

The Impact of California Assembly Bill 2016 (AB2016) on the Probate Process

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In April 2025, California bill AB2016 will take effect, significantly impacting the state's probate process. Currently, probate is required if a decedent's property exceeds a certain value, and AB2016 will raise this threshold considerably. AB2016 amends six sections of California's Probate Code and repeals one. Starting on April 1, 2025, and lasting through March 31, 2028, the threshold for a real property to qualify for disposition without a full probate administration will increase to \$750,000. As a result, more estates will be subject to probate, and the obligation to notify all heirs and devisees could lead to a rise in estate disputes.

In the wake of AB 2016, it's crucial to understand the California probate process and consider planning strategies to avoid it. All too often the reasons provided to clients are probate avoidance or circumventing the Medi-CAL recovery. With the imposition of the new law set to take effect on April 1, 2025, the value for probate avoidance for real properties per Probate Code section 13151 will rise to \$750,000 for a primary residence and then the additional small estate of personal property at \$166,250. Of note, the law provides that the "primary residence" is not limited to the decedent's residence at the time of their death.

This provides a total exclusion anticipated for April 1, 2025, to be \$916,250. However, Probate Code section 13100 is set to be adjusted for inflation every three years and based on the date of the enactment of this law, it is likely that the value will need to be adjusted upward with planners estimating a value of one million (\$1,000,000.00) can be excluded aside from jointly held assets or payable on death accounts. This is a significant change in the basis previously required court involvement. Now, if not otherwise designated in an estate planning instrument, the assets below the threshold in the Probate Code can go through a shorter form procedure with the Probate Court in the determination of a real property of small value.

Although this will still expose family assets to the public, it prevents many of the expensive aspects of probate. For starters, the statutory fees associated with probate will no longer apply. This means that neither a personal representative nor any counsel would receive compensation based on the values of the statutory estate. Instead, the work performed could be calculated at an hourly rate or other agreed upon compensation.

While the law is meant to extend the notice to all potential heirs and beneficiaries, it does not address the notice requirements to governmental agencies such as the Department of Victims Compensation Board, the Franchise Tax Board, and the Department of Healthcare Services. or instance, under the Welfare and Institutions Code section 14009.5, the Department of Healthcare Services is only notified for a Medi-CAL recovery claim when there is a decedent's estate as set forth in Title 42 of the United States Code. Pursuant to Section 1396p(b)(4)(A) of Title 42 of the United States Code, estate "shall include all real and personal property and other assets included within the individual's estate, as defined for purposes of State probate law[.]"

These techniques, as set forth in the Probate Code, provide an exclusion for the formal Probate Estate Administration

procedures in California. This will eliminate a large sector from the reporting requirements for Medi-CAL recovery claims.

While AB 2016 brings about significant changes to estate planning and probate law that could affect how estates are managed in California, the fundamental reasons for estate planning remain unchanged. Instead, it is a stark reminder of why practitioners advise in planning early. While AB 2016 provides a partial fix for transference of wealth after passing, it does not eliminate the concerns during a client's lifetime.

A properly executed estate plan can mitigate the need for court involvement during any period of incapacity. Further, it can provide for a mitigation of risk for abuse by others taking advantage of you as an elder with a trustor contact named as a successor representative.