

Property Transfers After Wrongful Death



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After the loss of a loved one a family often faces many legal decisions. Property transfers can be particularly complicated. This brief article is designed to provide you with an overview of the property transfer laws and issues that may arise.

Assistance of a wrongful death and/or estates lawyer should be sought in each and every circumstance to make sure no irreversible errors occur.

Small Estates

The law recognizes that many decedents pass without sizeable assets or large amounts of property. To simplify the transfer of property from the decedent to the heirs in these smaller estates the law allows heirs to avoid a full blown probate proceeding.

Probate Code §13100

Personal property, including money in financial accounts, and any salary due to the decedent, may be collected and transferred by affidavit pursuant to Probate Code §13100. The estate size must be \$150,000 or less.

Property of small estates can be transferred only after 40 days have elapsed since death. The proper successor in interest prepares a 13100 declaration under penalty of perjury and acquires a copy of the death certificate. Banks and financial institutions accept the declaration and then transfer the financial accounts to the declared successor.

Real estate may not be transferred using this procedure.

Who Is The Proper Successor?

If the person dies with a will the beneficiaries may collectively seek transfer of the property.

If the person dies without a will the intestate succession laws provide the legal framework to determine who is the proper legal successor. These rules are found at Probate Code §6400 et seq..

The proper successor is often times the spouse or registered domestic partner of the decedent, or the children of the decedent. When the decedent does not leave child (kin), then the law looks to the adult decedent's parents first, then siblings second, and grandparents third.

If you have lost a loved one and are interested in determining if you are the proper successor in interest you should seek the assistance of a wrongful death lawyer or an estates lawyer. These lawyers are skilled in determining who is the proper successor in interest.

Traps Using Probate Code §13100

A person who takes property under §13100 may be liable for the decedent's unsecured debts to the extent of the net value of the property received.

People who fraudulently acquire property using §13100 can be liable for three times the value of the net asset value.

Small Real Estate Holdings

A successor may only want to transfer a small piece of real estate. If so, there is a procedure for doing just that.

After a six month waiting period, real estate with a value up to \$50,000 can be transferred using an Affidavit Re: Real Property of Small Value. This is pursuant to Probate Code §13200.

The affidavit is filed with the court along with an inventory and appraisal of all the decedent's interest in real

property. The appraisal must be made by a probate referee appointed for the county in which the property is located.

The court clerk determines whether the affidavit meets the statutory requirements and issues a certified copy of the affidavit which then must be recorded in the office of the county recorder by the declarant.

When accomplished this procedure gives the recipient marketable title to the real property at issue.

Recipients of real property can be held liable for the decedent's final expenses, including funeral expenses, expenses of last illness, and known unsecured debts of the decedent. An heir can not simply take the real estate and leave creditors penniless.

Since the limit is so small and real estate is generally worth significantly more than \$50,000 in California, this is a rarely used procedure.

Wrongful death heirs should seek legal assistance with real property transfers and consider carefully what debts they may incur by way of the decedent's final expenses.

Probate Code §13150

If the value of the small estate is \$150,000 or less and includes real estate there is a court petition that can be filed that is an alternative to a full blown probate. It is called a Petition to Determine Succession to Real Property (and Personal Property).

This procedure can only be used if there is real estate involved and the value of all property including personal property is \$150,000 or less.

There is a 40 day waiting period after death before this petition can be filed with the court. The court will require an inventory and appraisal of all of the decedent's property both real property and personal property. A copy of the decedent's will must be attached if the decedent died with a will. There is a hearing and the petitioner is expected to attend that hearing.

When the court approves the order and signs it, the petitioner acquires a certified copy of the order and record it with the county recorder's office.

Recipients of property under Section 13150 are liable for decedent's unsecured debts up to the net value of the property received.

Transfers of Vehicles

Pursuant to Vehicle Code Section 5910 vehicles that were in a decedent's name alone can be transferred to the decedent's successor in interest.

The successor must sign an affidavit declaring themselves as the designated beneficiary of the vehicle under the decedent's will or otherwise declare that they are entitled to inherit the property.

Proof of death may be required to complete the transfer. This is usually the Certificate of Death.

An odometer disclosure must also accompany the request. A Statement of Facts must be completed and usually the inheritance box is checked.

The Certificate of Title must also be signed and tendered in the following format: "John Jones by Mary S. Jones, sole heir, successor, administrator,

executor, conservator, guardian, or trustee."

Generally a transfer of a vehicle as a result of the death of its owner is an involuntary transfer that is not subject to a use tax on the transferred vehicle. A request for a use tax clearance is likely advisable so that you are not held responsible for back taxes due on the vehicle.

Special considerations are needed if the vehicle is subject to a lien (vehicle financing and leasing situations). These situations generally require evaluation by a lawyer.

Very Small Estate Set Aside Procedures

If a decedent's estate has a net value of under \$20,000, the spouse or registered domestic partner, and minor children can file a court petition to set aside the estate of the decedent and enter an order transferring decedent's property. If real property is involved the certified order is recorded in the county recorder's office where the property is located.

A hearing is required and an inventory and appraisal must be filed with the court.

Spousal Set Aside Petitions

Surviving spouses and registered domestic partners may be able to avoid a full blown probate proceeding regardless of the estate's size.

A petition is filed with the court pursuant to Probate Code §13650 and asks the court to award the property to the spouse or domestic partner.

Caution must be used when choosing this procedure as the spouse or domestic partner may remain liable for debts of the decedent whereas if a probate is commenced, the debts of the

decedent may be more properly handled and or extinguished.

Traps Created By Transfers

It is highly advisable that any potential successor speak with a lawyer before using the small estates procedure referenced herein. The successor of a small estate may become *personally liable* for liens, encumbrances and taxes associated with assets acquired from these transfers.

Liens, encumbrances, and taxes may only appear after transfer and the recipient may find out that they were better off not taking the property. A careful evaluation of the facts is required to determine the best course of conduct.

Joint Tenancy

Often times property is held in joint tenancy with rights of survivorship. In that case, property may be transferred with an Affidavit of Death of Joint Tenant. This affidavit is often recorded in the office of the county recorder.

The effect is that the remaining joint owners have proper legal title for themselves. A preliminary change of ownership form may be required to recorded.

Payable on Death

Many financial accounts have a designated beneficiary called a POD beneficiary. After the death of the account owner the POD beneficiary presents the financial institution with the death certificate and valid identification and the financial assets are transferred to the beneficiary.

Death Without a Will

Most adults die without having a will or trust in place. When they die without a will they are said to have died intestate. This simply means that the

person died without having witnesses to their ultimate wishes.

Death with a Will

When a person dies with a will they are said to have passed away testate. This simply means they have declared their ultimate wishes.

Probate Administration

When a person dies with a will or when one of the small estate or summary procedures previously described does not apply, the family will file a petition for probate. The probate petition is designed to make sure that there is a full accounting, inventory and appraisal of the decedent's assets and liabilities. All creditors are dealt with and property is properly transferred.

Probate is an expensive and timely process. As a result many people may have transfer their property to a trust prior to their death. Property held by a trust is not subject to the probate proceeding and instead is subject to trust administration law.

Trust Administration

When a decedent leaves property held in a trust, the successor trustee must provide notice to trust

beneficiaries and inventory and manage trust and non-trust assets. Trustees are also required to determine the nature and extent of trust liabilities, debts and claims. Trustees also prepare and report accountings to trust beneficiaries, pay income and estate taxes and file tax returns. Trustees have to decide how to distribute trust assets and close out the trust estate.

Trust administration can become tedious for trustees. Using estates planning lawyers is often required so as to properly comply with all trustee obligations.

Seek Legal Advice

As a wrongful death heir, the last thing you want to do is to transfer property the wrong way, incurring taxes, or obligations for the decedent's debts.

This is especially true if there are significant debts associated with the final care of decedent just before passing.

Decisions must be made how to handle the decedent's creditors and how to divide and distribute the decedent's assets.

Laws exist to protect creditors and all legal heirs. Failure to consider the legal rights of all concerned usually causes needless litigation and more hardship than necessary.

As a wrongful death lawyer, I assist my clients during the most difficult time in their lives. When clients allow me, I make sure that property transfers are handled the right way.

Richard Harris is the principal attorney of Rich Harris, A Law Corporation. Mr. Harris practices wrongful death law in the State of California.

His practice is dedicated to helping individuals and families pursue their wrongful death claims against reckless motorists, greedy insurance companies, and careless corporations.

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