

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

**Disposition of Estate Without
Administration: Liability of Transferee**

May 2020

California Law Revision Commission
c/o UC Davis School of Law
Davis, CA 95616
www.clrc.ca.gov

NOTE

This report includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were already operative, since their primary purpose is to explain the law as it will exist to those who will have occasion to use it after it is operative. The Comments are legislative history and are entitled to substantial weight in construing the statutory provisions. For a discussion of cases addressing the use of Law Revision Commission materials in ascertaining legislative intent, see the Commission's most recent *Annual Report*.

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CALIFORNIA LAW REVISION COMMISSION

c/o UC Davis School of Law
Davis, CA 95616

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May 21, 2020

To: The Honorable Gavin Newsom
Governor of California, and
The Legislature of California

The Probate Code includes procedures that allow a person to receive property from a decedent's estate without probate administration. This recommendation focuses on two of those procedures, which allow the decedent's devisee or heir to (1) take personal property from a small estate or (2) take real property of small value.

Under those procedures, the transferee is personally liable for the decedent's unsecured debts and is also liable if another person has a "superior right" to the property (i.e., the transferee was not actually the decedent's devisee or heir with respect to the property taken). In addition, if the decedent's estate is being administered, the personal representative can require that transferred property be returned to the estate for use in paying the decedent's obligations or for transfer to a person with a superior right. If the property was taken fraudulently, the transferee is liable for three times the value of the property taken.

This recommendation proposes improvements to those liability rules, including revisions to do the following:

- Eliminate the personal representative's authority to require the return of transferred property to pay the decedent's unsecured debts.
- Replace the property return rule with a provision that makes the transferee personally liable to the decedent's estate for a calculated share of the decedent's unsecured debts.
- Make clear that a transferee's liability for the decedent's unsecured debts includes the decedent's funeral expenses and expenses of last illness, as well as any wage claims made against the decedent's estate.
- Expressly authorize a transferee to voluntarily return transferred property to the estate for administration.
- If the personal representative requires the return of transferred property because there is a person with a superior right, any treble damage award for fraud would go to the person with a superior right to the property, rather than to the estate generally. However, the award would first be used to reimburse the estate for the cost of the proceeding to recover the property.
- Existing rules provide for adjustments to the value of transferred property that is returned to the decedent's estate. Those rules would be standardized and generalized.

This recommendation was prepared pursuant to Resolution Chapter 158 of the Statutes of 2018.

Respectfully submitted,

Victor King
Chairperson

DISPOSITION OF ESTATE WITHOUT ADMINISTRATION: LIABILITY OF TRANSFEREE

BACKGROUND

Ordinarily, a decedent's estate must be administered before estate property can pass to a devisee or heir. As part of administration, the decedent's property is used to pay the decedent's debts and other obligations.

However, there are procedures that allow a decedent's property to pass to a devisee or heir without administration, in limited circumstances. One allows the devisee or heir to take personal property from a small estate.¹ Another allows the devisee or heir to take real property of small value.²

In both cases, the person who takes the property (hereafter the "transferee") is personally liable for the decedent's unsecured debts, up to the value of the property taken. In addition, the transferee is personally liable to a person with a "superior right" (i.e., if the transferee was not actually the decedent's devisee or heir with regard to the property, then the actual devisee or heir has a superior right to that property). In addition, if the decedent's estate is being administered, the transferee is liable to the decedent's estate for restitution of the property received (to the extent required to satisfy the decedent's debts or superior right claims).

This recommendation proposes improvements to those liability rules.

RESTITUTION LIABILITY

Under existing law, if a decedent's estate is being administered, the personal representative can require that property transferred under one of the procedures discussed above be returned to the

1. See generally Prob. Code §§ 13100-13116.

2. See generally Prob. Code §§ 13200-13210.

estate for use in paying the decedent's obligations.³ Return can also be required where another person has a superior right to the property at issue.⁴

When this liability is enforced for the payment of debts, its effect can be unduly burdensome. If a transferee is required to return a tangible asset to the estate, rather than a pecuniary gift, that asset would need to be sold in order to use its value in paying the estate's debts. That would deprive the transferee of ownership, which could be undesirable and contrary to the decedent's intentions, particularly if the gift has sentimental or heirloom value.

That problem would be especially acute where the transferee has sufficient funds to simply pay an appropriate share of liability for decedent debts and is willing to do so. Existing law does not expressly authorize that alternative.

The Commission recommends that the existing procedures be revised to address that issue. The proposed reform would have three parts:

Limit Scope of Restitution Liability

The proposed law would revise the restitution provisions to make them inapplicable to the payment of decedent debt.⁵

The restitution remedy would remain applicable to address a claim by a person with a superior right to the property.⁶ In the latter case, restitution is the best way to effectuate the decedent's intentions, because it would ensure that an item of tangible

3. See Prob. Code §§ 13111 (transfer of personal property), 13206 (transfer of real property).

4. See Prob. Code §§ 13111 (transfer of personal property), 13206 (transfer of real property).

5. See proposed amendments to Prob. Code §§ 13111 (transfer of personal property), 13206 (transfer of real property) *infra*.

6. See proposed amendments to Prob. Code §§ 13111 (transfer of personal property), 13206 (transfer of real property) *infra*.

property with sentimental or heirloom value goes to the right person.

Personal Liability to Estate

If the restitution provision is made unavailable for use in paying the decedent's debts, it would be necessary to provide a replacement, so that the transferee does not entirely escape liability to the estate for a share of the decedent's debts.

The proposed law would provide such a replacement. It would add a provision that establishes a transferee's personal liability to the estate for a share of the decedent's unsecured debts.⁷ The share would be calculated by applying the existing rules of abatement (which establish rules for determining the order in which gifts are consumed for the payment of a decedent's obligations).⁸ Payment of that share would eliminate the transferee's direct personal liability to a decedent's unsecured creditors.⁹ If the transferee had previously made any direct payments to creditors, those payments would be credited against the transferee's liability to the estate.¹⁰

7. See proposed Prob. Code §§ 13109.5 (transfer of personal property), 13204.5 (transfer of real property) *infra*.

8. See proposed Prob. Code §§ 13109.5(b) (transfer of personal property), 13204.5(b) (transfer of real property) *infra*. The cost of making this calculation would be borne by the transferee. See proposed Prob. Code §§ 13109.5(e) (transfer of personal property), 13204.5(e) (transfer of real property) *infra*.

9. See proposed Prob. Code §§ 13109(c) (transfer of personal property), 13204(c) (transfer of real property) *infra*.

10. See proposed Prob. Code §§ 13109.5(d), second sentence (transfer of personal property), 13204.5(d), second sentence (transfer of real property) *infra*. If the amount paid were to exceed the transferee's share of liability, the difference would be reimbursed. That reimbursement would be given a higher payment priority than the decedent's unsecured debts. See proposed Prob. Code §§ 13109.5(d), third and fourth sentences (transfer of personal property), 13204.5(d), third and fourth sentences (transfer of real property) *infra*.

Voluntary Property Return

Finally, a provision would be added that would permit a transferee to voluntarily return transferred property to the estate for administration.¹¹ That would not be an attractive option in many cases, because it would subject the property to the added cost and delay associated with administration. However, there might be circumstances where simply returning the property would be the best solution (especially if the transferee lacks sufficient funds to pay the estate the transferee's share of liability and does not want the burden of liquidating the transferred property).

SCOPE OF LIABILITY

Under existing law, a transferee is liable for the decedent's "unsecured debts."¹² However, it is not entirely clear whether that liability extends to the decedent's funeral expenses, expenses of last illness, and wage claims. Under existing law, those specific types of obligations are treated differently than the decedent's "general debts."¹³

The Commission found no good policy reason to exclude the listed obligations from the transferee's liability for the decedent's debts. The Commission recommends revising the statute to make clear that a transferee's liability includes funeral expenses, expenses of last illness, and wage claims.¹⁴

However, the Commission does not recommend that a transferee be made liable for a share of the general costs of estate administration. One of the main purposes of the procedures at issue here is to spare the transferee the cost of probate.

11. See proposed Prob. Code §§ 13110.5 (transfer of personal property), 13205.5 (transfer of real property) *infra*.

12. See Prob. Code §§ 13109, 13204.

13. See, e.g., Prob. Code § 11420.

14. See proposed Prob. Code §§ 13100.5(c), 13202.5(c) *infra*.

TREBLE DAMAGES FOR FRAUD

Under the existing procedures, a transferee who fraudulently takes property from the decedent's estate is liable for an additional penalty of three times the value of the transferred property.¹⁵ That penalty is imposed differently, in two different scenarios:

- (1) It can be imposed as part of the transferee's personal liability to a person with a superior right to the transferred property. In that scenario, the penalty is paid to the person with the superior right.¹⁶
- (2) It can be imposed when the transferred property is returned to the estate.¹⁷ In that scenario, the penalty is paid to the decedent's estate.

The proposed legislation would add language stating expressly that the penalty can only be applied once per incident of fraud. If the penalty is imposed in one of the scenarios described above, it could not be imposed in the other.¹⁸

In addition, the proposed legislation would change the recipient of the treble damages when imposed in an action brought by the estate for the return of the transferred property.¹⁹ Under existing law, that restitution is paid to the estate generally. The proposed legislation would instead provide for payment of treble damages to the person with a superior right to the transferred property (after reimbursing the estate's costs in bringing the action).

The Commission believes that the penalty should be paid to the person who was most directly harmed by the transferee's fraud — the person with the superior right to the property that was fraudulently taken. That result would be more fair than paying the

15. See Prob. Code §§ 13110(b), 13111(b), 13205(b), 13206(b).

16. Prob. Code §§ 13110(b), 13205(b).

17. Prob. Code §§ 13111(b), 13206(b).

18. See proposed Prob. Code §§ 13110(b), 13111(b), 13205(b), 13206(b) *infra*.

19. See proposed Prob. Code §§ 13111(b), 13206(b) *infra*.

award to the estate generally, where it would often be distributed to the decedent's residuary beneficiaries.

ADJUSTMENTS TO VALUE OF RETURNED PROPERTY

Under the existing restitution provisions, the value of the property to be returned to the estate can be adjusted, up or down, based on events that occurred after the property was transferred. For example, if the transferee improved real property, the transferee may be entitled to reimbursement for any increase in the property's fair market value.²⁰ Conversely, if the transferee extracted income from the property before its return, the transferee could be liable for restitution of that income, along with the property that generated it.²¹

The provisions that govern restitution of transferred property apply to a number of different situations. The statutes differentiate between cases where the transferee does or does not still possess the property,²² as well as cases where the property has or has not been improved by the transferee.²³ The adjustment rules are not applied consistently across those different situations.²⁴ The Commission sees no policy reason for that inconsistent treatment. It recommends that the adjustment rules be standardized so that they apply consistently in all cases.²⁵

20. See Prob. Code § 13206(c).

21. See Prob. Code §§ 13111(a)(1) (transfer of personal property), 13206(a)(1) (transfer of real property).

22. See Prob. Code §§ 13111(a)(1) & (2) (transfer of personal property); 13206(a)(1) & (2) (transfer of real property).

23. See Prob. Code § 13206(c) (transfer of real property).

24. For example, if a transferee is required to return real property that has been significantly improved, the transferee is entitled to reimbursement for having made a payment on any liens or encumbrances that were on the property when it was received. See Prob. Code §13206(c)(1)(B). If the transferee is required to return real property that was not significantly improved, the statute does not provide for any such reimbursement. See Prob. Code § 13206(a)(1).

25. See proposed Prob. Code §§ 13111(c), 13206(d) *infra*.

The Commission also recommends that the rules requiring restitution of income derived from transferred property be limited to income that would have been received by the estate if it had retained possession and control of the property.²⁶ This differentiates between income that is an innate part of an asset (e.g., dividends paid for shares of stock) from income that was created by the transferee's own initiative (e.g., income derived from using the property as part of the transferee's business). The former should be returned to the estate; the latter should not.

Finally, the Commission proposes that the basic principles underlying the adjustment rules be generalized, rather than relying on a set of specific rules.²⁷ This would allow for an appropriate adjustment to be made in circumstances that are not directly addressed by the existing rules.

If the decedent's personal representative and the transferee cannot agree on the adjustments to be made, either party could petition the court for a determination. In making that determination the court would consider whether the parties acted in good faith and whether a particular adjustment would impose an unfair burden.²⁸

MINOR SUBSTANTIVE AND TECHNICAL CHANGES

The proposed law would also make a minor substantive change and a small number of technical changes to the statutes affected by the reforms described above.²⁹

The minor substantive change involves the existing provisions that prescribe the scope of a transferee's aggregate personal

26. See proposed Prob. Code §§ 13110(a)(2), 13113(b)(2), 13205(a)(2), 13208(b)(2) *infra*.

27. See proposed Prob. Code §§ 13111(c), 13113, 13206(d), 13208 *infra*.

28. See proposed Prob. Code §§ 13113(e), 13208(e) *infra*.

29. The technical changes are noted in the Comments that follow the affected sections, *infra*.

liability to the decedent's creditors.³⁰ Under those provisions, the transferee's liability cannot exceed the fair market value of the property at the time it was received, plus net income derived from the property, and if the transferee no longer possesses the property, interest on the fair market value of the property from the date of disposition.³¹ The Commission sees no good policy reason to make the transferee liable to the decedent's creditors for income or interest that accrued after the transferee received the property. Creditors have no interest in estate property after it has been distributed. For that reason, the proposed law would delete the income and interest provisions from the rule that determines a transferee's aggregate liability to the decedent's creditors.³²

The same considerations do not apply to a transferee's liability to a person with a superior right to the property. In that instance, the transferee had no right to receive the property in the first place. It should have gone to the person with the superior right. For that reason, the transferee should be made to return not just the transferred property, but any value that would have accrued to that property.³³

30. See Prob. Code §§ 13113, 13208 *infra*.

31. See Prob. Code §§ 13113(b), 13208(b) (transfer of real property) *infra*.

32. See proposed Prob. Code §§ 13109(b), 13109.5(b)(2) 13204(b), 13204.5(b)(2) *infra*.

33. See proposed Prob. Code §§ 13110(a)(2), 13110(a)(3), 13111(a)(2), 13111(c), 13113(b)(2) (transfer of personal property); 13205(a)(2), 13205(a)(3), 13206(a)(2), 13206(d), 13208(b)(2) (transfer of real property) *infra*.

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PROPOSED LEGISLATION

PART 1. COLLECTION OR TRANSFER OF SMALL ESTATE WITHOUT ADMINISTRATION

CHAPTER 3. AFFIDAVIT PROCEDURE FOR COLLECTION OR TRANSFER OF PERSONAL PROPERTY

Prob. Code § 13100.5 (added). Definitions

SEC. ____. Section 13100.5 is added to the Probate Code, to read:
13100.5. For the purposes of this chapter, the following terms have the following meanings:

(a) “Transferee” means a person to whom payment, delivery, or transfer of property is made under this chapter.

(b) “Transferred property” means property that is paid, delivered, or transferred pursuant to an affidavit or declaration executed under Section 13101.

(c) “Unsecured debts” includes, but is not limited to, a decedent’s funeral expenses, expenses of a decedent’s last illness, and wage claims.

Comment. Section 13100.5 is new.

Subdivisions (a) and (b) are nonsubstantive. They are added for drafting convenience.

Subdivision (c) clarifies the scope of a transferee’s liability for a decedent’s obligations.

Prob. Code § 13109 (amended). Personal liability for decedent’s unsecured debts

SEC. ____. Section 13109 of the Probate Code is amended to read:

13109. ~~(a) A person to whom payment, delivery, or transfer of the decedent’s property is made under this chapter~~ A transferee is personally liable to the extent provided in ~~Section 13112, this section~~ this section for the unsecured debts of the decedent. ~~Any such~~ That

debt may be enforced against the ~~person transferee~~ transferee in the same manner as it could have been enforced against the decedent if the decedent had not died. In any action based upon the debt, the ~~person transferee~~ transferee may assert any ~~defenses, cross-complaints, or setoffs~~ defense, cross-complaint, or setoff that would have been available to the decedent if the decedent had not died. Nothing in this section permits enforcement of a claim that is barred under Part 4 (commencing with Section 9000) of Division 7. Section 366.2 of the Code of Civil Procedure applies in an action under this section.

(b) The personal liability under subdivision (a) shall not exceed the fair market value of the transferred property at the time the affidavit or declaration is presented under this chapter, less the amount of any liens and encumbrances on the transferred property at that time, and less the amount of any payment made pursuant to subdivision (a) of Section 13110.

(c) A transferee is not liable under this section if the transferee has satisfied the requirements of Section 13109.5, 13110.5, or 13111.

Comment. Subdivision (a) of Section 13109 is amended to make technical revisions.

Subdivision (b) is drawn from former Section 13112(b), except that it does not include the net income or interest elements of that provision. See also Section 13110(a).

Subdivision (c) is added to state the relationship between Section 13109 and Sections 13109.5, 13110.5, and 13111. It is drawn in part from former Section 13112(a).

See also Section 13100.5(a) (“transferee”), Section 13100.5(b) (“transferred property”).

Prob. Code § 13109.5 (added). Liability to estate for decedent’s unsecured debts

SEC. ____. Section 13109.5 is added to the Probate Code, to read:
13109.5. (a) If proceedings for the administration of the decedent’s estate are commenced, a transferee is personally liable to the estate for a share of the decedent’s unsecured debts.

(b) In calculating the transferee's share of liability under subdivision (a), the abatement rules provided in Part 4 (commencing with Section 21400) of Division 11 shall be applied, using all of the following assumptions:

(1) Transferred property shall be treated as if it had remained in the estate for administration.

(2) Any unsecured debts of the decedent that were paid by the transferee pursuant to Section 13109 shall be treated as if they were claims made against the decedent's estate.

(c) The personal representative shall provide a written statement of liability to the transferee, which specifies the amount that must be paid to the estate.

(d) The transferee is personally liable to the estate for the amount specified in the statement of liability. Any amount that the transferee paid pursuant to Section 13109 or 13110 shall be credited against the amount that the transferee owes the estate under this subdivision. If the amount that the transferee paid pursuant to Section 13109 or 13110 exceeds the amount specified in the written statement of liability, the estate shall reimburse the difference to the transferee. For the purposes of Section 11420, that reimbursement shall be deemed an expense of administration.

(e) The reasonable cost of proceeding under this section shall be reimbursed as an extraordinary service under Sections 10801 and 10811. The transferee is liable for the payment of that cost, which shall be separately identified in the statement of liability.

(f) A transferee is not liable under this section if the transferee has satisfied the requirements of Section 13110.5 or 13111.

Comment. Section 13109.5 is new.

Subdivision (f) is similar to former Section 13112(a).

See also Section 13100.5(a) ("transferee"), Section 13100.5(b) ("transferred property").

Prob. Code § 13110 (amended). Personal liability to person with superior right

SEC. _____. Section 13110 of the Probate Code is amended to read:

13110. (a) Except as provided in subdivision (b), ~~each person to whom payment, delivery, or transfer of the decedent's property is made under this chapter~~ a transferee is personally liable ~~to the extent provided in Section 13112~~ to any person having a superior right to transferred property by testate or intestate succession from the decedent. Except as provided in subdivision (b), the personal liability established by this subdivision shall not exceed the sum of the following, less the amount of any payment made pursuant to Section 13109 or Section 13109.5:

(1) The fair market value of the transferred property at the time the affidavit or declaration is presented under this chapter, less the amount of any liens and encumbrances on the transferred property at that time.

(2) Income received from the property, if that income would have accrued to the estate had the property not been transferred to the transferee.

(3) If the property has been disposed of, interest on the fair market value of the transferred property from the date of disposition at the rate payable on a money judgment. For the purposes of this paragraph, "fair market value of the transferred property" means the fair market value of the transferred property, determined as of the time of the disposition of the property, less the amount of any liens and encumbrances on the property at the time the property was paid, delivered, or transferred to the transferee.

(b) In addition to any other liability the ~~person~~ transferee has under this section and Sections 13109, 13109.5, 13111, and ~~13112~~ 13113, any person who fraudulently secures the payment, delivery, or transfer of the decedent's property under this chapter is liable to the person having ~~such~~ a superior right to that property by testate or intestate succession from the decedent for three times the fair market value of the property. For the purposes of this subdivision, the "fair market value of the property" is the fair market value of the property paid, delivered, or transferred to the person liable under this subdivision, valued as of the time the person liable under this subdivision presents the affidavit or declaration under

this chapter to the holder of the decedent's property, less any liens and encumbrances on that property at that time.

(c) An action to impose liability under this section is forever barred three years after the affidavit or declaration is presented under this chapter to the holder of the decedent's property, or three years after the discovery of the fraud, whichever is later. The three-year period specified in this subdivision is not tolled for any reason.

(d) A transferee is not liable under subdivision (a) if the transferee has satisfied the requirements of Section 13110.5 or 13111.

Comment. Subdivision (a) of Section 13110 is amended to continue a rule drawn from former Section 13112(b) (scope of liability). See also Section 13109(b). Subdivision (a) is also amended to make technical revisions.

Subdivision (b) is amended to provide that income received from the property need only be returned if it would have accrued to the estate had the property remained in the estate. The subdivision is also amended to add a reference to Section 13109.5 and to make technical revisions.

Subdivision (d) is added to state the relationship between this section and Sections 13110.5 and 13111. It is drawn in part from former Section 13112(a).

See also Section 13100.5(a) ("transferee"), (b) ("transferred property").

Prob. Code § 13110.5 (added). Voluntary return of transferred property to the estate

SEC. ____ . Section 13110.5 is added to the Probate Code, to read:

13110.5. (a) If proceedings for the administration of a decedent's estate are commenced, a transferee may voluntarily return transferred property to the decedent's estate for administration.

(b) The property to be restored to the estate under this section shall be reduced or increased as provided in Section 13113.

Comment. Section 13110.5 is new.

See also Section 13100.5(a) ("transferee"), Section 13100.5(b) ("transferred property").

Prob. Code § 13111 (amended). Liability for return of transferred property to estate

SEC. _____. Section 13111 of the Probate Code is amended to read:

~~13111. (a) Subject to the provisions of this section, if proceedings for the administration of the decedent's estate are commenced in this state, or if the decedent's personal representative has consented to the payment, transfer, or delivery of the decedent's property under this chapter and the personal representative later requests that the property be restored to the estate, each person to whom payment, delivery, or transfer of the decedent's property is made under this chapter is liable for:~~

If property is paid, delivered, or transferred to a transferee under this chapter, and the decedent's personal representative determines that another person has a superior right to the property by testate or intestate succession from the decedent, the personal representative may request that the transferred property be restored to the estate. Subject to subdivisions (b), (c), (d), (e), and (g) if the personal representative makes that request, the transferee is liable for all of the following:

~~(1) The~~ If the transferee still has the transferred property, restitution of the transferred property to the decedent's estate ~~if the person still has the property, together with (A) the net income the person received from the property and (B) if the person encumbered the property after it was delivered or transferred to the person, the amount necessary to satisfy the balance of the encumbrance as of the date the property is restored to the estate.~~

~~(2) The~~ If the transferee no longer has the transferred property, restitution to the decedent's estate of the fair market value of the transferred property ~~if the person no longer has the property, together with (A) the net income the person received from the property and (B) plus interest from the date of disposition at the rate payable on a money judgment on the fair market value of the transferred property.~~ For the purposes of this subdivision paragraph, the "fair market value of the transferred property" is the fair market value of the transferred property, determined as of the time of the disposition of the transferred property, ~~of the property~~

~~paid, delivered, or transferred to the person under this chapter, less the amount of any liens and encumbrances on the transferred property at that the time the property was paid, delivered, or transferred to the person under this chapter.~~

(b) Subject to subdivision (c) and subject to any additional liability the ~~person transferee~~ has under Sections 13109 to ~~13112~~ 13113, inclusive, if the ~~person transferee~~ fraudulently secured the payment, delivery, or transfer of the decedent's property under this chapter, the ~~person transferee~~ is liable under this section for restitution ~~to the decedent's estate~~ of three times the fair market value of the transferred property. For the purposes of this subdivision, the "fair market value of the transferred property" is the fair market value of the transferred property, determined as of the time the person liable under this subdivision presents the affidavit or declaration under this chapter, ~~of the property paid, delivered, or transferred to the person under this chapter, less the amount of any liens and encumbrances on the property at that time.~~ Restitution provided under this subdivision shall first be used to pay the estate's cost of proceeding under this section, with the remainder paid to the person who has a superior right to the property by testate or intestate succession.

(c) The property and amount required to be restored to the estate under this section shall be reduced ~~by any property or amount paid by the person to satisfy a liability under Section 13109 or 13110 or increased as provided in Section 13113.~~

(d) An action to enforce the liability under this section may be brought only by the personal representative of the estate of the decedent. ~~Whether or not the personal representative brings an action under this section, the personal representative may enforce the liability only to the extent necessary to protect the interests of the heirs, devisees, and creditors of the decedent.~~

(e) An action to enforce the liability under this section is forever barred three years after presentation of the affidavit or declaration under this chapter to the holder of the decedent's property, or three years after the discovery of the fraud, whichever is later. The three-

year period specified in this subdivision is not tolled for any reason.

(f) In the case of a nondomiciliary decedent, restitution under this section shall be made to the estate in an ancillary administration proceeding.

(g) A transferee is not liable under subdivision (a) if the transferred property was returned to the estate under Section 13110.5.

Comment. Section 13111 is amended to limit the application of the provision to claims by a person with a superior right, to delete language that is continued and generalized in Section 13113, and to make technical revisions.

Subdivision (b) is amended to change the disposition of treble damages awarded under the subdivision.

Subdivision (d) is amended to delete the second sentence. With the section limited to preclude its application to creditor claims, the deleted sentence became superfluous.

Subdivision (g) is added to state the relationship between this section and Section 13110.5.

See also Section 13110.5(a) (“transferee”), Section 13110.5(b) (“transferred property”).

Prob. Code § 13112 (repealed). Scope of personal liability under Sections 13109 and 13110

SEC. ____ . Section 13112 of the Probate Code is repealed.

Comment. Section 13112 is repealed. The substance of former Section 13112(a) is continued in Sections 13109(c) and 13110(d). For a similar rule, see Section 13109.5(f),

The substance of former Section 13112(b) is continued in Sections 13109(b) and 13110(a), except that Section 13109(b) does not continue the part of former Section 13112(b) that related to income and interest.

Prob. Code § 13113 (added). Adjustment to liability under Section 13110.5 or 13111

SEC. ____ . Section 13113 is added to the Probate Code, to read:

13113. (a) If the transferee’s action or inaction increased the value of property returned to the estate or decreased the estate’s obligations, the personal representative shall reimburse the

transferee by the same amount. Actions or inaction that increase the value of returned property or decrease the estate's obligations include, but are not necessarily limited to, the following actions:

(1) A payment toward an unsecured debt of the decedent.

(2) A payment toward a debt secured against the returned property.

(3) A significant improvement of the returned property that increased the fair market value of the property.

(b) If the transferee's action or inaction decreased the value of property returned to the estate or increased the estate's obligations, the transferee is personally liable to the estate for that amount. Actions or inaction that decrease the value of the returned property or increase the estate's obligations include, but are not necessarily limited to, the following actions or inaction:

(1) An action or inaction that resulted in a lien or encumbrance being recorded against the property.

(2) The receipt of income from the property, if that income would have accrued to the estate had the property not been transferred to the transferee.

(c) The personal representative shall provide the transferee a written statement of any reimbursement or liability under this section, along with a statement of the reasons for the reimbursement or liability.

(d) For the purposes of Section 11420, reimbursement of the transferee under subdivision (a) shall be deemed an expense of administration.

(e) In the event that the transferee and the personal representative cannot agree on the reimbursement or liability due under this section, the transferee or personal representative may petition the court for an order determining the amount of the reimbursement or liability. In making a decision under this subdivision, the court should consider the surrounding circumstances, including whether the parties acted in good faith and whether a particular result would impose an unfair burden on the transferee or the estate.

Comment. Section 13113 is new. It generalizes language that was deleted from Section 13111(a) and provides a procedure for determining the adjustments to be made under Sections 13110.5 and 13111(c).

See also Section 13100.5(a) (“transferee”).

Prob. Code § 13114 (added). Value of returned property included in value of estate

SEC. ____. Section 13114 is added to the Probate Code, to read:

13114. If transferred property is returned to the estate under Sections 13110.5 or 13111, the value of that property shall be included in the total value of the estate, for all purposes.

Comment. Section 13114 is new.

See also Section 13100.5(b) (“transferred property”).

CHAPTER 5. AFFIDAVIT PROCEDURE FOR
REAL PROPERTY OF SMALL VALUE

Prob. Code § 13202.5 (added). Definitions

SEC. ____. Section 13202.5 is added to the Probate Code, to read:

13202.5. For the purposes of this chapter, the following terms have the following meanings:

(a) “Transferee” means a person designated as a successor of the decedent in a certified copy of an affidavit issued under Section 13202.

(b) “Transferred property” means property transferred to a transferee pursuant to a certified copy of an affidavit issued under Section 13202.

(c) “Unsecured debts” includes, but is not limited to, a decedent’s funeral expenses, expenses of a decedent’s last illness, and wage claims.

Comment. Section 13202.5 is new.

Subdivisions (a) and (b) are nonsubstantive. They are added for drafting convenience.

Subdivision (c) clarifies the scope of a transferee’s liability for a decedent’s obligations.

See also Section 13006 (“successor of the decedent”).

Prob. Code § 13204 (amended). Personal liability for decedent's unsecured debts

SEC. _____. Section 13204 of the Probate Code is amended to read:

13204. ~~(a) Each person who is designated as a successor of the decedent in a certified copy of an affidavit issued under Section 13202~~ A transferee is personally liable to the extent provided in ~~Section 13207~~ this section for the unsecured debts of the decedent. ~~Any such~~ That debt may be enforced against the ~~person~~ transferee in the same manner as it could have been enforced against the decedent if the decedent had not died. In any action based upon the debt, the ~~person~~ transferee may assert any defense, cross-complaint, or setoff that would have been available to the decedent if the decedent had not died. Nothing in this section permits enforcement of a claim that is barred under Part 4 (commencing with Section 9000) of Division 7. Section 366.2 of the Code of Civil Procedure applies in an action under this section.

(b) The personal liability under subdivision (a) shall not exceed the fair market value of the transferred property at the time of the issuance of the certified copy of the affidavit under Section 13202, less the amount of any liens and encumbrances on the transferred property at that time, and less the amount of any payment made pursuant to subdivision (a) of Section 13205.

(c) The transferee is not liable under this section if the transferee has satisfied the requirements of Section 13204.5, 13205.5, or 13206.

Comment. Subdivision (a) of Section 13204 is amended to make technical revisions.

Subdivision (b) is drawn from former Section 13207(b), except that it does not include the net income or interest elements of that provision. See also Section 13205(a).

Subdivision (c) is added to state the relationship between Section 13204 and Section 13204.5, 13205.5, or 13206. It is drawn in part from former Section 13207(a).

See also Section 13202.5(a) (“transferee”), Section 13202.5(b) (“transferred property”).

Prob. Code § 13204.5 (added). Liability to estate for decedent's unsecured debts

SEC. ____ . Section 13204.5 is added to the Probate Code, to read:

13204.5. (a) If proceedings for the administration of the decedent's estate are commenced, a transferee is personally liable to the estate for a share of the decedent's unsecured debts.

(b) In calculating the transferee's share of liability under subdivision (a), the abatement rules provided in Part 4 (commencing with Section 21400) of Division 11 shall be applied, using all of the following assumptions:

(1) Transferred property under this chapter shall be treated as if it had remained in the estate for administration.

(2) Any unsecured debts of the decedent that were paid by the transferee pursuant to Section 13204 shall be treated as if they were claims made against the decedent's estate.

(c) The personal representative shall provide a written statement of liability to the transferee, which specifies the amount that must be paid to the estate.

(d) The transferee is personally liable to the estate for the amount specified in the statement of liability. Any amount that the transferee paid pursuant to Section 13204 or 13205 shall be credited against the amount that the transferee owes the estate under this subdivision. If the amount that the transferee paid pursuant to Section 13204 or 13205 exceeds the amount specified in the written statement of liability, the estate shall reimburse the difference to the transferee. For the purposes of Section 11420, that reimbursement shall be deemed an expense of administration.

(e) The reasonable cost of proceeding under this section shall be reimbursed as an extraordinary service under Sections 10801 and 10811. The transferee is liable for the payment of that cost, which shall be separately identified in the statement of liability.

(f) The transferee is not liable under this section if the transferee has satisfied the requirements of Section 13205.5 or 13206.

Comment. Section 13204.5 is new.

Subdivision (f) is similar to former Section 13207(a).

See also Section 13202.5(a) (“transferee”), Section 13202.5(b) (“transferred property”).

Prob. Code § 13205 (amended). Personal liability to person with superior right

SEC. _____. Section 13205 of the Probate Code is amended to read:

13205. (a) ~~Except as provided in subdivision (b), each person who is designated as a successor of the decedent in a certified copy of any affidavit issued under Section 13202~~ A transferee is personally liable to the extent provided in Section 13207 to any person having a superior right to transferred property by testate or intestate succession from the decedent. Except as provided in subdivision (d), the personal liability established by this subdivision shall not exceed the sum of the following, less the amount of any payment made pursuant to Section 13204 or Section 13204.5:

(1) The fair market value at the time of the issuance of the certified copy of the affidavit under Section 13202 of the transferred property, less the amount of any liens and encumbrances on the transferred property at that time.

(2) Income received from the property, if that income would have accrued to the estate had the property not been transferred to the transferee.

(3) If the property has been disposed of, interest on the fair market value of the transferred property from the date of disposition at the rate payable on a money judgment. For the purposes of this paragraph, “fair market value of the transferred property” means the fair market value of the transferred property, determined as of the time of the disposition of the property, less the amount of any liens and encumbrances on the property at the time the certified copy of the affidavit was issued.

(b) In addition to any other liability the ~~person~~ transferee has under this section and Sections 13204, 13204.5, 13206, and ~~13207~~ 13208, if the ~~person~~ transferee fraudulently executed or filed the affidavit under this chapter, the ~~person~~ transferee is liable to the person having a superior right to that property by testate or

intestate succession from the decedent for three times the fair market value of the transferred property. For the purposes of this subdivision, the “fair market value of the transferred property” is the fair market value of the transferred property, determined as of the time the certified copy of the affidavit was issued under Section 13202, ~~of the property the person liable took under the certified copy of the affidavit to which the other person has a superior right~~, less any liens and encumbrances on the transferred property at that time.

(c) An action to impose liability under this section is forever barred three years after the certified copy of the affidavit is issued under Section 13202, or three years after the discovery of the fraud, whichever is later. The three-year period specified in this subdivision is not tolled for any reason.

(d) The transferee is not liable under this section if the transferee has satisfied the requirements of Section 13205.5 or 13206.

Comment. Subdivision (a) of Section 13205 is amended to continue a rule drawn from former Section 13207(b). Subdivision (a) is also amended to make technical revisions.

Subdivision (b) is amended to provide that income received from the property need only be returned if it would have accrued to the estate had the property remained in the estate. The subdivision is also amended to add a reference to Section 13204.5 and to make technical revisions.

Subdivision (d) is added to state the relationship between this section and Sections 13205.5 and 13206. It is drawn in part from former Section 13207(a).

See also Section 13202.5(a) (“transferee”), Section 13202.5(b) (“transferred property”).

Prob. Code § 13205.5 (added). Voluntary return of transferred property to the estate

SEC. ____ . Section 13205.5 is added to the Probate Code, to read:

13205.5. (a) If proceedings for the administration of the decedent’s estate are commenced, a transferee may voluntarily return transferred property to the decedent’s estate for administration.

(b) The property to be restored to the estate under this section shall be reduced or increased as provided in Section 13208.

Comment. Section 13205.5 is new.

See also Section 13202.5(a) (“transferee”), Section 13202.5(b) (“transferred property”).

Prob. Code § 13206 (amended). Liability for return of transferred property to estate

SEC. _____. Section 13206 of the Probate Code is amended to read:

~~(a) Subject to subdivisions (b), (c), (d), and (e), if proceedings for the administration of the decedent’s estate are commenced, or if the decedent’s personal representative has consented to use of the procedure provided by this chapter and the personal representative later requests that the property be restored to the estate, each person who is designated as a successor of the decedent in a certified copy of an affidavit issued under Section 13202 is liable for:~~

If property is transferred to a transferee under this chapter, and the decedent’s personal representative later determines that another person has a superior right to the property by testate or intestate succession from the decedent, the personal representative may request that the transferred property be restored to the estate. Subject to subdivisions (b), (c), (d), (e), and (g) if the personal representative makes that request, the transferee is liable for all of the following:

~~(1) The~~ If the transferee still has the transferred property, restitution ~~of the transferred property to the decedent’s estate of the property the person took under the certified copy of the affidavit if the person still has the property, together with (A) the net income the person received from the property and (B) if the person encumbered the property after the certified copy of the affidavit was issued, the amount necessary to satisfy the balance of the encumbrance as of the date the property is restored to the estate.~~

~~(2) The~~ If the transferee no longer has the transferred property, restitution to the decedent’s estate of the fair market value of the transferred property ~~if the person no longer has the property~~

~~together with (A) the net income the person received from the property prior to disposing of it and (B) plus interest from the date of disposition at the rate payable on a money judgment on the fair market value of the transferred property. For the purposes of this paragraph, the “fair market value of the transferred property” is the fair market value of the transferred property, determined as of the time of the disposition of the transferred property, ~~of the property the person took under the certified copy of the affidavit~~, less the amount of any liens and encumbrances on the transferred property at the time the certified copy of the affidavit was issued.~~

(b) Subject to subdivision (d), if the ~~person~~ transferee fraudulently executed or filed the affidavit under this chapter, the ~~person~~ transferee is liable under this section for restitution ~~to the decedent’s estate~~ of three times the fair market value of the transferred property. For the purposes of this subdivision, the “fair market value of the transferred property” is the fair market value of the transferred property, determined as of the time the certified copy of the affidavit was issued, ~~of the property the person took under the certified copy of the affidavit~~, less the amount of any liens and encumbrances on the property at that time. Restitution provided under this subdivision shall first be used to pay the estate’s cost of proceeding under this section, with the remainder paid to the person who has a superior right to the property by testate or intestate succession.

(c) Subject to subdivision (d), if ~~proceedings for the administration of the decedent’s estate are commenced and a person designated as a successor of the decedent in a certified copy of an affidavit issued under Section 13202~~ the transferee made a significant improvement to the transferred property ~~taken by the person under the certified copy of the affidavit~~ in the good faith belief that the ~~person~~ transferee was the successor of the decedent to that property, the ~~person~~ transferee is liable for whichever of the following the decedent’s estate elects:

(1) The restitution of the transferred property, ~~as improved, to the estate of the decedent upon the condition that the estate reimburse the person making restitution for (A) the amount by~~

~~which the improvement increases the fair market value of the property restored, determined as of the time of restitution, and (B) the amount paid by the person for principal and interest on any liens or encumbrances that were on the property at the time the certified copy of the affidavit was issued.~~

(2) The restoration to the decedent's estate of the fair market value of the transferred property, determined as of the time of the issuance of the certified copy of the affidavit under Section 13202, less the amount of any liens and encumbrances on the transferred property at that time, together with interest on the net amount at the rate payable on a money judgment running from the date of the issuance of the certified copy of the affidavit.

(d) The property and amount required to be restored to the estate under this section shall be reduced ~~by any property or amount paid by the person to satisfy a liability under Section 13204 or 13205~~ or increased as provided in Section 13208.

(e) An action to enforce the liability under this section may be brought only by the personal representative of the estate of the decedent. ~~Whether or not the personal representative brings an action under this section, the personal representative may enforce the liability only to the extent necessary to protect the interests of the heirs, devisees, and creditors of the decedent.~~

(f) An action to enforce the liability under this section is forever barred three years after the certified copy of the affidavit is issued under Section 13202, or three years after the discovery of the fraud, whichever is later. The three-year period specified in this subdivision is not tolled for any reason.

(g) The transferee is not liable under subdivision (a) if the transferred property was returned to the estate under Section 13205.5.

Comment. Section 13206 is amended to limit the application of the section to claims by a person with a superior right, to delete language that is continued and generalized in Section 13208, and to make technical revisions.

Subdivision (b) is amended to change the disposition of treble damages awarded under the subdivision.

Subdivision (d) is amended to delete the second sentence. With the section limited to preclude its application to creditor claims, the deleted sentence became superfluous.

Subdivision (g) is added to state the relationship between this section and Section 13205.5.

See also Section 13202.5(a) (“transferee”), Section 13202.5(b) (“transferred property”).

Prob. Code § 13207 (repealed). Scope of personal liability under Sections 13204 and 13205

SEC. ____ . Section 13207 of the Probate Code is repealed.

Comment. Section 13207 is repealed. The substance of former Section 13207(a) is continued in Sections 13204(c) and 13205(d).

The substance of former Section 13207(b) is continued in Sections 13204(b) and 13205(a), except that Section 13204(b) does not continue the part of former Section 13207(b) that related to income and interest.

Prob. Code § 13208 (added). Adjustment to liability under Section 13205.5 or 13206

SEC. ____ . Section 13208 is added to the Probate Code, to read:

13208. (a) If the transferee’s action or inaction increased the value of property returned to the estate or decreased the estate’s obligations, the personal representative shall reimburse the transferee by the same amount. Actions or inaction that increase the value of returned property or decrease the estate’s obligations include, but are not necessarily limited to, the following actions:

(1) A payment toward an unsecured debt of the decedent.

(2) A payment toward a debt secured against the returned property.

(3) A significant improvement of the returned property that increased the fair market value of the property.

(b) If the transferee’s action or inaction decreased the value of property returned to the estate or increased the estate’s obligations, the transferee is personally liable to the estate for that amount. Actions or inaction that decrease the value of the returned property or increase the estate’s obligations include, but are not necessarily limited to, the following actions or inaction:

(1) An action or inaction that resulted in a lien or encumbrance being recorded against the property.

(2) The receipt of income from the property, if that income would have accrued to the estate had the property not been transferred to the transferee.

(c) The personal representative shall provide the transferee a written statement of any reimbursement or liability under this section, along with a statement of the reasons for the reimbursement or liability.

(d) For the purposes of Section 11420, reimbursement of the transferee under subdivision (a) shall be deemed an expense of administration.

(e) In the event that the transferee and the personal representative cannot agree on the reimbursement or liability due under this section, the transferee or personal representative may petition the court for an order determining the amount of the reimbursement or liability. In making a decision under this subdivision, the court should consider the surrounding circumstances, including whether the parties acted in good faith and whether a particular result would impose an unfair burden on the transferee or the estate.

Comment. Section 13208 is new. It generalizes language that was deleted from Section 13206(a) and (c) and provides a procedure for determining the adjustments to be made under Sections 13205.5 and 13206(d).

See also Section 13202.5(a) (“transferee”).

Prob. Code § 13209 (added). Value of returned property included in value of estate

SEC. ____. Section 13209 is added to the Probate Code, to read:

13209. If transferred property is returned to the estate under Section 13205.5 or 13206, the value of that property shall be included in the total value of the estate, for all purposes.

Comment. Section 13209 is new.

See also Section 13205.5(b) (“transferred property”).
