

ASSEMBLY BILL

No. 838

Introduced by Assembly Member Morrell

February 21, 2013

An act to amend Sections 8482 and 10453 of the Probate Code, relating to personal representatives.

LEGISLATIVE COUNSEL'S DIGEST

AB 838, as introduced, Morrell. Personal representatives: bonds.

Existing law requires a person appointed as a personal representative of an estate to post a bond approved by the court before letters are issued, except as specified. Existing law authorizes the court to fix the amount of the bond, not to exceed the sum of specified items, including the estimated value of the personal property and the probable annual gross income of the estate.

This bill would, commencing July 1, 2014, require the reasonable amount for the cost of recovery to collect on the bond, including attorney's fees and costs, to be included in the above-described sum. The bill would require the Judicial Council to revise a specified form to implement the changes made by this bill.

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

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

1 SECTION 1. Section 8482 of the Probate Code is amended to
2 read:

1 8482. (a) The court in its discretion may fix the amount of the
 2 bond, but the amount of the bond shall be not more than the sum
 3 of:

- 4 (1) The estimated value of the personal property.
- 5 (2) The probable annual gross income of the estate.
- 6 (3) If independent administration is granted as to real property,
 7 the estimated value of the decedent’s interest in the real property.
- 8 (4) *Commencing July 1, 2014, a reasonable amount for the cost*
 9 *of recovery to collect on the bond, including attorney’s fees and*
 10 *costs.*

11 (b) Notwithstanding subdivision (a), if the bond is given by an
 12 admitted surety insurer, the court may establish a fixed minimum
 13 amount for the bond, based on the minimum premium required by
 14 the admitted surety insurer.

15 (c) If the bond is given by personal sureties, the amount of the
 16 bond shall be twice the amount fixed by the court under subdivision
 17 (a).

18 (d) Before confirming a sale of real property the court shall
 19 require such additional bond as may be proper, not exceeding the
 20 maximum requirements of this section, treating the expected
 21 proceeds of the sale as personal property.

22 (e) *Commencing July 1, 2014, the attorney’s fees and costs*
 23 *incurred in a successful action for surcharge against a personal*
 24 *representative for breach of his or her duty under this code shall*
 25 *be a surcharge against the personal representative and, if unpaid,*
 26 *shall be recovered against the surety on the bond.*

27 (f) *The Judicial Council shall revise Rule 7.207 of the California*
 28 *Rules of Court to implement the changes made to this section*
 29 *during the 2013-14 Regular Session of the Legislature.*

30 SEC. 2. Section 10453 of the Probate Code is amended to read:

31 10453. (a) (1) If the personal representative is otherwise
 32 required to file a bond and has full authority, the court, in its
 33 discretion, shall fix the amount of the bond at not more than the
 34 ~~estimated~~ *sum of all of the following:*

- 35 (A) ~~The estimated value of the personal property, the property.~~
- 36 (B) ~~The estimated value of the decedent’s interest in the real~~
 37 ~~property authorized to be sold under this part, and the part.~~
- 38 (C) ~~The probable annual gross income of the estate, or, if the~~
 39 ~~bond is to be given by personal sureties, at not less than twice that~~
 40 ~~amount.~~

1 (D) Commencing July 1, 2014, the reasonable amount for the
2 cost of recovery to collect on the bond, including attorney's fees
3 and costs.

4 (2) Notwithstanding paragraph (1), if the bond is to be given
5 by personal sureties, the amount of the bond shall be fixed at not
6 less than twice the amount fixed by the court under paragraph (1).

7 (b) (1) If the personal representative is otherwise required to
8 file a bond and has limited authority, the court, in its discretion,
9 shall fix the amount of the bond at not more than the ~~estimated~~
10 *sum of both of the following:*

11 (A) *The estimated value of the personal property and the*
12 *probable annual gross income of the ~~estate, or, if estate.~~*

13 (B) *Commencing July 1, 2014, the reasonable amount for the*
14 *cost of recovery to collect on the bond, including attorney's fees*
15 *and costs.*

16 (2) *Notwithstanding paragraph (1), if the bond is to be given*
17 *by personal sureties, the amount of the bond shall be fixed at not*
18 *less than twice ~~that~~ the amount fixed by the court under paragraph*
19 *(1).*