

Memorandum 82-70

Subject: Study L-625 - Probate Code (Tentative Recommendation Relating to Intestate Succession and Wills)

This memorandum presents for Commission decision a number of policy matters in connection with the submission of the Tentative Recommendation Relating to Intestate Succession and Wills.

Numbering System for New Provisions of Probate Code

The Commission's tentative recommendation to the 1983 session will replace all of the material before Division 3 of the Probate Code. Division 3 begins with Section 300. It would not be possible to place all the new material we will recommend in 1983 within 299 sections and have space for parts, chapters, and articles. This is the reason we have used a decimal numbering system in preparing the proposed legislation in the tentative recommendation. The system we have used has three numbers before a decimal point and three numbers following. The system permits us to insert additional sections at any place without renumbering existing sections.

The Legislative Counsel does not object to use of a decimal system for numbering in basic codes where there is not sufficient room to insert new material. However, in the case of the Probate Code, the Legislative Counsel believes that the Commission's objective should be to ultimately produce a new Probate Code that does not use a decimal numbering system. The question is how this objective can best be accomplished.

The Legislative Counsel suggested that the Commission consider recommending to the 1983 session that the existing Probate Code be repealed and a new Probate Code enacted. The repeal and reenactment could be accomplished by a package of three bills. One bill would enact our wills and intestate succession and other new provisions that would replace the material that now appears before Division 3 (administration). The second bill would renumber and reenact Division 3 (administration), presumably with the conforming changes and additions we will recommend be made in that division. The third bill would renumber and reenact Division 4 (Guardianship, Conservatorship, and Other Protective Proceedings), presumably with the changes and additions we recommend be made in that division. The staff has serious reservations concerning the desirability of adopting this suggestion.

We would be concerned if we were to repeal and reenact Division 3 at the 1983 session. Division 3 is the division on administration of probate. If we renumber this division in 1983, it will be necessary to revise and reprint the probate forms when the renumbering becomes effective and then a few years later (when the Commission proposes its substantive revision of Division 3) to reprint the forms again. Moreover, it will be necessary for lawyers and judges to become familiar with new section numbers and then a year or two later to become familiar with an entire new division on administration. The renumbering of the division would require extensive supplementation of Continuing Education of the Bar and other books on probate and then a few years later a complete revision of the books will be required. It is likely that the private law publishers will reprint the four volumes of the Annotated Probate Code if a new code is enacted only to have to reprint three of them again and a few years later when a Commission recommended revision of Division 3 is enacted. We are concerned that it will be bad public relations with the lawyers and judges to renumber Division 3 and then a year or two later to enact a complete substantive revision of Division 3.

The difficulty is that if we do not renumber Division 3 now, we cannot establish the permanent numbering of the sections in the provisions we are recommending for enactment in 1983 that will be inserted in the Probate Code before Division 3. This means that when we propose a comprehensive revision of Division 3 we will have to renumber the provisions we are proposing for enactment in 1983. However, generally the provisions we are proposing for enactment in 1983 do not involve forms and judicial proceedings and would not present serious problems if they are renumbered. We could advise the law publishers that we are planning to renumber the provisions enacted in 1983 so that the law publishers would not publish a new bound volume containing the new 1983 provisions, but would publish the new provisions in soft-covered volumes.

Accordingly, the staff recommends that the Commission not propose the repeal and reenactment of the Probate Code in 1983. Instead, we recommend that the repeal and reenactment of the Probate Code be proposed when the Commission proposes its comprehensive revision of Division 3. At that time, the Commission would repeal the entire Probate Code and would renumber the sections enacted in 1983.

It would be possible to propose the renumbering of Division 4 (guardianship-conservatorship law) at the 1983 session but not to propose the renumbering of Division 3 in 1983. This would tend to minimize the

burden on the Judicial Council of preparing forms, since the guardianship-conservatorship forms could be revised after the legislation is enacted by the 1983 session and the remainder of the forms relating to administration of probate could be revised when the comprehensive revision of probate administration is enacted when proposed in a few years. If this course of action is taken, we could prepare a separate bill to renumber Division 4. We could include in the bill the provisions relating to missing persons which we plan to add to Division 4. The bill could be introduced in December 1982 and could be enacted early in the 1983 session with an operative date of January 1, 1984. This course of action would minimize the burden of renumbering the Probate Code. Working with the Legislative Counsel, the staff could prepare the bill to renumber Division 4 for the 1983 session. We could deal with the remainder of Probate Code at a later time. One difficulty with renumbering Division 4 is that all the official comments to the sections in that division become inaccurate if the sections are renumbered and the Comments should be revised. In addition, if the entire Probate Code is not repealed and reenacted, the law publishers will show in the Probate Code under each former section of the Probate Code an indication that the section has been repealed. If the entire Probate Code is repealed and reenacted, the law publishers will instead provide a general disposition table showing where the former sections are contained in the new Probate Code. The staff believes that it would be better to defer renumbering of Division 4 until the comprehensive revision of Division 3 is proposed. At that time, we could propose that the entire Probate Code be repealed, and we could propose one bill to renumber the provisions before Division 3, a bill to enact the comprehensive revision of Division 3, and a bill to renumber Division 4. Then, when an entire new Probate Code is enacted, the publishers of the annotated codes could republish entirely the annotated codes and CEB and other publishers could republish their textbooks and other material. At that time, the forms could also be revised and republished. This course of action also should result in a minimum of disruption to the lawyers and courts. Accordingly, we recommend that we propose for enactment in 1983 the new provisions which will be codified before existing Division 3 using a decimal numbering system with the understanding that these provisions will be renumbered when the recommendation on Division 3 is prepared and at that time an entire new Probate Code (which will not use a decimal numbering system) will be proposed.

Obtaining Input from State Bar Section

The staff had hoped to have a draft of the tentative recommendation available well before the July meeting of the Commission. This would have given the State Bar Section time to review the draft and to provide a statement of its views to the Commission at the July meeting.

The staff regrets that we could not meet this schedule. Work on preparing the initial draft of the tentative recommendation was delayed because Bob Murphy works only three-fourths time. Work on checking and revising the initial draft by the Executive Secretary and Assistant Executive Secretary was delayed because of the substantial amount of time that had to be devoted to the 1982 legislative program.

The staff decided to divide the tentative recommendation into approximately 16 parts so that portions could be sent to the State Bar and Commission as they were completed. Even so, the staff does not believe that the State Bar Section will have had an adequate time before the July meeting to review and reach its conclusions concerning the various policy issues presented by the tentative recommendation.

The staff recommends that the Commission review each section of the recommended legislation at the July meeting, making such substantive and technical revisions as the Commission decides should be made. After the July meeting, the staff will work on preparing the recommended legislation for the 1983 session and preparing the tentative recommendation for printing. At the September 23-25 meeting, the Commission will consider the additional comments and suggestions of the State Bar Section and the proposed legislation and tentative recommendation will be revised to the extent necessary in light of the decisions made at the September meeting. Hopefully, not too many changes will be required, and we will be able to print our tentative recommendation without undue delay after the September meeting. We plan to have the tentative recommendation ready to print before the meeting and will only need to make the revisions the Commission decides to make at the September meeting before the tentative recommendation is sent to the printer.

In addition to the State Bar Section, there are approximately 80 persons who indicated they were interested in reviewing a tentative recommendation on probate law. Some of these persons are law libraries or libraries of private law firms and would not submit comments. We suggest that we send these persons a copy of the printed tentative recommendation when it becomes available (probably in March 1983 if we delay sending it to the printer until after the September meeting). We

can introduce the recommended legislation in December 1982 and we can amend it to reflect any changes we decide to make in view of the comments we receive when we distribute the printed tentative recommendation. In other words, we do not want to print the tentative recommendation until the State Bar Section has had an adequate opportunity to review the material for the July meeting and to give additional suggestions at the September meeting. But we do not want to delay the printing of the tentative recommendation in order to give additional persons an opportunity to review and comment on the tentative recommendation in xerox form. We will consider the comments from persons other than the State Bar Section after the printed tentative recommendation has been distributed for review and comment and will make any necessary changes in the bill or bills introduced in December 1982. This is the procedure we followed with respect to the enforcement of judgments bills and we believed that our experience with this procedure in that case was generally satisfactory.

We believe that it is important that the Commission and the State Bar Section are in general agreement on the substance of the bills to be recommended to the 1983 session. This is the reason we would allow additional time for the State Bar Section to review the materials and would consider any additional comments of the State Bar Section at the September meeting, even at the cost of delaying the printing of the tentative recommendation. The staff believes that it is essential that the areas of disagreement between the Commission and the State Bar Section be reduced to the bare minimum before the tentative recommendation is printed and the recommended legislation is introduced in bill form. At the same time, it should be recognized that technical amendments and some substantive amendments will be made after the bills have been introduced and that the need for these amendments will become more apparent after the Commission's recommended legislation has been introduced and is available in the form of a printed bill for convenient review. Also, interested persons and organizations find it much more convenient to review a printed report than xeroxed material.

In conclusion, the staff recommends that the Commission review the recommended legislation (set out in the various supplements to this memorandum) section by section at the July meeting. At the September meeting, the Commission would review any additional comments or suggestions of the State Bar Section on the same material. After the July meeting, the staff will commence to put the July meeting material in shape to

print as a tentative recommendation (taking into account the Commission's decision concerning the numbering of the new provisions and the manner in which the renumbering of the entire Probate Code will be accomplished). The staff will delay sending the tentative recommendation to the printer until after the September meeting. After the September meeting, the staff will revise the tentative recommendation to reflect the decisions made at that meeting and send the material to the printer.

Operative Date

We have drafted the recommended legislation on the assumption that it will become operative on July 1, 1984. This assumes that the recommended legislation would be enacted in 1983, would take effect on January 1, 1984, and become operative on July 1, 1984.

We believe that we have to assume the enactment of the recommended legislation in 1983 for the purpose of determining the operative date. If the recommended legislation is not enacted in 1983, the operative date will need to be deferred for an additional year.

The policy issue is how long the operative date should be deferred. The proposed legislation changes a number of rules concerning the construction of wills. This may require the review and revision of existing wills. These new rules will apply in any case where the testator dies after the operative date. In addition, practitioners will need to review the standard provisions they include in wills so that they will be in a position to draft wills after the operative date. The Commission should seriously consider deferring the operative date until January 1, 1985. The effect of selecting this operative date is, of course, that the reforms that the proposed law would make in existing law will be deferred for an additional six months.

Improving the drafting of the Uniform Probate Code

When the members of the legal staff reviewed the draft of the proposed legislation, there was general agreement that many of the Uniform Probate Code provisions are incomplete or poorly drafted, or both. Before we made a decision on whether to seek to improve the drafting of those UPC provisions that will be included in the proposed law, we wrote to our consultants asking whether they believed we should seek to improve the drafting of the UPC provisions. A number of the consultants expressed the view that the UPC language should be retained without change even where it could be improved. However, we decided to

improve the UPC drafting where we could. Professor Dukeminier's letter (attached as Exhibit 1) was the major reason why we made this decision.

Outline of Proposed Legislation

Attached (pink pages) is an outline of the proposed legislation. You may find this useful.

Respectfully submitted,

John H. DeMouilly
Executive Secretary



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June 22, 1982

Mr. John H. De Moully
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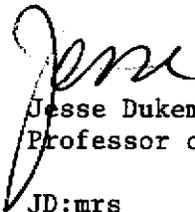
Dear John:

Yes, I do think you ought to use your best drafting skills in making the UPC sections clearer. The substantive ideas of the UPC are meritorious in most instances, but the drafting leaves something to be desired. The Chicago Bar Association recommended negatively on the UPC largely because of the inferior drafting. See Zartman, An Illinois Critique of the Uniform Probate Code, 1970 U. Ill. L.F. 413. So I think any clarification in language that does not change substance is desirable. You will find numerous suggested clarifications in the Zartman study.

As for the disclaimer statute, your new draft seems okay. You changed the language I found ambiguous.

I will be on Cape Cod in July, and will be unable to attend the meeting of the Commission.

Sincerely,


Jesse Dukeminier
Professor of Law
JD:mrs

Summary of Report

This report includes a comprehensive revision of the law of wills and intestate succession. The revision continues a substantial portion of existing law, but many changes are made to accomplish desirable substantive reforms and to promote national uniformity. The revision would take effect July 1, 1984, and would apply to cases involving persons who die on or after that date. Some of the more significant changes made by the proposed law are summarized below.

Family Maintenance

In cases where the decedent does not make adequate provision by will for the surviving spouse and children, the Probate Code protects the family by other means such as family allowance, set-aside of exempt property, and probate homestead. These provisions are limited either in duration or amount, however. The proposed law supplements them by family maintenance legislation requiring support for the decedent's family out of the estate. The support award is made by the court after consideration of all relevant factors including not only the needs of the decedent's family but also the rights and interests of other persons affected by the award, such as devisees and creditors. The support award may not be made on any terms that will unduly delay the closing of the estate.

Share of Surviving Spouse

Under existing law governing intestate succession, the surviving spouse takes a half or a third of the decedent's separate property, depending on the circumstances, with the balance passing to the decedent's children, parents, brothers, sisters, or descendants of a deceased brother or sister; the surviving spouse takes all the separate property only if the decedent is survived by none of these relatives. The proposed intestate succession provisions give the surviving spouse all the decedent's separate property without regard to the other relatives left by the decedent, unless the decedent left children who are not also children of the surviving spouse. In this case the surviving spouse takes one-half and the decedent's children take one-half.

Dissolution Revokes Disposition to Former Spouse

Existing law is that dissolution of marriage has no effect upon a will made before dissolution--a disposition made to the former spouse

remains in effect even though the testator may have remarried. The proposed law reverses this rule--any disposition to a former spouse in a will made before dissolution is ineffective.

Pay-On-Death Clauses

The proposed law expressly validates pay-on-death beneficiary designations in notes, deeds of trust, and other instruments. The law thus makes clear that such designations are valid even though not executed with all the formalities of a will. Existing law on this point is not clear.

Simultaneous Death

A person must survive the decedent in order to take from the decedent by will, succession, or survivorship; where the deaths occur simultaneously (as in a common accident), neither is deemed to have survived the other and the property of each passes to other heirs, devisees, and successors. The proposed law requires that a potential heir or devisee of the decedent must survive the decedent by 120 hours in order to take under the decedent's will (subject to an express provision in the will governing the matter) or by intestate succession. If it cannot be established that the heir or devisee has survived for the required period, he or she is treated as having predeceased the decedent and the decedent's property will pass to others. A similar rule is applied to nonprobate property such as life insurance. If the property is jointly owned property such as community property or joint tenancy and the two joint owners die within 120 hours of each other, half the property will pass to heirs or devisees of one joint owner, and the other half will pass to heirs or devisees of the other.

Filing Notice of Will

The proposed law permits a testator to file with the Secretary of State a notice that the testator has a will and where the will is to be kept. A certificate from the Secretary of State must be filed in all probate proceedings after July 1, 1989, stating what information is on file or that no information is on file.

Exoneration

Under existing law, encumbrances on property given by will must be discharged out of estate assets (unless the will directs otherwise or

the encumbrance is one for which the decedent was not personally liable). The proposed law reverses this rule so that in the ordinary case property given by will passes subject to all encumbrances.

Ancestral Property Doctrine

The proposed law does not continue the special rules of succession found in existing law that govern the descent of certain property acquired by the decedent from specified ancestors or from a predeceased spouse. Under the proposed law all property descends on the basis of the relationship of the successors to the decedent, not on the basis of the source of the property.

Laughing Heir

Under existing law, if the decedent dies intestate the property may pass to remote collateral relatives of the decedent if no close relatives survive the decedent. The proposed law cuts off inheritance by relatives more remote than grandparents and their descendants.

Right of Heirs of Predeceased Spouse

If property would otherwise escheat for lack of heirs of a decedent, existing law allows relatives of a predeceased spouse to inherit. The proposed law replaces this provision with an administrative procedure that permits such persons to claim property of the decedent that has escheated.

Interested Witness

Under existing law a disposition in a will to a person who witnessed the will is not valid. The proposed law eliminates this restriction.

Will Contracts

The Statute of Frauds requires that an agreement to make or not to revoke a will or to die intestate must be written, but existing rules permit proof of an oral agreement in a number of situations. The proposed law tightens these rules by permitting an oral agreement to be established only where some form of written evidence is available to show that the agreement actually exists.

Pretermitted Child

The proposed law permits a child of the decedent born after the decedent's will was made to take a share of the decedent's estate equal

in value to the shares given the decedent's other children, unless it is shown that the omission from the will was intentional. This has the effect of eliminating current provisions that give a full intestate share to a pretermitted child and that also protect an omitted child living at the time the will was made and a pretermitted grandchild.

Pretermitted Spouse

If the surviving spouse of a decedent is unintentionally omitted from the will of the decedent because the marriage occurred after the will was made, the proposed law gives the surviving spouse a share of the estate of the decedent closely similar to the share provided by existing law. However, existing law gives the omitted spouse one-third, one-half, or all of the decedent's separate property depending on whether the decedent leaves issue, parents, siblings, or their descendants; the proposed law gives the omitted spouse all of the decedent's separate property except to the extent the property is left to issue, parents, siblings, or their descendants, with a minimum share of one-half.

Anti-Lapse Statute

Under existing law if a devise is made to a person who predeceases the testator, the gift lapses unless the person is a blood relative of the testator, in which case the gift goes to the person's descendants. The proposed law extends the statute to prevent lapse of a gift made to a person other than a blood relative of the testator who predeceases the testator.

Residue of a Residue

If one of several residuary takers under the decedent's will predeceases the decedent without issue, the proposed law passes the failed gift to the other residuary taker or takers. This changes the existing rule that the failed gift passes by intestacy.

Waiver of Rights by Surviving Spouse

Existing cases strictly construe a waiver of rights by the surviving spouse in the estate of the decedent. The proposed law, consistent with existing cases, makes clear that a waiver must be in writing and to be enforceable must be either (1) made upon full disclosure of assets with advice of counsel or (2) found by the court to be voluntary and knowing or fair and not unconscionable.

Election to Take Quasi-Community Property Against Will

The proposed law treats quasi-community property the same as community property by deleting the requirement that the surviving spouse must elect whether to take the statutory share of quasi-community property or property given under the will.

Execution Formalities

The proposed law eliminates the existing ritual of will execution in favor of the basic requirements that the will be in writing and signed by the testator, and that either the signing or a declaration that the will or signature is the testator's be witnessed by two witnesses.

Revocation Formalities

The proposed law eliminates many of the technicalities that restrict proof of the terms of a missing will or of the fact of revocation or revival of a will. Under the proposed law evidence of the terms of a will and of the testator's intent is admissible without limitation and regardless of presumptions.

Missing Persons

The proposed law replaces existing provisions for appointment of a trustee to protect and manage the property of a person missing for more than 90 days with provisions permitting appointment of a conservator of the estate for a person without regard to how long the person has been missing.

The proposed law shortens from seven to five years the period of time one must be missing in order to be presumed dead, makes clear that there must be a diligent search for the missing person before the presumption of death will be applied, presumes that the death occurred at the end of the five-year period in the absence of contrary evidence, provides for protection of the rights of a missing person who reappears, and makes revisions in the administration provisions regarding estates of missing persons.

OUTLINE OF TENTATIVE RECOMMENDATION RELATING TO
WILLS AND INTESTATE SUCCESSION

DIVISION 1. DEFINITIONS AND GENERAL PROVISIONS

Part 1. Preliminary Provisions and Construction

- § 1. Short title
- § 2. Construction of code
- § 3. Liberal construction
- § 4. Continuation of existing law; construction of provisions drawn from Uniform Probate Code
- § 5. Tenure of office
- § 6. Pending proceedings; cases where decedent died before July 1, 1984
- § 7. Running of limitations and other period of time
- § 8. Effect of headings in code
- § 9. Certified mail equivalent of registered mail
- § 10. References to statute
- § 11. Reference to division, part, chapter, article, section, or part of section
- § 12. Construction of tenses
- § 13. Construction of singular and plural
- § 14. Construction of "shall" and "may"
- § 15. Severability

Part 2. Words and Phrases Defined

- § 100.010. Application of definitions
- § 100.020. Annulment of marriage
- § 100.030. Beneficiary
- § 100.040. Child
- § 100.050.
- § 100.060. Community property
- § 100.070.
- § 100.080.
- § 100.090. Devise
- § 100.100. Devisee
- § 100.110. Dissolution of marriage
- § 100.120.
- § 100.130. Family allowance
- § 100.140. Family maintenance
- § 100.150. Financial institution
- § 100.160.
- § 100.170.
- § 100.180.
- § 100.190. Heirs
- § 100.200.
- § 100.210.
- § 100.220. Interested person
- § 100.230. Issue
- § 100.240.
- § 100.250.
- § 100.260.
- § 100.270.
- § 100.280.
- § 100.290.

- § 100.300. Parent
- § 100.310. Person
- § 100.320. Personal property
- § 100.330.
- § 100.340. Probate homestead
- § 100.350. Property
- § 100.360.
- § 100.370.
- § 100.380. Quasi-community property
- § 100.390. Real property
- § 100.400. Security
- § 100.410.
- § 100.420.
- § 100.430. State
- § 100.440.
- § 100.450.
- § 100.460.
- § 100.470. Surviving spouse
- § 100.480.
- § 100.490. Trust
- § 100.500. Trustee
- § 100.510.
- § 100.520. Will

Part 3. General Provisions

Chapter 1. Effect of Death of Married Person on Community and Quasi-Community Property

- § 110.010. Community property
- § 110.020. Quasi-community property
- § 110.030. Recapture by surviving spouse of certain quasi-community property
- § 110.040. Effect on community and quasi-community property where married person does not survive death of spouse by 120 hours
- § 110.050. Community property held in certain revocable trusts

Chapter 2. Surviving Spouse's Right in California Real Property of Nondomiciliary Decedent

- § 110.510. Surviving spouse's right in California real property of nondomiciliary decedent

Chapter 3. Contractual Arrangements Relating to Rights at Death

Article 1. Surviving Spouse's Waiver of Rights

- § 111.010. "Waiver agreement"
- § 111.020. Rights of surviving spouse that may be waived
- § 111.030. Waiver must be in writing
- § 111.040. Amendment; revocation
- § 111.050. Waiver agreement enforceable as of right
- § 111.060. Waiver agreement enforceable in discretion of court
- § 111.070. Effect of waiver of all rights or complete property settlement
- § 111.080. Validity of agreements under prior law not affected

Article 2. Contracts Concerning Will or Succession

- § 111.110. Contracts concerning will or succession

Article 3. Provisions in Written Instruments

§ 111.210. Dispositive provisions in written instruments

Chapter 4. Disclaimer of Testamentary and Nontestamentary Interests

Article 1. Definitions

§ 112.010. Application of definitions

§ 112.020. Beneficiary

§ 112.030. Creator of the interest

§ 112.040. Disclaimant

§ 112.050. Disclaimer

§ 112.060. Employee benefit plan

§ 112.070. Interest

§ 112.080. Trust account

Article 2. General Provisions

§ 112.210. Right to disclaim interest

§ 112.220. Disclaimer on behalf of conservatee

§ 112.230. Disclaimer on behalf of minor or decedent

§ 112.240. Contents of disclaimer

§ 112.250. Time within which disclaimer must be filed

§ 112.260. Filing of disclaimer; recording of disclaimers
affecting real property

§ 112.270. Disclaimer irrevocable and binding

§ 112.280. Effect of disclaimer

§ 112.290. Disclaimer not a fraudulent conveyance

§ 112.300. Waiver of right to disclaim

§ 112.310. Disclaimer not permitted after interest
accepted

§ 112.320. Right to disclaim not affected by spendthrift
or similar restriction

§ 112.330. Application of chapter to interest created
before July 1, 1984

§ 112.340. Preexisting rights not affected

Article 3. Disclaimers Effective Under Federal Law

§ 112.510. Disclaimers effective under federal law
effective under this chapter

Chapter 5. Effect of Homicide

§ 113.010. Wills and intestate succession

§ 113.020. Joint assets

§ 113.030. Life insurance and beneficiary designations

§ 113.040. Other cases

§ 113.050. Determination of whether killing was felonious and
intentional

§ 113.060. Good faith purchasers

§ 113.070. Protection of obligors

Chapter 6. Required Period of Survival to Take as Survivor

Article 1. 120-Hour Survival Rule

§ 114.010. 120-hour survival rule

§ 114.020. Application of article

§ 114.030. Survival of beneficiaries

§ 114.040. Survival of joint tenants

§ 114.050. Life or accident insurance

Article 2. Proceedings to Determine Survival

- § 114.510. Petition for purpose of determining survival
- § 114.520. Persons authorized to file petition
- § 114.530. Court where petition to be filed
- § 114.540. Notice of hearing
- § 114.550. Hearing, determination, order

DIVISION 2. WILLS AND INTESTATE SUCCESSION

Part 1. Wills

Chapter 1. General Provisions

- § 200.010. Who may make a will
- § 200.020. Property subject to disposition by will
- § 200.030. Who may take a disposition by will

Chapter 2. Execution of Wills

- § 201.010. Execution of witnessed will
- § 201.020. Holographic will
- § 201.030. Who may witness a will
- § 201.040. Choice of law as to execution of will

Chapter 3. Revocation and Revival

- § 202.010. Revocation by writing or by act
- § 202.020. Effect of revoking duplicate will
- § 202.030. Revocation by divorce; no revocation by other changes of circumstances
- § 202.040. Revival of revoked will

Chapter 4. Reference to Matters Outside the Will

- § 203.010. Incorporation by reference
- § 203.020. Events of independent significance

Chapter 5. Rules of Construction of Wills

Article 1. General Provisions

- § 204.010. Intention of testator
- § 204.015. Rules of construction apply unless will indicates contrary intention
- § 204.020. Choice of law as to meaning and effect of wills
- § 204.030. Requirement that devisee survive testator by 120 hours
- § 204.040. Will passes all property including after-acquired property
- § 204.050. Anti-lapse
- § 204.060. Failure of testamentary provision
- § 204.070.
- § 204.080. Construction of generic terms to accord with relationships as defined for intestate succession
- § 204.090. Scope of disposition to a class; afterborn child
- § 204.100. Vesting
- § 204.110. Common law rule of worthier title abolished
- § 204.120. Direction in will for conversion of real property
- § 204.130. Death of devisee of limited interest

Article 2. Conditional Dispositions

- § 204.210. Conditional disposition defined
- § 204.220. Condition precedent defined; construction and operation
- § 204.230. Condition subsequent defined; operation

Article 3. Ascertaining Meaning of Words Used in the Will

- § 204.310. Every expression given some effect; intestacy avoided
- § 204.320. Construction of will as a whole
- § 204.330. Clear and distinct devise
- § 204.340. Words taken in ordinary and grammatical sense; technical words
- § 204.350. Words referring to death or survivorship

Article 4. Exoneration; Ademption

- § 204.400. No exoneration
- § 204.410. Change in form of securities
- § 204.420. Unpaid proceeds of sale, condemnation, or insurance; property obtained as a result of foreclosure
- § 204.430. Sale by conservator; payment of proceeds of specifically devised property to conservator
- § 204.440. Ademption by satisfaction
- § 204.450. Contract for sale or transfer of specifically devised property
- § 204.460. Testator placing charge or encumbrance on specifically devised property
- § 204.470. Act of testator altering testator's interest in specifically devised property

Chapter 6. California Statutory Will

Article 1. Definitions and Rules of Construction

- § 205.010. Application of definitions and rules of construction
- § 205.020. Testator
- § 205.030. Spouse
- § 205.040. Executor
- § 205.045. Trustee
- § 205.050. Descendants
- § 205.060. Class designation of "descendants" or "children"
- § 205.070. Construction of genders and singular and plural
- § 205.080. Use of "shall" or "may" in a California statutory will
- § 205.090. Manner of distribution to "descendants"
- § 205.100. Person

Article 2. General Provisions

- § 205.200. Persons who may execute California statutory will
- § 205.210. Method of executing California statutory will
- § 205.220. Two California statutory wills; contents
- § 205.230. Effect of selection of more than one property disposition clause; effect of failure to make selection
- § 205.240. Effect of titles of clauses

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 - § 649.1. Election to have community and quasi-community property administered
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 - § 649.5. Community property held in certain revocable trusts
- § 650 (technical amendment). Petition to have community or quasi-community property not administered in the estate
- § 655 (technical amendment). Court order
- Chapter 11 (commencing with Section 660) (repealed). Support of the family
- Chapter 11 (added). Legacies and interest
 - § 660. Testamentary intent controlling
 - § 661. Accrual of interest or income
 - § 662. Types of legacies; annuity
 - § 663. Interest on annuities and legacies; commencement of annuities
 - § 664. Distribution of net income
- § 704.2 (technical amendment). Claim for debts of deceased spouse
- § 736 (amendment). No sale of specifically devised property to exonerate other encumbered property
- § 750 (amended). Order of resort to estate assets
- § 754 (amended). Sale of estate property
- § 950 (amended). Order of payment of expenses, debts, and charges
- § 1050 (repealed). Gift before death
- § 1051 (repealed). Advancement as part of estate; deduction from share

- § 1052 (repealed). Determination of value
- § 1053 (repealed). Advancement to predeceased heir
- § 1054 (amended). Determination of questions as to advancements and adempments
- § 1200.5 (amended). Manner of giving notice in certain instances
- § 1215 (technical amendment). Notice in trust proceedings
- § 1240 (amended). Appeal of orders or refusal to make orders
- Chapter 23 (added). Administration of Estate of Missing Persons Presumed Dead
 - § 1300. Missing person defined
 - § 1301. Presumption of death for purposes of administration
 - § 1302. Manner of administration and distribution of missing person's estate
 - § 1303. Jurisdiction of court
 - § 1304. Petition for administration or probate
 - § 1305. Time for hearing; notice of hearing
 - § 1306. Determination whether person is person presumed to be dead; search for missing person
 - § 1307. Appointment of executor or administrator and determination of date of disappearance
 - § 1308. Recovery of property by missing person upon reappearance
 - § 1309. Application of chapter

DIVISION 4. GUARDIANSHIP, CONSERVATORSHIP, AND
OTHER PROTECTIVE PROCEEDINGS

- § 1461.7 (added). Notice of hearing on petition, report, or account where conservatee is a missing person
- § 1804 (added). Conservator of estate of missing person
- Article 5 of Chapter 1 of Part 3 (added). Special Provisions Applicable Where Proposed Conservatee is a Missing Person
 - § 1845. Appointment of conservator for missing person; procedure
 - § 1846. Petition; additional contents
 - § 1847. Notice of hearing
 - § 1848. Certain general requirements for establishment of conservatorship not applicable
 - § 1849. Appointment of conservator
 - § 1849.5. Application of article; authority of trustee under prior law
- § 2580 (technical amendment). Petition for conservator to exercise substituted judgment
- Heading for Chapter 5 (commencing with Section 3700) of Part 8 of Division 4 (technical amendment)
- Heading for Article 1 (commencing with Section 3700) of Chapter 5 of Part 8 of Division 4 (added)
- § 3700 (technical amendment) Definitions
- Heading for Article 2 (commencing with Section 3701) of Chapter 5 of Part 8 (added)

§ 3703 (technical amendment). Contents of petition

Article 3 of Chapter 5 of Part 8 (added). Management and Disposition of Personal Property of Absentee Without Court Proceeding

§ 3710. Authority of family of absentee to manage and dispose of personal property of absentee

§ 3711. Transfer of evidence of absentee's property right; discharge of third persons from liability

§ 3712. Action by absentee

Article 4 of Chapter 5 of Part 8 (added). Absentee's Power of Attorney

§ 3720. Power of attorney

CONFORMING REVISIONS IN OTHER CODES

Civil Code

§ 1389.4 (amended). Power of appointment

§ 1624 (amended). Statute of frauds

§ 4352 (amended). Notice concerning will

§ 5129 (repealed). Courtesy and dower abolished

Education Code

§ 24606 (amended). State Teachers' Retirement System; provisions applicable in simultaneous death and similar situations

Evidence Code

§ 667 (amended). Presumption of death

Government Code

§ 21371 (technical amendment). Public Employees' Retirement Law; provisions applicable in simultaneous death and similar situations

Revenue and Taxation Code

§ 13409 (technical amendment). Disclaimers

§ 15209 (technical amendment). Disclaimer not deemed a gift

No local reimbursement

SEC. _____. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the Legislature finds and declares that there are savings as well as costs in this act which, in the aggregate, do not result in additional net costs.

Operative date

SEC. _____. (a) Except as provided in subdivisions (b) and (c), this act becomes operative on July 1, 1984.

(b) On and after the effective date of this act, the Judicial Council and the Secretary of State may adopt any forms necessary so that the forms may be used when this act becomes operative.

(c) On and after the effective date of this act, the courts may adopt any rules necessary so that the rules will be effective when this act becomes operative.