

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 2016 (Maienschein)
Version: June 6, 2024
Hearing Date: July 2, 2024
Fiscal: No
Urgency: No
AM

SUBJECT

Estates: small estates

DIGEST

This bill revises and recasts the small estate petition process to allow the primary residence of a decedent to be transferred outside of probate if that real property does not exceed \$750,000, as periodically adjusted.

EXECUTIVE SUMMARY

The Probate Code provides several procedures by which some estates or portions thereof may be disposed of summarily or by affidavit to expedite the settlement of these smaller estates and assets and avoid unnecessary expenses related to court supervision. Some of the procedures may be undertaken by a person to whom the decedent devised the property directly or by a personal representative of the decedent who permits an heir to specified property to collect and transfer the property outside of probate. This bill would revise and recast the provision related to transferring real property via petition to allow the primary residence of a decedent to be transferred via petition if that real property does not exceed \$750,000. The author and sponsor argue this is needed to ensure that average Californians can transfer their largest asset to their heirs without being forced to use the lengthy probate process ensuring that intergenerational transfer of assets occurs, which is critical for low- and moderate-income households to build wealth. The bill is sponsored by Housing and Economic Rights Advocates and supported by the California Association of Realtors and California State Grange. This bill is opposed by the California Probate Referees Association.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides that a petition may be filed to request a court order to set aside a decedent's estate to the decedent's surviving spouse and minor children, as specified, if the net value of the estate does not exceed \$85,900, as adjusted periodically pursuant to Section 890. (Prob. Code § 6602.)¹
- 2) Allows for a decedent's successor to a real property interest to use a simplified petition to obtain a court order determining that the party has succeeded to that real property, if the gross value of decedent's real and personal property's value does not exceed \$166,250. (§ 13151 & 13154.)
- 3) Allows for a decedent's successor to a real property interest to obtain that property by filing an affidavit with specified information about the property, including that the property's gross value does not exceed \$55,425, as adjusted periodically pursuant to Section 890. (§ 13200.)
- 4) Provides that on April 1, 2022, and at each three-year interval ending on April 1 thereafter, the dollar threshold for the disposition of a decedent's estate outside of probate is to be adjusted based on the change in the "Consumer Price Index for All Urban Consumers," as published by the United States Bureau of Labor Statistics.
 - a) Requires the Judicial Council, beginning April 1, 2022, to publish a list of the current dollar amounts together with the date of the next scheduled adjustment. (§ 890.)

This bill:

- 1) Revises the simplified petition process described in 2), above, to allow the primary residence of a decedent to be transferred via petition if that real property does not exceed \$750,000, as indexed under Section 890.
 - a) Specifies that primary residence is not limited to the decedent's residence at the time of their death.
- 2) Makes other technical and conforming changes.

¹ All further statutory references are to the Probate Code unless otherwise specified.

COMMENTS

1. Stated need for the bill

The author writes:

As an advocate for equal access to probate processes, it's clear that California's current small estate probate system falls short in serving low- and middle-income families. With the state's rapid escalation of home values, many estates, even those with modest family homes, exceed the current small estate limit of \$184,500. This disproportionately affects households of color, who rely heavily on intergenerational transfer of assets to build wealth. By advocating for an increase in the small estate value threshold to \$750,000 for real property that was the decedent's primary residence, this bill aims to protect the financial security of low- and middle-income heirs, ensuring they can utilize the expedited probate process and safeguard their family homes and assets.

2. Would allow the transfer of a decedent's primary residence outside probate if the real property does not exceed \$750,000

a. Probate administration

When a person dies, their assets (referred to as the decedent) are generally distributed through a will or by intestate succession and are usually subject to probate administration. Probate administration involves a court proceeding to administer the decedent's estate by: deciding if a will exists, and if so, if it is valid; who are the decedent's heirs or beneficiaries; how much the decedent's estate is worth; taking care of the decedent's unresolved debts; and transferring the decedent's property to the heirs or beneficiaries.² Existing law provides for various ways to transfer property outside of formal probate administration, such as trusts, payable on death accounts, revocable transfer on death deeds (RTODDs), joint tenancy, and small estates. Probate fees in California are based on the gross value of the estate and are set in statute as follows 4 percent on the first \$100,000; 3 percent on the next \$100,000; 2 percent on the next \$800,000; 1 percent on the next \$9,000,000; and, 0.5 percent on the next \$15,000,000. (§ 10810.)

b. Revocable living trusts and RTODDs

A trust is a means for property to be managed on behalf of, and distributed to, specified beneficiaries in accordance with the wishes of the trust's creator, or "settlor" without going through probate. The settlor typically transfers property into the trust, designates

² Cal. Courts, *Wills, Estates, and Probate* (2022), available at <https://www.courts.ca.gov/8865.htm?rdeLocaleAttr=en>.

beneficiaries, and establishes guidelines for the management and distribution of the trust assets by a trustee, who has a legal obligation to implement the settlor's intent and make reasonable decisions with regard to the trust property. A revocable trust may be revoked or changed without the consent of the beneficiaries or a court, whereas an irrevocable trust prohibits the settlor from revoking or changing the trust without the consent of the beneficiaries of the trust and/or the court. Revocable trusts become irrevocable when the settlor dies, or when the trust instrument itself states when it is to become irrevocable. An RTODD is a deed of real property that designates a beneficiary to receive the property when the transferor dies. An RTODD enables a homeowner to deed the property directly to a desired beneficiary without the expense of creating a trust or going through a probate proceeding.

c. Accessibility gap for estate planning services

A 2022 survey of 10,000 employed adults in the U.S. by Wealth, an estate planning platform, found that 75 percent of respondents indicated that they want to pass their estate to their loved ones but only 53 percent of respondents actually had a current estate plan, with only 32 percent having a will in place.³ The survey concluded that the responses "indicate[] an accessibility gap for estate planning services" noting that 63 percent of respondents stated they considered creating an estate plan in the past, but 46 percent of those respondents did not know how to begin the process.⁴ Persons of color in particular seemed to face barriers to accessing estate planning as they were 14 percent less likely to have an estate plan in place than non-persons of color who responded to the survey.⁵

d. Small estates under the Probate Code

The Probate Code provides for the disposition of small estates, or portions of estates, without probate administration, based on the dollar value of the estates or assets. These provisions allow heirs and beneficiaries of small estates to avoid the burdens and delays of probate administration and prevents these estates and assets from being further depleted due to the costs of that process. These provisions also reduce the burdens on the judicial system and allow the courts to more efficiently focus on matters requiring greater judicial oversight and resources. When a small estate or portion of an estate is administered outside of the formal probate process, the recipient of the property may be held liable for the property's value if it turns out that there is a party who has a superior claim to that property. If the recipient has disposed of or improved the property, the recipient's liability may include interest on the property's value, which is the same rate

³ *New Study Reveals Lack of Preparedness Around Estate Planning*, PR Newswire (Mar. 29, 2022), available at <https://www.prnewswire.com/news-releases/new-study-reveals-lack-of-preparedness-around-estate-planning-301512295.html>.

⁴ *Ibid.*

⁵ *Ibid.*

applicable to judgements on monetary debts—7 percent per year. (See §§ 13206 & 13111.)

In 2018, the California Law Revision Commission (CLRC) studied the issue of small estates and noted that allowing small estates to be disposed of outside probate “serve[s] an important function by balancing the need for judicial oversight with the need for judicial economy and the avoidance of unnecessary administration. The dollar limits represent a considered choice in which the Legislature struck a balance between these important, competing policy concerns.”⁶ Under current law, the small-estate threshold amount is \$166,250 for decedents who died prior to April 1, 2022, and \$184,500 for decedents who died after that date. This threshold amount is determined by combining all real and personal property in the aggregate; it does not include any *non-probate* assets, such as assets subject to right-of-survivorship, insurance policies, IRAs, 410Ks, or assets held in a living trust.

The Legislature raised the small-estate threshold just five year ago in AB 473 (Maienschein, Ch. 122, Stats. 2019), and provided for periodic increases linked to the Consumer Price Index (CPI). However, the author and sponsor contend the recent adjustment began from an exceptionally low and outdated baseline, so that even with periodic CPI adjustments, the threshold will forever remain unrealistically low. As evidence for this proposition they note that the primary asset that decedents pass onto their heirs is their home, and median home prices in California are far in excess of the threshold amount. According to Zillow, as of June 23, 2024, the average home price in California is \$786,938, which is 7.2 percent higher than one year ago.⁷ In light of this, the bill seeks to revise the existing petition process to allow the primary residence of a decedent to be transferred outside of probate if that real property does not exceed \$750,000, as periodically adjusted for CPI under Section 890. The bill specifies that primary residence is not limited to the decedent’s residence at the time of their death. This is to ensure that if someone dies while living in a nursing home or with a family member due to having to seek assistance or care that residence would not be considered their primary residence for purposes of the small estate petition process authorized by the bill.

3. Statements in support

Housing and Economic Rights Advocates, the sponsor of the bill, write in support stating:

The rapid escalation of home values in California means that estates that include even a modest family home do not qualify for the small estate process. According to Zillow, the average value of a home in the state is now over \$900,000, nearly five

⁶ CLRC, *Disposition of Estate Without Administration: Dollar Amounts*, p. 2 (Aug. 2018).

⁷ California Housing Market, Zillow, <https://www.zillow.com/home-values/9/ca/> (as of Jun. 23, 2024).

times the small estate limit. In addition, while wealthier people have access to professional estate planning that allows them to arrange for the transfer of wealth after death to avoid probate, such as through a living trust, most low- and middle-income seniors do not. As a result, when they die their family must navigate the lengthy and often costly full probate process.

Having to go through probate to clear title puts heirs at risk of losing both the family home and the accompanying intergenerational transfer of assets that is so critical for low- and moderate-income households to build wealth. Increasingly, older homeowners tend to have considerable mortgage debt at the time of death and thus are more likely to leave behind a family home burdened with a high mortgage payment. Heirs may struggle to meet this debt and risk losing the home to foreclosure if they cannot quickly refinance, which they cannot do until probate is complete.

In addition, the longer heirs must wait to clear title, the more vulnerable they are to high-cost lending and equity stripping abuses. One such scheme is the offer of a high-cost loan against some portion of the heir's inheritance. Another is targeting heirs for quick sale of the property contingent on the inheritance. Both abuses frequently result in loss of the family home. There is an entire industry devoted to pursuing heirs and the property to which they may be heirs. The industry aggressively targets vulnerable people, including people with developmental disabilities, for predatory loans, something we see repeatedly in our work. Heirs may also simply end up selling the family home because the probate process is too complicated and expensive.

AB 2016 would provide for an expedited probate process for the transfer of a home with a value up to \$750,000 that was the decedent's primary residence, a level that would enable significantly more low- and middle-income heirs in California to access a faster probate process when they inherit the family home. This would save court resources and decrease opportunities for abuse during the probate process, helping to preserve intergenerational wealth while also ensuring ample protections to ensure that the expedited process does not result in the fraudulent transfer of title. Ensuring that heirs can quickly obtain title to the family home is a common sense measure that will significantly reduce unscrupulous equity-skimming schemes and preserve homeownership opportunities for families who would otherwise be priced out of the current market.

4. Statements in opposition

The California Probate Referees Association writes in opposition of the bill arguing that the bill will have serious unintended consequences. They claim that "referees throughout the state reviewed their workload over the last 12 months" and that an estimated 60 percent of residences in California are valued at under \$750,000.

They note the bill could:

- reduce the number of cases going through probate by more than 50%, thus leaving post death transfer to be managed by family members;
- lead to more litigation due to self-dealing and inter-family disputes, which could disrupt families and put unnecessary burdens on the courts;
- lacks a robust claims procedure for creditors and instead relies on a representation by the beneficiary that all unsecured debts have been paid;
- raising the limit to \$750,000 will create more opportunities for parties to game the system; and
- create more situations where title companies will be concerned about title and may be unwilling to issue a title policy without a full probate proceeding, as sometimes companies will not issue a title insurance policy where the transfer was by “set aside” and will insist on an order from the probate court approving the transfer.

The Probate Referees Association writes in opposition, stating:

The Probate Referees Association voted unanimously to oppose this bill on its merits. It does not affect our workload or income in any way. However, based on our experience it will undermine California’s highly praised probate system. [...]

These [small estate] laws are also used for small strips of land in urban locations. These can be from 30 square feet to 1,500 square feet. Typically, they are created when streets are widened, railroad rights of way are abandoned, owners divide properties either voluntarily or by partition actions. Such strips often have nominal value and the ‘set aside’ procedures are most useful. These procedures have been very successful. As set out below, we do not believe the above successes will be met by raising the exempt limit. [...]

The Probate Code provides a thorough program for notification of creditors and for creditor claims to be filed. One strength of the probate system is that creditors can file claims in court to collect obligations owed by the decedent, and a judge oversees each case so that beneficiaries or people claiming an interest in a property have a forum to be heard. Probate proceedings are public and, in fact, a notice of filing a probate must be published in a local qualified newspaper. Section 5 of the bill, Section 13200(8), discards the creditors’ claims procedure and relies on a representation by the beneficiary that all unsecured debts have been paid. This procedure will most likely lead to more litigation. [...]

Title insurance is an essential part of every real estate transaction in California. On occasion, title insurance companies will not issue a title insurance policy where the transfer was by “set aside” and will insist on an order from the probate court approving the transfer.

Obviously, raising the limit to \$750,000 will create more situations where title companies will be concerned about title and may be unwilling to issue a title policy without a full probate proceeding.

Raising the set-aside limit invites self-serving conduct. It is much less reliable than the current procedures for creditors' claims. Probate could still be required for other assets.

SUPPORT

Housing and Economic Rights Advocates (sponsor)
California Association of Realtors
California State Grange

OPPOSITION

California Probate Referee Association

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: AB 473 (Maienschein, Ch. 122, Stats. 2019) increased specified dollar amounts for a small estate to qualify for disposition without a full probate administration, and required on April 1, 2022, and at each 3-year interval ending on April 1 thereafter, that the Judicial Council adjust these dollar amounts based on CPI.

PRIOR VOTES

Assembly Floor (Ayes 72, Noes 0)
Assembly Appropriations Committee (Ayes 14, Noes 0)
Assembly Judiciary Committee (Ayes 10, Noes 0)
