

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2021-2022 Regular Session**

AB 1716 (Maienschein)  
Version: May 16, 2022  
Hearing Date: May 31, 2022  
Fiscal: No  
Urgency: No  
AM

**SUBJECT**

Estate disposition

**DIGEST**

This bill revises rules for liability of persons who receive property, both real and personal, through the disposition of a small estate outside formal probate administration, as provided. The bill also revises when a spouse may be liable for the debts of the deceased spouse, by clarifying that a surviving spouse's liability is limited to the property received through the disposition of estates outside formal probate administration.

**EXECUTIVE SUMMARY**

Existing law provides procedures for allowing a person to receive or take property from a decedent's estate without going through formal probate administration, such as for small estates or for real property that is of small value. Additionally, existing law provides that generally a surviving spouse takes a decedent's assets without the need for formal probate estate administration. Under these procedures, a spouse or a person that takes the property outside probate administration is personally liable for any unsecured debts of the decedent and to any person with a superior claim to the property. This bill seeks to implement recommendations of the California Law Revision Commission (CLRC) regarding the liability of surviving spouses and other heirs or beneficiaries for property they receive outside of full probate administration upon the death of a decedent. The bill revises rules for liability of persons who receive property outside formal probate administration through the disposition of a small estate. Additionally, the bill clarifies when a spouse can be liable for the debts of the decedent spouse, thereby abrogating a court of appeals holding from 2010.

The bill is author sponsored. There is no known support or opposition.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Authorizes the use of an affidavit or declaration to collect a decedent's personal property outside of formal probate if the gross value of the decedent's real and personal property in this state, unless exempt, does not exceed \$166,250, subject to a periodic inflation adjustment. (Probate Code § 13100 et seq.<sup>1</sup>)
- 2) Authorizes the use of a simplified petition to collect a decedent's interest in real property in this state if the gross value of decedent's real and personal property, unless exempt, does not exceed \$166,250, subject to a periodic inflation adjustment. (§ 13151 et seq.)
- 3) Authorizes the use of an affidavit to collect a decedent's interest in real property if the gross value of all real property owned by the decedent in California, unless exempt, does not exceed \$55,425, subject to a periodic inflation adjustment. (§ 13200 et seq.)
- 4) Provides that each person to whom payment, delivery, or transfer of a decedent's property is made for a small estate without probate administration is personally liable to any person having a superior right by testate or intestate succession from the decedent. (§ 13110.)
- 5) Requires a recipient of a decedent's property collected under a procedure that allows for disposition of property without estate administration, if probate estate administration is commenced or requested by the decedent's personal representative, to return the property or, if the property was disposed of, the net income received for the property, plus interest on the fair market value of the property from the date of disposition as provided. (§§ 13111-12 and 13206-07; Code Civ. Proc. § 685.010.)
- 6) Specifies that when a spouse dies and property passes to the surviving spouse, whether by testate or intestate succession, no probate administration is required, except as specified. (§ 13500.)
- 7) Specifies that upon the death of a married person, except as otherwise provided, the surviving spouse is personally liable for the debts of the deceased spouse, chargeable against the following property:
  - a) the portion of the one-half of the community and quasi-community property belonging to the surviving spouse that is not exempt from enforcement of a money judgment and is not administered in the estate of the deceased spouse;

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<sup>1</sup> Unless specified otherwise, all further statutory references are to the Probate Code.

- b) the portion of the one-half of the community and quasi-community property belonging to the decedent that passes to the surviving spouse without administration; and
  - c) the separate property of the decedent that passes to the surviving spouse without administration. (§ 13550.)
- 8) Provides that the spouse's liability may not exceed the fair market value of the specified property at the date of the deceased spouse's death, less liens and encumbrances. (§ 13551.)
- 9) Provides that a surviving spouse is liable for the deceased spouse's one-half of the community property and quasi-community property to anyone with a superior right by testate succession. If the surviving spouse disposed of the property, the spouse is liable for the net income received for the property plus interest on the fair market value of the property from the date of disposition as provided (§ 13560 et seq.)

This bill:

- 1) Provides that if probate administration proceedings are commenced for a decedent's estate, a transferee of the decedent's property may voluntarily return the transferred property.
- a) Sets forth rules for determining what, if any, increase or decrease the transferee must pay to the estate based on whether their actions increased or decreased the value of the property.
  - b) Provides that if the transferee and the personal representative cannot agree on the reimbursement or liability due, either person may petition the court for an order determining the amount of reimbursement or liability.
  - c) Requires the court when making its decision to 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.
- 2) Authorizes a decedent's personal representative to request that property be restored to the estate if a decedent's property is transferred to a transferee under small estate disposition and the personal representative determines that another person has a superior right to the property by testate or intestate succession as provided in a)-c).
- a) If the transferee has the transferred property, restitution of the property to the decedent's estate.
  - b) If the transferee no longer has the property, restitution to the decedent's estate of the fair market value of the property, plus interest from the date of disposition of the property on the fair market value of the property, less liens and encumbrances.
  - c) If the transferee fraudulently secured the transfer, the treble damages required under existing law must first be used to pay the estate for the

cost of the proceeding to recover the property and then the remainder to the person with the superior right to the property.

- 3) Specifies that under small estate disposition the personal liability of a transferee of the decedent's property for any unsecured debts of the decedent cannot exceed the fair market value of the transferred property at the time of the affidavit or declaration necessary for the transfer is presented, less the amount of liens or encumbrances on the transferred property and any payment made as provided. Provides that a transferee is not liable if the transferee fulfills the requirements in 1) or 2) above.
- 4) Clarifies that a transferee of property from a decedent's estate is personally liable to the estate for a share of the decedent's unsecured debt if estate administration proceedings are commenced and provides rules for determining the transferee's share of the unsecured debt. Provides that a transferee is not liable if the transferee fulfills the requirements in 1) or 2) above.
- 5) Specifies that a transferee is personally liable to any person having a superior right to the transferred property by testate or intestate succession from the decedent.
  - a) Limits the personal liability to not more than the sum of the fair market value of the transferred property at the time the affidavit or declaration is presented less the amount of any liens and encumbrances on the transferred property at that time, but includes the income received from the property if that income would have accrued to the estate had the property not been transferred to the transferee. Additionally, 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 of seven percent per year.
  - b) Provides that a transferee is not liable if the transferee satisfies the requirements in 1) or 2) above.
- 6) Defines, for purposes of small estate disposition of both real and personal property, the following terms:
  - a) "transferee" a person to whom payment, delivery, or transfer of property is made under Chapter 3 (commencing with Section 13100) of part 1 of Division 8;
  - b) "transferred property" means property that is paid, delivered, or transferred pursuant to an affidavit or declaration executed under Section 13101; and
  - c) "unsecured debts" as including, but not limited to, a decedent's funeral expenses, expenses of a decedent's last illness, and wage claims.
- 7) Clarifies that a surviving spouse can be imposed liability for the debts of the decedent spouse only for:

- a) the decedent's separate property; and
- b) the decedent's share of the community and quasi-community property that passes to the surviving spouse, as provided.

### COMMENTS

#### 1. Stated need for the bill

The author writes:

AB 1716 is an important bill that will make several improvements to the transferee liability provisions, based on two recommendations of the California Law Revision Commission. The first recommendation makes improvements to the transferee liability provisions that govern the take of property from an estate of small value or the take of real property of small value. The second recommendation makes a clarifying amendment to Probate Code Section 13551, which prescribes the scope of the surviving spouse's liability for the debts of the decedent.

#### 2. Disposing of a small estate without formal probate administration

##### *a. Probate administration*

When a person dies, the decedent's assets 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.<sup>2</sup> 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, joint tenancy, and small estates.

##### *b. Small estate procedures and liability of transferee*

Existing law provides procedures for allowing a person to receive or take property from a decedent's estate without going through formal probate administration for small estates and real property that is of small values. A small estate is where the gross value of the decedent's real and personal property in this state, unless exempt, does not exceed \$166,250, subject to a periodic inflation adjustment. Real property of small value

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<sup>2</sup> Cal. Courts, *Wills, Estates, and Probate* (2022), available at <https://www.courts.ca.gov/8865.htm?rdeLocaleAttr=en> (as of May 20, 2022).

is where the gross value of all real property owned by the decedent in California, unless exempt, does not exceed \$55,425, subject to a periodic inflation adjustment.

A decedent's devisees or heirs that take property under these procedures, referred to as a transferee, are personally liable for any unsecured debts of the decedent. Additionally, 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. Under existing law, if the decedent's estate is administered under probate proceedings and property was taken or transferred under the small estate provisions, the personal representative of the decedent can require the transferred property be returned to the estate to be used to pay any obligations of the decedent or to be transferred to a person with a superior right to the property.

*c. CLRC recommendations to improve liability rules for transferees under small estate disposition*

The California Law Revision Commission (CLRC) has been studying the transfer of assets on death, including both probate and non-probate transfers as directed by the Legislature.<sup>3</sup> The CLRC reviewed the liability provisions that apply to small estate transfers outside formal probate administration as part of that long-term and ongoing study and issued a report making several recommendations to improve the provisions. This bill seeks to codify the CLRC's recommendations.<sup>4</sup> Specifically the bill:

- Eliminates the authority of the personal representative to require the return of transferred property to pay the decedent's unsecured debts, but preserves the restitution provisions for property to be returned to a person with a superior right.
- Replaces the property return rule with a provision that makes the transferee personally liable to the decedent's estate for a calculated share of the decedent's unsecured debts in order to ensure the transferee cannot avoid liability for the estate's debts.
- Makes clear that a transferee's liability for the decedent's unsecured debts includes the decedent's funeral expenses and expenses of last illness, as well as any wage claims made against the decedent's estate.
- Expressly authorizes a transferee to voluntarily return transferred property to the estate for administration.
- Provides that, if the personal representative requires the return of transferred property because there is a person with a superior right, any treble damage award for fraud would go to the person with a superior right to the property, rather than to the estate generally; however, the award

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<sup>3</sup> SCR 91 (Roth, Ch. 158; Stats. 2018).

<sup>4</sup> Cal. Law Rev. Comm., *Disposition of Estate without Administration: Liability of Transferee* (May 2020).

would first be used to reimburse the estate for the costs of the proceeding to recover the property.

- Standardizes existing rules that provide for adjustments to the value of transferred property that is returned to the decedent's estate and generalizes them to allow for an appropriate adjustment to be made in circumstances that are not directly addressed by existing law.
- Limits rules requiring restitution of income derived from transferred property to income that would have been received by the estate if it had retained possession and control of the property.

Many of these changes are similar to changes made last year to transferee liability involving real property transferred through a non-probate revocable transfer on death deed in SB 315 (Roth, Ch. 215, Stats. 2021). That bill passed this Committee on a vote of 10 to 0.

### 3. Disposing of an estate to a surviving spouse without formal probate administration

#### *a. Liability of a spouse for a decedent's debts*

Existing law allows a surviving spouse to receive property of the deceased spouse via will or intestate succession without going through formal probate administration in order to facilitate prompt transfer of the decedent's assets.<sup>5</sup> (§ 13500.) Similar to liability for a transferee under small estates, existing law provides that a surviving spouse is liable for the decedent's debts. (§§ 13550-13551.) Subdivision (b) and (c) of Section 13551 specifically provides that liability is for specified property that passes to the surviving spouse without administration.

#### *b. Kircher v. Kircher (2010) 189 Cal. App. 4th 1105, 117 Cal. Rptr. 3d 254*

A California appellate court addressed the scope of existing liability of a spouse for a decedent's debts in 2010. Specifically, the court considered whether existing rules regarding spousal liability would impose liability for property received by joint tenancy. Joint tenancy is where ownership of a property is owned by two or more persons in equal shares. (Civ. Code § 683.) Joint tenants have a right of survivorship, which means if one party to a joint tenancy dies the other joint tenants automatically receive ownership of the deceased joint tenant's right and do not have to go through formal probate administration. The court in *Kircher* found that where a surviving spouse takes property via a joint tenancy, even though it was taken outside formal probate administration, the surviving spouse would be liable for the decedent's debts under Section 13551. The court concluded that "the Legislature clearly intended that [S]ection 13551 reach all property, including property held in joint tenancy, as long

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<sup>5</sup> Cal. Law Rev. Comm, *Nonprobate Transfers: Liability of a Surviving Spouse under Probate Code Sections 13550 and 13551* (May 2019), pp. 13-14.

as it is properly characterized as community property or the decedent's separate property." (*Id.* at 1113.) If the decedent's joint tenant was not a spouse, however, then the surviving joint tenant would not be liable for the decedent's debts, effectively making a surviving spouse more liable for a decedent's debts than any joint tenant that was not a spouse.

*c. CLRC review and recommendations*

The CLRC reviewed the *Kircher* case and the legislative history of Sections 13350 and 13551 and concluded that there is no "evidence that the Legislature considered applying, or intended the liability rule to apply, to such property. To the contrary, the legislative history suggests that such an interpretation of the liability rule is in tension with prior legislative understanding and decisions regarding the liability of property conveyed by [non-probate transfers].<sup>6</sup> Furthermore, the CLRC stated that the decision was "inconsistent with the family protection policies in the Probate Code, which generally provide more favorable treatment for a surviving spouse (and children) than other recipients of the decedent's property."<sup>7</sup> The CLRC recommends clarifying existing law to "impose liability for the decedent's property only when it would, absent the statutory authorization for the surviving spouse to receive the property without administration, be subject to probate administration."<sup>8</sup> This bill seeks to implement the CLRC's recommendations to clarify that a surviving spouse's liability for the decedent's debts is limited to the property received through the disposition of estates without formal probate administration, which would exclude non-probate property. As such, this bill would effectively abrogate the holding in *Kircher*.

**SUPPORT**

None known

**OPPOSITION**

None known

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<sup>6</sup> *Id.* at 19 (footnote omitted).

<sup>7</sup> *Id.* at 20 (footnote omitted).

<sup>8</sup> *Id.* at 21 (footnote omitted).



**RELATED LEGISLATION**

Pending Legislation: None known.

Prior Legislation:

SB 315 (Roth, Ch. 215, Stats. 2021) made similar changes that this bill makes to transferee liability involving real property transferred through a non-probate revocable transfer on death deed.

AB 473 (Maienschein, Ch. 122, Stats. 2019), among other things, increased the specified dollar amounts for a small estate to qualify for disposition without a full probate administration.

**PRIOR VOTES:**

Assembly Floor (Ayes 72, Noes 0)

Assembly Judiciary Committee (Ayes 10, Noes 0)

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