

The Small Estate Donut Hole: How California's AB 2016 Missed an Opportunity to Streamline Small Estate Administration

Bruce A. Last January 27, 2025



One of the things I love about the California Probate Code is how combining various procedures may expedite an estate administration and reduce client cost. This includes appropriate use of the Collection or Transfer of Small Estate Without Administration procedures (Prob. Code, § 13000-13007). However, after reviewing the recent changes to these procedures of Assembly Bill 2016 (2023-2024 Reg. Sess.; Stats. 2024, ch 331), it occurred to me that the California Legislature may have missed an opportunity to increase the efficiency of small estate administration.

I'm speaking of the bill not excluding the value of property transferred using a Petition Determining Succession to Property (Prob. Code, § 13150-13158) ("Succession Petition") from the value limits of an Affidavit to Transfer Real Property of Small Value (Prob. Code, § 13200-13211) ("Real Property Transfer Affidavit") and making those procedures expressly supplemental to other small estate procedures. This effectively forces any estate holding real property other than the decedent's primary residence into probate, even where the value of the other parcel(s) at issue are less than the value limit of the real property transfer affidavit procedure (\$61,500 until the next adjustment for inflation on April 1, 2025).

I know what some of you may be asking, "Where in California is there any real property valued at \$61,000 or less?" It's more common than you think. Deeded time shares, undeveloped lots, and small fractional interests in real property, all with low or nominal resale value, all exist in decedent's estates. Estates from marginalized and lower income communities may be particularly at risk due to the sale of lots in "antiquated subdivisions" (also known as "left-for-dead subdivisions") created decades -- if not a century -- ago and marketed as a great investment opportunities despite lacking power, water, or sewer services, paved roads, or reasonable (or any) access.

The problem occurs because the decedent's primary residence will most likely bring the total value of the real property in the estate over the Real Property Transfer Affidavit's \$61,500 limit. (Prob. Code, § 13200 subd. (a)(5) and (f).) This means a probate is required even where the decedent's residence is under the \$750,000 limit for a transfer by a Probate Code section 13151 petition (for decedents dying after April 1, 2025; Prob Code, §13152 subd. (a)(2) and (f)).

(In this article, I've used the current value limitations for transferring personal property by affidavit and Real Property Transfer Affidavits because the values effective April 1, 2025 have not been published.)

Consider a decedent dying intestate April 2, 2025 with an estate consisting of:

- A principal residence valued at \$500,000;
- A bank account valued at \$100,000; and
- An undeveloped parcel of real property valued at \$10,000.

Under the old rules, a formal probate of this estate was required because the total estate value of \$610,000 would exceed the \$184,500 value limit for a Succession Petition. However, under the new rules, you might be tempted to manage it this way:

- Transfer the principal residence under a Petition to Determine Successor to Property.
- Transfer the bank account under a Real Property Transfer Affidavit.
- Transfer the undeveloped parcel using an Affidavit for Transfer of Real Property.

And while that would be efficient and cost-effective, it will not work.

The problem arises from the language setting the value limitation for the Affidavit for Transfer of Real Property of Small Value. Probate Code section 13200, subdivision (a) (5) says that the affidavit must state (emphasis added):

The gross value of all real property in the decedent's estate located in California, as shown by the inventory and appraisal attached to this affidavit, excluding the real property described in Section 13050 of the California Probate Code, does not exceed [Insert dollar amount specified in subdivision (h)].

Subdivision (h) sets the value limit at \$55,000 as adjusted every three years for inflation under Probate Code section 890. For decedents dying on or after April 1, 2022 but before April 1, 2025, the date of the next adjustment, that limit is \$61,500. (Prob. Code, §§ 890 and 13200(h); see also Judicial Council Form DE-DE-300, Maximum Values for Small Estate Set-Aside & Disposition of Estate Without Administration.)

Notice the difference in the wording between that wording and the value limitations of an Affidavit for Transfer of Personal Property and Succession Petition:

- **Affidavit for Transfer of Personal Property:** *“Excluding the property described in Section 13050 and any property included in a petition filed under Section 13151, if the gross value of the decedent’s real and personal property in this state*

does not exceed one hundred sixty-six thousand two hundred fifty dollars (\$166,250) . . . [as adjusted for inflation] . . . (Prob. Code, § 13100, emphases added.)

- **Succession Petition:** If a decedent dies leaving real property that was their primary residence in this state and *the gross value of that real property does not exceed seven hundred fifty thousand dollars (\$750,000) [as adjusted for inflation]* . . . the successor of the decedent to an interest in that real property . . . may file a petition in the superior court . . . determining that the petitioner has succeeded to that real property. (Prob. Code, § 13151, emphases added.)

Comparing the italicized portions one quickly sees the distinction. While Probate Code section 13100 specifically excludes property included in a Successor Petition (Prob. Code, § 13151) and the Successor Petition specifically limits the calculation to the value of the decedent's primary residence, Probate Code section 13200 contains no such exclusion or limitation. Moreover, section 13200 clearly states the value includes "all real property located in California." Since a court cannot insert what has been omitted or omit what has been inserted in construing a statute (*California Fed. Savings and Loan Assn. v. City of Los Angeles* (1995) 11 Cal.4th 342, 350), the Real Property Transfer Affidavit should be interpreted to limit application only to estates where the value of **all** the decedent's real property, including property subject to a Successor Petition, is under the Real Property Transfer Affidavit limit.

Also, the Affidavit for Transfer of Personal Property statutes clearly state that the procedure is "supplemental to any other procedure" for transferring a decedent's property. A similar provision does not exist for the Succession Petition or the Real Property Transfer Affidavit. A logical read is that you can combine an Affidavit for Transfer of Personal Property with either a Succession Petition or a Real Property Transfer Affidavit, **but not both**. Neither could you combine a Succession Petition with a Real Property Transfer Affidavit (for an estate consisting only of real property) since neither of those procedures are specifically supplemental to the other.

One might be tempted to argue that property transferred under the Affidavit for Transfer of Personal Property or a Succession Petition is no longer be part of the decedent's estate and thus not counted under Probate Code section 13200. However, both real property small estate transfer procedures use the value of property shown an Inventory and Appraisal filed with the petition or affidavit. (Prob. Code, §§ 13152, subd. (a)(2) and 13200, subd. (a)(5).)

While no statute specifically addresses preparation requirements for an Inventory and Appraisal created for the small estate procedures, the statute for the content of Inventory and Appraisals for formal probates specifies that:

- It must include all property to be administered in the decedent's estate. (Prob. Code, § 8850.)
- It must separately list each item and the fair market value as of the decedent's death. (Prob. Code, § 8802.)
- While it may be in parts and supplemented, taken together they constitute one Inventory and Appraisal. (Prob. Code, §§ 8800 and 8801.)

The Probate Referee's Guide also does not list property transferred (or anticipated to be transferred) by either an affidavit or Succession Petition as property not listed on an Inventory and Appraisal, although it notes the use in small estate procedures. (The Probate Referee's Guide, Using Probate Referees in Probates, Conservatorships and Guardianships, Trusts, Small Estates, Non-Probate Matters, Receiverships, Partition Actions, and for Mediations and Arbitrations, California Probate Referee's Association, Rev. 04/2020, pgs. 8 & 10.)

A logical contradiction also occurs if real property subject to Successor Petition or Real Property Transfer Affidavit is not included in an Inventory and Appraisal for small estate procedures. If not included, then any Inventory and Appraisal filed with either would not list the property subject to the petition or affidavit. This prevents the party filing the petition or affidavit from declaring under penalty of perjury that the property value as shown on the Inventory and Appraisal was under the applicable valuation limit. (See Prob. Code, §§ 13152, subd. (a)(2) and 13200, subd. (a)(5).)

Unfortunately, the oversight means that small estates containing any real property other than the decedent's primary residence will most likely require a probate. While the personal representative could allow the small estate procedures to be used (see Prob. Code, §§ 13152(a)(5)(B)) and 13101(a)(4)(B)), this is unlikely due to the duties the representative owes to the decedent's creditors.

For more information on small estate administration procedures, see CEB's California Decedent Estate Practice, chapter 3, and CEB's Transferring Property Without Probate action guide.

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