

Introduced by Senator HertzbergFebruary 2, 2015

An act to add Part 3 (commencing with Section 13750) to Division 8 of the Probate Code, relating to decedent's estates.

LEGISLATIVE COUNSEL'S DIGEST

SB 155, as introduced, Hertzberg. Decedent's estates.

Existing law provides for the disposition of a testator's property by will. Existing law establishes the Uniform Testamentary Additions to Trusts Act, under which a valid devise of property may be made by will to the trustee or trustees of a trust established or to be established by the testator or by the testator and some other person, commonly referred to as a pour-over will. Existing law provides that the decedent's property, including property devised by a will, is generally subject to probate administration, except as specified. Existing law establishes simplified procedures for addressing a decedent's estate valued under \$150,000, including authorizing the successor of the decedent to collect property due to the decedent without letters of administration or awaiting probate of a will.

This bill would establish simplified procedures for the distribution of property, real or personal property of any amount or value, devised by a will to the trustee or trustees of a recipient trust, as defined, without procuring letters of administration. The bill would authorize the trustee or trustees of a recipient trust to file a verified petition setting forth specified facts in the superior court of the county in which the estate of the decedent may be administered, and would authorize the court to issue an order that a particular item or items of property pass without administration and are transferred to the petitioner as trustee or trustees of the recipient trust. The bill would require attorneys' fees for services

performed in connection with these provisions to be determined by a private agreement between the attorney and the client, and would specify that attorneys’ fees are not subject to approval by the court.

Vote: majority. Appropriation: no. Fiscal committee: no.
 State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Part 3 (commencing with Section 13750) is added
 2 to Division 8 of the Probate Code, to read:

3
 4 PART 3. DETERMINATION OF PROPERTY PASSING TO
 5 TRUSTEE OF RECIPIENT TRUST WITHOUT
 6 ADMINISTRATION

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 8 CHAPTER 1. DEFINITIONS

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 10 13750. For purposes of this part, both of the following
 11 definitions shall apply:

- 12 (a) “Pour-over will” means a devise by a will, including any
- 13 codicils, of property to the trustee or trustees of a recipient trust.
- 14 (b) “Recipient trust” means a trust established as a revocable
- 15 trust by a decedent during his or her lifetime, either alone or in
- 16 conjunction with his or her spouse or registered domestic partner,
- 17 and that is identified in the pour-over will.

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 19 CHAPTER 2. COURT ORDER DETERMINING PASSAGE OF
 20 PROPERTY TO TRUSTEE OR TRUSTEES OF RECIPIENT TRUST

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 22 13751. Subject to further requirements provided in this chapter,
 23 if a decedent dies testate and by his or her pour-over will devises
 24 some or all of his or her property to the trustee or trustees of a
 25 recipient trust, the trustee or trustees of that recipient trust, without
 26 procuring letters of administration, may file a petition in the
 27 superior court of the county in which the estate of the decedent
 28 may be administered requesting a court order that a particular item
 29 or items of property pass without administration to the petitioner
 30 as trustee or trustees of the recipient trust.

31 13752. (a) The procedure provided by this chapter may be
 32 used only if:

1 (1) At least 40 days have elapsed since the death of the decedent.

2 (2) No proceeding is being or has been conducted for the probate
3 administration of the decedent’s estate, either in this state or in
4 any other jurisdiction.

5 (3) Except as provided in paragraph (4), the devise in the
6 pour-over will to the trustee or trustees of the recipient trust applies
7 to the entire remainder of the property subject to the pour-over
8 will.

9 (4) (A) The only other devise or devises, if any, in the pour-over
10 will are one or more specific gifts, as defined in subdivision (a) of
11 Section 21117, all of which would be eligible for disposition
12 without administration pursuant to either of the following
13 provisions:

14 (i) Part 1 (commencing with Section 13000), as determined by
15 the petitioner. Any property that is not a devise of a specific gift,
16 as defined in subdivision (a) of Section 21117, in the decedent’s
17 pour-over will shall be excluded in determining the property or
18 estate of the decedent or its value for this purpose.

19 (ii) Part 2 (commencing with Section 13500), as determined by
20 the petitioner.

21 (B) The court may rely on the petitioner’s representations
22 concerning determinations made by the petitioner pursuant to this
23 paragraph.

24 (b) The procedure provided by this chapter may be used for real
25 or personal property of any amount or value, so long as the other
26 requirements of this chapter are satisfied. The value of an
27 individual item, or aggregate value of items, of property does not
28 need to be included in the petition. An inventory and appraisal
29 shall not be required for the property subject to the procedure
30 provided by this chapter.

31 13753. (a) The petition shall be verified by each petitioner,
32 shall contain a request that the court make an order pursuant to
33 this chapter that a particular item or items of the decedent’s
34 property pass without administration to the petitioner as trustee or
35 trustees of the recipient trust, and shall state all of the following:

36 (1) The facts necessary to determine that the petition is filed in
37 the proper county.

38 (2) That at least 40 days have elapsed since the death of the
39 decedent.

1 (3) That no proceeding is being or has been conducted for
2 administration of the decedent's estate, either in this state or in
3 any other jurisdiction.

4 (4) The facts and the provision or provisions of the pour-over
5 will upon which the petitioner bases the allegation that a particular
6 item or items of property pass without administration to the
7 petitioner as trustee or trustees of the recipient trust, including, but
8 not limited to, the following:

9 (A) That the devise in the pour-over will to the trustee or trustees
10 of the recipient trust applies to the entire remainder of the property
11 subject to the pour-over will.

12 (B) Either of the following, as applicable:

13 (i) That there is no devise in the pour-over will other than to the
14 trustee or trustees of the recipient trust.

15 (ii) The only other devise or devises, if any, in the pour-over
16 will are one or more specific gifts, as defined in subdivision (a) of
17 Section 21117, all of which would be eligible for disposition
18 without administration pursuant to either of the following
19 provisions:

20 (I) Part 1 (commencing with Section 13000), as determined by
21 the petitioner. Any property that is not a devise of a specific gift,
22 as defined in subdivision (a) of Section 21117, identified in the
23 decedent's pour-over will shall be excluded in determining the
24 property or estate of the decedent or its value.

25 (II) Part 2 (commencing with Section 13500), as determined by
26 the petitioner.

27 (5) A description or descriptions of the particular item or items
28 of the decedent's property for which the petitioner requests an
29 order pursuant to this chapter.

30 (6) The name, age, address, and relation to the decedent of each
31 of the following:

32 (A) Heir and devisee of the decedent.

33 (B) Each person named as executor or alternate executor of the
34 pour-over will.

35 (C) Each beneficiary of the recipient trust. For any future
36 interests, this determination shall be made pursuant to subdivision
37 (a) of Section 15804, so far as known to any petitioner.

38 (D) Each person named as trustee or successor trustee in the
39 recipient trust.

1 (7) The name and address of any person serving as guardian of
2 the estate or conservator of the estate of the decedent at the time
3 of the decedent's death, so far as known to any petitioner.

4 (b) A copy of the pour-over will shall be attached to, and filed
5 in support of, the petition.

6 (c) A certification of trust for the recipient trust that satisfies
7 the requirements of Section 18100.5 shall be attached to, and filed
8 in support of, the petition.

9 13754. Notice of hearing shall be given as provided in Section
10 1220 to each of the persons named in the petition pursuant to
11 Section 13753.

12 13755. If the requirements of this chapter are satisfied, the
13 court shall issue an order that a particular item or items of property
14 pass without administration and are transferred to the petitioner
15 as trustee or trustees of the recipient trust. Each item of property
16 shall be described in the order. The court shall not issue an omnibus
17 order for final distribution pursuant to the procedure provided by
18 this chapter.

19 13756. (a) Except as provided in subdivision (b), upon
20 becoming final, an order under this chapter that property passes
21 without administration to the trustee or trustees of the recipient
22 trust shall be conclusive on all persons.

23 (b) An order issued by the court pursuant to Section 13755 shall
24 not preclude the filing of a petition pursuant to Section 17200.

25 13757. The attorney's fees for services performed in connection
26 with the filing of a petition and obtaining a court order under this
27 chapter shall be determined by a private agreement between the
28 attorney and the client and are not subject to approval by the court.
29 If there is no agreement between the attorney and the client
30 concerning the attorney's fees for services performed in connection
31 with the filing of a petition and obtaining a court order under this
32 chapter and there is a dispute concerning the reasonableness of the
33 attorney's fees for those services, a petition may be filed with the
34 court in the same proceeding requesting that the court determine
35 the reasonableness of the attorney's fees for those services. If there
36 is an agreement between the attorney and the client concerning
37 the attorney's fees for services performed in connection with the
38 filing of a petition and obtaining a court order under this chapter
39 and there is a dispute concerning the meaning of the agreement, a

1 petition may be filed with the court in the same proceeding
2 requesting that the court determine the dispute.
3 13758. Nothing in this chapter excuses compliance with
4 Chapter 3 (commencing with Section 13100) by the holder of the
5 decedent's personal property if an affidavit or declaration is
6 furnished as provided in that chapter.

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CHAPTER 3. LIABILITY FOR DEBTS OF DECEDENT

10 13759. Property transferred to the trustee or trustees of a
11 recipient trust pursuant to an order issued under Section 13755
12 shall be subject to the payment of claims, debts, and expenses as
13 provided in Part 8 (commencing with Section 19000) of Division
14 9.