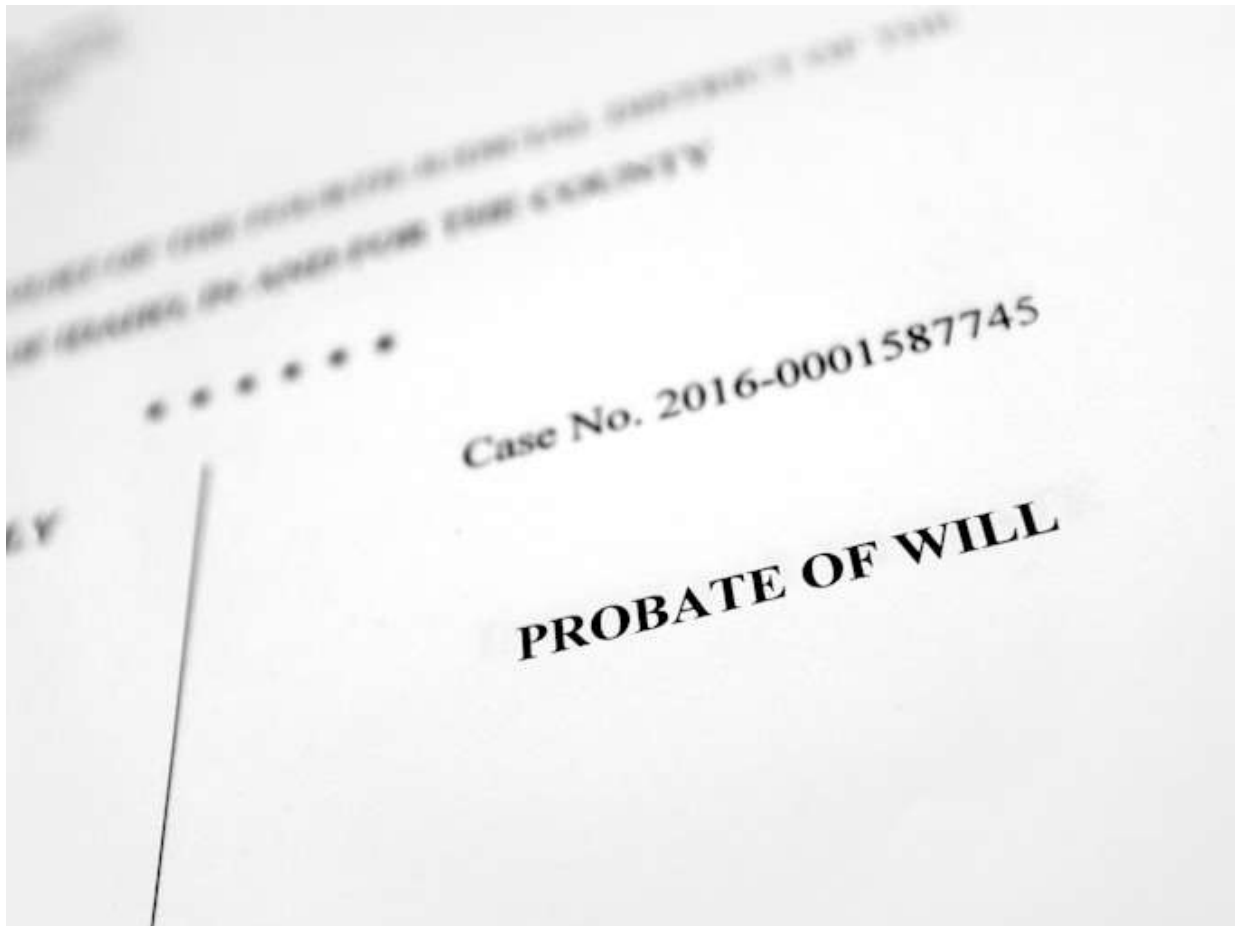


AB 2016 Proposes to Expand California's Small Estate Asset Limit to Just Shy of \$1 Million

Jennifer E. Dean September 05, 2024



A new bill that's cleared the California Legislature, and which looks poised for the governor's signature, has the potential to make major changes to the state's probate

administration landscape. Starting in mid-2025, AB 2016 would raise the state's threshold amount for a "small estate" to just under \$1 million -- and could lead to more laypersons foregoing the assistance of attorneys during the Probate Code section 13151 petition process.

In the last decade, the California Legislature has made several moves to reduce the cost of planning for and administering estates. In 2015, California experimentally adopted the Revocable Transfer on Death Deed (RTDD) (Prob. Code, §§ 5600-5696), effective initially for a five-year period, and subsequently extended to expire in January 2032.

Shortly after its adoption, the California Law Revision Commission did a study to determine whether the TDD was working as intended. It found that there were some initial issues, with provisions allowing for property subject to an RTDD to be used to satisfy creditors of the grantor's estate creating clouds on title (resolved by subsequent amendments to the code in 2021). However, in terms of general efficacy, the study posited that because RTDDs came with lengthy FAQs, and because of the general simplicity of what could be accomplished with an RTDD, these deeds were far less likely to be misunderstood or misused by a layperson in comparison to other deed formats.

The RTDD format certainly has its limitations, giving the grantor no ability to tailor distributions to the limitations of a beneficiary. (For example, could a grantor list a minor as a beneficiary on an RTDD? And if the grantor dies while the beneficiary is still a minor, it can lead to other complications that negate the simplicity intended by this probate avoidance methodology.)

The legislature also expanded the small estate thresholds in 2019 under Probate Code section 13100, so that thresholds for decedents dying before April 2022 were increased to \$166,250, and thresholds for decedents dying after April 2022 were increased to \$184,500 (with subsequent adjustments possible every three years, tied to the Consumer Price Index). The initial increases themselves were relatively minimal, given that the threshold prior to 2022 was \$150,000. And in practice, given how housing prices have increased since the housing market has rebounded from the 2008 mortgage crisis, not many homes' values fall under Probate Code section 13100's current expanded threshold.

This positions AB 2016's proposal to expand the small estate threshold for residential real estate to create a major shakeup in the probate administration world. The current

text of the bill proposes to carve out a decedent's personal residence as a separate category of small estate administration for residences valued up to \$750,000. If passed, this would bring the small estate threshold for a decedent's primary residence much closer to California's average median home prices. The code as amended would also maintain the existing provisions tying this threshold to inflation.

When combined with the extant Probate Code section 13100 threshold of \$184,500, the total potential assets (other than those already carved out by the statute) that could pass outside of probate reach just shy of \$1 million. In addition, the section 13151 procedure is not subject to the statutory fees requirement, which could result in significant savings to estates.

Currently, the Probate Code section 13151 petition process takes around 60-90 days to clear the courts because it avoids the requirements of the standard probate creditor notice process -- which gives estate creditors four months from the issuance of letters, or 60 days from the date of service for the Notice of Administration, to file a claim against the estate. While this time frame is a relatively short window for creditors to make claims against the estate, coupled with the initial published notice, it's presumed that the notice is sufficient to give creditors a bite at the apple. And it also gives estate administrators some assurance that after a certain date, creditors may no longer file a claim.

By contrast, estates filed under the Probate Code section 13151 petition process are subject to the forfeiture procedure outlined in Probate Code section 13156, which makes recipients of a decedent's property liable for the decedent's unsecured debts up to the value of the asset received, although such claims must be brought within a year of the decedent's date of death unless otherwise tolled. The effect may be that we will see creditors attempting to recoup losses in other ways, either through more creditors' lawsuits after a Probate Code section 13151 petition, or perhaps by making stronger attempts to secure unsecured debts via liens.

Unlike the RTDD process (which functionally only requires a deed to be filed on the death of the grantor), the Probate Code section 13151 petition posits a limited court-supervised transfer of real property, presumably making it less subject to potential fraud. However, the question remains whether the expanded thresholds make fraud substantially more likely to occur, because the Probate Code section 13151 petition process doesn't require an accounting or notice to creditors. And given that section 13151 is simpler than a full probate, we may see quite a few more laypersons filing these petitions *in pro per*, saving costs to the estate while simultaneously creating

greater potential for common misinterpretations of notice requirements (e.g., not seeing the need to send notice of the petition to an estranged family member).

Thus far, AB 2016 appears to be on track to pass and take effect mid-2025. It will be interesting to see whether the bill's anticipated benefits outweigh its potential problems.

A prior version of this article indicated that a non-residential lot could be transferred concurrently with residential real property under Probate Code section 13151. However, Probate Code section 13200 does not include a carve-out for property passing under Probate Code section 13151, and thus the two procedures could not be used concurrently. The article has been corrected accordingly.

© The Regents of the University of California, 2025.

Unauthorized use and/or duplication of this material without express and written permission from CEB is strictly prohibited. CEB content does not render any legal, accounting, or other professional service; this content is not intended to describe the standard of care for attorneys in any community, but rather to assist attorneys in providing high quality service to their clients and in protecting their own interests. Attorneys using CEB content in dealing with a specific legal matter should also research original sources of authority. Any opinions contained in CEB content are not intended to reflect the position of the University of California. Materials written by employees of state or federal agencies are not to be considered statements of governmental policies.

RELATED

Commentary: Summary Procedures for Estates Up To \$1 Million -- Is California's AB 2016 a Good Idea?

Bruce A. Last Sep 04, 2024

It's the Circle of Life (and Death): How Probate Rules Would Have Saved Pride Rock

Heidi Imsand Sep 03, 2024

Didn't Stick the Landing: Despite Legal Artistry, You Still Can't Amend a Trust with an Electronic Signature

Sean McKissick Aug 14, 2024

PRACTICE AREAS

Trusts & Estates