

## Memorandum 2018-34

**Disposition of Estate Without Administration: Interest Rate  
(Public Comment)**

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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 the decedent's estate, the decedent's creditors, or the decedent's rightful heirs or devisees. The recipient's liability includes interest on the property's value in some circumstances.

The Commission<sup>1</sup> approved a tentative recommendation relating to that interest liability and circulated it for public comment.<sup>2</sup> The tentative recommendation proposed the following changes to the law:

- (1) Lowering the interest rate currently imposed to compute the liability of a recipient of the decedent's property to the decedent's estate. The current ten percent interest rate would be reduced to a fixed rate of seven percent.
- (2) Granting the court discretion to reduce or waive the interest if the recipient acted reasonably and in good faith, under the circumstances known to the recipient.
- (3) Making minor technical and organizational changes to an affected section, Probate Code Section 13112.<sup>3</sup>

The Commission has not received any public comment on this tentative recommendation. This memorandum presents a draft recommendation and seeks a Commission decision on whether to approve that draft as a final recommendation.

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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](http://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 (May 2018), p. 7.

3. See Tentative Recommendation on *Disposition of Estate Without Administration: Interest Rate* (May 2018).

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

#### MINOR CHANGES TO DRAFT RECOMMENDATION

In preparing the draft recommendation, the staff identified a few minor clarifying changes and corrections that have been incorporated into the attached draft. In addition, the Commission may want to consider incorporating the following update into the final recommendation.

#### **Updating “Current” Interest Rate Footnote**

Footnote 11 in the draft recommendation provides information about current market interest rates, demonstrating that the ten percent interest rate is significantly higher than the current market rates.

The staff proposes to update the market interest rate information to be more current (in the tentative recommendation and the attached draft, the interest rates provided are from March 26, 2018). Specifically, the staff proposes to replace the text of footnote 11 with the following (only the interest rates and dates have been changed):

See, e.g., <<https://fred.stlouisfed.org/series/CD6NRJD>> (The national rate on jumbo deposits (greater than or equal to \$100,000) for 6 Month CD was 0.28% on July 23, 2018); <<https://fred.stlouisfed.org/series/CD6NRNJ>> (The national rate on non-jumbo deposits (less than \$100,000) for 6 Month CD was 0.24% on July 23, 2018); <<https://fred.stlouisfed.org/series/CD12NRJD>> (The national rate on jumbo deposits (greater than or equal to \$100,000) for 12 Month CD was 0.46% on July 23, 2018).

#### **Does the Commission approve of this proposed change?**

#### APPROVAL OF RECOMMENDATION

**Does the Commission approve the attached draft (as is or with modifications) as a final recommendation for publication and submission to the Legislature?**

Respectfully submitted,

Kristin Burford  
Staff Counsel

#L-4130.2

STATE OF CALIFORNIA

# **CALIFORNIA LAW REVISION COMMISSION**

**STAFF DRAFT**

RECOMMENDATION

Disposition of Estate Without Administration:  
Interest Rate

August 2018

California Law Revision Commission  
c/o King Hall Law School  
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## SUMMARY OF 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 often includes interest on the property's value.

The Commission concluded that the ten 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.

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



## DISPOSITION OF ESTATE WITHOUT ADMINISTRATION: INTEREST RATE

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### BACKGROUND

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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 often includes interest on the property's value, at the rate payable on a money judgment.<sup>1</sup>

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Currently, the law provides for a ten percent interest rate in these situations.<sup>2</sup>

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### SCOPE OF THE STUDY

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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:

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- *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.<sup>3</sup> 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.<sup>4</sup> 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 value<sup>5</sup> of the property.

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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.<sup>6</sup> 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 value<sup>7</sup> of the property.

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 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 ten percent.<sup>8</sup> At the time of the Commission  
15 recommendation proposing the interest rate provisions,<sup>9</sup> the ten percent interest  
16 rate was in the range of the prevailing market rate.<sup>10</sup> Under those conditions, the  
17 ten 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 ten percent interest rate is significantly higher than the current market  
20 interest rates.<sup>11</sup> Under current market conditions, the ten percent interest rate does

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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. Where the property is disposed of, the fair market value of the property is computed at the time of disposition. See Prob. Code § 13562(a)(2). Where the property is improved, the fair market value of the property is computed at the time of the decedent's death. See Prob. Code § 13562(b)(2).

8. See *supra* note 2.

9. See *Recommendation Relating to Disposition of Estate Without Administration*, 18 Cal. L. Revision Comm'n Reports 1005 (1986); see also *Recommendation Relating to Right of Surviving Spouse to Dispose of Community Property*, 20 Cal. L. Revision Comm'n Reports 2769 (1990).

10. 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).

11. See, e.g., <<https://fred.stlouisfed.org/series/CD6NRJD>> (The national rate on jumbo deposits (greater than 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 than or equal to \$100,000) for 12 Month CD was 0.37% on March 26, 2018).

1 not reflect the expected value that a recipient would receive by investing the  
2 proceeds of sale. Instead, the ten percent interest rate acts as a de facto penalty,  
3 imposing liability on the recipient far in excess of the value that the recipient could  
4 expect to realize from the decedent's property. This places the recipient of the  
5 decedent's property in a worse position than if the recipient had not received the  
6 property at all.

7 For example, under Probate Code Section 13101, the successor to the decedent's  
8 property could use an affidavit to collect the decedent's personal property worth  
9 \$100,000. The successor could then sell the property immediately after receiving  
10 it. If, after three years, the successor received notice that the property must be  
11 returned to the estate,<sup>12</sup> the successor would owe, in addition to the \$100,000 value  
12 from the property sale, approximately \$30,000 in interest (not taking into account  
13 compounding).<sup>13</sup> If the successor had invested the proceeds of sale in certificate of  
14 deposit offering two percent interest,<sup>14</sup> the investment would have only earned  
15 roughly \$6,000. In this situation, the successor would have a net loss of \$24,000  
16 resulting from the imposition of the ten percent interest rate.

#### 17 RECOMMENDATION

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

26 The Commission recognizes that, in some circumstances, the fixed rate of seven  
27 percent per annum may produce inequitable results, as described above. For this  
28 reason, the Commission also recommends that a court be given discretion to  
29 excuse a recipient's liability for interest, in whole or in part, where it would be  
30 equitable to do so, if the recipient acted reasonably and in good faith, under the

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12. 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....").

13. See Prob. Code § 13111(a)(2).

14. Under current market conditions, two percent is significantly higher than the average interest rate. See *supra* note 11.

15. 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).

- 1 circumstances known to the recipient.<sup>16</sup> Under existing law, courts are granted
  - 2 discretion to offer relief from liability in similar circumstances.<sup>17</sup>
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16. See, e.g., proposed Prob. Code § 13117.

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

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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 ~~payable on a money judgment~~  
21 of seven percent per annum 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.