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AB-2016 Decedents' estates. (2023-2024)

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Assembly Bill No. 2016

CHAPTER 331

An act to amend Sections 13100, 13101, 13150, 13151, 13152, and 13154 of, and to repeal Section 13158 of, the Probate Code, relating to estates.

[Approved by Governor September 21, 2024. Filed with Secretary of State September 21, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2016, Maienschein. Decedents' estates.

Existing law establishes procedures through which a successor of the decedent may, without procuring letters of administration or awaiting probate of the will, dispose of a decedent's real and personal property by utilizing an affidavit or declaration under penalty of perjury if the gross value of the decedent's estate does not exceed \$166,250. Existing law also establishes procedures through which a successor of the decedent may, without procuring letters of administration or awaiting probate of the will, dispose of a decedent's real property by filing a petition in the superior court if the gross value of the decedent's real property does not exceed \$166,250. Existing law excludes certain property from the determination of the value of the estate, including property held in joint tenancy. Existing law requires the Judicial Council to adjust the dollar amounts under these provisions, as specified, every 3 years.

This bill would exclude real property that was included in a petition to the superior court from the affidavit procedures. The bill would change the petition procedures to apply only to real property that was the decedent's primary residence in this state and has a gross value that does not exceed \$750,000 or the amount specified by Judicial Counsel after review. The bill would require a successor who files a petition to deliver notice of the petition to each heir and devisee named in the petition. The bill would specify that, for these purposes, "primary residence" is not limited to the decedent's residence at the time of their death.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 13100 of the Probate Code is amended to read:

13100. 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 periodically in accordance with Section 890, and if 40 days have elapsed since the death of the decedent, the successor of the decedent may, without procuring letters of administration or awaiting probate of the will, do any of the following with respect to one or more particular items of property:

(a) Collect any particular item of property that is money due the decedent.

(b) Receive any particular item of property that is tangible personal property of the decedent.

(c) Have any particular item of property that is evidence of a debt, obligation, interest, right, security, or chose in action belonging to the decedent transferred, whether or not secured by a lien on real property.

SEC. 2. Section 13101 of the Probate Code is amended to read:

13101. (a) To collect money, receive tangible personal property, or have evidences of a debt, obligation, interest, right, security, or chose in action transferred under this chapter, an affidavit or a declaration under penalty of perjury under the laws of this state shall be furnished to the holder of the decedent's property stating all of the following:

(1) The decedent's name.

(2) The date and place of the decedent's death.

(3) "At least 40 days have elapsed since the death of the decedent, as shown in a certified copy of the decedent's death certificate attached to this affidavit or declaration."

(4) Either of the following, as appropriate:

(A) "No proceeding is now being or has been conducted in California for administration of the decedent's estate."

(B) "The decedent's personal representative has consented in writing to the payment, transfer, or delivery to the affiant or declarant of the property described in the affidavit or declaration."

(5) "The current gross fair market value of the decedent's real and personal property in California, excluding the property described in Section 13050 of the California Probate Code and any property included in a petition filed under Section 13151 of the California Probate Code, does not exceed [Insert dollar amount specified in subdivision (g) of Section 13101 of the California Probate Code]."

(6) A description of the property of the decedent that is to be paid, transferred, or delivered to the affiant or declarant.

(7) The name of the successor of the decedent, as defined in Section 13006, to the described property.

(8) Either of the following, as appropriate:

(A) "The affiant or declarant is the successor of the decedent (as defined in Section 13006 of the California Probate Code) to the decedent's interest in the described property."

(B) "The affiant or declarant is authorized under Section 13051 of the California Probate Code to act on behalf of the successor of the decedent (as defined in Section 13006 of the California Probate Code) with respect to the decedent's interest in the described property."

(9) "No other person has a superior right to the interest of the decedent in the described property."

(10) "The affiant or declarant requests that the described property be paid, delivered, or transferred to the affiant or declarant."

(11) "The affiant or declarant affirms or declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct."

(b) Where more than one person executes the affidavit or declaration under this section, the statements required by subdivision (a) shall be modified as appropriate to reflect that fact.

(c) If the particular item of property to be transferred under this chapter is a debt or other obligation secured by a lien on real property and the instrument creating the lien has been recorded in the office of the county recorder of the county where the real property is located, the affidavit or declaration shall satisfy the requirements both of this section and of Section 13106.5.

(d) A certified copy of the decedent's death certificate shall be attached to the affidavit or declaration.

(e) If the decedent's personal representative has consented to the payment, transfer, or delivery of the described property to the affiant or declarant, a copy of the consent and of the personal representative's letters shall be attached to the affidavit or declaration.

(f) If the decedent dies on or after April 1, 2022, the list of adjusted dollar amounts, published in accordance with subdivision (c) of Section 890, in effect on the date of the decedent's death, shall be attached to the affidavit or declaration.

(g) (1) If the decedent dies prior to April 1, 2022, the dollar amount for paragraph (5) of subdivision (a) is one hundred sixty-six thousand two hundred fifty dollars (\$166,250).

(2) If the decedent dies on or after April 1, 2022, the dollar amount for paragraph (5) of subdivision (a) is the adjusted dollar amount, published in accordance with subdivision (c) of Section 890, in effect on the date of the decedent's death.

SEC. 3. Section 13150 of the Probate Code is amended to read:

13150. The procedure provided by this chapter may be used only if one of the following requirements is satisfied:

(a) No proceeding is being or has been conducted in this state for administration of the decedent's estate.

(b) (1) The decedent's personal representative consents in writing to use of the procedure provided by this chapter to determine that real property that was the decedent's primary residence is property passing to the petitioners.

(2) For purposes of this chapter, "primary residence" is not limited to the decedent's residence at the time of their death.

SEC. 4. Section 13151 of the Probate Code is amended to read:

13151. (a) 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 periodically in accordance with Section 890, and 40 days have elapsed since the death of the decedent, the successor of the decedent to an interest in that real property, without procuring letters of administration or awaiting the probate of the will, may file a petition in the superior court of the county in which the estate of the decedent may be administered requesting a court order determining that the petitioner has succeeded to that real property.

(b) A successor who files a petition pursuant to subdivision (a) shall deliver a notice of the petition to each heir and devisee named in the petition pursuant to paragraph (7) of subdivision (a) of Section 13152 within five business days of filing the petition.

SEC. 5. Section 13152 of the Probate Code is amended to read:

13152. (a) The petition shall be verified by each petitioner, shall contain a request that the court make an order under this chapter determining that the property described in the petition is property passing to the petitioner, and shall state all of the following:

(1) The facts necessary to determine that the petition is filed in the proper county.

(2) The gross value of the real property that was the decedent's primary residence in this state, as shown by the inventory and appraisal attached to the petition, does not exceed the dollar amount specified in subdivision (f).

(3) A description of the particular item of real property in this state that the petitioner alleges is property of the decedent passing to the petitioner and the facts upon which the petitioner bases the allegation that the described real property was the decedent's primary residence.

(4) The facts upon which the petitioner bases the allegation that the described property is property passing to the petitioner.

(5) Either of the following, as appropriate:

(A) A statement that no proceeding is being or has been conducted in this state for administration of the decedent's estate.

(B) A statement that the decedent's personal representative has consented in writing to use of the procedure provided by this chapter.

(6) Whether estate proceedings for the decedent have been commenced in any other jurisdiction and, if so, where those proceedings are pending or were conducted.

(7) The name, age, address, and relation to the decedent of each heir and devisee of the decedent, the names and addresses of all persons named as executors of the will of the decedent, and, if the petitioner is the trustee of a trust that is a devisee under the will of the decedent, the names and addresses of all persons interested in the trust, as determined in cases of future interests pursuant to paragraph (1), (2), or (3) of subdivision (a) of Section 15804, so far as known to any petitioner.

(8) The name and address of each person serving as guardian or conservator of the estate of the decedent at the time of the decedent's death, so far as known to any petitioner.

(b) An inventory and appraisal in the form set forth in Section 8802 of the real property that was the decedent's primary residence in this state shall be attached to the petition. The appraisal shall be made by a probate referee selected by the petitioner from

those probate referees appointed by the Controller under Section 400 to appraise property in the county where the real property is located. The appraisal shall be made as provided in Part 3 (commencing with Section 8800) of Division 7.

(c) If the petitioner bases the petitioner's claim to the described property upon the will of the decedent, a copy of the will shall be attached to the petition.

(d) If the decedent's personal representative has consented to use of the procedure provided by this chapter, a copy of the consent shall be attached to the petition.

(e) If the decedent dies on or after April 1, 2022, the list of adjusted dollar amounts, published in accordance with subdivision (c) of Section 890, in effect on the date of the decedent's death shall be attached to the petition.

(f) (1) If the decedent dies prior to April 1, 2022, the dollar amount for paragraph (2) of subdivision (a) is one hundred sixty-six thousand two hundred fifty dollars (\$166,250).

(2) If the decedent dies on or after April 1, 2022, through March 31, 2025, the dollar amount for paragraph (2) of subdivision (a) is the adjusted dollar amount, published in accordance with subdivision (c) of Section 890, in effect on the date of the decedent's death.

(3) If the decedent dies on or after April 1, 2025, through March 31, 2028, the dollar amount for paragraph (2) of subdivision (a) is seven hundred fifty thousand dollars (\$750,000).

(4) If the decedent dies on or after April 1, 2028, the dollar amount for paragraph (2) of subdivision (a) is the adjusted dollar amount, published in accordance with subdivision (c) of Section 890, in effect on the date of the decedent's death.

SEC. 6. Section 13154 of the Probate Code is amended to read:

13154. (a) If the court makes the determinations required under subdivision (b), the court shall issue an order determining that the real property that was the decedent's primary residence, to be described in the order, is property passing to the petitioners and the specific property interest of each petitioner in the described property.

(b) The court may make an order under this section only if the court makes all of the following determinations:

(1) The gross value of the real property that was the decedent's primary residence in this state does not exceed seven hundred fifty thousand dollars (\$750,000), as adjusted periodically in accordance with Section 890.

(2) Not less than 40 days have elapsed since the death of the decedent.

(3) Whichever of the following is appropriate:

(A) No proceeding is being or has been conducted in this state for administration of the decedent's estate.

(B) The decedent's personal representative has consented in writing to use of the procedure provided by this chapter.

(4) The property described in the order is property of the decedent passing to the petitioner.

(c) If the petition has attached an inventory and appraisal that satisfies the requirements of subdivision (b) of Section 13152, the determination required by paragraph (1) of subdivision (b) of this section shall be made on the basis of the verified petition and the attached inventory and appraisal, unless evidence is offered by a person opposing the petition that the gross value of the real property that was the decedent's primary residence in this state exceeds seven hundred fifty thousand dollars (\$750,000), as adjusted periodically in accordance with Section 890.

SEC. 7. Section 13158 of the Probate Code is repealed.