

CALIFORNIA LAW REVISION COMMISSION

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 **October 15, 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.

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

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 (1) personal property from a small estate or (2) 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's unsecured debts.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
15 unsecured debts, it would be necessary to provide a replacement rule, so that the
16 transferee does not entirely escape liability to the estate for a share of those 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 revisions 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 **Related Questions**

10 The first two reforms described above (limiting the existing restitution liability to cases
11 that involve a superior right claim and adding a new provision to establish the
12 transferee's liability to the estate for the decedent's unsecured debts) are based on an
13 assumption that, under existing law, the restitution remedy can only be used for those two
14 purposes (i.e., satisfying superior right claims and paying unsecured debts).

15 However, the Commission is not certain whether that assumption is correct. It seems
16 possible that a personal representative could require the return of transferred property to
17 pay other estate obligations (e.g., funeral expenses, expenses of last illness, wage claims,
18 costs of administration). Even if that is not the scope of existing law, it might be good
19 policy to extend the liability to include some or all such obligations.

20 **The Commission requests public comment on these matters. When property is**
21 **returned to the estate, what estate obligations can it be used to satisfy? If use of the**
22 **restitution provisions is currently limited, should it be broadened?**

23 **Relatedly, are the provisions that establish a transferee's personal liability for the**
24 **unsecured debts of the decedent (Sections 13110 and 13204) understood to apply to**
25 **funeral expenses, expenses of last illness, and wage claims? If not, should the**
26 **provisions be broadened to include such obligations? Should the transferee's**
27 **liability include expenses of administration and the family allowance?**

28 **ADJUSTMENTS TO VALUE OF RETURNED PROPERTY**

29 Under the existing restitution provisions, the value of the property to be returned to the
30 estate can be adjusted, up or down, based on events that occurred after the property was
31 transferred. For example, if the transferee improved real property, the transferee may be
32 entitled to reimbursement for any increase in the property's fair market value.¹²
33 Conversely, if the transferee extracted income from the property before its return, the

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

12. See Prob. Code § 13206(c).

1 transferee could be liable for restitution of that income, along with the property that
2 generated it.¹³

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

10 The Commission also recommends that the rules requiring restitution of income
11 derived from transferred property be limited to income that would have been received by
12 the estate if it had retained possession and control of the property.¹⁸ This differentiates
13 between income that is an innate part of an asset (e.g., dividends paid to shares of stock)
14 and income that was created by the transferee's own initiative (e.g., income derived from
15 using the property as part of the transferee's business). The former should probably be
16 returned to the estate; the latter should not.

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

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

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*.

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*.

1

TREBLE DAMAGES FOR FRAUD

2 Under the existing procedures, a transferee who fraudulently takes property from the
3 decedent's estate is liable for an additional penalty of three times the value of the
4 transferred property.²¹ Under each of the procedures, that liability can be imposed in two
5 different scenarios:

- 6 (1) It can be imposed as part of the transferee's personal liability to a person
7 with a superior right to the transferred property. In that scenario, the penalty
8 is paid to the person with the superior right.²²
- 9 (2) It can be imposed when the transferred property is returned to the estate.²³ In
10 that scenario, the penalty is paid to the decedent's estate.

11 The proposed legislation would add language stating expressly that the penalty can
12 only be applied once per incident of fraud. If the liability for an act of fraud is imposed in
13 one of the scenarios described above, it could not be imposed in the other.²⁴

14 As noted, the penalty is paid to a different person in the two scenarios described above.
15 If the penalty arises as part of the transferee's personal liability to a person with a
16 superior right, the penalty is paid to that person. If the penalty arises as a result of
17 returning transferred property to the estate, the penalty is paid to the estate. **The
18 Commission requests public comment on the policy merits of that treatment of the
19 penalty.**

20

MINOR SUBSTANTIVE AND TECHNICAL CHANGES

21 The proposed law would also make a minor substantive change and a small number of
22 technical changes to the statutes affected by the reforms described above.²⁵

23 The minor substantive change involves the existing provisions that prescribe the scope
24 of a transferee's aggregate personal liability to the decedent's creditors.²⁶ Under those
25 provisions, the transferee's liability cannot exceed the fair market value of the property at
26 the time it was received, plus net income derived from the property, and, if the transferee
27 no longer possesses the property, interest on the fair market value of the property from
28 the date of disposition.²⁷ The Commission sees no good policy reason to make the
29 transferee liable to the decedent's creditors for income or interest that accrued after the
30 transferee received the property. Creditors have no interest in estate property after it has

21. See Prob. Code §§ 13110(b), 13111(b), 13205(b), 13206(b).

22. Prob. Code §§ 13110(b), 13205(b).

23. Prob. Code §§ 13111(b), 13206(b).

24. See proposed Prob. Code §§ 13110(b), 13111(b), 13205(b), 13206(b) *infra*.

25. The technical changes are noted in the Comments that follow the affected sections in the proposed legislation *infra*.

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

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

1 been distributed. For that reason, the proposed law would delete the income and interest
2 provisions from the rule that determines a transferee’s aggregate liability to the
3 decedent’s creditors.²⁸

4 The same considerations do not apply to a transferee’s liability to a person with a
5 superior right to the property. In that instance, the transferee had no right to receive the
6 property in the first place. It should have gone to the person with the superior right. For
7 that reason, the transferee should be made to return not just the transferred property, but
8 also any value that would have accrued to that property.²⁹

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RELATED QUESTION

Existing law also provides a procedure that can be used by a surviving spouse to
receive property from a deceased spouse, without administration.³⁰ The scope of the
surviving spouse’s liability under that procedure is very different from the liability of a
transferee under the procedures discussed above. For that reason, the Commission does
not recommend applying the reforms described above to the surviving spouse procedure.

However, there may be an ambiguity in the surviving spouse procedure that could be
addressed by the Commission. Like the two procedures at issue in this tentative
recommendation, the surviving spouse procedure includes a provision that can be used to
require the return of property to a decedent’s estate: Probate Code Section 13562. The
location and language of that provision suggest that the provision can only be used to
recover property from a surviving spouse for transfer to a person with a superior right to
the property (i.e., the returned property cannot be used to pay the decedent’s debts or
other obligations). **The Commission requests public comment on whether that is the
correct interpretation of the provision.**

REQUEST FOR COMMENT

**The Commission seeks public comment on all of the proposed statutory changes
included in this tentative recommendation.** The Commission also specifically requests
comment on specific questions raised above or in notes in the proposed legislation that
follows.

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

28. 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*.

29. 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*.

30. See Prob. Code §§ 13500-13660.

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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 for a particular item of transferred property, if the transferee has satisfied the requirements of Section 13109.5, 13110.5, or 13111 with regard to that item.

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.

1 Subdivision (c) is added to state the relationship between Section 13109 and Sections 13109.5,
2 13110.5, and 13111. It is drawn in part from former Section 13112(a).

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

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

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

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

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

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

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

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

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

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

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

31 (f) A transferee is not liable under this section for a particular item of transferred
32 property, if the transferee has satisfied the requirements of Section 13110.5 or 13111 with
33 regard to that item.

34 **Comment.** Section 13109.5 is new.

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

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

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

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

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

1 as provided in subdivision (b), the personal liability established by this subdivision shall
2 not exceed the sum of the following, less the amount of any payment made pursuant to
3 Section 13109 or Section 13109.5:

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

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

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

14 (b) In addition to any other liability the ~~person~~ transferee has under this section and
15 Sections 13109, 13109.5, 13111, and 13112, any person who fraudulently secures the
16 payment, delivery, or transfer of the decedent’s property under this chapter is liable to the
17 person having ~~such~~ a superior right to that property by testate or intestate succession from
18 the decedent for three times the fair market value of the property. For the purposes of this
19 subdivision, the “fair market value of the property” is the fair market value of the
20 property paid, delivered, or transferred to the person liable under this subdivision, valued
21 as of the time the person liable under this subdivision presents the affidavit or declaration
22 under this chapter to the holder of the decedent’s property, less any liens and
23 encumbrances on that property at that time. A transferee is not liable under this
24 subdivision if the transferee has satisfied the liability imposed under subdivision (b) of
25 Section 13111 for the same fraud.

26 (c) An action to impose liability under this section is forever barred three years after
27 the affidavit or declaration is presented under this chapter to the holder of the decedent’s
28 property, or three years after the discovery of the fraud, whichever is later. The three-year
29 period specified in this subdivision is not tolled for any reason.

30 (d) A transferee is not liable under subdivision (a) for a particular item of transferred
31 property, if the transferee has satisfied the requirements of Section 13110.5 or 13111 with
32 regard to that item.

33 **Comment.** Subdivision (a) of Section 13110 is amended to continue a rule drawn from former
34 Section 13112(b). Subdivision (a) is also amended to make technical revisions.

35 Subdivision (b) is amended to add a reference to Section 13109.5 and to make technical
36 revisions. The subdivision is also amended to make clear that treble damages will only be
37 imposed once per incident of fraud. See also Section 13111(b).

38 Subdivision (d) is added to state the relationship between this section and Sections 13110.5 and
39 13111. It is drawn in part from former Section 13112(a).

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

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

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

1 13110.5. (a) If proceedings for the administration of a decedent’s estate are
2 commenced, a transferee may voluntarily return transferred property to the decedent’s
3 estate for administration.

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

6 **Comment.** Section 13110.5 is new.

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

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

9 SEC. ___. Section 13111 of the Probate Code is amended to read:

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

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

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

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

38 (b) Subject to subdivision (c) and subject to any additional liability the ~~person~~
39 transferee has under Sections 13109 to 13112, inclusive, if the ~~person~~ transferee
40 fraudulently secured the payment, delivery, or transfer of the decedent’s property under
41 this chapter, the ~~person~~ transferee is liable under this section for restitution to the
42 decedent’s estate of three times the fair market value of the transferred property. For the

1 purposes of this subdivision, the “fair market value of the transferred property” is the fair
2 market value of the transferred property, determined as of the time the person liable
3 under this subdivision presents the affidavit or declaration under this chapter, ~~of the~~
4 ~~property paid, delivered, or transferred to the person under this chapter~~, less the amount
5 of any liens and encumbrances on the property at that time. A transferee is not liable
6 under this subdivision if the transferee has satisfied the liability imposed under
7 subdivision (b) of Section 13110 for the same fraud.

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

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

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

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

23 (g) A transferee is not liable under subdivision (a) for a particular item of transferred
24 property if that item was returned to the estate under Section 13110.5.

25 **Comment.** Section 13111 is amended to limit the application of the provision to claims by a
26 person with a superior right, to delete language that is continued and generalized in Section
27 13112, and to make technical revisions.

28 Subdivision (b) is also amended to make clear that treble damages will only be imposed once
29 per incident of fraud. See also Section 13110(b).

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

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


32 **Note.** The second sentence of existing Section 13111(d) provides that the personal representative
33 may enforce the section “only to the extent necessary to protect the interests of the heirs,
34 devisees, and creditors of the decedent.” The Commission’s research suggests that this language
35 was intended to make clear that enforcement of the section is not mandatory; there may be
36 situations in which the liability should not be enforced because it would be inequitable to do so
37 (e.g., where a debt to be paid is much smaller than the value of the property to be returned or
38 where the process is being misused to harass the transferee). See First Supplement to CLRC Staff
39 Memorandum 2019-39, pp. 3-4. **The Commission requests public comment on whether the**
40 **same concerns would exist if the provision were to be limited to the satisfaction of superior**
41 **right claims, as proposed. If not, could the second sentence of subdivision (d) be deleted as**
42 **superfluous?**

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

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

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

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

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

7 13112. (a) A person to whom payment, delivery, or transfer of the decedent's property has
8 been made under this chapter is not liable under Section 13109 or 13110 if proceedings for the
9 administration of the decedent's estate are commenced in this state, and the person satisfies the
10 requirements of Section 13111.

11 (b) Except as provided in subdivision (b) of Section 13110, the aggregate of the personal
12 liability of a person under Sections 13109 and 13110 shall not exceed the fair market value,
13 valued as of the time the affidavit or declaration is presented under this chapter, of the property
14 paid, delivered, or transferred to the person under this chapter, less the amount of any liens and
15 encumbrances on that property at that time, together with the net income the person received from
16 the property and, if the property has been disposed of, interest on the fair market value of the
17 property accruing from the date of disposition at the rate payable on a money judgment. For the
18 purposes of this subdivision, "fair market value of the property" has the same meaning as defined
19 in paragraph (2) of subdivision (a) of Section 13111.

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

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

22 13112. (a) If the transferee's action or inaction increased the value of property returned
23 to the estate or decreased the estate's obligations, the personal representative shall
24 reimburse the transferee by the same amount. Actions or inaction that increase the value
25 of returned property or decrease the estate's obligations include, but are not necessarily
26 limited to, the following actions:

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

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

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

31 (b) If the transferee's action or inaction decreased the value of property returned to the
32 estate or increased the estate's obligations, the transferee is personally liable to the estate
33 for that amount. Actions or inaction that decrease the value of the returned property or
34 increase the estate's obligations include, but are not necessarily limited to, the following
35 actions or inaction:

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

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

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

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

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

7 **Comment.** Section 13112 is new. It generalizes language that was deleted from Section
8 13111(a) and provides a procedure for determining the adjustments to be made under Sections
9 13110.5(b) and 13111(c).

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

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

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

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

14 13202.5. For the purposes of this chapter, the following terms have the following
15 meanings:

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

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

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

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

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

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

24 13204. ~~(a) Each person who is designated as a successor of the decedent in a certified~~
25 ~~copy of an affidavit issued under Section 13202~~ A designated successor is personally
26 liable to the extent provided in ~~Section 13207~~ this section for the unsecured debts of the
27 decedent. ~~Any such~~ That debt may be enforced against the ~~person~~ designated successor in
28 the same manner as it could have been enforced against the decedent if the decedent had
29 not died. In any action based upon the debt, the ~~person~~ designated successor may assert
30 any defense, cross-complaint, or setoff that would have been available to the decedent if
31 the decedent had not died. Nothing in this section permits enforcement of a claim that is
32 barred under Part 4 (commencing with Section 9000) of Division 7. Section 366.2 of the
33 Code of Civil Procedure applies in an action under this section.

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

39 (c) The designated successor is not liable under this section for a particular item of
40 transferred property, if the designated successor has satisfied the requirements of Section
41 13204.5, 13205.5, or 13206 with regard to that item.

1 **Comment.** Subdivision (a) of Section 13204 is amended to make technical revisions.
2 Subdivision (b) is drawn from former Section 13207(b), except that it does not include the net
3 income or interest elements of that provision.
4 Subdivision (c) is added to state the relationship between Section 13204 and Sections 13204.5,
5 13205.5, and 13206. It is drawn in part from former Section 13207(a).
6 See also Section 13202.5(a) (“designated successor”), 13202.5(b) (“transferred property”).

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

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

9 13204.5. (a) If proceedings for the administration of the decedent’s estate are
10 commenced, a designated successor is personally liable to the estate for a share of the
11 decedent’s unsecured debts.

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

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

17 (2) The value of the transferred property shall be deemed to be the fair market value of
18 the property at the time of the issuance of the certified copy of the affidavit under Section
19 13202, less the amount of any liens and encumbrances on the property at that time.

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

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

25 (d) The designated successor is personally liable to the estate for the amount specified
26 in the statement of liability. Any amount that the designated successor paid pursuant to
27 Section 13204 or 13205 shall be credited against the amount that the designated
28 successor owes the estate under this subdivision. If the amount that the designated
29 successor paid pursuant to Section 13204 or 13205 exceeds the amount specified in the
30 written statement of liability, the estate shall reimburse the difference to the designated
31 successor. For the purposes of Section 11420, that reimbursement shall be deemed an
32 expense of administration.

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

37 (f) The designated successor is not liable under this section for a particular item of
38 transferred property, if the designated successor has satisfied the requirements of Section
39 13205.5 or 13206 with regard to that item.

40 **Comment.** Section 13204.5 is new.

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

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

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

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

4 ~~13205. (a) Except as provided in subdivision (b), each person who is designated as a~~
5 ~~successor of the decedent in a certified copy of any affidavit issued under Section 13202~~
6 A designated successor is personally liable to the extent provided in Section 13207 to any
7 person having a superior right to transferred property by testate or intestate succession
8 from the decedent. Except as provided in subdivision (d), the personal liability
9 established by this subdivision shall not exceed the sum of the following, less the amount
10 of any payment made pursuant to Section 13204 or Section 13204.5:

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

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

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

21 (b) In addition to any other liability the ~~person~~ designated successor has under this
22 section and Sections 13204, 13204.5, 13206, and 13207, if the ~~person~~ designated
23 successor fraudulently executed or filed the affidavit under this chapter, the ~~person~~
24 designated successor is liable to the person having a superior right to that property by
25 testate or intestate succession from the decedent for three times the fair market value of
26 the transferred property. For the purposes of this subdivision, the “fair market value of
27 the transferred property” is the fair market value of the transferred property, determined
28 as of the time the certified copy of the affidavit was issued under Section 13202, of the
29 transferred property the person liable took under the certified copy of the affidavit to
30 which the other person has a superior right, less any liens and encumbrances on the
31 transferred property at that time. A designated successor is not liable under this
32 subdivision if the designated successor has satisfied the liability imposed under
33 subdivision (b) of Section 13206 for the same fraud.

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

38 (d) The designated successor is not liable under this section for a particular item of
39 transferred property, if the designated successor has satisfied the requirements of Section
40 13205.5 or 13206 with regard to that item.

41 **Comment.** Subdivision (a) of Section 13205 is amended to continue a rule drawn from former
42 Section 13207(b). Subdivision (a) is also amended to make technical revisions.

1 Subdivision (b) is amended to add a reference to Section 13204.5 and to make technical
2 revisions. The subdivision is also amended to make clear that treble damages will only be
3 imposed once per incident of fraud. See also Section 13206(b).

4 Subdivision (d) is added to state the relationship between this section and Sections 13205.5 and
5 13206. It is drawn in part from former Section 13207(a).

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

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

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

9 13205.5. (a) If proceedings for the administration of the decedent’s estate are
10 commenced, a designated successor may voluntarily return transferred property to the
11 decedent’s estate for administration.

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

14 **Comment.** Section 13205.5 is new.

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

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

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

18 ~~13206. (a) Subject to subdivisions (b), (c), (d), and (e), if proceedings for the~~
19 ~~administration of the decedent’s estate are commenced, or if the decedent’s personal~~
20 ~~representative has consented to use of the procedure provided by this chapter and the~~
21 ~~personal representative later requests that the property be restored to the estate, each~~
22 ~~person who is designated as a successor of the decedent in a certified copy of an affidavit~~
23 ~~issued under Section 13202 is liable for:~~

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

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

36 (2) The If the designated successor no longer has the transferred property, restitution to
37 the decedent’s estate of the fair market value of the transferred property, if the person no
38 longer has the property together with (A) the net income the person received from the
39 property prior to disposing of it and (B) plus interest from the date of disposition at the
40 rate payable on a money judgment on the fair market value of the transferred property.
41 For the purposes of this paragraph, the “fair market value of the transferred property” is
42 the fair market value of the transferred property, determined as of the time of the

1 disposition of the transferred property, ~~of the property the person took under the certified~~
2 ~~copy of the affidavit,~~ less the amount of any liens and encumbrances on the transferred
3 property at the time the certified copy of the affidavit was issued.

4 (b) Subject to subdivision (d), if the ~~person~~ designated successor fraudulently executed
5 or filed the affidavit under this chapter, the ~~person~~ designated successor is liable under
6 this section for restitution to the decedent's estate of three times the fair market value of
7 the transferred property. For the purposes of this subdivision, the "fair market value of
8 the transferred property" is the fair market value of the transferred property, determined
9 as of the time the certified copy of the affidavit was issued, ~~of the property the person~~
10 ~~took under the certified copy of the affidavit,~~ less the amount of any liens and
11 encumbrances on the property at that time. A designated successor is not liable under this
12 subdivision if the designated successor has satisfied the liability imposed under
13 subdivision (b) of Section 13205 for the same fraud.

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

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

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

33 (d) The property and amount required to be restored to the estate under this section
34 shall be reduced by any property or amount paid by the ~~person~~ designated successor to
35 satisfy a liability under Section ~~13204 or~~ 13205. The property and amount required to be
36 restored to the estate shall also be reduced or increased as provided in Section 13207.

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

42 (f) An action to enforce the liability under this section is forever barred three years
43 after the certified copy of the affidavit is issued under Section 13202, or three years after

1 the discovery of the fraud, whichever is later. The three-year period specified in this
2 subdivision is not tolled for any reason.

3 (g) The designated successor is not liable under subdivision (a) for a particular item of
4 transferred property if that item was returned to the estate under Section 13205.5.

5 **Comment.** Section 13206 is amended to limit the application of the section to claims by a
6 person with a superior right, to delete language that is continued and generalized in Section
7 13207, and to make technical revisions.

8 Subdivision (b) is also amended to make clear that treble damages will only be imposed once
9 per incident of fraud. See also Section 13205(b).

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

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

12 **Note.** The second sentence of existing Section 13206(e) provides that the personal
13 representative may enforce the section “only to the extent necessary to protect the interests of the
14 heirs, devisees, and creditors of the decedent.” The Commission’s research suggests that this
15 language was intended to make clear that enforcement of the section is not mandatory; there may
16 be situations in which the liability should not be enforced because it would be inequitable to do so
17 (e.g., where a debt to be paid is much smaller than the value of the property to be returned or
18 where the process is being misused to harass the transferee). See First Supplement to CLRC Staff
19 Memorandum 2019-39, pp. 3-4. **The Commission requests public comment on whether the**
20 **same concerns would exist if the provision were to be limited to the satisfaction of superior**
21 **right claims, as proposed. If not, could the second sentence of subdivision (e) be deleted as**
22 **superfluous?**

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

24 SEC. ____ . Section 13207 of the Probate Code is repealed.

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

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

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

31 13207. (a) A person designated as a successor of the decedent in a certified copy of an
32 affidavit issued under Section 13202 is not liable under Section 13204 or 13205 if
33 proceedings for the administration of the decedent’s estate are commenced, or if the
34 decedent’s personal representative has consented to use of the procedure provided by this
35 chapter and the personal representative later requests that the property be restored to the
36 estate, and the person satisfies the requirements of Section 13206.

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

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

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

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

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

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

3 13207. (a) If the designated successor's action or inaction increased the value of
4 property returned to the estate or decreased the estate's obligations, the personal
5 representative shall reimburse the designated successor by the same amount. Actions or
6 inaction that increase the value of returned property or decrease the estate's obligations
7 include, but are not necessarily limited to, the following actions:

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

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

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

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

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

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

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

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

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

33 **Comment.** Section 13207 is new. It generalizes language that was deleted from Section
34 13206(a) and (c) and provides a procedure for determining the adjustments to be made under
35 Sections 13205.5(b) and 13206(d).

See also Section 13202.5(a) ("designated successor").