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

BACKGROUND

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

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

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

This tentative recommendation proposes improvements to those liability rules.

RESTITUTION LIABILITY

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

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

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

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

**Limit Scope of Restitution Liability**

The proposed law would revise the restitution provisions to make them inapplicable to the payment of decedent’s unsecured debts.¹

The restitution remedy would remain applicable to address a claim by a person with a superior right to the property.² In the latter case, restitution is the best way to effectuate the decedent’s intentions, because it would ensure that an item of tangible property with sentimental or heirloom value goes to the right person.

**Personal Liability to Estate**

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

The proposed law would provide such a replacement. It would add a provision that establishes a transferee’s personal liability to the estate for a share of the decedent’s unsecured debts.³ The share would be calculated by applying the existing rules of abatement (which establish rules for determining the order in which gifts are consumed for the payment of a decedent’s obligations).⁴ Payment of that share would eliminate the transferee’s direct personal liability to a decedent’s unsecured creditors.⁵ If the transferee had made any direct payments to creditors, those payments would be credited against the transferee’s liability.⁶

---

¹. See proposed revisions of Prob. Code §§ 13111 (transfer of personal property), 13206 (transfer of real property) infra.

². Id.

³. See proposed Prob. Code §§ 13109.5 (transfer of personal property), 13204.5 (transfer of real property) infra.

⁴. 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(c) (transfer of personal property), 13204.5(c) (transfer of real property) infra.

⁵. See proposed Prob. Code §§ 13109(c) (transfer of personal property), 13204(c) (transfer of real property) infra.

⁶. 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.
Voluntary Property Return

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

Related Questions

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

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

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

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

Adjustments to Value of Returned Property

Under the existing restitution provisions, the value of the property to be returned to the estate can be adjusted, up or down, based on events that occurred after the property was transferred. For example, if the transferee improved real property, the transferee may be entitled to reimbursement for any increase in the property’s fair market value. 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.
transferee could be liable for restitution of that income, along with the property that
generated it.\textsuperscript{13}

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

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

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

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

\begin{itemize}
\item\textsuperscript{13} See Prob. Code §§ 13111(a)(1) (transfer of personal property), 13206(a)(1) (transfer of real

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

property).
\item\textsuperscript{15} See Prob. Code §§ 13206(c) (transfer of real property).
\item\textsuperscript{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).
\item\textsuperscript{17} See proposed Prob. Code §§ 13111(c) (transfer of personal property), 13206(d) (transfer of real

property) \textit{infra}.
\item\textsuperscript{18} See proposed Prob. Code §§ 13112(b)(2) (transfer of personal property), 13207(b)(2) (transfer of real

property) \textit{infra}.
\item\textsuperscript{19} See proposed Prob. Code §§ 13111(c), 13112 (transfer of personal property); 13206(d), 13207

(transfer of real property) \textit{infra}.
\item\textsuperscript{20} See proposed Prob. Code §§ 13112(c) (transfer of personal property), 13207(e) (transfer of real

property) \textit{infra}.
\end{itemize}
Tentative Recommendation • July 2019

TREBLE DAMAGES FOR FRAUD

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

1. It can be imposed as part of the transferee’s personal liability to a person with a superior right to the transferred property. In that scenario, the penalty is paid to the person with the superior right.22

2. It can be imposed when the transferred property is returned to the estate.23 In that scenario, the penalty is paid to the decedent’s estate.

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

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

MINOR SUBSTANTIVE AND TECHNICAL CHANGES

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

The minor substantive change involves the existing provisions that prescribe the scope of a transferee’s aggregate personal liability to the decedent’s creditors.26 Under those provisions, the transferee’s liability cannot exceed the fair market value of the property at the time it was received, plus net income derived from the property, and, if the transferee no longer possesses the property, interest on the fair market value of the property from the date of disposition.27 The Commission sees no good policy reason to make the transferee liable to the decedent’s creditors for income or interest that accrued after the 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).
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.
been distributed. For that reason, the proposed law would delete the income and interest provisions from the rule that determines a transferee’s aggregate liability to the decedent’s creditors.\textsuperscript{28}

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

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.\textsuperscript{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.

\textsuperscript{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) \textit{infra}.

\textsuperscript{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) \textit{infra}.

\textsuperscript{30} See Prob. Code §§ 13500-13660.
Contents

PART 1. COLLECTION OR TRANSFER OF SMALL ESTATE WITHOUT ADMINISTRATION ................................................................. 9

CHAPTER 3. AFFIDAVIT PROCEDURE FOR COLLECTION OR TRANSFER OF PERSONAL PROPERTY ............ 9

Prob. Code § 13100.5 (added). Definitions .......................................................................................... 9
Prob. Code § 13109 (amended). Personal liability for decedent’s unsecured debts .................... 9
Prob. Code § 13109.5 (added). Liability to estate for decedent’s unsecured debts ................ 10
Prob. Code § 13110 (amended). Personal liability to person with superior right ...................... 10
Prob. Code § 13110.5 (added). Voluntary return of transferred property to the estate ............. 11
Prob. Code § 13111 (amended). Liability for return of transferred property to estate ............. 12
Prob. Code § 13112 (repealed). Scope of personal liability under Sections 13109 and 13110 .... 13
Prob. Code § 13112 (added). Adjustment to liability under Section 13110.5 or 13111 ........ 14

CHAPTER 5. AFFIDAVIT PROCEDURE FOR REAL PROPERTY OF SMALL VALUE ......................................................... 15

Prob. Code § 13202.5 (added). Definitions ..................................................................................... 15
Prob. Code § 13204 (amended). Personal liability for decedent’s unsecured debts ................. 15
Prob. Code § 13204.5 (added). Liability to estate for decedent’s unsecured debts ................. 16
Prob. Code § 13205 (amended). Personal liability to person with superior right .................. 17
Prob. Code § 13205.5 (added). Voluntary return of transferred property to the estate .......... 18
Prob. Code § 13207 (repealed). Scope of personal liability under Sections 13204 and 13205 .... 20
Prob. Code § 13207 (added). Adjustment to liability under Section 13205.5 or 13206 ............ 21
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 is personally liable to the extent provided in Section 13112, this section for the unsecured debts of the decedent. Any such debt may be enforced against the 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 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.
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).

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

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

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

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

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

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

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

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

4. The personal representative shall provide a written statement of liability to the transferee, which specifies the amount that must be paid to the estate.

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

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

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

**Comment.** Section 13109.5 is new.

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

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

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

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

13110. (a) Except as provided in subdivision (b), each 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 to any person having a superior right to transferred property by testate or intestate succession from the decedent. Except
as provided in subdivision (b), the personal liability established by this subdivision shall not exceed the sum of the following, less the amount of any payment made pursuant to Section 13109 or Section 13109.5:

(1) 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.

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

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

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

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

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

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

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

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

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

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

SEC. ____. Section 13110.5 is added to the Probate Code, to read:
13110.5. (a) If proceedings for the administration of a decedent’s estate are
commenced, a transferee may voluntarily return transferred property to the decedent’s
estate for administration.
(b) The property to be restored to the estate under this section shall be reduced or
increased as provided in Section 13112.

Comment. Section 13110.5 is new.
See also Sections 13100.5(a) (“transferee”), 13100.5(b “transferred property”).

Prob. Code § 13111 (amended). Liability for return of transferred property to estate
SEC. ___. Section 13111 of the Probate Code is amended to read:
13111. (a) Subject to the provisions of this section, if proceedings for the
administration of the decedent’s estate are commenced in this state, or if the decedent’s
personal representative has consented to the payment, transfer, or delivery of the
decedent’s property under this chapter and the personal representative later requests that
the property be restored to the estate, each person to whom payment, delivery, or transfer
of the decedent’s property is made under this chapter is liable for:
If property is paid, delivered, or transferred to a transferee under this chapter, and the
decedent’s personal representative determines that another person has a superior right to
the property by testate or intestate succession from the decedent, the personal
representative may request that the transferred property be restored to the estate. Subject
to subdivisions (b), (c), (d), (e), and (g), if the personal representative makes that request,
the transferee is liable for all of the following:
(1) The transferee still has the transferred property, restitution of the transferred
property to the decedent’s estate if the person still has the property, together with (A) the
net income the person received from the property and (B) if the person encumbered the
property after it was delivered or transferred to the person, the amount necessary to
satisfy the balance of the encumbrance as of the date the property is restored to the estate.
(2) The transferee no longer has the transferred property, restitution to the
decedent’s estate of the fair market value of the transferred property, if the person no
longer has the property, together with (A) the net income the person received from the
property and (B) plus interest from the date of disposition at the rate payable on a money
judgment on the fair market value of the transferred property. For the purposes of this
subdivision paragraph, the “fair market value of the transferred property” is the fair
market value of the transferred property, determined as of the time of the disposition of
the transferred property, of the property paid, delivered, or transferred to the person under
this chapter, less the amount of any liens and encumbrances on the transferred property at
that time the property was paid, delivered, or transferred to the person under this
chapter.
(b) Subject to subdivision (c) and subject to any additional liability the person
transferee has under Sections 13109 to 13112, inclusive, if the person transferee
fraudulently secured the payment, delivery, or transfer of the decedent’s property under
this chapter, the person transferee is liable under this section for restitution to the
decedent’s estate of three times the fair market value of the transferred property. For the
purposes of this subdivision, the “fair market value of the transferred property” is the fair
market value of the transferred property, determined as of the time the person liable
under this subdivision presents the affidavit or declaration under this chapter, of the
property paid, delivered, or transferred to the person under this chapter, less the amount
of any liens and encumbrances on the property at that time. A transferee is not liable
under this subdivision if the transferee has satisfied the liability imposed under
subdivision (b) of Section 13110 for the same fraud.

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

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

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

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

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

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

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

Subdivision (g) is added to state the relationship between this section and Section 13110.5.
See also Sections 13110.5(a) ("transferee"), 13110.5(b) ("transferred property").

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

Prob. Code § 13112 (repealed). Scope of personal liability under Sections 13109 and 13110
SEC. ___. Section 13112 of the Probate Code is repealed.
Comment. Section 13112 is repealed. The substance of former Section 13112(a) is continued in Sections 13109(c) and 13110(d). For a similar rule, see Section 13109.5(f).

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

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

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

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

Prob. Code § 13112 (added). Adjustment to liability under Section 13110.5 or 13111
SEC. ___. Section 13112 is added to the Probate Code, to read:

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

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

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

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

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

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

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

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

(d) For the purposes of Section 11420, reimbursement of the transferee under subdivision (a) shall be deemed an expense of administration.
(e) In the event that the transferee and the personal representative cannot agree on the
reimbursement or liability due under this section, the transferee or personal representative
may petition the court for an order determining the amount of the reimbursement or
liability. In making a decision under this subdivision, the court should consider the
surrounding circumstances, including whether the parties acted in good faith and whether
a particular result would impose an unfair burden on the transferee or the estate.

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

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

CHAPTER 5. AFFIDAVIT PROCEDURE FOR REAL PROPERTY OF SMALL VALUE

Prob. Code § 13202.5 (added). Definitions
SEC. ___. Section 13202.5 is added to the Probate Code, to read:
13202.5. For the purposes of this chapter, the following terms have the following
meanings:
(a) “Designated successor” means a person designated as a successor of the decedent in
a certified copy of an affidavit issued under Section 13202.
(b) “Transferred property” means property transferred to a designated successor
pursuant to a certified copy of an affidavit issued under Section 13202.

Comment. Section 13202.5 is new. It is added for drafting convenience.
See also Section 13006 (“successor of the decedent”).

Prob. Code § 13204 (amended). Personal liability for decedent’s unsecured debts
SEC. ___. Section 13204 of the Probate Code is amended to read:
13204. (a) Each person who is designated as a successor of the decedent in a certified
copy of an affidavit issued under Section 13202 is personally
liable to the extent provided in Section 13207 this section for the unsecured debts of the
decedent. Any such That debt may be enforced against the person designated successor 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 designated successor may assert
any 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 of the issuance of the certified copy of the affidavit
under Section 13202, 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 13205.

(c) The designated successor is not liable under this section for a particular item of
transferred property, if the designated successor has satisfied the requirements of Section
13204.5, 13205.5, or 13206 with regard to that item.
**Comment.** Subdivision (a) of Section 13204 is amended to make technical revisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Comment.** Section 13204.5 is new.

Subdivision (f) is similar to former Section 13207(a).
Prob. Code § 13205 (amended). Personal liability to person with superior right

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

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

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

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

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

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

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

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

Comment. Subdivision (a) of Section 13205 is amended to continue a rule drawn from former Section 13207(b). Subdivision (a) is also amended to make technical revisions.
Subdivision (b) is amended to add a reference to Section 13204.5 and to make technical revisions. The subdivision is also amended to make clear that treble damages will only be imposed once per incident of fraud. See also Section 13206(b).

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

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

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

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

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

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

Comment. Section 13205.5 is new.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Prob. Code § 13207 (repealed). Scope of personal liability under Sections 13204 and 13205
SEC. ___. Section 13207 of the Probate Code is repealed.

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

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

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

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

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

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

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

(3) If the property has been disposed of, interest on the fair market value of the property
from the date of disposition at the rate payable on a money judgment. For the purposes of this
paragraph, “fair market value of the property” has the same meaning as defined in paragraph
(2) of subdivision (a) of Section 13206.
Prob. Code § 13207 (added). Adjustment to liability under Section 13205.5 or 13206

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

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

1. A payment toward an unsecured debt of the decedent.
2. A payment toward a debt secured against the returned property.
3. A significant improvement of the returned property that increased the fair market value of the property.

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

1. An action or inaction that resulted in a lien or encumbrance being recorded against the property.
2. The receipt of income from the property, if that income would have accrued to the estate had the property not been transferred to the designated successor.
3. The personal representative shall provide the designated successor a written statement of any reimbursement or liability under this section, along with a statement of the reasons for the reimbursement or liability.

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

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

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

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