

Memorandum 2018-16

**Disposition of Estate Without Administration: Interest Rate
(Draft Tentative Recommendation)**

This study addresses Probate Code procedures for the disposition of a small estate or portion of an estate, without probate administration. Generally, the recipient of property under these procedures is liable, to the extent of the property's value, to a decedent's creditors or the decedent's rightful heirs or devisees. The recipient's liability includes interest on the property's value in some instances.

Memorandum 2017-57 and its First Supplement¹ discuss the interest rate imposed under these provisions. This memorandum presents a draft tentative recommendation on this issue. It also discusses the implementation details that arose in preparation of the draft tentative recommendation.

Unless otherwise noted, all statutory references in this memorandum are to the Probate Code.

BACKGROUND

At the December 2017 meeting, the Commission considered the propriety of the ten percent interest rate that is currently charged against persons who receive the decedent's property under certain Probate Code procedures.² The Commission decided the following:

- (1) The interest rate should be set at a fixed rate of seven percent.
- (2) Interest should not begin accruing until a beneficiary has been given notice that property must be returned to the estate.

1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. See Memorandum 2017-57 and its First Supplement.

- (3) The court should be given discretion to reduce or waive the interest if the beneficiary acted reasonably and in good faith, under the circumstances known to the beneficiary.³

The attached draft tentative recommendation contains proposed legislation to implement two of these decisions. Each of these decisions is discussed briefly below.

INTEREST RATE

As indicated above, the Commission decided that the interest rate should be set at a fixed rate of seven percent for these provisions. The proposed legislation specifies that the rate of interest is “seven percent per annum.”⁴

TIMING OF INTEREST ACCRUAL

The Commission decided to change the time at which interest begins to accrue, to the date when the property recipient is notified of an obligation to return the property’s value.⁵

Originally, when the Commission considered this issue, the discussion was focused on a situation in which there was only a single claimant, the decedent’s estate.⁶ In a single-claimant situation, the proposed reform is fairly easy to implement and would achieve the goal of avoiding imposition of interest to increase the recipient’s liability before the recipient knew of the obligation to pay.

However, in working closely with the relevant statutes, the staff realized that the interest rate would also apply in a very different situation, where there is liability to *multiple* claimants, including the individual unsecured creditors of the decedent or devisees or heirs who have a superior claim to the property.⁷ Implementing a change to the timing of interest accrual where there are multiple claimants is much more complex.

The complexity comes from the fact that interest is used to compute the recipient’s *aggregate liability for all claims*, and not the amount owed to individual claimants.

3. Minutes (Dec. 2017), p. 14.

4. See, e.g., proposed Prob. Code § 13111(a)(2).

5. See Minutes (Dec. 2017), p. 14.

6. See Memorandum 2017-57, pp. 11-12.

7. See, e.g., Sections 13109, 13110, 13112.

Where there are multiple claims, notice of a single claim does not provide notice of any other potential claims. If interest were to begin accruing on notice of the first claim, the recipient's aggregate liability would begin increasing, enlarging the potential liability for subsequent claims, even though the recipient is unaware of those claims. This is contrary to the purpose of the reform, imposing interest to increase liability *only* when the recipient has knowledge of an unfulfilled obligation to pay.

To take a very simple example: Decedent owed \$50,000 to Creditor A and \$50,000 to Creditor B. Recipient takes \$90,000 worth of the decedent's personal property under the affidavit procedure,⁸ incurring personal liability for the decedent's unsecured debts, and sells the property. Creditor A requests payment immediately after the property sold. Recipient promptly pays the \$50,000 debt to Creditor A and is unaware of the debt to Creditor B. Should interest start accruing on the Recipient's liability at that point, to the benefit of Creditor B?

For the purposes of computing the recipient's aggregate liability in a situation of multiple claimants, the staff could not identify a single accrual date that would be consistent with the goals of the reform. **Unless the Commission or a member of the public has a suggestion, the staff would recommend omitting the accrual date reform from the proposed law (as was done in the attached draft tentative recommendation).**

Without the change in the date of interest accrual, a reform package reducing the interest rate and allowing courts to waive or reduce interest would still appear to be an improvement on the status quo.

WAIVER OF INTEREST

The Commission decided that the court should be given discretion to reduce or waive interest altogether if the recipient acted reasonably and in good faith, under the circumstances known to the recipient.⁹ This decision was based on a comment from Judge Arnold H. Gold, Retired.¹⁰ Judge Gold's letter identifies provisions of the Probate Code that allow a court, in its discretion, to reduce or waive liability under certain circumstances.

For instance, Probate Code Section 9602(b), a provision of this type, provides:

8. See Prob. Code §§ 13100, 13101.

9. See Minutes (Dec. 2017), p. 14; see also First Supplement to Memorandum 2017-57.

10. See First Supplement to Memorandum 2017-57.

If the personal representative has acted reasonably and in good faith under the circumstances as known to the personal representative, the court, in its discretion, may excuse the personal representative in whole or in part from liability under subdivision (a) [interest for a breach of fiduciary duty] if it would be equitable to do so.

The proposed legislation includes new provisions, modeled after Probate Code Section 9602(b), that would allow a court to make a discretionary reduction or elimination of liability for interest. These provisions would borrow the standard used in the provisions pointed out by Judge Gold. For instance, proposed Section 13117 provides:

If the court finds that a person to whom payment, delivery, or transfer of the decedent's property has been made under this chapter has acted reasonably and in good faith under the circumstances as known to the person, the court may, in its discretion, excuse the person from liability to pay interest, in whole or in part, under paragraph (2) of subdivision (a) of Section 13111 or paragraph (3) of subdivision (b) of Section 13112, if it would be equitable to do so.¹¹

Does the Commission approve of this proposed language?

TECHNICAL CHANGE

In the draft tentative recommendation, Section 13112 includes proposed organizational changes (i.e., adding paragraph numbers) to achieve parallelism with similar provisions Sections 13207 and 13563. The relevant portion of Section 13112 (with changes shown in ~~strikeout~~ and underscore) is reproduced below.

(b) Except as provided in subdivision (b) of Section 13110, the aggregate of the personal liability of a person under Sections 13109 and 13110 shall not exceed the sum of the following:

(1) The fair market value, valued as of the time the affidavit or declaration is presented under this chapter, of the property paid, delivered, or transferred to the person under this chapter, less the amount of any liens and encumbrances on that property at that time, together with the .

(2) The net income the person received from the property .

(3) If and, if the property has been disposed of, interest on the fair market value of the property accruing from the date of disposition at the rate payable on a money judgment of seven percent per annum. For the purposes of this subdivision paragraph,

11. See also proposed Sections 13211 and 13565.

“fair market value of the property” has the same meaning as defined in paragraph (2) of subdivision (a) of Section 13111.

Does the Commission have any concerns with this proposed technical change?

APPROVAL OF TENTATIVE RECOMMENDATION

Does the Commission approve the attached draft (as is or with modifications) as a tentative recommendation to be posted to its website and circulated for public comment?

Respectfully submitted,

Kristin Burford
Staff Counsel

CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

TENTATIVE RECOMMENDATION

Disposition of Estate Without Administration: Interest Rate

April 2018

The purpose of this tentative recommendation is to solicit public comment on the Commission's tentative conclusions. A comment submitted to the Commission will be part of the public record. The Commission will consider the comment at a public meeting when the Commission determines what, if any, recommendation it will make to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made to it.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN June 20, 2018.

The Commission will often substantially revise a proposal in response to comment it receives. Thus, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

California Law Revision Commission
c/o King Hall Law School
Davis, CA 95616
530-752-3620
<commission@clrc.ca.gov>

SUMMARY OF TENTATIVE RECOMMENDATION

The Probate Code contains a number of provisions that permit an estate or a portion of an estate to be disposed of without administration (or with substantially simplified administration). The recipient of the decedent's property under some of these procedures is liable, to the extent of the property's value, to the decedent's estate, an unsecured creditor of the decedent, or a person with a superior right to succeed to the property. Where the recipient has disposed of or improved the property, the extent of the recipient's liability also includes interest on the property's value.

The Commission concluded that the 10 percent interest rate imposed by these statutes (through incorporation of a rate specified in the Code of Civil Procedure) is too high and unduly burdens a recipient of the decedent's property. The Commission recommends that the default interest rate be changed to seven percent per annum, which is the default rate for judgments set by the California Constitution.

In addition, the Commission recommends that a court be granted discretion to reduce or waive the recipient's liability for interest where it would be equitable to do so, if the recipient has acted reasonably and in good faith, under the circumstances known to the recipient.

The Commission solicits public comment on this tentative recommendation.

This tentative recommendation was prepared pursuant to Chapter 150 of the Statutes of 2016.

DISPOSITION OF ESTATE WITHOUT ADMINISTRATION: INTEREST RATE

1

BACKGROUND

2

The Probate Code contains a number of provisions that permit an estate or a portion of an estate to be disposed of without administration (or with substantially simplified administration). The recipient of the decedent's property under some of these procedures is liable, to the extent of the property's value, to the decedent's estate, an unsecured creditor of the decedent, or a person with a superior right to succeed to the property. Where the recipient has disposed of or improved the property, the extent of the recipient's liability also includes interest on the property's value, at the rate payable on a money judgment.¹

3

4

5

6

7

8

9

10

Currently, the law provides for a 10 percent interest rate in these situations.²

11

SCOPE OF THE STUDY

12

The Commission's study of this topic focused on statutory provisions that impose interest in computing the recipient's liability to the estate, an unsecured creditor of the decedent, or a person with a superior right to succeed to the property. In particular, the Commission focused on the following provisions of the Probate Code:

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

- *Affidavit Procedure for Collection or Transfer of Personal Property* (Sections 13111, 13112). These provisions impose liability on a person who receives the decedent's personal property using the statutory affidavit procedure.³ Where the recipient of the decedent's property has disposed of the property, the extent of the recipient's liability includes interest on the fair market value of the property from the date of disposition.
- *Affidavit Procedure for Real Property of Small Value* (Sections 13206, 13207, 13210). These provisions impose liability on a person who receives the decedent's real property of small value using the statutory affidavit procedure.⁴ Where the recipient of the decedent's property has disposed of the property or improved the property, the extent of the recipient's liability can include interest on the fair market value⁵ of the property.

1. See, e.g., Prob. Code § 13206(a)(2), (c)(2).

2. See, e.g., Prob. Code § 13111(a)(2) (interest accrues at rate payable on money judgment); Code Civ. Proc. § 685.010 (interest of 10% per annum accrues on principal amount of money judgment remaining unsatisfied).

3. See generally Prob. Code §§ 13100-13116.

4. See generally Prob. Code §§ 13200-13210.

5. Where the property is disposed of, the fair market value of the property is computed at the time of disposition. See Prob. Code § 13206(a)(2). Where the property is improved, the fair market

- 1 • *Surviving Spouse Liability for Decedent’s Property* (Sections 13562,
2 13563). These provisions impose liability on a surviving spouse who
3 receives the decedent’s property without probate administration.⁶ Where the
4 surviving spouse has disposed of the property or improved the property, the
5 extent of the surviving spouse’s liability can include interest on the fair
6 market value⁷ of the property from the date of disposition or improvement.

7 This recommendation addresses only the interest rates in the provisions noted
8 above. For ease of reference, these provisions will be referred to as the “interest
9 rate provisions” in this tentative recommendation.

10 This recommendation does not address and the Commission takes no position on
11 the suitability of interest rates or lack thereof in other provisions of the Probate
12 Code.

13 PROBLEM

14 Currently, the interest rate is 10 percent.⁸ At the time of the Commission
15 recommendation proposing the interest rate provisions, the 10 percent interest rate
16 was in the range of the prevailing market rate.⁹ Under those conditions, the 10
17 percent interest rate would approximate the expected investment returns that a
18 property recipient would receive on investing the proceeds of the property sale.

19 The 10 percent interest rate is significantly higher than the current market
20 interest rates.¹⁰ Under current market conditions, the 10 percent interest rate does
21 not reflect the expected value that a recipient would receive by investing the
22 proceeds of sale. Instead, the 10 percent interest rate acts as a de facto penalty,
23 imposing liability on the recipient far in excess of the value that the recipient could
24 expect to realize from the decedent’s property. This places the recipient of the

value of the property is computed at the time that the certified copy of the affidavit used to claim the property was issued. See Prob. Code § 13206(c)(2).

6. See generally Prob. Code §§ 13560-13564.

7. See Prob. Code §§ 13562(a)(2), (b)(2).

8. See *supra* note 2.

9. See, e.g., <<https://fred.stlouisfed.org/series/CD6M>> (6-month certificate of deposit secondary market rate was 7.80% in December 1985); <<https://fred.stlouisfed.org/series/CD1M>> (1-month certificate of deposit secondary market rate 7.87% in December 1985); see also <<https://www.bankrate.com/banking/cds/historical-cd-interest-rates-1984-2016/>> (1 year certificate of deposit yield was 7.89% and 5 year certificate of deposit yield was 9.09% on January 8, 1986).

10. See, e.g., <<https://fred.stlouisfed.org/series/CD6NRJD>> (The national rate on jumbo deposits (greater or equal to \$100,000) for 6 Month CD was 0.21% on March 26, 2018); <<https://fred.stlouisfed.org/series/CD6NRNJ>> (The national rate on non-jumbo deposits (less than \$100,000) for 6 Month CD was 0.19% on March 26, 2018); <<https://fred.stlouisfed.org/series/CD12NRJD>> (The national rate on jumbo deposits (greater or equal to \$100,000) for 12 Month CD was 0.37% on March 26, 2018).

1 decedent’s property in a worse position than if the recipient had not received the
2 property at all.

3 For example, under Probate Code Section 13101, the successor to the decedent’s
4 property could use an affidavit to collect the decedent’s personal property worth
5 \$100,000. The successor could then sell the property immediately after receiving
6 it. If, after three years, the successor received notice that the property must be
7 returned to the estate,¹¹ the successor would owe, in addition to the \$100,000 value
8 from the property sale, approximately \$30,000 in interest (not taking into account
9 compounding).¹² If the successor had invested the proceeds of sale in certificate of
10 deposit offering two percent interest,¹³ the investment would have only earned
11 roughly \$6,000. In this situation, the successor would have a net loss of \$24,000
12 resulting from the imposition of the 10 percent interest rate.

13 RECOMMENDATION

14 The Commission recommends that the interest rate imposed in the interest rate
15 provisions be changed to seven percent per annum. The seven percent rate is the
16 default rate for judgments in the California Constitution and is used in other
17 contexts under California law.¹⁴ While the seven percent interest rate is still
18 significantly higher than the current market interest rate, seven percent is closer to
19 current rates than the 10 percent interest rate. Although a variable rate tied to the
20 market could provide a better approximation of market rates, a variable rate is
21 more difficult to administer than a fixed rate.

22 The Commission recognizes that, in some circumstances, the fixed rate of seven
23 percent per annum may produce inequitable results, as described above. For this
24 reason, the Commission also recommends that a court be given discretion to
25 excuse a recipient’s liability for interest, in whole or in part, where it would be
26 equitable to do so, if the recipient acted reasonably and in good faith, under the
27 circumstances known to the recipient.¹⁵ Under existing law, courts are granted
28 discretion to offer relief from liability in similar circumstances.¹⁶

11. See Prob. Code § 13111(e) (“An action to enforce the liability under this section is forever barred three years after presentation of the affidavit or declaration under this chapter to the holder of the decedent’s property....”).

12. See Prob. Code § 13111(a)(2).

13. Under current market conditions, two percent is significantly higher than the average interest rate. See *supra* note 10.

14. See Cal. Const. art. XV, § 1; see also *Palomar Grading & Paving, Inc. v. Wells Fargo Bank, N.A.*, 230 Cal. App. 4th 686 (2014) (prejudgment interest on a mechanics lien); Prob. Code § 12001 (interest on unpaid devises).

15. See, e.g., proposed Prob. Code § 13117.

16. See Prob. Code §§ 2401.3(b), 2401.5(b), 9601(b), 9602(b), 16440(b), 16441(b).

1

REQUEST FOR COMMENT

2 **The Commission seeks public comment on all of the proposed statutory**
3 **changes included in this tentative recommendation.**

4 Input from knowledgeable persons is critical in the Commission’s study process,
5 and may cause the Commission to substantially revise its proposal. Comments
6 supporting the proposed approach are just as important as comments suggesting
7 changes to that approach or expressing other views.

Contents

Prob. Code § 13111 (amended). Restitution if estate proceeding commenced or on request of personal representative	7
Prob. Code § 13112 (amended). Extent of liability	8
Prob. Code § 13117 (added). Waiver of interest	8
Prob. Code § 13206 (amended). Restitution if estate proceeding commenced or on request of personal representative	9
Prob. Code § 13207 (amended). Extent of liability	10
Prob. Code § 13211 (added). Waiver of interest	11
Prob. Code § 13562 (amended). Restitution if estate proceeding commenced	11
Prob. Code § 13563 (amended). Extent of liability	12
Prob. Code § 13565 (added). Waiver of interest	13

PROPOSED LEGISLATION

1 **Prob. Code § 13111 (amended). Restitution if estate proceeding commenced or on request of**
2 **personal representative**

3 SECTION 1. Section 13111 of the Probate Code is amended to read:

4 13111. (a) Subject to the provisions of this section, if proceedings for the
5 administration of the decedent’s estate are commenced in this state, or if the
6 decedent’s personal representative has consented to the payment, transfer, or
7 delivery of the decedent’s property under this chapter and the personal
8 representative later requests that the property be restored to the estate, each person
9 to whom payment, delivery, or transfer of the decedent’s property is made under
10 this chapter is liable for:

11 (1) The restitution of the property to the estate if the person still has the
12 property, together with (A) the net income the person received from the property
13 and (B) if the person encumbered the property after it was delivered or transferred
14 to the person, the amount necessary to satisfy the balance of the encumbrance as
15 of the date the property is restored to the estate.

16 (2) The restitution to the estate of the fair market value of the property if the
17 person no longer has the property, together with (A) the net income the person
18 received from the property and (B) interest on the fair market value of the property
19 from the date of disposition at the rate ~~payable on a money judgment of seven~~
20 percent per annum. For the purposes of this subdivision, the “fair market value of
21 the property” is the fair market value, determined as of the time of the disposition
22 of the property, of the property paid, delivered, or transferred to the person under
23 this chapter, less any liens and encumbrances on the property at that time.

24 (b) Subject to subdivision (c) and subject to any additional liability the person
25 has under Sections 13109 to 13112, inclusive, if the person fraudulently secured
26 the payment, delivery, or transfer of the decedent’s property under this chapter, the
27 person is liable under this section for restitution to the decedent’s estate of three
28 times the fair market value of the property. For the purposes of this subdivision,
29 the “fair market value of the property” is the fair market value, determined as of
30 the time the person liable under this subdivision presents the affidavit or
31 declaration under this chapter, of the property paid, delivered, or transferred to the
32 person under this chapter, less the amount of any liens and encumbrances on the
33 property at that time.

34 (c) The property and amount required to be restored to the estate under this
35 section shall be reduced by any property or amount paid by the person to satisfy a
36 liability under Section 13109 or 13110.

37 (d) An action to enforce the liability under this section may be brought only by
38 the personal representative of the estate of the decedent. Whether or not the
39 personal representative brings an action under this section, the personal

1 representative may enforce the liability only to the extent necessary to protect the
2 interests of the heirs, devisees, and creditors of the decedent.

3 (e) An action to enforce the liability under this section is forever barred three
4 years after presentation of the affidavit or declaration under this chapter to the
5 holder of the decedent’s property, or three years after the discovery of the fraud,
6 whichever is later. The three-year period specified in this subdivision is not tolled
7 for any reason.

8 (f) In the case of a nondomiciliary decedent, restitution under this section shall
9 be made to the estate in an ancillary administration proceeding.

10 **Comment.** Section 13111(a)(2) is amended to change the interest rate. The liability for interest
11 imposed by this section may be modified by a court under appropriate circumstances. See Section
12 13117.

13 **Prob. Code § 13112 (amended). Extent of liability**

14 SEC. 2. Section 13112 of the Probate Code is amended to read:

15 13112. (a) A person to whom payment, delivery, or transfer of the decedent’s
16 property has been made under this chapter is not liable under Section 13109 or
17 13110 if proceedings for the administration of the decedent’s estate are
18 commenced in this state, and the person satisfies the requirements of Section
19 13111.

20 (b) Except as provided in subdivision (b) of Section 13110, the aggregate of the
21 personal liability of a person under Sections 13109 and 13110 shall not exceed the
22 sum of the following:

23 (1) The fair market value, valued as of the time the affidavit or declaration is
24 presented under this chapter, of the property paid, delivered, or transferred to the
25 person under this chapter, less the amount of any liens and encumbrances on that
26 property at that time ~~, together with the~~ .

27 (2) The net income the person received from the property .

28 (3) If and, if the property has been disposed of, interest on the fair market value
29 of the property accruing from the date of disposition at the rate ~~payable on a~~
30 ~~money judgment~~ of seven percent per annum. For the purposes of this ~~subdivision~~
31 ~~paragraph~~, “fair market value of the property” has the same meaning as defined in
32 paragraph (2) of subdivision (a) of Section 13111.

33 **Comment.** Section 13112 is amended to change the interest rate. The liability for interest
34 imposed by this section may be modified by a court under appropriate circumstances. See Section
35 13117.

36 Section 13112 is also amended to add paragraph numbering in subdivision (b). This is a
37 technical change made for parallelism with similar provisions. See, e.g., Section 13207.

38 **Prob. Code § 13117 (added). Waiver of interest**

39 SEC. 3. Section 13117 of the Probate Code is added, to read:

40 13117. If the court finds that a person to whom payment, delivery, or transfer of
41 the decedent’s property has been made under this chapter has acted reasonably and
42 in good faith under the circumstances as known to the person, the court may, in its

1 discretion, excuse the person from liability to pay interest, in whole or in part,
2 under paragraph (2) of subdivision (a) of Section 13111 or paragraph (3) of
3 subdivision (b) of Section 13112, if it would be equitable to do so.

4 **Comment.** Section 13117 is comparable to Section 9602(b). This section is added to give the
5 court discretion to waive or reduce liability for interest in appropriate circumstances.

6 **Prob. Code § 13206 (amended). Restitution if estate proceeding commenced or on request of**
7 **personal representative**

8 SEC. 4. Section 13206 of the Probate Code is amended to read:

9 13206. (a) Subject to subdivisions (b), (c), (d), and (e), if proceedings for the
10 administration of the decedent's estate are commenced, or if the decedent's
11 personal representative has consented to use of the procedure provided by this
12 chapter and the personal representative later requests that the property be restored
13 to the estate, each person who is designated as a successor of the decedent in a
14 certified copy of an affidavit issued under Section 13202 is liable for:

15 (1) The restitution to the decedent's estate of the property the person took under
16 the certified copy of the affidavit if the person still has the property, together with
17 (A) the net income the person received from the property and (B) if the person
18 encumbered the property after the certified copy of the affidavit was issued, the
19 amount necessary to satisfy the balance of the encumbrance as of the date the
20 property is restored to the estate.

21 (2) The restitution to the decedent's estate of the fair market value of the
22 property if the person no longer has the property, together with (A) the net income
23 the person received from the property prior to disposing of it and (B) interest from
24 the date of disposition at the rate ~~payable on a money judgment~~ of seven percent
25 per annum on the fair market value of the property. For the purposes of this
26 paragraph, the "fair market value of the property" is the fair market value,
27 determined as of the time of the disposition of the property, of the property the
28 person took under the certified copy of the affidavit, less the amount of any liens
29 and encumbrances on the property at the time the certified copy of the affidavit
30 was issued.

31 (b) Subject to subdivision (d), if the person fraudulently executed or filed the
32 affidavit under this chapter, the person is liable under this section for restitution to
33 the decedent's estate of three times the fair market value of the property. For the
34 purposes of this subdivision, the "fair market value of the property" is the fair
35 market value, determined as of the time the certified copy of the affidavit was
36 issued, of the property the person took under the certified copy of the affidavit,
37 less the amount of any liens and encumbrances on the property at that time.

38 (c) Subject to subdivision (d), if proceedings for the administration of the
39 decedent's estate are commenced and a person designated as a successor of the
40 decedent in a certified copy of an affidavit issued under Section 13202 made a
41 significant improvement to the property taken by the person under the certified
42 copy of the affidavit in the good faith belief that the person was the successor of

1 the decedent to that property, the person is liable for whichever of the following
2 the decedent's estate elects:

3 (1) The restitution of the property, as improved, to the estate of the decedent
4 upon the condition that the estate reimburse the person making restitution for (A)
5 the amount by which the improvement increases the fair market value of the
6 property restored, determined as of the time of restitution, and (B) the amount paid
7 by the person for principal and interest on any liens or encumbrances that were on
8 the property at the time the certified copy of the affidavit was issued.

9 (2) The restoration to the decedent's estate of the fair market value of the
10 property, determined as of the time of the issuance of the certified copy of the
11 affidavit under Section 13202, less the amount of any liens and encumbrances on
12 the property at that time, together with interest on the net amount at the rate
13 ~~payable on a money judgment~~ of seven percent per annum running from the date
14 of the issuance of the certified copy of the affidavit.

15 (d) The property and amount required to be restored to the estate under this
16 section shall be reduced by any property or amount paid by the person to satisfy a
17 liability under Section 13204 or 13205.

18 (e) An action to enforce the liability under this section may be brought only by
19 the personal representative of the estate of the decedent. Whether or not the
20 personal representative brings an action under this section, the personal
21 representative may enforce the liability only to the extent necessary to protect the
22 interests of the heirs, devisees, and creditors of the decedent.

23 (f) An action to enforce the liability under this section is forever barred three
24 years after the certified copy of the affidavit is issued under Section 13202, or
25 three years after the discovery of the fraud, whichever is later. The three-year
26 period specified in this subdivision is not tolled for any reason.

27 **Comment.** Section 13206 is amended to change the interest rate. The liability for interest
28 imposed by this section may be modified by a court under appropriate circumstances. See Section
29 13211.

30 **Prob. Code § 13207 (amended). Extent of liability**

31 SEC. 5. Section 13207 of the Probate Code is amended to read:

32 13207. (a) A person designated as a successor of the decedent in a certified copy
33 of an affidavit issued under Section 13202 is not liable under Section 13204 or
34 13205 if proceedings for the administration of the decedent's estate are
35 commenced, or if the decedent's personal representative has consented to use of
36 the procedure provided by this chapter and the personal representative later
37 requests that the property be restored to the estate, and the person satisfies the
38 requirements of Section 13206.

39 (b) Except as provided in subdivision (b) of Section 13205, the aggregate of the
40 personal liability of a person under Sections 13204 and 13205 shall not exceed the
41 sum of the following:

1 (1) The fair market value at the time of the issuance of the certified copy of the
2 affidavit under Section 13202 of the decedent’s property received by that person
3 under this chapter, less the amount of any liens and encumbrances on the property
4 at that time.

5 (2) The net income the person received from the property.

6 (3) If the property has been disposed of, interest on the fair market value of the
7 property from the date of disposition at the rate ~~payable on a money judgment of~~
8 seven percent per annum. For the purposes of this paragraph, “fair market value of
9 the property” has the same meaning as defined in paragraph (2) of subdivision (a)
10 of Section 13206.

11 **Comment.** Section 13207 is amended to change the interest rate. The liability for interest
12 imposed by this section may be modified by a court under appropriate circumstances. See Section
13 13211.

14 **Prob. Code § 13211 (added). Waiver of interest**

15 SEC. 6. Section 13211 of the Probate Code is added, to read:

16 13211. If the court finds that a person designated as a successor of the decedent
17 in a certified copy of an affidavit issued under Section 13202 has acted reasonably
18 and in good faith under the circumstances as known to the person, the court may,
19 in its discretion, excuse the person from liability to pay interest, in whole or in
20 part, under paragraph (2) of subdivision (a) of Section 13206, paragraph (2) of
21 subdivision (c) of Section 13206, or paragraph (3) of subdivision (b) of Section
22 13207, if it would be equitable to do so.

23 **Comment.** Section 13211 is comparable to Section 9602(b). This section is added to give the
24 court discretion to waive or reduce liability for interest in appropriate circumstances.

25 **Prob. Code § 13562 (amended). Restitution if estate proceeding commenced**

26 SEC. 7. Section 13562 of the Probate Code is amended to read:

27 13562. (a) Subject to subdivisions (b), (c), and (d), if proceedings for the
28 administration of the decedent’s estate are commenced, the surviving spouse is
29 liable for:

30 (1) The restitution to the decedent’s estate of the decedent’s property if the
31 surviving spouse still has the decedent’s property, together with (A) the net
32 income the surviving spouse received from the decedent’s property and (B) if the
33 surviving spouse encumbered the decedent’s property after the date of death, the
34 amount necessary to satisfy the balance of the encumbrance as of the date the
35 decedent’s property is restored to the estate.

36 (2) The restitution to the decedent’s estate of the fair market value of the
37 decedent’s property if the surviving spouse no longer has the decedent’s property,
38 together with (A) the net income the surviving spouse received from the
39 decedent’s property prior to disposing of it and (B) interest from the date of
40 disposition at the rate ~~payable on a money judgment of~~ seven percent per annum
41 on the fair market value of the decedent’s property. For the purposes of this

1 paragraph, the “fair market value of the decedent’s property” is the fair market
2 value of the decedent’s property, determined as of the time of the disposition of
3 the decedent’s property, less the amount of any liens and encumbrances on the
4 decedent’s property at the time of the decedent’s death.

5 (b) Subject to subdivision (c), if proceedings for the administration of the
6 decedent’s estate are commenced and the surviving spouse made a significant
7 improvement to the decedent’s property in the good faith belief that the surviving
8 spouse was the successor of the decedent to the decedent’s property, the surviving
9 spouse is liable for whichever of the following the decedent’s estate elects:

10 (1) The restitution of the decedent’s property, as improved, to the estate of the
11 decedent upon the condition that the estate reimburse the surviving spouse for (A)
12 the amount by which the improvement increases the fair market value of the
13 decedent’s property restored, valued as of the time of restitution, and (B) the
14 amount paid by the surviving spouse for principal and interest on any liens or
15 encumbrances that were on the decedent’s property at the time of the decedent’s
16 death.

17 (2) The restoration to the decedent’s estate of the fair market value of the
18 decedent’s property, valued as of the time of the decedent’s death, excluding the
19 amount of any liens and encumbrances on the decedent’s property at that time,
20 together with interest on the net amount at the rate of seven percent per annum
21 running from the date of the decedent’s death.

22 (c) The property and amount required to be restored to the estate under this
23 section shall be reduced by any property or amount paid by the surviving spouse to
24 satisfy a liability under Chapter 3 (commencing with Section 13550).

25 (d) An action to enforce the liability under this section may be brought only by
26 the personal representative of the estate of the decedent. Whether or not the
27 personal representative brings an action under this section, the personal
28 representative may enforce the liability only to the extent necessary to protect the
29 interests of the heirs, devisees, and creditors of the decedent.

30 (e) An action to enforce the liability under this section is forever barred three
31 years after the death of the decedent. The three-year period specified in this
32 subdivision is not tolled for any reason.

33 **Comment.** Section 13562 is amended to change the interest rate. The liability for interest
34 imposed by this section may be modified by a court under appropriate circumstances. See Section
35 13565.

36 **Prob. Code § 13563 (amended). Extent of liability**

37 SEC. 8. Section 13563 of the Probate Code is amended to read:

38 13563. (a) The surviving spouse is not liable under Section 13561 if proceedings
39 for the administration of the decedent’s estate are commenced and the surviving
40 spouse satisfies the requirements of Section 13562.

41 (b) The aggregate of the personal liability of the surviving spouse under Section
42 13561 shall not exceed the sum of the following:

1 (1) The fair market value at the time of the decedent’s death, less the amount of
2 any liens and encumbrances on the decedent’s property at that time, of the portion
3 of the decedent’s property that passes to any person having a superior right by
4 testate succession from the decedent.

5 (2) The net income the surviving spouse received from the portion of the
6 decedent’s property that passes to any person having a superior right by testate
7 succession from the decedent.

8 (3) If the decedent’s property has been disposed of, interest on the fair market
9 value of the portion of the decedent’s property that passes to any person having a
10 superior right by testate succession from the decedent from the date of disposition
11 at the rate ~~payable on a money judgment~~ of seven percent per annum. For the
12 purposes of this paragraph, “fair market value” is fair market value, determined as
13 of the time of disposition of the decedent’s property, less the amount of any liens
14 and encumbrances on the decedent’s property at the time of the decedent’s death.

15 **Comment.** Section 13563 is amended to change the interest rate. The liability for interest
16 imposed by this section may be modified by a court under appropriate circumstances. See Section
17 13565.

18 **Prob. Code § 13565 (added). Waiver of interest**

19 SEC. 9. Section 13565 of the Probate Code is added, to read:

20 13565. If the court finds that the surviving spouse has acted reasonably and in
21 good faith under the circumstances as known to the surviving spouse, the court
22 may, in its discretion, excuse the surviving spouse from liability to pay interest, in
23 whole or in part, under paragraph (2) of subdivision (a) of Section 13562,
24 paragraph (2) of subdivision (b) of Section 13562, or paragraph (3) of subdivision
25 (b) of Section 13563, if it would be equitable to do so.

26 **Comment.** Section 13565 is comparable to Section 9602(b). This section is added to give the
27 court discretion to waive or reduce liability for interest in appropriate circumstances.