

ASSEMBLY BILL

No. 1305

Introduced by Assembly Member Huber

February 18, 2011

An act to amend Sections 13050, 13100, 13101, 13151, 13152, 13154, 13200, 13600, 13601, and 13602 of the Probate Code, relating to decedents' estates.

LEGISLATIVE COUNSEL'S DIGEST

AB 1305, as introduced, Huber. Decedents' estates: smaller estates.

Existing law establishes simplified procedures for addressing 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 excludes certain property from the determination of the value of the estate, including salary or other compensation owed to the decedent, not to exceed \$5,000. 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. Existing law establishes an affidavit procedure by which a surviving spouse may collect salary or other compensation owed the deceased spouse when the amount does not exceed \$5,000, as specified.

This bill would increase the amount of salary or other compensation to be excluded from the determination of the value of the estate from \$5,000 to \$15,000. The bill would also increase the values in the succession and transfer provisions described above from \$100,000 to

\$200,000 for an estate, from \$20,000 to \$100,000 for real property, and from \$5,000 to \$15,000 for salary or compensation.

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 13050 of the Probate Code is amended
2 to read:

3 13050. (a) For the purposes of this part:

4 (1) Any property or interest or lien thereon which, at the time
5 of the decedent’s death, was held by the decedent as a joint tenant,
6 or in which the decedent had a life or other interest terminable
7 upon the decedent’s death, or which was held by the decedent and
8 passed to the decedent’s surviving spouse pursuant to Section
9 13500, shall be excluded in determining the property or estate of
10 the decedent or its value. This excluded property shall include, but
11 not be limited to, property in a trust revocable by the decedent
12 during his or her lifetime.

13 (2) A multiple-party account to which the decedent was a party
14 at the time of the decedent’s death shall be excluded in determining
15 the property or estate of the decedent or its value, whether or not
16 all or a portion of the sums on deposit are community property, to
17 the extent that the sums on deposit belong after the death of the
18 decedent to a surviving party, P.O.D. payee, or beneficiary. For
19 the purposes of this paragraph, the terms “multiple-party account,”
20 “party,” “P.O.D. payee,” and “beneficiary” are defined in Article
21 2 (commencing with Section 5120) of Chapter 1 of Part 2 of
22 Division 5.

23 (b) For the purposes of this part, all of the following property
24 shall be excluded in determining the property or estate of the
25 decedent or its value:

26 (1) Any vehicle registered under Division 3 (commencing with
27 Section 4000) of the Vehicle Code or titled under Division 16.5
28 (commencing with Section 38000) of the Vehicle Code.

29 (2) Any vessel numbered under Division 3.5 (commencing with
30 Section 9840) of the Vehicle Code.

31 (3) Any manufactured home, mobilehome, commercial coach,
32 truck camper, or floating home registered under Part 2

1 (commencing with Section 18000) of Division 13 of the Health
2 and Safety Code.

3 (c) For the purposes of this part, the value of the following
4 property shall be excluded in determining the value of the
5 decedent's property in this state:

6 (1) Any amounts due to the decedent for services in the armed
7 forces of the United States.

8 (2) The amount, not exceeding ~~five~~ *fifteen* thousand dollars
9 ~~(\$5,000)~~ *(\$15,000)*, of salary or other compensation, including
10 compensation for unused vacation, owing to the decedent for
11 personal services from any employment.

12 SEC. 2. Section 13100 of the Probate Code is amended to read:

13 13100. Excluding the property described in Section 13050, if
14 the gross value of the decedent's real and personal property in this
15 state does not exceed ~~one~~ *two* hundred thousand dollars ~~(\$100,000)~~
16 *(\$200,000)* and if 40 days have elapsed since the death of the
17 decedent, the successor of the decedent may, without procuring
18 letters of administration or awaiting probate of the will, do any of
19 the following with respect to one or more particular items of
20 property:

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

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

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

29 SEC. 3. Section 13101 of the Probate Code is amended to read:

30 13101. (a) To collect money, receive tangible personal
31 property, or have evidences of a debt, obligation, interest, right,
32 security, or chose in action transferred under this chapter, an
33 affidavit or a declaration under penalty of perjury under the laws
34 of this state shall be furnished to the holder of the decedent's
35 property stating all of the following:

36 (1) The decedent's name.

37 (2) The date and place of the decedent's death.

38 (3) "At least 40 days have elapsed since the death of the
39 decedent, as shown in a certified copy of the decedent's death
40 certificate attached to this affidavit or declaration."

- 1 (4) Either of the following, as appropriate:
- 2 (A) “No proceeding is now being or has been conducted in
- 3 California for administration of the decedent’s estate.”
- 4 (B) “The decedent’s personal representative has consented in
- 5 writing to the payment, transfer, or delivery to the affiant or
- 6 declarant of the property described in the affidavit or declaration.”
- 7 (5) “The current gross fair market value of the decedent’s real
- 8 and personal property in California, excluding the property
- 9 described in Section 13050 of the California Probate Code, does
- 10 not exceed ~~one~~ *two* hundred thousand dollars ~~(\$100,000)~~
- 11 *(\$200,000)*.”
- 12 (6) A description of the property of the decedent that is to be
- 13 paid, transferred, or delivered to the affiant or declarant.
- 14 (7) The name of the successor of the decedent (as defined in
- 15 Section 13006 of the California Probate Code) to the described
- 16 property.
- 17 (8) Either of the following, as appropriate:
- 18 (A) “The affiant or declarant is the successor of the decedent
- 19 (as defined in Section 13006 of the California Probate Code) to
- 20 the decedent’s interest in the described property.”
- 21 (B) “The affiant or declarant is authorized under Section 13051
- 22 of the California Probate Code to act on behalf of the successor
- 23 of the decedent (as defined in Section 13006 of the California
- 24 Probate Code) with respect to the decedent’s interest in the
- 25 described property.”
- 26 (9) “No other person has a superior right to the interest of the
- 27 decedent in the described property.”
- 28 (10) “The affiant or declarant requests that the described
- 29 property be paid, delivered, or transferred to the affiant or
- 30 declarant.”
- 31 (11) “The affiant or declarant affirms or declares under penalty
- 32 of perjury under the laws of the State of California that the
- 33 foregoing is true and correct.”
- 34 (b) Where more than one person executes the affidavit or
- 35 declaration under this section, the statements required by
- 36 subdivision (a) shall be modified as appropriate to reflect that fact.
- 37 (c) If the particular item of property to be transferred under this
- 38 chapter is a debt or other obligation secured by a lien on real
- 39 property and the instrument creating the lien has been recorded in
- 40 the office of the county recorder of the county where the real

1 property is located, the affidavit or declaration shall satisfy the
2 requirements both of this section and of Section 13106.5.

3 (d) A certified copy of the decedent's death certificate shall be
4 attached to the affidavit or declaration.

5 (e) If the decedent's personal representative has consented to
6 the payment, transfer, or delivery of the described property to the
7 affiant or declarant, a copy of the consent and of the personal
8 representative's letters shall be attached to the affidavit or
9 declaration.

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

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

25 SEC. 5. Section 13152 of the Probate Code is amended to read:

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

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

33 (2) The gross value of the decedent's real and personal property
34 in this state, excluding the property described in Section 13050,
35 as shown by the inventory and appraisal attached to the petition,
36 does not exceed ~~one~~ *two* hundred thousand dollars ~~(\$100,000)~~
37 *(\$200,000)*.

38 (3) A description of the particular item of real property in this
39 state which the petitioner alleges is property of the decedent passing
40 to the petitioner, and a description of the personal property which

1 the petitioner alleges is property of the decedent passing to the
2 petitioner if the requested order also is to include a determination
3 that the described personal property is property passing to the
4 petitioner.

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

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

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

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

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

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

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

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

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

1 (d) If the decedent’s personal representative has consented to
2 use of the procedure provided by this chapter, a copy of the consent
3 shall be attached to the petition.

4 SEC. 6. Section 13154 of the Probate Code is amended to read:

5 13154. (a) If the court makes the determinations required under
6 subdivision (b), the court shall issue an order determining (1) that
7 real property, to be described in the order, of the decedent is
8 property passing to the petitioners and the specific property interest
9 of each petitioner in the described property and (2) if the petition
10 so requests, that personal property, to be described in the order,
11 of the decedent is property passing to the petitioners and the
12 specific property interest of each petitioner in the described
13 property.

14 (b) The court may make an order under this section only if the
15 court makes all of the following determinations:

16 (1) The gross value of the decedent’s real and personal property
17 in this state, excluding the property described in Section 13050,
18 does not exceed ~~one~~ two hundred thousand dollars ~~(\$100,000)~~
19 (\$200,000).

20 (2) Not less than 40 days have elapsed since the death of the
21 decedent.

22 (3) Whichever of the following is appropriate:

23 (A) No proceeding is being or has been conducted in this state
24 for administration of the decedent’s estate.

25 (B) The decedent’s personal representative has consented in
26 writing to use of the procedure provided by this chapter.

27 (4) The property described in the order is property of the
28 decedent passing to the petitioner.

29 (c) If the petition has attached an inventory and appraisal that
30 satisfies the requirements of subdivision (b) of Section 13152, the
31 determination required by paragraph (1) of subdivision (b) of this
32 section shall be made on the basis of the verified petition and the
33 attached inventory and appraisal, unless evidence is offered by a
34 person opposing the petition that the gross value of the decedent’s
35 real and personal property in this state, excluding the property
36 described in Section 13050, exceeds ~~one~~ two hundred thousand
37 dollars ~~(\$100,000)~~ (\$200,000).

38 SEC. 7. Section 13200 of the Probate Code is amended to read:

39 13200. (a) No sooner than six months from the death of a
40 decedent, a person or persons claiming as successor of the decedent

1 to a particular item of property that is real property may file in the
 2 superior court in the county in which the decedent was domiciled
 3 at the time of death, or if the decedent was not domiciled in this
 4 state at the time of death, then in any county in which real property
 5 of the decedent is located, an affidavit in the form prescribed by
 6 the Judicial Council pursuant to Section 1001 stating all of the
 7 following:

- 8 (1) The name of the decedent.
- 9 (2) The date and place of the decedent’s death.
- 10 (3) A legal description of the real property and the interest of
 11 the decedent therein.
- 12 (4) The name and address of each person serving as guardian
 13 or conservator of the estate of the decedent at the time of the
 14 decedent’s death, so far as known to the affiant.
- 15 (5) “The gross value of all real property in the decedent’s estate
 16 located in California, as shown by the inventory and appraisal
 17 attached to this affidavit, excluding the real property described in
 18 Section 13050 of the California Probate Code, does not exceed
 19 ~~twenty one hundred thousand dollars (\$20,000)~~ (\$100,000).”
- 20 (6) “At least six months have elapsed since the death of the
 21 decedent as shown in a certified copy of decedent’s death certificate
 22 attached to this affidavit.”
- 23 (7) Either of the following, as appropriate:
 - 24 (A) “No proceeding is now being or has been conducted in
 25 California for administration of the decedent’s estate.”
 - 26 (B) “The decedent’s personal representative has consented in
 27 writing to use of the procedure provided by this chapter.”
- 28 (8) “Funeral expenses, expenses of last illness, and all unsecured
 29 debts of the decedent have been paid.”
- 30 (9) “The affiant is the successor of the decedent (as defined in
 31 Section 13006 of the Probate Code) and to the decedent’s interest
 32 in the described property, and no other person has a superior right
 33 to the interest of the decedent in the described property.”
- 34 (10) “The affiant declares under penalty of perjury under the
 35 law of the State of California that the foregoing is true and correct.”
 - 36 (b) For each person executing the affidavit, the affidavit shall
 37 contain a notary public’s certificate of acknowledgment identifying
 38 the person.
 - 39 (c) There shall be attached to the affidavit an inventory and
 40 appraisal of the decedent’s real property in this state, excluding

1 the real property described in Section 13050. The inventory and
2 appraisal of the real property shall be made as provided in Part 3
3 (commencing with Section 8800) of Division 7. The appraisal shall
4 be made by a probate referee selected by the affiant from those
5 probate referees appointed by the Controller under Section 400 to
6 appraise property in the county where the real property is located.

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

10 (e) A certified copy of the decedent's death certificate shall be
11 attached to the affidavit. If the decedent's personal representative
12 has consented to the use of the procedure provided by this chapter,
13 a copy of the consent and of the personal representative's letters
14 shall be attached to the affidavit.

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

17 SEC. 8. Section 13600 of the Probate Code is amended to read:

18 13600. (a) At any time after a husband or wife dies, the
19 surviving spouse or the guardian or conservator of the estate of
20 the surviving spouse may, without procuring letters of
21 administration or awaiting probate of the will, collect salary or
22 other compensation owed by an employer for personal services of
23 the deceased spouse, including compensation for unused vacation,
24 not in excess of ~~five~~ *fifteen* thousand dollars ~~(\$5,000)~~ *(\$15,000)*
25 net.

26 (b) Not more than ~~five~~ *fifteen* thousand dollars ~~(\$5,000)~~
27 *(\$15,000)* net in the aggregate may be collected by or for the
28 surviving spouse under this chapter from all of the employers of
29 the decedent.

30 (c) For the purposes of this chapter, a guardian or conservator
31 of the estate of the surviving spouse may act on behalf of the
32 surviving spouse without authorization or approval of the court in
33 which the guardianship or conservatorship proceeding is pending.

34 (d) The ~~five~~ *fifteen* thousand dollar ~~(\$5,000)~~ *(\$15,000)* net
35 limitation set forth in subdivisions (a) and (b) does not apply to
36 the surviving spouse or the guardian or conservator of the estate
37 of the surviving spouse of a firefighter or peace officer described
38 in subdivision (a) of Section 22820 of the Government Code.

39 (e) On January 1, 2003, and on January 1 of each year thereafter,
40 the maximum net amount of salary or compensation payable under

1 subdivisions (a) and (b) to the surviving spouse or the guardian or
2 conservator of the estate of the surviving spouse may be adjusted
3 to reflect any increase in the cost of living occurring after January
4 1 of the immediately preceding year. The United States city average
5 of the “Consumer Price Index for all Urban Consumers,” as
6 published by the United States Bureau of Labor Statistics, shall
7 be used as the basis for determining the changes in the cost of
8 living. The cost-of-living increase shall equal or exceed 1 percent
9 before any adjustment is made. The net amount payable may not
10 be decreased as a result of the cost-of-living adjustment.

11 SEC. 9. Section 13601 of the Probate Code is amended to read:

12 13601. (a) To collect salary or other compensation under this
13 chapter, an affidavit or a declaration under penalty of perjury under
14 the laws of this state shall be furnished to the employer of the
15 deceased spouse stating all of the following:

16 (1) The name of the decedent.

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

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

19 (A) “The affiant or declarant is the surviving spouse of the
20 decedent.”

21 (B) “The affiant or declarant is the guardian or conservator of
22 the estate of the surviving spouse of the decedent.”

23 (4) “The surviving spouse of the decedent is entitled to the
24 earnings of the decedent under the decedent’s will or by intestate
25 succession and no one else has a superior right to the earnings.”

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

28 (6) “Sections 13600 to 13605, inclusive, of the California
29 Probate Code require that the earnings of the decedent, including
30 compensation for unused vacation, not in excess of ~~five~~ *fifteen*
31 thousand dollars ~~(\$5,000)~~ *(\$15,000)* net, be paid promptly to the
32 affiant or declarant.”

33 (7) “Neither the surviving spouse, nor anyone acting on behalf
34 of the surviving spouse, has a pending request to collect
35 compensation owed by another employer for personal services of
36 the decedent under Sections 13600 to 13605, inclusive, of the
37 California Probate Code.”

38 (8) “Neither the surviving spouse, nor anyone acting on behalf
39 of the surviving spouse, has collected any compensation owed by
40 an employer for personal services of the decedent under Sections

1 13600 to 13605, inclusive, of the California Probate Code except
2 the sum of ____ dollars (\$____) which was collected from ____.”

3 (9) “The affiant or declarant requests that he or she be paid the
4 salary or other compensation owed by you for personal services
5 of the decedent, including compensation for unused vacation, not
6 to exceed ~~five~~ *fifteen* thousand dollars (~~\$5,000~~) (*\$15,000*) net, less
7 the amount of ____ dollars (\$____) which was previously
8 collected.”

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

12 (b) Reasonable proof of the identity of the surviving spouse
13 shall be provided to the employer. If a guardian or conservator is
14 acting for the surviving spouse, reasonable proof of the identity
15 of the guardian or conservator shall also be provided to the
16 employer. Proof of identity that is sufficient under Section 13104
17 is sufficient proof of identity for the purposes of this subdivision.

18 (c) If a person presenting the affidavit or declaration is a person
19 claiming to be the guardian or conservator of the estate of the
20 surviving spouse, the employer shall be provided with reasonable
21 proof, satisfactory to the employer, of the appointment of the
22 person to act as guardian or conservator of the estate of the
23 surviving spouse.

24 SEC. 10. Section 13602 of the Probate Code is amended to
25 read:

26 13602. If the requirements of Section 13600 are satisfied, the
27 employer to whom the affidavit or declaration is presented shall
28 promptly pay the earnings of the decedent, including compensation
29 for unused vacation, not in excess of ~~five~~ *fifteen* thousand dollars
30 (~~\$5,000~~) (*\$15,000*) net, to the person presenting the affidavit or
31 declaration.