

Memorandum 87-73

Subject: Study L-655 - Inventory and Appraisal (Review of Revised Provisions Before Approval for Printing)

At the September meeting in Los Angeles the Commission made further refinements in the recommendations relating to the time for filing an inventory and appraisal, in response to suggestions of the State Bar. Attached to this memorandum is a redraft of the relevant provisions. Upon approval by the Commission, these will be printed as part of the Commission's final recommendation on this topic.

Respectfully submitted,

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Assistant Executive Secretary

EXHIBIT 1

§ 8800. Inventory and appraisal required

8800. (a) The personal representative shall file with the court clerk an inventory of property to be administered in the decedent's estate and an appraisal of property in the inventory. An inventory and appraisal may be combined in a single document.

(b) The inventory shall be filed within three months after letters are first issued to a general personal representative. The appraisal shall be filed within six months after letters are first issued to a general personal representative. The court may allow such further time for filing an inventory or an appraisal as is reasonable under the circumstances of the particular case.

(c) The personal representative may file partial inventories or partial appraisals where appropriate under the circumstances of the particular case, but all inventories and appraisals shall be filed before expiration of the time allowed under subdivision (b).

Comment. Section 8800 supersedes the first portion of the first sentence of former Section 600. It permits separately-filed inventories and appraisals and extends the time for filing the appraisal (as opposed to the inventory) to six months. Both the three month and six-month periods may be extended by the court either on prior authorization or by subsequent excuse. A further time might be reasonable, for example, in an estate for which a federal estate tax return is necessary and additional time is required in order to ensure that the property is valued consistently.

The inventory and appraisal procedure provided in this part applies to valuation in administration of decedents' estates, but may be incorporated in other proceedings. For example, in a small estate set-aside proceeding under Chapter 6 (commencing with Section 6600) of Part 3 of Division 6, an inventory and appraisal of the decedent's estate is required as provided in Section 6608. No inventory and appraisal of the decedent's estate is required where it is disposed of without administration under Division 8 (commencing with Section 13000) except to the extent an inventory and appraisal is required pursuant to Section 13103 (real property), subdivision (b) of Section 13152 (real property), subdivision (c) of Section 13200 (affidavit procedure), or Section 13658 (property passing or belonging to surviving spouse).

See also Code Civ. Proc. § 166 (actions in chambers).

CROSS-REFERENCES

Definitions

Letters § 52
Personal representative § 58
Property § 62

§ 8801. Supplemental inventory and appraisal

8801. If after expiration of the time allowed under subdivision (b) of Section 8800 for filing an inventory the personal representative acquires knowledge of property to be administered in the decedent's estate that is not included in a prior inventory, the personal representative shall file a supplemental inventory and an appraisal or supplemental appraisal of the property in the manner prescribed for an original inventory and an original appraisal. The supplemental inventory shall be filed within three months after the personal representative acquires knowledge of the property. The supplemental appraisal shall be filed within six months after the personal representative acquires knowledge of the property. The court may allow such further time for filing a supplemental inventory or a supplemental appraisal as is reasonable under the circumstances of the particular case.

Comment. Section 8801 supersedes former Section 611, recognizing the possibility of separate inventories and appraisals and extending the two month time for filing to three and six months, parallel to Section 8800 (inventory and appraisal required). For enforcement of this requirement, see Section 8804 (failure to timely file inventory or appraisal).

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 8804. Failure to timely file inventory or appraisal

8804. If the personal representative negligently fails or refuses to file an inventory or appraisal within the time allowed under this chapter, upon petition of an interested person:

(a) The court may compel the personal representative to file an inventory or appraisal pursuant to the procedure prescribed in Section 921.

(b) The court may remove the personal representative from office.

(c) The court may impose on the personal representative personal liability for injury to the estate or to an interested person that directly results from the failure. The liability may include

attorney's fees, in the court's discretion. Damages awarded pursuant to this subdivision are a liability on the bond of the personal representative, if any.

Comment. Section 8804 restates former Section 610 and a portion of former Section 611, making clear that the statute applies to failure to timely file the appraisal as well as failure to timely file the inventory. The time allowed under this chapter for filing an inventory or appraisal includes any court extension of the statutory times under Sections 8800 (inventory and appraisal required) and 8801 (supplemental inventory and appraisal). Section 8804 is limited to negligent or willful noncompliance by the personal representative and is not intended to apply where the personal representative was unable to file the appraisal due to the probate referee's delay, or where the personal representative made a good faith effort to file but was unable to due to circumstances beyond the personal representative's control. For delay caused by the probate referee, see Article 3 (commencing with Section 8940) of Chapter 3.

Subdivision (a) is new. It incorporates the procedure for compelling an account.

Subdivision (b) provides for removal as an independent sanction. For the removal procedure, see Article 4 (commencing with Section 520) of Chapter 6 of Division 3. This supplements the removal sanction that is part of the procedure under subdivision (a) to compel a filing.

Under subdivision (c) liability for injury arising from the failure of the personal representative to timely file the inventory and appraisal may include attorney's fees incurred in proceedings to compel the filing. Liability of the personal representative and of the sureties on the bond is joint and several. See Code Civ. Proc. § 996.410 et seq.

CROSS-REFERENCES

Definitions

Interested person § 48

Personal representative § 58

§ 8850. Contents of inventory

8850. (a) The inventory, including partial and supplemental inventories, shall include all property to be administered in the decedent's estate.

(b) The inventory shall particularly specify the following property:

(1) Debts, bonds, mortgages, deeds of trust, notes, and other security for the payment of money to the decedent, with the name of each debtor, the date, the sum originally payable, and the endorsements, if any, with their dates. If security for the payment of

money is real property, the inventory shall include a reference to the place in the records where the security interest is recorded or, if not recorded, a legal description of the real property.

(2) A statement of the interest of the decedent in a partnership in which the decedent was a member, appraised as a single item.

(3) An account of all money of the decedent.

(c) The inventory shall show, to the extent ascertainable by the personal representative, the portions of the property that are community, quasi-community, and separate property of the decedent.

Comment. Subdivisions (a) and (b) of Section 8850 restate the third and fourth sentences of former Section 600 without substantive change. Subdivision (b)(1) includes a requirement of precise identification of real property security in order to achieve an accurate inventory for appraisal of the underlying obligation. Subdivision (c) restates former Section 601, with the addition of the reference to quasi-community property.

CROSS-REFERENCES

Definitions

- Community property § 28
- Personal representative § 58
- Property § 62
- Quasi-community property § 66