Judicial Council *of* California

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INVITATION TO COMMENT

W25-10

Title
Decedents' Estates: Succession to Real Property of Small Value

Action Requested
Review and submit comments by January 6, 2025

Proposed Rules, Forms, Standards, or Statutes
Revise forms DE-310 and DE-315

Proposed Effective Date
April 28, 2025

Proposed by
Probate and Mental Health Advisory Committee
Hon. Jayne Chong-Soon Lee, Chair

Contact
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Executive Summary and Origin

The Probate and Mental Health Advisory Committee proposes revising two forms in response to recent legislation that changed the statutory procedure for claiming succession to real property by raising the maximum value of the property claimed to $750,000 and limiting the application of the procedure to succession to a decedent's primary residence in California. The proposed form revisions would conform to these changes and make technical and formatting corrections.

Background

Effective January 1, 2025, Assembly Bill 2016 (Stats. 2024, ch. 331) amended Probate Code sections 13150, 13151, 13152, and 13154 and repealed section 13158.[1] These amendments narrow the scope of the procedure used to claim succession to a decedent's real and personal property in California if the gross value of the decedent's estate in California falls below a specified value. That procedure may now be used only for succession to real property that was the decedent's "primary residence in this state" if the gross value of "that real property" does not

[1] All further statutory references are to the Probate Code. AB 2016 also amended sections 13100 and 13101, which govern the affidavit procedure for collection or transfer of *personal* property. The property used to determine eligibility for that procedure now excludes "any property included in a petition filed under Section 13151." Because the affidavit used in this procedure is not submitted to the court but is instead given directly to the holder of the property to be collected, there is no applicable Judicial Council affidavit form.

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.

exceed the threshold amount.[2] The legislation also, effective April 1, 2025, increases the maximum value of the subject real property to $750,000, to be further adjusted every three years according to the procedure in section 890.[3]

The Proposal

Petition to Determine Succession to Real Property (form DE-310) and *Order Determining Succession to Real Property* (form DE-315) are currently used for the procedure described above. The statutory amendments require revisions to these forms to allow their continued use for the new procedure. The committee proposes, effective April 28, 2025, to:

- Revise form DE-310 by:
    - Retitling the form as *Petition to Determine Succession to Primary Residence in California*;
    - Updating item 1 to specify that the real property that is the subject of the petition was the decedent's primary residence in California and not any other real or personal property;[4]
    - Revising item 8 to refer only to the real property that is the subject of the petition and to update the maximum values of that property;
    - Updating item 11 to limit the scope of the property description to the property that is the subject of the petition and to require that, in addition to a statement of the decedent's interest in the real property, the petition include facts showing that the property was the decedent's primary residence in California; and
    - Revising items 12 and 13 to refer more specifically to the real property that is the subject of the petition; and

[2] See, e.g., Stats. 2024, ch. 331, § 4, amending § 13151. The amendments have the peculiar effect of allowing a decedent to have more than one "primary residence" but only one such residence in California. This effect was acknowledged and accepted by the bill's author and sponsor.

[3] The committee also plans to recommend technical revisions to *Maximum Values for Small Estate Set-Aside & Disposition of Estate Without Administration* (form DE-300) and *Affidavit re Real Property of Small Value* (form DE-305) to reflect the amount increased by AB 2016 and other amounts adjusted according to the requirements in section 890. All adjusted amounts will take effect April 1, 2025, and be published by that date on the California courts website. Because the revisions to forms DE-300 and DE-305 will do no more than apply the formula mandated by section 890(b), the committee plans to recommend their adoption along with the forms in this proposal, effective April 28, 2025, without circulating them for public comment.

[4] The Probate Code no longer authorizes a petition procedure for succession to real or personal property of small value other than a decedent's primary residence in California. Section 13152(f), as amended, makes clear that the procedure to succeed to the decedent's primary residence in California applies regardless of the decedent's date of death. (See also § 13152(a)(2).) The affidavit procedures under section 13100 et seq. (personal property) and section 13200 et seq. (real property) will remain available after January 1, 2025, for succession to property of small value.

- Revise form DE-315 by:

    - Retitling the form as *Order Determining Succession to Primary Residence in California*;

    - Revising item 6 to refer more specifically to the real property that is the subject of the order and to update the maximum values of that property;

    - Revising item 7 to refer more specifically to the property that is the subject of the order;

    - Adding new item 8, a finding that the real property that is the subject of the petition was the decedent's primary residence in California; and

    - Renumbering existing item 8 as item 9 and revising it to specify more precisely the property that is the subject of the order.

The forms, as proposed to be revised, are attached at pages 5–7.

Alternatives Considered

The committee did not consider the alternative of taking no action because the form revisions are required to implement statutory changes affecting litigants, including self-represented litigants, and to bring the forms into compliance with current law. The committee did consider proposing different effective dates for the revisions. Initially, the committee considered proposing a January 1, 2026, effective date, but determined that an earlier effective date would be more appropriate. Because the increase to the maximum value of eligible property takes effect April 1, 2025, delaying implementation beyond that date longer than necessary would frustrate self-represented litigants who attempted to claim residences belonging to decedents who had died on or after April 1 that were valued at more than $184,500 but less than $750,000.

The committee also considered proposing a January 1, 2025, effective date, with circulation for comment after council approval. Although AB 2016's limitation of the statutory process to a decedent's primary residence in California does take effect on January 1, the committee determined that the existing forms may be used without modification to succeed to a decedent's primary residence until May 12, 2025. That is the first day on which a person may file a petition under section 13151 to succeed to a decedent's primary residence that is valued between $184,500 and $750,000.[5] In addition, even if the council revised the forms effective January 1, 2025, it would need to revise them again on or shortly after the April 1, 2025, effective date of the adjustment of the maximum property value. The committee concluded that two separate but related revisions of the same forms within four months of one another would cause confusion

[5] The April 1, 2025, value adjustments required by section 890 and SB 1106 apply only to property of decedents who die on or after that date. Section 13151 requires a successor to wait at least 40 days after a decedent's death before filing a petition to start the process in which forms DE-310 and DE-315 are used. The revised forms will therefore take effect in time for their first authorized use.

exceeding any benefit of an earlier effective date. For these reasons, the committee proposes that all form revisions take effect April 28, 2025, the Monday after the meeting at which the Judicial Council will consider proposals circulated for comment this winter cycle.

Fiscal and Operational Impacts

The only fiscal or operational impacts this proposal may have on courts or litigants are the costs of replacing outdated forms and reprogramming digital case management systems. Because the changes are required by statute, their impacts cannot be avoided.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Forms DE-310 and DE-315, at pages 5–7
2. Link A: Assembly Bill 2016 (Stats. 2024, ch. 331), *https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB2016*

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NO.:	FOR COURT USE ONLY
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: EMAIL ADDRESS: ATTORNEY FOR (*name*):	**DRAFT 110624** **Not approved by** **the Judicial Council**
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
ESTATE OF *(name):* DECEDENT	CASE NUMBER:
PETITION TO DETERMINE SUCCESSION TO PRIMARY RESIDENCE IN CALIFORNIA	HEARING DATE AND TIME: / DEPT.:

1. Petitioner *(name of each person claiming an interest):*

   requests a determination that the real property described in item 11 was the decedent's primary residence in California and is property passing to petitioner.

2. Decedent *(name):*
   a. Date of death:
   b. Place of death *(city and state or, if outside the United States, city and country):*

3. ☐ At least 40 days have passed since the decedent's death.

4. a. ☐ Decedent was a resident of this county at the time of death.
   b. ☐ Decedent was **not** a resident of California at the time of death. Decedent died owning property in this county.

5. Decedent died ☐ intestate *(without a will)* ☐ testate *(with a will),* and a copy of the will is attached as Attachment 5 or 12a.

6. a. ☐ No proceeding for the administration of decedent's estate is being conducted or has been conducted in California.
   b. ☐ Decedent's personal representative's consent to use the procedure provided by Probate Code section 13150 et seq. is attached as Attachment 6b.

7. Proceedings for the administration of decedent's estate in another jurisdiction
   a. ☐ have **not** been commenced.
   b. ☐ have been commenced ☐ and completed. *(Specify state, county, court, and case number):*

8. The **gross value,** at the time of decedent's death, of decedent's interest in the real property described in item 11, as shown by the attached appraisal, did not exceed *(check one):*
   a. ☐ **$166,250** *(decedent died before April 1, 2022).*
   b. ☐ **$184,500** *(decedent died on or after April 1, 2022, and before April 1, 2025. Form DE-300 is attached as required by law).*
   c. ☐ **$750,000** *(decedent died on or after April 1, 2025, and before April 1, 2028. Form DE-300 is attached as required by law).*
   (Prepare and attach as Attachment 8 an appraisal of the property described in item 11. (Use Judicial Council forms DE-160 and DE-161.) *A probate referee appointed for the county named above must perform the appraisal. See Probate Code, §§ 8901, 8902.)*

9. a. Decedent is survived by *(check items (1) or (2), and (3) or (4), and (5) or (6), and (7) or (8)):*
      (1) ☐ spouse
      (2) ☐ no spouse, as follows: (a) ☐ divorced or never married (b) ☐ spouse deceased
      (3) ☐ registered domestic partner
      (4) ☐ no registered domestic partner *(See Family Code, § 297.5(c); Probate Code, §§ 37(b), 6401(c), and 6402.)*
      (5) ☐ child, as follows: (a) ☐ natural or adopted (b) ☐ natural, adopted by a third party
      (6) ☐ no child
      (7) ☐ issue of a predeceased child
      (8) ☐ no issue of a predeceased child
   b. Decedent ☐ is ☐ is not survived by a stepchild or foster child or children who would have been adopted by decedent if a legal barrier had not prevented adoption. *(See Probate Code, § 6454.)*

ESTATE OF *(name)*: DECEDENT	CASE NUMBER:

10. ☐ Decedent is survived by *(complete if decedent is survived by (1) a spouse or registered domestic partner described in Probate Code, § 37, but no issue (only a or b apply); or (2) no spouse or registered domestic partner described in Probate Code, § 37, and no issue. Check only the **first** box that applies.)*
    a. ☐ a parent or parents who are listed in item 14.
    b. ☐ a sibling, or issue of a deceased sibling, all of whom are listed in item 14.
    c. ☐ other persons who might be entitled to inherit property if decedent did not have a will, all of whom are listed in item 14.
    d. ☐ no known next of kin.

11. Attachment 11 contains (1) the **legal description** and the Assessor's Parcel Number of the real property claimed in this petition; (2) a statement of decedent's interest in the property, including facts that show that the property was decedent's primary residence in California; and (3) if any petitioner's claim to the property is based on succession under Probate Code sections 6401 and 6402, facts that show whether the property was community, separate, or quasi-community property.

12. Each petitioner is a successor of the decedent (as defined in Probate Code section 13006) and successor to the decedent's interest in the real property described in item 11 because each petitioner is
    a. ☐ ***(will)*** a beneficiary who succeeded to that property under decedent's will, and a copy of the will is attached as Attachment 5 or 12a.
    b. ☐ ***(no will)*** a person who succeeded to that property under Probate Code sections 6401 and 6402.

13. The interest of each petitioner in the property described in item 11 ☐ is stated in Attachment 13 ☐ is as follows *(specify):*

14. The names, relationships to decedent, ages, and residence or mailing addresses, as far as known to or reasonably ascertainable by petitioner, of (1) all persons named or checked in items 1, 9, and 10; (2) all other persons who may be entitled to inherit decedent's property in the absence of a will; and (3) all persons designated in the will to receive any property are listed in Attachment 14.

15. The names and addresses of all executors named in decedent's will are ☐ listed below ☐ listed in Attachment 15.

    ☐ No executor is named. ☐ There is no will.

16. ☐ Petitioner is the trustee of a trust designated in decedent's will to receive property. The names and addresses of all persons interested in the trust, as determined in cases of future interests under Probate Code section 15804(a)(1), (2), or (3), are listed in Attachment 16.

17. ☐ Decedent's estate was under a ☐ guardianship ☐ conservatorship at decedent's death. The names and addresses of all persons serving as guardian or conservator ☐ are listed below ☐ are listed in Attachment 17.

18. Number of pages attached: _____

Date:

_____ ▶ _____
(TYPE OR PRINT NAME OF ATTORNEY) (SIGNATURE OF ATTORNEY)*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

_____ ▶ _____
(TYPE OR PRINT NAME OF PETITIONER) (SIGNATURE OF PETITIONER)*

_____ ▶ _____
(TYPE OR PRINT NAME OF PETITIONER) (SIGNATURE OF PETITIONER)*

☐ SIGNATURE(S) OF ADDITIONAL PETITIONERS ATTACHED

* Each petitioner (i.e., each person named in item 1) must sign this form. (Probate Code, § 1020.) If more than 2 petitioners, check the box above and use an attachment.

DE-315

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NO.:
After recording, return to:
NAME:
FIRM NAME:
STREET ADDRESS:
CITY, STATE, ZIP CODE:
TELEPHONE NO.: FAX NO.:
EMAIL ADDRESS:
ATTORNEY FOR *(name)*:

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
STREET ADDRESS:
MAILING ADDRESS:
CITY AND ZIP CODE:
BRANCH NAME:

DRAFT 110624
Not approved by
the Judicial Council

FOR RECORDER'S USE ONLY

ESTATE OF *(name)*:

DECEDENT

CASE NUMBER:

FOR COURT USE ONLY

ORDER DETERMINING SUCCESSION TO PRIMARY RESIDENCE IN CALIFORNIA

1. Date of hearing: Time:
   Dept./Room:
   Judicial Officer *(name)*:

THE COURT FINDS

2. Notice has been given as required by law.
3. Decedent died on *(date)*:
   a. ☐ a resident of this county.
   b. ☐ a nonresident of California who owned property in this county.
   c. ☐ intestate *(without a will)* ☐ testate *(with a will)*.
4. At least 40 days have passed since the decedent's death.
5. a. ☐ No proceeding for the administration of the decedent's estate is now being or has been conducted in California.
   b. ☐ Decedent's personal representative has consented in writing to use the procedure in Probate Code section 13150 et seq.
6. The gross value of the real property described in item 9a does not exceed
   ☐ **$166,250** *(death before April 1, 2022)*.
   ☐ **$184,500** *(death on or after April 1, 2022, and before April 1, 2025)*.
   ☐ **$750,000** *(death on or after April 1, 2025)*.
7. Each petitioner is a successor of the decedent (as defined in Probate Code section 13006) to the decedent's interest in the real property described in item 9a because each petitioner is *(check one)*:
   a. ☐ ***(will)*** a beneficiary who succeeded to the property under decedent's will.
   b. ☐ ***(no will)*** a person who succeeded to the property under Probate Code sections 6401 and 6402.
8. The real property described in item 9a was the decedent's primary residence in the state of California.

THE COURT FURTHER FINDS AND ORDERS

9. a. The real property ☐ described in Attachment 9a ☐ described below passes to each petitioner as described in b.
   *(Give **legal description** of property, including Assessor's Parcel Number):*

   b. Each petitioner's **name** and specific interest in the property ☐ is stated in Attachment 9b ☐ is as follows *(specify):*

10. ☐ Other orders are stated in Attachment 10.
11. Number of pages attached: _____

Date:

JUDICIAL OFFICER

☐ SIGNATURE FOLLOWS LAST ATTACHMENT