

**ASSEMBLY BILL**

**No. 2267**

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**Introduced by Assembly Members Huff, Benoit, DeVore, Maze,  
Mountjoy, Strickland, and Villines**  
(Coauthor: Senator Dutton)

February 22, 2006

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An act to amend Sections 13100, 13101, 13151, 13152, and 13200 of the Probate Code, relating to decedent's estates.

LEGISLATIVE COUNSEL'S DIGEST

AB 2267, as introduced, Huff. Decedent's estates.

Existing law establishes simplified procedures for dealing with a decedent's estate valued under \$100,000, including authorizing the successor of the decedent to collect property due to the decedent without letters of administration or awaiting probate of a will. Existing law permits a court, pursuant to a petition, to determine succession to property in an estate valued under \$100,000, as specified. Existing law establishes an affidavit procedure by which a person may be designated as a successor to a decedent to a particular item of real property valued at no more than \$20,000.

This bill would increase the values in the provisions described above from \$100,000 to \$200,000 and from \$20,000 to \$40,000.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

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

1 SECTION 1. Section 13100 of the Probate Code is amended  
2 to read:

1 13100. Excluding the property described in Section 13050, if  
 2 the gross value of the decedent’s real and personal property in  
 3 this state does not exceed ~~one~~ *two* hundred thousand dollars  
 4 (~~\$100,000~~) (*\$200,000*) and if 40 days have elapsed since the  
 5 death of the decedent, the successor of the decedent may, without  
 6 procuring letters of administration or awaiting probate of the  
 7 will, do any of the following with respect to one or more  
 8 particular items of property:

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

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

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

17 SEC. 2. Section 13101 of the Probate Code is amended to  
 18 read:

19 13101. (a) To collect money, receive tangible personal  
 20 property, or have evidences of a debt, obligation, interest, right,  
 21 security, or chose in action transferred under this chapter, an  
 22 affidavit or a declaration under penalty of perjury under the laws  
 23 of this state shall be furnished to the holder of the decedent’s  
 24 property stating all of the following:

25 (1) The decedent’s name.

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

27 (3) “At least 40 days have elapsed since the death of the  
 28 decedent, as shown in a certified copy of the decedent’s death  
 29 certificate attached to this affidavit or declaration.”

30 (4) Either of the following, as appropriate:

31 (A) “No proceeding is now being or has been conducted in  
 32 California for administration of the decedent’s estate.”

33 (B) “The decedent’s personal representative has consented in  
 34 writing to the payment, transfer, or delivery to the affiant or  
 35 declarant of the property described in the affidavit or  
 36 declaration.”

37 (5) “The current gross fair market value of the decedent’s real  
 38 and personal property in California, excluding the property  
 39 described in Section 13050 of the California Probate Code, does

1 not exceed ~~one~~ *two* hundred thousand dollars ~~—(\$100,000)~~  
2 ~~(\$200,000).~~”

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

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

8 (8) Either of the following, as appropriate:

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

12 (B) “The affiant or declarant is authorized under Section  
13 13051 of the California Probate Code to act on behalf of the  
14 successor of the decedent (as defined in Section 13006 of the  
15 California Probate Code) with respect to the decedent’s interest  
16 in the described property.”

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

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

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

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

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

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

37 (e) If the decedent’s personal representative has consented to  
38 the payment, transfer, or delivery of the described property to the  
39 affiant or declarant, a copy of the consent and of the personal

1 representative’s letters shall be attached to the affidavit or  
2 declaration.

3 SEC. 3. Section 13151 of the Probate Code is amended to  
4 read:

5 13151. Exclusive of the property described in Section 13050,  
6 if a decedent dies leaving real property in this state and the gross  
7 value of the decedent’s real and personal property in this state  
8 does not exceed ~~one~~ *two* hundred thousand dollars ~~(\$100,000)~~  
9 *(\$200,000)* and 40 days have elapsed since the death of the  
10 decedent, the successor of the decedent to an interest in a  
11 particular item of property that is real property, without  
12 procuring letters of administration or awaiting the probate of the  
13 will, may file a petition in the superior court of the county in  
14 which the estate of the decedent may be administered requesting  
15 a court order determining that the petitioner has succeeded to that  
16 real property. A petition under this chapter may include an  
17 additional request that the court make an order determining that  
18 the petitioner has succeeded to personal property described in the  
19 petition.

20 SEC. 4. Section 13152 of the Probate Code is amended to  
21 read:

22 13152. (a) The petition shall be verified by each petitioner,  
23 shall contain a request that the court make an order under this  
24 chapter determining that the property described in the petition is  
25 property passing to the petitioner, and shall state all of the  
26 following:

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

29 (2) The gross value of the decedent’s real and personal  
30 property in this state, excluding the property described in Section  
31 13050, as shown by the inventory and appraisal attached to the  
32 petition, does not exceed ~~one~~ *two* hundred thousand dollars  
33 ~~(\$100,000)~~ *(\$200,000)*.

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

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

3 (5) Either of the following, as appropriate:

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

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

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

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

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

23 (b) There shall be attached to the petition an inventory and  
24 appraisal in the form set forth in Section 8802 of the decedent's  
25 real and personal property in this state, excluding the property  
26 described in Section 13050. The appraisal shall be made by a  
27 probate referee selected by the petitioner from those probate  
28 referees appointed by the Controller under Section 400 to  
29 appraise property in the county where the real property is located.  
30 The appraisal shall be made as provided in Part 3 (commencing  
31 with Section 8800) of Division 7. The petitioner may appraise the  
32 assets which a personal representative could appraise under  
33 Section 8901.

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

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

1 SEC. 5. Section 13200 of the Probate Code is amended to  
 2 read:

3 13200. (a) No sooner than six months from the death of a  
 4 decedent, a person or persons claiming as successor of the  
 5 decedent to a particular item of property that is real property may  
 6 file in the superior court in the county in which the decedent was  
 7 domiciled at the time of death, or if the decedent was not  
 8 domiciled in this state at the time of death, then in any county in  
 9 which real property of the decedent is located, an affidavit in the  
 10 form prescribed by the Judicial Council pursuant to Section 1001  
 11 stating all of the following:

- 12 (1) The name of the decedent.
- 13 (2) The date and place of the decedent’s death.
- 14 (3) A legal description of the real property and the interest of  
 15 the decedent therein.
- 16 (4) The name and address of each person serving as guardian  
 17 or conservator of the estate of the decedent at the time of the  
 18 decedent’s death, so far as known to the affiant.
- 19 (5) “The gross value of all real property in the decedent’s  
 20 estate located in California, as shown by the inventory and  
 21 appraisal attached to this affidavit, excluding the real property  
 22 described in Section 13050 of the California Probate Code, does  
 23 not exceed ~~twenty~~ *forty* thousand dollars ~~(\$20,000)~~ *(\$40,000)*.”
- 24 (6) “At least six months have elapsed since the death of the  
 25 decedent as shown in a certified copy of decedent’s death  
 26 certificate attached to this affidavit.”
- 27 (7) Either of the following, as appropriate:
  - 28 (A) “No proceeding is now being or has been conducted in  
 29 California for administration of the decedent’s estate.”
  - 30 (B) “The decedent’s personal representative has consented in  
 31 writing to use of the procedure provided by this chapter.”
- 32 (8) “Funeral expenses, expenses of last illness, and all  
 33 unsecured debts of the decedent have been paid.”
- 34 (9) “The affiant is the successor of the decedent (as defined in  
 35 Section 13006 of the Probate Code) and to the decedent’s interest  
 36 in the described property, and no other person has a superior  
 37 right to the interest of the decedent in the described property.”
- 38 (10) “The affiant declares under penalty of perjury under the  
 39 law of the State of California that the foregoing is true and  
 40 correct.”

1 (b) For each person executing the affidavit, the affidavit shall  
2 contain a notary public's certificate of acknowledgment  
3 identifying the person.

4 (c) There shall be attached to the affidavit an inventory and  
5 appraisal of the decedent's real property in this state, excluding  
6 the real property described in Section 13050. The inventory and  
7 appraisal of the real property shall be made as provided in Part 3  
8 (commencing with Section 8800) of Division 7. The appraisal  
9 shall be made by a probate referee selected by the affiant from  
10 those probate referees appointed by the Controller under Section  
11 400 to appraise property in the county where the real property is  
12 located.

13 (d) If the affiant claims under the decedent's will and no estate  
14 proceeding is pending or has been conducted in California, a  
15 copy of the will shall be attached to the affidavit.

16 (e) A certified copy of the decedent's death certificate shall be  
17 attached to the affidavit. If the decedent's personal representative  
18 has consented to the use of the procedure provided by this  
19 chapter, a copy of the consent and of the personal  
20 representative's letters shall be attached to the affidavit.

21 (f) The affiant shall mail a copy of the affidavit and  
22 attachments to any person identified in paragraph (4) of  
23 subdivision (a).