

Daily Journal

Sep. 30, 2020

Navigating increased probate thresholds under Assembly Bill 473

The bill increased thresholds for “small estates” to avoid formal probate proceedings.



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As of this year, increased probate thresholds apply to decedents' estates in California.

A formal probate proceeding provides judicial oversight of the administration of a decedent's estate to ensure all debts, taxes and expenses are properly satisfied; to certify the decedent's assets are properly inventoried and appraised in the estate and to confirm the proper distribution of the decedent's estate in accordance with the decedent's wishes in the will or pursuant to intestate succession. However, the time and cost of a formal probate may not be warranted for smaller estates.

For that reason, the California Legislature enacted various procedures to administer small estates without requiring a formal probate. The Legislature has provided dollar limits in such cases, "[t]hese dollar limits serv[ing] an important function by balancing the need for judicial oversight with the need for judicial economy and the avoidance of unnecessary administration," as stated by the California Law Revision Commission in Disposition of Estate Without Administration: Dollar Amounts. The last time the Legislature reviewed and increased the dollar amounts was in 2011 with Assembly Bill 1305.

In 2019, the Legislature passed Assembly Bill 473 without opposition and it became effective Jan. 1, 2020. The dollar amounts are not only increased under AB 473 but are also adjusted for inflation every three years beginning April 1, 2022.

The small estate procedures that may avoid formal probate are described in Probate Code Sections 13100, 13150 and 13200. Those small estate procedures are available to the "successor of the decedent" and applicable to "property of the decedent." Section 13006 defines a "successor of the decedent" as the beneficiary or beneficiaries under the decedent's will (including a trust named as a beneficiary under the decedent's "pourover" will) or as the intestate heir or heirs of the decedent. Section 13005 defines the "property of the decedent" as any property that becomes part of the decedent's estate.

The small estate procedures are available only for estates under \$166,250 (2020 dollar amount). For non-real property interests, the small estate procedure is stated in Probate Code section 13100. For real property interests in excess of \$55,425 (2020 dollar amount), the small estate procedure is described in Section 13150. For real property interests under \$55,425 (2020 dollar amount), the small estate procedure is in Section 13200.

The small estate collection or transfer procedure under Section 13100 allows the decedent's successor to collect the decedent's personal property (including money, tangible personal property or evidence of a debt, obligation, interest, right, security or chose in action) without probate. This is done by giving the holder of the decedent's property an affidavit or declaration under penalty of perjury, which states:

- (1) at least 40 days have elapsed since the decedent's death,
- (2) no probate proceeding is or has been conducted,
- (3) the affiant or declarant is the successor of the decedent and
- (4) the "current gross fair market value of the decedent's real and personal property in California ... does not exceed [\$166,250]."

Under AB 473, the dollar amount for decedents passing away before April 1, 2022 is increased from \$150,000 to \$166,250. For those who pass away on or after April 1, 2022, the dollar amount will be adjusted for inflation using the Consumer Price Index for All Urban Consumers.

For a decedent's estate holding real property in excess of \$55,425, where the gross value of the decedent's real and personal property in California does not exceed \$166,250 (as adjusted for inflation), the successor of the decedent with an interest in that real property may petition for a court order determining that the petitioner has succeeded to the real property. A successor of the decedent to real property may file that petition at least 40 days after the decedent's death and after obtaining an appraisal of the real property by a probate referee. The petitioner must give notice of the hearing to heirs and interested persons and record the final order in the county where the property is located. Under AB 473, the dollar amount for this procedure increased from \$150,000 to \$166,250 for decedents who pass away before April 1, 2022. For decedent's passing away later, the dollar amount will be adjusted for inflation based on the CPI-U.

Probate Code Section 13200 provides an alternative affidavit procedure if the gross value of all real property in the decedent's estate does not exceed \$55,425 (and the entire estate does not exceed \$166,250). In that case, the decedent's successor, no sooner than six months from the date of death, files an affidavit with the probate court including an appraisal of the property by a probate referee and declaring that no probate is or has been conducted and that all funeral expenses and debts of the decedent have been paid. No hearing is required. Upon receipt of the affidavit and fee, the court clerk will determine if the affidavit is complete and then issue a certified copy of the affidavit. When recording the certified affidavit in the county where the property is located, the decedent is indexed as the grantor and the successor to the property is indexed as the grantee. Under AB 473, the dollar amount for this procedure increased from \$50,000 to \$55,425 for decedents who pass away before April 1, 2022. For decedent's passing away later, the dollar amount will be the inflation-adjusted dollar amount.

- Timing to use: 6 months after death
- Current dollar amounts under AB 473: \$55,425 until April 1, 2022, then adjusted for inflation
- 2012-2019 dollar amounts: \$50,000

Although the small estate dollar amount thresholds remain low, even as adjusted under AB 473, the inflation adjustment feature added by AB 473 provides some relief to smaller estates to minimize the time and costs of probate. Estate planning, including the use of revocable trusts, therefore remains critical for those seeking to avoid probate if their estates will exceed the small estate dollar amounts.

The small estate procedures, timelines for use, the current dollar amounts under AB 473, and the historic dollar amounts are as follows:

Small estate affidavit (PC Section 13100)

- Timing to use: 40 days after death
- Current dollar amounts under AB 473: \$166,250 until April 1, 2022, then adjusted for inflation
- 2012-2019 dollar amounts: \$150,000

Petition for disposition of real property (PC Section 13150)

- Timing to use: 40 days after death
- Current dollar amounts under AB 473: \$166,250 until April 1, 2022, then adjusted for inflation
- 2012-2019 dollar amounts: \$150,000

Affidavit re real property of small value (PC Section 13200)