

CALIFORNIA LAW REVISION COMMISSION

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NEWS RELEASE
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For Immediate Release

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**Nonprobate Transfers: Liability of a Surviving Spouse
Under Probate Code Sections 13550 and 13551**

Request for Public Comment

The California Law Revision Commission seeks public comment on its proposal to revise the law governing the liability of a surviving spouse for property received from a decedent without administration. Statutory citations refer to the Probate Code unless otherwise indicated.

Division 8 of the Probate Code includes rules allowing certain property of a decedent to pass without probate administration to the person entitled to receive the property. Part 2 of Division 8 contains a rule allowing property to pass to the decedent's surviving spouse without administration, if the spouse was entitled to receive that property by will or intestate succession. See § 13500. The part also includes a liability rule imposing personal liability on a surviving spouse for a decedent's debts. See §§ 13550, 13551. The scope of this liability includes the value of property received from the decedent "without administration." See § 13551 (b), (c).

In 2010, a California appellate court in *Kircher v. Kircher* (189 Cal. App. 4th 1105, 117 Cal. Rptr. 3d 254 (2010)) concluded that this rule imposed liability on a surviving spouse for property received as a surviving joint tenant (i.e., property *not* passing by will or intestate succession). The court's analysis suggests that the surviving spouse's liability under this rule extends to *any* property received from the decedent outside of probate (i.e., property received by nonprobate transfer).

The Commission studied this issue and concluded that the rule was probably intended to have a narrower scope. Thus, the Commission tentatively recommends revising the liability rule to make clear that it applies only to property received without administration *pursuant to Part 2 of Division 8* (i.e., property passing by will or intestate succession). The Commission also tentatively recommends a conforming change to preserve the liability of community property with a right of survivorship under current law.

The tentative recommendation is available on the Commission's website (www.clrc.ca.gov) through the pull-down "Reports" menu. The tentative recommendation can also be requested from Commission staff (see contact above).

To receive timely consideration, comments on the tentative recommendation should be submitted to the Commission by February 25, 2019.

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