

ALTERNATIVES TO PROBATE

Scope Note: Virtually every decedent leaves some property, or interests in property, that may be transferred to their successors in interest outside probate. Often, these “probate alternatives” eliminate the need for *any* estate administration proceedings; but even if some of the estate must be probated, other assets may qualify for immediate disposition without probate delay. Counsel must always consider the availability of less complicated and less expensive *alternatives* to formal estate administration. This Chapter discusses the available options.

A. SUMMARY ADMINISTRATION

1. [2:1] **Overview:** In certain circumstances, some or all of decedent’s assets may qualify for “summary probate,” “summary collection” or “set-aside proceedings.” These procedures shortcut what could otherwise be a lengthy and more costly formal estate administration.
 - a. [2:2] **“Small estates” and “nominal” property interests:** Various statutes simplify the probate of *very small estates* or property interests of nominal value.
 - Collection or transfer of personal property by affidavit. [Prob.C. §§13100-13115]
 - Delivery of undisputed tangible personal property to specified persons. [Prob.C. §330]
 - Transfer of real property of “small value” by affidavit. [Prob.C. §§13200-13210]
 - Summary court determination of succession to decedent’s personal residence. [Prob.C. §§13150-13158]
 - Small estate set-aside to surviving spouse or registered domestic partner and/or minor children. [Prob.C. §§6600-6614]
 - b. [2:2.1] **Vehicles and state-registered property:** If the estate otherwise qualifies to pass outside probate, related provisions of the Vehicle Code and the Health and Safety Code authorize the nonprobate transfer of vehicles and other state-registered property (mobilehomes, manufactured homes, undocumented vessels, etc.). [Veh.C. §§5910, 9916; Health & Saf.C. §18102]
 - c. [2:3] **Spousal/domestic partnership property:** Estates of married or registered domestic partner decedents consisting of community property, quasi-community property and/or separate property passing outright to the surviving spouse or surviving registered domestic partner may qualify for a summary “spousal or domestic partner property set-aside” regardless of their size. [Prob.C. §13500 et seq.; Fam.C. §297.5(c)]

[2:3.1 — 2:6]

Special statutes also govern the nonprobate transfer of various community property interests. [See Prob.C. §§5010-5015, 5020-5023, 5030-5032, *discussed in Ch. 4*]

- d. [2:3.1] **Employment compensation:** The Probate Code also 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)]

The dollar limit set forth in §13600 does not apply to the surviving spouse of a firefighter or peace officer. [Prob.C. §13600(d); Gov.C. §22820(a)]

This procedure is initiated with an affidavit signed by the surviving spouse or domestic partner, or the guardian or conservator of their estate. [Prob.C. §13600 et seq.; Fam.C. §297.5(c); *see detailed discussion at ¶4:52 ff.*]

- e. [2:4] **Estates of “absent federal personnel”:** There are special procedures for the set-aside of small personal property estates of “absent federal personnel.” [Prob.C. §§3701-3708, 3710-3712]

- f. [2:4.1] **Summary administration by public administrator:** Under specified conditions, when no personal representative of a decedent’s estate has been appointed, the public administrator may be required to take charge of and administer the estate (Prob.C. §7600 et seq.). In such event, “summary administration” procedures may be available to the public administrator; but special rules apply (Prob.C. §7660); *see ¶12:105.2 ff.*

[2:5] Most of the summary distribution and set-aside procedures are explored in this Chapter. Spousal/domestic partner property set-asides (Prob.C. §13500 et seq.) raise more complex problems and are treated separately in *Ch. 4*, along with the nonprobate transfer of community property (Prob.C. §5010 et seq.) and collection-of-compensation-by-affidavit procedures (Prob.C. §13600 et seq.).

2. [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 procedure for determining title to a decedent’s primary residence in this State worth not more than \$750,000 (¶2:28.40 *ff.*). [Prob.C. §13100]

- a. [2:6.1] **Property collectible:** Assuming the estate's gross fair market value does not exceed the \$208,850 limit (§2:7 ff.), decedent's successors in interest may use the §13100 procedure to:
 - Collect *money* due decedent;
 - Receive decedent's *tangible personal property*; and/or
 - Have transferred any "evidence of a debt, obligation, interest, right, security, or chose in action" (whether or not secured by a lien on real property) belonging to decedent. [Prob.C. §13100]
- (1) [2:6.1a] **Not real property:** Title to real property may *not* be transferred under this procedure. See §2:7.1.
 - (a) [2:6.1b] **Compare—excess proceeds of tax default sale collectible under §13100:** A decedent's heirs are specifically authorized to use the Prob.C. §13100 affidavit procedure to claim excess proceeds due the decedent following the sale of tax-defaulted real property. [Rev. & Tax.C. §4675(f); and see *Carlross v. County of Alameda* (2015) 242 CA4th 116, 128, 194 CR3d 784, 792—successor in interest to deceased taxpayer may establish title of record with evidence other than a recorded grant deed]
- b. **Threshold prerequisites**
 - (1) [2:6.2] **No probate proceeding or personal representative consents:** Notwithstanding the value of the estate, the Prob.C. §13100 procedure may be used *only* if (a) *no probate proceeding* is currently pending or has been conducted for the estate in California; *or* (b) decedent's personal representative *consents in writing* to transfer of the property described in the §13100 affidavit or declaration. [Prob.C. §§13101(a)(4)(A), (B), 13108(a)]

(A §13100 summary distribution does not preclude a *subsequent probate administration* of decedent's estate—typically, when necessary to enforce payment of decedent's debts; see §2:27.3 ff.)
 - (a) [2:6.2a] **"Probate proceeding" narrowly defined:** For this purpose, "probate proceedings" do *not* include (i) petitions for administration that were dismissed before appointment of a personal representative; (ii) summary set-aside proceedings under Prob.C. §§13100, 13150, 13200 and 13500; or (iii) actions or proceedings commenced in other states. [See Prob.C. §13007]

Moreover, even where a California petition for probate has been filed, qualified estates are not prevented

[2:6.2b — 2:7]

from proceeding under the §13100 summary set-aside procedure . . . *provided* no personal representative has yet been appointed and the probate petition is dismissed. [See Prob.C. §13007 (defining “proceeding”)]

1) [2:6.2b] **Comment:** This leeway is helpful in cases where, after opening a probate, counsel discovers Prob.C. §13100-eligible assets previously thought to be held in some other form (e.g., in trust or joint tenancy), or that assets otherwise subject to probate fall within the §13100 statutory ceilings.

(2) [2:6.3] **40-day wait:** Also, the procedure may not be utilized until at least *40 days* have elapsed since the date of the deceased owner’s death. [Prob.C. §13100] (This rule is consistent with the 40-day wait applicable to the summary transfer of certain state-registered property, ¶2:29.15 ff.; and with the 40-day hold on a surviving spouse’s power to deal with and dispose of real property, ¶4:32.)

(a) [2:6.4] **Compare—Prob.C. §330 “delivery” of decedent’s tangible personalty:** Another statute, Prob.C. §330, authorizes specified entities and individuals in possession of decedent’s tangible personal property at time of death to “deliver” that property to decedent’s surviving spouse, conservator or guardian without waiting 40 days and regardless of the value of the estate. *See* ¶2:27.15 ff.

c. [2:7] **Limited to maximum \$208,850 estates:** Personal property qualifies for Prob.C. §13100 summary collection only if the total “*gross fair market value*” of decedent’s real and personal property in California (excluding Prob.C. §13050 (¶2:8 ff.) and Prob.C. §13150 property (¶2:28.40 ff.)) *does not exceed* the dollar amount specified in subdivision (g) of Prob.C. §13101. [Prob.C. §13101(a)(5)]

Prob.C. §13101(g) in turn provides that the dollar amount for §13101(a)(5) is the adjusted dollar amount published in accordance with Prob.C. §890(c) in effect on the date of decedent’s death (currently \$208,850). [Prob.C. §13101(g)]

Pursuant to Prob.C. §890(c), the Judicial Council has published its list of “Maximum Values for Small Estate Set-Aside & Disposition of Estate Without Administration” (DE-300), which sets forth the adjusted maximum value amounts, applicable to decedents dying on or after April 1, 2022, for each of the summary procedures discussed in this Practice Guide. This form is available online at the California Courts website (www.courts.ca.gov). This form *must* be attached to: (1) an af-

fidavit or declaration furnished under Prob.C. §13101; (2) a Petition to Determine Succession to Primary Residence (Form DE-310) filed under Prob.C. §13151; (3) an Affidavit Re Real Property of Small Value (Form DE-305) filed under Prob.C. §1200; or (4) an affidavit or declaration furnished under Prob.C. §13601.

- (1) [2:7a] **Comment:** The Legislature has never clarified whether the reference to “current” gross fair market value permits or requires the subject real and personal property to be valued as of the date of decedent’s death or at the time the §13100 declaration is made. However, since the language (“current gross fair market value”) is unambiguous, and the Legislature had an opportunity to revise the language in the 2019 legislation, and in the years since, it is the authors’ view that the phrase should be literally applied to permit or require the subject valuations to be made as of the date of the declaration. If this interpretation is correct, it should then be possible to clear qualifying property for a decedent who died some years earlier (for example, in 2017) without an ensuing probate, but whose assets have never been properly transferred, and yet now (for example, in 2026) have a value within the statutorily prescribed maximum limit.
- (2) [2:7.1] **Real property not subject to §13100 summary collection:** Decedent’s real property in California must be considered in determining whether the gross fair market value of the California estate satisfies the maximum \$208,850 ceiling. But *title* to real property in the estate may *not be cleared* under §13100. This procedure is limited to the nonprobate transfer of decedent’s California *personal property*. [Prob.C. §§13100, 13115]
 - (a) [2:7.2] **Compare—other summary procedures for distribution of real property:** However, there is independent Code authority for the summary distribution of certain real property (Prob.C. §13150 et seq.—by court order; Prob.C. §13200 et seq.—by affidavit); *see* ¶2:28 ff. And realty held in *joint tenancy* or as *community property with right of survivorship* passes outside probate in any event (by right of survivorship, ¶2:119 ff., 2:165 ff.).
- (3) [2:8] **Exclusions from \$208,850 limit calculation:** In determining the total gross value of the estate, certain statutory exclusions are required (Prob.C. §13050); i.e., the gross fair market value limit is calculated *net* of the following items (Prob.C. §13100—“Excluding the property described in Section 13050 and any property included in a petition filed under Section 13151. . .”):

- (a) [2:9] **Vehicles and other state-registered property:** Vehicles registered with the State under the Vehicle Code (Veh.C. §4000 et seq., §38000 et seq.)—including “nonmotor” vehicles, such as trailers—do not count against the estate value limit. [Prob.C. §13050(b)(1)]

Also excluded are state-registered mobilehomes, manufactured homes, commercial coaches, truck campers and floating homes (Health & Saf.C. §18000 et seq.) and undocumented vessels (Veh.C. §9840 et seq.). [Prob.C. §13050(b)(2), (3)]

- 1) [2:9.1] **Nonprobate transfer may be available:** So long as decedent leaves no other assets requiring probate, such state-registered property will usually be transferable by affidavit as well. But the procedures are governed by different statutes; and there is not complete conformity with the Prob.C. §13100 affidavit procedure. *See ¶2:29 ff.*

- (b) [2:10] **Unpaid salary:** Likewise disregarded are (i) any amounts due decedent for services in the armed forces and (ii) up to \$20,875, with the amount adjusted periodically pursuant to Prob.C. §890 in unpaid salary or other compensation (including compensation for unused vacation) owing to decedent for personal services from any employment. [Prob.C. §13050(c)]

- 1) [2:10.1] **Nonprobate transfer available:** This exclusion does not prevent use of the Prob.C. §13100 procedure to collect salary or other compensation owed to decedent. But other procedures for collection of employment compensation may also be available.

For example, under Prob.C. §§13600-13606, a surviving spouse generally may obtain by affidavit or declaration up to \$20,875 in net employment compensation (subject to annual cost of living adjustments) owed to the deceased spouse. (The maximum net amount does not apply to the surviving spouse of a qualified firefighter or peace officer.) This procedure will usually be the most efficient for a spouse in need of immediate funds since, unlike §13100, no 40-day wait is required. [Prob.C. §13601(a); *see* ¶4:52 *ff.*]

- (c) [2:11] **Joint tenancy interests, life estates, etc.:** Also excluded is *all* property (including real estate and other property in a revocable inter vivos trust, ¶2:12):

- Held by decedent in *joint tenancy*; or
- In which decedent had a *life estate* or *other interest terminable at death* (e.g., employee retirement or death benefits); or
- That passed outright to decedent's surviving spouse or registered domestic partner under Prob.C. §13500 et seq. (*Ch. 4*). [Prob.C. §13050(a)(1)]

Comment: The “other interest terminable at death” language should be broad enough to justify the exclusion of property passing pursuant to the revocable transfer on death deed procedure (*discussed at ¶2:166 ff.*).

- (d) [2:11.1] **Multiple-party accounts:** Likewise disregarded is any “multiple-party account” (Prob.C. §5100 et seq., ¶2:117.5 ff.) to which decedent was a party at death, regardless of whether the account contained community property . . . but only to the extent the funds pass to a surviving party, P.O.D. payee or beneficiary. (Conversely, to the extent the funds do *not* belong after decedent's death to a surviving party, P.O.D. payee or beneficiary, they *are includible* in the “gross value” calculation.) [Prob.C. §13050(a)(2)]
- (e) [2:12] **Inter vivos trust assets:** The Code specifically excludes property held in an inter vivos trust. [Prob.C. §13050(a)(1)]
- (4) [2:13] **Property included in Prob.C. §13151 petition:** Any property included in a Prob.C. §13151 petition is to be *excluded* from the gross value limitation of Prob.C. §13100. For decedents dying on or after April 1, 2025, §13151 permits a summary proceeding for the transfer of real property that was the “primary residence” of the decedent and whose gross value does not exceed \$750,000 (as adjusted periodically pursuant to Prob.C. §890). [Prob.C. §§13100, 13151; *see* ¶2:28.40 ff.]
- (5) [2:13.1] **Insurance policy or retirement plan proceeds included in calculation if estate designated as beneficiary:** The gross fair market value calculation must *include* any life insurance policy or retirement plan proceeds payable to the estate as the designated beneficiary (or where the designated beneficiary predeceased the decedent).
- Reason: “Money due the decedent” for Prob.C. §13100 purposes (¶2:6.1) includes “property that becomes part of decedent's estate on decedent's death, whether by designation of the estate as beneficiary under an in-

surance policy on decedent's life or under the decedent's retirement plan, or otherwise." [See Prob.C. §13005]

[2:14] *Reserved.*



[2:15] **PRACTICE POINTER:** The above rules (§2:7 *ff.*) demonstrate how *seemingly* large estates might qualify for the relatively speedy and inexpensive Prob.C. §13100 summary collection procedure.

For example, the largest portion of decedent's estate might consist of assets held in inter vivos trust and/or joint tenancy. When these assets are deducted from the estate's total value, there may be only a nominal estate remaining (typically where decedent inadvertently failed to transfer one or two assets into trust or joint tenancy title). As a result, probate administration may not be needed at all.

- d. [2:16] **Eligible claimants ("successors of decedent"):** The §13100 procedure may be used by any "successor of the decedent." [Prob.C. §13100] This term broadly includes anyone entitled to succeed to the claimed property under decedent's will or by the laws of intestacy (Prob.C. §13006). Specifically, the term encompasses:

- (1) [2:16.1] **Testate beneficiaries:** The sole beneficiary under decedent's last will or, if more than one beneficiary, *all* beneficiaries under the will may proceed under Prob.C. §13100, regardless whether any beneficiary is related to decedent. [Prob.C. §13006(a)]

- (a) [2:16.2] **Trusts included as "successors":** An eligible testate beneficiary successor includes a trustee of decedent's *inter vivos or testamentary trust* where the trust succeeds to the particular item of property under decedent's will. Even in the unlikely event the trust is subject to continuing court jurisdiction, the trustee may utilize Prob.C. §13100 on the trust's behalf without obtaining prior court approval. [Prob.C. §§13006(a), 13051(b), Law Rev. Comm'n Comments]

[2:16.3-16.4] *Reserved.*

- (2) [2:16.5] **Intestate heirs:** If decedent died without a will, Prob.C. §13100 is available to any or all of decedent's intestate heirs under Prob.C. §§6401-6402. [Prob.C. §13006(b)]

- (a) [2:16.6] **"Heirs" under out-of-state law:** The eligible heirs may also include "heirs" determined pursuant to another jurisdiction's intestate succession law: If, under applicable conflict of laws principles, succession to the particular item of property is determined by the law of a sister state or foreign

nation, the successors in interest under that law may use the Prob.C. §13100 procedure. [Prob.C. §13006(b)]

(For a general discussion of conflict of laws problems where a decedent's estate has multistate connections, see ¶14:336 ff.)

- (3) [2:16.7] **Representatives:** Certain persons in a *representative* capacity are eligible Prob.C. §13100 claimants:

- (a) [2:16.7a] **Guardian, conservator or trustee of eligible claimant:** As stated above, the trustee of a trust is an eligible Prob.C. §13100 transferee as to items passing from decedent to the trust; the trustee need not obtain prior court approval to utilize §13100 (¶2:16.2).

Likewise, guardians or conservators of the estates of eligible transferees are themselves eligible to use the §13100 procedure on such persons' behalf *without* authorization by the court where the guardianship or conservatorship is pending. [Prob.C. §13051(a)]

- (b) [2:16.7b] **Out-of-state personal representative:** A personal representative appointed in a sister state may act on behalf of the estate's beneficiaries, and thus may proceed under Prob.C. §13100 for the beneficiaries who would be eligible to do so. [Prob.C. §13051(d); also see Prob.C. §12507 (defining "sister state personal representative")]

- (c) [2:16.8] **Nominated custodian under UGMA or UTMA:** Similarly, if decedent's will authorizes a custodian to receive a devise under the Uniform Gifts to Minors Act (former Civ.C. §§1154-1165) or the Uniform Transfers to Minors Act (Prob.C. §§3900-3925) of any state, the *custodian* is eligible to collect the devise pursuant to Prob.C. §13100 . . . provided the beneficiary has not yet reached the age at which the custodianship is to terminate. [Prob.C. §13051(c)]

(In California, the age at which the custodianship terminates and the child receives the custodial property depends on the terms of the transfer. In appropriate cases, the custodianship may remain in effect until the child reaches age 25. See Prob.C. §3920.5.)

- (d) [2:16.9] **Attorney-in-fact under durable power of attorney:** An attorney-in-fact acting under a durable power of attorney (¶1:59 ff.) may use the Prob.C. §13100 procedure on behalf of the beneficiary giving the power of attorney. [Prob.C. §13051(e)]

- e. [2:17] **Affidavit (declaration) procedure:** The transfer may be effected by presenting to the "holder" (see ¶2:18) an

[2:17a — 2:17.1]

affidavit or declaration under penalty of perjury (CCP §2015.5) executed in the prescribed statutory form and content and complying with specified statutory formalities. [Prob.C. §§13101-13104, 13106.5]



[2:17a] **CAVEAT:** Carefully follow the statutory requirements. The property holder is not required to honor a defective Prob.C. §13101 declaration; and a holder who *does* honor a defective declaration will not receive the protection afforded by Prob.C. §13106 (which discharges the holder from further liability with respect to the property transferred under Prob.C. §13100, ¶2:27.10).

(1) [2:17.1] **Contents of declaration:** The contents of the Prob.C. §13100 declaration are prescribed by Prob.C. §§13101 and 13106.5. Specifically, the declaration *must* contain all of the following:

- (a) Decedent's name. [Prob.C. §13101(a)(1)]
- (b) Date and place of decedent's death. [Prob.C. §13101(a)(2)]
- (c) Statements that:
 - 1) "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." [Prob.C. §13101(a)(3); see ¶2:6.3 on 40-day waiting period, and ¶2:17.4 on death certificate]
 - 2) Either of the following, as appropriate:
 - "No proceeding is now being or has been conducted in California for administration of the decedent's estate." [Prob.C. §13101(a)(4)(A); see ¶2:6.2]
 - OR*
 - "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." [Prob.C. §13101(a)(4)(B); see ¶2:6.2]
 - 3) "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