

Memorandum 2018-17

**Disposition of Estate Without Administration: Dollar Amounts
(Draft Tentative Recommendation)**

This study addresses Probate Code provisions that provide procedures for the disposition of a small estate or portion of an estate without probate administration. The provisions typically restrict the use of these procedures to estates or assets under a certain dollar amount.

Memorandum 2017-58¹ discussed the apparent obsolescence of the dollar amounts contained in these Probate Code provisions. This memorandum presents a draft tentative recommendation implementing the Commission's decisions regarding adjusting these dollar amounts to account for inflation. This memorandum also discusses several implementation details for which the staff is seeking a Commission decision.

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

BACKGROUND

At the December 2017 meeting, the Commission decided that the dollar amounts contained in the Probate Code provisions regarding disposition of small estates (or portions of estates) should be adjusted to account for inflation since the amounts were last adjusted.² In particular, the Commission decided that the U.S. Bureau of Labor Statistics ("USBLS") Consumer Price Index for All Urban Consumers ("Index") should be used in updating these dollar amounts.³

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 Minutes (Dec. 2017), p. 15.

3. See *id.*

In addition, the Commission decided that the Probate Code should include an automatic adjustment mechanism, so that these amounts would be periodically updated administratively going forward.⁴ The Commission decided this automatic adjustment mechanism should be similar to the one provided in Code of Civil Procedure Section 703.150,⁵ which is set out below.

703.150. (a) On April 1, 2004, and at each three-year interval ending on April 1 thereafter, the dollar amounts of exemptions provided in subdivision (b) of Section 703.140 in effect immediately before that date shall be adjusted as provided in subdivision (d).

(b) On April 1, 2007, and at each three-year interval ending on April 1 thereafter, the dollar amounts of exemptions provided in Article 3 (commencing with Section 704.010) in effect immediately before that date shall be adjusted as provided in subdivision (d).

(c) On April 1, 2013, and at each three-year interval ending on April 1 thereafter, the Judicial Council shall submit to the Legislature the amount by which the dollar amounts of exemptions provided in subdivision (a) of Section 704.730 in effect immediately before that date may be increased as provided in subdivision (d). Those increases shall not take effect unless they are approved by the Legislature.

(d) The Judicial Council shall determine the amount of the adjustment based on the change in the annual California Consumer Price Index for All Urban Consumers, published by the Department of Industrial Relations, Division of Labor Statistics, for the most recent three-year period ending on December 31 preceding the adjustment, with each adjusted amount rounded to the nearest twenty-five dollars (\$25).

(e) Beginning April 1, 2004, the Judicial Council shall publish a list of the current dollar amounts of exemptions provided in subdivision (b) of Section 703.140 and in Article 3 (commencing with Section 704.010), together with the date of the next scheduled adjustment. In any year that the Legislature votes to increase the exemptions provided in subdivision (a) of Section 704.730, the Judicial Council shall publish a list of current dollar amounts of exemptions.

(f) Adjustments made under subdivision (a) do not apply with respect to cases commenced before the date of the adjustment, subject to any contrary rule applicable under the federal Bankruptcy Code. The applicability of adjustments made under subdivisions (b) and (c) is governed by Section 703.050.

4. See *id.*

5. See *id.*

Code of Civil Procedure Section 703.150 was originally recommended by the Commission.⁶

ADJUSTED DOLLAR AMOUNTS

Memorandum 2017-58 presented adjusted numbers for the relevant Probate Code provisions.⁷ These adjusted numbers were calculated using the USBLS Index for August 2017. Since then, several more months of data have been released. Currently, USBLS has released the Index for the months through December 2017.

The dollar amounts in the attached draft tentative recommendation have been adjusted using the December 2017 data. The chart below provides a brief description of the statutory provisions, the current dollar amount, and the adjusted dollar amount.⁸

Sections	Short Description	Current Dollar Amount (Year Last Raised)	Dec. 2017 USBLS Adjusted Amount
6602, 6609	Small estate set-aside	\$20,000 (1977)	\$84,275
13050	Estate valuation exclusion of unpaid compensation	\$15,000 (2012)	\$16,325
13100, 13101	Disposition of personal property by affidavit	\$150,000 (2012)	\$163,150
13151, 13152, 13154	Petition for disposition of real property	\$150,000 (2012)	\$163,150
13200	Disposition of real property by affidavit	\$50,000 (2012)	\$54,375
13600, 13601, 13602	Collection by affidavit of compensation owed to deceased spouse	\$15,000 (2012)	\$16,325

6. See generally *Exemptions from Enforcement of Money Judgments: Second Decennial Review*, 33 Cal. L. Revision Comm'n Reports 113 (2003).

7. See Memorandum 2017-58, p. 7.

8. The dollar amounts were adjusted using USBLS figures from January 1977 (58.5), January 2012 (226.665), and December 2017 (246.524). U.S. Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers: All Items [CPIAUCNS], retrieved from FRED, FED. RES. BANK OF ST. LOUIS, available at <https://fred.stlouisfed.org/series/CPIAUCNS>.

The staff found that the USBLS typically releases each month's data roughly two weeks after the month ends. The staff included a note to this effect in the draft tentative recommendation.

IMPLEMENTATION OF MECHANISM FOR PERIODIC FUTURE ADJUSTMENTS

The attached draft tentative recommendation proposes adding a new part (Part 21) to Division 2 (General Provisions) of the Probate Code. This new part will have a single section, proposed Section 890, addressing the future administrative adjustment of dollar amounts.⁹

The Commission decided that the automatic adjustment provision should be modeled after Code of Civil Procedure Section 703.150,¹⁰ which provides for the triennial update of the dollar amounts for the exemptions from the enforcement of money judgments. There are several implementation issues that the Commission should consider in connection with that decision.

Identifying Provisions for Adjustment

As drafted, proposed Section 890 refers to the entire Chapter or Division that contains the provisions with dollar amounts to be updated. The other alternative would be to refer instead to the individual sections. There are possible downsides to either approach.

One potential downside to referring to the containers, as opposed to the individual sections, is that the Legislature might in the future add new sections with dollar amounts within the relevant container. In this case, the Legislature may not be aware that the dollar amount would be subject to periodic updates. So, there is some possibility that the Legislature would add a new section with a dollar amount that the Legislature does *not* want to be adjusted, without realizing that the dollar amount is subject to periodic adjustments under Section 890.

On the other hand, referring to individual sections could lead to the opposite problem. For instance, the Legislature could decide to add a new section establishing a higher dollar limit (say, \$100,000) for the Small Estate Set-Aside if a surviving dependent of the decedent has significant medical needs. In that case, this dollar limit would not be subject to adjustment unless the Legislature

9. See proposed Prob. Code § 890.

10. See Minutes (Dec. 2017), p. 15.

amends Section 890 to include this new section. Over time, cost of living increases could cause the standard limit to exceed the \$100,000 limit – achieving the opposite result of what the Legislature intended – imposing a lower dollar limit when the decedent’s survivor has significant needs.

Overall, the staff concluded that the container approach was preferable. It seems more likely that new dollar amounts added within these containers would be related to the existing dollar amounts and should similarly be adjusted. For this reason, proposed Section 890 in the draft tentative recommendation provides for adjustment of the “dollar amounts specified in Chapter 6 (commencing with Section 6600) of Part 3 of Division 6 and Division 8 (commencing with 13000).”

The staff has reviewed all of the provisions contained within Chapter 6 and Division 8 to confirm that, currently, there are no dollar amounts in these provisions aside from the ones to be updated (i.e., those identified in the chart on page 2 of this memorandum).

Does the Commission approve of this approach of referring to the dollar amounts contained in the specified Chapter and Division?

Appropriate Timing for Adjustments

Code of Civil Procedure Section 703.150 provides for a triennial adjustment of the dollar amounts for the exemptions from the enforcement of money judgments.¹¹ In accordance with this triennial update schedule, the Judicial Council last updated these dollar amounts in 2016 and will next update these dollar amounts in 2019.¹²

Given that the Judicial Council would also be the entity responsible for adjusting the dollar amounts for the Probate Code provisions at issue here, it would appear to be administratively simpler to have these dollar amount adjustments occurring on the same cycle as those for the exemptions from the enforcement of money judgments.

For this reason, the draft tentative recommendation currently provides for triennial updates on the same cycle as the adjustments for the exemptions from

11. This triennial adjustment period was chosen in conformity with the federal bankruptcy exemption update interval. See *Exemptions from Enforcement of Money Judgments: Second Decennial Review*, 33 Cal. L. Revision Comm’n Reports 113, 119-120, 124 (2003).

12. See Judicial Council Form EJ-156: Current Dollar Amounts of Exemptions from Enforcement of Judgments [Revised April 1, 2016], available at <http://www.courts.ca.gov/documents/ej156.pdf>.

enforcement of money judgments.¹³ **Is the Commission comfortable with this approach?**

To fully sync up these adjustment cycles, the staff would need to update the dollar amounts in the Probate Code provisions in early 2019 to reflect inflation for 2018. This update would not impede the introduction of legislation in 2019 to effectuate a recommendation on this topic, as the amounts could either be adjusted before the legislation is introduced or amended early in the legislative process. Then, as described in proposed Probate Code Section 890, the Judicial Council would be responsible for first updating the dollar amounts in 2022 and, then, on a triennial cycle going forward.

Conforming Change

One of the Probate Code provisions at issue in this tentative recommendation – Section 13600 – specifies a dollar limit applicable to the surviving spouse’s right to collect unpaid compensation from the decedent’s employer. This provision already contains a cost of living adjustment provision. Currently, Section 13600(e) provides for annual cost of living adjustments of the dollar limit, but there does not appear to be anyone responsible for making the adjustments and publishing the adjusted amounts.

Section 890 would provide for triennial adjustments of this dollar amount and publication of the adjusted dollar amount. This would supersede the cost of living adjustment in Section 13600, making it unnecessary. For this reason, the draft tentative recommendation proposes eliminating that provision.

ADJUSTMENT OF EXISTING DOLLAR AMOUNTS

As indicated above, the draft tentative recommendation includes amendments to update the dollar amounts in the relevant statutory provisions in accordance with the chart on page 3 of this memorandum. (These amounts will

13. The draft tentative recommendation proposes that the adjustments occur on April 1, the same as the adjustments for the exemptions from the enforcement of money judgments.

The staff considered whether the April 1 date would work from a timing perspective. The staff found that the Index data is released for each month roughly two weeks after the month ends. Thus, the December data needed to adjust the dollar amounts will be available in mid-January. The April 1 date appears to provide sufficient time for the prior December’s data to be released, the adjustments computed, and the adjusted amounts to be published.

For informational purposes, a Staff Note to proposed Probate Code Section 890 discusses this timing issue.

need to be updated again to reflect inflation in 2018 before enacting legislation is finalized.)

The discussion below addresses implementation issues regarding the provisions containing dollar amounts that will be updated.

Inclusion of Cross-Reference to Adjustment Provision

In the draft tentative recommendation, the proposed periodic adjustment of the specified dollar amounts is described in a single, new statutory provision – proposed Probate Code Section 890. The staff proposes including cross-references to Section 890 with the dollar amounts subject to adjustment.¹⁴ An example of the relevant language from the proposed draft tentative recommendation is provided below (cross-reference text in italics):

6602. A petition may be filed under this chapter requesting an order setting aside the decedent’s estate to the decedent’s surviving spouse and minor children, or one or more of them, as provided in this chapter, if the net value of the decedent’s estate, over and above all liens and encumbrances at the date of death and over and above the value of any probate homestead interest set apart out of the decedent’s estate under Section 6520, does not exceed ~~twenty thousand dollars (\$20,000)~~ eighty-four thousand two hundred seventy-five dollars (\$84,275), as adjusted periodically in accordance with Section 890.

This proposed approach applies only to statutes that do *not* prescribe specific contents for petitions or affidavits; the approach for such statutes is discussed separately in the following section.¹⁵

The staff considers it likely that simplified administration procedures in the Probate Code could be used by laypeople seeking to collect an estate without a lawyer’s assistance. Where a person is unfamiliar with these procedures and the statutes, it seems to be particularly helpful to provide a signal in the statutory language that the applicable dollar amount differs from the number in the statute.

Does the Commission approve of this proposed approach?

14. For exemptions from enforcement of money judgments, the statutory language of the individual exemption provisions, which states the dollar amount, does *not* reference the periodic adjustment provision (Code of Civil Procedure Section 703.150). However, the Commission Comments point to Section 703.150 for “future automatic triennial adjustments.” See, e.g., Comment to Code Civ. Proc. § 704.040 (2003 Amendment).

15. See discussion of “Contents of Petitions or Affidavits” *infra*.

Contents of Petitions or Affidavits

Some of the sections proposed for amendment prescribe the content for a petition or affidavit to be prepared by a person seeking to receive the decedent's property. Sections 13101, 13152, 13200, and 13601 are all sections of this type.¹⁶

Each of these sections requires that the relevant dollar amount be included in the language of the petition or affidavit. For instance, Section 13101, specifying the contents of an affidavit or declaration to collect or transfer personal property without probate, currently requires inclusion of the following statement, which is made under penalty of perjury:¹⁷

“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 fifty thousand dollars (\$150,000).”¹⁸

Essentially, the affiant must affirm under penalty of perjury that the value of the decedent's estate does not exceed the statutory dollar limit and the estate is, thus, eligible for collection under this simplified affidavit procedure.

For the statutory language prescribing the contents of a petition or affidavit, simply acknowledging that the dollar amount is subject to periodic adjustments is not sufficient. If the dollar amount is adjusted, the statutory language needs to reflect the current dollar amount.

The staff has considered the best way to ensure that these statutory provisions incorporate future adjustments. For Section 13101, the draft tentative recommendation proposes the following language to address this issue:

(a)...

(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 fifty thousand dollars (\$150,000)~~ [Insert dollar amount specified in subdivision (g) of Probate Code Section 13101].”

...

(g)(1) If the decedent dies prior to April 1, 2022, the dollar amount for paragraph (5) of subdivision (a) is one hundred sixty-three thousand one hundred fifty dollars (\$163,150).

16. For Sections 13152 and 13200, the Judicial Council has prepared forms to be used that contain the statutorily prescribed language. See note 20 *infra*.

17. See Section 13101(a).

18. Section 13101(a)(5) (quotation marks as in original).

(2) If the decedent dies on or after April 1, 2022, the dollar amount for paragraph (5) of subdivision (a) is the adjusted dollar amount, published in accordance with subdivision (c) of Section 890, in effect on the date of the decedent's death.

Is this approach acceptable to the Commission?

Attachment of Published, Adjusted Dollar Amounts to Petition or Affidavit

For these statutes that prescribe the contents of petitions or affidavits, the staff considered whether the Judicial Council document publishing the adjusted dollar amounts should be included as an attachment to the petition or affidavit.

Requiring the attachment of the published dollar amounts would seem to serve an important validating function, particularly where the relevant document is not submitted to the court, but to persons or entities holding the decedent's property (Section 13101) or to an employer who owes the decedent unpaid compensation (Section 13601).

A similar approach is taken in the statutes governing the exemptions from the enforcement of money judgments. These statutes include a requirement that the current, adjusted dollar amounts, published by Judicial Council, be provided to a debtor whose property is levied. Specifically, where the judgment debtor is a natural person, the levying officer is required to serve (among other things) "the list of exemption amounts published pursuant to subdivision (e) of Section 703.150."¹⁹

The staff concluded that, on the whole, it would be helpful for the adjusted dollar amounts to be attached to the affidavit or petition. The proposed legislation in the draft tentative recommendation includes attachment requirements to that effect in all of the relevant sections. For example, the relevant proposed language from Section 13101 provides:

(f) If the decedent dies on or after April 1, 2022, the list of adjusted dollar amounts, published in accordance with subdivision (c) of Section 890, in effect on the date of the decedent's death, shall be attached to the affidavit or declaration.

Does the Commission have any concerns with this approach?

19. Code Civ. Proc. § 700.010(a)(3).

Judicial Council Forms

The Judicial Council has prepared forms for certain simplified administration procedures that would be affected by this change. The staff has identified three Judicial Council forms for the simplified administration procedures, all of which currently include the relevant dollar limits.²⁰

The staff will bring this issue to the attention of the Judicial Council staff. Although the Judicial Council has broad authority to prepare forms for probate-related issues,²¹ the staff will inquire whether any conforming changes are needed to clarify their authority to make any updates necessitated by this proposal.

Conforming Statutes Regarding Unpaid Compensation for Surviving Spouse of Decedent Firefighter or Peace Officer

In preparing this draft tentative recommendation, the staff came across some apparent errors in certain affected statutory provisions. The draft tentative recommendation includes proposed changes to address these errors. This discussion describes the errors and the proposed changes to address them.

Section 13600 allows the surviving spouse of a decedent to collect up to \$15,000 of a decedent's unpaid compensation. Subdivision (d) of this section provides an exception:

The fifteen-thousand-dollar (\$15,000) net limitation set forth in subdivisions (a) and (b) does not apply to the surviving spouse or the guardian or conservator of the estate of the surviving spouse of a firefighter or peace officer described in subdivision (a) of Section 22820 of the Government Code.

This provision would appear to allow the surviving spouse²² of a firefighter or public safety officer to collect an unlimited amount of unpaid compensation. The

20. See Judicial Council Form DE-305: Affidavit RE Real Property of Small Value [Rev. July 1, 2015], *available at* <http://www.courts.ca.gov/documents/de305.pdf>; Judicial Council Form DE-310: Petition to Determine Succession to Real Property [Rev. January 1, 2017], *available at* <http://www.courts.ca.gov/documents/de310.pdf>; Judicial Council Form DE-315: Order Determining Succession to Real Property [Rev. January 1, 2015], *available at* <http://www.courts.ca.gov/documents/de315.pdf>.

21. See Prob. Code § 1001(b).

22. References to the “surviving spouse” in this discussion include, if applicable, the guardian or conservator of the estate of the surviving spouse.

legislative history for this provision suggests that is the intended effect of this subdivision.²³

However, Section 13602, which places an obligation on the employer to pay the surviving spouse, limits an employer's obligation as follows (with emphasis added):

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

This section provides no exception to the dollar limit for the surviving spouse of a firefighter or peace officer. This appears to have been an oversight.

The staff recommends amending section 13602 to ensure that the employer's obligation to pay is aligned with the surviving spouse's right to collect unpaid compensation. In particular, the draft tentative recommendation proposes the following amendments to Section 13602:

If the requirements of Section 13600 are satisfied, the employer to whom the affidavit or declaration is presented shall promptly pay the earnings of the decedent, including compensation for unused vacation, ~~not in excess of fifteen thousand dollars (\$15,000) net~~ as provided in Section 13600, to the person presenting the affidavit or declaration.

Similarly, Section 13601, which specifies the contents of an affidavit to be used for collection of unpaid compensation, includes certain statements regarding the \$15,000 limit. These statements do not appear to apply to a surviving spouse of a deceased firefighter or peace officer. The draft tentative recommendation proposes to add the following language, which provides alternative language to be included in an affidavit of such a surviving spouse:

(b) Where the decedent is a firefighter or peace officer described in subdivision (a) of Section 22820 of the Government Code, the affidavit or declaration need not include the content specified in paragraphs (6) through (9) of subdivision (a). The affidavit shall instead include the following statements:

(1) "The decedent was a firefighter or peace officer described in subdivision (a) of Section 22820 of the Government Code. Sections 13600 to 13605, inclusive, of the California Probate Code require

23. See 2002 Cal. Stat. ch. 733 (AB 2059); see generally, e.g., Senate Floor Analysis of SB 2059 (Aug. 14, 2002).

that the earnings of the decedent, including compensation for unused vacation, be paid promptly to the affiant or declarant.”

(2) “The affiant or declarant requests to be paid the salary or other compensation owed by you for personal services of the decedent, including compensation for unused vacation.”

Does the Commission approve of these amendments?

Technical Changes

In a few of the affected statutory provisions, the staff identified language that seemed to be at odds with current legislative drafting practices. The draft tentative recommendation includes minor technical changes to improve this language. These changes include:

- Amend Section 6609(d) to remove “such” and eliminate passive voice.
- Amend Section 13050(a)(1) to replace “which” with “that.”
- Amend Section 13152(a)(3) to replace “which” with “that.”
- Amend Section 13152(b) to avoid “[t]here shall be” phrasing and replace “which” with “that.”
- Amend Section 13200(c) to avoid “[t]here shall be” phrasing.
- Amend Section 13601(a)(8) and (9) to replace “which” with “that.”

Does the Commission have any concerns with these proposed technical changes?

In addition to these technical changes, the staff identified a possible cross-reference error in Section 13602. The attached draft tentative recommendation includes a Staff Note discussing this issue and requesting comment on the appropriate cross-reference. **Does the Commission have any concerns with this proposed Note?**

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
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CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

TENTATIVE RECOMMENDATION

Disposition of Estate Without Administration: Dollar Amounts

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.

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SUMMARY OF TENTATIVE RECOMMENDATION

The Probate Code provides several options for estates or portions of estates to be conveyed without requiring a full probate proceeding. Many of these provisions that allow disposition of an estate without administration include a dollar limit, authorizing use of the procedure only where the value of the relevant assets is less than the specified amount.

The Commission concluded that, unless the dollar amounts were adjusted to account for inflation, the availability of these procedures would decrease over time due to inflation. This, in turn, could effectively require more estates to be administered in probate.

The Commission believes that these disposition without administration procedures are a useful tool and their availability should be preserved. Therefore, the Commission recommends adjusting the dollar amounts to reflect the cost-of-living changes due to inflation since these amounts were last adjusted. The Commission also recommends that these amounts be adjusted and published administratively triennially (every three years) going forward.

The Commission seeks 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: DOLLAR LIMITS

1

BACKGROUND

2 The Probate Code contains a number of provisions that permit an estate or a
3 portion of an estate to be collected without administration (or with substantially
4 simplified administration). Some of these procedures are limited to estates or
5 assets below a specified dollar limit.

6 These procedures are helpful to heirs and beneficiaries of small estates, as the
7 procedures make it possible to avoid the delays and costs associated with probate
8 administration.¹ In addition, these procedures lessen the burden on courts and
9 allow judicial resources to be directed to matters requiring greater judicial
10 oversight.²

11 The Commission studied the dollar limits for these procedures to determine
12 whether those dollar limits need to be adjusted.

13

SCOPE OF THE ISSUE

14 The Commission's study of this topic focused on procedures that permit
15 collection of an estate or assets of a decedent without administration or with
16 substantially simplified administration that are subject to a maximum dollar limit.
17 In particular, the Commission focused on the following provisions of the Probate
18 Code:

- 19 • *Small Estate Set-Aside* (Sections 6600-6615). These provisions allow the
20 decedent's spouse and/or minor children to petition the court to set the
21 decedent's estate aside for them. The procedure is only applicable when the
22 value of the estate (subject to specified exclusions³) does not exceed
23 \$20,000.
- 24 • *Affidavit Procedure for Collection or Transfer of Personal Property*
25 (Sections 13100-13116). These provisions permit a decedent's successor⁴ to
26 collect certain property without administration, when the gross value of the
27 decedent's real and personal property in this state does not exceed \$150,000
28 (subject to Section 13050, described below).
- 29 • *Transfer of Real Property Without Administration* (Sections 13150-13158).
30 Under these provisions, a court may order the transfer of real property to a

1. See Senate Committee on Judiciary Analysis of AB 1305 (June 6, 2011), p. 4.

2. *Id.*

3. See Prob. Code §§ 6602, 6609.

4. See *id.* § 13006.

1 decedent's successor⁵ if the gross value of the decedent's real and personal
2 property in this state does not exceed \$150,000) (subject to Section 13050,
3 described below).

- 4 • *Affidavit Procedure for Real Property of Small Value* (Sections 13200-
5 13210). These provisions allow a decedent's successor⁶ to record a court-
6 certified affidavit, to transfer title to the decedent's real property to the
7 successor. The provisions only apply if the gross value of all real property in
8 the decedent's estate located in California does not exceed \$50,000 (subject
9 to Section 13050, described below).
- 10 • *Collection by Affidavit of Compensation Owed Deceased Spouse* (Sections
11 13600-13606). These provisions allow a decedent's surviving spouse to
12 collect salary or other compensation owed by an employer for personal
13 services of the deceased spouse, of \$15,000 or less.

14 Probate Code Section 13050 provides a rule for calculating the value of the
15 decedent's property, which is used to determine the availability of certain
16 procedures described above. In that calculation, Section 13050(c)(2) excludes up
17 to \$15,000 of unpaid compensation owed to the decedent.

18 This recommendation addresses only the dollar amounts noted above.

19 This recommendation does not address and the Commission takes no position on
20 the suitability of dollar amounts in other provisions of the Probate Code.
21 **Although other such provisions were beyond the scope of this narrow study,**
22 **the Commission welcomes comment on whether there are other dollar**
23 **amounts in the Probate Code that the Commission should consider for**
24 **adjustment in the future.**

25 PROBLEM

26 These procedures for simplified administration and disposition of administration
27 are subject to dollar limits, as indicated above. These dollar limits serve an
28 important function by balancing the need for judicial oversight with the need for
29 judicial economy and the avoidance of unnecessary administration.⁷ The dollar
30 limits represent a considered choice in which the Legislature struck a balance
31 between these important, competing policy concerns.

32 Over time, changes in the cost of living could shift the policy balance struck by
33 the Legislature. As the cost of living increases, the purchasing power of these
34 dollar limits will be lower. Fewer estates and assets will qualify to use these
35 procedures and would, instead, require administration in a full probate proceeding.
36 As such, "[t]he Legislature has regularly reemphasized the importance of
37 maintaining this balance by adjusting the applicable limits regularly over time."⁸

5. *Id.*

6. *Id.*

7. Senate Committee on Judiciary Analysis of AB 1305 (June 6, 2011), pp. 4-5.

8. *Id.* at 5.

1

RECOMMENDATION

2

The Commission recommends that the dollar amounts contained in Chapter 6 (commencing with Section 6600) of Part 3 of Division 6 and Division 8 (commencing with 13000) of the Probate Code be adjusted to reflect the cost of living increases since these amounts were previously changed.⁹

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In addition, the Commission recommends that an automatic cost of living adjustment mechanism be added to the Probate Code to provide for periodic administrative adjustment of the dollar amounts and publication of those adjusted amounts going forward.¹⁰ This automatic adjustment mechanism (proposed Probate Code Section 890) is modeled after Code of Civil Procedure Section 703.150, which provides for automatic adjustment of the dollar amounts for exemptions from the enforcement of money judgments.

13

As with Code of Civil Procedure Section 703.150, proposed Probate Code Section 890 would assign the Judicial Council the task of adjusting the dollar amounts and publishing those adjusted amounts.

16

Proposed Probate Code Section 890 uses the same triennial cycle for adjusting the relevant dollar amounts as Code of Civil Procedure Section 703.150.¹¹ Using the same triennial cycle (once every three years, as specified) would appear to minimize the administrative burden of performing these adjustments for the different statutory provisions.

21

RELATED TECHNICAL CHANGES

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The Commission also recommends making the following related technical changes:

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- Amend Sections 13101, 13152, 13200, and 13601, which prescribe the contents of documents to be used to collect assets under different procedures at issue in this recommendation. These sections are amended to ensure that the adjusted dollar amounts are used in the forms, as appropriate, and the list of adjusted dollar amounts is attached to the relevant form.

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- Repeal Section 13600(e), which provides a cost of living adjustment of the dollar limit for collection of unpaid compensation by a surviving spouse.

9. The Commission considered which cost of living index to use for calculating the adjustment amounts: either the United States Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (USBLI Index) or the California Consumer Price Index (CCPI). The Commission selected the USBLI Index because this index has been used recently for updating dollar values in the Probate Code. See CLRC Minutes (Dec. 2017), p. 15; CLRC Staff Memorandum 2017-58, pp. 5-7.

10. See proposed Prob. Code § 890.

11. The dollar amounts contained in the proposed legislation will need to be updated to reflect the cost of living adjustments through the end of 2018 in order to properly coordinate the adjustment schedule of proposed Probate Code Section 890 with the adjustment schedule used in Code of Civil Procedure Section 703.150.

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PROPOSED LEGISLATION

1 **Prob. Code § 890 (added). Periodic adjustment of dollar amounts**

2 SECTION 1. Part 21 (commencing with Section 890) is added to Division 2 of
3 the Probate Code, to read:

4 PART 21. PERIODIC ADJUSTMENT OF DOLLAR
5 AMOUNTS

6 **§ 890. Periodic adjustment of dollar amounts**

7 890. (a) On April 1, 2022, and at each three-year interval ending on April 1
8 thereafter, the dollar amounts specified in Chapter 6 (commencing with Section
9 6600) of Part 3 of Division 6 and in Division 8 (commencing with 13000) in effect
10 immediately before that date shall be adjusted as provided in subdivision (b).

11 (b) The Judicial Council shall determine the amount of the adjustment based on
12 the change in the United States city average of the “Consumer Price Index for All
13 Urban Consumers,” as published by the United States Bureau of Labor Statistics,
14 from the December three years prior to the adjustment to the December
15 immediately preceding the adjustment, with each adjusted amount rounded to the
16 nearest twenty-five dollars (\$25).

17 (c) Beginning April 1, 2022, the Judicial Council shall, after adjusting the
18 amounts as directed in subdivision (b), publish a list of the current dollar amounts
19 for the provisions identified in subdivision (a), together with the date of the next
20 scheduled adjustment.

21 (d) Adjustments made under subdivision (a) do not apply when the decedent’s
22 death preceded the date of adjustment.

23 **Comment.** Section 890 is comparable to Code of Civil Procedure Section 703.150. It provides
24 for periodic cost-of-living adjustments for dollar amounts contained in certain provisions of the
25 Probate Code.

26 **Staff Note.** It appears that the Consumer Price Index Data for each month is released
27 approximately two weeks after the end of the month (see [https://stats.bls.gov/schedule/
28 news_release/cpi.htm](https://stats.bls.gov/schedule/news_release/cpi.htm)). Thus, the December data needed to adjust the amounts would be available
29 mid-January. This would appear to provide sufficient time for the adjustments to be made and
30 published prior to the April 1 date specified in the statute.

31 **Prob. Code § 6602 (amended). Petition to set aside estate**

32 SEC. 2. Section 6602 of the Probate Code is amended to read:

33 6602. A petition may be filed under this chapter requesting an order setting aside
34 the decedent’s estate to the decedent’s surviving spouse and minor children, or one
35 or more of them, as provided in this chapter, if the net value of the decedent’s
36 estate, over and above all liens and encumbrances at the date of death and over and

1 above the value of any probate homestead interest set apart out of the decedent's
2 estate under Section 6520, does not exceed ~~twenty thousand dollars (\$20,000)~~
3 eighty-four thousand two hundred seventy-five dollars (\$84,275), as adjusted
4 periodically in accordance with Section 890.

5 **Comment.** Section 6602 is amended to adjust the dollar amount contained in this section. The
6 adjusted amount reflects cost-of-living increases since the amount was last changed. See 1976
7 Cal. Stat. ch. 1028, § 2 (amending former Prob. Code § 640, which was the predecessor to this
8 section); see also 1986 Cal. Stat. ch. 783 §§ 9, 23; *Recommendation Relating to Small Estate Set-*
9 *Aside*, 18 Cal. L. Revision Comm'n Reports 1101 (1986). The dollar amount is subject to
10 periodic cost-of-living adjustments going forward. See Section 890.

11 **Prob. Code § 6609 (amended). Court order to set aside estate**

12 SEC. 3. Section 6609 of the Probate Code is amended to read:

13 6609. (a) If the court determines that the net value of the decedent's estate, over
14 and above all liens and encumbrances at the date of death of the decedent and over
15 and above the value of any probate homestead interest set apart out of the
16 decedent's estate under Section 6520, does not exceed ~~twenty thousand dollars~~
17 ~~(\$20,000)~~ eighty-four thousand two hundred seventy-five dollars (\$84,275), as
18 adjusted periodically in accordance with Section 890, as of the date of the
19 decedent's death, the court shall make an order under this section unless the court
20 determines that making an order under this section would be inequitable under the
21 circumstances of the particular case.

22 (b) In determining whether to make an order under this section, the court shall
23 consider the needs of the surviving spouse and minor children, the liens and
24 encumbrances on the property of the decedent's estate, the claims of creditors, the
25 needs of the heirs or devisees of the decedent, the intent of the decedent with
26 respect to the property in the estate and the estate plan of the decedent as
27 expressed in inter vivos and testamentary transfers or by other means, and any
28 other relevant considerations. If the surviving spouse has remarried at the time the
29 petition is heard, it shall be presumed that the needs of the surviving spouse do not
30 justify the setting aside of the small estate, or any portion thereof, to the surviving
31 spouse. This presumption is a presumption affecting the burden of proof.

32 (c) Subject to subdivision (d), if the court makes an order under this section, the
33 court shall assign the whole of the decedent's estate, subject to all liens and
34 encumbrances on property in the estate at the date of the decedent's death, to the
35 surviving spouse and the minor children of the decedent, or any one or more of
36 them.

37 (d) If there are any liabilities for expenses of the last illness, funeral charges, or
38 expenses of administration that are unpaid at the time the court makes an order
39 under this section, the court shall make ~~such orders as are necessary so that the~~
40 necessary orders for payment of those unpaid liabilities are paid.

41 (e) Title to property in the decedent's estate vests absolutely in the surviving
42 spouse, minor children, or any or all of them, as provided in the order, subject to
43 all liens and encumbrances on property in the estate at the date of the decedent's

1 death, and there shall be no further proceedings in the administration of the
2 decedent's estate unless additional property in the decedent's estate is discovered.

3 **Comment.** Section 6609 is amended to adjust the dollar amount contained in this section. The
4 adjusted amount reflects cost-of-living increases since the amount was last changed. See 1976
5 Cal. Stat. ch. 1028, § 3 (amending former Prob. Code § 645, which was the predecessor to this
6 section); see also 1986 Cal. Stat. ch. 783 §§ 9, 23; *Recommendation Relating to Small Estate Set-*
7 *Aside*, 18 Cal. L. Revision Comm'n Reports 1101 (1986). The dollar amount is subject to
8 periodic cost-of-living adjustments going forward. See Section 890.

9 Subdivision (d) of Section 6609 is amended to make technical changes.

10 **Prob. Code § 13050 (amended). Exclusions in determining property or estate of decedent or**
11 **its value**

12 SEC. 4. Section 13050 of the Probate Code is amended to read:

13 13050. (a) For the purposes of this part:

14 (1) Any property or interest or lien thereon ~~which~~ that, at the time of the
15 decedent's death, was held by the decedent as a joint tenant, or in which the
16 decedent had a life or other interest terminable upon the decedent's death, or
17 ~~which~~ that was held by the decedent and passed to the decedent's surviving spouse
18 pursuant to Section 13500, shall be excluded in determining the property or estate
19 of the decedent or its value. This excluded property shall include, but not be
20 limited to, property in a trust revocable by the decedent during his or her lifetime.

21 (2) A multiple-party account to which the decedent was a party at the time of the
22 decedent's death shall be excluded in determining the property or estate of the
23 decedent or its value, whether or not all or a portion of the sums on deposit are
24 community property, to the extent that the sums on deposit belong after the death
25 of the decedent to a surviving party, P.O.D. payee, or beneficiary. For the
26 purposes of this paragraph, the terms "multiple-party account," "party," "P.O.D.
27 payee," and "beneficiary" are defined in Article 2 (commencing with Section
28 5120) of Chapter 1 of Part 2 of Division 5.

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

31 (1) Any vehicle registered under Division 3 (commencing with Section 4000) of
32 the Vehicle Code or titled under Division 16.5 (commencing with Section 38000)
33 of the Vehicle Code.

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

36 (3) Any manufactured home, mobilehome, commercial coach, truck camper, or
37 floating home registered under Part 2 (commencing with Section 18000) of
38 Division 13 of the Health and Safety Code.

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

41 (1) Any amounts due to the decedent for services in the Armed Forces of the
42 United States.

1 (2) The amount, not exceeding ~~fifteen thousand dollars (\$15,000)~~ sixteen
2 thousand three hundred twenty-five dollars (\$16,325), as adjusted periodically in
3 accordance with Section 890, of salary or other compensation, including
4 compensation for unused vacation, owing to the decedent for personal services
5 from any employment.

6 **Comment.** Section 13050 is amended to adjust the dollar amount contained in this section. The
7 adjusted amount reflects cost-of-living increases since the amount was last changed. See 2011
8 Cal. Stat. ch. 117, § 3. The dollar amount is subject to periodic cost-of-living adjustments going
9 forward. See Section 890.

10 Paragraph (a)(1) of Section 13050 is amended to make technical changes.

11 **Prob. Code § 13100 (amended). Collection or transfer of personal property without probate**

12 SEC. 5. Section 13100 of the Probate Code is amended to read:

13 13100. Excluding the property described in Section 13050, if the gross value of
14 the decedent's real and personal property in this state does not exceed ~~one hundred~~
15 ~~fifty thousand dollars (\$150,000)~~ one hundred sixty-three thousand one hundred
16 fifty dollars (\$163,150), as adjusted periodically in accordance with Section 890,
17 and if 40 days have elapsed since the death of the decedent, the successor of the
18 decedent may, without procuring letters of administration or awaiting probate of
19 the will, do any of 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 the decedent.

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

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

27 **Comment.** Section 13100 is amended to adjust the dollar amount contained in this section.
28 The adjusted amount reflects cost-of-living increases since the amount was last changed. See
29 2011 Cal. Stat. ch. 117, § 4. This dollar amount is subject to periodic cost-of-living adjustments
30 going forward. See Section 890.

31 **Prob. Code § 13101 (amended). Contents of affidavit or declaration to collect or transfer**
32 **personal property without probate**

33 SEC. 6. Section 13101 of the Probate Code is amended to read:

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

39 (1) The decedent's name.

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

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

4 (4) Either of the following, as appropriate:

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

7 (B) “The decedent’s personal representative has consented in writing to the
8 payment, transfer, or delivery to the affiant or declarant of the property described
9 in the affidavit or declaration.”

10 (5) “The current gross fair market value of the decedent’s real and personal
11 property in California, excluding the property described in Section 13050 of the
12 California Probate Code, does not exceed ~~one hundred fifty thousand dollars~~
13 ~~(\$150,000)~~ [Insert dollar amount specified in subdivision (g) of Probate Code
14 Section 13101].”

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

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

19 (8) Either of the following, as appropriate:

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

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

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

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

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

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

36 (c) If the particular item of property to be transferred under this chapter is a debt
37 or other obligation secured by a lien on real property and the instrument creating
38 the lien has been recorded in the office of the county recorder of the county where
39 the real property is located, the affidavit or declaration shall satisfy the
40 requirements both of this section and of Section 13106.5.

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

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

5 (f) If the decedent dies on or after April 1, 2022, the list of adjusted dollar
6 amounts, published in accordance with subdivision (c) of Section 890, in effect on
7 the date of the decedent’s death, shall be attached to the affidavit or declaration.

8 (g)(1) If the decedent dies prior to April 1, 2022, the dollar amount for
9 paragraph (5) of subdivision (a) is one hundred sixty-three thousand one hundred
10 fifty dollars (\$163,150).

11 (2) If the decedent dies on or after April 1, 2022, the dollar amount for
12 paragraph (5) of subdivision (a) is the adjusted dollar amount, published in
13 accordance with subdivision (c) of Section 890, in effect on the date of the
14 decedent’s death.

15 **Comment.** Paragraph (a)(5) of Section 13101 is amended to adjust the dollar amount, as set
16 forth in subdivision (g).

17 Subdivision (f) is added to require that, after the dollar amounts are adjusted, the published
18 adjusted dollar amounts be attached to the affidavit or declaration.

19 Paragraph (g)(1) is added to adjust the amount to reflect cost-of-living increases since the
20 amount was last changed. See 2011 Cal. Stat. ch. 117, § 5. Paragraph (g)(2) is added to clarify
21 that this dollar amount is subject to periodic cost-of-living adjustments going forward. See
22 Section 890.

23 **Prob. Code § 13151 (amended). Petition for order determining succession to real property**

24 SEC. 7. Section 13151 of the Probate Code is amended to read:

25 13151. Exclusive of the property described in Section 13050, if a decedent dies
26 leaving real property in this state and the gross value of the decedent’s real and
27 personal property in this state does not exceed ~~one hundred fifty thousand dollars~~
28 ~~(\$150,000)~~ one hundred sixty-three thousand one hundred fifty dollars (\$163,150),
29 as adjusted periodically in accordance with Section 890, and 40 days have elapsed
30 since the death of the decedent, the successor of the decedent to an interest in a
31 particular item of property that is real property, without procuring letters of
32 administration or awaiting the probate of the will, may file a petition in the
33 superior court of the county in which the estate of the decedent may be
34 administered requesting a court order determining that the petitioner has
35 succeeded to that real property. A petition under this chapter may include an
36 additional request that the court make an order determining that the petitioner has
37 succeeded to personal property described in the petition.

38 **Comment.** Section 13151 is amended to adjust the dollar amount contained in this section. The
39 adjusted amount reflects cost-of-living increases since the amount was last changed. See 2011
40 Cal. Stat. ch. 117, § 6. The dollar amount is subject to periodic cost-of-living adjustments going
41 forward. See Section 890.

1 **Prob. Code § 13152 (amended). Contents of petition for order determining succession to**
2 **real property**

3 SEC. 8. Section 13152 of the Probate Code is amended to read:

4 13152. (a) The petition shall be verified by each petitioner, shall contain a
5 request that the court make an order under this chapter determining that the
6 property described in the petition is property passing to the petitioner, and shall
7 state all of the following:

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

10 (2) The gross value of the decedent's real and personal property in this state,
11 excluding the property described in Section 13050, as shown by the inventory and
12 appraisal attached to the petition, does not exceed ~~one hundred fifty thousand~~
13 ~~dollars (\$150,000)~~ [insert dollar amount specified in subdivision (f)].

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

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

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

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

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

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

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

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

39 ~~(b) There shall be attached to the petition an~~ An inventory and appraisal in the
40 form set forth in Section 8802 of the decedent's real and personal property in this
41 state, excluding the property described in Section 13050, shall be attached to the
42 petition. The appraisal shall be made by a probate referee selected by the petitioner
43 from those probate referees appointed by the Controller under Section 400 to

1 appraise property in the county where the real property is located. The appraisal
2 shall be made as provided in Part 3 (commencing with Section 8800) of Division
3 7. The petitioner may appraise the assets ~~which~~ that a personal representative
4 could appraise under Section 8901.

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

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

10 (e) If the decedent dies on or after April 1, 2022, the list of adjusted dollar
11 amounts, published in accordance with subdivision (c) of Section 890, in effect on
12 the date of the decedent's death shall be attached to the petition.

13 (f)(1) If the decedent dies prior to April 1, 2022, the dollar amount for paragraph
14 (2) of subdivision (a) is one hundred sixty-three thousand one hundred fifty dollars
15 (\$163,150).

16 (2) If the decedent dies on or after April 1, 2022, the dollar amount for
17 paragraph (2) of subdivision (a) is the adjusted dollar amount, published in
18 accordance with subdivision (c) of Section 890, in effect on the date of the
19 decedent's death.

20 **Comment.** Paragraph (a)(2) of Section 13152 is amended to adjust the dollar amount, as set
21 forth in subdivision (f).

22 Subdivision (b) is amended to make technical changes.

23 Subdivision (e) is added to require that, after the dollar amounts are adjusted, the published
24 adjusted dollar amounts be attached to the petition.

25 Paragraph (f)(1) is added to adjust the amount to reflect cost-of-living increases since the
26 amount was last changed. See 2011 Cal. Stat. ch. 117, § 5. Paragraph (f)(2) is added to clarify that
27 this dollar amount is subject to periodic cost-of-living adjustments going forward. See Section
28 890.

29 **Prob. Code § 13154 (amended). Court order determining succession to real property**

30 SEC. 9. Section 13154 of the Probate Code is amended to read:

31 13154. (a) If the court makes the determinations required under subdivision (b),
32 the court shall issue an order determining (1) that real property, to be described in
33 the order, of the decedent is property passing to the petitioners and the specific
34 property interest of each petitioner in the described property and (2) if the petition
35 so requests, that personal property, to be described in the order, of the decedent is
36 property passing to the petitioners and the specific property interest of each
37 petitioner in the described property.

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

40 (1) The gross value of the decedent's real and personal property in this state,
41 excluding the property described in Section 13050, does not exceed ~~one hundred~~
42 ~~fifty thousand dollars (\$150,000)~~ one hundred sixty-three thousand one hundred
43 fifty dollars (\$163,150), as adjusted periodically in accordance with Section 890.

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

2 (3) Whichever of the following is appropriate:

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

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

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

9 (c) If the petition has attached an inventory and appraisal that satisfies the
10 requirements of subdivision (b) of Section 13152, the determination required by
11 paragraph (1) of subdivision (b) of this section shall be made on the basis of the
12 verified petition and the attached inventory and appraisal, unless evidence is
13 offered by a person opposing the petition that the gross value of the decedent's
14 real and personal property in this state, excluding the property described in Section
15 13050, exceeds ~~one hundred fifty thousand dollars (\$150,000)~~ one hundred sixty-
16 three thousand one hundred fifty dollars (\$163,150), as adjusted periodically in
17 accordance with Section 890.

18 **Comment.** Section 13154 is amended to adjust the dollar amount contained in this section. The
19 adjusted amount reflects cost-of-living increases since the amount was last changed. See 2011
20 Cal. Stat. ch. 117, § 8. The dollar amount is subject to periodic cost-of-living adjustments going
21 forward. See Section 890.

22 **Prob. Code § 13200 (amended). Contents of affidavit for collection of real property of small**
23 **value**

24 SEC. 10. Section 13200 of the Probate Code is amended to read:

25 13200. (a) No sooner than six months from the death of a decedent, a person or
26 persons claiming as successor of the decedent to a particular item of property that
27 is real property may file in the superior court in the county in which the decedent
28 was domiciled at the time of death, or if the decedent was not domiciled in this
29 state at the time of death, then in any county in which real property of the decedent
30 is located, an affidavit in the form prescribed by the Judicial Council pursuant to
31 Section 1001 stating all of the following:

32 (1) The name of the decedent.

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

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

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

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

1 Code, does not exceed ~~fifty thousand dollars (\$50,000)~~ [insert dollar amount
2 specified in subdivision (h)].”

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

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

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

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

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

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

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

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

20 (c) ~~There shall be attached to the affidavit an~~ An inventory and appraisal of the
21 decedent’s real property in this state, excluding the real property described in
22 Section 13050 , shall be attached to the affidavit. The inventory and appraisal of
23 the real property shall be made as provided in Part 3 (commencing with Section
24 8800) of Division 7. The appraisal shall be made by a probate referee selected by
25 the affiant from those probate referees appointed by the Controller under Section
26 400 to appraise property in the county where the real property is located.

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

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

34 (f) If the decedent dies on or after April 1, 2022, the list of adjusted dollar
35 amounts, published in accordance with subdivision (c) of Section 890, in effect on
36 the date of the decedent’s death shall be attached to the affidavit.

37 ~~(f)~~ (g) The affiant shall deliver pursuant to Section 1215 a copy of the affidavit
38 and attachments to any person identified in paragraph (4) of subdivision (a).

39 (h)(1) When the decedent dies prior to April 1, 2022, the dollar amount for
40 paragraph (5) of subdivision (a) is fifty-four thousand three hundred seventy-five
41 (\$54,375).

42 (2) When the decedent dies on or after April 1, 2022, the dollar amount for
43 paragraph (5) of subdivision (a) is the adjusted dollar amount, published in

1 accordance with subdivision (c) of Section 890, in effect on the date of the
2 decedent's death.

3 **Comment.** Paragraph (a)(5) of Section 13200 is amended to adjust the dollar amount, as set
4 forth in subdivision (h).

5 Subdivision (c) is amended to make technical changes.

6 Subdivision (f) is added to require that, after the dollar amounts are adjusted, the published
7 adjusted dollar amounts be attached to the affidavit.

8 Paragraph (h)(1) is added to adjust the amount to reflect cost-of-living increases since the
9 amount was last changed. See 2011 Cal. Stat. ch. 117, § 9. Paragraph (h)(2) is added to clarify
10 that this dollar amount is subject to periodic cost-of-living adjustments going forward. See
11 Section 890.

12 **Prob. Code § 13600 (amended). Authority to collect salary or other compensation**

13 SEC. 11. Section 13600 of the Probate Code is amended to read:

14 13600. (a) At any time after a spouse dies, the surviving spouse or the guardian
15 or conservator of the estate of the surviving spouse may, without procuring letters
16 of administration or awaiting probate of the will, collect salary or other
17 compensation owed by an employer for personal services of the deceased spouse,
18 including compensation for unused vacation, not in excess of ~~fifteen thousand~~
19 ~~dollars (\$15,000)~~ sixteen thousand three hundred twenty-five dollars (\$16,325), as
20 adjusted periodically in accordance with Section 890, net.

21 (b) Not more than ~~fifteen thousand dollars (\$15,000)~~ sixteen thousand three
22 hundred twenty-five dollars (\$16,325), as adjusted periodically in accordance with
23 Section 890, net in the aggregate may be collected by or for the surviving spouse
24 under this chapter from all of the employers of the decedent.

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

29 (d) The ~~fifteen thousand dollars (\$15,000) net limitation~~ dollar limit set forth in
30 subdivisions (a) and (b) does not apply to the surviving spouse or the guardian or
31 conservator of the estate of the surviving spouse of a firefighter or peace officer
32 described in subdivision (a) of Section 22820 of the Government Code.

33 ~~(e) On January 1, 2003, and on January 1 of each year thereafter, the maximum~~
34 ~~net amount of salary or compensation payable under subdivisions (a) and (b) to the~~
35 ~~surviving spouse or the guardian or conservator of the estate of the surviving~~
36 ~~spouse may be adjusted to reflect any increase in the cost of living occurring after~~
37 ~~January 1 of the immediately preceding year. The United States city average of the~~
38 ~~“Consumer Price Index for All Urban Consumers,” as published by the United~~
39 ~~States Bureau of Labor Statistics, shall be used as the basis for determining the~~
40 ~~changes in the cost of living. The cost of living increase shall equal or exceed 1~~
41 ~~percent before any adjustment is made. The net amount payable may not be~~
42 ~~decreased as a result of the cost of living adjustment.~~

43 **Comment.** Section 13600 is amended to adjust the dollar amount contained in this section. The
44 adjusted amount reflects cost-of-living increases since the amount was last changed. See 2011

1 Cal. Stat. ch. 117, § 10. The dollar amount is subject to periodic cost-of-living adjustments going
2 forward. See Section 890.

3 Subdivision (d) is amended to make a technical change.

4 Subdivision (e) is repealed. The dollar amounts in this section will be subject to periodic cost-
5 of-living adjustments going forward. See Section 890.

6 **Prob. Code § 13601 (amended). Contents of affidavit or declaration and proof of identity to**
7 **collect salary or other compensation**

8 SEC. 12. Section 13601 of the Probate Code is amended to read:

9 13601. (a) To collect salary or other compensation under this chapter, an
10 affidavit or a declaration under penalty of perjury under the laws of this state shall
11 be furnished to the employer of the deceased spouse stating all of the following:

12 (1) The name of the decedent.

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

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

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

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

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

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

23 (6) “Sections 13600 to 13605, inclusive, of the California Probate Code require
24 that the earnings of the decedent, including compensation for unused vacation, not
25 in excess of ~~fifteen thousand dollars (\$15,000)~~ [insert dollar amount specified in
26 subdivision (e)] net, be paid promptly to the affiant or declarant.”

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

31 (8) “Neither the surviving spouse, nor anyone acting on behalf of the surviving
32 spouse, has collected any compensation owed by an employer for personal
33 services of the decedent under Sections 13600 to 13605, inclusive, of the
34 California Probate Code except the sum of ____ dollars (\$____) ~~which that~~ that was
35 collected from ____.”

36 (9) “The affiant or declarant requests that he or she be paid the salary or other
37 compensation owed by you for personal services of the decedent, including
38 compensation for unused vacation, not to exceed ~~fifteen thousand dollars~~
39 ~~(\$15,000)~~ [insert dollar amount specified in subdivision (e)] net, less the amount
40 of ____ dollars (\$____) ~~which that~~ that was previously collected.”

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

1 (b) Where the decedent is a firefighter or peace officer described in subdivision
2 (a) of Section 22820 of the Government Code, the affidavit or declaration need not
3 include the content specified in paragraphs (6) through (9) of subdivision (a). The
4 affidavit shall instead include the following statements:

5 (1) “The decedent was a firefighter or peace officer described in subdivision (a)
6 of Section 22820 of the Government Code. Sections 13600 to 13605, inclusive, of
7 the California Probate Code require that the earnings of the decedent, including
8 compensation for unused vacation, be paid promptly to the affiant or declarant.”

9 (2) “The affiant or declarant requests to be paid the salary or other compensation
10 owed by you for personal services of the decedent, including compensation for
11 unused vacation.”

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

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

22 (e)(1) When the decedent dies prior to April 1, 2022, the dollar amount for
23 paragraphs (6) and (9) of subdivision (a) is sixteen thousand three hundred twenty-
24 five dollars (\$16,325).

25 (2) When the decedent dies on or after April 1, 2022, the dollar amount for
26 paragraphs (6) and (9) of subdivision (a) is the adjusted dollar amount, published
27 in accordance with subdivision (c) of Section 890, in effect on the date of the
28 decedent’s death. The affiant or declarant shall attach the list of adjusted dollar
29 amounts, published in accordance with subdivision (c) of Section 890, in effect on
30 the date of the decedent’s death to the affidavit or declaration.

31 **Comment.** Paragraphs (a)(6) and (a)(9) of Section 13601 are amended to adjust the dollar
32 amount, as set forth in subdivision (e).

33 Subdivision (b) is added to clarify that the affidavit or declaration of a surviving spouse (or
34 guardian or conservator of the estate of a surviving spouse, if applicable) of a firefighter or peace
35 officer described in Government Code Section 22820(a) need not include provisions related to the
36 dollar limit set forth in Section 13600(a) and (b). This change is made to conform to the effect of
37 Section 13600(d).

38 Paragraph (e)(1) is added to adjust the amount to reflect cost-of-living increases since the
39 amount was last changed. See 2011 Cal. Stat. ch. 117, § 11. Paragraph (e)(2) is added to clarify
40 that this dollar amount is subject to periodic cost-of-living adjustments going forward. See
41 Section 890. Paragraph (e)(2) also requires that, after the dollar amounts are adjusted, the
42 published adjusted dollar amounts be attached to the affidavit or declaration.

43 **Prob. Code § 13602 (amended). Payment of salary or other compensation by employer**

44 SEC. 13. Section 13602 of the Probate Code is amended to read:

1 13602. If the requirements of Section 13600 are satisfied, the employer to whom
2 the affidavit or declaration is presented shall promptly pay the earnings of the
3 decedent, including compensation for unused vacation, ~~not in excess of fifteen~~
4 ~~thousand dollars (\$15,000) net~~ as provided in Section 13600, to the person
5 presenting the affidavit or declaration.

6 **Comment.** Section 13602 is amended to clarify that the employer’s obligation to pay the
7 person presenting the affidavit or declaration is subject to any applicable limitation set forth in
8 Section 13600. This technical change is made to conform to the effect of Section 13600(d).

9  **Staff Note.** It appears that the cross-reference to Section 13600 in this section may be
10 incorrect.

11 Section 13600 appears to be primarily an authorization for the surviving spouse (or the
12 guardian or conservator of the estate of the surviving spouse, if applicable) to collect unpaid
13 compensation, while Section 13601 contains the requirements for the contents of the affidavit to
14 collect the unpaid compensation. Thus, Section 13601 would appear to be a more appropriate
15 cross-reference for the requirements to be satisfied before payment.

16 In addition, Section 13603 refers to Section 13601. Section 13603 states, in part, that, “[i]f the
17 requirements of Section 13601 are satisfied, receipt by the employer of the affidavit or
18 declaration constitutes sufficient acquittance for the compensation paid pursuant to this chapter
19 and discharges the employer from any further liability with respect to the compensation paid...”
20 It would seem that the employer’s obligation to pay under Section 13602 should correspond with
21 the employer’s discharge from liability under Section 13603. In this case, it would seem that both
22 sections should cross-refer to the same set of requirements.

23 **The staff requests public comment on which Section 13600 or 13601 would be the**
24 **appropriate cross-reference for this section.**