

## Memorandum 2019-05

**Disposition of Estate Without Administration:  
Discussion of Issues**

---

In this study, the Commission<sup>1</sup> is considering a number of technical issues that relate to certain Probate Code provisions that allow the disposition of a decedent's estate without administration (hereafter "probate avoidance procedures"). The provisions discussed here address personal property of small value,<sup>2</sup> real property of small value,<sup>3</sup> and property received by a surviving spouse.<sup>4</sup>

At prior meetings, the Commission has made a number of decisions about how to reform the law on this topic. This memorandum presents draft language to implement those decisions.

The attached draft shows the proposed legislation for only one of the statutes at issue (the affidavit procedure for disposition of real property of small value). The Commission should review the attached draft and decide whether to approve it, with or without changes. After that decision has been made, the staff will prepare draft legislation for all three of the statutes at issue, for inclusion in a draft tentative recommendation.

The attached draft shows the proposed legislation in two ways. First it shows the proposed law as it would appear in a tentative recommendation.<sup>5</sup> Strikeout and underscore are used to show changes. Draft Commission Comments are added after each affected provision. For context, the staff has also included the provisions of the chapter that would not be revised. The headings for those sections make clear that they are "(unchanged)."

---

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. Prob. Code §§ 13100-13116.

3. Prob. Code §§ 13200-13210.

4. Prob. Code §§ 13500-13660.

5. See attached draft pp. 1-10.

Because the amount of strikeout and underscore makes it somewhat difficult to read the provisions for their meaning, the staff has also included a “clean” version of the provisions that would be affected by the proposed revisions, with all of the proposed changes incorporated into the text (without strikeout and underscore).<sup>6</sup> Those “as revised” provisions do not show changes as clearly, but they are easier to read for meaning.

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

#### OVERVIEW

Ordinarily, property that would pass by will or intestacy would be administered in a probate proceeding. However, in certain circumstances, existing law permits such property to pass to a devisee of a will or an heir under intestate succession rules without probate administration. **For convenience of reference, the remainder of this memorandum will use the term “designated successor” to mean a person who receives property from a decedent under one of the probate avoidance procedures.**

In probate, a decedent’s estate is used to pay the decedent’s debts (and certain expenses) before it is distributed to devisees or heirs. If property passes outside of probate, it passes outside of that creditor satisfaction procedure. To avoid unfairness to creditors, the probate avoidance procedures make the designated successor personally liable for the decedent’s unsecured debts, up to the value of the property received.<sup>7</sup>

A designated successor is also personally liable if another person establishes a superior right to the property by will or intestate succession (i.e., the other person, and not the designated successor, was actually the devisee or heir of the property).<sup>8</sup>

In addition to the rules establishing personal liability, the probate avoidance procedures also include what the staff has been calling “property return provisions.” Those are provisions that allow the decedent’s personal representative to require a designated successor to return transferred property

---

6. See attached draft pp. 11-15.

7. Sections 13109, 13204. The rules for liability of a surviving spouse are significantly different. See Sections 13550-13551.

8. Sections 13110, 13205, 13561.

(or its value) to the probate estate for use in paying creditor claims or transferring the property to a person with a superior right.<sup>9</sup>

If the property return provisions are invoked and the property received by the designated successor (or its value) is returned to the estate as required, the designated successor's personal liability is negated.<sup>10</sup>

#### IMPLEMENTATION OF PRIOR DECISIONS

The Commission has made a number of decisions about how to reform the provisions that govern a designated successor's liability for creditor claims and claims of superior right. The implementation of those decisions is discussed below. The staff will walk through them step-by-step at the meeting.

#### **Creditor Claims**

The Commission decided that the property return provisions should not apply to creditor claims.<sup>11</sup> **That decision would be implemented by adding limiting language to the introductory clause of Section 13206(a).**<sup>12</sup>

In connection with that change, the Commission decided to provide two new methods that a designated successor could use to avoid personal liability for the decedent's unsecured debts:

- (1) The designated successor should be able to request a determination of the designated successor's share of liability for the decedent's unsecured debts. The determination would be made by the personal representative, as if the property were still part of the decedent's probate estate. If the designated successor pays the share of liability determined by the personal representative, the designated successor would have no personal liability to the decedent's creditors.<sup>13</sup> **This decision would be implemented in proposed Section 13204.5.**<sup>14</sup>
- (2) The Commission also decided that the designated successor should have the option of simply returning the property at issue to the estate. This would effectively reverse the decision to take the property outside of probate, negating the liability that follows

---

9. Sections 13111, 13206, 13562.

10. Sections 13112, 13207. The rules for liability of a surviving spouse are significantly different. See Section 13563.

11. See Minutes (Dec. 2018), p. 9.

12. Conforming changes would be made by revising Sections 13206(e) & (g) and deleting a reference to Section 13204 in Section 13207(a).

13. *Id.*

14. A conforming revision would be made in Section 13204(a).

from such a transfer.<sup>15</sup> **This option would be implemented in proposed Section 13205.5.**

### **Claim of Superior Right**

In addition to limiting the application of the property return provision (to claims of superior right), the Commission made a number of decisions on how to reform the operation of the property return provision.

Specifically, it decided to restate and generalize the rules that govern the reimbursement of a designated successor or the estate, for value added to or lost from the estate by the action or inaction of the designated successor.<sup>16</sup>

The Commission approved specific language and directed the staff to make any necessary conforming revisions.<sup>17</sup>

**These decisions were implemented in proposed Section 13207.<sup>18</sup>**

## NEW ISSUES

### **Technical Revisions**

In preparing the proposed legislation, the staff saw two opportunities for improvement of the user-friendliness of the law. These are new points that have not previously been considered by the Commission:

- (1) *Definitions.* Proposed Section 13202.5 would define the terms “designated successor” and “transferred property.” The defined terms have been used throughout the attached draft. This significantly simplifies the existing language. It also eliminates some scope for ambiguity with respect to repeated references to “property” and “person.”
- (2) *Consolidation of language.* Under existing law, the scope of liability under Sections 13204 (creditor claims) and 13205 (claim of superior right) is prescribed in Section 13207. That seems needlessly indirect. In the attached draft, the scope of liability language in Section 13207 would be moved into Sections 13204 and 13205.

### **Substantive Issue**

There is one new substantive point worth noting. It relates to the second of the technical revisions discussed above. In moving language regarding the scope

---

15. *Id.*

16. See Minutes (Aug. 2018), p. 14, Minutes (Dec. 2018), p. 9.

17. *Id.*

18. A conforming revision was made in Section 13206(d).

of a designated successor's liability for creditor claims, the staff wondered whether it makes sense to include subsequent income and interest when calculating the scope of liability for the decedent's unsecured debts. Under existing Section 13207, the scope of liability for decedent's unsecured debts includes the fair market value of the transferred property at the time of transfer, plus net income received from the property and interest on the fair market value from the time of the transfer.

With respect to creditor claims, it seems fair to hold the designated successor liable up to the value of the property received. But why should that liability continue to increase over time, based on later income derived from the property or interest on the initial value of the gift? To highlight that issue and prompt comment, the attached draft omits the income and interest from the scope of liability in Section 13204.

In contrast, the staff does see good reason for including income and interest when calculating a designated successor's liability to a person with a superior right. In that situation, the designated successor never had any right to receive the property. It was intended for another person. Consequently, the designated survivor should disgorge both the property and any value derived from the property. Both belong to the intended recipient. For that reason, the staff did include the existing income and interest provisions in Section 13205.

**The Commission needs to decide whether it agrees with that preliminary approach, for the purposes of a tentative recommendation.**

#### NEXT STEPS

**Once the Commission decides whether to approve the proposed legislation, with or without changes, the staff will prepare a tentative recommendation that includes parallel changes for all of the statutes at issue.**

Respectfully submitted,

Brian Hebert  
Executive Director



AFFIDAVIT PROCEDURE FOR REAL PROPERTY  
OF SMALL VALUE

CONTENTS

PROPOSED REVISIONS (WITH STRIKEOUT AND UNDERSCORE) .....	1
Prob. Code § 13200 (unchanged). Affidavit .....	1
Prob. Code § 13201 (unchanged). Fee .....	3
Prob. Code § 13202 (unchanged). Filing and recording .....	3
Prob. Code § 13202.5 (added). Definitions .....	3
Prob. Code § 13204 (amended). Personal liability for decedent’s unsecured debts .....	3
Prob. Code § 13204.5 (added). Written determination of share of liability .....	4
Prob. Code § 13205 (amended). Personal liability to person with superior right .....	5
Prob. Code § 13205.5 (added). Voluntary return of transferred property to the estate.....	6
Prob. Code § 13206 (amended). Liability for return of transferred property to estate .....	6
Prob. Code § 13207 (repealed). Scope of personal liability under Sections 13204 and 13205 .....	8
Prob. Code § 13207 (added). Adjustment to liability under Section 13206 .....	8
Prob. Code § 13208 (unchanged). Remedies not exclusive .....	9
Prob. Code § 13209 (unchanged). Application of procedure .....	10
REVISED OR ADDED PROVISIONS (AS REVISED).....	11
Prob. Code § 13202.5 (added). Definitions .....	11
Prob. Code § 13204 (amended). Personal liability for decedent’s unsecured debts .....	11
Prob. Code § 13204.5 (added). Written determination of share of liability .....	11
Prob. Code § 13205 (amended). Personal liability to person with superior right .....	12
Prob. Code § 13205.5 (added). Voluntary return of transferred property to the estate.....	13
Prob. Code § 13206 (amended). Liability for return of transferred property to estate .....	13
Prob. Code § 13207 (repealed). Scope of personal liability under Sections 13204 and 13205 .....	14
Prob. Code § 13207 (added). Adjustment to liability under Section 13206 .....	14

---

PROPOSED REVISIONS  
(WITH STRIKEOUT AND UNDERSCORE)

- 1   **Prob. Code § 13200 (unchanged). Affidavit**
- 2       13200. (a) No sooner than six months from the death of a decedent, a person or
- 3   persons claiming as successor of the decedent to a particular item of property that
- 4   is real property may file in the superior court in the county in which the decedent
- 5   was domiciled at the time of death, or if the decedent was not domiciled in this
- 6   state at the time of death, then in any county in which real property of the decedent
- 7   is located, an affidavit in the form prescribed by the Judicial Council pursuant to
- 8   Section 1001 stating all of the following:
- 9       (1) The name of the decedent.
- 10      (2) The date and place of the decedent’s death.

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

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

6 (5) "The gross value of all real property in the decedent's estate located in  
7 California, as shown by the inventory and appraisal attached to this affidavit,  
8 excluding the real property described in Section 13050 of the California Probate  
9 Code, does not exceed fifty thousand dollars (\$50,000)."

10 (6) "At least six months have elapsed since the death of the decedent as shown  
11 in a certified copy of decedent's death certificate attached to this affidavit."

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

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

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

17 (8) "Funeral expenses, expenses of last illness, and all unsecured debts of the  
18 decedent have been paid."

19 (9) "The affiant is the successor of the decedent (as defined in Section 13006 of  
20 the Probate Code) and to the decedent's interest in the described property, and no  
21 other person has a superior right to the interest of the decedent in the described  
22 property."

23 (10) "The affiant declares under penalty of perjury under the laws of the State of  
24 California that the foregoing is true and correct."

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

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

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

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

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



1 **Prob. Code § 13201 (unchanged). Fee**

2 13201. Notwithstanding any other provision of law, the total fee for the filing of  
3 an affidavit under Section 13200 and the issuance of one certified copy of the  
4 affidavit under Section 13202 is as provided in subdivision (b) of Section 70626 of  
5 the Government Code.

6 **Prob. Code § 13202 (unchanged). Filing and recording**

7 13202. Upon receipt of the affidavit and the required fee, the court clerk, upon  
8 determining that the affidavit is complete and has the required attachments, shall  
9 file the affidavit and attachments and shall issue a certified copy of the affidavit  
10 without the attachments. The certified copy shall be recorded in the office of the  
11 county recorder of the county where the real property is located. The county  
12 recorder shall index the certified copy in the index of grantors and grantees. The  
13 decedent shall be indexed as the grantor and each person designated as a successor  
14 to the property in the certified copy shall be indexed as a grantee.

15 **Prob. Code § 13202.5 (added). Definitions**

16 SEC. \_\_\_\_\_. Section 13202.5 is added to the Probate Code, to read:

17 13202.5. For the purposes of this chapter, the following terms have the  
18 following meanings:

19 (a) “Designated successor” means a person designated as a successor of the  
20 decedent in a certified copy of an affidavit issued under Section 13202.

21 (b) “Transferred property” means property transferred to a designated successor  
22 pursuant to a certified copy of an affidavit issued under Section 13202.

23 **Comment.** Section 13202.5 is new. It is added for drafting convenience.

24 **Prob. Code § 13204 (amended). Personal liability for decedent’s unsecured debts**

25 SEC. \_\_\_\_\_. Section 13204 of the Probate Code is amended to read:

26 13204. ~~(a) Each person who is designated as a successor of the decedent in a~~  
27 ~~certified copy of an affidavit issued under Section 13202~~ Except as provided in  
28 Sections 13204.5 and 13205.5, each designated successor is personally liable to  
29 the extent provided in Section 13207 subdivision (b) for the unsecured debts of the  
30 decedent. Any such That debt may be enforced against the person designated  
31 successor in the same manner as it could have been enforced against the decedent  
32 if the decedent had not died. In any action based upon the debt, the person  
33 designated successor may assert any defense, cross-complaint, or setoff that would  
34 have been available to the decedent if the decedent had not died. Nothing in this  
35 section permits enforcement of a claim that is barred under Part 4 (commencing  
36 with Section 9000) of Division 7. Section 366.2 of the Code of Civil Procedure  
37 applies in an action under this section.

38 (b) The personal liability under subdivision (a) shall not exceed the fair market  
39 value of the transferred property, at the time of the issuance of the certified copy

1 of the affidavit under Section 13202, less the amount of any liens and  
2 encumbrances on the transferred property at that time.

3 **Comment.** Subdivision (a) of Section 13204 is amended to provide that there is no liability  
4 under that provision if the designated successor satisfies the requirements of Section 13204.5 or  
5 13205.5. The subdivision is also amended to make technical revisions.

6 Subdivision (b) continues the substance of former Section 13207(b)(1) applicable to Section  
7 13204. With respect to this section, the substance of former Section 13207(b)(2)-(3) is not  
8 continued.

9 See also Section 13202.5 (“designated successor” & “transferred property”).

10 **Prob. Code § 13204.5 (added). Written determination of share of liability**

11 SEC. \_\_\_\_ . Section 13204.5 is added to the Probate Code, to read:

12 13204.5. (a) If proceedings for the administration of the transferor’s estate are  
13 commenced, a designated successor may submit a written request to the personal  
14 representative for a determination of the designated successor’s share of liability  
15 for the unsecured debts of the transferor.

16 (b) On receipt of a request pursuant to subdivision (a), the personal  
17 representative shall determine the share of liability for the decedent’s unsecured  
18 debts that would have been allocated to the transferred property had that property  
19 remained in the estate. In making that determination, the personal representative  
20 shall apply the following rules:

21 (1) The abatement rules provided in Part 4 (commencing with Section 21400) of  
22 Division 11 shall be applied as if the transferred property had remained in the  
23 estate for administration.

24 (2) The value of the property received by the designated successor under this  
25 chapter shall be deemed to be the fair market value of the property, at the time of  
26 the issuance of the certified copy of the affidavit under Section 13202, less the  
27 amount of any liens and encumbrances on the property at that time.

28 (c) The reasonable cost of proceeding under this section shall be reimbursed as  
29 an extraordinary service under Sections 10801 and 10811 and added to the  
30 designated successor’s share of liability.

31 (d) If the designated successor made any payment toward the decedent’s  
32 unsecured debts pursuant to Section 13204, that amount shall be deducted from  
33 the designated successor’s share of liability. If the amount deducted under this  
34 subdivision is greater than the sum of the amounts determined in subdivisions (b)  
35 and (c), the estate will reimburse the designated successor for the difference. For  
36 the purposes of Section 11420, that reimbursement shall be deemed an expense of  
37 administration.

38 (e) The personal representative shall provide a written determination of the  
39 designated successor’s share of liability if any, which states the amount  
40 determined under this section and explains how that amount was determined.

41 (f) If the designated successor’s share of liability is zero or the designated  
42 successor is entitled to reimbursement under subdivision (d), the designated  
43 successor has no liability under Section 13204.

1 (g) If the designated successor’s share of liability is greater than zero and the  
2 designated successor pays that amount to the estate, the designated successor has  
3 no liability under Section 13204.

4 **Comment.** Section 13204.5 is new. It provides a method for a designated successor to  
5 determine and pay the estate an amount equal to the share of liability that would have been  
6 assigned to property that was transferred under this chapter, had the property remained in the  
7 decedent’s estate. Payment of that amount negates the personal liability established in Section  
8 13204.

9 See also Section 13202.5 (“designated successor” & “transferred property”).

10 **Prob. Code § 13205 (amended). Personal liability to person with superior right**

11 SEC. \_\_\_\_ . Section 13205 of the Probate Code is amended to read:

12 13205. (a) Except as provided in subdivision (b), each ~~person who is designated~~  
13 ~~as a successor of the decedent in a certified copy of any affidavit issued under~~  
14 ~~Section 13202~~ designated successor is personally liable to the extent provided in  
15 ~~Section 13207~~ to any person having a superior right by testate or intestate  
16 succession from the decedent. Except as provided in subdivision (b), the personal  
17 liability established by this subdivision shall not exceed the sum of the following:

18 (1) The fair market value at the time of the issuance of the certified copy of the  
19 affidavit under Section 13202 of the transferred property, less the amount of any  
20 liens and encumbrances on the transferred property at that time.

21 (2) The net income the designated successor received from the transferred  
22 property.

23 (3) If the property has been disposed of, interest on the fair market value of the  
24 transferred property from the date of disposition at the rate payable on a money  
25 judgment. For the purposes of this paragraph, “fair market value of the transferred  
26 property” has the same meaning as defined in paragraph (2) of subdivision (a) of  
27 Section 13206.

28 (b) In addition to any other liability the ~~person~~ designated successor has under  
29 this section and Sections 13204, 13206, and 13207, if the ~~person~~ designated  
30 successor fraudulently executed or filed the affidavit under this chapter, the ~~person~~  
31 designated successor is liable to the person having a superior right for three times  
32 the fair market value of the transferred property. For the purposes of this  
33 subdivision, the “fair market value of the transferred property” is the fair market  
34 value, determined as of the time the certified copy of the affidavit was issued  
35 under Section 13202, of the transferred property ~~the person liable took under the~~  
36 ~~certified copy of the affidavit~~ to which the other person has a superior right, less  
37 any liens and encumbrances on the transferred property at that time.

38 (c) An action to impose liability under this section is forever barred three years  
39 after the certified copy of the affidavit is issued under Section 13202, or three  
40 years after the discovery of the fraud, whichever is later. The three-year period  
41 specified in this subdivision is not tolled for any reason.

42 **Comment.** Section 13205 is amended to incorporate the substance of former Section 13207(b),  
43 as applicable to Section 13205. The section is also amended to make technical revisions.

1 See also Section 13202.5 (“designated successor” & “transferred property”).

2 **Prob. Code § 13205.5 (added). Voluntary return of transferred property to the estate**

3 SEC. \_\_\_\_ . Section 13205.5 is added to the Probate Code, to read:

4 13205.5. (a) If proceedings for the administration of the transferor’s estate are  
5 commenced, a designated successor may voluntarily return transferred property to  
6 the decedent’s estate for administration.

7 (b) A designated successor who returns transferred property to the estate  
8 voluntarily under this section has no liability for that property under Sections  
9 13204 or 13205.

10 (c) If a designated successor made any payment toward any of decedent’s  
11 unsecured debts prior to returning the transferred property to the estate, the  
12 personal representative shall reimburse the designated successor for the amount  
13 paid.

14 **Comment.** Section 13205.5 is new. It provides a method to avoid the personal liability  
15 established in Section 13204.

16 See also Section 13202.5 (“designated successor” & “transferred property”).

17 **Prob. Code § 13206 (amended). Liability for return of transferred property to estate**

18 SEC. \_\_\_\_ . Section 13206 of the Probate Code is amended to read:

19 ~~13206. (a) Subject to subdivisions (b), (c), (d), and (e), if proceedings for the~~  
20 ~~administration of the decedent’s estate are commenced, or if the decedent’s~~  
21 ~~personal representative has consented to use of the procedure provided by this~~  
22 ~~chapter and the personal representative later requests that the property be restored~~  
23 ~~to the estate, each person who is designated as a successor of the decedent in a~~  
24 ~~certified copy of an affidavit issued under Section 13202 is liable for:~~

25 If property is transferred to a designated successor under this chapter, and the  
26 personal representative determines that another person has a superior right to the  
27 property by testate or intestate succession from the decedent, the personal  
28 representative may request that the transferred property be restored to the estate.  
29 Subject to subdivisions (b), (c), (d), and (e), if the personal representative makes  
30 that request, the designated successor is liable for all of the following:

31 (1) ~~The~~ If the designated successor still has the transferred property, restitution  
32 of the transferred property to the decedent’s estate of the property the person took  
33 under the certified copy of the affidavit if the person still has the property, together  
34 with (A) the net income the person received from the property and (B) if the  
35 person encumbered the property after the certified copy of the affidavit was  
36 issued, the amount necessary to satisfy the balance of the encumbrance as of the  
37 date the property is restored to the estate.

38 (2) ~~The~~ If the designated successor no longer has the transferred property,  
39 restitution to the decedent’s estate of the fair market value of the transferred  
40 property if the person no longer has the property together with (A) the net income  
41 the person received from the property prior to disposing of it and (B) plus interest

1 from the date of disposition at the rate payable on a money judgment on the fair  
2 market value of the transferred property. For the purposes of this paragraph, the  
3 “fair market value of the transferred property” is the fair market value of the  
4 transferred property, determined as of the time of the disposition of the transferred  
5 property, ~~of the property the person took under the certified copy of the affidavit,~~  
6 less the amount of any liens and encumbrances on the transferred property at ~~the~~  
7 that time the certified copy of the affidavit was issued.

8 (b) Subject to subdivision (d), if the ~~person~~ designated successor fraudulently  
9 executed or filed the affidavit under this chapter, the ~~person~~ designated successor  
10 is liable under this section for restitution to the decedent’s estate of three times the  
11 fair market value of the transferred property. For the purposes of this subdivision,  
12 the “fair market value of the transferred property” is the fair market value of the  
13 transferred property, determined as of the time the certified copy of the affidavit  
14 was issued, ~~of the property the person took under the certified copy of the~~  
15 ~~affidavit,~~ less the amount of any liens and encumbrances on the property at that  
16 time.

17 (c) Subject to subdivision (d), if ~~proceedings for the administration of the~~  
18 ~~decedent’s estate are commenced and a person designated as a successor of the~~  
19 ~~decedent in a certified copy of an affidavit issued under Section 13202~~ the  
20 designated successor made a significant improvement to the transferred property  
21 ~~taken by the person under the certified copy of the affidavit~~ in the good faith belief  
22 that the ~~person~~ designated successor was the successor of the decedent to that  
23 property, the ~~person~~ designated successor is liable for whichever of the following  
24 the decedent’s estate elects:

25 (1) The restitution of the transferred property, ~~as improved,~~ to the estate of the  
26 decedent ~~upon the condition that the estate reimburse the person making~~  
27 ~~restitution for (A) the amount by which the improvement increases the fair market~~  
28 ~~value of the property restored, determined as of the time of restitution, and (B) the~~  
29 ~~amount paid by the person for principal and interest on any liens or encumbrances~~  
30 ~~that were on the property at the time the certified copy of the affidavit was issued.~~

31 (2) The restoration to the decedent’s estate of the fair market value of the  
32 transferred property, determined as of the time of the issuance of the certified copy  
33 of the affidavit under Section 13202, less the amount of any liens and  
34 encumbrances on the transferred property at that time, together with interest on the  
35 net amount at the rate payable on a money judgment running from the date of the  
36 issuance of the certified copy of the affidavit.

37 (d) The property and amount required to be restored to the estate under this  
38 section shall be reduced ~~by any property or amount paid by the person to satisfy a~~  
39 ~~liability under Section 13204 or 13205~~ or increased as provided in Section 13207.

40 (e) An action to enforce the liability under this section may be brought only by  
41 the personal representative of the estate of the decedent. Whether or not the  
42 personal representative brings an action under this section, the personal  
43 representative may enforce the liability only to the extent necessary to protect the

1 interests of ~~the heirs, or devisees, and creditors of the decedent~~ a person with a  
2 superior right to the transferred property.

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

7 (g) A designated successor who satisfies the liability established by this section  
8 is not liable under Section 13205.

9 **Comment.** Section 13206 is amended to limit the application of the section to claims of  
10 superior right, to delete language that is continued and generalized in Section 13207, and to make  
11 technical revisions.

12 Subdivision (g) is added to continue the substance of former Section 13207(a), as that  
13 subdivision applied to Section 13205. The application of that subdivision to Section 13204 is not  
14 continued.

15 See also Section 13202.5 (“designated successor” & “transferred property”).

16 **Prob. Code § 13207 (repealed). Scope of personal liability under Sections 13204 and 13205**

17 SEC. \_\_\_\_\_. Section 13207 of the Probate Code is repealed.

18 **Comment.** Section 13207 is repealed. The substance of former subdivision (a), as it applied to  
19 Section 13205, is continued in Section 13206(g). The application of former subdivision (a) to  
20 Section 13204 is not continued, because Section 13206 no longer applies to creditor claims.

21 The application of former paragraph (b)(1) to Section 13204 is continued in Section 13204(b).  
22 The application of former paragraphs (b)(2)-(3) to Section 13204 is not continued. The  
23 application of former subdivision (b) to Section 13205 is continued in Section 13205(a).

24 **Staff Note.** For ease of reference, the text of Section 13207 is reproduced below:

25 13207. (a) A person designated as a successor of the decedent in a certified copy of an  
26 affidavit issued under Section 13202 is not liable under Section 13204 or 13205 if  
27 proceedings for the administration of the decedent’s estate are commenced, or if the  
28 decedent’s personal representative has consented to use of the procedure provided by this  
29 chapter and the personal representative later requests that the property be restored to the  
30 estate, and the person satisfies the requirements of Section 13206.

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

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

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

38 (3) If the property has been disposed of, interest on the fair market value of the property  
39 from the date of disposition at the rate payable on a money judgment. For the purposes of this  
40 paragraph, “fair market value of the property” has the same meaning as defined in paragraph  
41 (2) of subdivision (a) of Section 13206.

42 **Prob. Code § 13207 (added). Adjustment to liability under Section 13206**

43 SEC. \_\_\_\_\_. Section 13207 is added to the Probate Code, to read:

44 13207. (a) If the designated successor’s action or inaction increased the value of  
45 property returned to the estate or decreased the estate’s obligations, the personal

1 representative shall reduce the designated successor's restitution liability under  
2 Section 13206 by the same amount. Actions or inaction that may increase the  
3 value of returned property or decrease the estate's obligations include, but are not  
4 necessarily limited to, the following actions:

5 (1) A payment toward an unsecured debt of the decedent.

6 (2) A payment toward a debt secured against the returned property.

7 (3) A significant improvement of the returned property that increased the fair  
8 market value of the property.

9 (b) If the designated successor's action or inaction decreased the value of  
10 property returned to the estate or increased the estate's obligations, the personal  
11 representative shall increase the designated successor's restitution liability under  
12 Section 13206 by the same amount. Actions or inaction that may decrease the  
13 value of the returned property or increase the estate's obligations include, but are  
14 not necessarily limited to, the following actions or inaction:

15 (1) An action or inaction that resulted in a lien or encumbrance being recorded  
16 against the property.

17 (2) The receipt of income from the property, if that income would have accrued  
18 to the estate had the property not been transferred to the designated successor.

19 (c) The personal representative shall provide the designated successor a written  
20 statement of any increase or decrease in restitution liability under this section,  
21 along with a statement of the reasons for the increase or decrease.

22 (d) If the designated successor returns tangible property to the estate and is  
23 entitled to a reduction in restitution liability under this section, the estate shall pay  
24 the designated successor an amount equal to the reduction in liability. For the  
25 purposes of Section 11420, this payment shall be deemed an expense of  
26 administration.

27 (e) In the event that the designated successor and the personal representative  
28 cannot agree on how the designated successor's liability should be adjusted under  
29 this section, the designated successor or personal representative may petition the  
30 court for an order determining the amount of the adjustment. In making a decision  
31 under this subdivision, the court should consider the surrounding circumstances,  
32 including whether the parties acted in good faith and whether a particular  
33 adjustment would impose an unfair burden on the designated successor or the  
34 estate.

35 **Comment.** Section 13207 is new. It generalizes language that was deleted from Section  
36 13206(a) and (c) and provides a procedure for determining the adjustments to be made under  
37 Section 13206(d).

38 See also Section 13202.5 ("designated successor" & "transferred property").

39 **Prob. Code § 13208 (unchanged). Remedies not exclusive**

40 13208. The remedies available under Sections 13204 to 13207, inclusive, are in  
41 addition to any remedies available by reason of any fraud or intentional  
42 wrongdoing.

1 **Prob. Code § 13209 (unchanged). Application of procedure**

2 13209. The procedure provided by this chapter may be used only if one of the  
3 following requirements is satisfied:

4 (a) No proceeding for the administration of the decedent's estate is pending or  
5 has been conducted in this state.

6 (b) The decedent's personal representative consents in writing to use of the  
7 procedure provided by this chapter.

---



REVISED OR ADDED PROVISIONS  
(AS REVISED)

1 **Prob. Code § 13202.5 (added). Definitions**

2 SEC. \_\_\_\_\_. Section 13202.5 is added to the Probate Code, to read:

3 13202.5. For the purposes of this chapter, the following terms have the  
4 following meanings:

5 (a) “Designated successor” means a person designated as a successor of the  
6 decedent in a certified copy of an affidavit issued under Section 13202.

7 (b) “Transferred property” means property transferred to a designated successor  
8 pursuant to a certified copy of an affidavit issued under Section 13202.

9 **Prob. Code § 13204 (amended). Personal liability for decedent’s unsecured debts**

10 SEC. \_\_\_\_\_. Section 13204 of the Probate Code is amended to read:

11 13204. (a) Except as provided in Sections 13204.5 and 13205.5, each designated  
12 successor is personally liable to the extent provided in subdivision (b) for the  
13 unsecured debts of the decedent. That debt may be enforced against the designated  
14 successor in the same manner as it could have been enforced against the decedent  
15 if the decedent had not died. In any action based upon the debt, the designated  
16 successor may assert any defense, cross-complaint, or setoff that would have been  
17 available to the decedent if the decedent had not died. Nothing in this section  
18 permits enforcement of a claim that is barred under Part 4 (commencing with  
19 Section 9000) of Division 7. Section 366.2 of the Code of Civil Procedure applies  
20 in an action under this section.

21 (b) The personal liability under subdivision (a) shall not exceed the fair market  
22 value of the transferred property, at the time of the issuance of the certified copy  
23 of the affidavit under Section 13202, less the amount of any liens and  
24 encumbrances on the transferred property at that time.

25 **Prob. Code § 13204.5 (added). Written determination of share of liability**

26 SEC. \_\_\_\_\_. Section 13204.5 is added to the Probate Code, to read:

27 13204.5. (a) If proceedings for the administration of the transferor’s estate are  
28 commenced, a designated successor may submit a written request to the personal  
29 representative for a determination of the designated successor’s share of liability  
30 for the unsecured debts of the transferor.

31 (b) On receipt of a request pursuant to subdivision (a), the personal  
32 representative shall determine the share of liability for the decedent’s unsecured  
33 debts that would have been allocated to the transferred property had that property  
34 remained in the estate. In making that determination, the personal representative  
35 shall apply the following rules:

1 (1) The abatement rules provided in Part 4 (commencing with Section 21400) of  
2 Division 11 shall be applied as if the transferred property had remained in the  
3 estate for administration.

4 (2) The value of the property received by the designated successor under this  
5 chapter shall be deemed to be the fair market value of the property, at the time of  
6 the issuance of the certified copy of the affidavit under Section 13202, less the  
7 amount of any liens and encumbrances on the property at that time.

8 (c) The reasonable cost of proceeding under this section shall be reimbursed as  
9 an extraordinary service under Sections 10801 and 10811 and added to the  
10 designated successor's share of liability.

11 (d) If the designated successor made any payment toward the decedent's  
12 unsecured debts pursuant to Section 13204, that amount shall be deducted from  
13 the designated successor's share of liability. If the amount deducted under this  
14 subdivision is greater than the amounts calculated in subdivisions (b) and (d), the  
15 estate will reimburse the designated successor for the difference. For the purposes  
16 of Section 11420, that reimbursement shall be deemed an expense of  
17 administration.

18 (e) The personal representative shall provide a written determination of the  
19 designated successor's share of liability if any, which states the amount  
20 determined under this section and explains how that amount was determined.

21 (f) If the designated successor's share of liability is zero or the designated  
22 successor is entitled to reimbursement under subdivision (d), the designated  
23 successor has no liability under Section 13204.

24 (g) If the designated successor's share of liability is greater than zero and the  
25 designated successor pays that amount to the estate, the designated successor has  
26 no liability under Section 13204.

27 **Prob. Code § 13205 (amended). Personal liability to person with superior right**

28 13205. (a) Except as provided in subdivision (b), each designated successor is  
29 personally liable to any person having a superior right by testate or intestate  
30 succession from the decedent. Except as provided in subdivision (b), the personal  
31 liability established by this subdivision shall not exceed the sum of the following:

32 (1) The fair market value at the time of the issuance of the certified copy of the  
33 affidavit under Section 13202 of the transferred property, less the amount of any  
34 liens and encumbrances on the transferred property at that time.

35 (2) The net income the designated successor received from the transferred  
36 property.

37 (3) If the property has been disposed of, interest on the fair market value of the  
38 transferred property from the date of disposition at the rate payable on a money  
39 judgment. For the purposes of this paragraph, "fair market value of the transferred  
40 property" has the same meaning as defined in paragraph (2) of subdivision (a) of  
41 Section 13206.

1 (b) In addition to any other liability the designated successor has under this  
2 section and Sections 13204, 13206, and 13207, if the designated successor  
3 fraudulently executed or filed the affidavit under this chapter, the designated  
4 successor is liable to the person having a superior right for three times the fair  
5 market value of the transferred property. For the purposes of this subdivision, the  
6 “fair market value of the transferred property” is the fair market value, determined  
7 as of the time the certified copy of the affidavit was issued under Section 13202,  
8 of the transferred property to which the other person has a superior right, less any  
9 liens and encumbrances on the transferred property at that time.

10 (c) An action to impose liability under this section is forever barred three years  
11 after the certified copy of the affidavit is issued under Section 13202, or three  
12 years after the discovery of the fraud, whichever is later. The three-year period  
13 specified in this subdivision is not tolled for any reason.

14 **Prob. Code § 13205.5 (added). Voluntary return of transferred property to the estate**

15 SEC. \_\_\_\_ . Section 13205.5 is added to the Probate Code, to read:

16 13205.5. (a) If proceedings for the administration of the transferor’s estate are  
17 commenced, a designated successor may voluntarily return transferred property to  
18 the decedent’s estate for administration.

19 (b) A designated successor who returns transferred property to the estate  
20 voluntarily under this section has no liability for that property under Sections  
21 13204 or 13205.

22 (c) If a designated successor made any payment toward any of decedent’s  
23 unsecured debts prior to returning the transferred property to the estate, the  
24 personal representative shall reimburse the designated successor for the amount  
25 paid.

26 **Prob. Code § 13206 (amended). Liability for return of transferred property to estate**

27 SEC. \_\_\_\_ . Section 13206 of the Probate Code is amended to read:

28 13206. (a) If property is transferred to a designated successor under this chapter,  
29 and the personal representative determines that another person has a superior right  
30 to the property by testate or intestate succession from the decedent, the personal  
31 representative may request that the transferred property be restored to the estate.  
32 Subject to subdivisions (b), (c), (d), and (e), if the personal representative makes  
33 that request, the designated successor is liable for all of the following:

34 (1) If the designated successor still has the transferred property, restitution of the  
35 transferred property to the decedent’s estate .

36 (2) If the designated successor no longer has the transferred property, restitution  
37 to the decedent’s estate of the fair market value of the transferred property plus  
38 interest from the date of disposition at the rate payable on a money judgment on  
39 the fair market value of the transferred property. For the purposes of this  
40 paragraph, the “fair market value of the transferred property” is the fair market  
41 value of the transferred property, determined as of the time of the disposition of

1 the transferred property, less the amount of any liens and encumbrances on the  
2 transferred property at that time.

3 (b) Subject to subdivision (d), if the designated successor fraudulently executed  
4 or filed the affidavit under this chapter, the designated successor is liable under  
5 this section for restitution to the decedent's estate of three times the fair market  
6 value of the transferred property. For the purposes of this subdivision, the "fair  
7 market value of the transferred property" is the fair market value of the transferred  
8 property, determined as of the time the certified copy of the affidavit was issued,  
9 less the amount of any liens and encumbrances on the property at that time.

10 (c) Subject to subdivision (d), if the designated successor made a significant  
11 improvement to the transferred property in the good faith belief that the designated  
12 successor was the successor of the decedent to that property, the designated  
13 successor is liable for whichever of the following the decedent's estate elects:

14 (1) The restitution of the transferred property to the estate of the decedent.

15 (2) The restoration to the decedent's estate of the fair market value of the  
16 transferred property, determined as of the time of the issuance of the certified copy  
17 of the affidavit under Section 13202, less the amount of any liens and  
18 encumbrances on the transferred property at that time, together with interest on the  
19 net amount at the rate payable on a money judgment running from the date of the  
20 issuance of the certified copy of the affidavit.

21 (d) The property and amount required to be restored to the estate under this  
22 section shall be reduced or increased as provided in Section 13207.

23 (e) An action to enforce the liability under this section may be brought only by  
24 the personal representative of the estate of the decedent. Whether or not the  
25 personal representative brings an action under this section, the personal  
26 representative may enforce the liability only to the extent necessary to protect the  
27 interests of a person with a superior right to the transferred property.

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

32 (g) A designated successor who satisfies the liability established by this section  
33 is not liable under Section 13205.

34 **Prob. Code § 13207 (repealed). Scope of personal liability under Sections 13204 and 13205**

35 SEC. \_\_\_\_\_. Section 13207 of the Probate Code is repealed.

36 **Prob. Code § 13207 (added). Adjustment to liability under Section 13206**

37 SEC. \_\_\_\_\_. Section 13207 is added to the Probate Code, to read:

38 13207. (a) If the designated successor's action or inaction increased the value of  
39 property returned to the estate or decreased the estate's obligations, the personal  
40 representative shall reduce the designated successor's restitution liability under  
41 Section 13206 by the same amount. Actions or inaction that may increase the

1 value of returned property or decrease the estate's obligations include, but are not  
2 necessarily limited to, the following actions:

3 (1) A payment toward an unsecured debt of the decedent.

4 (2) A payment toward a debt secured against the returned property.

5 (3) A significant improvement of the returned property that increased the fair  
6 market value of the property.

7 (b) If the designated successor's action or inaction decreased the value of  
8 property returned to the estate or increased the estate's obligations, the personal  
9 representative shall increase the designated successor's restitution liability under  
10 Section 13206 by the same amount. Actions or inaction that may decrease the  
11 value of the returned property or increase the estate's obligations include, but are  
12 not necessarily limited to, the following actions or inaction:

13 (1) An action or inaction that resulted in a lien or encumbrance being recorded  
14 against the property.

15 (2) The receipt of income from the property, if that income would have accrued  
16 to the estate had the property not been transferred to the designated successor.

17 (c) The personal representative shall provide the designated successor a written  
18 statement of any increase or decrease in restitution liability under this section,  
19 along with a statement of the reasons for the increase or decrease.

20 (d) If the designated successor returns tangible property to the estate and is  
21 entitled to a reduction in restitution liability under this section, the estate shall pay  
22 the designated successor an amount equal to the reduction in liability. For the  
23 purposes of Section 11420, this payment shall be deemed an expense of  
24 administration.

25 (e) In the event that the designated successor and the personal representative  
26 cannot agree on how the designated successor's liability should be adjusted under  
27 this section, the designated successor or personal representative may petition the  
28 court for an order determining the amount of the adjustment. In making a decision  
29 under this subdivision, the court should consider the surrounding circumstances,  
30 including whether the parties acted in good faith and whether a particular  
31 adjustment would impose an unfair burden on the designated successor or the  
32 estate.