

Assembly Bill No. 2146

Passed the Assembly April 18, 1996

Chief Clerk of the Assembly

Passed the Senate June 13, 1996

Secretary of the Senate

This bill was received by the Governor this ___ day
of _____, 1996, at ___ o'clock __M.

Private Secretary of the Governor

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CHAPTER ____

An act to amend Sections 2459, 2544, 2943, 13100, 13101, 13151, 13152, 13154, and 13200 of, and to add Section 2544.5 to, the Probate Code, relating to probate.

LEGISLATIVE COUNSEL'S DIGEST

AB 2146, Rainey. Probate: disposition of property.

(1) Existing law authorizes a conservator to take specified action with respect to mutual fund and other dividend reinvestment plans in which the conservatee, or other specified person, has or will have an interest, only after authorization or direction by order of the court.

This bill would create an exception to this provision with respect to the sale of mutual funds held without designation of a beneficiary.

(2) Existing law authorizes the guardian or conservator to sell securities, under certain conditions, without authorization, confirmation, or direction of the court, as specified.

This bill would amend that provision to authorize a guardian or conservator to sell securities that are to be directly redeemed by the issuer thereof.

(3) Existing law also authorizes the public guardian, rather than a probate referee, to appraise property described in the inventory of an estate if the public guardian files with the inventory an appraisal showing that the estimated value of the property, including cash items, does not exceed \$10,000. In addition, the successor of a decedent may, without procuring letters of administration or awaiting probate of the will, take specified actions related to the collection or recovery of property due or belonging to the decedent, if the gross value of the decedent's estate does not exceed \$60,000.

This bill would authorize the public guardian to appraise the property described above if the estimated value of the property does not exceed \$100,000, as specified. The bill would require an appraisal by a probate referee, however, where a conservator seeks authority to



sell the conservatee's personal residence or to sell other property valued in excess of \$10,000, as specified. The bill would also provide that the successor of a decedent may take specified actions with respect to the collection or recovery of property without procuring letters of administration or awaiting probate of the will, if the gross value of the decedent's estate does not exceed \$100,000.

(4) Existing law permits a person or persons to make a claim as successor of a decedent to a particular item of real property by filing an affidavit stating, among other things, that the gross value of all real property in the decedent's estate located in this state does not exceed \$10,000.

This bill would instead require that the affidavit state that the gross value of the real property does not exceed \$20,000.

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

SECTION 1. Section 2459 of the Probate Code is amended to read:

2459. (a) The guardian or conservator may obtain, continue, renew, modify, terminate, or otherwise deal in any of the following for the purpose of providing protection to the ward or conservatee or a person legally entitled to support from the ward or conservatee:

(1) Medical, hospital, and other health care policies, plans, or benefits.

(2) Disability policies, plans, or benefits.

(b) The conservator may continue in force any of the following in which the conservatee, or a person legally entitled to support, maintenance, or education from the conservatee, has or will have an interest:

(1) Life insurance policies, plans, or benefits.

(2) Annuity policies, plans, or benefits.

(3) Mutual fund and other dividend reinvestment plans.

(4) Retirement, profit-sharing, and employee welfare plans or benefits.



(c) The right to elect benefit or payment options, to terminate, to change beneficiaries or ownership, to assign rights, to borrow, or to receive cash value in return for a surrender of rights, or to take similar actions under any of the policies, plans, or benefits described in subdivision (b) may be exercised by the conservator only after authorization or direction by order of the court, except as permitted in Section 2544.5. To obtain such an order, the conservator or other interested person shall petition under Article 10 (commencing with Section 2580).

(d) Notwithstanding subdivision (c), unless the court otherwise orders, the conservator without authorization of the court may borrow on the loan value of an insurance policy to pay the current premiums to keep the policy in force if the conservatee followed that practice prior to the establishment of the conservatorship.

(e) The guardian may give the consent provided in Section 10112 of the Insurance Code without authorization of the court, but the guardian may use funds of the guardianship estate to effect or maintain in force a contract entered into by the ward under Section 10112 of the Insurance Code only after authorization by order of the court. To obtain such an order, the guardian, the ward, or any other interested person shall file a petition showing that it is in the best interest of the ward or of the guardianship estate to do so. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(f) Nothing in this section limits the power of the guardian or conservator to make investments as otherwise authorized by this division.

SEC. 2. Section 2544 of the Probate Code is amended to read:

2544. (a) Except as specifically limited by order of the court, subject to Section 2541, the guardian or conservator may sell securities without authorization, confirmation, or direction of the court if any of the following conditions is satisfied:



(1) The securities are to be sold on an established stock or bond exchange.

(2) The securities to be sold are securities designated as a national market system security on an interdealer quotation system or subsystem thereof, by the National Association of Securities Dealers, Inc., sold through a broker-dealer registered under the Securities Exchange Act of 1934 during the regular course of business of the broker-dealer.

(3) The securities are to be directly redeemed by the issuer thereof.

(b) Section 2543 does not apply to sales under this section.

SEC. 2.5. Section 2544.5 is added to the Probate Code, to read:

2544.5. Except as specifically limited by the court, subject to Section 2541, the guardian or conservator may sell mutual funds held without designation of a beneficiary without authorization, confirmation, or direction of the court. Section 2543 does not apply to sales under this section.

SEC. 3. Section 2943 of the Probate Code is amended to read:

2943. (a) Notwithstanding subdivision (c) of Section 2610, the property described in the inventory may be appraised by the public guardian and need not be appraised by a probate referee if the public guardian files with the inventory an appraisal showing that the estimated value of the property in the estate does not exceed the amount prescribed in Section 13100.

(b) If the conservator seeks authority pursuant to subdivision (b) of Section 2540 to sell the conservatee's personal residence, whether or not it is real property, or if the conservator seeks authority pursuant to Section 2590 to sell the conservatee's real property, valued in excess of ten thousand dollars (\$10,000), or an item of personal property valued in excess of ten thousand dollars (\$10,000) that is not a security sold pursuant to subdivision (a) of Section 2544, that property shall be appraised by a probate referee.



SEC. 4. Section 13100 of the Probate Code is amended to read:

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

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

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

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

SEC. 5. Section 13101 of the Probate Code is amended to read:

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

(1) The decedent's name.

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

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

(4) Either of the following, as appropriate:

(A) "No proceeding is now being or has been conducted in California for administration of the decedent's estate."

(B) "The decedent's personal representative has consented in writing to the payment, transfer, or delivery



to the affiant or declarant of the property described in the affidavit or declaration.”

(5) “The current gross fair market value of the decedent’s real and personal property in California, excluding the property described in Section 13050 of the California Probate Code, does not exceed one hundred thousand dollars (\$100,000).”

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

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

(8) Either of the following, as appropriate:

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

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

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

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

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

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

(c) If the particular item of property to be transferred under this chapter is a debt or other obligation secured by a lien on real property and the instrument creating the lien has been recorded in the office of the county



recorder of the county where the real property is located, the affidavit or declaration shall satisfy the requirements both of this section and of Section 13106.5.

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

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

SEC. 6. Section 13151 of the Probate Code is amended to read:

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

SEC. 7. Section 13152 of the Probate Code is amended to read:

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

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

(2) The gross value of the decedent's real and personal property in this state, excluding the property described in Section 13050, as shown by the inventory and appraisal



attached to the petition, does not exceed one hundred thousand dollars (\$100,000).

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

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

(5) Either of the following, as appropriate:

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

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

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

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

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

(b) There shall be attached to the petition an inventory and appraisal in the form set forth in Section 8802 of the decedent's real and personal property in this



state, excluding the property described in Section 13050. The appraisal shall be made by a probate referee selected by the petitioner from those probate referees appointed by the Controller under Section 400 to appraise property in the county where the real property is located. The appraisal shall be made as provided in Part 3 (commencing with Section 8800) of Division 7. The petitioner may appraise the assets which a personal representative could appraise under Section 8901.

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

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

SEC. 8. Section 13154 of the Probate Code is amended to read:

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

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

(1) The gross value of the decedent's real and personal property in this state, excluding the property described in Section 13050, does not exceed one hundred thousand dollars (\$100,000).

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

(3) Whichever of the following is appropriate:

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



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

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

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

SEC. 9. Section 13200 of the Probate Code is amended to read:

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

(1) The name of the decedent.

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

(3) A legal description of the real property and the interest of the decedent therein.

(4) The name and address of each person serving as guardian or conservator of the estate of the decedent at the time of the decedent's death, so far as known to the affiant.

(5) "The gross value of all real property in the decedent's estate located in California, as shown by the inventory and appraisal attached to this affidavit, excluding the real property described in Section 13050 of



the California Probate Code, does not exceed twenty thousand dollars (\$20,000).”

(6) “At least six months have elapsed since the death of the decedent as shown in a certified copy of decedent’s death certificate attached to this affidavit.”

(7) Either of the following, as appropriate:

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

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

(8) “Funeral expenses, expenses of last illness, and all unsecured debts of the decedent have been paid.”

(9) “The affiant is the successor of the decedent (as defined in Section 13006 of the Probate Code) and to the decedent’s interest in the described property, and no other person has a superior right to the interest of the decedent in the described property.”

(10) “The affiant declares under penalty of perjury under the law of the State of California that the foregoing is true and correct.”

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

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

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



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

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



Approved _____, 1996

Governor

