

CALIFORNIA PRACTICE GUIDE PROBATE 2025 UPDATE

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These Highlights summarize the most significant developments over the past year. The paragraph numbers are keyed to the 2025 edition of the Practice Guide where the topics are discussed in greater detail. Our cut-off date for this Update was June 1, 2025. Some of the new cases cited were not final as of that date, so be sure to check the subsequent histories before citing or relying on them.

Thank You! As always, we appreciate your comments and suggestions regarding this Practice Guide. *Please keep them coming!*

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2025 UPDATE HIGHLIGHTS

CHAPTER 1

PRELIMINARY CONSIDERATIONS

Accepting Employment

[1:18] **Malpractice liability for allegedly negligent will drafting:** An attorney who drafts a will is not subject to malpractice liability to nonclient potential beneficiaries in the absence of an executed will expressly reflecting the testator's intent to benefit the nonclient. [See *Grossman v. Wakeman* (2024) 104 CA5th 1012, 1025, 325 CR3d 163, 172-173—verdict against attorney for malpractice reversed as evidence of trustor's alleged intent to leave his estate to his grandchildren (but whose estate plan, drafted by the defendant, disinherited them) "not clear, certain, and undisputed"]

Premortem Planning

[1:48.5a] **Mental capacity presumed:** There is a rebuttable presumption affecting the burden of proof that "all persons have the capacity to make decisions and to be responsible for their acts or decisions." [See *Herren v. George S.* (2025) 109 CA5th 410, 423-424, 330 CR3d 458, 466]

Predeath Tax Planning

[1:197] **Annual exclusion gifts:** Under federal tax law, taxpayers are allowed a \$19,000 *per donee* annual exclusion from gift tax. Thus, they may make yearly gifts of present interests to various individuals without incurring transfer tax, so long as no one person is given more than \$19,000 by any one taxpayer in any one year (\$38,000 if a joint gift from spouses). [IRC §2503(b); Rev.Proc. 2024-40]

CHAPTER 2

ALTERNATIVES TO PROBATE

Summary Administration

[2:3.1] **Employment compensation:** The Probate Code authorizes the summary collection of a limited amount of employment compensation (generally up to \$20,875 net, as adjusted periodically pursuant to Prob.C. §890) owed to a deceased spouse or domestic partner. [Prob.C. §13600(a)]

[2:6] **Estates not exceeding \$208,850—Collection or Transfer of Personal Property by Affidavit [Prob.C. §§13100-13115]:** Prob.C. §§13100-13115 set forth a relatively simple procedure for the nonprobate distribution of a decedent's *personal property*. Decedent's testate beneficiaries and/or heirs at law may make their claims and take title (assuming no conflicting claims) simply by presenting a statutorily-prescribed affidavit to the holders of the property. [Prob.C. §§13100-13115]

The summary affidavit procedure set forth in Prob.C. §13100 *excludes* from the calculation of the limitation on the gross value of a decedent's estate subject to this procedure (currently \$208,850) any property included in a petition filed under Prob.C. §13151, which sets forth a pro-

cedure for determining title to a decedent's primary residence in this state valued at not more than \$750,000. [Amended Prob.C. §13100]

[2:28.1a] **Summary transfer of real property of "small value" by affidavit or declaration [Prob.C. §§13200-13210]:** If the total gross value of all of decedent's California realty does not exceed \$69,625, the successors in interest may obtain marketable title by filing with the court and recording a statutory affidavit in compliance with Prob.C. §13200 et seq. A declaration under penalty of perjury that is not in compliance with the statute is not sufficient. [Prob.C. §13200]

[2:28.40] **Court order determining succession to decedent's "primary residence" (Prob.C. §§13150-13158):** Title to decedent's "primary residence" may be cleared by court order under Prob.C. §13150 et seq. The term "primary residence" is not limited to decedent's residence at the time of death. [Amended Prob.C. §13150(b)]

Comment: The broadening of Prob.C. §13151 et seq. procedure and application solely to the transfer of a decedent's "primary residence" not exceeding \$750,000 in gross value (as periodically adjusted) represents the Legislature's attempt to simplify the procedure for transfer of, and avoiding probate administration for estates consisting primarily of, decedent's primary residence and, if applicable, personal property worth no more than \$208,850 in gross value (as periodically adjusted), which can be transferred pursuant to Prob.C. §13100 et seq.

Prior to the Legislature's amendment of Prob.C. §13150, that procedure could be used for both personal and real property, assuming the applicable gross value limits were not exceeded. That is no longer the case. Note that the Prob.C. §13100 procedure continues to apply only to personal property subject to the gross value limitation (currently \$208,850) and that the §13150 procedure is now available only for real property that was decedent's primary residence. Real property of small value may continue to be set aside pursuant to the affidavit procedure set forth in Prob.C. §13200.

[2:29] **Nonprobate transfer of vehicles and other State-registered property by declaration:** Vehicles and specified state-registered property (mobilehomes, boats, floating homes, etc.) are excluded in calculating the \$208,850 "gross value" limit for nonprobate transfers under Prob.C. §13100 (personal property) and Prob.C. §13151 (real property that was decedent's primary residence). [Amended Prob.C. §13050(b)]

[2:30.1] **Small estate set-aside to surviving spouse/registered domestic partner and/or minor children (Prob.C. §§6600-6615):** Subject to court approval, an estate of real and/or personal property not exceeding \$107,900 in net value (as adjusted periodically in accordance with Prob.C. §890) may be "set aside" to decedent's surviving spouse or registered domestic partner and/or minor children without a formal probate. The court's order is obtained by filing a petition and an inventory and appraisal; and the spouse/domestic partner/minor children distributees become personally liable for decedent's debts to the extent of the net value of the property they receive. [Amended Prob.C. §6600 et seq.]

Inter Vivos Trusts

[2:110] **Trust contest subject to elective probate court**

jurisdiction: A settlor’s establishment and maintenance of an inter vivos trust may be challenged on the same grounds as any donative transfer—e.g., lack of capacity, undue influence, fraud, duress, menace, etc. [See *Hamlin v. Jendayi* (2024) 105 CA5th 1064, 1076-1077, 326 CR3d 496, 504-505]

CHAPTER 3

COMMENCING PROBATE PROCEEDINGS

Probate Jurisdiction and Venue

[3:47.1] **Continuing jurisdiction to correct “extrinsic fraud” by set-aside order:** A court sitting in probate has continuing equitable jurisdiction to set aside final probate orders obtained through “extrinsic fraud.” [See *California Capital Ins. Co. v. Hoehn* (2024) 17 C5th 207, 225, 327 CR3d 172, 185-186—motion to vacate default judgment for improper service not subject to CCP §473.5 two-year time limit]

[3:54] **Supplemental jurisdiction over related claims:** Once probate court jurisdiction attaches over a decedent’s estate, the court may determine *all* claims in and to, for and against and affecting the estate . . . even if those controversies would be beyond its jurisdiction if asserted independently. In other words, as courts of “general jurisdiction,” probate courts may exercise “supplemental” (or “concomitant”) general jurisdiction over related claims whether or not expressly authorized by the Probate Code. [See *Bunker v. Buccinio* (CD CA 2024) 2024 WL 4600430, *3—probate court had jurisdiction over tort case]

[3:60.29g] **“Probate exception to federal court jurisdiction:** The probate exception did not preclude bankruptcy court from determining whether debtor inherited real property by intestate succession making the property part of debtor’s bankruptcy estate versus defendant’s claim that the property had not been transferred to them before their mother’s death and did not pass by intestacy—property was not part of the res distributed by the probate court. [*In re Williams* (6th Cir. 2025) 2025 WL 454925, *2; see also *Tabb v. Wood* (CD CA 2024) 2024 WL 5185391, *2—allegations that property should be within an estate but are not do not fall within the probate exception]

Petition for Probate

[3:83.2-83.3] **Standing to file—“interested persons”:** Heirs, devisees, children, a spouse (or registered domestic partner, see Fam.C. §297.5(c)), creditors, beneficiaries, and any other person having a property right in or claim against a trust estate or the estate of a decedent *that may be affected by the particular proceeding* are all “interested persons.” [Prob.C. §48(a)(1); see *Hamlin v. Jendayi* (2024) 105 CA5th 1064, 1076-1077, 326 CR3d 496, 504-505—*potential intestate heirs* have standing to contest trust; *Estate of Tarlow* (2025) 109 CA5th 124, 131, 330 CR3d 178, 184]

CHAPTER 6

MARSHALING AND INVENTORYING ASSETS

Digital Assets

[6:46.11a] **Revised act extended to conservators and agents:** Effective January 1, 2025, the Revised Uniform Fiduciary Access to Digital Assets Act has been broadened to be made applicable to any fiduciary acting under a power of attorney and to conservators. [Amended Prob.C. §§871(l), (q), (x), & (z), 872(5), (6); and New Prob.C. §§879.1, 879.3]

CHAPTER 7

FAMILY PROTECTION

Omitted Spouses/Domestic Partners and Children

[7:136] **Property affected:** Prob.C. §21600 et seq. applies to all of a decedent's property, regardless of whether it passes by will through the decedent's estate or by a trust that becomes irrevocable only upon the settlor's death. [See Prob.C. §§21600, 21601(a)—“testamentary instruments” means decedent's will or revocable trust; but see *Reich v. Reich* (2024) 105 CA5th 1282, 1289-1291, 326 CR3d 570, 575-576—omitted surviving spouse *not* entitled to share of property passing outside decedent's “probate estate” or property that does not pass through a revocable trust that becomes irrevocable upon decedent's death; thus, omitted spouse not entitled to share of IRA proceeds where IRA beneficiaries were separate trusts created by testamentary trust, rather than testamentary trust itself]

[7:155.1] **Burden of proof:** An omitted child who was living when their parent's testamentary instruments were executed bears the burden of proving the parent believed the child was dead or was unaware of the child's birth, in order to obtain a distribution contrary to the terms of the parent's testamentary instruments. [See *Estate of Williams* (2024) 104 CA5th 374, 379, 324 CR3d 406, 408-409]

CHAPTER 8

CREDITORS' CLAIMS

Procedures for Filing, Approval and Rejection of Claims

[8:124.3] **Effect of arbitration decision:** Prob.C. §9621 arbitration must be conducted pursuant to CCP §1280 et seq. Most significantly, this means that there ordinarily is *no right to trial de novo* or any judicial review on the merits. Except to the extent the parties have clearly agreed otherwise (*Valencia v. Mendoza* (2024) 103 CA5th 427, 440-441, 322 CR3d 903, 913), court review lies only on limited statutory grounds to “vacate” or “correct” the award (CCP §§1285, 1286.2, 1286.6) and such relief is available only by petition served and filed within 100 days of service of a copy of the award (CCP §1288).

Handling Special Types of Creditor Claims

[8:169] **Statute of limitations—one-year extension for insured claims:** If the limitations period otherwise applicable to the action

has not expired at the time of decedent's death, an action under Prob.C. §550 et seq. may be commenced within *one year* after expiration of the limitations period otherwise applicable; the CCP §366.2 statute of limitations does *not* apply. [Prob.C. §551; but see *Hastings v. Price* (CD CA 2024) 2024 WL 4843950, *3-4—conclusory allegation upon information and belief that insurance exists because decedent was entitled to indemnification not sufficient to raise reasonable expectation that insurance covered estate for purposes of Prob.C. §551 because indemnification agreement not “insurance” under statute]

Procedures for Payment of Established Claims and Debts

[8:268.2] **Trustee not bound to preserve trust assets for satisfaction of pending claims:** Mere timely filing of a *claim* will not prevent the trustee from distributing trust property; and (in the absence of a prior restraining order) the trustee may not be surcharged for making otherwise appropriate distributions to beneficiaries under the terms of the trust while a lawsuit is pending against the estate. Until the creditor's claim is *reduced to judgment*, the trustee's duty with regard to trust distributions runs solely to the trust beneficiaries. [But see *M&E Brothers, LLC v. Estate of Hortman* (SD CA 2024) 2024 WL 3463641, *3—such a distribution may violate the common law or statutory provisions prohibiting fraudulent conveyances]

CHAPTER 10

FEDERAL ESTATE TAX

Preliminary Considerations

[10:5.1] **“Applicable exclusion amount”:** For purposes of calculating the unified credit against estate tax, the basic exclusion amount for estates of decedents dying and gifts made in 2025 is \$13,990,000, plus any unused exclusion amount of a predeceased spouse (who died after 12/31/10) if the personal representative of the predeceased spouse has so elected; this is the concept generally known as “portability.” [See IRC §2010(c); Rev.Proc. 2024-40]

Federal Estate Tax: Statutory Framework

[10:41] **Lifetime gifts with “strings of ownership” retained:** [See *Estate of Fields v. Comm'r*, TC Memo 2024-90—taxpayer's right to participate in liquidation of limited partnership resulted in right to designate beneficial enjoyment within scope of IRC §2036]

[10:155.13] **Marital deduction—effect of surviving spouse's transfer of interest in QTIP property:** Once an election has been made and a marital deduction allowed with respect to QTIP property, a surviving spouse's transfer of any interest in that property triggers gift tax on the remainder interest. [IRC §§2519, 2511; see *Estate of Anenberg v. Comm'r* (2024) 162 TC No. 9—judicial termination of QTIP trust and distribution to surviving spouse is *not* gift by surviving spouse (assuming IRC §2036 is triggered, any deemed transfer of remainder interest is offset by surviving spouse's receipt of QTIP) and *bona fide* sales of assets that surviving spouse received upon termination of QTIP is *not* gift]

[10:224] **Special use valuation (IRC §2032A):** Qualifying real property

may then be valued at its “current use” (as opposed to its highest and best use). However, the election may not reduce the gross estate by more than \$1,420,000 for decedents dying in 2025. [IRC §2032A(a)(3); see Rev.Proc. 2024-40]

CHAPTER 12

DEATHBED AND POSTMORTEM PLANNING AND FIDUCIARY INCOME TAX CONSIDERATIONS

Deathbed Planning

[12:25] **“Per donee” annual exclusion gifts:** The IRC allows an annual per donee exclusion of \$19,000 for gifts of present interests in property (double the amount, or \$38,000 for 2025, for married donors who agree to “split” the gifts in question). [IRC §2503(b); Rev.Proc. 2024-40]

[12:26] **Unified credit:** A gift of more than the per donee annual exclusion amount (\$19,000 for 2025) to a particular donee in a given year, or a gift of any future interest, whatever its value, will be taxable and will require the filing of a gift tax return. However, the applicable credit amount (sometimes also referred to as the unified credit amount) will be available so that no tax need actually be paid for taxable lifetime gifts of up to \$13,990,000 in 2025 (plus, if applicable, the unused lifetime exemption amount of a predeceased spouse who died after 2010). [See IRC §2505; Rev.Proc. 2024-40]

The Estate’s Income Tax Returns

[12:212] **Liability for payment:** The estate representative (“fiduciary”) is responsible for payment of the tax and may be personally liable for the tax. [IRC §641(b); Treas.Reg. §1.641(b)-2]

The government has the burden of proving the existence of the three elements of fiduciary liability:

- the executor transferred assets of the estate;
- the estate was insolvent at the time of the transfer or the transfer rendered the estate insolvent; and
- the executor had notice of the government’s claim. [*United States v. Lipson* (D NV 2025) 2025 WL 947530, *4—personal representative’s estate liable for estate tax deficiency where personal representative had formed and transferred estate assets to a limited partnership to protect estate assets from creditors]

[12:291.10] **3.8% Medicare Surtax:** The 3.8% Medicare Surtax is imposed on the undistributed net investment income (UNII) of an estate or trust, to the extent that adjusted gross income exceeds a certain threshold. The threshold, which is subject to adjustment each year, is \$15,560 for 2025. [See Rev.Proc. 2024-40]

CHAPTER 14

SPECIAL PROBLEMS IN PROBATE ADMINISTRATION

Partition of Undivided Interests in Property

[14:226] **Civil partition proceedings generally:** When the decedent’s

estate includes an *undivided interest* in commonly owned property, the surviving co-owners' interests are obviously not part of the decedent's probate estate. To effect a severance of *decedent's* interest, the estate representative may commence an independent civil action as plaintiff, or the other cotenants may commence a civil partition action against the representative as defendant. Such actions are maintained under CCP §872.010 et seq.—outside probate. [See *Amundson v. Catello* (2025) 111 CA5th 817, —, — CR3d —, — (2025 WL 1563241, *5) (citing text)]

[14:229] **Personal representative may sue or be sued for partition order:** Where the decedent has left an undivided interest in any property, a partition action may be brought by the personal representative against the other cotenants or by the other cotenants against the personal representative. [Prob.C. §9823(a) & (b); *Amundson v. Catello* (2025) 111 CA5th 817, —, — CR3d —, — (2025 WL 1563241, *6)—potential heirs lacked standing to pursue partition claim against surviving co-owner of property where personal representative was not a party to the action and their interests in the property had not yet been determined by the probate court]

CHAPTER 15 LITIGATION

Will Contests

[15:62.11] **No standing where omission of child apparent from will:** Decedent's failure to provide for a child in decedent's will (or other "testamentary instrument") was intentional and that intention is apparent from the will (or other "testamentary instrument"). [Prob.C. §21621(a); see *Estate of Williams* (2024) 104 CA5th 374, 379, 324 CR3d 406, 408—current law now presumes that preexisting child's recovery is conditional upon the child showing that testator was unaware of the child's birth *and* that child was not provided for *solely* because of that lack of awareness]

[15:83] **Nature and purpose of "no-contest clause":** Although once found only in wills, no-contest provisions are now regularly included in inter vivos trust instruments as well. But the purpose is the same in either context—i.e., to discourage contests to the will or trust document by imposing a "penalty" or "forfeiture" against beneficiaries who might otherwise be tempted to challenge the dispositive instrument. [See *Key v. Tyler* (2024) 102 CA5th 365, 379-381, 321 CR3d 487, 497-499—forfeiture imposed under no contest clause of original trust extended to assets specified in amendment to trust that did not itself contain a no contest clause]

Alternatives to Will Contest

[15:111.1] **CCP §366.3 one-year statute for claims arising from alleged distribution agreement (post-2000 deaths):** The CCP §366.3 one-year statute applies specifically to all claims to distribution from an estate or trust, or under other instrument, arising from an oral or written promise or agreement with a decedent. Any action on such a claim must be brought within *one year of decedent's date of death*; and any otherwise applicable statute of limitations "does not apply."

[CCP §366.3(a), (c); see *Smith v. Myers* (2024) 103 CA5th 586, 593-594, 323 CR3d 157, 163—CCP §366.3 one-year statute of limitations did *not* apply to action brought by settlor’s daughter confirming validity of purported amendment to trust granting daughter remaining fractional interest in ranch, a portion of which settlor had given daughter during his lifetime; statute held to applied *only* to claims arising from promise or agreement with decedent to distribution from estate or trust or under another instrument rather than to claims based *solely* on the very instrument *effectuating* the distribution]

Testamentary intent

- [15:118.8] **Test—intent to dispose of property upon death:** The basic test of testamentary intent is whether the testator intended by the particular instrument to create a disposition of property effective only upon death; no “magic” words are necessary. [Compare *Trotter v. Van Dyck* (2024) 103 CA5th 126, 134-135, 322 CR3d 622, 628-629—trustor’s writings (emails and Questionnaire/Estate Plan Data Sheet) did not show intent to that trust be modified by those writings themselves, but were drafted in anticipation of formal amendment]
- [15:161.6] **Reformation following clear and convincing proof of mistake:** An unambiguous will may be reformed to achieve the testator’s intent, provided that intent is proven by *clear and convincing evidence* establishing that the will contains a mistake in the testator’s expression of intent at the time the will was drafted and also establishes the testator’s *actual, specific intent* at the time the will was drafted. [See *Packard v. Packard* (2025) 108 CA5th 1284, 1294-1295, 330 CR3d 203, 210 (same re trust)]

Wrongful Death and Personal Injury Actions “Surviving” to the Estate

[15:447] **Wrongful death claimants possibly subject to agreement to arbitrate medical malpractice and elder abuse claims:** Just as wrongful death claimants may be bound by a decedent’s preinjury liability waiver, they may also be bound by decedent’s *agreement to arbitrate* medical malpractice claims against a health care provider under CCP §1295. [But see *Hearden v. Windsor Redding Care Ctr., LLC* (2024) 103 CA5th 1010, 1022, 324 CR3d 33, 45—motion to compel arbitration of elder abuse, wrongful death and related claims brought by deceased patients’ survivors against skilled nursing facility *denied* because agreements to arbitrate signed by family members and not by decedents or person authorized to do so]

Elder and Dependent Adult Abuse Claims (Welf. & Inst.C. §15600 et seq.)

[15:532] **Standing to bring elder abuse action:** The Elder Abuse Act authorizes an action not only by the elder, but also by the elder’s “personal representative” (conservator, trustee, attorney-in-fact) when the elder is alive but lacks capacity (Prob.C. §812), or is of unsound mind, but not entirely without understanding (Civ.C. §38). [Welf. & Inst.C. §§15610.30(d), 15657.6; *Herren v. George S.* (2025) 109 CA5th 410, 424-425, 330 CR3d 458, 467—trustee and attorney-in-fact had standing to bring action on elder’s behalf without capacity determination; and see *Asaro v. Maniscalco* (2024) 103 CA5th 717, 726-727,

323 CR3d 275, 283-284—beneficiary of decedent’s irrevocable trust had standing to bring elder abuse action on decedent’s behalf; standing to bring elder abuse action is *not* limited solely to “successors in interest” (harmonizing Welf. & Inst.C. §15657.3(d)(1)(B) and CCP §377.11)]

[15:540] **Restraining orders:** In an appropriate case, a restraining order against an abuser is also available under the Act. [Welf. & Inst.C. §15657.03; *Herren v. George S.* (2025) 109 CA5th 410, 427, 330 CR3d 458, 469]

[15:600] **Optional lis pendens if proceeding involves real property:** If the petition affects real property, either party may file a notice of pendency of the proceeding (“lis pendens”) pursuant to CCP §405 et seq. (the same procedure governing lis pendens in civil actions generally). [Prob.C. §1004; *Newell v. Sup.Ct. (Rollins)* (2024) 107 CA5th 728, 734, 328 CR3d 322, 326]

Proceeding to Determine Distribution Rights (Prob.C. §11700)

[15:669] **Standing—beneficiaries and distributees:** The Code specifically confers standing on “any person claiming to be a beneficiary or otherwise entitled to distribution of a share of the estate” (“beneficiary” for this purpose includes intestate heirs; see Prob.C. §24(a)). [Prob.C. §11700; see *Estate of Tarlow* (2025) 109 CA5th 124, 130-131, 330 CR3d 178, 183-184—trustee of trust created by the will has standing as devisee entitled to distribution from estate]

CHAPTER 16

ACCOUNTINGS, DISTRIBUTIONS, COMPENSATION AND DISCHARGE

Representative’s Accountings

[16:201] **Reliance on counsel as a defense in surcharge litigation:** The issue may turn on whether the representative’s reliance was on a matter of law or a matter of fact. It *may* be that good faith reliance on counsel’s advice as to *legal* issues will excuse the representative’s errors and omissions in probate administration. [See *Murphy v. United States* (ED CA 2025) 2025 WL 535666,*8]

Payment of Estate Obligations, Final Distribution and Discharge

[16:405] **Petition for final distribution—burden of proof:** A representative filing a petition for distribution in their *representative capacity* *only* does *not* bear the burden of proving who is entitled to distribution . . . since the representative (as such) does not have an “interest” in the distribution. Rather, the burden is on those contesting the proposed distribution to prove their lawful right to the property in dispute. [See *Estate of Williams* (2024) 104 CA5th 374, 378-380, 324 CR3d 406, 408-409]

[16:498.1] **Right to disclaim extends to vested and contingent interests:** A beneficiary may disclaim any interest, vested or contingent, provided that the interest has not already been accepted. However, the presumption that disclaimers are valid is not conclusive. [*Estate of Tarlow* (2025) 109 CA5th 124, 131, 330 CR3d 178, 184—trustee

of testamentary trust has standing to challenge disclaimer under Prob.C. §11700]

[16:517.9-517.9a] **Federal preemption—ERISA benefits:** [See *Cannon v. Blue Cross & Blue Shield of Mass.* (1st Cir. 2025) 132 F4th 86, 89-90—ERISA preempts state wrongful death actions based on an insurer’s denial of benefits under ERISA-governed plan; *Standard Insurance Co. v. Guy* (6th Cir. 2024) 115 F4th 518, 527—federal common law slayer rule precluded son convicted of murdering insured from recovering benefits]

[16:517.13] **Deceased personality’s “rights of publicity”:** Civil Code §3344.1 confers certain rights to a deceased personality’s name, voice, signature, photograph or likeness. The statute in turn imposes penalties and permits recovery of damages and profits for the unauthorized use of those rights by the personality’s successors in interest or licensees. This statutory right of publicity “is a property right, freely transferable and descendible; and in the absence of an express testamentary transfer, could pass through the residual clause in the will of the deceased personality.” [Amended Civ.C. §3344.1 (amended to address digital replicas)]

Special Rules Affecting Distribution of Shares and Amounts

[16:521.2] **Transferor’s intention controls:** With respect to all rules of construction, the transferor’s intention “as expressed in the instrument controls the legal effect of the dispositions made in the instrument.” [Prob.C. §21102(a); see *Reich v. Reich* (2024) 105 CA5th 1282, 1292, 326 CR3d 570, 577-578]