000) (subject to Section 13050, described below).
- *Affidavit Procedure for Real Property of Small Value* (Sections 13200-13210). These provisions allow a decedent's successor[7] to record a court-certified affidavit, to transfer title to the decedent's real property to the successor. The provisions only apply if the gross value of all real property in the decedent's estate located in California does not exceed $50,000 (subject to Section 13050, described below).
- *Collection by Affidavit of Compensation Owed Deceased Spouse* (Sections 13600-13606). These provisions allow a decedent's surviving spouse to collect salary or other compensation owed by an employer for personal services of the deceased spouse, of $15,000 or less.

On a related point, Section 13050 provides a rule, used in some of the procedures listed above, for calculating the value of a decedent's estate. Under that section, up to $15,000 of salary or other compensation owed the decedent is not included in the value of the decedent's estate.

This memorandum considers whether the dollar amounts noted above should be adjusted to reflect inflation since the date of their last adjustment. (The first of the figures, used in Sections 6600-6615, has not been adjusted since 1976; the remainder were adjusted in 2012.)

5. See Section 13006 (in general, "successor" means a beneficiary under a will or a person entitled to property through intestacy).
6. *Id.*
7. *Id.*

Purpose of Streamlined Procedures with Dollar Limits.

Before considering whether the dollar amounts listed above should be adjusted, it is necessary to first consider the purpose served by the streamlined procedures and why those procedures are limited to property of relatively small value.

Benefits of Streamlined Procedures

The streamlined procedures listed above allow for the disposition of small estates without probate administration. A recent analysis of the Senate Committee on Judiciary, quoting TEXCOM, explains that such procedures

> allow heirs and beneficiaries of such small estates to avoid the burdens and delays of formal probate administration. These provisions also allow heirs and beneficiaries to avoid costs which amount to a considerable percentage of a small estate. They also reduce the burdens on the judicial system and allow the courts to more efficiently focus on matters requiring greater judicial oversight and resources.[8]

That analysis provides several reasons why streamlined probate procedures exist. First, permitting the disposition of property by using either the affidavit or petition procedures helps allocate judicial resources more efficiently. Courts are able to focus their resources "on matters requiring greater judicial oversight," or, in other words, on estates and property above the specified value. In enacting the affidavit and petition procedures for small value property, it is likely that the Legislature determined that the disposition of small estates and property raise simpler issues when compared to larger estates.

Second, heirs and beneficiaries that are eligible to use these procedures avoid the expense and time required for formal probate proceedings. This is particularly important for small estates, where the costs of administration could consume a disproportionately large part of the total estate.

Thus, the streamlined disposition procedures function to conserve judicial resources while providing a less costly and burdensome alternative for small estates.

8. Senate Committee on Judiciary Analysis of AB 1305 (June 6, 2011), p. 4.

Purpose of Dollar Limits

The committee analysis cited above, again quoting TEXCOM, explains that the procedures are limited to property of small value in order to "balance the need for judicial oversight in formal probate administrations with the needs of judicial economy and to avoid overburdening small estates with administrative expenses."

Judicial oversight helps to prevent fraud and mistake. Unsupervised affidavit and petition procedures could be used by a person who is not the decedent's successor to obtain property to which that person is not entitled (either through fraud or innocent error). Without court oversight, such a transaction is more likely to occur and may be completed long before the problem is discovered.

Limiting the streamlined procedures to small estates reduces the scope for such problems to occur, and limits their magnitude when they do occur.

In deciding where to draw the limits on the application of the streamlined procedures, the Legislature is balancing concerns about the likelihood and seriousness of fraud and mistake, against the costs to the courts and beneficiaries of providing judicial oversight.

COST OF LIVING ADJUSTMENT

When a statute sets a dollar value, that value is based on a considered legislative policy choice. In the provisions discussed above, the choice reflects the proper balance to be struck between the costs and benefits of requiring judicial oversight for estates of small value.

Over time, inflation changes the balance that the Legislature originally struck. The real value of estates that qualify for the streamlined procedures diminishes, as the purchasing value of the specified dollar amounts declines.

Periodic cost of living adjustments ("COLAs") preserve the Legislature's intended policy balance. The Senate Committee on Judiciary, again quoting TEXCOM, explained that periodic adjustment of the dollar limits is necessary "to account for … the rise in asset values that occurs over time…."[9] The gradual reduction in the real value of the dollar limits that results from inflation makes the streamlined procedures unavailable for small estates that would have been eligible to use them in the past. This results in "increases in the costs and time

9. *Id.*

delays involved in formal probate administration, and increased burdens on the court system…."[10]

A dollar limit that remains the same for a number of years gradually changes the balance struck by the Legislature between the need for judicial oversight and judicial economy, because more small estates will be required to undergo formal probate as the natural consequence of rising asset values. It also disturbs the Legislature's goal to reduce administrative costs on small estates. Accordingly, "[t]he Legislature has regularly reemphasized the importance of maintaining this balance by adjusting the applicable limits regularly over time."[11]

The staff recommends that the existing dollar limits be adjusted to account for inflation since they were last adjusted.

INFLATION CALCULATIONS

If the Commission decides to recommend COLA revisions for the provisions discussed in this memorandum, it will need to select an appropriate cost of living index to use to calculate the adjustment amounts.

The staff has found statutes that use either the United States Bureau of Labor Statistics Consumer Price Index for All Urban Consumers ("USBLS Index") or the California Consumer Price Index ("CCPI") as a measure of inflation.[12]

When the Commission recommended COLA revisions to the dollar amounts used in the exemptions from money judgments, it used the CCPI.[13] The Commission described the CCPI as "the best single measure of cost-of-living changes affecting Californians[.]"[14]

However, one of the provisions discussed in this memorandum, Probate Code Section 13600, already includes an automatic COLA mechanism, which relies on the USBLS Index:

> 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

10. *Id.*
11. *Id.* at 5.
12. See, e.g., Gov't Code § 9360.9 (using USBLS Index); Rev. & Tax Code 2212 (using CCPI).
13. See *Exemptions from Enforcement of Money Judgments: Second Decennial Review*, 33 Cal. L. Revision Comm'n Reports 113 (2003).
14. *Id.* at 122.

> 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.[15]

Moreover, a 2013 bill that adjusted most of the amounts discussed in this memorandum used the USBLS Index to calculate the adjusted amounts.[16]

As shown in the table below, the difference between the USBLS Index and CCPI is significant, but still relatively modest. While the Commission previously considered the CCPI to be the best measure of inflation in California, **the staff recommends that the USBLS Index be used to adjust the amounts at issue in this memorandum.** That would be consistent with the Legislature's relatively recent decision to use the USBLS index to adjust most of those amounts.

The table below shows adjustments based on both indices to help illustrate their differences. For each provision, the year of enactment or last statutory adjustment is used as the baseline year to calculate the necessary COLAs. For the small estate set-aside, the $20,000 limit was last adjusted in 1977.[17] All of the other limits discussed above were adjusted fairly recently, in 2012.[18]

To estimate the rise in the cost of living between the baseline year and today, the consumer price index ("CPI") figure for all urban consumers from either January or February of the baseline year was compared to the most recent monthly CPI figures that both indices have in common.[19]

Using the USBLS index for calculations, the average cost of living in California between January 2012 and August 2017 has increased by approximately 8.32%; between 1977 and 2017 the increase was 320%.[20] The CCPI

15. Section 13600(e).
16. See 2011 Cal. Stat. ch. 117.
17. See former Sections 640-647; 1976 Cal. Stat. ch. 1028, § 2.
18. See 2011 Cal. Stat. ch. 117.
19. *California Consumer Price Index chart (1955-2017)*, CAL. DEP'T OF INDUS. REL., *available at* https://www.dir.ca.gov/oprl/CPI/EntireCCPI.PDF; *U.S. Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers: All Items [CPIAUCNS]*, retrieved from FRED, FED. RES. BANK OF ST. LOUIS, *available at* https://fred.stlouisfed.org/series/CPIAUCNS.
20. Using USBLS figures from January 1977 (58.5), January 2012 (226.665), and August 2017 (245.519). The factor from 1977 to 2017 is 4.1969; from 2012 to 2017, it is 1.0832. *U.S. Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers: All Items [CPIAUCNS], supra* note 19.

shows an increase of 11.72% from February 2012 to August 2017 and an increase of 352% from March 1977 to August 2017.[21]

All numbers in the chart are rounded to the nearest twenty-five ($25) dollars, as was done in Section 703.150(d) of the Code of Civil Procedure.

Sections	Short Description	Current Dollar Limit (Year Last Raised)	August 2017 USBLS Adjusted Value	August 2017 CCPI Adjusted Value
6602, 6609	Small estate set-aside	$20,000 (1977)	$83,950	$90,375
13050	Estate valuation exclusion of unpaid compensation	$15,000 (2012)	$16,250	$16,750
13100, 13101	Disposition of personal property by affidavit	$150,000 (2012)	$162,475	$167,575
13151, 13152, 13154	Petition for disposition of real property of a decedent	$150,000 (2012)	$162,475	$167,575
13200	Disposition of real property by affidavit	$50,000 (2012)	$54,150	$55,850
13600, 13601, 13602	Collection by affidavit of compensation owed to deceased spouse	$15,000 (2012)	$16,250	$16,750

As the table shows, the dollar values that were set in 2012 have significantly depreciated in the five-year period since their last adjustment.

The depreciation is much more dramatic for the small estate set-aside, which was last adjusted in 1977. The magnitude of that adjustment could lead to some reluctance to make such a large change. However, it is important to realize that the small estate set-aside is a judicially supervised procedure. The set-aside is not automatic. The court exercises discretion in deciding whether to set the estate aside for the benefit of the surviving spouse and children, based on an appraisal of their needs, the needs of other heirs and creditors, and the decedent's intent.[22] Thus, the principal arguments against making such an adjustment — concerns about increased risk of fraud and mistake — are not germane.

21. Using CCPI figures from March 1987 (58.3), February 2012 (235.828), and August 2017 (263.473). The factor from 1977 to 2017 is 4.5193; from 2012 to 2017, it is 1.1172. *California Consumer Price Index chart*, *supra* note 19.

22. Section 6609.

AUTOMATIC COLA PROVISION

In addition to making a one-time adjustment to current dollar values, the Commission may wish to recommend the creation of an automatic COLA procedure, which would adjust the dollar limits discussed above without the need for statutory revision.

A good model of how this could be done is provided in Code of Civil Procedure Section 703.150, which was added on the Commission's recommendation.[23] It provides, in relevant part:

> (a) On April 1, 2004, and at each three-year interval ending on April 1 thereafter, the dollar amounts of exemptions provided in subdivision (b) of Section 703.140 in effect immediately before that date shall be adjusted as provided in subdivision (d).
>
> …
>
> (d) The Judicial Council shall determine the amount of the adjustment based on the change in the annual California Consumer Price Index for All Urban Consumers, published by the Department of Industrial Relations, Division of Labor Statistics, for the most recent three-year period ending on December 31 preceding the adjustment, with each adjusted amount rounded to the nearest twenty-five dollars ($25).
>
> (e) Beginning April 1, 2004, the Judicial Council shall publish a list of the current dollar amounts of exemptions provided in subdivision (b) of Section 703.140 …, together with the date of the next scheduled adjustment. …
>
> (f) Adjustments made under subdivision (a) do not apply with respect to cases commenced before the date of the adjustment, subject to any contrary rule applicable under the federal Bankruptcy Code. ….

Section 703.150 provides that the specified exemptions are adjusted every three years, based on calculations performed by the Judicial Council. The Judicial Council then has the duty to publish the newly adjusted amounts. Because the adjustments only occur every three years, and Judicial Council is not required to *formally* promulgate the results, the implementation cost is relatively low.

As noted earlier, Section 13600 already includes an automatic COLA provision. But, unlike the provision set out above, it does not provide any mechanism for official calculation and publication of the adjusted amount. This means that all surviving spouses who wish to use the process established in Section 13600 to collect compensation owed to their deceased spouses, must

23. *Exemptions from Enforcement of Money Judgments: Second Decennial Review*, 33 Cal. L. Revision Comm'n Reports 113 (2003).

make their own calculations of the governing dollar limit. The dollar amount stated in the statute itself will not be correct. Many surviving spouses will lack the ability to easily make the necessary COLA calculation (and then convince the deceased spouse's employer that the calculation is correct). That problem was noted in an Assembly Committee on Judiciary analysis, again quoting TEXCOM:

> Though this limit is subject to a cost of living adjustment, it is often difficult for a grieving widow or widower to compose themselves sufficiently to research the effect of that adjustment. The simplified procedures for administering a decedent's estate are supposed to reduce the survivor's reliance on paid advisors and speed the collection of relatively small amounts. These purposes are not fulfilled if the widow or widower cannot calculate without advice the amount that may be collected from the decedent's employer.[24]

That problem would be avoided if the surviving spouse could readily look up an officially-calculated adjusted amount.

The general approach described above is also used in the Uniform Probate Code ("UPC"). UPC Section 1-109 includes an annual automatic COLA mechanism that applies to provisions of the UPC that govern the disposition of a decedent's property or estate. Like Section 703.150 of the Code of Civil Procedure, UPC Section 1-109 requires that a public entity calculate and publish the adjusted amounts.

The comment to Section 1-109 notes that the Uniform Law Commission ("ULC") added the section "to make it unnecessary in the future for the ULC or individual enacting states to continue to amend the UPC periodically to adjust the dollar amounts for inflation."

CONCLUSION

The Commission should decide whether it wishes to update the dollar limits to reflect the effect of inflation since they were last adjusted. **The staff recommends doing so.** The Legislature has already struck a policy balance between judicial oversight, judicial economy, and the appropriate financial burden to impose on small estates. COLA revisions help to preserve that policy balance against degradation over time.

If the Commission agrees, it will need to decide which inflation index to use for the adjustments. As noted, the CCPI is probably the better measure of

24. Assembly Committee on Judiciary Analysis of AB 2267 (May 9, 2006), p. 4.

inflation in California. **Nonetheless, the staff recommends using the USBLS Index.** That is the index that the Legislature used when last adjusting most of the amounts discussed above, in 2012. There is value in consistency in making these calculations.

If the Commission decides to recommend COLA revisions, it should also decide whether to add an automatic COLA provision along the lines described above. This would avoid any need for future statutory COLA revisions. It would also provide a relatively low cost administrative process for calculation and publication of the adjusted amounts. There is precedent for doing so, with the Commission itself having recommended such a mechanism for automatic adjustment of the exemptions from the enforcement of money judgments. The UPC also includes a similar mechanism. **The staff recommends that such a mechanism be included in this study.**

If the Commission decides to proceed, the staff will prepare implementing language for consideration at a future meeting.

Respectfully submitted,

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