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ATTORNEYS AT LAW

The Small Estate Limit Has Increased

Property in a small estate may be transferred upon a decedent's death in California without a formal probate proceeding. An estate is a "small estate" when the gross value of the property in California, after statutory exceptions, does not exceed a certain amount. This amount has been increased in 2020 from \$150,000 to \$166,250. The following assets are excluded in determining the \$166,250 limit: (1) automobiles, mobile and motor homes and boats registered through the Department of Motor Vehicles, (2) assets that pass on the decedent's death by beneficiary designation, such as life insurance, retirement accounts and equity-compensation, (3) assets held in trust, and (4) assets jointly owned "with right of survivorship."

An heir or beneficiary may collect the decedent's property in a small estate by way of a written affidavit. We refer to this as the small estate affidavit. In addition to those decedents who do not own more than the specified amount at the time of death, in our experience, the small estate affidavit is most commonly used to collect an account that was not transferred to a revocable living trust during the decedent's lifetime or when no effective beneficiary designation is in place for life insurance or retirement accounts. In other words, it can be used in conjunction with other probate avoidance techniques.

Beginning in 2022, the small estate amount will be adjusted every three (3) years based on a consumer price index. In the past, many financial institutions have provided a small estate affidavit to the beneficiary seeking to collect an asset but if not, it is a relatively simple form that can be prepared and to which a death certificate is attached.