

**Introduced by Senator Hertzberg**February 2, 2015

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An act to add Part 3 (commencing with Section 13750) to Division 8 of the Probate Code, relating to decedent's estates.

## LEGISLATIVE COUNSEL'S DIGEST

SB 155, as introduced, Hertzberg. Decedent's estates.

Existing law provides for the disposition of a testator's property by will. Existing law establishes the Uniform Testamentary Additions to Trusts Act, under which a valid devise of property may be made by will to the trustee or trustees of a trust established or to be established by the testator or by the testator and some other person, commonly referred to as a pour-over will. Existing law provides that the decedent's property, including property devised by a will, is generally subject to probate administration, except as specified. Existing law establishes simplified procedures for addressing a decedent's estate valued under \$150,000, including authorizing the successor of the decedent to collect property due to the decedent without letters of administration or awaiting probate of a will.

This bill would establish simplified procedures for the distribution of property, real or personal property of any amount or value, devised by a will to the trustee or trustees of a recipient trust, as defined, without procuring letters of administration. The bill would authorize the trustee or trustees of a recipient trust to file a verified petition setting forth specified facts in the superior court of the county in which the estate of the decedent may be administered, and would authorize the court to issue an order that a particular item or items of property pass without administration and are transferred to the petitioner as trustee or trustees of the recipient trust. The bill would require attorneys' fees for services

performed in connection with these provisions to be determined by a private agreement between the attorney and the client, and would specify that attorneys’ fees are not subject to approval by the court.

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. Part 3 (commencing with Section 13750) is added  
2 to Division 8 of the Probate Code, to read:

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4 PART 3. DETERMINATION OF PROPERTY PASSING TO  
5 TRUSTEE OF RECIPIENT TRUST WITHOUT  
6 ADMINISTRATION

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8 CHAPTER 1. DEFINITIONS

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10 13750. For purposes of this part, both of the following  
11 definitions shall apply:

12 (a) “Pour-over will” means a devise by a will, including any  
13 codicils, of property to the trustee or trustees of a recipient trust.

14 (b) “Recipient trust” means a trust established as a revocable  
15 trust by a decedent during his or her lifetime, either alone or in  
16 conjunction with his or her spouse or registered domestic partner,  
17 and that is identified in the pour-over will.

18  
19 CHAPTER 2. COURT ORDER DETERMINING PASSAGE OF  
20 PROPERTY TO TRUSTEE OR TRUSTEES OF RECIPIENT TRUST

21  
22 13751. Subject to further requirements provided in this chapter,  
23 if a decedent dies testate and by his or her pour-over will devises  
24 some or all of his or her property to the trustee or trustees of a  
25 recipient trust, the trustee or trustees of that recipient trust, without  
26 procuring letters of administration, may file a petition in the  
27 superior court of the county in which the estate of the decedent  
28 may be administered requesting a court order that a particular item  
29 or items of property pass without administration to the petitioner  
30 as trustee or trustees of the recipient trust.

31 13752. (a) The procedure provided by this chapter may be  
32 used only if:

1 (1) At least 40 days have elapsed since the death of the decedent.

2 (2) No proceeding is being or has been conducted for the probate  
3 administration of the decedent’s estate, either in this state or in  
4 any other jurisdiction.

5 (3) Except as provided in paragraph (4), the devise in the  
6 pour-over will to the trustee or trustees of the recipient trust applies  
7 to the entire remainder of the property subject to the pour-over  
8 will.

9 (4) (A) The only other devise or devises, if any, in the pour-over  
10 will are one or more specific gifts, as defined in subdivision (a) of  
11 Section 21117, all of which would be eligible for disposition  
12 without administration pursuant to either of the following  
13 provisions:

14 (i) Part 1 (commencing with Section 13000), as determined by  
15 the petitioner. Any property that is not a devise of a specific gift,  
16 as defined in subdivision (a) of Section 21117, in the decedent’s  
17 pour-over will shall be excluded in determining the property or  
18 estate of the decedent or its value for this purpose.

19 (ii) Part 2 (commencing with Section 13500), as determined by  
20 the petitioner.

21 (B) The court may rely on the petitioner’s representations  
22 concerning determinations made by the petitioner pursuant to this  
23 paragraph.

24 (b) The procedure provided by this chapter may be used for real  
25 or personal property of any amount or value, so long as the other  
26 requirements of this chapter are satisfied. The value of an  
27 individual item, or aggregate value of items, of property does not  
28 need to be included in the petition. An inventory and appraisal  
29 shall not be required for the property subject to the procedure  
30 provided by this chapter.

31 13753. (a) The petition shall be verified by each petitioner,  
32 shall contain a request that the court make an order pursuant to  
33 this chapter that a particular item or items of the decedent’s  
34 property pass without administration to the petitioner as trustee or  
35 trustees of the recipient trust, and shall state all of the following:

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

38 (2) That at least 40 days have elapsed since the death of the  
39 decedent.

1 (3) That no proceeding is being or has been conducted for  
2 administration of the decedent's estate, either in this state or in  
3 any other jurisdiction.

4 (4) The facts and the provision or provisions of the pour-over  
5 will upon which the petitioner bases the allegation that a particular  
6 item or items of property pass without administration to the  
7 petitioner as trustee or trustees of the recipient trust, including, but  
8 not limited to, the following:

9 (A) That the devise in the pour-over will to the trustee or trustees  
10 of the recipient trust applies to the entire remainder of the property  
11 subject to the pour-over will.

12 (B) Either of the following, as applicable:

13 (i) That there is no devise in the pour-over will other than to the  
14 trustee or trustees of the recipient trust.

15 (ii) The only other devise or devises, if any, in the pour-over  
16 will are one or more specific gifts, as defined in subdivision (a) of  
17 Section 21117, all of which would be eligible for disposition  
18 without administration pursuant to either of the following  
19 provisions:

20 (I) Part 1 (commencing with Section 13000), as determined by  
21 the petitioner. Any property that is not a devise of a specific gift,  
22 as defined in subdivision (a) of Section 21117, identified in the  
23 decedent's pour-over will shall be excluded in determining the  
24 property or estate of the decedent or its value.

25 (II) Part 2 (commencing with Section 13500), as determined by  
26 the petitioner.

27 (5) A description or descriptions of the particular item or items  
28 of the decedent's property for which the petitioner requests an  
29 order pursuant to this chapter.

30 (6) The name, age, address, and relation to the decedent of each  
31 of the following:

32 (A) Heir and devisee of the decedent.

33 (B) Each person named as executor or alternate executor of the  
34 pour-over will.

35 (C) Each beneficiary of the recipient trust. For any future  
36 interests, this determination shall be made pursuant to subdivision  
37 (a) of Section 15804, so far as known to any petitioner.

38 (D) Each person named as trustee or successor trustee in the  
39 recipient trust.

1 (7) The name and address of any person serving as guardian of  
2 the estate or conservator of the estate of the decedent at the time  
3 of the decedent's death, so far as known to any petitioner.

4 (b) A copy of the pour-over will shall be attached to, and filed  
5 in support of, the petition.

6 (c) A certification of trust for the recipient trust that satisfies  
7 the requirements of Section 18100.5 shall be attached to, and filed  
8 in support of, the petition.

9 13754. Notice of hearing shall be given as provided in Section  
10 1220 to each of the persons named in the petition pursuant to  
11 Section 13753.

12 13755. If the requirements of this chapter are satisfied, the  
13 court shall issue an order that a particular item or items of property  
14 pass without administration and are transferred to the petitioner  
15 as trustee or trustees of the recipient trust. Each item of property  
16 shall be described in the order. The court shall not issue an omnibus  
17 order for final distribution pursuant to the procedure provided by  
18 this chapter.

19 13756. (a) Except as provided in subdivision (b), upon  
20 becoming final, an order under this chapter that property passes  
21 without administration to the trustee or trustees of the recipient  
22 trust shall be conclusive on all persons.

23 (b) An order issued by the court pursuant to Section 13755 shall  
24 not preclude the filing of a petition pursuant to Section 17200.

25 13757. The attorney's fees for services performed in connection  
26 with the filing of a petition and obtaining a court order under this  
27 chapter shall be determined by a private agreement between the  
28 attorney and the client and are not subject to approval by the court.  
29 If there is no agreement between the attorney and the client  
30 concerning the attorney's fees for services performed in connection  
31 with the filing of a petition and obtaining a court order under this  
32 chapter and there is a dispute concerning the reasonableness of the  
33 attorney's fees for those services, a petition may be filed with the  
34 court in the same proceeding requesting that the court determine  
35 the reasonableness of the attorney's fees for those services. If there  
36 is an agreement between the attorney and the client concerning  
37 the attorney's fees for services performed in connection with the  
38 filing of a petition and obtaining a court order under this chapter  
39 and there is a dispute concerning the meaning of the agreement, a

1 petition may be filed with the court in the same proceeding  
2 requesting that the court determine the dispute.  
3 13758. Nothing in this chapter excuses compliance with  
4 Chapter 3 (commencing with Section 13100) by the holder of the  
5 decedent's personal property if an affidavit or declaration is  
6 furnished as provided in that chapter.

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CHAPTER 3. LIABILITY FOR DEBTS OF DECEDENT

10 13759. Property transferred to the trustee or trustees of a  
11 recipient trust pursuant to an order issued under Section 13755  
12 shall be subject to the payment of claims, debts, and expenses as  
13 provided in Part 8 (commencing with Section 19000) of Division  
14 9.