

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

Disposition of Estate Without
Administration: Interest Rate

August 2018

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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STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

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

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August 17, 2018

To: The Honorable Edmund G. Brown, Jr.
Governor of California, and
The Legislature of California

The Probate Code contains a number of provisions that permit an estate or a portion of an estate to be disposed of without administration (or with substantially simplified administration). The recipient of the decedent's property under some of these procedures is liable (to the extent of the property's value) to the decedent's estate, an unsecured creditor of the decedent, or a person with a superior right to succeed to the property. Where the recipient has disposed of or improved the property, the extent of the recipient's liability also often includes interest on the property's value.

The Commission concluded that the ten percent interest rate imposed by these statutes (through incorporation of a rate specified in the Code of Civil Procedure) is too high and unduly burdens a recipient of the decedent's property. The Commission recommends that the default interest rate be changed to seven percent per annum, which is the default rate for judgments set by the California Constitution.

In addition, the Commission recommends that a court be granted discretion to reduce or waive the recipient's liability for interest where it would be equitable to do so, if the recipient has acted

reasonably and in good faith, under the circumstances known to the recipient.

This recommendation was prepared pursuant to Resolution Chapter 150 of the Statutes of 2016.

Respectfully submitted,

Thomas Hallinan
Chairperson

DISPOSITION OF ESTATE WITHOUT ADMINISTRATION: INTEREST RATE

BACKGROUND

The Probate Code contains a number of provisions that permit an estate or a portion of an estate to be disposed of without administration (or with substantially simplified administration). The recipient of the decedent's property under some of these procedures is liable (to the extent of the property's value) to the decedent's estate, an unsecured creditor of the decedent, or a person with a superior right to succeed to the property. Where the recipient has disposed of or improved the property, the extent of the recipient's liability also often includes interest on the property's value, at the rate payable on a money judgment.¹

Currently, the law provides for a ten percent interest rate in these situations.²

SCOPE OF THE STUDY

The Commission's study of this topic focused on statutory provisions that impose interest in computing the recipient's liability to the estate, an unsecured creditor of the decedent, or a person with a superior right to succeed to the property. In particular, the Commission focused on the following provisions of the Probate Code:

- *Affidavit Procedure for Collection or Transfer of Personal Property* (Sections 13111, 13112). These provisions impose liability on a person who receives the decedent's personal property using the statutory affidavit procedure.³ Where the recipient of the

1. See, e.g., Prob. Code § 13206(a)(2), (c)(2).

2. See, e.g., Prob. Code § 13111(a)(2) (interest accrues at rate payable on money judgment); Code Civ. Proc. § 685.010 (interest of 10% per annum accrues on principal amount of money judgment remaining unsatisfied).

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

decedent's property has disposed of the property, the extent of the recipient's liability includes interest on the fair market value of the property from the date of disposition.

- *Affidavit Procedure for Real Property of Small Value* (Sections 13206, 13207, 13210). These provisions impose liability on a person who receives the decedent's real property of small value using the statutory affidavit procedure.⁴ Where the recipient of the decedent's property has disposed of the property or improved the property, the extent of the recipient's liability can include interest on the fair market value⁵ of the property.
- *Surviving Spouse Liability for Decedent's Property* (Sections 13562, 13563). These provisions impose liability on a surviving spouse who receives the decedent's property without probate administration.⁶ Where the surviving spouse has disposed of the property or improved the property, the extent of the surviving spouse's liability can include interest on the fair market value⁷ of the property.

This recommendation addresses only the interest rates in the provisions noted above. For ease of reference, these provisions will

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

5. Where the property is disposed of, the fair market value of the property is computed at the time of disposition. See Prob. Code § 13206(a)(2). Where the property is improved, the fair market value of the property is computed at the time that the certified copy of the affidavit used to claim the property was issued. See Prob. Code § 13206(c)(2).

6. See generally Prob. Code §§ 13560-13564.

7. Where the property is disposed of, the fair market value of the property is computed at the time of disposition. See Prob. Code § 13562(a)(2). Where the property is improved, the fair market value of the property is computed at the time of the decedent's death. See Prob. Code § 13562(b)(2).

be referred to as the “interest rate provisions” in this recommendation.

This recommendation does not address and the Commission takes no position on the suitability of interest rates or lack thereof in other provisions of the Probate Code.

PROBLEM

Currently, the interest rate is ten percent.⁸ At the time of the Commission recommendation proposing the interest rate provisions,⁹ the ten percent interest rate was in the range of the prevailing market rate.¹⁰ Under those conditions, the ten percent interest rate would approximate the expected investment returns that a property recipient would receive on investing the proceeds of the property sale.

The ten percent interest rate is significantly higher than the current market interest rates.¹¹ Under current market conditions, the ten percent interest rate does not reflect the expected value that

8. See *supra* note 2.

9. See *Recommendation Relating to Disposition of Estate Without Administration*, 18 Cal. L. Revision Comm'n Reports 1005 (1986); see also *Recommendation Relating to Right of Surviving Spouse to Dispose of Community Property*, 20 Cal. L. Revision Comm'n Reports 2769 (1990).

10. See, e.g., <<https://fred.stlouisfed.org/series/CD6M>> (6-month certificate of deposit secondary market rate was 7.80% in December 1985); <<https://fred.stlouisfed.org/series/CD1M>> (1-month certificate of deposit secondary market rate 7.87% in December 1985); see also <<https://www.bankrate.com/banking/cds/historical-cd-interest-rates-1984-016/>> (1 year certificate of deposit yield was 7.89% and 5 year certificate of deposit yield was 9.09% on January 8, 1986).

11. See, e.g., <<https://fred.stlouisfed.org/series/CD6NRJD>> (The national rate on jumbo deposits (greater than or equal to \$100,000) for 6 Month CD was 0.28% on July 23, 2018); <<https://fred.stlouisfed.org/series/CD6NRNJ>> (The national rate on non-jumbo deposits (less than \$100,000) for 6 Month CD was 0.24% on July 23, 2018); <<https://fred.stlouisfed.org/series/CD12NRJD>> (The national rate on jumbo deposits (greater than or equal to \$100,000) for 12 Month CD was 0.46% on July 23, 2018).

a recipient would receive by investing the proceeds of sale. Instead, the ten percent interest rate acts as a de facto penalty, imposing liability on the recipient far in excess of the value that the recipient could expect to realize from the decedent's property. This places the recipient of the decedent's property in a worse position than if the recipient had not received the property at all.

For example, under Probate Code Section 13101, the successor to the decedent's property could use an affidavit to collect the decedent's personal property worth \$100,000. The successor could then sell the property immediately after receiving it. If, after three years, the successor received notice that the property must be returned to the estate,¹² the successor would owe, in addition to the \$100,000 value from the property sale, approximately \$30,000 in interest (not taking into account compounding).¹³ If the successor had invested the proceeds of sale in certificate of deposit offering two percent interest,¹⁴ the investment would have only earned roughly \$6,000. In this situation, the successor would have a net loss of \$24,000 resulting from the imposition of the ten percent interest rate.

RECOMMENDATION

The Commission recommends that the interest rate imposed in the interest rate provisions be changed to seven percent per annum. The seven percent rate is the default rate for judgments in the California Constitution and is used in other contexts under

12. See Prob. Code § 13111(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...").

13. See Prob. Code § 13111(a)(2).

14. Under current market conditions, two percent is significantly higher than the average interest rate. See *supra* note 11.

California law.¹⁵ While the seven percent interest rate is still significantly higher than the current market interest rate, seven percent is closer to current rates than the ten percent interest rate. Although a variable rate tied to the market could provide a better approximation of market rates, a variable rate is more difficult to administer than a fixed rate.

The Commission recognizes that, in some circumstances, the fixed rate of seven percent per annum may produce inequitable results, as described above. For this reason, the Commission also recommends that a court be given discretion to excuse a recipient's liability for interest, in whole or in part, where it would be equitable to do so, if the recipient acted reasonably and in good faith, under the circumstances known to the recipient.¹⁶ Under existing law, courts are granted discretion to offer relief from liability in similar circumstances.¹⁷

15. See Cal. Const. art. XV, § 1; see also *Palomar Grading & Paving, Inc. v. Wells Fargo Bank, N.A.*, 230 Cal. App. 4th 686 (2014) (prejudgment interest on a mechanics lien); Prob. Code § 12001 (interest on unpaid devises).

16. See, e.g., proposed Prob. Code § 13117.

17. See Prob. Code §§ 2401.3(b), 2401.5(b), 9601(b), 9602(b), 16440(b), 16441(b).

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PROPOSED LEGISLATION

Prob. Code § 13111 (amended). Restitution if estate proceeding commenced or on request of personal representative

SECTION 1. 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:

(1) The restitution of the property to the 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 restitution to the estate of the fair market value of the property if the person no longer has the property, together with (A) the net income the person received from the property and (B) interest on the fair market value of the property from the date of disposition at the rate ~~payable on a money judgment of 7 percent per annum~~. For the purposes of this subdivision, the "fair market value of the property" is the fair market value, determined as of the time of the disposition of the property, of the property paid, delivered, or transferred to the person under this chapter, less any liens and encumbrances on the property at that time.

(b) Subject to subdivision (c) and subject to any additional liability the person has under Sections 13109 to 13112, inclusive, if the person fraudulently secured the payment, delivery, or transfer of the decedent's property under this chapter, the person is liable under this section for restitution to the decedent's estate of 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, 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.

(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.

(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.

Comment. Section 13111(a)(2) is amended to change the interest rate. The liability for interest imposed by this section may be modified by a court under appropriate circumstances. See Section 13117.

Prob. Code § 13112 (amended). Extent of liability

SEC. 2. Section 13112 of the Probate Code is amended to read:

13112. (a) A person to whom payment, delivery, or transfer of the decedent’s property has been made under this chapter is not liable under Section 13109 or 13110 if proceedings for the administration of the decedent’s estate are commenced in this state, and the person satisfies the requirements of Section 13111.

(b) Except as provided in subdivision (b) of Section 13110, the aggregate of the personal liability of a person under Sections 13109 and 13110 shall not exceed the sum of the following:

(1) The fair market value, valued as of the time the affidavit or declaration is presented 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 that property at that ~~time, together with the time.~~

(2) The net income the person received from the property.

(3) ~~If and, if~~ the property has been disposed of, interest on the fair market value of the property accruing from the date of disposition at the rate ~~payable on a money judgment of 7 percent per annum~~. For the purposes of this ~~subdivision paragraph~~, “fair market value of the property” has the same meaning as defined in paragraph (2) of subdivision (a) of Section 13111.

Comment. Section 13112 is amended to change the interest rate. The liability for interest imposed by this section may be modified by a court under appropriate circumstances. See Section 13117.

Section 13112 is also amended to add paragraph numbering in subdivision (b). This is a technical change made for parallelism with similar provisions. See, e.g., Section 13207.

Prob. Code § 13117 (added). Waiver of interest

SEC. 3. Section 13117 of the Probate Code is added, to read:

13117. If the court finds that a person to whom payment, delivery, or transfer of the decedent’s property has been made under this chapter has acted reasonably and in good faith under the circumstances as known to the person, the court may, in its discretion, excuse the person from liability to pay interest, in whole or in part, under paragraph (2) of subdivision (a) of Section 13111 or paragraph (3) of subdivision (b) of Section 13112, if it would be equitable to do so.

Comment. Section 13117 is comparable to Section 9602(b). This section is added to give the court discretion to waive or reduce liability for interest in appropriate circumstances.

Prob. Code § 13206 (amended). Restitution if estate proceeding commenced or on request of personal representative

SEC. 4. Section 13206 of the Probate Code is amended to read:

13206. (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:

(1) The restitution 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 restitution to the decedent's estate of the fair market value of the 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) interest from the date of disposition at the rate ~~payable on a money judgment of 7 percent per annum~~ per annum on the fair market value of the property. For the purposes of this paragraph, the "fair market value of the property" is the fair market value, determined as of the time of the disposition of the property, 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 the time the certified copy of the affidavit was issued.

(b) Subject to subdivision (d), if the person fraudulently executed or filed the affidavit under this chapter, the person is liable under this section for restitution to the decedent's estate of 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, 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.

(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 made a significant improvement to the property taken by the person under the certified copy of the affidavit in the good faith belief that the person was the successor of the decedent to that property, the person is liable for whichever of the following the decedent's estate elects:

(1) The restitution of the 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 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 property at that time, together with interest on the net amount at the rate ~~payable on a money judgment~~ of 7 percent per annum 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.

(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.

Comment. Section 13206 is amended to change the interest rate. The liability for interest imposed by this section may be modified by a court under appropriate circumstances. See Section 13211.

Prob. Code § 13207 (amended). Extent of liability

SEC. 5. Section 13207 of the Probate Code is amended to read:

13207. (a) A person designated as a successor of the decedent in a certified copy of an affidavit issued under Section 13202 is not liable under Section 13204 or 13205 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, and the person satisfies the requirements of Section 13206.

(b) Except as provided in subdivision (b) of Section 13205, the aggregate of the personal liability of a person under Sections 13204 and 13205 shall not exceed the sum of the following:

(1) The fair market value at the time of the issuance of the certified copy of the affidavit under Section 13202 of the decedent's property received by that person under this chapter, less the amount of any liens and encumbrances on the property at that time.

(2) The net income the person received from the property.

(3) If the property has been disposed of, interest on the fair market value of the property from the date of disposition at the rate ~~payable on a money judgment of 7 percent per annum~~. For the purposes of this paragraph, "fair market value of the property" has

the same meaning as defined in paragraph (2) of subdivision (a) of Section 13206.

Comment. Section 13207 is amended to change the interest rate. The liability for interest imposed by this section may be modified by a court under appropriate circumstances. See Section 13211.

Prob. Code § 13211 (added). Waiver of interest

SEC. 6. Section 13211 of the Probate Code is added, to read:

13211. If the court finds that a person designated as a successor of the decedent in a certified copy of an affidavit issued under Section 13202 has acted reasonably and in good faith under the circumstances as known to the person, the court may, in its discretion, excuse the person from liability to pay interest, in whole or in part, under paragraph (2) of subdivision (a) of Section 13206, paragraph (2) of subdivision (c) of Section 13206, or paragraph (3) of subdivision (b) of Section 13207, if it would be equitable to do so.

Comment. Section 13211 is comparable to Section 9602(b). This section is added to give the court discretion to waive or reduce liability for interest in appropriate circumstances.

Prob. Code § 13562 (amended). Restitution if estate proceeding commenced

SEC. 7. Section 13562 of the Probate Code is amended to read:

13562. (a) Subject to subdivisions (b), (c), and (d), if proceedings for the administration of the decedent's estate are commenced, the surviving spouse is liable for:

(1) The restitution to the decedent's estate of the decedent's property if the surviving spouse still has the decedent's property, together with (A) the net income the surviving spouse received from the decedent's property and (B) if the surviving spouse encumbered the decedent's property after the date of death, the amount necessary to satisfy the balance of the encumbrance as of the date the decedent's property is restored to the estate.

(2) The restitution to the decedent's estate of the fair market value of the decedent's property if the surviving spouse no longer has the decedent's property, together with (A) the net income the

surviving spouse received from the decedent's property prior to disposing of it and (B) interest from the date of disposition at the rate ~~payable on a money judgment of 7 percent per annum~~ on the fair market value of the decedent's property. For the purposes of this paragraph, the "fair market value of the decedent's property" is the fair market value of the decedent's property, determined as of the time of the disposition of the decedent's property, less the amount of any liens and encumbrances on the decedent's property at the time of the decedent's death.

(b) Subject to subdivision (c), if proceedings for the administration of the decedent's estate are commenced and the surviving spouse made a significant improvement to the decedent's property in the good faith belief that the surviving spouse was the successor of the decedent to the decedent's property, the surviving spouse is liable for whichever of the following the decedent's estate elects:

(1) The restitution of the decedent's property, as improved, to the estate of the decedent upon the condition that the estate reimburse the surviving spouse for (A) the amount by which the improvement increases the fair market value of the decedent's property restored, valued as of the time of restitution, and (B) the amount paid by the surviving spouse for principal and interest on any liens or encumbrances that were on the decedent's property at the time of the decedent's death.

(2) The restoration to the decedent's estate of the fair market value of the decedent's property, valued as of the time of the decedent's death, excluding the amount of any liens and encumbrances on the decedent's property at that time, together with interest on the net amount at the rate ~~payable on a money judgment of 7 percent per annum~~ running from the date of the decedent's death.

(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 surviving spouse to satisfy a liability under Chapter 3 (commencing with Section 13550).

(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 the death of the decedent. The three-year period specified in this subdivision is not tolled for any reason.

Comment. Section 13562 is amended to change the interest rate. The liability for interest imposed by this section may be modified by a court under appropriate circumstances. See Section 13565.

Prob. Code § 13563 (amended). Extent of liability

SEC. 8. Section 13563 of the Probate Code is amended to read:

13563. (a) The surviving spouse is not liable under Section 13561 if proceedings for the administration of the decedent's estate are commenced and the surviving spouse satisfies the requirements of Section 13562.

(b) The aggregate of the personal liability of the surviving spouse under Section 13561 shall not exceed the sum of the following:

(1) The fair market value at the time of the decedent's death, less the amount of any liens and encumbrances on the decedent's property at that time, of the portion of the decedent's property that passes to any person having a superior right by testate succession from the decedent.

(2) The net income the surviving spouse received from the portion of the decedent's property that passes to any person having a superior right by testate succession from the decedent.

(3) If the decedent's property has been disposed of, interest on the fair market value of the portion of the decedent's property that passes to any person having a superior right by testate succession from the decedent from the date of disposition at the rate ~~payable on a money judgment~~ of 7 percent per annum. For the purposes of this paragraph, "fair market value" is fair market value, determined as of the time of disposition of the decedent's property, less the

amount of any liens and encumbrances on the decedent's property at the time of the decedent's death.

Comment. Section 13563 is amended to change the interest rate. The liability for interest imposed by this section may be modified by a court under appropriate circumstances. See Section 13565.

Prob. Code § 13565 (added). Waiver of interest

SEC. 9. Section 13565 of the Probate Code is added, to read:

13565. If the court finds that the surviving spouse has acted reasonably and in good faith under the circumstances as known to the surviving spouse, the court may, in its discretion, excuse the surviving spouse from liability to pay interest, in whole or in part, under paragraph (2) of subdivision (a) of Section 13562, paragraph (2) of subdivision (b) of Section 13562, or paragraph (3) of subdivision (b) of Section 13563, if it would be equitable to do so.

Comment. Section 13565 is comparable to Section 9602(b). This section is added to give the court discretion to waive or reduce liability for interest in appropriate circumstances.
