

Memorandum 2019-39

**Disposition of Estate Without Administration
(Draft Tentative Recommendation)**

In this study, the Commission¹ has been considering whether to recommend improvements to existing statutes that permit, in specified circumstances, a decedent's property to be taken by the decedent's devisee or heir without administration.

The Commission has examined three such procedures. The first two allow a devisee or heir to take property from an estate of relatively small value, through the use of an affidavit or declaration.² The third procedure governs the receipt of a decedent's property by the decedent's surviving spouse.³

The study has focused on the rules that govern the liability of a person who takes property under the special procedures.

At its February 2019 meeting, the Commission considered proposed legislation to reform one of the procedures, which governs real property of small value.⁴ The Commission "approved the proposed legislation for inclusion in a tentative recommendation" and directed the staff to use that proposed legislation as a model for reform of the other procedures at issue in this study⁵

This memorandum presents a draft tentative recommendation that includes statutory language addressing the first two procedures. As the staff has noted before, the third procedure (relating to the liability of a surviving spouse) is sufficiently different from the first two that it will require special treatment. The

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 Sections 13100-13116 (personal property affidavit procedure), 13200-13210 (real property affidavit procedure).

3. Prob. Code §§ 13500-13660.

4. See Memorandum 2019-5; First Supplement to Memorandum 2019-5.

5. Minutes (Feb. 2019), pp. 8-9.

application of the Commission's proposed reforms to that statute will be discussed in a supplement to this memorandum or a future memorandum.

The attached draft deviates in substance from the Commission's approved language in one important way. The draft also makes significant nonsubstantive changes from the approved language. Both of those changes are discussed below.

The draft also makes a few minor technical changes, which the staff does not plan to discuss.⁶ They can be described orally at the meeting, if the Commission wishes.

The Commission should decide whether to approve the attached draft as a tentative recommendation, with or without changes.

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

SUBSTANTIVE CHANGE: LIABILITY TO DECEDENT'S ESTATE

This study was prompted by issues that surfaced in the Commission's separate study of the revocable transfer on death deed ("RTODD"). Because the RTODD statute includes liability provisions that are derived from and nearly identical to the provisions at issue in this study, the reforms proposed in the RTODD study have been largely paralleled in this one (and vice versa).

At its May 2019 meeting, the Commission approved a tentative recommendation in the RTODD study.⁷ However, in doing so, it made a significant substantive change to its earlier decisions, to address a problem that had previously been overlooked.⁸ **The same problem exists in the provisions governed by this study and the staff recommends that the Commission address it in the same way that it was addressed in the RTODD study.** The problem and its proposed solution are described below.

In the RTODD study, the Commission proposes to repeal the "property return provision,"⁹ which makes an RTODD beneficiary liable for restitution of property received by RTODD to the decedent's estate, if necessary for the

6. The most significant of these changes would be the replacement of language that incorporates a definition *by reference*, with the language of the definition itself. This should make the statutes easier to use. See, e.g., proposed Section 13205(a)(3).

7. Minutes (May 2019), p. 5.

8. See First Supplement to Memorandum 2019-28.

9. Section 5676.

purpose of paying the decedent's unsecured debts.¹⁰

The liability rule provided by the repealed provision would be replaced with two alternative provisions that would govern the liability of an RTODD beneficiary for a decedent's unsecured debts. One would simply allow the beneficiary to return the property to the estate for administration, as if it had never transferred outside of probate.¹¹ That provision was unproblematic.

It was the second alternative approach that needed to be changed. As originally proposed, that provision would have allowed an RTODD beneficiary to petition the decedent's personal representative for a statement of the beneficiary's share of the estate's liability for the decedent's unsecured debts. That share would be determined by applying existing abatement principles, as if the RTODD property were part of the estate.¹²

The problem was that the existing property return provision that would be repealed is *mandatory*. The decedent's estate can compel the RTODD beneficiary to return property to the estate. The proposed replacement provision, which provides for calculation of the RTODD beneficiary's share of the estate's liability to creditors, would be *elective*. This change would allow the RTODD beneficiary to avoid liability to the estate simply by choosing not to invoke the new procedure. That would have been a significant and problematic substantive change in the law.

The Commission decided to revise the new provision to make it mandatory. This would preserve the RTODD beneficiary's mandatory liability to the estate, while transforming it from restitution liability to personal liability.¹³

The same issue exists in the provisions addressed in the attached draft. The mandatory restitution provisions would be revised to eliminate their application to the decedent's debts. In the language provisionally approved by the Commission, that restitution liability would be replaced with an *elective* procedure for determining the transferee's share of liability for the decedent's unsecured debts. Because that provision would be elective, the transferee could escape mandatory liability to the estate, simply by declining to invoke the new procedure. The Commission has already determined that such a change would

10. See Tentative Recommendation on *Revocable Transfer on Death Deed: Follow-Up Study* (May 2019), pp. 24-25.

11. *Id.*

12. See Memorandum 2019-28, p. 6.

13. See Minutes (May 2019), p. 5; First Supplement to Memorandum 2019-28.

be problematic in the RTODD statute. The staff believes that a functionally similar change in the attached draft would pose the same problem.

The staff recommends that the matter be addressed in the same way that it was in the RTODD proposal. The elective provision should be revised to make it mandatory. That is the approach taken in the attached draft. If the Commission disagrees, that change can be reversed. **How would the Commission like to proceed on this matter?**

NONSUBSTANTIVE CHANGE: COORDINATION OF LIABILITY RULES

The proposed law includes a number of alternative liability rules. Satisfaction of the liability imposed under one of those rules generally excuses a transferee of liability under the others.

In working to prepare the attached draft, the staff concluded that the relationship between those rules could be expressed more clearly and in a more consistent way.

Those changes have been restated in the attached draft, in the following provisions:

- Proposed Sections 13109(c) and 13204(c) (liability to decedent's unsecured creditors).
- Proposed Sections 13109.5(f) and 13204.5(f) (liability to estate for unsecured debts).
- Proposed Sections 13110(d) and 13205(d) (liability to person with superior right).
- Proposed Sections 13111(g) and 13206(g) (liability to estate for return of property).

Is that approach acceptable?

CONCLUSION

After considering the issues discussed above, the Commission needs to decide whether to approve the attached draft, with or without changes, for distribution as a tentative recommendation.

Respectfully submitted,

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CALIFORNIA LAW REVISION COMMISSION

STAFF DRAFT

TENTATIVE RECOMMENDATION

Disposition of Estate Without Administration: Liability

July 2019

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 September 12, 2019.

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 includes procedures that allow a person to receive property from a decedent's estate without probate administration. This study focuses on two of those procedures, which allow the decedent's devisee or heir to take personal property from a small estate or real property of small value.

Under those procedures, the transferee is personally liable for the decedent's unsecured debts and is also liable if another person has a "superior right" to the property (i.e., the transferee was not actually the decedent's devisee or heir with respect to the property taken).

This tentative recommendation proposes improvements to these liability provisions.

The Commission solicits public comment on the tentative recommendation, which was prepared pursuant to Resolution Chapter 158 of the Statutes of 2018.

DISPOSITION OF ESTATE WITHOUT ADMINISTRATION: LIABILITY

1

BACKGROUND

2 Ordinarily, a decedent’s estate must be administered before estate property can pass to
3 a devisee or heir. As part of administration, the decedent’s property is used to pay the
4 decedent’s debts and other obligations.

5 However, there are procedures that allow a decedent’s property to pass to a devisee or
6 heir without administration, in limited circumstances. One allows the devisee or heir to
7 take personal property from a small estate.¹ Another allows the devisee or heir to take
8 real property of small value.²

9 In both cases, the person who takes the property (hereafter the “transferee”) is
10 personally liable for the decedent’s unsecured debts, up to the value of the property taken.
11 In addition, the transferee is personally liable to a person with a “superior right” (i.e., if
12 the transferee was not actually the decedent’s devisee or heir with regard to the property,
13 then the actual devisee or heir has a superior right to that property). In addition, if the
14 decedent’s estate is being administered, the transferee is liable to the decedent’s estate for
15 restitution of the property received (to the extent required to satisfy the decedent’s debts
16 or superior right claims).

17 This tentative recommendation proposes improvements to those liability rules.

18

RESTITUTION LIABILITY

19 Under existing law, if a decedent’s estate is being administered, the personal
20 representative can require that property transferred under one of the procedures discussed
21 above be returned to the estate for use in paying the decedent’s obligations.³ Return can
22 also be required where there is another person with a superior right to the property at
23 issue.⁴

24 When this liability is enforced for the payment of debts, its effect can be unduly
25 burdensome. If a transferee is required to return a tangible asset to the estate, rather than a
26 pecuniary gift, that asset would need to be sold in order to use its value in paying the
27 estate’s debts. That would deprive the transferee of ownership, which could be
28 undesirable and contrary to the decedent’s intentions, particularly if the gift has
29 sentimental or heirloom value.

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

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

3. See Prob. Code §§ 13111 (transfer of personal property), 13206 (transfer of real property).

4. *Id.*

1 That problem would be especially acute where the transferee has sufficient funds to
2 simply pay the share of liability for decedent debts and is willing to do so. Existing law
3 does not expressly authorize that alternative.

4 The Commission recommends that the existing procedures be revised to address that
5 issue. The proposed reform would have three parts:

6 **Limit Scope of Restitution Liability**

7 The proposed law would revise the restitution provisions to make them inapplicable to
8 the payment of decedent debt.⁵

9 The restitution remedy would remain applicable to address a claim by a person with a
10 superior right to the property.⁶ In the latter case, restitution is the best way to effectuate
11 the decedent's intentions, because it would ensure that an item of tangible property with
12 sentimental or heirloom value goes to the right person.

13 **Personal Liability to Estate**

14 If the restitution provision is made unavailable for use in paying the decedent's debts, it
15 would be necessary to provide a replacement, so that the transferee does not entirely
16 escape liability to the estate for a share of the decedent's debts.

17 The proposed law would provide such a replacement. It would add a provision that
18 establishes a transferee's personal liability to the estate for a share of the decedent's
19 unsecured debts.⁷ The share would be calculated by applying the existing rules of
20 abatement (which establish rules for determining the order in which gifts are consumed
21 for the payment of a decedent's obligations).⁸ Payment of that share would eliminate the
22 transferee's direct personal liability to a decedent's unsecured creditors.⁹ If the transferee
23 had made any direct payments to creditors, those payments would be credited against the
24 transferee's liability.¹⁰

5. See proposed revision of Prob. Code §§ 13111 (transfer of personal property), 13206 (transfer of real property), *infra*.

6. *Id.*

7. See proposed Prob. Code §§ 13109.5 (transfer of personal property), 13204.5 (transfer of real property), *infra*.

8. See proposed Prob. Code §§ 13109.5(b) (transfer of personal property), 13204.5(b) (transfer of real property), *infra*. The cost of making this calculation would be borne by the transferee. See proposed Prob. Code §§ 13109.5(e) (transfer of personal property), 13204.5(e) (transfer of real property), *infra*.

9. See proposed Prob. Code §§ 13109(c) (transfer of personal property), 13204(c) (transfer of real property), *infra*.

10. See proposed Prob. Code §§ 13109.5(d), second sentence (transfer of personal property); 13204.5(d), second sentence (transfer of real property), *infra*. If the amount paid were to exceed the transferee's share of liability, the difference would be reimbursed. That reimbursement would be given a higher payment priority than the decedent's unsecured debts. See proposed Prob. Code §§ 13109.5(d), third and fourth sentences (transfer of personal property); 13204.5(d), third and fourth sentences (transfer of real property), *infra*.

1 **Voluntary Property Return**

2 Finally, a provision would be added that would permit a transferee to voluntarily return
3 transferred property to the estate for administration.¹¹ That would not be an attractive
4 option in many cases, because it would subject the property to the added cost and delay
5 associated with administration. However, there might be circumstances where simply
6 returning the property would be the best solution (especially if the transferee lacks
7 sufficient funds to pay the estate the transferee’s share of liability and does not want the
8 burden of liquidating the transferred property).

9 **ADJUSTMENTS TO VALUE OF RETURNED PROPERTY**

10 Under the existing restitution provisions, the value of the property to be returned to the
11 estate can be adjusted, up or down, based on events that occurred after the property was
12 transferred. For example, if the transferee improved real property, the transferee may be
13 entitled to reimbursement for any increase in the property’s fair market value.¹²
14 Conversely, if the transferee extracted income from the property before its return, the
15 transferee could be liable for restitution of that income, along with the property that
16 generated it.¹³

17 The provisions that govern restitution of transferred property apply to a number of
18 different situations. The statutes differentiate between cases where the transferee does or
19 does not still possess the property,¹⁴ as well as cases where the property has or has not
20 been improved by the transferee.¹⁵ The adjustment rules are not applied consistently
21 across those different situations.¹⁶ The Commission sees no policy reason for that
22 inconsistent treatment. It recommends that the adjustment rules be standardized so that
23 they apply consistently in all cases.¹⁷

24 The Commission also recommends that the rules requiring restitution of income
25 derived from transferred property be limited to income that would have been received by

11. See proposed Prob. Code §§ 13110.5 (transfer of personal property), 13205.5 (transfer of real property), *infra*.

12. See Prob. Code § 13206(c).

13. See Prob. Code §§ 13111(a)(1) (transfer of personal property), 13206(a)(1) (transfer of real property).

14. See Prob. Code §§ 13111(a)(1), (2) (transfer of personal property); 13206(a)(1), (2) (transfer of real property).

15. See Prob. Code §§ 13206(c) (transfer of real property).

16. For example, if a transferee is required to return real property to the estate that has been significantly improved, the transferee is entitled to reimbursement for having made a payment on any liens or encumbrances that were on the property when it was received. See Prob. Code §§13206(c)(1)(B). If the transferee is required to return real property that was not significantly improved, the statute does not provide for any such reimbursement. See Prob. Code §§13206(a)(1).

17. See proposed Prob. Code §§ 13111(c) (transfer of personal property), 13206(d) (transfer of real property), *infra*.

1 the estate if it had retained possession and control of the property.¹⁸ This differentiates
2 between income that is an innate part of an asset (e.g., dividends paid to shares of stock)
3 from income that was created by the transferee's own initiative (e.g., income derived
4 from using the property as part of the transferee's business). The former should probably
5 be returned to the estate; the latter should not.

6 Finally, the Commission proposes that the basic principles underlying the adjustment
7 rules be generalized, rather than relying on a set of specific rules.¹⁹ This would allow for
8 an appropriate adjustment to be made in circumstances that are not directly addressed by
9 the existing rules.

10 If the decedent's personal representative and the transferee cannot agree on the
11 adjustments to be made, either could petition the court for a determination. In making that
12 determination the court would consider the whether the parties acted in good faith and
13 whether a particular adjustment would impose an unfair burden.²⁰

14 MINOR SUBSTANTIVE AND TECHNICAL CHANGES

15 The proposed law would also make a minor substantive change and a small number of
16 technical changes to the statutes affected by the reforms described above.²¹

17 The minor substantive change involves the existing provisions that prescribe the scope
18 of a transferee's aggregate personal liability to the decedent's creditors.²² Under those
19 provisions, the transferee's liability cannot exceed the fair market value of the property at
20 the time it was received, plus net income derived from the property, and if the transferee
21 no longer possesses the property, interest on the fair market value of the property from
22 the date of disposition.²³ The Commission sees no good policy reason to make the
23 transferee liable to the decedent's creditors for income or interest that accrued after the
24 transferee received the property. Creditor's have no interest in estate property after it has
25 been distributed. For that reason, the proposed law would delete the income and interest
26 provisions from the rule that determines a transferee's aggregate liability to the
27 decedent's creditors.²⁴

28 The same considerations do not apply to a transferee's liability to a person with a
29 superior right to the property. In that instance, the transferee had no right to receive the

18. See proposed Prob. Code §§ 13112(b)(2) (transfer of personal property), 13207(b)(2) (transfer of real property), *infra*.

19. See proposed Prob. Code §§ 13111(c), 13112 (transfer of personal property); 13206(d), 13207 (transfer of real property), *infra*.

20. See proposed Prob. Code §§ 13112(e) (transfer of personal property), 13207(e) (transfer of real property), *infra*.

21. The technical changes are noted in the Comments that follow the affected sections, *infra*.

22. See Prob. Code §§ 13112 (transfer of personal property), 13207 (transfer of real property), *infra*.

23. See Prob. Code §§ 13112(b) (transfer of personal property), 13207(b) (transfer of real property), *infra*.

24. See proposed Prob. Code §§ 13109(b), 13109.5(b)(2) (transfer of personal property) 13204(b), 13204.5(b)(2) (transfer of real property), *infra*.

1 property in the first place. It should have gone to the person with the superior right. For
2 that reason, the transferee should be made to return not just the transferred property, but
3 any value that would have accrued to that property.²⁵

4 **REQUEST FOR COMMENT**

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

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

25. See proposed Prob. Code §§ 13110(a)(2), 13110(a)(3), 13111(a)(2), 13111(c), 13112(b)(2) (transfer of personal property); 13205(a)(2), 13205(a)(3), 13206(a)(2), 13206(d), 13207(b)(2) (transfer of real property), *infra*.

Contents

PART 1. COLLECTION OR TRANSFER OF SMALL ESTATE WITHOUT ADMINISTRATION	7
CHAPTER 3. AFFIDAVIT PROCEDURE FOR COLLECTION OR TRANSFER OF PERSONAL PROPERTY.....	7
Prob. Code § 13100.5 (added). Definitions.....	7
Prob. Code § 13109 (amended). Personal liability for decedent’s unsecured debts	7
Prob. Code § 13109.5 (added). Liability to estate for decedent’s unsecured debts	8
Prob. Code § 13110 (amended). Personal liability to person with superior right	8
Prob. Code § 13110.5 (added). Voluntary return of transferred property to the estate.....	9
Prob. Code § 13111 (amended). Liability for return of transferred property to estate	10
Prob. Code § 13112 (repealed). Scope of personal liability under Sections 13109 and 13110	11
Prob. Code § 13112 (added). Adjustment to liability under Section 13110.5 or 13111	11
CHAPTER 5. AFFIDAVIT PROCEDURE FOR REAL PROPERTY OF SMALL VALUE.....	13
Prob. Code § 13202.5 (added). Definitions.....	13
Prob. Code § 13204 (amended). Personal liability for decedent’s unsecured debts	13
Prob. Code § 13204.5 (added). Liability to estate for decedent’s unsecured debts	13
Prob. Code § 13205 (amended). Personal liability to person with superior right	14
Prob. Code § 13205.5 (added). Voluntary return of transferred property to the estate.....	15
Prob. Code § 13206 (amended). Liability for return of transferred property to estate	16
Prob. Code § 13207 (repealed). Scope of personal liability under Sections 13204 and 13205	17
Prob. Code § 13207 (added). Adjustment to liability under Section 13205.5 or 13206	18

PROPOSED LEGISLATION

PART 1. COLLECTION OR TRANSFER OF SMALL
ESTATE WITHOUT ADMINISTRATION

CHAPTER 3. AFFIDAVIT PROCEDURE FOR COLLECTION OR
TRANSFER OF PERSONAL PROPERTY

Prob. Code § 13100.5 (added). Definitions

SEC. ____. Section 13100.5 is added to the Probate Code, to read:

13100.5. For the purposes of this chapter, the following terms have the following meanings:

(a) “Transferee” means a person to whom payment, delivery, or transfer of property is made under this chapter.

(b) “Transferred property” means property that is paid, delivered, or transferred pursuant to an affidavit or declaration executed under Section 13101.

Comment. Section 13100.5 is new. It is added for drafting convenience.

Prob. Code § 13109 (amended). Personal liability for decedent’s unsecured debts

SEC. ____. Section 13109 of the Probate Code is amended to read:

13109. ~~(a) A person to whom payment, delivery, or transfer of the decedent’s property is made under this chapter~~ A transferee is personally liable to the extent provided in ~~Section 13112, this section~~ for the unsecured debts of the decedent. ~~Any such~~ That debt may be enforced against the ~~person~~ transferee in the same manner as it could have been enforced against the decedent if the decedent had not died. In any action based upon the debt, the ~~person~~ transferee may assert any ~~defenses, cross-complaints, or setoffs~~ defense, cross-complaint, or setoff that would have been available to the decedent if the decedent had not died. Nothing in this section permits enforcement of a claim that is barred under Part 4 (commencing with Section 9000) of Division 7. Section 366.2 of the Code of Civil Procedure applies in an action under this section.

(b) The personal liability under subdivision (a) shall not exceed the fair market value of the transferred property at the time the affidavit or declaration is presented under this chapter, less the amount of any liens and encumbrances on the transferred property at that time, and less the amount of any payment made pursuant to subdivision (a) of Section 13110.

(c) A transferee is not liable under this section if the transferee has satisfied the requirements of Section 13109.5, 13110.5, or 13111.

Comment. Subdivision (a) of Section 13109 is amended to make technical revisions.

Subdivision (b) is drawn from former Section 13112(b), except that it does not include the net income or interest elements of that provision. See also Section 13110(a).

Subdivision (c) is added to state the relationship between Section 13109 and Sections 13109.5, 13110.5, and 13111. It is drawn in part from former Section 13112(a).

1 See also Section 13100.5(a) (“transferee”), Section 13100.5(b) (“transferred property”).

2 **Prob. Code § 13109.5 (added). Liability to estate for decedent’s unsecured debts**

3 SEC. ____. Section 13109.5 is added to the Probate Code, to read:

4 13109.5. (a) If proceedings for the administration of the decedent’s estate are
5 commenced, a transferee is personally liable to the estate for a share of the decedent’s
6 unsecured debts.

7 (b) In calculating the transferee’s share of liability under subdivision (a), the abatement
8 rules provided in Part 4 (commencing with Section 21400) of Division 11 shall be
9 applied, using all of the following assumptions:

10 (1) Transferred property shall be treated as if it had remained in the estate for
11 administration.

12 (2) The value of the transferred property shall be deemed to be the fair market value of
13 the property at the time the property is received by the transferee, less the amount of any
14 liens and encumbrances on the property at that time.

15 (3) Any unsecured debts of the decedent that were paid by the transferee pursuant to
16 Section 13109 shall be treated as if they were claims made against the decedent’s estate.

17 (c) The personal representative shall provide a written statement of liability to the
18 transferee, which specifies the amount that must be paid to the estate.

19 (d) The transferee is personally liable to the estate for the amount specified in the
20 statement of liability. Any amount that the transferee paid pursuant to Section 13109 or
21 13110 shall be credited against the amount that the transferee owes the estate under this
22 subdivision. If the amount that the transferee paid pursuant to Section 13109 or 13110
23 exceeds the amount specified in the written statement of liability, the estate shall
24 reimburse the difference to the transferee. For the purposes of Section 11420, that
25 reimbursement shall be deemed an expense of administration.

26 (e) The reasonable cost of proceeding under this section shall be reimbursed as an
27 extraordinary service under Sections 10801 and 10811. The transferee is liable for the
28 payment of that cost, which shall be separately identified in the statement of liability.

29 (f) A transferee is not liable under this section if the transferee has satisfied the
30 requirements of Section 13110.5 or 13111.

31 **Comment.** Section 13109.5 is new.

32 Subdivision (f) is similar to former Section 13112(a).

33 See also Section 13100.5(a) (“transferee”), Section 13100.5(b) (“transferred property”).

34 **Prob. Code § 13110 (amended). Personal liability to person with superior right**

35 SEC. ____. Section 13110 of the Probate Code is amended to read:

36 13110. (a) Except as provided in subdivision (b), ~~each person to whom payment,~~
37 ~~delivery, or transfer of the decedent’s property is made under this chapter~~ a transferee is
38 personally liable ~~to the extent provided in Section 13112~~ to any person having a superior
39 right to transferred property by testate or intestate succession from the decedent. Except
40 as provided in subdivision (b), the personal liability established by this subdivision shall

1 not exceed the sum of the following, less the amount of any payment made pursuant to
2 Section 13109 or Section 13109.5:

3 (1) The fair market value of the transferred property at the time the affidavit or
4 declaration is presented under this chapter, less the amount of any liens and
5 encumbrances on the transferred property at that time.

6 (2) The net income the transferee received from the transferred property.

7 (3) If the property has been disposed of, interest on the fair market value of the
8 transferred property from the date of disposition at the rate payable on a money
9 judgment. For the purposes of this paragraph, “fair market value of the transferred
10 property” means the fair market value of the transferred property, determined as of the
11 time of the disposition of the property, less the amount of any liens and encumbrances on
12 the property at the time the property was paid, delivered, or transferred to the transferee.

13 (b) In addition to any other liability the ~~person~~ transferee has under this section and
14 Sections 13109, 13109.5, 13111, and 13112, any person who fraudulently secures the
15 payment, delivery, or transfer of the decedent’s property under this chapter is liable to the
16 person having such a superior right to that property by testate or intestate succession from
17 the decedent for three times the fair market value of the property. For the purposes of this
18 subdivision, the “fair market value of the property” is the fair market value of the
19 property paid, delivered, or transferred to the person liable under this subdivision, valued
20 as of the time the person liable under this subdivision presents the affidavit or declaration
21 under this chapter to the holder of the decedent’s property, less any liens and
22 encumbrances on that property at that time.

23 (c) An action to impose liability under this section is forever barred three years after
24 the affidavit or declaration is presented under this chapter to the holder of the decedent’s
25 property, or 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 (d) A transferee is not liable under subdivision (a) if the transferee has satisfied the
28 requirements of Section 13110.5 or 13111.

29 **Comment.** Subdivision (a) of Section 13110 is amended to continue a rule drawn from former
30 Section 13112(b) (scope of liability). See also Section 13109(b). Subdivision (a) is also amended
31 to make technical revisions.

32 Subdivision (b) is amended to add a reference to Section 13109.5 and to make technical
33 revisions.

34 Subdivision (d) is added to state the relationship between this section and Sections 13110.5 and
35 13111. It is drawn in part from former Section 13112(a).

36 See also Section 13100.5(a) (“transferee”), Section 13100.5(b) (“transferred property”).

37 **Prob. Code § 13110.5 (added). Voluntary return of transferred property to the estate**

38 SEC. ____. Section 13110.5 is added to the Probate Code, to read:

39 13110.5. (a) If proceedings for the administration of a decedent’s estate are
40 commenced, a transferee may voluntarily return transferred property to the decedent’s
41 estate for administration.

42 (b) The property to be restored to the estate under this section shall be reduced or
43 increased as provided in Section 13112.

1 **Comment.** Section 13110.5 is new.

2 See also Sections 13100.5(a) (“transferee”), 13100.5(b) “transferred property”).

3 **Prob. Code § 13111 (amended). Liability for return of transferred property to estate**

4 SEC. ____. Section 13111 of the Probate Code is amended to read:

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

11 If property is paid, delivered, or transferred to a transferee under this chapter, and the
12 decedent’s personal representative determines that another person has a superior right to
13 the property by testate or intestate succession from the decedent, the personal
14 representative may request that the transferred property be restored to the estate. Subject
15 to subdivisions (b), (c), (d), (e), and (g) if the personal representative makes that request,
16 the transferee is liable for all of the following:

17 (1) ~~The~~ If the transferee still has the transferred property, restitution of the transferred
18 property to the decedent’s estate if the person still has the property, together with (A) the
19 net income the person received from the property and (B) if the person encumbered the
20 property after it was delivered or transferred to the person, the amount necessary to
21 satisfy the balance of the encumbrance as of the date the property is restored to the estate.

22 (2) ~~The~~ If the transferee no longer has the transferred property, restitution to the
23 decedent’s estate of the fair market value of the transferred property if the person no
24 longer has the property, together with (A) the net income the person received from the
25 property and (B) plus interest from the date of disposition at the rate payable on a money
26 judgment on the fair market value of the transferred property. For the purposes of this
27 subdivision paragraph, the “fair market value of the transferred property” is the fair
28 market value of the transferred property, determined as of the time of the disposition of
29 the transferred property, of the property paid, delivered, or transferred to the person under
30 this chapter, less the amount of any liens and encumbrances on the transferred property at
31 that the time the property was paid, delivered, or transferred to the person under this
32 chapter.

33 (b) Subject to subdivision (c) and subject to any additional liability the ~~person~~
34 transferee has under Sections 13109 to 13112, inclusive, if the ~~person~~ transferee
35 fraudulently secured the payment, delivery, or transfer of the decedent’s property under
36 this chapter, the ~~person~~ transferee is liable under this section for restitution to the
37 decedent’s estate of three times the fair market value of the transferred property. For the
38 purposes of this subdivision, the “fair market value of the transferred property” is the fair
39 market value of the transferred property, determined as of the time the person liable
40 under this subdivision presents the affidavit or declaration under this chapter, ~~of the~~
41 ~~property paid, delivered, or transferred to the person under this chapter,~~ less the amount
42 of any liens and encumbrances on the property at that time.

1 (c) The property and amount required to be restored to the estate under this section
2 shall be reduced ~~by any property or amount paid by the person to satisfy a liability under~~
3 Section 13109 or 13110 or increased as provided in Section 13112.

4 (d) An action to enforce the liability under this section may be brought only by the
5 personal representative of the estate of the decedent. Whether or not the personal
6 representative brings an action under this section, the personal representative may enforce
7 the liability only to the extent necessary to protect the interests of ~~the heirs, devisees, and~~
8 creditors of the decedent a person with a superior right to the transferred property.

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

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

15 (g) A transferee is not liable under subdivision (a) if the transferred property was
16 returned to the estate under Section 13110.5.

17 **Comment.** Section 13111 is amended to limit the application of the provision to claims by a
18 person with a superior right, to delete language that is continued and generalized in Section
19 13112, and to make technical revisions.

20 Subdivision (g) is added to state the relationship between this section and Section 13110.5.

21 See also Sections 13110.5(a) (“transferee”), 13110.5(b) “transferred property”).

22 **Prob. Code § 13112 (repealed). Scope of personal liability under Sections 13109 and 13110**

23 SEC. ____ . Section 13112 of the Probate Code is repealed.

24 **Comment.** Section 13112 is repealed. The substance of former Section 13112(a) is continued
25 in Sections 13109(c) and 13110(d). For a similar rule, see Section 13109.5(f).

26 The substance of former Section 13112(b) is continued in Sections 13109(b) and 13110(a),
27 except that Section 13109(b) does not continue the part of former Section 13112(b) that related to
28 income and interest.

29 **Note.** For ease of reference, the text of Section 13112 is reproduced below:

30 13112. (a) A person to whom payment, delivery, or transfer of the decedent's property has
31 been made under this chapter is not liable under Section 13109 or 13110 if proceedings for the
32 administration of the decedent's estate are commenced in this state, and the person satisfies the
33 requirements of Section 13111.

34 (b) Except as provided in subdivision (b) of Section 13110, the aggregate of the personal
35 liability of a person under Sections 13109 and 13110 shall not exceed the fair market value,
36 valued as of the time the affidavit or declaration is presented under this chapter, of the property
37 paid, delivered, or transferred to the person under this chapter, less the amount of any liens and
38 encumbrances on that property at that time, together with the net income the person received from
39 the property and, if the property has been disposed of, interest on the fair market value of the
40 property accruing from the date of disposition at the rate payable on a money judgment. For the
41 purposes of this subdivision, “fair market value of the property” has the same meaning as defined
42 in paragraph (2) of subdivision (a) of Section 13111.

43 **Prob. Code § 13112 (added). Adjustment to liability under Section 13110.5 or 13111**

44 SEC. ____ . Section 13112 is added to the Probate Code, to read:

1 13112. (a) If the transferee’s action or inaction increased the value of property returned
2 to the estate or decreased the estate’s obligations, the personal representative shall
3 reimburse the transferee by the same amount. Actions or inaction that increase the value
4 of returned property or decrease the estate’s obligations include, but are not necessarily
5 limited to, the following actions:

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

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

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

10 (b) If the transferee’s action or inaction decreased the value of property returned to the
11 estate or increased the estate’s obligations, the transferee is personally liable to the estate
12 for that amount. Actions or inaction that decrease the value of the returned property or
13 increase the estate’s obligations include, but are not necessarily limited to, the following
14 actions or inaction:

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

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

19 (c) The personal representative shall provide the transferee a written statement of any
20 reimbursement or liability under this section, along with a statement of the reasons for the
21 reimbursement or liability.

22 (d) For the purposes of Section 11420, reimbursement of the transferee under
23 subdivision (a) shall be deemed an expense of administration.

24 (e) In the event that the transferee and the personal representative cannot agree on the
25 reimbursement or liability due under this section, the transferee or personal representative
26 may petition the court for an order determining the amount of the reimbursement or
27 liability. In making a decision under this subdivision, the court should consider the
28 surrounding circumstances, including whether the parties acted in good faith and whether
29 a particular result would impose an unfair burden on the transferee or the estate.

30 **Comment.** Section 13112 is new. It generalizes language that was deleted from Section
31 13111(a) and provides a procedure for determining the adjustments to be made under Section
32 13111(c).

33 See also Sections 13100.5(a) (“transferee”).

1 CHAPTER 5. AFFIDAVIT PROCEDURE FOR REAL PROPERTY OF SMALL VALUE

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

3 SEC. ____. Section 13202.5 is added to the Probate Code, to read:

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

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

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

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

11 See also Section 13006 (“successor of the decedent”).

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

13 SEC. ____. Section 13204 of the Probate Code is amended to read:

14 13204. ~~(a) Each person who is designated as a successor of the decedent in a certified~~
15 ~~copy of an affidavit issued under Section 13202~~ A designated successor is personally
16 liable to the extent provided in ~~Section 13207~~ this section for the unsecured debts of the
17 decedent. ~~Any such~~ That debt may be enforced against the ~~person~~ designated successor in
18 the same manner as it could have been enforced against the decedent if the decedent had
19 not died. In any action based upon the debt, the ~~person~~ designated successor may assert
20 any defense, cross-complaint, or setoff that would have been available to the decedent if
21 the decedent had not died. Nothing in this section permits enforcement of a claim that is
22 barred under Part 4 (commencing with Section 9000) of Division 7. Section 366.2 of the
23 Code of Civil Procedure applies in an action under this section.

24 (b) The personal liability under subdivision (a) shall not exceed the fair market value of
25 the transferred property at the time of the issuance of the certified copy of the affidavit
26 under Section 13202, less the amount of any liens and encumbrances on the transferred
27 property at that time, and less the amount of any payment made pursuant to subdivision
28 (a) of Section 13205.

29 (c) The designated successor is not liable under this section if the designated successor
30 has satisfied the requirements of Section 13204.5, 13205.5, or 13206.

31 **Comment.** Subdivision (a) of Section 13204 is amended to make technical revisions.

32 Subdivision (b) is drawn from former Section 13207(b), except that it does not include the net
33 income or interest elements of that provision. See also Section 13205(a).

34 Subdivision (c) is added to state the relationship between Section 13204 and Sections 13204.5,
35 13205.5, and 13206. It is drawn in part from former Section 13207(a).

36 See also Section 13202.5(a) (“designated successor”), 13202.5(b) (“transferred property”).

37 **Prob. Code § 13204.5 (added). Liability to estate for decedent’s unsecured debts**

38 SEC. ____. Section 13204.5 is added to the Probate Code, to read:

39 13204.5. (a) If proceedings for the administration of the decedent’s estate are
40 commenced, a designated successor is personally liable to the estate for a share of the
41 decedent’s unsecured debts.

1 (b) In calculating the designated successor’s share of liability under subdivision (a), the
2 abatement rules provided in Part 4 (commencing with Section 21400) of Division 11
3 shall be applied, using all of the following assumptions:

4 (1) Transferred property under this chapter shall be treated as if it had remained in the
5 estate for administration.

6 (2) The value of the transferred property shall be deemed to be the fair market value of
7 the property at the time of the issuance of the certified copy of the affidavit under Section
8 13202, less the amount of any liens and encumbrances on the property at that time.

9 (3) Any unsecured debts of the decedent that were paid by the designated successor
10 pursuant to Section 13204 shall be treated as if they were claims made against the
11 decedent’s estate.

12 (c) The personal representative shall provide a written statement of liability to the
13 designated successor, which specifies the amount that must be paid to the estate.

14 (d) The designated successor is personally liable to the estate for the amount specified
15 in the statement of liability. Any amount that the designated successor paid pursuant to
16 Section 13204 or 13205 shall be credited against the amount that the designated
17 successor owes the estate under this subdivision. If the amount that the designated
18 successor paid pursuant to Section 13204 or 13205 exceeds the amount specified in the
19 written statement of liability, the estate shall reimburse the difference to the designated
20 successor. For the purposes of Section 11420, that reimbursement shall be deemed an
21 expense of administration.

22 (e) The reasonable cost of proceeding under this section shall be reimbursed as an
23 extraordinary service under Sections 10801 and 10811. The designated successor is liable
24 for the payment of that cost, which shall be separately identified in the statement of
25 liability.

26 (f) The designated successor is not liable under this section if the designated successor
27 has satisfied the requirements of Section 13205.5 or 13206.

28 **Comment.** Section 13204.5 is new.

29 Subdivision (f) is similar to former Section 13207(a).

30 See also Section 13202.5(a) (“designated successor”), 13202.5(b) (“transferred property”).

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

32 SEC. ____. Section 13205 of the Probate Code is amended to read:

33 ~~13205. (a) Except as provided in subdivision (b), each person who is designated as a~~
34 ~~successor of the decedent in a certified copy of any affidavit issued under Section 13202~~
35 A designated successor is personally liable to the extent provided in Section 13207 to any
36 person having a superior right to transferred property by testate or intestate succession
37 from the decedent. Except as provided in subdivision (d), the personal liability
38 established by this subdivision shall not exceed the sum of the following, less the amount
39 of any payment made pursuant to Section 13204 or Section 13204.5:

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

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

2 (3) If the property has been disposed of, interest on the fair market value of the
3 transferred property from the date of disposition at the rate payable on a money
4 judgment. For the purposes of this paragraph, “fair market value of the transferred
5 property” means the fair market value of the transferred property, determined as of the
6 time of the disposition of the property, less the amount of any liens and encumbrances on
7 the property at the time the certified copy of the affidavit was issued.

8 (b) In addition to any other liability the ~~person~~ designated successor has under this
9 section and Sections 13204, 13204.5, 13206, and 13207, if the ~~person~~ designated
10 successor fraudulently executed or filed the affidavit under this chapter, the ~~person~~
11 designated successor is liable to the person having a superior right to that property by
12 testate or intestate succession from the decedent for three times the fair market value of
13 the transferred property. For the purposes of this subdivision, the “fair market value of
14 the transferred property” is the fair market value of the transferred property, determined
15 as of the time the certified copy of the affidavit was issued under Section 13202, ~~of the~~
16 ~~transferred~~ property the person liable took under the certified copy of the affidavit to
17 ~~which the other person has a superior right~~, less any liens and encumbrances on the
18 transferred property at that time.

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

23 (d) The designated successor is not liable under this section if the designated successor
24 has satisfied the requirements of Section 13205.5 or 13206.

25 **Comment.** Subdivision (a) of Section 13205 is amended to continue a rule drawn from former
26 Section 13207(b). See also Section 13204(b). Subdivision (a) is also amended to make technical
27 revisions.

28 Subdivision (b) is amended to add a reference to Section 13204.5 and to make technical
29 revisions.

30 Subdivision (d) is added to state the relationship between this section and Sections 13205.5 and
31 13206. It is drawn in part from former Section 13207(a).

32 See also Section 13202.5(a) (“designated successor”), 13202.5(b) (“transferred property”).

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

34 SEC. ____ . Section 13205.5 is added to the Probate Code, to read:

35 13205.5. (a) If proceedings for the administration of the decedent’s estate are
36 commenced, a designated successor may voluntarily return transferred property to the
37 decedent’s estate for administration.

38 (b) The property to be restored to the estate under this section shall be reduced or
39 increased as provided in Section 13207.

40 **Comment.** Section 13205.5 is new.

41 See also Section 13202.5(a) (“designated successor”), 13202.5(b) (“transferred property”).

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

2 SEC. ____ . Section 13206 of the Probate Code is amended to read:

3 (a) ~~Subject to subdivisions (b), (c), (d), and (e), if proceedings for the administration of~~
4 ~~the decedent's estate are commenced, or if the decedent's personal representative has~~
5 ~~consented to use of the procedure provided by this chapter and the personal~~
6 ~~representative later requests that the property be restored to the estate, each person who is~~
7 ~~designated as a successor of the decedent in a certified copy of an affidavit issued under~~
8 ~~Section 13202 is liable for:~~

9 If property is transferred to a designated successor under this chapter, and the
10 decedent's personal representative later determines that another person has a superior
11 right to the property by testate or intestate succession from the decedent, the personal
12 representative may request that the transferred property be restored to the estate. Subject
13 to subdivisions (b), (c), (d), (e), and (g) if the personal representative makes that request,
14 the designated successor is liable for all of the following:

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

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

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

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

1 was the successor of the decedent to that property, the ~~person~~ designated successor is
2 liable for whichever of the following the decedent’s estate elects:

3 (1) The restitution of the transferred property, ~~as improved,~~ to the estate of the decedent
4 ~~upon the condition that the estate reimburse the person making restitution for (A) the~~
5 ~~amount by which the improvement increases the fair market value of the property~~
6 ~~restored, determined as of the time of restitution, and (B) the amount paid by the person~~
7 ~~for principal and interest on any liens or encumbrances that were on the property at the~~
8 ~~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 transferred
10 property, determined as of the time of the issuance of the certified copy of the affidavit
11 under Section 13202, less the amount of any liens and encumbrances on the transferred
12 property at that time, together with interest on the net amount at the rate payable on a
13 money judgment running from the date of the issuance of the certified copy of the
14 affidavit.

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

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

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

27 (g) The designated successor is not liable under subdivision (a) if the transferred
28 property was returned to the estate under Section 13205.5.

29 **Comment.** Section 13206 is amended to limit the application of the section to claims by a
30 person with a superior right, to delete language that is continued and generalized in Section
31 13207, and to make technical revisions.

32 Subdivision (g) is added to state the relationship between this section and Section 13205.5.

33 See also Section 13202.5(a) (“designated successor”), 13202.5(b) (“transferred property”).

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 **Comment.** Section 13207 is repealed. The substance of former Section 13207(a) is continued
37 in Sections 13204(c) and 13205(d). For a similar rule, see Section 13204.5(f).

38 The substance of former Section 13207(b) is continued in Sections 13204(b) and 13205(a),
39 except that Section 13204(b) does not continue the part of former Section 13207(b) that related to
40 income and interest.

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

42 13207. (a) A person designated as a successor of the decedent in a certified copy of an
43 affidavit issued under Section 13202 is not liable under Section 13204 or 13205 if

1 proceedings for the administration of the decedent's estate are commenced, or if the
2 decedent's personal representative has consented to use of the procedure provided by this
3 chapter and the personal representative later requests that the property be restored to the
4 estate, and the person satisfies the requirements of Section 13206.

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

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

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

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

16 **Prob. Code § 13207 (added). Adjustment to liability under Section 13205.5 or 13206**

17 SEC. ____. Section 13207 is added to the Probate Code, to read:

18 13207. (a) If the designated successor's action or inaction increased the value of
19 property returned to the estate or decreased the estate's obligations, the personal
20 representative shall reimburse the designated successor by the same amount. Actions or
21 inaction that increase the value of returned property or decrease the estate's obligations
22 include, but are not necessarily limited to, the following actions:

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

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

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

27 (b) If the designated successor's action or inaction decreased the value of property
28 returned to the estate or increased the estate's obligations, the designated successor is
29 personally liable to the estate for that amount. Actions or inaction that decrease the value
30 of the returned property or increase the estate's obligations include, but are not
31 necessarily limited to, the following actions or inaction:

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

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

36 (c) The personal representative shall provide the designated successor a written
37 statement of any reimbursement or liability under this section, along with a statement of
38 the reasons for the reimbursement or liability.

39 (d) For the purposes of Section 11420, reimbursement of the designated successor
40 under subdivision (a) shall be deemed an expense of administration.

41 (e) In the event that the designated successor and the personal representative cannot
42 agree on the reimbursement or liability due under this section, the designated successor or
43 personal representative may petition the court for an order determining the amount of the
44 reimbursement or liability. In making a decision under this subdivision, the court should
45 consider the surrounding circumstances, including whether the parties acted in good faith

1 and whether a particular result would impose an unfair burden on the designated
2 successor or the estate.

3 **Comment.** Section 13207 is new. It generalizes language that was deleted from Section
4 13206(a) and (c) and provides a procedure for determining the adjustments to be made under
5 Section 13206(d).

6 See also Section 13202.5(a) (“designated successor”).
