

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATIONS

relating to

Probate Law

Public Guardians and Administrators
Inventory and Appraisal
Opening Estate Administration
Abatement
Accounts
Litigation Involving Decedents
Rules of Procedure in Probate
Distribution and Discharge
Nondomiciliary Decedents
Interest and Income During Administration

December 1987

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

THE CALIFORNIA LAW REVISION COMMISSION

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NOTE

The Commission's annual reports and its recommendations and studies are published in separate pamphlets which are later bound in permanent volumes. The page numbers in each pamphlet are the same as in the volume in which the pamphlet is bound. The purpose of this numbering system is to facilitate consecutive pagination of the bound volumes. This pamphlet will appear in Volume 19 of the Commission's *Reports, Recommendations, and Studies* which is scheduled to be published late in 1989.

Cite this pamphlet as *Recommendations Relating to Probate Law*, 19 Cal. L. Revision Comm'n Reports 701 (1988).

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PREFACE

This publication contains 10 recommendations of the Law Revision Commission relating to probate law. The recommended legislation is included in a bill introduced in the 1988 session of the California Legislature. The 10 recommendations are listed in the following table of contents.

Following the recommendations is an Appendix of Conforming Revisions and Repeals. This appendix includes the comments to revisions and repeals accomplished by the 10 recommendations. In addition, each recommendation contains a table showing which conforming revisions and repeals are relevant to its subject matter.

This publication does not include an index, but a cross-reference table showing where background material may be found on each section in the bill as introduced is printed at the very end of this report. This table facilitates ready access to the particular recommendation in this publication that supports a given section in the bill.

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STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

relating to

Public Guardians and Administrators

September 1987

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

(707)

NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

Cite this recommendation as *Recommendation Relating to Public Guardians and Administrators*, 19 Cal. L. Revision Comm'n Reports 707 (1988).

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4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739
(415) 494-1335

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VAUGHN R. WALKER

September 17, 1987

To: The Honorable George Deukmejian
Governor of California
and
The Legislature of California

The California Law Revision Commission is now devoting its time and resources almost exclusively to the study of probate law and procedure. The Commission is preparing a new code to replace the existing Probate Code.

The Commission has decided not to delay submitting all recommendations for the improvement of probate law until work on the new code is completed. This recommendation is one of those which is being submitted for enactment prior to the submission of the entire code.

The recommended legislation replaces the existing provisions governing the public guardian (existing Welfare and Institutions Code Sections 8000 to 8015) and the public administrator (existing Probate Code Sections 1140 to 1155).

This recommendation is submitted pursuant to Resolution Chapter 37 of the Statutes of 1980.

Respectfully submitted,

Ann E. Stodden
Chairperson

RECOMMENDATION

relating to

PUBLIC GUARDIANS AND ADMINISTRATORS

PUBLIC GUARDIANS

The proposed law relocates the public guardian statute from the Welfare and Institutions Code¹ to the Guardianship and Conservatorship Law. At the same time, the proposed law makes a few significant substantive changes in the law.

Public guardian's bond. The official bond of the public guardian and the liability of the county for the public guardian stand in place of the ordinary bond of a guardian or conservator. Since the public guardian's bond and liability are for the benefit and protection of the ward or conservatee and persons interested in the estate of the ward or conservatee, it is proper that these persons, rather than the public, should bear the cost.² The proposed law allows a bond fee as a claim against the estate of the ward or conservatee.³ This amount is remitted to the county treasury to offset the public expenditure for the official bond and other public liability of the county.

Court ordered public guardianship or conservatorship. If the court orders the guardianship or conservatorship of any person or estate into the public guardian's hands, existing law provides in one place that the public guardian "may act" as guardian or conservator and in another that the public guardian "shall" procure letters of guardianship or conservatorship.⁴ As a consequence,

1. Welf. & Inst. Code §§ 8000-8015. Section 8016 (1987 Cal. Stat. ch. 1241, § 2) is not affected.

2. A guardian or conservator is generally allowed the amount of reasonable expenses incurred in performance of the duties, including the cost of any surety bond given. Prob. Code § 2623(a).

3. The bond fee is statutorily defined as \$25 plus ¼% of the amount of an estate greater than \$10,000. This is equivalent to one-half the maximum amount allowed for the bond of a personal representative under Probate Code Section 541.5.

The smallest estates—those of persons eligible for Social Security Supplemental Income—are exempt from the bond fee.

4. Welf. & Inst. Code § 8006.

whether the public guardian must accept a court referral is not clear. The proposed law makes it clear that the public guardian must accept a court-referred guardianship or conservatorship. However, the court may not order the referral except upon 15 days' notice to the public guardian, a court hearing, consideration of the alternatives, and a determination that there is no other person qualified and willing to act whose appointment would be in the best interest of the ward or conservatee and that the public guardianship or conservatorship is necessary. This will ensure that persons and property in need of protection will receive it, and that the public guardian will be required to act only in appropriate cases.

Jurisdiction of public guardian. Existing law provides that the public guardian may act with respect to persons and property "in the county."⁵ However, a person domiciled in the county may require protection when temporarily outside the county (including institutionalization outside the county), or the person's property requiring protection may be situated outside the county. Jurisdiction should be based on domicile, regardless of the temporary location of the person or property. The proposed law implements this concept.

Taking possession or control of property. Whether or not the public guardian is ultimately appointed guardian or conservator, the public guardian may take immediate possession or control of property in need of protection because it is subject to waste, lack of care, or loss. The proposed law extends this authority to property that is subject to misappropriation as well. The proposed law also gives the public guardian added power to reach and preserve property, consistent with the powers of the public administrator in a similar situation.⁶

Existing law sets a fee for the services of the public guardian in taking charge of the ward's or conservatee's property. The statutory fee is subject to a \$25 minimum and a \$500 maximum.⁷ These limits are arbitrary, and bear no

5. Welf. & Inst. Code § 8006.

6. Prob. Code § 1141.

7. Welf. & Inst. Code § 8006.5.

reasonable relation to the actual cost to the public guardian of providing services. The proposed law eliminates the statutory maximum and minimum fees, leaving the public guardian simply with a reasonable fee for services. This fee is subject to court approval.

Employment of attorneys. Existing law enables the public guardian to employ private attorneys if necessary, provided the cost can be defrayed out of estate funds.⁸ The proposed law broadens this authority even where estate funds are insufficient by enabling the public guardian to employ private attorneys where satisfactory pro bono or contingency fee arrangements can be made. This will enable the public guardian to obtain adequate legal representation for the ward's or conservatee's estate without cost to the public or the estate.

Appraisal of estate. Ordinarily, a guardianship or conservatorship estate must be appraised.⁹ The appraisal requirement is a substantial and unnecessary burden in the case of small estates. The proposed law mitigates this problem by having the public guardian, rather than the probate referee, appraise an estate less than \$10,000. This will simplify administration in small estates and prevent the ward's or conservatee's assets from being consumed in administrative expenses.

Disposition of assets on death of ward or conservatee. On the death of the ward or conservatee the public guardian may pay expenses of last illness and funeral expenses, and may liquidate an estate worth less than \$20,000 by summary court proceedings if existing liquid assets are insufficient for payment.¹⁰ This is a useful procedure, and the proposed law expands it to permit liquidation and payment of other reasonable guardian or conservator charges as well, whether incurred before or

8. Welf. & Inst. Code § 8010.

9. Prob. Code § 2610. An estate handled by the public guardian need not be appraised if worth fifty dollars or less. Welf. & Inst. Code § 8011.

10. Welf. & Inst. Code § 8012.

after death, including unpaid court approved attorney's fees.¹¹ However, because of the expansion and because of the summary nature of the court proceedings, the proposed law restricts the liquidation procedure to small estates—those worth less than \$10,000.

PUBLIC ADMINISTRATORS

The provisions of existing law governing public administrators are generally continued in the proposed law without substantive change, or with only minor changes that are noted in the Comments to the proposed law and to the repealed provisions of existing law. There are a number of more significant changes, however, that are noteworthy.

Property subject to loss, injury, waste, or misappropriation. A public administrator must take charge of a decedent's property either (1) upon court order or (2) if there is no personal representative and the property is subject to loss, injury, or waste.¹² The proposed law extends this requirement to property that is subject to misappropriation as well. However, the public administrator is given express immunity with respect to property the public administrator is unable to obtain control of.

In carrying out this responsibility, the public administrator may make a search for other property, a will, and burial instructions, including a search of the decedent's safe deposit box, but only if there are reasonable grounds to believe that the public administrator may be appointed personal representative.¹³ This limitation is unduly restrictive, since there may be an immediate need for action regardless of the likelihood the public administrator will ultimately be the personal representative. The proposed law deletes the likelihood of appointment requirement. The proposed law also adds a requirement that if the search reveals additional property of the

11. The new law makes this revision in Section 2631, which is applicable to any guardian or conservator and is not limited to the public guardian.

12. Prob. Code § 1140.

13. Prob. Code § 1141.

decendent that is subject to loss, injury, or waste, the person in possession must surrender the property to the public administrator.

Public administrator's bond. The official bond of the public administrator and the liability of the county for the public administrator stand in place of the ordinary bond of a personal representative. Since the public administrator's bond and liability are for the benefit and protection of persons interested in the estates administered by the public administrator, it is proper that these beneficiaries, rather than the public, should bear the cost. The proposed law allows a bond fee as a charge against every estate administered by the public administrator.¹⁴ This amount is remitted to the county treasury to offset the public expenditure for the official bond and other public liability of the county.

Summary proceedings. Most estates handled by the public administrator are small estates that are uneconomical to administer.¹⁵ Existing law seeks to cure this problem by providing summary proceedings for use by the public administrator in small estates.¹⁶

Because no notice to creditors is given under summary proceedings, the proposed law includes two protections for creditors not found under existing law. First, the proposed law requires payment of claims made any time before distribution of the decedent's property is made, as opposed to the four-month claim period applicable in ordinary administration proceedings in which creditors receive published notice. To avoid precipitate distributions, the proposed law prohibits distribution until four months after commencement of summary disposition proceedings.

14. The statutory fee is \$25 for an estate of \$10,000 or less and $\frac{1}{4}\%$ of the amount of an estate greater than \$10,000. This is equivalent to one-half the maximum amount allowed for the bond of a personal representative generally under Probate Code Section 541.5.

15. For example, James R. Scannell, Public Administrator for the City and County of San Francisco, informs the Law Revision Commission that 70% of the estates handled by his office are less than \$10,000 in value and 88% are less than \$50,000 in value. See Minutes of Meeting of California Law Revision Commission (March 13-14, 1986, Sacramento) at 28.

16. Prob. Code § 1143.

Second, the proposed law imposes liability on recipients of property distributed pursuant to summary proceedings for unpaid creditor claims. This is analogous to personal liability imposed on recipients of property that passes without probate administration.¹⁷

Existing law provides no limit to the amount of time a public administrator must preserve files of summary disposition cases. The proposed law simplifies the record-keeping system by requiring the public administrator to file with the court a permanent statement of the decedent's estate and receipts for distributions in the case of an estate over \$10,000. Thereafter, the public administrator must preserve in the office of the public administrator a temporary file of all receipts and records of expenditures for a period of three years, after which the file may be destroyed.

Existing law provides that where the public administrator uses summary disposition proceedings, unclaimed property in estates under \$10,000 is paid to the county¹⁸ but unclaimed property in estates under \$60,000 is distributed to the state.¹⁹ The Law Revision Commission recommends that all unclaimed summary disposition funds be paid to the county. Typically the small estates summarily disposed of by the public administrator are the estates of elders living alone without family support who receive greater than usual county care and service during their lifetimes.²⁰ For this reason it is appropriate that unclaimed property is paid to the county where the decedent resided.

17. See, e.g., Prob. Code §§ 13000-13660.

18. Prob. Code § 1143(b).

19. Prob. Code § 1144.

20. Such care and service may include supplementation of income through geriatric programs such as day care centers, low cost public transportation, food and health centers, and replacement of services eliminated from the Medi-Cal program. See letter from Dianne Feinstein, Mayor of San Francisco, to California Law Revision Commission (May 21, 1986) (letter on file in Commission office).

OUTLINE OF PROPOSED LEGISLATION

DIVISION 4. GUARDIANSHIP, CONSERVATORSHIP, AND OTHER PROTECTIVE PROCEEDINGS

PART 5. PUBLIC GUARDIAN

CHAPTER 1. TAKING TEMPORARY POSSESSION OR CONTROL OF PROPERTY

- § 2900. Authority to take possession or control
- § 2901. Providing information and access to public guardian
- § 2902. Costs and fee for taking possession or control

CHAPTER 2. APPOINTMENT OF PUBLIC GUARDIAN

- § 2920. Application for appointment
- § 2921. Persons under jurisdiction of Departments of Mental Health or Developmental Services
- § 2922. Letters, oath, and bond

CHAPTER 3. ADMINISTRATION BY PUBLIC GUARDIAN

- § 2940. Deposit of funds
- § 2941. Employment of attorneys
- § 2942. Expenses of public guardian
- § 2943. Inventory and appraisal of estate
- § 2944. Immunity of public guardian

DIVISION 7. ADMINISTRATION OF ESTATES OF DECEDENTS

PART 1. GENERAL PROVISIONS

CHAPTER 4. PUBLIC ADMINISTRATOR

Article 1. Taking Temporary Possession or Control of Property

- § 7600. Report of public officer or employee
- § 7601. Duty of public administrator
- § 7602. Search for property, will, and instructions for disposition of remains
- § 7603. Providing information and access to public administrator
- § 7604. Costs and fees for taking possession or control of property

Article 2. Appointment as Personal Representative

- § 7620. Authority of public administrator
- § 7621. Appointment of public administrator
- § 7622. General rules governing administration of estates apply
- § 7623. Additional compensation
- § 7624. Payment of unclaimed funds

Article 3. Deposit of Money of Estate

- § 7640. Deposit by public administrator
- § 7641. Withdrawal of amounts deposited
- § 7642. Interest on money deposited
- § 7643. Deposit with county treasurer
- § 7644. Deposit unclaimed in financial institution

Article 4. Summary Disposition of Small Estates

- § 7660. Summary disposition authorized
- § 7661. Liquidation of assets
- § 7662. Payment of debts
- § 7663. Distribution of property
- § 7664. Liability for decedent's unsecured debts
- § 7665. Public administrator's statement of disposition
- § 7666. Commission of public administrator

CONFORMING REVISIONS AND REPEALS

DIVISION 4. GUARDIANSHIP, CONSERVATORSHIP, AND OTHER PROTECTIVE PROCEEDINGS

PART 5. PUBLIC GUARDIAN

Comment. For general provisions governing the office of the public guardian, formerly found in Welfare and Institutions Code Sections 8000-5, 8008, and 8015, see Government Code Sections 27430-6.

CHAPTER 1. TAKING TEMPORARY POSSESSION OR CONTROL OF PROPERTY

§ 2900. Authority to take possession or control

2900. The public guardian may take possession or control of property of a person domiciled in the county that is subject to loss, injury, waste, or misappropriation if the public guardian determines that the requirements for appointment of a guardian or conservator of the estate are satisfied and the public guardian intends to apply for appointment.

Comment. Section 2900 supersedes the fifth sentence of former Welfare and Institutions Code Section 8006. It replaces the concept of “referral” to the public guardian with a scheme based on the propriety of public guardian control. It also adds misappropriation as grounds for taking possession or control.

§ 2901. Providing information and access to public guardian

2901. (a) A public guardian who is authorized to take possession or control of property under this chapter may issue a written certification of that fact. The written certification is effective for five days after the date of issuance.

(b) The public guardian may record a copy of the written certification in any county in which is situated real property of which the public guardian is authorized to take possession or control under this chapter.

(c) A financial institution or other person shall, without the necessity of inquiring into the truth of the written certification and without court order or letters being issued:

(1) Provide the public guardian information concerning property held in the sole name of the proposed ward or conservatee.

(2) Surrender to the public guardian property of the proposed ward or conservatee that is subject to loss, injury, waste, or misappropriation.

(d) Receipt of the written certification:

(1) Constitutes sufficient acquittance for providing information and for surrendering property of the proposed ward or conservatee.

(2) Fully discharges the County Recorder, financial institution, or other person from any liability for any act or omission of the public guardian with respect to the property.

Comment. Section 2901 is drawn from Section 7603 (providing information and access to public administrator).

§ 2902. Costs and fee for taking possession or control

2902. A public guardian who takes possession or control of property pursuant to this chapter is entitled to reasonable costs incurred for the protection of the property, together with a reasonable fee for services, in case of the subsequent appointment of another person as guardian or conservator of the estate. The costs and fee are a proper and legal charge against the estate of the ward or conservatee.

Comment. Section 2902 restates former Welfare and Institutions Code Section 8006.5, eliminating the maximum and minimum fees. The costs and fee provided by this section are subject to court approval under Section 2430. Where the public guardian is ultimately appointed guardian or conservator, the costs and fee provided by this section are part of the public guardian's commission. See Section 2942 (expenses of public guardian).

CHAPTER 2. APPOINTMENT OF PUBLIC GUARDIAN

§ 2920. Application for appointment

2920. If any person domiciled in the county requires a guardian or conservator and there is no one else who is qualified and willing to act and whose appointment as guardian or conservator would be in the best interest of the person:

(a) The public guardian may apply for appointment as guardian or conservator of the person, the estate, or the person and estate.

(b) The public guardian shall apply for appointment as guardian or conservator of the person, the estate, or the person and estate, if the court so orders. The court may make an order under this subdivision on motion of an interested person or on the court's own motion in a pending proceeding or in a proceeding commenced for that purpose. The court shall not make an order under this subdivision except after notice to the public guardian for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1, consideration of the alternatives, and a determination by the court that the appointment is necessary. The notice and hearing under this subdivision may be combined with the notice and hearing required for appointment of a guardian or conservator.

Comment. Section 2920 supersedes the first, second, and a portion of the third sentences of former Welfare and Institutions Code Section 8006. Section 2920 applies even though a person may be institutionalized in a facility in another county if the person is domiciled in the county of the public guardian. Even though there may be other persons qualified and willing to act, their appointment may not be in the best interest of the ward or conservatee. This could occur, for example, where a neutral party is needed because of family disputes. In such a situation, a public guardian is not liable for failure to take possession or control of property that is beyond the public guardian's ability to possess or control. See Section 2944 (immunity of public guardian).

The court may order appointment of the public guardian only after notice to the public guardian and a determination that the appointment is necessary. The determination of necessity may require the court to ascertain whether there is any other alternative to public guardianship, and whether the public guardianship is simply being sought as a convenience or as a strategic litigation device by the parties involved. Alternative means of resolving the situation, besides appointment of the public guardian, could include such options as use of a private guardian or appointment of a guardian ad litem, in an appropriate case.

Subdivision (b) permits the special notice to the public guardian and hearing under this subdivision to be combined with a general notice and hearing for appointment of a guardian or conservator, in the interest of procedural efficiency.

§ 2921. Persons under jurisdiction of Departments of Mental Health or Developmental Services

2921. An application of the public guardian for guardianship or conservatorship of the person, the estate, or the person and estate, of a person who is under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services may not be granted without the written consent of the department having jurisdiction of the person.

Comment. Section 2921 restates former Welfare and Institutions Code Section 8007 without substantive change.

§ 2922. Letters, oath, and bond

2922. If the public guardian is appointed as guardian or conservator:

(a) Letters shall be issued in the same manner and by the same proceedings as letters are issued to other persons. Letters may be issued to “the public guardian” of the county without naming the public guardian.

(b) The official bond and oath of the public guardian are in lieu of the guardian or conservator’s bond and oath on the grant of letters.

Comment. Section 2922 restates the third and fourth sentences of former Welfare and Institutions Code Section 8006 with the addition of authority to issue letters to “the public

guardian.” Letters issued in this form are sufficient to enable a successor public guardian to act without issuance of new letters. Gov’t Code § 27433 (termination of authority of public guardian). See also Section 52 (“letters” defined).

The public guardian is allowed a share of the cost of the bond as an expense of administration. Section 2942 (expenses of public guardian).

CHAPTER 3. ADMINISTRATION BY PUBLIC GUARDIAN

§ 2940. Deposit of funds

2940. All funds coming into the custody of the public guardian shall be deposited or invested in the same manner and subject to the same terms and conditions as deposit or investment by the public administrator of money in an estate pursuant to Article 3 (commencing with Section 7640) of Chapter 4 of Division 7.

Comment. Section 2940 supersedes former Welfare and Institutions Code Section 8009. It cross-refers to comparable provisions of the public administrator statute.

§ 2941. Employment of attorneys

2941. The public guardian may, if necessary and in the public guardian’s discretion, employ private attorneys where the cost of employment can be defrayed out of estate funds or where satisfactory pro bono or contingency fee arrangements can be made.

Comment. Section 2941 restates former Welfare and Institutions Code Section 8010 with the addition of reference to satisfactory pro bono or contingency fee arrangements.

§ 2942. Expenses of public guardian

2942. The public guardian has a claim against the estate of the ward or conservatee for all of the following:

(a) Reasonable expenses incurred in the execution of the guardianship or conservatorship.

(b) Compensation for services of the public guardian and the attorney of the public guardian, and for the filing and processing services of the county clerk, in the amount the court determines is just and reasonable.

(c) A bond fee in the amount of twenty-five dollars (\$25) plus one-fourth of one percent of the amount of an estate greater than ten thousand dollars (\$10,000). The amount charged shall be deposited in the county treasury. This subdivision does not apply if the conservatee is eligible for Social Security Supplemental Income Benefits.

Comment. Subdivisions (a) and (b) of Section 2942 restate former Welfare and Institutions Code Section 8013 without substantive change. Subdivision (c) is new; it is comparable to Section 7621(d) (public administrator).

§ 2943. Inventory and appraisal of estate

2943. Notwithstanding subdivision (c) of Section 2610, the property described in the inventory may be appraised by the public guardian and need not be appraised by a probate referee if the public guardian files with the inventory an appraisal showing that the estimated value of the property in the estate, including cash items, does not exceed \$10,000.

Comment. Section 2943 supersedes former Welfare and Institutions Code Section 8011.

§ 2944. Immunity of public guardian

2944. The public guardian is not liable for failing to take possession or control of property that is beyond the ability of the public guardian to possess or control.

Comment. Section 2944 is new. *Cf.* Section 7601(b) (duty of public administrator).

DIVISION 7. ADMINISTRATION OF ESTATES OF DECEDENTS

PART 1. GENERAL PROVISIONS

CHAPTER 4. PUBLIC ADMINISTRATOR

Article 1. Taking Temporary Possession or Control of Property

§ 7600. Report of public officer or employee

7600. If a public officer or employee knows of property of a decedent that is subject to loss, injury, waste, or

misappropriation and that ought to be in the possession or control of the public administrator, the officer or employee shall inform the public administrator.

Comment. Section 7600 restates former Section 1146 without substantive change.

CROSS-REFERENCES

Definitions

Property § 62

§ 7600.5. Notice of death of patient

7600.5. If a person dies in a hospital, convalescent hospital, or board and care facility without known next of kin, the person in charge of the hospital or facility shall give immediate notice of that fact to the public administrator of the county in which the hospital or facility is located. If the notice required by this section is not given, the hospital or facility is liable for (1) any cost of interment incurred by the estate or the county as a result of the failure and (2) any loss to the estate or beneficiaries caused by loss, injury, waste, or misappropriation of property of the decedent as a result of the failure.

Comment. Section 7600.5 supersedes former Section 1145.

§ 7601. Duty of public administrator

7601. (a) If no personal representative has been appointed, the public administrator of a county shall take prompt possession or control of property of a decedent in the county that is subject to loss, injury, waste, or misappropriation, or that the court orders into the possession or control of the public administrator after notice to the public administrator as provided in Section 1220.

(b) If property described in subdivision (a) is beyond the ability of the public administrator to take possession or control, the public administrator is not liable for failing to take possession or control of the property.

Comment. Section 7601 restates the first sentence of former Section 1140(a), with the addition of (1) misappropriation as a ground for taking possession or control, (2) express provisions relating to notice and hearing, and (3) an express immunity in the case of property that is beyond the control of the public

administrator. The public administrator may also be appointed special administrator for the property. Sections 8540-8541 (special administrators).

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 7602. Search for property, will, and instructions for disposition of remains

7602. (a) A public administrator who is authorized to take possession or control of property of a decedent under this article shall make a prompt search for other property, a will, and instructions for disposition of the decedent's remains.

(b) If a will is found, the public administrator or custodian of the will shall deliver the will as provided in Section 8200.

(c) If instructions for disposition of the decedent's remains are found, the public administrator shall promptly deliver the instructions to the person upon whom the right to control disposition of the decedent's remains devolves as provided in Section 7100 of the Health and Safety Code.

Comment. Section 7602 restates the first portion of subdivision (a) and subdivision (b) of former Section 1141 but eliminates the requirement that there be reasonable grounds to believe that the public administrator may be appointed personal representative.

CROSS-REFERENCES

Definitions

Property § 62

Will § 88

§ 7603. Providing information and access to public administrator

7603. (a) A public administrator who is authorized to take possession or control of property of a decedent pursuant to this article may issue a written certification of that fact. The written certification is effective for five days after the date of issuance.

(b) The public administrator may record a copy of the written certification in any county in which is situated real

property of which the public administrator is authorized to take possession or control under this article.

(c) A financial institution or other person shall, without the necessity of inquiring into the truth of the written certification and without court order or letters being issued:

(1) Provide the public administrator information concerning property held in the sole name of the decedent.

(2) Grant the public administrator access to a safe deposit box rented in the sole name of the decedent for the purpose of inspection and removal of any will or instructions for disposition of the decedent's remains. Costs and expenses incurred in drilling or forcing a safe deposit box shall be borne by the estate of the decedent.

(3) Surrender to the public administrator property of the decedent that is subject to loss, injury, waste, or misappropriation.

(d) Receipt of the written certification provided by this section:

(1) Constitutes sufficient acquittance for providing information or granting access to the safe deposit box, for removal of the decedent's will and instructions for disposition of the decedent's remains, and for surrendering property of the decedent.

(2) Fully discharges the County Recorder, financial institution, or other person from any liability for granting access or for any act or omission of the public administrator with respect to the safe deposit box.

Comment. Section 7603 restates the last portion of subdivision (a) and subdivision (c) of former Section 1141 with the elimination of the requirement that there be reasonable grounds to believe the public administrator may be appointed personal representative and with the addition of subdivisions (b) and (c) (3) and the imposition of a five-day effective period for the written certification.

CROSS-REFERENCES

Definitions

Financial institution § 40

Letters § 52

Person § 56

Property § 62

Will § 88

§ 7604. Costs and fees for taking possession or control of property

7604. If the public administrator takes possession or control of property of a decedent under this article, but another person is subsequently appointed personal representative, the public administrator is entitled to costs incurred for the preservation of the estate, together with a reasonable fee for services. The costs and fee are a proper and legal charge against the decedent's estate as an expense of administration.

Comment. Section 7604 restates former Section 1144.5. The public administrator's costs and fee under this section are an expense of administration and thus subject to court order for payment. Section 11422 (payment of debts on court order).

CROSS-REFERENCES

Definitions

Person § 56

Personal representative § 58

Property § 62

Article 2. Appointment as Personal Representative

§ 7620. Authority of public administrator

7620. The public administrator of the county in which the estate of a decedent may be administered shall promptly:

(a) Petition for appointment as personal representative of the estate if no person having higher priority has petitioned for appointment.

(b) Petition for appointment as personal representative of any other estate the public administrator determines is proper.

(c) Accept appointment as personal representative of an estate when so ordered by the court whether or not on petition of the public administrator, after notice to the public administrator as provided in Section 7621.

Comment. Subdivisions (a) and (b) of Section 7620 restate the second sentence of former Section 1140(a) without substantive change. Subdivision (c) is new. For priority for

appointment as personal representative, see Section 8461. See also Sections 7050-7051 (jurisdiction and venue of probate proceedings) and 8461 (priority for appointment).

CROSS-REFERENCES

Definitions

Beneficiary § 24

Personal representative § 58

§ 7621. Appointment of public administrator

7621. (a) Except as otherwise provided in this section, appointment of the public administrator as personal representative shall be made, and letters issued, in the same manner and pursuant to the same procedure as for appointment of and issuance of letters to personal representatives generally.

(b) Appointment of the public administrator may be made on the court's own motion, after notice to the public administrator as provided in Section 1220.

(c) Letters may be issued to "the public administrator" of the county without naming the public administrator.

(d) The public administrator's oath and official bond are in lieu of the personal representative's oath and bond. Every estate administered under this chapter shall be charged a bond fee in the amount of twenty-five dollars (\$25) plus one-fourth of one percent of the amount of an estate greater than ten thousand dollars (\$10,000). The amount charged is an expense of administration and that amount shall be deposited in the county treasury.

Comment. Section 7621 restates former Section 1140(b), with the addition of subdivisions (b) and (c) and the provision of subdivision (d) allowing the county to recoup a bond fee.

Letters issued to "the public administrator" under subdivision (c) are sufficient to enable a successor public administrator to act without issuance of new letters. Gov't Code § 27444 (expiration of term of office).

The amount allowed under subdivision (d) is half the amount allowed for the bond of a personal representative generally under former Section 541.5. Removal of the public administrator is subject to the same procedures as removal of administrators

generally, including removal at the request of a person having a higher priority for appointment. Section 8503.

CROSS-REFERENCES

Definitions

Letters § 52

Personal representative § 58

§ 7622. General rules governing administration of estates apply

7622. Except as otherwise provided in this chapter:

(a) The public administrator shall administer the estate in the same manner as a personal representative generally, and the provisions of this division apply to administration by the public administrator.

(b) The public administrator is entitled to receive the same compensation and allowances granted by this division to a personal representative generally.

Comment. Section 7622 restates former Section 1142 without substantive change. The public administrator must file an inventory, institute suits for the recovery or protection of property, render accounts, and deliver up the property of the estate in the same manner as personal representatives generally.

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 7623. Additional compensation

7623. (a) As used in this section, “additional compensation” means the difference between the reasonable cost of the administration of an estate and the commission awarded under Sections 901 and 902.

(b) The public administrator may be awarded additional compensation if any of the following conditions is satisfied:

(1) A person having priority for appointment as personal representative has been given notice under Section 8110 of the public administrator’s petition for appointment, and the person has not petitioned for appointment in preference to the public administrator.

(2) The public administrator has been appointed after the resignation or removal of a personal representative.

Comment. Section 7623 restates former Section 1142.3 without substantive change.

CROSS-REFERENCES

Definitions

Person § 56

Personal representative § 58

§ 7624. Payment of unclaimed funds

7624. (a) If after final distribution of an estate any money remains in the possession of the public administrator that should be paid over to the county treasurer pursuant to Chapter 5 (commencing with Section 11850) of Part 10, the court shall order payment to be made within 60 days.

(b) Upon failure of the public administrator to comply with an order made pursuant to subdivision (a), the district attorney of the county shall promptly institute proceedings against the public administrator and the sureties on the official bond for the amount ordered to be paid, plus costs.

Comment. Section 7624 restates former Section 1154, referring to the general provisions for deposit of funds in the county treasury instead of to “unclaimed” property and allowing 60 instead of 10 days for payment to be made.

CROSS-REFERENCES

Actions in chambers, Code Civ. Proc. § 166

Article 3. Deposit of Money of Estate

§ 7640. Deposit by public administrator

7640. (a) The public administrator shall, upon receipt, deposit all money of the estate in an insured account in a financial institution or with the county treasurer of the county in which the proceedings are pending.

(b) Upon deposit under this section the public administrator is discharged from further responsibility for the money deposited until the public administrator withdraws the money.

Comment. Section 7640 restates the first sentence of former Section 1147 without substantive change.

CROSS-REFERENCES

Definitions

Insured account in a financial institution § 46

§ 7641. Withdrawal of amounts deposited

7641. Money deposited in a financial institution or with the county treasurer under this article may be withdrawn upon the order of the public administrator when required for the purposes of administration.

Comment. Section 7641 restates the second sentence of former Section 1147 without substantive change.

CROSS-REFERENCES

Definitions

Financial institution § 40

§ 7642. Interest on money deposited

7642. (a) The public administrator shall credit each estate with the highest rate of interest or dividends that the estate would have received if the funds available for deposit had been individually and separately deposited.

(b) Interest or dividends credited to the account of the public administrator in excess of the amount credited to the estates pursuant to subdivision (a) shall be deposited in the county general fund.

Comment. Section 7642 restates the second paragraph of former Section 1147 without substantive change.

§ 7643. Deposit with county treasurer

7643. (a) The county treasurer shall receive and safely keep all money deposited with the county treasurer under this chapter and pay the money out on the order of the public administrator when required for the purposes of administration. The county treasurer and sureties on the official bond of the county treasurer are responsible for the safekeeping and payment of the money.

(b) The county treasurer shall deliver to the State Treasurer or the State Controller all money in the possession of the county treasurer belonging to the estate, if there are no beneficiaries or other persons entitled to the money, or the beneficiaries or other persons entitled to the money do not appear and claim it. Delivery shall be made under the provisions of Article 1 (commencing with Section 1440) of Chapter 6 of Title 10 of Part 3 of the Code of Civil Procedure.

Comment. Section 7643 restates former Section 1148 without substantive change.

CROSS-REFERENCES

Definitions

Beneficiary § 24

Person § 56

§ 7644. Deposit unclaimed in financial institution

7644. (a) If a deposit in a financial institution is made under this article, money remaining unclaimed at the expiration of five years after the date of the deposit, together with the increase and proceeds of the deposit, shall be presumed abandoned in any of the following circumstances:

(1) The deposit belongs to the estate of a known decedent for which a personal representative has never been appointed.

(2) The deposit belongs to the estate of a known decedent for which a personal representative has been appointed but no order of distribution has been made due to the absence of interested persons or the failure of interested persons diligently to protect their interests by taking reasonable steps for the purpose of securing a distribution of the estate.

(b) The State Controller may, at any time after the expiration of the five-year period, file a petition with the court setting forth the fact that the money has remained on deposit in a financial institution under the circumstances described in subdivision (a) for the five-year period, and requesting an order declaring that the money is presumptively abandoned and directing the holder of the money to pay the money to the State Treasurer.

(c) Upon presentation of a certified copy of a court order made under subdivision (b), the financial institution shall forthwith transmit the money to the State Treasurer for deposit in the State Treasury. The deposit shall be made as provided in Section 1310 of the Code of Civil Procedure. All money deposited in the State Treasury under the provisions of this section shall be deemed to be deposited in the State Treasury under the provisions of Article 1 (commencing with Section 1440) of Chapter 6 of Title 10 of Part 3 of the

Code of Civil Procedure. The deposit shall be transmitted, received, accounted for, and disposed of as provided by Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.

Comment. Section 7644 restates former Section 1147.5 without substantive change.

CROSS-REFERENCES

Definitions

Financial institution § 40

Interested person § 48

Personal representative § 58

Article 4. Summary Disposition of Small Estates

§ 7660. Summary disposition authorized

7660. (a) If a public administrator takes possession or control of, or is appointed personal representative of, an estate pursuant to this chapter, the public administrator may summarily dispose of the estate in the manner provided in this article in either of the following circumstances:

(1) The total value of the property in the decedent's estate does not exceed the amount prescribed in Section 13100. The authority provided by this paragraph may be exercised only upon order of the court. The order may be made upon ex parte application. The fee to be allowed to the clerk for the filing of the application shall be set by the court.

(2) The total value of the property in the decedent's estate does not exceed ten thousand dollars (\$10,000). The authority provided by this paragraph may be exercised without court authorization.

(b) Summary disposition may be made whether or not there is a will of the decedent in existence, if the will does not name an executor, or if the named executor refuses to act.

(c) Nothing in this article precludes the public administrator from filing a petition with the court under any other provision of this division.

Comment. Subdivisions (a) and (b) of Section 7660 supersede portions of former Section 1143(a) and (b). Subdivision (c) restates former Section 1143(d). Petitions under other provisions of this division include petitions for interpretation of a will or determination of persons entitled to distribution. See, e.g., Sections 9611 (petition for instructions); 11700-11705 (determination of persons entitled to distribution).

CROSS-REFERENCES

Definitions

Personal representative § 58

Will § 88

Ex parte orders may be made in chambers, Code Civ. Proc. § 166

§ 7661. Liquidation of assets

7661. A public administrator acting under authority of this article may:

(a) Withdraw money of the decedent on deposit in a financial institution.

(b) Collect any debts owed to the decedent.

(c) Sell personal property of the decedent. Sales may be made with or without notice, as the public administrator elects. Title to the property sold passes without the need for confirmation by the court.

(d) Sell real property of the decedent, subject to Article 6 (commencing with Section 10300) of Chapter 18 of Part 5. Title to the property sold passes with the public administrator's deed.

Comment. Section 7661 restates portions of former Sections 1143 and 1144, expanding the ability to withdraw funds to include other financial institutions besides banks.

CROSS-REFERENCES

Definitions

Financial institution § 40

Real property § 68

§ 7662. Payment of debts

7662. The public administrator acting under authority of this article shall pay out the money of the estate in the following order:

(a) Costs of administration, including commissions and fees.

(b) Expenses of the decedent's last illness and of disposition of the remains of the decedent.

(c) Claims presented to the public administrator before distribution of the decedent's property pursuant to Section 7663. Claims shall be paid in the order prescribed in Section 11420. A creditor whose claim is paid under this subdivision is not liable for contribution to a creditor whose claim is presented after the payment.

Comment. Section 7662 restates the second sentence of former Section 1143(a) and a portion of former Section 1143(b), with the addition of specific references to fees and costs of administration. Tax and other claims of public entities are entitled to priority under Section 11420. Because no notice to creditors is given pursuant to this article, the time for making claims is extended to the time of distribution of the decedent's property, and recipients of the property remain liable for creditor claims. See Section 7664 (liability for decedent's unsecured debts). Distribution may not be made until at least four months after commencement of administration. Section 7663 (distribution of property).

CROSS-REFERENCES

Definitions

Property § 62

§ 7663. Distribution of property

7663. (a) After payment of debts pursuant to Section 7662, but in no case before four months after court authorization of the public administrator to act under this article or after the public administrator takes possession or control of the estate, the public administrator shall distribute to the decedent's beneficiaries any money or other property of the decedent remaining in the possession of the public administrator.

(b) If there are no beneficiaries, the public administrator shall deposit the balance with the county treasurer for use in the general fund.

Comment. Section 7663 restates a portion of former Section 1143(b) and supersedes the fifth and sixth sentences of former Section 1144. It makes clear that distribution may not be made until at least four months after commencement of

administration, and requires that all unclaimed summary disposition funds go to the county (as opposed to only those from the smallest estates). The California Veterans' Home is considered a beneficiary for the purpose of application of this section. See Mil. & Vet. Code § 1035.05.

CROSS-REFERENCES

Definitions

Beneficiary § 24

Person § 56

Property § 62

§ 7664. Liability for decedent's unsecured debts

7664. A person to whom property is distributed under this article is personally liable for the unsecured debts of the decedent. Such a debt may be enforced against the person in the same manner as it could have been enforced against the decedent if the decedent had not died. In an action based on the debt, the person may assert any defenses available to the decedent if the decedent had not died. The aggregate personal liability of a person under this section shall not exceed the fair market value of the property distributed, valued as of the date of the distribution, less the amount of any liens and encumbrances on the property on that date.

Comment. Section 7664 is new. It is drawn from Sections 13109 and 13112 (affidavit procedure for collection or transfer of personal property).

CROSS-REFERENCES

Definitions

Person § 56

Property § 62

§ 7665. Public administrator's statement of disposition

7665. (a) The public administrator shall file with the clerk a statement showing the property of the decedent that came into possession of the public administrator and the disposition made of the property, together with receipts for all distributions. This subdivision does not apply to proceedings under paragraph (2) of subdivision (a) of Section 7660.

(b) The public administrator shall maintain a file of all receipts and records of expenditures for a period of three years after disposition of the property pursuant to Section 7663.

Comment. Subdivision (a) of Section 7665 restates the substance of the fourth sentence of former Section 1144. Receipts and records for expenditures are preserved in the public administrator's files for three years pursuant to subdivision (b).

CROSS-REFERENCES

Definitions

Property § 62

§ 7666. Commission of public administrator

7666. (a) Except as provided in subdivision (b), the commissions payable to the public administrator and the attorney, if any, for the filing of an application pursuant to this article and for performance of any duty or service connected therewith, are those set out in Sections 901, 902, and 910.

(b) The public administrator is entitled to a minimum commission of three hundred fifty dollars (\$350).

Comment. Section 7666 supersedes former Section 1143(c) and the second sentence of former Section 1144. See 43 Op. Cal. Att'y Gen. 192 (1964).

CONFORMING REVISIONS AND REPEALS

Enactment of the proposed legislation will require conforming revisions in other statutes, as well as the repeal of existing provisions. A table of the conforming revisions and repeals follows. For the text of the conforming revisions and repeals, refer to the legislation introduced to effectuate this recommendation. For comments to the conforming revisions and repeals, see the Appendix published with this report.

Code Civ. Proc.	Probate Code	Probate Code
1441 (amended)	52 (amended)	2430 (amended)
1443 (amended)	1140 (repealed)	2631 (amended)
1449 (amended)	1140.5 (repealed)	13114 (amended)
	1141 (repealed)	
	1142 (repealed)	
Gov't Code	1142.3 (repealed)	Welf. & Inst. Code
27430 (added)	1142.5 (repealed)	8000 (repealed)
27431 (added)	1143 (repealed)	8001 (repealed)
27432 (added)	1144 (repealed)	8002 (repealed)
27433 (added)	1144.5 (repealed)	8003 (repealed)
27434 (added)	1145 (repealed)	8004 (repealed)
27435 (added)	1146 (repealed)	8005 (repealed)
27436 (added)	1147 (repealed)	8006 (repealed)
27444 (added)	1147.5 (repealed)	8006.5 (repealed)
29616 (repealed)	1148 (repealed)	8007 (repealed)
	1149 (repealed)	8008 (repealed)
Health & Saf. Code	1150 (repealed)	8009 (repealed)
1289.4 (amended)	1151 (repealed)	8010 (repealed)
	1152 (repealed)	8011 (repealed)
Mil. & Vet. Code	1154 (repealed)	8012 (repealed)
1035.05 (amended)	1155 (repealed)	8013 (repealed)
		8015 (repealed)

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

relating to

Inventory and Appraisal

October 1987

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

(741)

NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

Cite this recommendation as *Recommendation Relating to Inventory and Appraisal*, 19 Cal. L. Revision Comm'n Reports 741 (1988).

CALIFORNIA LAW REVISION COMMISSION

4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739
(415) 494-1335

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VAUGHN R. WALKER

October 22, 1987

To: The Honorable George Deukmejian
Governor of California
and
The Legislature of California

The California Law Revision Commission is now devoting its time and resources almost exclusively to the study of probate law and procedure. The Commission is preparing a new code to replace the existing Probate Code.

The Commission has decided not to delay submitting all recommendations for the improvement of probate law until work on the new code is completed. This recommendation is one of those which is being submitted for enactment prior to the submission of the entire code.

The recommended legislation replaces the existing provisions governing inventory and appraisal (existing Probate Code Sections 600 to 615), including probate referees (existing Probate Code Sections 1300 to 1313).

This recommendation is submitted pursuant to Resolution Chapter 37 of the Statutes of 1980.

Respectfully submitted,

Ann E. Stodden
Chairperson

RECOMMENDATION

relating to

INVENTORY AND APPRAISAL

Background

The major changes made by the new law affecting the inventory and appraisal relate to the role of the probate referee.

The 1982 legislation governing probate referees¹ made specific reference to the California Law Revision Commission study of the administration of estates of decedents, and directed that the study be monitored by the appropriate legislative policy committees.² The Commission has devoted substantial resources to investigating the functioning of the probate referee system, including reviewing material from legislative hearings concerning probate referees, surveying inventory and appraisal systems in other jurisdictions, and considering the views of the probate bar (including the State Bar, Los Angeles County Bar, Beverly Hills Bar, and other bar associations), as well as communications from many interested individuals and groups (including the California Probate Referees' Association, California Bankers Association, California Appraisers Council, and American Institute of Real Estate Appraisers). The Commission has also allocated substantial public meeting time to presentations by interested persons.

In addition, the Commission distributed widely throughout the probate community both a questionnaire concerning the functioning of the probate referee system and the need for reforms and a tentative recommendation for revision of the law. The Commission received more than 100 completed questionnaire responses and more than 35 tentative recommendation comments, including group responses from a number of probate bar associations, and

1. Prob. Code §§ 1300-1313, enacted by 1982 Cal. Stat. ch. 1535, § 13.

2. Prob. Code § 1313.

responses from judges, court Commissioners, public administrators, and practicing lawyers. Responses came from persons in more than 20 counties, both rural and urban.

The Commission has taken into account this substantial volume of information in developing the following recommendations for changes in the role of the probate referee in administration of decedents' estates.

Retention of Probate Referee

The Commission considered removing the probate referee from decedent estate administration entirely, relying instead on appraisal by the personal representative. It has been argued that this would save money for most estates by eliminating the probate referee's fees and would simplify estate administration by eliminating an unneeded third party, with its attendant delays, from the process.

The Commission's investigation reveals that the cost to the estate of the probate referee appraisal is relatively small. The referee's fee is a statutory commission of one-tenth of one percent of the value of the estate, plus actual expenses.³ This costs the estate substantially less than an independent appraisal by a private appraiser where such an appraisal is needed for tax or other reasons, and is one of the smaller costs associated with probate.

If an appraisal is not otherwise needed, however, the probate referee's fee is an unnecessary cost to the estate. The Commission recommends, below, a number of changes directed at this problem, relating to assets that may be appraised by the personal representative and procedures for waiver of a probate referee appraisal and reduction of fees.

The Commission's investigation also reveals that the probate referee's involvement causes little complexity or delay in the ordinary case. The probate referee's appraisal is fairly expeditious in the ordinary case. Usually, any delay caused is not due to the referee's appraisal but to time spent by the personal representative in preparing the inventory.

3. Prob. Code § 609. The commission is subject to a statutory maximum of \$10,000 and minimum of \$75.

There are cases in which a particular probate referee is dilatory or not performing up to standards. The Commission recommends, below, procedures to force expeditious appraisals in such cases, including sanctions against and procedures for removal of inadequate probate referees.

The probate bar generally believes the probate referee system works efficiently and expedites and facilitates the probate process in the usual case. Most judges and practitioners think the referee provides a useful and ordinarily high quality service at modest cost to the estate, and that the referee system should be retained. Problems in the system should be resolved by attacking the problems directly, not by scrapping what is a basically sound system. The Commission concurs with these views, and recommends the following changes to cure problems in the probate referee system.

Qualifications for Appointment as Probate Referee

In order to ensure that a person appointed as a probate referee is qualified to appraise probate estates, existing law requires the State Controller to appoint only from among persons passing a qualification examination⁴ and permits the Controller to establish standards of training, performance, and ethics.⁵ The proposed law strengthens these requirements by making adoption of standards mandatory rather than permissive. The standards should help ensure the usefulness and accuracy of probate referee appraisals.

Existing law also limits the political patronage aspect of probate referee appointment by excluding persons who have been involved in or have contributed to a campaign for election of the State Controller or for other partisan state political offices.⁶ The proposed law strengthens enforcement of these limitations by requiring the probate referee to file an annual disclosure statement indicating relevant contributions or participation during the preceding year.

4. Prob. Code §§ 1305-1306.

5. Prob. Code § 1307.

6. Prob. Code §§ 1311-1312.

Assets Appraised by Referee

In some estates the appraisal of assets is simple and does not call for an appraisal expert such as a probate referee. These are estates in which most assets are liquid and easily valued, and could well be appraised by the personal representative without resort to services of the probate referee.

Existing law recognizes this situation by permitting the personal representative to appraise bank accounts, lump-sum insurance payments, cash accounts, and a few other liquid assets.⁷ The proposed law expands these items to include lump-sum annuities, cash deposits and money market funds and accounts, including brokerage cash accounts, and refund checks issued after the decedent's death.

One area the Commission has examined closely is the appraisal of publicly traded stock listed on the New York, American, or Pacific stock exchange. Although it appears that the personal representative rather than the probate referee might properly appraise such assets, the Commission does not recommend that this be done as a matter of course. The economy of scale that enables low-cost probate referee appraisals in the ordinary case would be substantially impaired by removing publicly traded stock as a routine matter. In addition, a major reason the probate referee system works efficiently is that the referee simply appraises all noncash assets *en masse* and cheaply, without the time and expense of making distinctions between what particular items are and are not subject to referee appraisal. The savings achieved by attempting to distinguish among the many varieties of stock are not significant compared to the procedural costs involved, and could be counterproductive in many cases. Finally, experience has shown that appraisals of publicly traded and listed stock by inexperienced persons are frequently inaccurate, due to such problems as value fluctuations on the date of death, failure to take into account x-dividend dates, and misidentification of the class of stock.

7. Prob. Code § 605.

The Commission believes a better approach to appraisal of stock of all kinds, whether publicly traded or closely held, is to require as a matter of course that the referee be the appraiser, subject to waiver for good cause. This is existing law,⁸ and appears to work well in the ordinary case. In the unusual case, such as where the only major asset is stock in a difficult to value family corporation, it may be appropriate to waive the probate referee or to refer the matter to an independent expert for appraisal.⁹

The Commission also recommends that the probate referee's commission for appraisal of all stock traded on the New York, American, and Pacific stock exchanges be subject to a \$250 maximum in each estate. This limitation recognizes that stock of this type is relatively easy to appraise and protects against an unreasonably high probate referee commission in an estate with a large amount of publicly traded stock.

Waiver and Related Matters

The Commission has found the existing procedure for waiver of the probate referee in appropriate cases to be basically sound. The one substantial revision in the waiver procedure made by the proposed law is to require that a waiver be made before the inventory is delivered to the probate referee. This will expedite administration by encouraging prompt action by the personal representative and avoid having the probate referee invest substantial work on an appraisal only to have the appraisal later waived.

The proposed law supplements the waiver procedure by a provision to permit a unique, artistic, unusual, or special item of tangible personal property to be appraised by a qualified independent expert. This would enable the personal representative to avoid appraisal by the probate referee and to select the appraiser in a case where there is need for a special expert. The propriety of an independent appraisal would be subject to review by the probate referee, and the property would be excluded in computing the referee's fees.

8. Prob. Code § 605(a).

9. See discussion below under "Waiver and Related Matters."

Selection and Removal of Probate Referee

Although most people who work with probate referees are satisfied with the operation of the system, there are some instances of dissatisfaction. The Commission has concluded that existing remedies for incompetent or otherwise inadequate referees are not sufficient,¹⁰ and the proposed law supplements the existing remedies.

Initially, the proposed law enables the personal representative to avoid appointment of a probate referee known to provide poor service by application to the court to appoint some other referee. The proposed law makes clear that the court has authority and discretion not to designate a particular probate referee, and need not designate a referee merely because that referee happens to be next in rotation on a panel.

The proposed law also enables the personal representative to select a particular probate referee, to a limited extent. This authority is limited in order to avoid favoritism and to prevent influencing the appraisal through a known bias of the referee. However, selection of a particular probate referee may be appropriate in some situations where, for example, the same referee has recently appraised the same property or will be making related appraisals of the same property in another proceeding. Selection of a particular referee by the personal representative is subject to court discretion and a showing of good cause by the personal representative.

Where a referee has already been appointed, the proposed law provides two new removal procedures. First, the personal representative may remove the first referee appointed as a matter of right, without the need for a showing of cause. This is similar to a peremptory challenge of the first judge appointed, and should be an expeditious and effective remedy to ensure the competence of probate referees (by making incompetence easily avoided). Second, the personal representative may seek removal by the court for cause. Cause in this context includes incompetence and undue delay. This will supplement the State Controller's removal authority with local control over appointments in individual cases.

10. Existing remedies are generally under the State Controller. Prob. Code § 1308.

Time for Appraisal

The probate referee's appraisal is ordinarily made expeditiously and causes little delay in probate. This is not always the case, however, and the proposed law adds provisions to ensure that all probate referee appraisals are completed quickly.

The proposed law creates a statutory duty on the probate referee to appraise the property promptly and with reasonable diligence. The code does not set a specific standard, since the time required for the appraisal may vary with the size, character, and difficulty of assets in the estate.

Under the proposed law, if 60 days have elapsed since delivery of the inventory and the probate referee has not returned the appraisal, the probate referee must report the status of the appraisal showing why the property has not been appraised and estimating the time needed to complete the appraisal.¹¹ The report is filed with the court and delivered to the personal representative, who may have the report set for hearing. Actions the court may take for a dilatory referee include reduction of fees and removal.

It is current practice for some probate referees to withhold delivery of the appraisal, even though completed, until their fees have been paid. This is inappropriate because it delays probate and, in an illiquid estate, it may make it impossible to proceed since payment must come from proceeds of sale of appraised property. The proposed law prohibits a probate referee from withholding an appraisal until payment, but also makes clear that the probate referee's fees are an expense of administration, included in the highest statutory priority for payment in the administration proceedings.¹²

11. This is analogous to the report made by the personal representative in the event of delay in closing the estate. See Prob. Code § 1025.5. The 60-day period was selected in recognition of the fact that in many cases it takes at least 30 days for the probate referee to obtain necessary appraisal information from the personal representative where the information has not been delivered with the inventory.

In this connection, the new law preserves the three-month period within which the inventory must be filed but extends the time for filing the appraisal to six months or such further time as is reasonable under the circumstances of the particular case. See Prob. Code § 600. The longer period is more realistic under current conditions. For uniformity, the time for filing a supplemental appraisal is also extended. See Prob. Code § 611.

12. See Prob. Code § 950.

Justification of Appraisal

If the probate referee's appraisal is questioned, there is no easy way to obtain the appraisal data used by the probate referee or for supporting the appraisal. The proposed law takes a number of steps to remedy this problem.

On demand by the personal representative or the beneficiary of property, the probate referee must provide any appraisal report or backup data concerning the property in the referee's files. This information must be provided without charge as part of the referee's regular services.

The referee may also be called upon to justify the appraisal at a hearing for a tax audit or otherwise. Because of the substantial time and effort that may be involved in this situation, the probate referee may be entitled to an additional fee, to be negotiated between the referee and person requiring the justification or, if they are unable to agree, to be fixed by the court.

These two remedies should be sufficient where a question concerning the appraisal arises shortly after the appraisal is made. However, existing law does not clearly require record-keeping, so that if an audit or other question arises later, the referee's files may no longer be available. The proposed law addresses this problem by requiring the referee to offer the files to the personal representative. If the personal representative does not request the files within three years, the files may be destroyed.

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- § 8960. Payment of commission and expenses
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CONFORMING REVISIONS AND REPEALS

DIVISION 2. GENERAL PROVISIONS

PART 12. PROBATE REFEREES

CHAPTER 1. APPOINTMENT AND REVOCATION

§ 400. Appointment by Controller

400. (a) The State Controller shall appoint at least one person in each county to act as a probate referee for the county.

(b) If there are fewer than three qualified applicants to serve in a county, the State Controller may designate a probate referee from another county or make an interim appointment, to serve until the vacancy has been filled by a qualified applicant.

Comment. Subdivision (a) of Section 400 continues a portion of the first sentence of the first paragraph of former Section 1305 without change. Subdivision (b) supersedes the third sentence of the first paragraph of former Section 1305. For qualification of an applicant, see Section 401.

§ 401. Qualifications for appointment

401. (a) Appointment shall be from among persons passing a qualification examination administered by the State Personnel Board. A person who passes the examination is eligible for appointment for a period of five years from the date of the examination.

(b) Appointment shall be on the basis of merit without regard to sex, race, religious creed, color, national origin, ancestry, marital status, or political affiliation.

Comment. Subdivision (a) of Section 401 restates a portion of the first sentence of the first paragraph and the fifth sentence of the second paragraph of former Section 1305 without substantive change. Subdivision (b) continues the second sentence of the first paragraph of former Section 1305 without change.

§ 402. Qualification examination

402. (a) The qualification examination for applicants for appointment to act as a probate referee shall be held at

times and places within the state determined by the State Controller.

(b) The State Controller shall contract with the State Personnel Board to administer the qualification examination. Administration of the examination shall include:

(1) Development of standards for passage of the examination.

(2) Preparation of examination questions.

(3) Giving the examination.

(4) Scoring the examination.

(c) Each applicant shall pay a fee established by the State Personnel Board for taking the qualification examination. The State Personnel Board shall transmit to the State Controller a list of candidates who have received a passing score in the examination. The list is a public record.

Comment. Section 402 restates former Section 1306 without substantive change.

§ 403. Term of office of probate referee

403. (a) The term of office of a probate referee is four years, expiring June 30. A person may be appointed to complete the unexpired term of office of a probate referee whose appointment is revoked or is otherwise terminated. For a period of five years from the date of expiration of the term of office, a person appointed to act as a probate referee is eligible for reappointment.

(b) If the State Controller increases the number of probate referees in a county, the State Controller shall stagger the terms of the new appointees so that one-quarter, or as close to one-quarter as possible, of the terms of the probate referees in that county expire on June 30 of each succeeding year.

Comment. Section 403 restates the second, third, and sixth sentences of the second paragraph of former Section 1305, with the addition that a probate referee's eligibility for reappointment lasts until five years after expiration of the referee's term of office. Section 403 also makes clear that an appointment may be for a term less than four years in the case of an appointment for the purpose of completion of the term of another probate referee.

§ 404. Standards for probate referee

404. (a) The State Controller shall establish and may amend standards of training, performance, and ethics of probate referees. The standards shall be a public record.

(b) The State Controller may revoke the appointment of a person to act as a probate referee for noncompliance with any standard of training, performance, or ethics established under subdivision (a). The State Controller may revoke an appointment under this subdivision without notice or a hearing, but the revocation is subject to review by writ of mandate to a court of competent jurisdiction.

Comment. Subdivision (a) of Section 404 restates former Section 1307, making the adoption of standards mandatory rather than permissive. This codifies existing practice. Subdivision (b) restates former Section 1308(a) without substantive change.

§ 405. Termination of authority

405. (a) The authority of a person to act as a probate referee ceases immediately upon expiration of the person's term of office, revocation of the person's appointment, or other termination pursuant to law.

(b) Upon cessation of authority of a person to act as a probate referee, the State Controller shall notify the court of the county for which the probate referee was appointed. Upon receipt of notice, or if it otherwise comes to the attention of the court that the authority of a person to act as a probate referee has ceased, the court shall reassign any estate for which the person had been designated as probate referee to another probate referee.

Comment. Subdivision (a) of Section 405 restates former Section 1309 without substantive change. Subdivision (b) codifies existing practice. Other termination pursuant to law includes resignation.

§ 406. Political activities of probate referee

406. (a) A probate referee, or any person who is an applicant for or seeking appointment or reappointment to act as a probate referee, shall not, directly or indirectly, solicit, receive, or contribute, or be in any manner involved in soliciting, receiving, or contributing, any of the following:

(1) Any assessment, subscription, or contribution to any party, incumbent, committee, or candidate exceeding two hundred dollars (\$200) in any one year for any partisan public office of this state.

(2) An assessment, subscription, contribution, or political service for the office of State Controller in any amount, notwithstanding paragraph (1).

(b) A violation of subdivision (a) is a misdemeanor, and the State Controller shall revoke the appointment of a probate referee who violates subdivision (a).

(c) Upon a person's application for appointment as a probate referee, and thereafter annually during the person's eligibility for appointment, during the person's tenure as a probate referee, and during the person's eligibility for reappointment, the person shall file with the State Controller a verified statement indicating whether the person has done any act described in subdivision (a) (1) or (a) (2) during the preceding two-year period.

(d) The State Controller may not appoint or reappoint as a probate referee any person who, within the two-year period preceding the date of the appointment or reappointment, violates any provision of this section, and any such appointment or reappointment is void and shall be revoked. However, all acts not otherwise invalid performed by the person before revocation of the person's appointment are valid.

Comment. Subdivisions (a) and (b) of Section 406 restate former Section 1311, with the addition of references to incumbency, reappointment, and committees, and the deletion of references to campaigns. The two hundred dollar limitation of paragraph (a)(1) does not apply to the State Controller; solicitation, receipt, or contribution of any amount to a State Controller campaign is absolutely prohibited by paragraph (a) (2).

Subdivision (c) is new. It is intended to facilitate compliance with the other requirements of this section.

Subdivision (d) restates former Section 1312, with the added requirement of removal from office. The transitional provision is omitted because it is no longer necessary.

CHAPTER 2. POWERS OF PROBATE REFEREE

§ 450. General powers

450. Upon designation by the court, the probate referee has all the powers of a referee of the superior court and all other powers provided in this chapter.

Comment. Section 450 restates subdivision (b) of former Section 1301 without substantive change. For general provisions relating to referees of the court, see Code Civ. Proc. §§ 638-645.1.

§ 451. Compelling appearance

451. (a) For the purpose of appraisal of property in the estate, the probate referee may require, and may issue a subpoena to compel, the appearance before the referee of the personal representative, guardian, conservator, or other fiduciary, an interested person, or any other person the referee has reason to believe has knowledge of the property.

(b) A subpoena issued under subdivision (a) is subject to the provisions of Section 2020 of the Code of Civil Procedure governing deposition subpoenas.

Comment. Subdivision (a) of Section 451 restates subdivision (a) of former Section 1301 and former Section 1302, with the addition of the reference to a guardian, conservator, or other fiduciary, since the probate referee may appraise estates other than decedents' estates. Subdivision (b) is new.

CROSS-REFERENCES

Definitions

Interested person § 48

Person § 56

Personal representative § 58

Property § 62

§ 452. Examination, testimony, and production of documents

452. (a) The probate referee may examine and take the testimony under oath of a person appearing before the referee, or require, and issue a subpoena to compel, the person to produce any document in the person's possession

or control, concerning the value of any property in the estate.

(b) A subpoena issued under subdivision (a) is subject to the provisions of Section 2020 of the Code of Civil Procedure governing deposition subpoenas.

Comment. Subdivision (a) of Section 452 restates former Section 1303, with the addition of the reference to production of documents. See Section 453 (protective orders and enforcement). Subdivision (b) is new.

CROSS-REFERENCES

Definitions

Person § 56

Property § 62

§ 453. Protective orders and enforcement

453. (a) On petition of a person required to appear before the probate referee pursuant to this chapter, the court may make a protective order to protect the person from annoyance, embarrassment, or oppression. The petitioner shall mail notice of the hearing on the petition to the probate referee and to the personal representative at least 15 days before the date set for the hearing. Any subpoena issued by the probate referee is stayed during the pendency of the petition.

(b) On petition of the probate referee, the court may make an order to show cause why a person who is required, but fails, to appear before the probate referee pursuant to this chapter, should not be compelled to do so. The probate referee shall mail notice of the hearing on the petition to the person at least 15 days before the date set for the hearing.

Comment. Subdivision (a) of Section 453 is drawn from Code of Civil Procedure Section 2037.8, with the addition of an automatic stay of enforcement during pendency of the petition. Subdivision (b) is new.

CROSS-REFERENCES

Definitions

Person § 56

Mailed notice § 1215

Person need not give notice to self § 1201

DIVISION 7. ADMINISTRATION OF ESTATES OF DECEDENTS

PART 3. INVENTORY AND APPRAISAL

CHAPTER 1. GENERAL PROVISIONS

§ 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, and 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 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, and 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

§ 8802. Form of inventory and appraisal

8802. The inventory shall separately list each item. The appraisal shall state the fair market value of each item in the inventory at the time of the decedent's death in monetary terms opposite the item.

Comment. Section 8802 restates the fifth sentence of former Section 600.

§ 8803. Notice of filing of inventory and appraisal

8803. Upon the filing of an inventory, supplemental inventory, appraisal, or supplemental appraisal, the personal representative shall, pursuant to Section 1252, mail a copy to each person who has requested special notice.

Comment. Section 8803 is new.

CROSS-REFERENCES

Definitions

Person § 56

Personal representative § 58

Request for special notice § 1250

§ 8804. Failure to timely file inventory or appraisal

8804. If the personal representative refuses or negligently fails 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 refusal or 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 refusal or failure to timely file the appraisal as well as

refusal or 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 refusal or 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

CHAPTER 2. INVENTORY

Article 1. General Provisions

§ 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) Money owed to the decedent, including debts, bonds, and notes, with the name of each debtor, the date,

the sum originally payable, and the endorsements, if any, with their dates. The inventory shall also specify security for the payment of money to the decedent, including mortgages and deeds of trust. 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, appraised as a single item.

(3) All money and other cash items, as defined in Section 8901, 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

§ 8851. Discharge or devise of claims

8851. The discharge or devise in a will of any debt or demand of the testator against the executor or any other person is not valid against creditors of the testator, but is a specific devise of the debt or demand. The debt or demand shall be included in the inventory. If necessary, the debt or demand shall be applied in the payment of the debts of the testator. If not necessary for that purpose, the debt or demand shall be distributed in the same manner and proportion as other specific devises.

Comment. Section 8851 restates former Section 603 without substantive change.

CROSS-REFERENCES

Definitions

Devise § 32

Will § 88

§ 8852. Oath of personal representative

8852. (a) The personal representative shall take and subscribe an oath that the inventory contains a true statement of the property to be administered in the decedent's estate of which the personal representative has knowledge, and particularly of money of the decedent and debts or demands of the decedent against the personal representative. The oath shall be endorsed upon or attached to the inventory.

(b) If there is more than one personal representative, each shall take and subscribe the oath. If the personal representatives are unable to agree as to property to be included in the inventory, any personal representative may petition for a court order determining whether the property is to be administered in the decedent's estate. The determination shall be made pursuant to the procedure provided in Chapter 11 (commencing with Section 9860) of Part 5 or, if there is an issue of property belonging or passing to the surviving spouse, pursuant to Chapter 5 (commencing with Section 13650) of Part 2 of Division 8.

Comment. Subdivision (a) of Section 8852 restates former Section 604 without substantive change. The requirement of an oath may be satisfied by a written affirmation. Code Civ. Proc. § 2015.6.

Subdivision (b) is new. It is an exception to the rule of Section 9630 (where there is more than one personal representative, a majority may act).

CROSS-REFERENCES

Definitions

Personal representative § 58

Article 2. Discovery of Property of Decedent

§ 8870. Citation to appear and be examined concerning decedent's property

8870. (a) On petition by the personal representative or an interested person, the court may order that a citation be issued to a person to answer interrogatories, or to appear before the court and be examined under oath, or both, concerning any of the following allegations:

(1) That the person has wrongfully taken, concealed, or disposed of property in the estate of the decedent.

(2) That the person has knowledge or possession of any of the following:

(A) A deed, conveyance, bond, contract, or other writing that contains evidence of or tends to disclose the right, title, interest, or claim of the decedent to property.

(B) A claim of the decedent.

(C) A lost will of the decedent.

(b) If the person does not reside in the county in which the estate is being administered, the superior court either of the county in which the person resides or of the county in which the estate is being administered may issue a citation under this section.

(c) Disobedience of a citation issued pursuant to this section may be punished as a contempt of the court issuing the citation.

Comment. Subdivisions (a) and (b) of Section 8870 restate the first two sentences of former Section 613. See also Code Civ. Proc. § 166 (actions in chambers).

Subdivision (c) supersedes the first sentence of former Section 614.

CROSS-REFERENCES

Definitions

Interested person § 48

Personal representative § 58

Property § 62

Will § 88

Verification required § 1284

§ 8871. Interrogatories

8871. Interrogatories may be put to a person cited to answer interrogatories pursuant to Section 8870. The interrogatories and answers shall be in writing. The answers shall be signed under penalty of perjury by the person cited. The interrogatories and answers shall be filed with the court.

Comment. Section 8871 restates the third sentence and a portion of the first sentence of former Section 614 without substantive change.

CROSS-REFERENCES

Definitions

Person § 56

Written interrogatories, Code Civ. Proc. § 2030

§ 8872. Examination

8872. (a) At an examination witnesses may be produced and examined on either side.

(b) If upon the examination it appears that the allegations of the petition are true, the court may order the person to disclose the person's knowledge of the facts to the personal representative.

(c) If upon the examination it appears that the allegations of the petition are not true, the person's necessary expenses, including a reasonable attorney's fee, shall be charged against the petitioner or allowed out of the estate, in the discretion of the court.

Comment. Subdivisions (a) and (b) of Section 8872 restate the second and fourth sentences of former Section 614. Subdivision (c) supersedes the third sentence of former Section 613. The court order of disclosure is enforceable in the same manner as other court orders. See, e.g., Code Civ. Proc. § 1209 (contempt); see also Section 1283 (rules of practice).

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 8873. Citation to appear and account

8873. (a) On petition by the personal representative, the court may issue a citation to a person who has possession or control of property in the decedent's estate to appear

before the court and make an account under oath of the property and the person's actions with respect to the property.

(b) Disobedience of a citation issued pursuant to this section may be punished as a contempt of the court issuing the citation.

Comment. Section 8873 restates former Section 615 without substantive change. See also Code Civ. Proc. § 166 (actions in chambers). The duty to account under this section includes both property entrusted to a person and property that comes into the person's possession, including money, accounts, and other property and papers. For general provisions governing issuance and enforcement of citations, see Sections 1240-1242.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 8874. Wrongful taking, concealment, or disposition of property in estate

8874. A person who, in bad faith, has wrongfully taken, concealed, or disposed of property in the estate of the decedent is liable for twice the value of the property, recoverable in an action by the personal representative for the benefit of the estate.

Comment. Section 8874 restates former Section 612 with the addition of a bad faith limitation.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

CHAPTER 3. APPRAISAL

Article 1. Procedure

§ 8900. Appraisal by personal representative, probate referee, and independent expert

8900. The appraisal of property in the inventory shall be made by the personal representative, probate referee, or independent expert as provided in this chapter.

Comment. Section 8900 restates the introductory clause of former Section 605(a) with the addition of the reference to an independent expert. See Section 8904 (appraisal by independent expert). Designation of a probate referee is made pursuant to Article 2 (commencing with Section 8920). The appraisal is made of the fair market value of the property at the time of the decedent's death. See Section 8802 (form of inventory and appraisal).

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 8901. Appraisal by personal representative

8901. The personal representative shall appraise the following property, excluding items whose fair market value is, in the opinion of the personal representative, an amount different from the face value of the property:

(a) Money and other cash items. As used in this subdivision, a "cash item" is a check, draft, money order, or similar instrument issued on or before the date of the decedent's death that can be immediately converted to cash.

(b) The following checks issued after the date of the decedent's death:

(1) Checks for wages earned before death.

(2) Refund checks, including tax and utility refunds, and Medicare, medical insurance, and other health care reimbursements and payments.

(c) Accounts (as defined in Section 21) in financial institutions.

(d) Cash deposits and money market funds or accounts, whether in a financial institution or otherwise, including a brokerage cash account.

(e) Proceeds of life and accident insurance policies and retirement plans and annuities payable on death in lump sum amounts.

Comment. Subdivisions (a), (c), and (e) of Section 8901 restate former Section 605(a) (1) with the addition of annuities in subdivision (e).

The definition of “cash item” in subdivision (a) is consistent with existing practice. California Probate Referees’ Ass’n, Probate Referees’ Procedures Guide 9 (1976).

Subdivisions (b) and (d) are new. The personal representative may appraise an item listed in subdivision (b) or (d), as well as items listed in subdivisions (a), (c), and (e), only if its fair market value can be determined solely from its face without calculation or reference to other sources. See introductory clause of Section 8901.

CROSS-REFERENCES

Definitions

Account § 21

Financial institution § 40

Personal representative § 58

Property § 62

§ 8902. Appraisal by probate referee

8902. Except as otherwise provided by statute:

(a) The personal representative shall deliver the inventory to the probate referee designated by the court, together with necessary supporting data to enable the probate referee to make an appraisal of the property in the inventory to be appraised by the probate referee.

(b) The probate referee shall appraise all property other than that appraised by the personal representative.

Comment. Subdivision (a) of Section 8902 codifies existing practice. A statutory exception to the duty to deliver an inventory to the probate referee occurs in the case of a waiver of appraisal by the probate referee. See Section 8903. The personal representative must furnish the referee such information as the referee requires concerning the assets appraised by the personal representative or to be appraised by the probate referee. See Sections 450-453 (powers of probate referee).

Subdivision (b) restates a portion of former Section 605(a)(2). The probate referee may serve an appraisal function in areas outside of decedent estate administration. See Comment to Section 8800 (inventory and appraisal required). There are statutory exceptions to appraisal by the probate referee. See, e.g., Section 2610 (inventory and appraisal of conservatorship under Lanterman-Petris-Short Act). For waiver of the probate referee, see Section 8903. For appraisal by an independent expert, see Section 8904.

Designation of a probate referee is made pursuant to Article 2 (commencing with Section 8920).

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 8903. Waiver of appraisal by probate referee

8903. (a) The court may, for good cause, waive appraisal by a probate referee in the manner provided in this section.

(b) The personal representative may apply for a waiver together with the petition for appointment of the personal representative or together with another petition, or may apply for a waiver in a separate petition filed in the administration proceedings, but the application may not be made later than the time the personal representative delivers the inventory to the probate referee, if a probate referee has been appointed. A copy of the proposed inventory and appraisal and a statement that sets forth the good cause that justifies the waiver shall be attached to the petition.

(c) The hearing on the waiver shall be not sooner than 15 days after the petition is filed. Notice of the hearing on the petition shall be given as provided in Section 1220, together with a copy of the petition and a copy of the proposed inventory and appraisal. In addition to the notice required by this subdivision, notice of the hearing, together with a copy of the petition and a copy of the proposed inventory and appraisal, shall be given as provided in Section 1220 to all of the following persons:

(1) Each known heir whose interest in the estate is affected by the waiver.

(2) Each known devisee whose interest in the estate is affected by the waiver.

(3) The State of California if any portion of the estate is to escheat to it and its interest in the estate is affected by the waiver.

(4) The probate referee, if a probate referee has been appointed.

(d) If the petition is granted, the inventory and appraisal attached to the petition shall be filed pursuant to Section 8800.

Comment. Section 8903 restates former Section 605(a)-(b), with changes to make clear that the application for waiver is made by petition, to specify the time within which the petition must be made, and to make clear that the inventory and appraisal attached to the petition is to be filed pursuant to Section 8800 (inventory and appraisal required). A waiver petition may be made under Section 8903 at any time before an inventory is delivered to the probate referee, including a combined waiver and petition to open administration or a combined waiver and petition for final distribution.

CROSS-REFERENCES

Clerk to set matter for hearing § 1285

Definitions

Letters § 52

Person § 56

Personal representative § 58

Property § 62

Mailed notice § 1215

Verification required § 1284

§ 8904. Appraisal by independent expert

8904. (a) A unique, artistic, unusual, or special item of tangible personal property that would otherwise be appraised by the probate referee may, at the election of the personal representative, be appraised by an independent expert qualified to appraise the item.

(b) The personal representative may make the election provided in subdivision (a) by a notation on the inventory delivered to the probate referee indicating the property to be appraised by an independent expert. The probate referee may, within five days after delivery of the inventory, petition for a court determination whether the property to be appraised by an independent expert is a unique, artistic, unusual, or special item of tangible personal property. On the determination, the court shall award litigation expenses, including reasonable attorney's fees, to the prevailing party.

Comment. Section 8904 is new. If the Judicial Council adopts a form for the inventory and appraisal filed with the court, the independent expert appraisal must be filed in that form or

otherwise comply with Judicial Council rules for completing the form. See Section 1001 (Judicial Council and local court rules); see also Section 8802 (form of inventory and appraisal).

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 8905. Verification of appraisal

8905. A person who appraises property, whether a personal representative, probate referee, or independent expert, shall sign the appraisal as to property appraised by that person, and shall take and subscribe an oath that the person has truly, honestly, and impartially appraised the property to the best of the person's ability.

Comment. Section 8905 restates former Section 608, with the inclusion of an independent appraisal expert. See Section 8904. The requirement of subscription of an oath may be satisfied by a written affirmation or a declaration under penalty of perjury. Code Civ. Proc. §§ 2015.5-2015.6.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 8906. Objection to appraisal

8906. (a) At any time before the hearing on the petition for final distribution of the estate, an interested person may file with the court a written objection to the appraisal.

(b) The clerk shall fix a time, not less than 15 days after the filing, for a hearing on the objection.

(c) The person objecting shall give notice of the hearing, together with a copy of the objection, as provided in Section 1220. If the appraisal was made by a probate referee, the person objecting shall also mail notice of the hearing and a copy of the objection to the probate referee at least 15 days before the date set for the hearing.

(d) The person objecting to the appraisal has the burden of proof.

(e) Upon completion of the hearing, the court may make any orders that appear appropriate. If the court determines the objection was filed without reasonable cause or good faith, the court may order that the fees of the personal representative and attorney and any costs incurred for defending the appraisal be made a charge against the person filing the objection.

Comment. Section 8906 restates former Section 608.5, but requires an objection at or before the hearing on the petition for final distribution and provides for an award of fees and costs in the event of a frivolous objection. It is drawn from former Section 927 and from former Revenue and Taxation Code Sections 14510-14513. See also Section 8908 (appraisal report, backup data, and justification of appraisal). For objection to the inventory, other procedures are available. See, e.g., Chapter 11 (commencing with Section 9860) of Part 5 (conveyance or transfer of property claimed to belong to decedent or other person).

CROSS-REFERENCES

Definitions

Interested person § 48

Person § 56

Request for special notice § 1250

§ 8907. Fee for appraisal by personal representative

8907. Neither the personal representative nor the personal representative's attorney is entitled to receive compensation for extraordinary services by reason of appraising any property in the estate.

Comment. Section 8907 restates former Section 605(c). It should be noted that the limitation in this section applies only to appraisal of property; it does not affect estate tax work performed by the attorney.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 8908. Appraisal report, backup data, and justification of appraisal

8908. A probate referee who appraises property in the estate shall, upon demand by the personal representative or by a beneficiary:

(a) Provide any appraisal report or backup data in the possession of the probate referee used by the referee to appraise an item of property. The probate referee shall not disclose any information that is required by law to be confidential. The probate referee shall provide the appraisal report or backup data without charge. The cost of providing the appraisal report or backup data shall not be allowed as an expense of appraisal but is included in the commission for services of the probate referee.

(b) Justify the appraisal of an item of property if the appraisal is contested, whether by objection pursuant to Section 8906, by tax audit, or otherwise. The probate referee may be entitled to an additional fee for services provided to justify the appraisal, to be agreed upon by the personal representative or beneficiary and referee. If the personal representative or beneficiary and the probate referee are unable to agree, the court shall determine what fee, if any, is appropriate.

Comment. Section 8908 is new. Backup data required pursuant to subdivision (a) might include, for example, a listing of comparable sales used in the appraisal. Confidential information that may not be disclosed includes tax assessor information obtained by the probate referee pursuant to Section 408 of the Revenue and Taxation Code. The determination of an appropriate fee under subdivision (b) will depend in part upon the quality of the appraisal and whether the contest of the appraisal is reasonable.

CROSS-REFERENCES**Definitions**

Beneficiary § 24

Personal representative § 58

§ 8909. Retention of records by probate referee

8909. A probate referee who appraises property in an estate shall retain possession of all appraisal reports and backup data used by the referee to appraise the property

for a period of three years after the appraisal is filed. The probate referee shall, during the three-year period, offer the personal representative the reports and data used by the referee to appraise the property and deliver the reports and data to the personal representative on request. Any reports and data not requested by the personal representative may be destroyed at the end of the three-year period without further notice.

Comment. Section 8909 is new.

CROSS-REFERENCES

Definitions
Property § 62

Article 2. Designation and Removal of Probate Referee

§ 8920. Designation by court

8920. The probate referee, when designated by the court, shall be among the persons appointed by the State Controller to act as a probate referee for the county. If there is no person available who is able to act or if, pursuant to authority of Section 8922 or otherwise, the court does not designate a person appointed for the county, the court may designate a probate referee from another county.

Comment. Section 8920 restates a portion of former Section 605(a)(2), and makes clear that the probate referee is designated from the panel appointed for the county by the State Controller. See Section 400 (appointment by Controller). Where there is no person able to act, whether because all are disqualified or removed or because there are an insufficient number appointed or because the court elects not to designate a particular probate referee or otherwise, the court may appoint a probate referee from another county. This codifies existing practice. For designation of a probate referee for sale of real property, see Section 10309 (minimum price for private sale of real property). The designation of a probate referee may be made by the judge in chambers. Code Civ. Proc. § 166 (actions in chambers).

CROSS-REFERENCES

Definitions
Property § 62

§ 8921. Designation at request of personal representative

8921. The court may designate a person requested by the personal representative as probate referee, on a showing by the personal representative of good cause for the designation. The following circumstances are included within the meaning of good cause, as used in this section:

(a) The probate referee has recently appraised the same property that will be appraised in the administration proceeding.

(b) The probate referee will be making related appraisals in another proceeding.

(c) The probate referee has recently appraised similar property in another proceeding.

Comment. Section 8921 is new.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 8922. Discretion not to designate person as probate referee

8922. The court has authority and discretion not to designate a particular person as probate referee even though appointed by the State Controller to act as a probate referee for the county.

Comment. Section 8922 is new. The court may, but is not required to, designate probate referees in rotation from the panel for the county, or may use any other system of designation. The court may refuse to designate a particular person as probate referee if experience with that person is unsatisfactory, if experience with that person's office or staff (including office or staff shared with other probate referees) is generally unsatisfactory, or for other proper reasons in the court's discretion. Among the proper reasons for refusal to designate a particular person as probate referee is that the person is habitually unduly slow in making appraisals, due to overwork or otherwise. This example is given by way of illustration and is not intended as a comprehensive listing of reasons. Where there is no satisfactory probate referee for the county, or a sufficient number of satisfactory probate referees for the county is lacking,

the court may designate a probate referee from the panel appointed for another county. Section 8920 (designation by court).

§ 8923. Disqualification of probate referee

8923. The court may not designate as probate referee any of the following persons:

(a) The court clerk.

(b) A partner or employee of the judge or commissioner who orders the designation.

(c) The spouse of the judge or commissioner who orders the designation.

(d) A person, or the spouse of a person, who is related within the third degree either (1) to the judge or commissioner who orders the designation or (2) to the spouse of the judge or commissioner who orders the designation.

Comment. Section 8923 restates former Section 606 with the addition of references to a commissioner. The prohibition in subdivision (a) includes deputy clerks as well. Gov't Code § 24100.

§ 8924. Removal of probate referee

8924. (a) The court shall remove the designated probate referee in any of the following circumstances:

(1) The personal representative shows cause, including incompetence or undue delay in making the appraisal, that in the opinion of the court warrants removal of the probate referee. The showing shall be made at a hearing on petition of the personal representative. The personal representative shall mail notice of the hearing on the petition to the probate referee at least 15 days before the date set for the hearing.

(2) The personal representative shall have the right to remove the first probate referee who is designated by the court. No cause need be shown for removal under this paragraph. The personal representative may exercise the right at any time before the personal representative delivers the inventory to the probate referee. The personal representative shall exercise the right by filing an affidavit or declaration under penalty of perjury with the court and

mailing a copy to the probate referee. Thereupon, the court shall remove the probate referee without any further act or proof.

(3) Any other cause provided by statute.

(b) Upon removal of the probate referee, the court shall designate another probate referee in the manner prescribed in Section 8920.

Comment. Section 8924 is new. Other causes provided by statute for removal of a probate referee include failure to make a timely appraisal or report. See Section 8941 (hearing and order). If experience with all the probate referees in a particular office is unsatisfactory, a referee from that office can be removed pursuant to Section 8924 or designation of a referee from that office can be avoided pursuant to Section 8922 (discretion not to designate a person as probate referee).

CROSS-REFERENCES

Definitions

Personal representative § 58

Mailed notice § 1215

Verification required § 1284

Article 3. Time For Probate Referee Appraisal

§ 8940. Time required for appraisal or status report

8940. (a) The probate referee shall promptly and with reasonable diligence appraise the property scheduled for appraisal by the probate referee in the inventory that the personal representative delivers to the referee.

(b) The probate referee shall, not later than 60 days after delivery of the inventory, do one of the following:

(1) Return the completed appraisal to the personal representative.

(2) Make a report of the status of the appraisal. The report shall show the reason why the property has not been appraised and an estimate of the time needed to complete the appraisal. The report shall be delivered to the personal representative and filed with the court.

Comment. Sections 8940 and 8941 are new. They are drawn from former Section 1025.5 (time for closing estate). The personal representative must deliver an inventory together with supporting data to the probate referee. Section 8902 (appraisal by probate referee). Subdivision (a) of Section 8940 requires the

probate referee to act promptly and diligently in making the appraisal, which in the ordinary case should occur well before the 60-day period provided in subdivision (b) has run. The 60-day period provided in subdivision (b) should be viewed as an unusually long period and not as the norm for accomplishing the appraisal.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 8941. Hearing and order

8941. (a) The court shall, on petition of the personal representative or probate referee, or may, on the court's own motion, hear the report of the status of the appraisal. The court may issue a citation to compel the personal representative or the probate referee to attend the hearing.

(b) If the probate referee does not make the report of the status of the appraisal within the time required by this article or prescribed by the court, the court shall, on petition of the personal representative or may, on its own motion, cite the probate referee to appear before the court and show the reason why the property has not been appraised.

(c) Upon the hearing, the court may order any of the following:

(1) That the appraisal be completed within a time that appears reasonable.

(2) That the probate referee be removed. Upon removal of the probate referee the court shall designate another probate referee in the manner prescribed in Section 8920.

(3) That the commission of the probate referee be reduced by an amount the court deems appropriate, regardless of whether the commission otherwise allowable under the provisions of Sections 8960 to 8964 would be reasonable compensation for the services rendered.

(4) That the personal representative deliver to the probate referee all information necessary to allow the probate referee to complete the appraisal. Failure to comply with such an order is grounds for removal of the personal representative.

(5) Such other orders as may be appropriate.

Comment. Sections 8940 and 8941 are new. They are drawn from former Section 1025.5 (time for closing estate).

Reduction of the probate referee's commission under subdivision (c) (3) may be appropriate if the time taken was within the control of the referee and was not in the best interest of the estate or interested persons. In making such a determination, the court should take into account any previous action taken under this article as a result of the delay.

Removal of the personal representative under subdivision (c) (4) may be appropriate where the personal representative's failure to supply necessary information is hindering completion of the appraisal.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

Verification required § 1284

Article 4. Commission and Expenses of Probate Referee

§ 8960. Payment of commission and expenses

8960. (a) The commission and expenses provided by this article as compensation for the services of the probate referee shall be paid from the estate.

(b) The probate referee may not withhold the appraisal until the commission and expenses are paid, but shall deliver the appraisal to the personal representative promptly upon completion.

(c) The commission and expenses of the probate referee are an expense of administration, entitled to the priority for payment provided by Section 11420, and shall be paid in the course of administration.

Comment. Subdivision (a) of Section 8960 restates a portion of the first sentence of the first paragraph of former Section 609 without substantive change.

Subdivisions (b) and (c) are new. Section 11420 provides the highest priority for payment of expenses of administration, which take precedence over all other debts.

§ 8961. Amount of commission and expenses

8961. As compensation for services the probate referee shall receive all of the following:

(a) A commission of one-tenth of one percent of the total value of the property for each estate appraised, subject to Sections 8962 and 8963. The commission shall be computed excluding property appraised by the personal representative pursuant to Section 8901 or by an independent expert pursuant to Section 8904.

(b) Actual and necessary expenses for each estate appraised. The referee shall file with the inventory a verified account of the referee's expenses.

Comment. Section 8961 restates a portion of the first sentence and the second sentence of the first paragraph, and the second paragraph, of former Section 609 without substantive change. The commission provided by this section is subject to a limitation for publicly traded stock pursuant to Section 8962 and a maximum and minimum pursuant to Section 8963.

CROSS-REFERENCES

Definitions

Property § 62

§ 8962. Limitation on commission and expenses for publicly traded stock

8962. Notwithstanding Section 8961, the commission and expenses received by the probate referee for appraising securities listed as of the date of the decedent's death on the New York Stock Exchange, the American Stock Exchange, or the Pacific Stock Exchange shall not exceed two hundred fifty dollars (\$250) in the aggregate.

Comment. Section 8962 is new. It applies to stock listed on an exchange on the date of the decedent's death, whether or not the exchange was open or stock was traded on that date.

§ 8963. Maximum and minimum commissions

8963. (a) Notwithstanding Section 8961 and subject to subdivision (b), the commission of the probate referee shall in no event be less than seventy-five dollars (\$75) nor more than ten thousand dollars (\$10,000) for any estate appraised.

(b) Upon application of the probate referee, the court may allow a commission in excess of ten thousand dollars (\$10,000) if the court determines that the reasonable value of the referee's services exceeds that amount. Notice of the hearing under this subdivision shall be given as provided in

Section 1220 and mailed to persons who have requested special notice. In addition, notice of the hearing shall be given as provided in Section 1220 to all of the following persons:

(1) Each known heir whose interest in the estate is affected.

(2) Each known devisee whose interest in the estate is affected.

(3) The State of California if any portion of the estate is to escheat to it and its interest in the estate is affected.

Comment. Section 8963 restates a portion of the first sentence of the first paragraph and the third paragraph of former Section 609 with the addition of the provision for notice in the case of an increase in commission.

CROSS-REFERENCES

Definitions

Devisee § 34

Heirs § 44

§ 8964. Division of commission between referees

8964. If more than one probate referee appraises or participates in the appraisal of property in the estate, each is entitled to the share of the commission agreed upon by the referees or, absent an agreement, that the court allows. In no case shall the total commission for all referees exceed the maximum commission that would be allowable for a single referee.

Comment. Section 8964 restates former Section 609.5 without substantive change. Reference to division of expenses is omitted, since each referee is entitled to actual and necessary expenses allowed by the court, regardless of the amount of the commission. It should be noted that the amount of the commission split by the referees may exceed the statutory maximum in a case where the court determines that the reasonable value of the services in the case exceeds the statutory amount. See Section 8963(b).

CROSS-REFERENCES

Definitions

Property § 62

CONFORMING REVISIONS AND REPEALS

Enactment of the proposed legislation will require conforming revisions in other statutes, as well as the repeal of existing provisions. A table of the conforming revisions and repeals follows. For the text of the conforming revisions and repeals, refer to the legislation introduced to effectuate this recommendation. For comments to the conforming revisions and repeals, see the Appendix published with this report.

Probate Code

600 (repealed)
601 (repealed)
602 (repealed)
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608 (repealed)
608.5 (repealed)
609 (repealed)

Probate Code

609.5 (repealed)
610 (repealed)
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615 (repealed)
1300 (repealed)
1301 (repealed)
1302 (repealed)
1303 (repealed)

Probate Code

1304 (repealed)
1305 (repealed)
1306 (repealed)
1307 (repealed)
1308 (repealed)
1309 (repealed)
1310 (repealed)
1311 (repealed)
1312 (repealed)
1313 (repealed)

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

relating to

Opening Estate Administration

October 1987

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

(787)

NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

Cite this recommendation as *Recommendation Relating to Opening Estate Administration*, 19 Cal. L. Revision Comm'n Reports 787 (1988).

CALIFORNIA LAW REVISION COMMISSION

4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739
(415) 494-1335

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October 23, 1987

To: The Honorable George Deukmejian
Governor of California
and
The Legislature of California

The California Law Revision Commission is now devoting its time and resources almost exclusively to the study of probate law and procedure. The Commission is preparing a new code to replace the existing Probate Code.

The Commission has decided not to delay submitting all recommendations for the improvement of probate law until work on the new code is completed. This recommendation is one of those which is being submitted for enactment prior to the submission of the entire code.

The recommended legislation replaces the existing provisions governing opening estate administration (existing Probate Code Sections 320 to 553.5).

This recommendation is submitted pursuant to Resolution Chapter 37 of the Statutes of 1980.

Respectfully submitted,

Ann E. Stodden
Chairperson

RECOMMENDATION

relating to

OPENING ESTATE ADMINISTRATION

The provisions of the proposed law governing the opening of estate administration generally follow both the organization and substance of existing law. The proposed law accomplishes some reorganization¹ and also makes many simplifications and technical and clarifying changes.² Minor substantive changes are noted in the Comments to the specific provisions of the proposed law; major changes are described below.

Delivery of will to clerk. Existing law requires the custodian of a will to deliver the will to the named executor within 30 days of being informed of the testator's death.³ The proposed law requires instead that the custodian deliver the will to the court clerk and mail a copy to the executor or, if none, a beneficiary. This will ensure that the will is kept safe and available when needed by interested persons.

1. For example, existing law provides two parallel though not identical procedures for probating a will and appointing a personal representative. The proposed law reorganizes these procedures in a single uniform proceeding for opening estate administration. This is consistent with current practice through consolidated Judicial Council forms.

2. Terminology has been simplified. The proposed law replaces existing references to executors, administrators, administrators with the will annexed, and special administrators, with a single reference to "personal representative," unless a special reference to one particular type is called for. References in existing law to granting of letters, granting of administration, admission as executor, and other varieties of terminology intended to refer to court appointment of a personal representative have been standardized to refer to "appointment of a personal representative." References to the "trust" of the personal representative have been replaced by references to the office of the personal representative. Removal from office is the standardized phrase for such variants as revocation or annulment of letters.

3. Prob. Code § 320.

Time for probate of will. Under existing law a will may be admitted to probate at any time after the testator's death.⁴ To ensure some finality in probate proceedings, the proposed law precludes probate of a will to the extent the will affects property that has previously been distributed under court order in estate administration.⁵

Setting petition for hearing. Existing law provides a minimum 10 days before a petition for administration of a decedent's estate may be heard.⁶ The proposed law increases the minimum hearing time to 15 days in recognition of the fact that interested persons may require additional time to prepare for the initial hearing in the administration of the estate.⁷

Notice of hearing. In the interest of simplicity and economy, the proposed law consolidates in a single form the various notices of hearing to open probate administration, whether served or published. Suggestions have been made for changes in the existing law governing publication of notice; the Commission has not received information sufficient to persuade it of the need for change in this area.⁸

4. Prob. Code § 323. Admission of a will to probate and failure to contest a will do not preclude probate of a subsequent will. Prob. Code § 385; Estate of Moore, 180 Cal. 570, 182 P. 285 (1919).

5. The proposed law also omits former Section 322. The section's major effect was to enable a title insurer to provide insurance in the occasional case in which title is insured in a purchaser from an heir without requiring administration proceedings, the insurance being predicated on the property's small value and satisfactory proof (usually by affidavit) of heirship. 2 Bowman, Ogden's Revised California Real Property Law § 29.82, at 1498 (1975). For this purpose, Sections 13200-13209 (affidavit procedure for real property of small value) provide a more complete and detailed procedure.

6. Prob. Code § 327.

7. Likewise, the proposed law requires that interested persons receive 15 days' actual notice, in order to allow sufficient time to prepare for the hearing.

8. Recent revisions of the publication statute require that, absent a more appropriate paper, publication may be in a newspaper of general circulation published nearest the county seat of the county where the decedent resided and circulated where the decedent resided. See Prob. Code § 333, as amended by 1986 Cal. Stat. ch. 711, § 1. This revision renders posting no longer necessary as a backup where there is no appropriate paper; the proposed law accordingly eliminates the posting provisions.

Will contest. Existing statutes appear to put the burden of proof on a will contestant rather than on a will proponent,⁹ but lack detail on the specific burdens and order of proof in will contests.¹⁰ The proposed law provides useful detail in this area.¹¹

In a will contest a jury determination may be had of a number of issues involving the validity of the will.¹² The jury trial scheme has been criticized not only because it is erratic in the issues it leaves to the jury,¹³ but also because jury verdicts upholding a contest are reversed on appeal in the great majority of cases.¹⁴ Jury trial in probate matters is not constitutionally required,¹⁵ and there is a substantial waste

9. Prob. Code § 371. This seems to conflict with the general rule that, "The party affirming is plaintiff and the one denying or avoiding is defendant." Prob. Code § 1230.

10. The cases have resolved this statutory ambiguity by imposing the burden of proof of due execution on the proponent of the will, and the burden of proof of lack of testamentary capacity or undue influence on the contestant.

11. The detail is drawn from Uniform Probate Code Section 3-407 (1982).

12. Probate Code Section 371 provides for a jury trial of the following issues:

(1) Competency of the decedent to make a will.

(2) Freedom of the decedent from duress, menace, fraud, and undue influence.

(3) Due execution and attestation of the will.

(4) Any other question substantially affecting the validity of the will.

13. Evans, *Comments on the Probate Code of California*, 19 Calif. L. Rev. 602, 616 (1931). Simes, *The Function of Will Contests*, 44 Mich. L. Rev. 503 (1946), notes that a majority of American states provide for a jury trial for largely historical reasons, relating to ejectment in land title cases, and concludes that "the issues of fact would seem to be of a sort which could better be dealt with by a court than by a jury." *Id.* at 557.

14. See, e.g., discussion in *Estate of Mann*, 184 Cal. App. 3d 593, 229 Cal. Rptr. 225 (1986):

It is no secret that instructions such as this are repeatedly ignored. In 1892 our Supreme Court unhappily observed that "juries lean against wills which to them seem unequal or unjust." In several later cases decided before the turn of the century the Supreme Court again noted, with apparently increasing distress, that "[t]he upsetting of wills is a growing evil", and that "quite a number of people have come to think that the right to dispose of property by will has but little significance, and may be legally disregarded whenever the testator has not disposed of his property in a manner which suits the views of a jury." The Supreme Court more recently adverted to this problem in *Estate of Fritschi*, where it pointed out that a "legion" of appellate decisions have been necessary in order to "strike down attempts of juries to invalidate wills upon the ground of undue influence in order to indulge their own concepts of how testators should have disposed of their properties." 184 Cal. App. 3d at 610 (citations omitted).

See also Note, *Will Contests on Trial*, 6 Stan. L. Rev. 91 (1953); Breidenbach, *Will Contests*, in 2 California Decedent Estate Administration §§ 21.139-21.141 (Cal. Cont. Ed. Bar 1975).

15. See, e.g., *Estate of Beach*, 15 Cal. 3d 623, 542 P.2d 994, 125 Cal. Rptr. 570 (1975).

of time and resources in going through the jury trial, appeal, and reversal process. Moreover, the whole process has the effect of postponing enjoyment of the estate for several years, which gives unmeritorious contestants leverage to obtain compromise settlements to which they should not be entitled. For these reasons, the proposed law leaves questions of fact in will contests to the judge rather than the jury.

In the case of a will contest after probate (i.e., a proceeding to revoke the probate of a will), existing law requires an award of costs against an unsuccessful contestant and, if the contest is successful, gives the court discretion to award costs either against the person who resisted the contest or against the estate.¹⁶ The proposed law removes the mandatory award of costs against an unsuccessful contestant. Mutuality requires that the court have discretion to award costs against any party, as justice may require.

Existing law apparently allows a minor or incompetent person to commence a proceeding to revoke the probate of a will at any time, even after final distribution of the estate and discharge of the personal representative.¹⁷ In order to provide assurance of finality in probate proceedings, the proposed law precludes revocation of probate after entry of an order for final distribution.

Under existing law, a no-contest clause in a will is inapplicable to a contest or an attack on a provision of the will that benefits a witness to the will.¹⁸ The proposed law extends this policy to a comparable situation involving the lawyer or other person who prepared the will for the testator. The potential for fraud, duress, or undue influence in such a situation is obviously great.

Competence of person appointed personal representative. Existing law requires that a person appointed as personal representative be an adult, resident

16. Prob. Code § 383.

17. Prob. Code § 384. The only statutory limit is four months after the end of the person's legal disability.

18. Prob. Code § 372.5.

of the United States, and have sufficient understanding and integrity, among other qualifications.¹⁹ The governing statutes do not, however, include a conflict of interest among the grounds for disqualification of a personal representative even though the conflict of interest would require removal of the personal representative from office upon appointment.²⁰ The proposed law cures this problem by adding as a ground for disqualification that the person would be removed from office if appointed. This will save needless court proceedings, as well as substantial amounts of time, and will avoid unnecessary problems and complications in the administration of the estate.

Priority for appointment as administrator. The priority of persons for appointment as administrator of the estate of a decedent corresponds to their priority for inheriting the estate of the decedent under the laws governing intestate succession.²¹ Recent changes in the law governing intestate succession²² have rendered the appointment priority scheme inconsistent. The proposed law conforms the priority for appointment as administrator to the current law governing intestate succession. The proposed law also makes clear that the nominee of a person having priority also has priority for appointment, and that several persons may act together to make a nomination.

Priority of surviving spouse. Ordinarily the surviving spouse of the decedent has first priority for appointment as personal representative.²³ However, where there was pending litigation to dissolve the marriage and the spouses were living apart from each other at the time of the decedent's death, the surviving spouse may have a lower

19. Prob. Code §§ 401, 420. The United States residency requirement applies to administrators but not executors. The proposed law eliminates some of the existing grounds for disqualification such as "drunkenness," "improvidence," and conviction of an "infamous crime", in favor of the general ground that the person is incapable of executing or is otherwise unfit to execute the duties of the office.

20. See, e.g., *Estate of Backer*, 164 Cal. App. 3d 1159, 211 Cal. Rptr. 163 (1985).

21. *Cf.* Prob. Code § 422.

22. See Prob. Code §§ 6400-6414.

23. Prob. Code § 422(a)(1).

priority, depending upon whether the surviving spouse has waived the right to petition for a determination that property passes to the surviving spouse without administration.²⁴ The proposed law does not distinguish between a surviving spouse who waives the right to petition and one who does not. Any surviving spouse who was involved in a pending proceeding to dissolve the marriage and who was living apart from the decedent is likely to have a conflict of interest with the decedent's heirs and should have lower priority.

Appointment of disinterested person as personal representative. If two persons of equal rank seek appointment as personal representative and are unable to agree, the court is faced with the difficult choice of appointing a person whose interests are antagonistic to those of another person equally entitled to appointment. In this situation, appointment of a disinterested person would be beneficial. The proposed law authorizes the court to make an appointment of a disinterested person having the same priority or the next lower class of priority, or the public administrator.

If no person entitled to higher priority seeks appointment as personal representative, a creditor may be appointed personal representative, but if another creditor objects, the court may appoint a third person instead.²⁵ The proposed law broadens court discretion to allow appointment of a neutral party whether or not a creditor objects. This may be important for the protection of the estate or other interested parties, as well as for the protection of creditors who may not have received notice of the pendency of the administration proceedings.

Administrator with the will annexed. Because an administrator with the will annexed was not selected by the testator to execute the testator's will, the law does not permit the administrator with the will annexed to exercise discretionary powers granted to an executor by the will.²⁶

24. Prob. Code § 422(a)(6).

25. Prob. Code §§ 422(a)(11), 425.

26. Prob. Code § 409.

In some circumstances exercise of a discretionary power would be desirable and beneficial for the estate and persons interested in the estate. For this reason the proposed law enables the court in its discretion to authorize exercise of discretionary powers by the administrator with the will annexed.

Special administrator. Existing statutes provide for appointment of a special administrator where there are problems of delay in appointing a general personal representative, where there is a vacancy in the office of the personal representative, or for a number of other causes.²⁷ The statutory listing of grounds is unduly restrictive, since there may be other situations where temporary appointment of a special administrator would be beneficial to the estate and interested parties. For example, it may be desirable to liquidate some of the estate assets immediately for tax purposes or to prevent foreclosure, even though a general personal representative will eventually be appointed in due course. The proposed law permits the court to appoint a special administrator to exercise such powers as may be appropriate under the circumstances for the preservation of the estate, if immediate appointment appears necessary. Likewise, the proposed law makes clear that a special administrator may be appointed for a specific purpose or with specific powers and duties,²⁸ or may be granted general powers of a personal representative where it appears to the court proper to grant such powers.²⁹

Upon termination of the special administrator's appointment, the special administrator must deliver the

27. Prob. Code § 460.

28. This provision is drawn from Uniform Probate Code Section 3-617 (1982). The express authority to appoint a special administrator to perform particular acts includes provision for court authorization of the act at the same time as appointment, notation of limited powers in the letters, and immunity for the special administrator for failure to take unrelated actions for the protection of the estate.

29. Existing statutes are unduly rigid in this respect, listing limited situations where a general grant of authority is proper and requiring, rather than permitting, a general grant of authority in these situations. See Prob. Code § 465. For the protection of interested persons, the proposed law requires general notice before the court may grant general powers.

estate assets immediately to the general personal representative and render an account.³⁰ In some cases it may be desirable for the special administrator to retain control during the transitional period, for example to complete a transaction. The proposed law enables the court to authorize this. It may also be wasteful for the special administrator to render a separate account where the same person is appointed general personal representative. In this situation, the proposed law permits the special account to be combined with the first general account of the general personal representative.³¹

Nonresident personal representative. A nonresident personal representative remains subject to the jurisdiction of the probate court and must maintain a current address with the Secretary of State for service of process.³² Nonetheless, for practical purposes a nonresident may be effectively beyond the reach of the court and interested persons. As a partial remedy for this problem, the proposed law adds express authority for the court to require a bond where appropriate.

Bond of personal representative. Existing law gives the court discretion to fix the amount of the bond of the personal representative based on the estimated value of personal property in the estate and the probable annual gross income of the estate.³³ The proposed law makes clear that the court has authority to prescribe a minimum bond regardless of the value of property and the income of the estate, but the bond should not exceed the estimated value and income. This approach will provide greater guidance to the court, will be simpler to administer, and will adequately protect persons interested in the estate.

30. Prob. Code §§ 466-467.

31. The fees of the special administrator would not be allowed until the final account (unless agreed to by the general personal representative); this would conform the law to statewide practice. The proposed law also conforms the award of attorney's fees for extraordinary services to the general rules on such awards, and recognizes agreements among interested persons on splitting fees between special and general administrations.

32. Prob. Code §§ 405.1-405.6.

33. Prob. Code § 541(a).

Existing law allows the personal representative the cost of the bond, not exceeding one-half of one percent of the amount of the bond.³⁴ The Commission is informed that although bond costs vary around the state, the cost of a personal representative's bond is generally less than the statutory allowance. If bond costs were to exceed the statutory allowance, it would be appropriate to allow the excess cost where reasonable. Surety bond premiums are controlled by the marketplace, not by the statutory allowance. For these reasons, the proposed law eliminates the specific statutory allowance in favor of a general provision allowing recovery of the reasonable cost of the bond.

The guardianship and conservatorship law provides a three-year statute of limitations for recovery on a bond,³⁵ but the law governing administration of decedents' estates includes no comparable provision. The proposed law provides a four-year statute of limitations for recovery on the bond for both decedents' and guardianship estates, running from the close of administration. This is consistent with the general statute of limitations for written instruments.³⁶

Informing personal representative of duties. The proposed law includes a requirement that the personal representative acknowledge receipt of a statement of duties and liabilities of the office before letters are issued. The statement of duties and liabilities is in general terms, derived from comparable statements used in a number of probate courts around the state.³⁷ The statement should be helpful in giving the personal representative a basic understanding of the responsibilities involved in the office.

34. Prob. Code § 541.5. In the case of a bond in an amount less than \$4,000, the amount allowed is \$50.

35. Prob. Code § 2333.

36. Code Civ. Proc. §§ 337, 996.450.

37. See, e.g., Los Angeles County Superior Court, Probate Department, General Instructions to Estate Representatives (PR 042/R 5-80); Santa Clara County Superior Court, General Instructions to Personal Representatives (Post-Record Catalog 527/New 3-08-85).

Suspension of powers of personal representative. Existing law enables the court to restrain the personal representative from taking actions adverse to the interests of interested persons in limited situations, such as where probate of a lost or destroyed will is pending.³⁸ This provision is useful, but is unduly restricted.³⁹ The proposed law includes a general provision to enable the court to suspend the powers of the personal representative either generally or as to specific property or duties.⁴⁰ In order to protect against abuse, the proposed law also authorizes the court to award attorney's fees where a petition to suspend powers is brought unnecessarily.

Removal of personal representative. The existing statute specifies a number of grounds for removal of a personal representative, including such causes as embezzlement, mismanagement, and removal from the state.⁴¹ This statutory statement is obsolete in two respects—(1) nonresidents may now serve as personal representatives; and (2) other grounds developed by the cases such as having an adverse interest or engaging in hostile acts are not reflected in the statute. The proposed law restates the grounds for removal consistent with existing law.

Removal of a personal representative may be ordered without cause upon petition of a person having higher priority for appointment.⁴² Automatic removal may be inappropriate in some cases, however, as where administration is nearly complete at the time of the petition. For this reason the proposed law gives the court discretion to deny the petition for removal where to grant the petition would be contrary to the sound administration of the estate.

38. Prob. Code § 352; see also Prob. Code § 550.

39. See, e.g., Evans, *Comments on the Probate Code of California*, 19 Calif. L. Rev. 602, 616 (1931).

40. This provision is drawn from Uniform Probate Code Section 3-607 (1982).

41. Prob. Code §§ 521, 524.

42. Prob. Code §§ 450, 452.

Effect of Reversal of Appointment of Personal Representative

Existing law provides that where the appointment of an executor or administrator is reversed on appeal for error, lawful acts of the executor or administrator are as valid as though the order had been confirmed.⁴³ This rule is ambiguous and can be misleading. The proposed law limits this rule to the determination of rights of persons dealing with the personal representative.⁴⁴

43. Prob. Code § 1298. This rule does not apply where the order is reversed for lack of jurisdiction. *Estate of Schwartz*, 87 Cal. App. 2d 569, 573, 197 P.2d 223 (1948); *Security-First Nat'l Bank v. Superior Court*, 100 Cal. App. 702, 704-06, 280 P. 995 (1929).

44. This rule is drawn from case law. See *Estate of Gibson*, 233 Cal. App. 2d 125, 130, 43 Cal. Rptr. 302 (1965).

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CONFORMING REVISIONS AND REPEALS

PART 2. OPENING ESTATE ADMINISTRATION

CHAPTER 1. COMMENCEMENT OF PROCEEDINGS

§ 8000. Petition

8000. (a) At any time after a decedent's death, any interested person may commence proceedings for administration of the estate of the decedent by a petition to the court for an order determining the date and place of the decedent's death and for either or both of the following:

- (1) Appointment of a personal representative.
- (2) Probate of the decedent's will.

(b) A petition for probate of the decedent's will may be made regardless of whether the will is in the petitioner's possession or is lost, destroyed, or beyond the jurisdiction of the state.

Comment. Section 8000 restates former law without substantive change. See, e.g., former Section 323 (petition for probate of will). The court having jurisdiction is the superior court of the proper county. Sections 7050 (jurisdiction in superior court), 7051 (venue), and 7070-7072 (transfer of proceedings).

CROSS-REFERENCES

Appointment of public administrator § 7641

Definitions

Interested person § 48

Personal representative § 58

Will § 88

§ 8001. Failure of person named executor to petition

8001. Unless good cause for delay is shown, if a person named in a will as executor fails to petition the court for administration of the estate within 30 days after the person has knowledge of the death of the decedent and that the person is named as executor, the person may be held to have waived the right to appointment as personal representative.

Comment. Section 8001 restates former Section 324 without substantive change. It is within the discretion of the court whether to hold the person named as executor to have waived the right to appointment. If the court so holds, the court may

appoint another competent person as personal representative. See Section 8440 (administrators with the will annexed).

CROSS-REFERENCES

Definitions

Person § 56

Personal representative § 58

Will § 88

§ 8002. Contents of petition

8002. (a) The petition shall contain all of the following information:

- (1) The facts referred to in Section 8005(b) (1) (A).
 - (2) The street number, street, and city, or other address, and the county, of the decedent's residence at the time of death.
 - (3) The name, age, address, and relation to the decedent of each heir and devisee of the decedent, so far as known to or reasonably ascertainable by the petitioner.
 - (4) The character and estimated value of the property in the estate.
 - (5) The name of the person for whom appointment as personal representative is petitioned.
- (b) If the decedent left a will:
- (1) The petitioner shall attach to the petition a photographic copy of the will. In the case of a holographic will, the petitioner shall also attach a typed copy of the will.
 - (2) If the will is in a foreign language, the petitioner shall attach an English language translation. On admission of the will to probate, the court shall certify to a correct translation into English, and the certified translation shall be filed with the will.
 - (3) The petition shall state whether the person named as executor in the will consents to act or waives the right to appointment.

Comment. Section 8002 supersedes portions of former Sections 326 (petition for probate of will), 332 (admission of will to probate), and 440 (petition for letters of administration). It substitutes the address for the residence of heirs and devisees, adds an express requirement that a copy of the will be attached, and provides for notice to heirs and devisees reasonably ascertainable by the petitioner. For general provisions governing

the signing of this and other petitions, see Section 1020 (petitions, reports, accounts).

CROSS-REFERENCES

Definitions

Devisee § 34

Heirs § 44

Person § 56

Personal representative § 58

Property § 62

Will § 88

Verification required § 1021

§ 8003. Setting and notice of hearing

8003. (a) The hearing on the petition shall be set for a day not less than 15 nor more than 30 days after the petition is filed. At the request of the petitioner made at the time the petition is filed, the hearing on the petition shall be set for a day not less than 30 nor more than 45 days after the petition is filed.

(b) The petitioner shall serve and publish notice of the hearing in the manner prescribed in Chapter 2 (commencing with Section 8100).

Comment. Section 8003 restates former Sections 327 (probate of will) and 441 (application for letters), except that the 10-day minimum period is increased to 15 days and the petitioner rather than the clerk has the duty of giving notice.

CROSS-REFERENCES

Clerk to set matter for hearing § 1041

§ 8004. Opposition

8004. (a) If appointment of the personal representative is contested, the grounds of opposition may include a challenge to the competency of the personal representative or the right to appointment. If the contest asserts the right of another person to appointment as personal representative, the contestant shall also file a petition and serve notice in the manner provided in Article 2 (commencing with Section 8110) of Chapter 2, and the court shall hear the two petitions together.

(b) If a will is contested, the applicable procedure is that provided in Article 3 (commencing with Section 8250) of Chapter 3.

Comment. Subdivision (a) of Section 8004 restates portions of former Sections 370, 407, and 442 without substantive change. See also Sections 1043 (response or objection) and 1045 (continuance or postponement). Subdivision (b) is included as a cross-reference.

CROSS-REFERENCES

Definitions

Interested person § 48

Person § 56

Personal representative § 58

Will § 88

Verification required § 1021

§ 8005. Hearing

8005. (a) At the hearing on the petition, the court may examine and compel any person to attend as a witness concerning any of the following matters:

(1) The time, place, and manner of the decedent's death.

(2) The place of the decedent's domicile and residence at the time of death.

(3) The character and value of the decedent's property.

(4) Whether or not the decedent left a will.

(b) The following matters shall be established:

(1) The jurisdictional facts, including:

(A) The date and place of the decedent's death.

(B) That the decedent was domiciled in this state or left property in this state at the time of death.

(C) The publication of notice under Article 3 (commencing with Section 8120) of Chapter 2.

(2) The existence or nonexistence of the decedent's will.

(3) That notice of the hearing was served as provided in Article 2 (commencing with Section 8110) of Chapter 2.

Comment. Section 8005 restates former Section 443 and a portion of the first sentence of former Section 407 with the addition of the references to notice. See also Section 1046 (hearing and order).

CROSS-REFERENCES

Definitions

Property § 62

Will § 88

§ 8006. Court order

8006. (a) If the court finds that the matters referred to in Section 8005(b) (1) are established, the court shall make an order determining the time and place of the decedent's death and the jurisdiction of the court. Where appropriate and on satisfactory proof, the order shall admit the decedent's will to probate and appoint a personal representative. The date the will is admitted to probate shall be included in the order.

(b) If through defect of form or error the matters referred to in Section 8005(b) (1) are incorrectly stated in the petition but actually are established, the court has and retains jurisdiction to correct the defect or error at any time. No such defect or error makes void an order admitting the will to probate or appointing a personal representative or an order made in any subsequent proceeding.

Comment. Subdivision (a) of Section 8006 is new. For the minute order admitting a will to probate, see Section 8225.

Subdivision (b) restates the last paragraph of former Sections 326 and 440 without substantive change.

CROSS-REFERENCES**Definitions**

Personal representative § 58

Will § 88

§ 8007. Determination of jurisdiction conclusive

8007. (a) Except as provided in subdivision (b), an order admitting a will to probate or appointing a personal representative, when it becomes final, is a conclusive determination of the jurisdiction of the court and cannot be collaterally attacked.

(b) Subdivision (a) does not apply in either of the following cases:

(1) The presence of fraud in the procurement of the court order.

(2) The court order is based on the erroneous determination of the decedent's death.

Comment. Section 8007 restates former Section 302 without substantive change and extends it to cover probate of a will as

well as appointment of a personal representative. This has the effect of codifying the rule in *Estate of Sanders*, 40 Cal. 3d 607, 710 P.2d 232, 221 Cal. Rptr. 432 (1985).

CROSS-REFERENCES

Definitions

Personal representative § 58

Will § 88

CHAPTER 2. NOTICE OF HEARING

Article 1. Contents

§ 8100. Form of notice

8100. The notice of hearing of a petition for administration of a decedent's estate, whether served under Article 2 (commencing with Section 8110) or published under Article 3 (commencing with Section 8120), shall state substantially as follows:

NOTICE OF PETITION TO ADMINISTER ESTATE OF _____, ESTATE NO. _____

To all heirs, beneficiaries, creditors, and contingent creditors of _____ and persons who may be otherwise interested in the will or estate, or both:

A petition has been filed by _____ in the Superior Court of California, County of _____, requesting that _____ be appointed as personal representative to administer the estate of _____ [and for probate of the decedent's will, which is available for examination in the court file].

[The petition requests authority to administer the estate under the Independent Administration of Estates Act. This will avoid the need to obtain court approval for many actions taken in connection with the estate. However, before taking certain actions, the personal representative will be required to give notice to interested persons unless they have waived notice or have consented to the proposed action. The petition will

be granted unless good cause is shown why it should not be.]

The petition is set for hearing in Dept. No.

_____ at _____
(Address)

on _____ at _____
(Date of hearing) (Time of hearing)

IF YOU OBJECT to the granting of the petition, you should appear at the hearing and state your objections or file written objections with the court before the hearing. Your appearance may be in person or by your attorney.

IF YOU ARE A CREDITOR or a contingent creditor of the deceased, you must file your claim with the court and mail a copy to the personal representative appointed by the court within four months from the date of first issuance of letters as provided in Section 9100 of the California Probate Code. The time for filing claims will not expire before four months from the date of the hearing noticed above.

YOU MAY EXAMINE the file kept by the court. If you are interested in the estate, you may request special notice of the filing of an inventory and appraisal of estate assets or of any petition or account as provided in Section 1250 of the California Probate Code.

(Name and address of petitioner,
or petitioner's attorney)

Comment. Section 8100 restates the second sentence of former Section 328 and former Section 333(b), except that reference to notice of the decedent's death is eliminated from the caption, the type size is not specified, and a reference to the decedent's will is added. *Cf.* Section 8123 (type size). Section 8100 also restates the last sentence of former Section 441 without substantive change and incorporates the substance of Section 10451(c). Section 8100 consolidates the published notice with the general notice served on heirs or beneficiaries, so that there is a single form of notice.

Article 2. Service of Notice

§ 8110. Persons on whom notice served

8110. At least 15 days before the hearing of a petition for administration of a decedent's estate, the petitioner shall serve notice of the hearing on all of the following persons:

(a) Each heir of the decedent, so far as known to or reasonably ascertainable by the petitioner.

(b) Each devisee and executor named in any will being offered for probate.

Comment. Section 8110 restates the first part of the first sentence of former Section 328 and a portion of the second sentence of former Section 441, with the extension of the notice period from 10 days to 15 and limitation of service to known heirs. See also Section 1202 (additional notice on court order). *Cf.* Section 9050 (notice to creditors).

CROSS-REFERENCES

Definitions

Devisee § 34

Heirs § 44

Person § 56

Will § 88

Form of notice § 8100

§ 8111. Service on Attorney General

8111. If the decedent's will involves or may involve a testamentary trust of property for charitable purposes other than a charitable trust with a designated trustee resident in this state, or involves or may involve a devise for charitable purposes without an identified devisee, notice of hearing accompanied by a copy of the petition and of the will shall be served on the Attorney General.

Comment. Section 8111 restates the second paragraph of former Section 328 without substantive change. See also Section 1209 (notice to state).

CROSS-REFERENCES

Definitions

Devisee § 32

Devisee § 34

Will § 88

Form of notice § 8100

§ 8112. Notice to creditors and public entity claimants

8112. A general personal representative shall give notice of administration of the estate of the decedent to creditors under Chapter 2 (commencing with Section 9050), and to public entities under Chapter 5 (commencing with Section 9200), of Part 4.

Comment. Section 8112 is intended for cross-referencing purposes.

§ 8113. Notice involving foreign citizen

8113. (a) If a citizen of a foreign country dies without leaving a will or leaves a will without naming an executor, or if it appears that property will pass to a citizen of a foreign country, notice shall be given to the consul of the foreign country.

(b) Notice under this section is required only if the particular foreign country has consul representation in the United States and the United States has treaty rights with that country.

Comment. Section 8113 is drawn from Section 7.06 of the Los Angeles County Probate Policy Memorandum (1985). Whether a country has consul representation in the United States and the United States has treaty rights with the country may be ascertained from the United States Department of State.

Article 3. Publication**§ 8120. Publication required**

8120. In addition to service of the notice of hearing as provided in Article 2 (commencing with Section 8110), notice of hearing of a petition for administration of a decedent's estate shall also be published before the hearing in the manner provided in this article.

Comment. Section 8120 is new. It is intended for organizational purposes.

CROSS-REFERENCES

Form of notice § 8100

§ 8121. Publication of notice

8121. (a) Notice shall be published for at least 10 days. Three publications in a newspaper published once a week or more often, with at least five days intervening between the first and last publication dates, not counting the publication dates, are sufficient.

(b) Notice shall be published in a newspaper of general circulation in the city where the decedent resided at the time of death, or where the decedent's property is located if the court has jurisdiction under Section 7052. If there is no such newspaper, the decedent did not reside in a city, or the property is not located in a city, then notice shall be published in a newspaper of general circulation in the county which is circulated within the area of the county in which the decedent resided or the property is located. If there is no such newspaper, notice shall be published in a newspaper of general circulation published in the State of California nearest to the county seat of the county in which the decedent resided or the property is located, and which is circulated within the area of the county in which the decedent resided or the property is located.

(c) For purposes of this section, "city" means a charter city as defined in Section 34101 of the Government Code or a general law city as defined in Section 34102 of the Government Code.

Comment. Section 8121 restates subdivision (a) of former Section 333 but omits the posting provision, which is no longer necessary. The former reference to the "community" where the decedent resided is replaced by a reference to the "area of the county", since some decedents do not reside in communities.

CROSS-REFERENCES

Definitions

Property § 62

Form of notice § 8100

§ 8122. Good faith compliance with publication requirement

8122. The Legislature finds and declares that, to be most effective, notice of hearing should be published in compliance with Section 8121. However, the Legislature recognizes the possibility that in unusual cases due to

confusion over jurisdictional boundaries or oversight such notice may inadvertently be published in a newspaper that does not satisfy Section 8121. Therefore, to prevent a minor error in publication from invalidating what would otherwise be a proper proceeding, the Legislature further finds and declares that notice published in a good faith attempt to comply with Section 8121 is sufficient to provide notice of hearing and to establish jurisdiction if the court expressly finds that the notice was published in a newspaper of general circulation published within the county and widely circulated within a true cross-section of the area of the county in which the decedent resided or the property was located in substantial compliance with Section 8121.

Comment. Section 8122 restates former Section 334 without substantive change.

CROSS-REFERENCES

Definitions

Property § 62

Form of notice § 8100

§ 8123. Type size

8123. The caption of a notice under this article shall be in 8-point type or larger and the text shall be in 7-point type or larger.

Comment. Section 8123 restates the introductory portion of subdivision (b) of former Section 333 without substantive change. See also Code Civ. Proc. § 1019 (type size variations).

CROSS-REFERENCES

Form of notice § 8100

§ 8124. Affidavit of publication

8124. A petition for administration of a decedent's estate shall not be heard by the court unless an affidavit showing due publication of the notice of hearing has been filed with the court. The affidavit shall contain a copy of the notice and state the date of its publication.

Comment. Section 8124 restates subdivision (c) of former Section 333 without substantive change.

§ 8125. Contents of subsequent published notice

8125. Notwithstanding Section 8100, after the notice of hearing is published and an affidavit filed, any subsequent publication of the notice may omit the information for creditors and contingent creditors.

Comment. Section 8125 restates former Section 333(d) without substantive change.

CROSS-REFERENCES

Form of notice § 8100

CHAPTER 3. PROBATE OF WILL**Article 1. Production of Will****§ 8200. Delivery of will**

8200. (a) Unless a petition for probate of the will is earlier filed, the custodian of a will shall, within 30 days after having knowledge of the death of the testator, do both of the following:

(1) Deliver the will to the clerk of the superior court of the county in which the estate of the decedent may be administered.

(2) Mail a copy of the will to the person named in the will as executor, if the person's whereabouts are known to the custodian, or if not, to a person named in the will as a beneficiary, if the person's whereabouts are known to the custodian.

(b) A custodian of a will who fails to comply with the requirements of this section is liable for all damages sustained by any person injured by the failure.

(c) The clerk shall release a copy of a will delivered under this section for attachment to a petition for probate of the will or otherwise on receipt of a court order for production of the will and payment of the required fee.

Comment. Section 8200 supersedes former Section 320. Section 8200 requires delivery of the original will in all cases, and adds a procedure for production of the delivered will.

CROSS-REFERENCES

Defined terms

Beneficiary § 24

Person § 56

Will § 88

§ 8201. Order for production of will

8201. If, on petition to the superior court of the county in which the estate of the decedent is being or may be administered alleging that a person has possession of a decedent's will, the court is satisfied that the allegation is true, the court shall order the person to produce the will.

Comment. Section 8201 restates a portion of former Section 321. The court or judge has general authority to enforce the production of wills and the attendance of witnesses. See Section 7060 (authority of court or judge).

CROSS-REFERENCES

Definitions

Person § 56
Will § 88

§ 8202. Will detained outside California

8202. If the will of a person who was domiciled in this state at the time of death is detained in a court of any other state or country and cannot be produced for probate in this state, a certified photographic copy of the will may be admitted to probate in this state with the same force and effect as the original will. The same proof shall be required as if the original will were produced.

Comment. Section 8202 restates former Section 330 with clarifications that domicile, rather than residence, is the determining factor and that a certified, rather than authenticated, copy of the will is necessary. Proof of a certified copy may be made in the same manner as proof of an original will. Thus the court may authorize a copy to be presented to the witnesses and the witnesses may be asked the same questions with respect to the copy as if the original will were present. See Article 2 (commencing with Section 8220) (proof of will). Proof may also be made by an affidavit in the will that incorporates an attestation clause. Section 8220(b) (evidence of subscribing witness).

CROSS-REFERENCES

Definitions

Person § 56
State § 74
Will § 88

Article 2. Proof of Will

§ 8220. Evidence of subscribing witness

8220. Unless there is a contest of a will:

(a) The will may be proved on the evidence of one of the subscribing witnesses only, if the evidence shows that the will was executed in all particulars as prescribed by law.

(b) Evidence of execution of a will may be received by an affidavit of a subscribing witness to which there is attached a photographic copy of the will, or by an affidavit in the original will that includes or incorporates the attestation clause.

(c) If no subscribing witness resides in the county, but the deposition of a witness can be taken elsewhere, the court may direct the deposition to be taken. On the examination, the court may authorize a photographic copy of the will to be made and presented to the witness, and the witness may be asked the same questions with respect to the photographic copy as if the original will were present.

Comment. Section 8220 restates the first two sentences of former Section 329 and the last sentence of former Section 1233 without substantive change.

CROSS-REFERENCES

Definitions
Will § 88

§ 8221. Proof where no subscribing witness available

8221. If no subscribing witness is available as a witness within the meaning of Section 240 of the Evidence Code, the court may, if the will on its face conforms to all requirements of law, permit proof of the will by proof of the handwriting of the testator and one of the following:

(a) Proof of the handwriting of any one subscribing witness.

(b) Receipt in evidence of one of the following documents reciting facts showing due execution of the will:

(1) A writing in the will bearing the signatures of all subscribing witnesses.

(2) An affidavit of a person with personal knowledge of the circumstances of the execution.

Comment. Section 8221 restates the fourth sentence of former Section 329, except that the writing need not appear “at the end” of the will. The signatures of subscribing witnesses no longer must appear at the end. Section 6110 (execution). If the subscribing witnesses are competent at the time of attesting the execution, their subsequent incompetency, from whatever cause, will not prevent the probate of the will, if it is otherwise satisfactorily proved. *Cf.* Evid. Code § 240 (“unavailable as a witness”).

CROSS-REFERENCES

Definitions

Will § 88

§ 8222. Proof of holographic will

8222. A holographic will may be proved in the same manner as other writings.

Comment. Section 8222 restates former Section 331 without substantive change. See Evid. Code §§ 1400-1454 (authentication and proof of writings).

§ 8223. Proof of lost or destroyed will

8223. The petition for probate of a lost or destroyed will shall include a written statement of the testamentary words or their substance. If the will is proved, the provisions of the will shall be set forth in the order admitting the will to probate.

Comment. Section 8223 restates the first two sentences of former Section 351 except that the requirement that the order admitting the will to probate be “set forth at length in the minutes” is omitted.

CROSS-REFERENCES

Definitions

Will § 88

§ 8224. Subsequent admissibility of testimony

8224. The testimony of each witness in a proceeding concerning the execution or provisions of a will, the testamentary capacity of the decedent, and other issues of fact, may be reduced to writing, signed by the witness, and filed, whether or not the will is contested. The testimony so preserved, or an official reporter’s transcript of the testimony, is admissible in evidence in any subsequent

proceeding concerning the will if the witness has become unavailable as a witness within the meaning of Section 240 of the Evidence Code.

Comment. Section 8224 restates and broadens former Section 374 (will contests) and the last sentence of former Section 351 (proof of lost or destroyed will). The former provisions were treated as permissive rather than mandatory in practice and by case law. *Cf.* Section 8220 (evidence of subscribing witness).

CROSS-REFERENCES

Definitions
Will § 88

§ 8225. Admission of will to probate

8225. When the court admits a will to probate, that fact shall be recorded in the minutes by the clerk and the will shall be filed.

Comment. Section 8225 supersedes the first sentence of former Section 332. See also Section 8002(b) (contents of petition).

CROSS-REFERENCES

Definitions
Will § 88

§ 8226. Effect of admission of will to probate

8226. (a) If no person contests the validity of a will or petitions for revocation of probate of the will within the time provided in this chapter, admission of the will to probate is conclusive, subject to Section 8007.

(b) A will may be admitted to probate notwithstanding prior admission to probate of another will or prior distribution of property in the proceeding. The will may not affect property previously distributed, but the court may determine how any provision of the will affects property not yet distributed and how any provision of the will affects provisions of another will.

Comment. Subdivision (a) of Section 8226 restates the first portion of former Section 384 without substantive change. The time within which a contest must be made is before or at the hearing (Section 8004), and the time within which revocation of probate may be sought is 120 days after the will is admitted or,

in the case of a minor or incompetent person, before the close of estate administration (Section 8270). The conclusive effect of admission of a will to probate is subject to jurisdictional defects. See, e.g., *Estate of Sanders*, 40 Cal. 3d 607, 710 P.2d 232, 221 Cal. Rptr. 432 (1985) (extrinsic fraud); Section 8007 (determination of jurisdiction conclusive).

Subdivision (b) supersedes former Section 385. It is consistent with *Estate of Moore*, 180 Cal. 570, 182 P. 285 (1919) (admission of will does not preclude probate of another will). If more than one will is admitted to probate, the court should resolve any conflicts in provisions, including what provisions control nomination of an executor. Admission of a will to probate may not affect property previously distributed, but the court may order adjustments of gifts in light of a will later admitted to probate. The court may not, however, rescind a distribution once made as a result of a later discovery of a will.

One effect of subdivision (b) is to preclude probate of a will after close of administration as a general rule. In the case of after-discovered property, however, a later will would be admissible under subdivision (b) to govern distribution of the after-discovered property, notwithstanding Section 11642 (after-acquired or after-discovered property).

CROSS-REFERENCES

Definitions

Person § 56

Property § 62

Will § 88

Article 3. Contest of Will

§ 8250. Summons

8250. (a) When an objection is made under Section 8004, the court clerk shall issue a summons directed to the persons required by Section 8110 to be served with notice of hearing of a petition for administration of the decedent's estate. The summons shall contain a direction that the persons summoned file with the court a written pleading in response to the contest within 30 days after service of the summons.

(b) A person named as executor in the will is under no duty to defend a contest until the person is appointed personal representative.

Comment. Section 8250 restates the last portion of the first sentence of former Section 370, but replaces the citation with a summons. Service of the summons must be made in the manner provided by law for service of summons in a civil action. Section 1000 (general rules of practice). Section 8250 does not limit the persons to be notified, and thus requires notice to all affected persons wherever residing, including minors and incompetents. Failure of a person to respond precludes the person from further participating in the contest but does not otherwise affect the person's interest. Section 8251 (responsive pleading).

CROSS-REFERENCES

Definitions

Person § 56

Personal representative § 58

Will § 88

§ 8251. Responsive pleading

8251. (a) The petitioner and any other interested person may jointly or separately answer the objection or demur to the objection within the time prescribed in the summons.

(b) Demurrer may be made on any of the grounds of demurrer available in a civil action. If the demurrer is sustained, the court may allow the contestant a reasonable time, not exceeding 15 days, within which to amend the objection. If the demurrer is overruled, the petitioner and other interested persons may, within 15 days thereafter, answer the objection.

(c) If a person fails timely to respond to the summons:

(1) The case is at issue notwithstanding the failure, and no entry of default is necessary. The case may proceed on the petition and other documents filed by the time of the hearing, and no further pleadings by other persons are necessary.

(2) The person may not participate further in the contest, but the person's interest in the proceeding or the estate is not otherwise affected.

(3) The person is bound by the decision in the proceeding.

Comment. Subdivisions (a) and (b) of Section 8251 restate the second, third, and fourth sentences of former Section 370, but do not make receipt of written notice a condition for time to

answer after a demurrer is overruled. Subdivision (c) is new; relief from a judgment in the will contest may be available under Code of Civil Procedure Section 473. See Section 1000 (general rules of practice).

CROSS-REFERENCES

Definitions

Interested person § 48

§ 8252. Trial

8252. (a) At the trial, the proponents of the will have the burden of proof of due execution. The contestants of the will have the burden of proof of lack of testamentary intent or capacity, undue influence, fraud, duress, mistake, or revocation. If the will is opposed by the petition for probate of a later will revoking the former, it shall be determined first whether the later is entitled to probate.

(b) The court shall try and determine any contested issue of fact that affects the validity of the will.

Comment. Section 8252 supersedes former Section 371. Subdivision (a) is drawn from Uniform Probate Code Section 3-407. Nothing in subdivision (a) precludes consolidation for trial of two wills offered for probate.

Subdivision (b) eliminates jury trial in will contests. Jury trial is not constitutionally required. There is a high percentage of reversals on appeal of jury verdicts, with the net result that the whole jury and appeal process serves mainly to postpone enjoyment of the estate, enabling contestants as a practical matter to force compromise settlements to which they would not otherwise be entitled. See *Recommendation Relating to Opening Estate Administration*, 19 Cal. L. Revision Comm'n Reports 787 (1988).

CROSS-REFERENCES

Definitions

Court § 29

Will § 88

§ 8253. Evidence of execution

8253. At the trial, each subscribing witness shall be produced and examined. If no subscribing witness is available as a witness within the meaning of Section 240 of the Evidence Code, the court may admit the evidence of other witnesses to prove the due execution of the will.

Comment. Section 8253 restates former Section 372 but does not continue the limitation on production of witnesses outside the county. See Section 1000 (general rules of practice); Code Civ. Proc. § 1989 (compelling attendance of witnesses). The court may admit proof of the handwriting of the testator and of any of the subscribing witnesses as evidence of the due execution of the will where no witness is available. Section 8221 (proof where no subscribing witness available).

CROSS-REFERENCES

Definitions

Will § 88

§ 8254. Judgment

8254. The court may make appropriate orders, including orders sustaining or denying objections, and shall render judgment either admitting the will to probate or rejecting it, in whole or in part, and appointing a personal representative.

Comment. Section 8254 supersedes former Section 373.

CROSS-REFERENCES

Definitions

Personal representative § 58

Will § 88

Article 4. Revocation of Probate

§ 8270. Petition for revocation

8270. (a) Within 120 days after a will is admitted to probate, any interested person, other than a party to a will contest and other than a person who had actual notice of a will contest in time to have joined in the contest, may petition the court to revoke the probate of the will. The petition shall include objections setting forth written grounds of opposition.

(b) Notwithstanding subdivision (a), a person who was a minor or who was incompetent and had no guardian or conservator at the time a will was admitted to probate may petition the court to revoke the probate of the will at any time before entry of an order for final distribution.

Comment. Subdivision (a) of Section 8270 restates the first and second sentences of former Section 380 but omits reference

to some of the specific grounds of opposition. A will is admitted to probate when it is recorded in the minutes by the clerk pursuant to Section 8225. Section 8225 (admission of will to probate).

Subdivision (b) supersedes the last portion of former Section 384. It limits the previously indefinite right of minors and incompetents to petition for revocation.

CROSS-REFERENCES

Definitions

Interested person § 48

Person § 56

Will § 88

§ 8271. Summons

8271. (a) On the filing of the petition, the clerk shall issue a summons directed to the personal representative and to the heirs and devisees of the decedent, so far as known to the petitioner. The summons shall contain a direction that the persons summoned file with the court a written pleading in response to the petition within 30 days after service of the summons. Failure of a person timely to respond to the summons precludes the person from further participation in the revocation proceeding, but does not otherwise affect the person's interest in the proceeding or the estate.

(b) The summons shall be served and proceedings had as in the case of a contest of the will.

(c) If a person fails timely to respond to the summons:

(1) The case is at issue notwithstanding the failure, and no entry of default is necessary. The case may proceed on the petition and other documents filed by the time of the hearing, and no further pleadings by other persons are necessary.

(2) The person may not participate further in the contest, but the person's interest in the proceeding or the estate is not otherwise affected.

(3) The person is bound by the decision in the proceeding.

Comment. Subdivision (a) of Section 8271 supersedes former Section 381, substituting a summons for the citation. The former requirement that the summons be issued within the time allowed

for filing the petition is not continued. The summons must be directed to the devisees mentioned in the will as to which revocation of probate is sought, as well as to heirs and any personal representative appointed by the court. The summons may be directed to minors or incompetent persons, or to the personal representative of a deceased person.

Subdivision (b) restates the first sentence of former Section 382, except that the provision for a jury trial is not continued. See Section 7200 (trial by jury). For the burden of proof on proponents and contestants of the will, see Section 8252 (trial).

Subdivision (c) is new; relief from a judgment in the will contest may be available under Code of Civil Procedure Section 473. See Section 1000 (general rules of practice).

CROSS-REFERENCES

Definitions

Devisee § 34

Heirs § 44

Personal representative § 58

Will § 88

§ 8272. Revocation

8272. (a) If it appears on satisfactory proof that the will should be denied probate, the court shall revoke the probate of the will.

(b) Revocation of probate of a will terminates the powers of the personal representative. The personal representative is not liable for any otherwise proper act done in good faith before the revocation, nor is any transaction void by reason of the revocation if entered into with a third person dealing in good faith and for value.

Comment. Section 8272 restates the second, third, and fourth sentences of former Section 382, except that the references to jury trial and invalidity of the will are not continued. See Section 7200 (trial by jury). Section 8272 also adds protection for bona fide purchasers and encumbrancers for value.

CROSS-REFERENCES

Definitions

Person § 56

Personal representative § 58

Will § 88

CHAPTER 4. APPOINTMENT OF PERSONAL REPRESENTATIVE

Article 1. General Provisions

§ 8400. Appointment necessary

8400. (a) A person has no power to administer the estate until the person is appointed personal representative and the appointment becomes effective. Appointment of a personal representative becomes effective when the person appointed is issued letters.

(b) Subdivision (a) applies whether or not the person is named executor in the decedent's will, except that a person named executor in the decedent's will may, before the appointment is made or becomes effective, pay funeral expenses and take necessary measures for the maintenance and preservation of the estate.

Comment. Section 8400 restates former Section 400 without substantive change. Letters may not be issued until the person appointed takes the oath of office and gives any required bond. See Section 8403 (oath) and Article 5 (commencing with Section 8480) (bond). It should be noted that a petitioner for appointment as personal representative may deliver or deposit property of the decedent in the petitioner's possession in a controlled account. See Section 8401. A person named executor in the will is under no duty to defend a contest of the will until appointment as executor. Section 8250 (summons).

CROSS-REFERENCES

Appointment of public administrator § 7621

Definitions

Letters § 52

Person § 56

Personal representative § 58

Will § 88

§ 8401. Deposit in controlled account

8401. (a) Notwithstanding Section 8400, a petitioner for appointment as personal representative may deliver money, securities, or personal property in the petitioner's possession to a financial institution, or allow a financial institution to retain money, securities, and personal

property already in its possession, for deposit in an insured account in the financial institution.

(b) The petitioner shall obtain and file with the court a written receipt including the agreement of the financial institution that the money, securities, or other personal property, including any earnings thereon, shall not be allowed to be withdrawn except on order of the court.

(c) In receiving and retaining money, securities, or other personal property under this section, the financial institution is protected to the same extent as though it had received the money, securities, or other personal property from a person who had been appointed personal representative.

Comment. Section 8401 restates the second paragraph of former Section 541.1 without substantive change. See also Section 2328 (guardianship and conservatorship).

CROSS-REFERENCES

Definitions

Financial institution § 40

Insured account in a financial institution § 46

Personal representative § 58

Security § 70

§ 8402. Qualifications

8402. (a) Notwithstanding any other provision of this chapter, a person is not competent to act as personal representative in any of the following circumstances:

- (1) The person is under the age of majority.
- (2) The person is incapable of executing, or is otherwise unfit to execute, the duties of the office.
- (3) There are grounds for removal of the person from office under Section 8502.
- (4) The person is not a resident of the United States.
- (5) The person is a surviving partner of the decedent and an interested person objects to the appointment.

(b) Paragraphs (4) and (5) of subdivision (a) do not apply to a person named as executor or successor executor in the decedent's will.

Comment. Paragraph (a) (1) of Section 8402 restates a provision of former Section 401 without substantive change. Paragraph (a) (2) supersedes the remainder of former Section 401.

Paragraph (a) (3) is new; it enables the court to deny appointment of a personal representative if the personal representative would be subject to removal, for example for a conflict of interest that is sufficient to require removal. This would reverse the result in cases such as *Estate of Backer*, 164 Cal. App. 3d 1159, 211 Cal. Rptr. 163 (1985).

Paragraph (a) (4) and subdivision (b) restate former Section 420 without substantive change. Paragraph (a) (5) and subdivision (b) restate former Section 421 without substantive change.

For contest of appointment, see Section 8004.

CROSS-REFERENCES

Definitions

- Interested person § 48
- Person § 56
- Personal representative § 58
- Will § 88

§ 8403. Oath

8403. (a) Before letters are issued, the personal representative shall take and subscribe an oath to perform, according to law, the duties of the office. The oath may be taken and dated on or after the time the petition for appointment as personal representative is signed, and may be filed with the clerk at any time after the petition is granted.

(b) The oath constitutes an acceptance of the office and shall be attached to or endorsed on the letters.

Comment. Section 8403 restates former Section 540 but permits the oath to be signed at the time the petition is signed. *Cf. Adams v. Sharp*, 61 Cal. 2d 775, 394 P.2d 943, 40 Cal. Rptr. 225 (1964) (oath taken out of state). The requirement of an oath may be satisfied by a written affirmation. Code Civ. Proc. § 2015.6.

CROSS-REFERENCES

Definitions

- Letters § 52
- Personal representative § 58

§ 8404. Statement of duties and liabilities

8404. (a) Before letters are issued, the personal representative, other than a trust company, shall file an acknowledgment of receipt of a statement of duties and liabilities of the office. The statement shall be in the form provided in subdivision (c) or, if the Judicial Council prescribes the form of the statement, in the form prescribed by the Judicial Council. The court may by local rule require the acknowledgment of receipt to include the personal representative's social security number and driver's license number, if any, provided that the court ensures their confidentiality.

(b) The statement of duties and liabilities, whether in the form provided in subdivision (c) or prescribed by the Judicial Council, does not supersede the law on which the statement is based.

(c)

DUTIES AND LIABILITIES OF PERSONAL REPRESENTATIVE

When you have been appointed a personal representative of an estate by the court, you become an officer of the court and assume certain duties and obligations. An attorney is best qualified to advise you regarding these matters. You should clearly understand the following:

1. You must manage the estate assets with the care of a prudent person dealing with someone else's property. This means you must be cautious and you may not make any speculative investments. You may deposit estate funds in insured accounts in financial institutions, but you should consult with an attorney before making other investments.

2. You must keep the money and property in this estate separate from anyone else's, including your own. When you open a bank account for the estate, the account name must indicate that it is an estate account and not your personal account. Estate accounts, other than checking accounts intended for ordinary administration expenses, must earn interest. Never deposit estate funds in your personal account or otherwise commingle them with anyone else's

property. Securities in the estate must also be held in a name that shows they are estate property and not your personal property.

3. There are many restrictions on your authority to deal with estate property. You should not spend any of the estate's money until you have received permission from the court or if so advised by an attorney. You may reimburse yourself for official court costs paid by you to the County Clerk and for the premium on your bond. You may not pay fees to your attorney, if any, or to yourself without prior order of the court. If you do not obtain the court's permission when it is required, you may be removed as personal representative, or you may have to reimburse the estate from your own personal funds, or both. You should consult with an attorney concerning the legal requirements affecting sales, leases, mortgages, and investments of estate property.

4. You must attempt to locate and take possession of all the decedent's property to be administered in the estate. You must arrange to have a court-appointed referee determine the value of the property unless this is waived by the court. (You, rather than the referee, must determine the value of certain "cash items"; an attorney can advise you as to this procedure.) Within three months after your appointment as personal representative you must file with the court an inventory of all the assets in the estate and within six months you must file an appraisal of the assets. At the time you file the inventory you must also file a change of ownership statement with the county recorder or assessor in each county where the decedent owned real property at the time of death, as provided in Section 480 of the California Revenue and Taxation Code.

5. You must mail notice of administration to each known creditor of the decedent within four months after your appointment as personal representative. If the decedent received MediCal assistance you must notify the State Director of Health Services within 90 days after appointment.

6. You should determine that there is appropriate and adequate insurance covering the assets and risks of the

estate. Maintain the insurance in force during the entire period of the administration.

7. You must keep complete and accurate records of each financial transaction affecting the estate. You will have to prepare an account of all money and property you have received, what you have spent, and the date of each transaction. You must describe in detail what you have left after the payment of expenses. Your account will be reviewed by the court. Save your receipts because the court may ask to review them. If you do not file your accounts as required, the court will order you to do so. You may be removed as personal representative if you fail to comply.

This statement of duties and liabilities is a summary and is not a complete statement of the law. Your conduct as a personal representative is governed by the law itself and not by this summary.

If you have an attorney, you should cooperate with the attorney at all times. You and your attorney are responsible for completing the estate administration as promptly as possible. When in doubt, contact your attorney.

Comment. Section 8404 is new. It is drawn from general instructions given to personal representatives by a number of courts. Although the statement of duties and liabilities must be in the form prescribed in this section, the attorney for the personal representative may supplement, explain, or otherwise address the subject matter separately, where appropriate. If the Judicial Council prescribes the form of the statement, the Judicial Council form supersedes the form provided in this section. See Section 1001 (Judicial Council and local court rules).

CROSS-REFERENCES

Definitions

Letters § 52

Personal representative § 58

Trust company § 83

§ 8405. Form of letters

8405. Letters shall be signed by the clerk under the seal of the court and shall include:

(a) The county from which the letters are issued.

(b) The name of the person appointed as personal representative and whether the personal representative is

an executor, administrator, administrator with the will annexed, or special administrator.

(c) A notation whether the personal representative is authorized to act under the Independent Administration of Estates Act, and whether the authority includes or excludes sale, exchange, or granting an option to purchase real property under the Act.

Comment. Section 8405 supersedes former Sections 500, 501, and 502. The Judicial Council may prescribe the form of letters. Section 7201.

CROSS-REFERENCES

Appointment of public administrator § 7621

Definitions

Letters § 52

Person § 56

Personal representative § 58

Real property § 68

§ 8406. Effect of reversal of appointment of personal representative

8406. If an order appointing a personal representative is reversed on appeal for error, the person appointed is not liable for any otherwise proper act done in good faith before the reversal if entered into with a third person dealing in good faith and for value.

Comment. Section 8406 replaces former Section 1298 and parallels Section 8272 (revocation). Section 8406 revises former Section 1298 by making clear that it is intended to protect third persons. See *Estate of Gibson*, 233 Cal. App. 2d 125, 130, 43 Cal. Rptr. 302 (1965) (interpreting the predecessor of former Section 1298). This provision does not apply where the appointment of the personal representative is reversed for lack of jurisdiction. See *Estate of Schwartz*, 87 Cal. App. 2d 569, 573, 197 P.2d 223 (1948). The reference in former Section 1298 to the time of qualification of the personal representative has been replaced by the reference to the time letters are issued. See Section 8400(a) (appointment of personal representative effective on issuance of letters).

CROSS-REFERENCES

Definition

Letters § 52

Personal representative § 58

Article 2. Executors

§ 8420. Right to appointment as executor

8420. The person named as executor in the decedent's will has the right to appointment as personal representative.

Comment. Section 8420 is an express statement of the concept that the named executor has first priority for appointment as personal representative. *Cf.* former Section 407. Section 8420 does not apply if the person named is not qualified for appointment under Section 8402 (qualifications) or has waived the right to appointment.

CROSS-REFERENCES

Definitions

Person § 56

Personal representative § 58

Will § 88

§ 8421. Executor not specifically named

8421. If a person is not named as executor in a will but it appears by the terms of the will that the testator intended to commit the execution of the will and the administration of the estate to the person, the person is entitled to appointment as personal representative in the same manner as if named as executor.

Comment. Section 8421 restates former Section 402 without substantive change.

CROSS-REFERENCES

Definitions

Person § 56

Personal representative § 58

Will § 88

§ 8422. Power to designate executor

8422. (a) The testator may by will confer on a person the power to designate an executor or coexecutor, or successor executor or coexecutor. The will may provide that the persons so designated may serve without bond.

(b) A designation shall be in writing and filed with the court. Unless the will provides otherwise, if there are two or more holders of the power to designate, the designation

shall be unanimous, unless one of the holders of the power is unable or unwilling to act, in which case the remaining holder or holders may exercise the power.

(c) Except as provided in this section, an executor does not have authority to name a coexecutor, or a successor executor or coexecutor.

Comment. Section 8422 restates former Section 403 without substantive change. *Cf.* Section 10 (singular and plural). An executor designated under this section must be appointed by the court. See Section 8400 (appointment necessary).

CROSS-REFERENCES

Definitions

Person § 56
Will § 88

§ 8423. Successor trust company as executor

8423. If the executor named in the will is a trust company that has sold its business and assets to, has consolidated or merged with, or is in any manner provided by law succeeded by, another trust company, the court may, and to the extent required by the Banking Law, Division 1 (commencing with Section 99) of the Financial Code, shall, appoint the successor trust company as executor.

Comment. Section 8423 restates former Section 404 without substantive change. A trust company is an entity that has qualified to engage in and conduct a trust business in this state. A trust company may act as an executor. See Sections 83, 300; Fin. Code § 1580.

CROSS-REFERENCES

Definitions

Trust company § 83
Will § 88

§ 8424. Minor named as executor

8424. (a) If a person named as executor is under the age of majority and there is another person named as executor, the other person may be appointed and may administer the estate until the majority of the minor, who may then be appointed as coexecutor.

(b) If a person named as executor is under the age of majority and there is no other person named as executor,

another person may be appointed as personal representative, but the court may revoke the appointment on the majority of the minor, who may then be appointed as executor.

Comment. Section 8424 restates without substantive change the portion of former Section 405 that related to a minor named as executor. The court may exercise its discretion under this section.

CROSS-REFERENCES

Definitions

Person § 56

Personal representative § 58

§ 8425. When fewer than all executors appointed

8425. If the court does not appoint all the persons named in the will as executors, those appointed have the same authority to act in every respect as all would have if appointed.

Comment. Section 8425 restates former Section 408 without substantive change.

CROSS-REFERENCES

Definitions

Person § 56

Will § 88

Article 3. Administrators With the Will Annexed

§ 8440. Appointment

8440. An administrator with the will annexed shall be appointed as personal representative if no executor is named in the will or if the sole executor or all the executors named in the will have waived the right to appointment or are for any reason unwilling or unable to act.

Comment. Section 8440 supersedes former Section 406. A person named as an executor may be unwilling or unable to act because the person is dead or incompetent, renounces or fails to petition for appointment, fails to appear and qualify, or dies or is removed from office after appointment and before the completion of administration.

No executor of a deceased executor is, as such, authorized to administer the estate of the first testator. Section 8522 (vacancy where no personal representatives remain). However, the deceased executor may have the power to designate a successor

executor. See Section 8422 (power to designate executor). And the executor of the deceased executor may qualify independently for appointment as an administrator with the will annexed under this section.

CROSS-REFERENCES

Definitions

Personal representative § 58

Will § 88

§ 8441. Priority for appointment

8441. (a) Except as provided in subdivision (b), persons and their nominees are entitled to appointment as administrator with the will annexed in the same order of priority as for appointment of an administrator.

(b) A person who takes under the will has priority over a person who does not. A person who takes more than 50 percent of the value of the estate under the will or the person's nominee, or the nominee of several persons who together take more than 50 percent of the value of the estate under the will, has priority over other persons who take under the will.

Comment. Section 8441 restates without substantive change the second sentence and supersedes the third sentence of former Section 409. Subdivision (b) gives priority to devisees, who need not be entitled to succeed to all or part of the estate under the law of succession in order to have priority. The express references to nominees are new.

CROSS-REFERENCES

Definitions

Person § 56

Will § 88

§ 8442. Authority of administrator with the will annexed

8442. (a) Subject to subdivision (b), an administrator with the will annexed has the same authority over the decedent's estate as an executor named in the will would have.

(b) If the will confers a discretionary power or authority on an executor that is not conferred by law and the will does not extend the power or authority to other personal representatives, the power or authority shall not be deemed to be conferred on an administrator with the will

annexed, but the court in its discretion may authorize the exercise of the power or authority.

Comment. Section 8442 restates the first sentence of former Section 409, with the addition of court discretion to permit exercise of a discretionary power or authority. The acts of the administrator with the will annexed are as effectual for all purposes as the acts of an executor would be.

CROSS-REFERENCES

Definitions
Will § 88

Article 4. Administrators

§ 8460. Appointment of administrator

8460. (a) If the decedent dies intestate, the court shall appoint an administrator as personal representative.

(b) The court may appoint one or more persons as administrator.

Comment. Section 8460 restates the introductory portion of former Section 422(a) without substantive change.

CROSS-REFERENCES

Definitions
Person § 56
Personal representative § 58

§ 8461. Priority for appointment

8461. Subject to the provisions of this article, the following persons are entitled to appointment as administrator in the following order of priority:

- (a) Surviving spouse.
- (b) Children.
- (c) Grandchildren.
- (d) Other issue.
- (e) Parents.
- (f) Brothers and sisters.
- (g) Grandparents.
- (h) Issue of grandparents.
- (i) Children of a predeceased spouse.
- (j) Other next of kin.
- (k) Relatives of a predeceased spouse.

(l) Conservator or guardian of the estate of the decedent acting in that capacity at the time of death.

(m) Public administrator.

(n) Creditors.

(o) Any other person.

Comment. Section 8461 restates subdivision (a) of former Section 422, with the addition of subdivisions (d), (g), (h), and (i) to reflect changes in the law governing intestate succession. See Section 6402. The general order of priority prescribed in Section 8461 is subject to limitation in the succeeding sections of this article. See, e.g., Sections 8462 (priority of relatives), 8463 (estranged spouse). A person appointed must be legally competent. Section 8401 (qualifications).

CROSS-REFERENCES

Definitions

Child § 26

Issue § 50

Parent § 54

Person § 56

Predeceased spouse § 59

Surviving spouse § 78

§ 8462. Priority of relatives

8462. The surviving spouse of the decedent, a relative of the decedent, or a relative of a predeceased spouse of the decedent, has priority under Section 8461 only if one of the following conditions is satisfied:

(a) The surviving spouse or relative is entitled to succeed to all or part of the estate.

(b) The surviving spouse or relative either takes under the will of, or is entitled to succeed to all or part of the estate of, another deceased person who is entitled to succeed to all or part of the estate of the decedent.

Comment. Section 8462 restates former Section 422 with the addition of language recognizing the priority of relatives of a predeceased spouse and the expansion of subdivision (b) to include any relative of the decedent who satisfies the prescribed conditions.

CROSS-REFERENCES

Definitions

Predeceased spouse § 59

Surviving spouse § 78

Will § 88

§ 8463. Surviving spouse

8463. If the surviving spouse is a party to an action for separate maintenance, annulment, or dissolution of the marriage of the decedent and the surviving spouse, and was living apart from the decedent on the date of the decedent's death, the surviving spouse has priority next after brothers and sisters and not the priority prescribed in Section 8461.

Comment. Section 8463 supersedes subdivision (a) (6) and the second paragraph of subdivision (a) (1) of former Section 422. There is an inherent conflict of interest between the surviving spouse and other heirs of the decedent in the situation described in this section.

CROSS-REFERENCES

Definitions

Surviving spouse § 78

§ 8464. Minors and incompetent persons

8464. If a person otherwise entitled to appointment as administrator is a person under the age of majority or a person for whom a guardian or conservator of the estate has been appointed, the court in its discretion may appoint the guardian or conservator or another person entitled to appointment.

Comment. Section 8464 restates former Section 426 without substantive change.

CROSS-REFERENCES

Definitions

Person § 56

§ 8465. Nominee of person entitled to appointment

8465. (a) The court may appoint as administrator a person nominated by a person otherwise entitled to appointment or by the guardian or conservator of the estate of a person otherwise entitled to appointment. The nomination shall be made in writing and filed with the court.

(b) If a person making a nomination for appointment of an administrator is the surviving spouse, child, grandchild, other issue, parent, brother or sister, or grandparent of the

decedent, the nominee has priority next after those in the class of the person making the nomination.

(c) If a person making a nomination for appointment of an administrator is other than a person described in subdivision (b), the court in its discretion may appoint either the nominee or a person of a class lower in priority to that of the person making the nomination, but other persons of the class of the person making the nomination have priority over the nominee.

Comment. Section 8465 restates without substantive change provisions found in former Sections 409 and 423 and a portion of subdivision (a) (1) of former Section 422. “Grandparent” and “issue” have been added to subdivision (b) consistent with Section 8461. The nominee is not entitled to appointment unless legally competent. Section 8402 (qualifications).

CROSS-REFERENCES

Definitions

Child § 26

Issue § 50

Parent § 54

Person § 56

Surviving spouse § 78

§ 8466. Priority of creditor

8466. If a creditor claims appointment as administrator, the court in its discretion may deny the appointment and appoint another person.

Comment. Section 8466 restates the last portion of former Section 425 but omits the requirement that there be a request of another creditor before the court may appoint another person. Any person appointed under this section must be legally competent. Section 8401 (qualifications).

CROSS-REFERENCES

Definitions

Person § 56

§ 8467. Equal priority

8467. If several persons have equal priority for appointment as administrator, the court may appoint one or more of them, or if such persons are unable to agree, the court may appoint the public administrator or a

disinterested person in the same or the next lower class of priority as the persons who are unable to agree.

Comment. Section 8467 restates the first portion of former Section 425, with the addition of authority to appoint the public administrator or a disinterested person where there is a conflict between persons of equal priority.

CROSS-REFERENCES

Definitions

Person § 56

§ 8468. Administration by any competent person

8468. If persons having priority fail to claim appointment as administrator, the court may appoint any person who claims appointment.

Comment. Section 8468 restates former Section 427 without substantive change. A person appointed under this section must be legally competent. Section 8402 (qualifications).

CROSS-REFERENCES

Definitions

Person § 56

Article 5. Bond

§ 8480. Bond required

8480. (a) Except as otherwise provided by statute, every person appointed as personal representative shall, before letters are issued, give a bond approved by the court. If two or more persons are appointed, the court may require either a separate bond from each or a joint and several bond.

(b) The bond shall be for the benefit of interested persons and shall be conditioned on the personal representative's faithful execution of the duties of the office according to law.

(c) If the person appointed as personal representative fails to give the required bond, letters shall not be issued. If the person appointed as personal representative fails to give a new, additional, or supplemental bond, or to substitute a sufficient surety, under court order, the person may be removed from office.

Comment. Subdivisions (a) and (b) of Section 8480 restate without substantive change former Section 410, the first sentence of subdivision (a) of former Section 541, and former Section 544. Subdivision (c) continues the effect of a portion of former Section 549; it is a special application of Code of Civil Procedure Section 996.010. For statutory exceptions to the bond requirement, see Sections 301 (bond of trust company) and 8481 (waiver of bond).

CROSS-REFERENCES

Appointment of public administrator § 7621

Definitions

Interested person § 48

Letters § 52

Person § 56

Personal representative § 58

Judge in chambers may approve bond, Code Civ. Proc. § 166

§ 8481. Waiver of bond

8481. (a) A bond is not required in either of the following cases:

(1) The will waives the requirement of a bond.

(2) All beneficiaries waive in writing the requirement of a bond and the written waivers are attached to the petition for appointment of a personal representative. This paragraph does not apply if the will requires a bond.

(b) Notwithstanding the waiver of a bond by a will or by all the beneficiaries, on petition of any interested person or on its own motion the court may for good cause require that a bond be given, either before or after issuance of letters.

Comment. Subdivision (a)(1) of Section 8481 restates without substantive change portions of former Section 462(c) and former Section 541(a). Subdivision (a)(2) restates subdivision (b) of former Section 541 without substantive change. Subdivision (b) restates former Section 543 without substantive change. For provisions on reduction or increase of the amount of the bond, see Code Civ. Proc. §§ 996.010-996.030 (insufficient and excessive bonds).

CROSS-REFERENCES

Definitions

Beneficiary § 24

Interested person § 48

Letters § 52

Personal representative § 58

Will § 88

Verification required § 1021

§ 8482. Amount of bond

8482. (a) The court in its discretion may fix the amount of the bond, including a fixed minimum amount, but the amount of the bond shall be not more than the sum of:

- (1) The estimated value of the personal property.
- (2) The probable annual gross income of the estate.
- (3) If independent administration is granted as to real property, the estimated value of the decedent's interest in the real property.

(b) If the bond is given by personal sureties, the amount of the bond shall be twice the amount fixed by the court under subdivision (a).

(c) Before confirming a sale of real property the court shall require such additional bond as may be proper, not exceeding the maximum requirements of this section, treating the expected proceeds of the sale as personal property.

Comment. Subdivision (a) of Section 8482 supersedes the last sentence of former Section 541 (a), making explicit the authority of the court to impose a fixed minimum bond. Subdivision (b) supersedes former Section 542.

CROSS-REFERENCES

Definitions

Personal property § 57

Real property § 68

§ 8483. Reduction of bond by deposit of assets

8483. (a) This section applies where property in the estate has been deposited in an insured account in a financial institution on condition that the property, including any earnings thereon, will not be withdrawn except on authorization of the court.

(b) In a proceeding to determine the amount of the bond of the personal representative (whether at the time of appointment or subsequently), on production of a receipt showing the deposit of property in the estate in the manner described in subdivision (a), the court may order that the property shall not be withdrawn except on authorization of the court and may, in its discretion, do either of the following:

(1) Exclude the property in determining the amount of the required bond or reduce the amount of the bond to an amount the court determines is reasonable.

(2) If a bond has already been given or the amount fixed, reduce the amount to an amount the court determines is reasonable.

Comment. Section 8483 restates the first paragraph of former Section 541.1 without substantive change. See also Section 2328 (guardianship and conservatorship). For authority of a petitioner for appointment as personal representative to make a deposit described in this section, see Section 8401.

CROSS-REFERENCES

Definitions

Insured account in a financial institution § 46

Personal representative § 58

Property § 62

§ 8484. Excessive bond

8484. If a personal representative petitions to have the amount of the bond reduced, the petition shall include an affidavit setting forth the condition of the estate and notice of hearing shall be given as provided in Section 1220.

Comment. Section 8484 restates former Section 553.3 without substantive change.

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 8485. Substitution or release of sureties

8485. A personal representative who petitions for substitution or release of a surety shall file with the petition an account in the form provided in Section 10900. The court shall not order a substitution or release unless the account is approved.

Comment. Section 8485 restates former Section 553.5 without substantive change. A copy of the petition and a notice of hearing must be served on the surety. Code Civ. Proc. § 996.110(c).

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 8486. Cost of bond

8486. The personal representative shall be allowed the reasonable cost of the bond for every year it remains in force.

Comment. Section 8486 supersedes former Section 541.5. Unlike the former provision, Section 8486 does not prescribe a fixed or maximum amount, but leaves the reasonableness of the amount to be determined by market forces.

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 8487. Law governing bond

8487. The provisions of the Bond and Undertaking Law, Chapter 2 (commencing with Section 995.010) of Title 14 of Part 2 of the Code of Civil Procedure, apply to a bond given under to this division, except to the extent this division is inconsistent.

Comment. Section 8487 is a specific application of existing law. See Code Civ. Proc. § 995.020 (application of Bond and Undertaking Law).

§ 8488. Limitation as to sureties on bond

8488. No action may be maintained against the sureties on the bond of the personal representative unless commenced not later than four years after the discharge of the personal representative.

Comment. Section 8488 is new. It is comparable to Section 2333 (guardianship and conservatorship law).

CROSS-REFERENCES

Definitions

Personal representative § 58

Article 6. Removal from Office**§ 8500. Procedure for removal**

8500. (a) Any interested person may petition for removal of the personal representative from office. A petition for removal may be combined with a petition for appointment of a successor personal representative under

Article 7 (commencing with Section 8520). The petition shall state facts showing cause for removal.

(b) On a petition for removal, or if the court otherwise has reason to believe from the court's own knowledge or from other credible information, whether on the settlement of an account or otherwise, that there are grounds for removal, the court shall issue a citation to the personal representative to appear and show cause why the personal representative should not be removed. The court may suspend the powers of the personal representative and may make such orders as are necessary to deal with the property pending the hearing.

(c) Any interested person may appear at the hearing and file a written declaration showing that the personal representative should be removed or retained. The personal representative may demur to or answer the declaration. The court may compel the attendance of the personal representative and may compel the personal representative to answer questions, on oath, concerning the administration of the estate. Failure to attend or answer is cause for removal of the personal representative from office.

(d) The issues shall be heard and determined by the court. If the court is satisfied from the evidence that the citation has been duly served and cause for removal exists, the court shall remove the personal representative from office.

Comment. Section 8500 supersedes portions of former Section 451. Subdivision (b) restates portions of the first sentence of former Section 521 without substantive change. Subdivision (c) restates former Sections 522 and 523 without substantive change. The court may enforce its orders by any proper means, including contempt. Section 7050 (jurisdiction and authority of court or judge).

CROSS-REFERENCES

Citation §§ 1240-1242

Definitions

Interested person § 48

Personal representative § 58

Person § 56

§ 8501. Revocation of letters

8501. On removal of a personal representative from office, the court shall revoke any letters issued to the personal representative, and the authority of the personal representative ceases.

Comment. Section 8501 generalizes a provision found in former Section 549.

CROSS-REFERENCES

Definitions

Letters § 52

Personal representative § 58

§ 8502. Grounds for removal

8502. A personal representative may be removed from office for any of the following causes:

(a) The personal representative has wasted, embezzled, mismanaged, or committed a fraud on the estate, or is about to do so.

(b) The personal representative is incapable of properly executing the duties of the office or is otherwise not qualified for appointment as personal representative.

(c) The personal representative has wrongfully neglected the estate, or has long neglected to perform any act as personal representative.

(d) Removal is otherwise necessary for protection of the estate or interested persons.

(e) Any other cause provided by statute.

Comment. Section 8502 restates former Section 524 and portions of the first sentence of former Section 521, except that permanent removal from the state is not continued as a ground for dismissal. See Article 9 (commencing with Section 8570) (nonresident personal representative). A conflict of interest may be ground for removal under subdivision (d); it should be noted, however, that not every conflict necessarily requires removal for protection of the estate, depending on the circumstances of the particular case. Other causes for removal are provided in this article and elsewhere by statute. See, e.g., Sections 8480 (bond required), 8577 (failure of nonresident personal representative to comply with Section 8573), 8500 (failure to attend and answer).

CROSS-REFERENCES

Definitions

Interested person § 48

Personal representative § 58

§ 8503. Removal at request of person with higher priority

8503. (a) Subject to subdivision (b), an administrator may be removed from office on the petition of the surviving spouse or a relative of the decedent entitled to succeed to all or part of the estate, or the nominee of the surviving spouse or relative, if such person is higher in priority than the administrator.

(b) The court in its discretion may refuse to grant the petition:

(1) Where the petition is by a person or the nominee of a person who had actual notice of the proceeding in which the administrator was appointed and an opportunity to contest the appointment.

(2) Where to do so would be contrary to the sound administration of the estate.

Comment. Subdivision (a) of Section 8503 supersedes former Sections 450 and 452. Subdivision (b) (1) restates former Section 453 without substantive change. Subdivision (b) (2) is new; it is intended to cover the situation, for example, where administration is nearly complete or has otherwise progressed to a point where replacement of the administrator would be inappropriate. A petition under this section should be accompanied by a petition for appointment of a successor who has higher priority than the existing personal representative.

CROSS-REFERENCES

Definitions

Surviving spouse § 78

§ 8504. Subsequent probate of will

8504. (a) After appointment of an administrator on the ground of intestacy, the personal representative shall be removed from office on the later admission to probate of a will.

(b) After appointment of an executor or administrator with the will annexed, the personal representative shall be removed from office on admission to probate of a later will.

Comment. Section 8504 restates the first portion of the first sentence of former Section 510 without substantive change. *Cf.* Section 8226 (effect of admission of will to probate).

CROSS-REFERENCES

Definitions

Personal representative § 58

Will § 88

§ 8505. Contempt

8505. (a) A personal representative may be removed from office if the personal representative is found in contempt for disobeying an order of the court.

(b) Notwithstanding any other provision of this article, a personal representative may be removed from office under this section by a court order reciting the facts and without further showing or notice.

Comment. Section 8505 restates former Section 526, omitting the requirement of 30 days custody. See also Sections 8501 (revocation of letters) and 8524 (successor personal representative).

CROSS-REFERENCES

Definitions

Personal representative § 58

Article 7. Changes in Administration**§ 8520. Vacancy in office**

8520. A vacancy occurs in the office of a personal representative who resigns, dies, or is removed from office under Article 6 (commencing with Section 8500), or whose authority is otherwise terminated.

Comment. Section 8520 generalizes provisions found in various parts of former law. A personal representative who resigns is not excused from liability until accounts are settled and property is delivered to the successor. Section 8525(b) (effect of vacancy).

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 8521. Vacancy where other personal representatives remain

8521. (a) Unless the will provides otherwise or the court in its discretion orders otherwise, if a vacancy occurs in the office of fewer than all personal representatives, the remaining personal representatives shall complete the administration of the estate.

(b) The court, on the filing of a petition alleging that a vacancy has occurred in the office of fewer than all personal

representatives, may order the clerk to issue appropriate amended letters to the remaining personal representatives.

Comment. Section 8521 restates former Section 511 without substantive change.

CROSS-REFERENCES

Definitions

Letters § 52

Will § 88

Verification required § 1284

§ 8522. Vacancy where no personal representatives remain

8522. (a) If a vacancy occurs in the office of a personal representative and there are no other personal representatives, the court shall appoint a successor personal representative.

(b) Appointment of a successor personal representative shall be made on petition and service of notice on interested persons in the manner provided in Article 2 (commencing with Section 8110) of Chapter 2, and shall be subject to the same priority as for an original appointment of a personal representative. The personal representative of a deceased personal representative is not, as such, entitled to appointment as successor personal representative.

Comment. Section 8522 restates former Section 512 and a portion of former Section 451 without substantive change, and generalizes the first sentence of former Section 406.

CROSS-REFERENCES

Definitions

Interested person § 48

Personal representative § 58

§ 8523. Interim protection of estate

8523. The court may make orders that are necessary to deal with the property between the time a vacancy occurs in the office of personal representative and appointment of a successor. Such orders may include appointment of a special administrator.

Comment. Section 8523 supersedes the second sentence of former Section 520.

CROSS-REFERENCES

Definitions

Property § 62

§ 8524. Successor personal representative

8524. (a) A successor personal representative is entitled to demand, sue for, recover and collect all the property of the decedent remaining unadministered, and may prosecute to final judgment any suit commenced by the former personal representative before the vacancy.

(b) No notice, process, or claim given to or served on the former personal representative need be given to or served on the successor in order to preserve any position or right the person giving the notice or filing the claim may thereby have obtained or preserved with reference to the former personal representative.

(c) Except as provided in subdivision (b) of Section 8442 (authority of administrator with will annexed) or as otherwise ordered by the court, the successor personal representative has the powers and duties in respect to the continued administration that the former personal representative would have had.

Comment. Subdivision (a) of Section 8524 restates and broadens the application of a portion of former Section 466 and the second sentence of former Section 510. Subdivisions (b) and (c) are drawn from Section 3-613 of the Uniform Probate Code.

CROSS-REFERENCES

Definitions

Person § 56

Personal representative § 58

Property § 62

§ 8525. Effect of vacancy

8525. (a) The acts of the personal representative before a vacancy occurs are valid to the same extent as if no vacancy had later occurred.

(b) The liability of a personal representative whose office is vacant, or of the surety on the bond, is not discharged, released, or affected by the vacancy or by appointment of a successor, but continues until settlement of the accounts of the personal representative and delivery of all the property to the successor personal representative or other person appointed by the court to receive it. The personal representative shall render an account of the administration within such time as the court directs.

Comment. Subdivision (a) of Section 8525 restates former Section 525 without substantive change. The first sentence of subdivision (b) restates the third sentence of former Section 520 without substantive change. The second sentence of subdivision (b) restates the last portion of the first sentence of former Section 510 without substantive change.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

Article 8. Special Administrators**§ 8540. Grounds for appointment**

8540. (a) If the circumstances of the estate require the immediate appointment of a personal representative, the court may appoint a special administrator to exercise such powers as may be appropriate under the circumstances for the preservation of the estate.

(b) The appointment may be for a specified term, to perform particular acts, or on such other terms as the court may direct.

Comment. Subdivision (a) of Section 8540 supersedes the first clause of former Section 460 and generalizes provisions of former Sections 465 and 520. Under subdivision (a), grounds for appointment of a special administrator would include situations where (1) no application is made for appointment of a personal representative, (2) there is delay in appointment of a personal representative, (3) a sufficient bond is not given as required by statute or letters are otherwise granted irregularly, (4) the personal representative dies, resigns, or is suspended or removed from office, (5) an appeal is taken from an order revoking probate of a will, (6) there is a will contest pending, (7) appointment is necessary to maintain a lawsuit on the decedent's cause of action, or where (8) for any other cause the personal representative is unable to act. Appointment may be made on the court's own motion or on petition of an interested person.

Subdivision (b) is drawn from Section 3-617 of the Uniform Probate Code. See also Section 8544 (special powers, duties, and obligations).

A judge may appoint a special administrator in chambers. Code Civ. Proc. § 166 (actions in chambers). The public administrator may serve as special administrator. Section 8541.

CROSS-REFERENCES

Actions in chambers § 7061
 Definitions
 Personal representative § 58

§ 8541. Procedure for appointment

8541. (a) Appointment of a special administrator may be made at any time without notice or on such notice to interested persons as the court deems reasonable.

(b) In making the appointment, the court shall ordinarily give preference to the person entitled to appointment as personal representative. The court may appoint the public administrator.

(c) In the case of an appointment to perform a particular act, request for approval of the act may be included in the petition for appointment, and approval may be made on the same notice and at the same time as the appointment.

(d) The court may act, if necessary, to remedy any errors made in the appointment.

Comment. Section 8541 restates former Section 461 and the last clause of former Section 460, with the addition of subdivisions (c) and (d). The appointment of, or refusal to appoint, a person as special administrator is not appealable. Section 7240 (appealable orders and refusals to make orders). The public administrator may no longer be directed by the court to “take charge” of the estate but may be appointed as special administrator. Appointment of a special administrator may be made by the judge in chambers. Code Civ. Proc. § 166 (actions in chambers).

CROSS-REFERENCES

Definitions
 Interested person § 48
 Person § 56

§ 8542. Issuance of letters

8542. (a) The clerk shall issue letters to the special administrator after both of the following conditions are satisfied:

(1) The special administrator gives such bond as may be required by the court under Section 8480.

(2) The special administrator takes the usual oath indorsed on the letters.

(b) Subdivision (a) does not apply to the public administrator.

(c) The letters of a special administrator appointed to perform a particular act shall include a notation of the particular act the special administrator was appointed to perform.

Comment. Subdivisions (a) and (b) of Section 8542 restate subdivisions (a) and (b) of former Section 462 without substantive change. The bond must be conditioned that the special administrator will faithfully execute the duties of the office according to law. Section 8480 (bond required). The judge may approve the bond in chambers. Code Civ. Proc. § 166 (actions in chambers).

Subdivision (b) is new.

CROSS-REFERENCES

Definitions

Letters § 52

§ 8543. Waiver of bond

8543. If the will waives the requirement of a bond for the executor and the person named as executor in the will is appointed special administrator, the court shall, subject to Section 8481, direct that no bond be given.

Comment. Section 8543 restates a portion of subdivision (c) of former Section 462 without substantive change. For additional provisions on waiver of the bond of a special administrator, see Section 8481 (waiver of bond).

CROSS-REFERENCES

Definitions

Person § 56

Will § 88

§ 8544. Special powers, duties, and obligations

8544. (a) Except to the extent the order appointing a special administrator prescribes terms, the special administrator has the power to do all of the following without further order of the court:

(1) Take possession of all of the real and personal property of the decedent and preserve it from damage, waste, and injury.

(2) Collect all claims, rents, and other income belonging to the estate.

(3) Commence and maintain or defend suits and other legal proceedings.

(4) Sell perishable property.

(b) Except to the extent the order prescribes terms, the special administrator has the power to do all of the following on order of the court:

(1) Borrow money, or lease, mortgage, or execute a deed of trust on real property, in the same manner as an administrator.

(2) Pay the interest due on all or any part of an obligation secured by a mortgage, lien, or deed of trust on property in the estate, where there is danger that the holder of the security may enforce or foreclose on the obligation and the property exceeds in value the amount of the obligation. This power may be ordered only on petition of the special administrator or any interested person, with such notice as the court deems proper, and shall remain in effect until appointment of a successor personal representative. The order may also direct that interest not yet accrued be paid as it becomes due, and the order shall remain in effect and cover the future interest unless and until for good cause set aside or modified by the court in the same manner as for the original order.

(3) Exercise other powers that are conferred by order of the court.

(c) Except where the powers, duties, and obligations of a general personal representative are granted under Section 8545, the special administrator is not liable to an action by a creditor on a claim against the decedent.

(d) A special administrator appointed to perform a particular act has no duty to take any other action to protect the estate.

Comment. Subdivisions (a), (b), and (c) of Section 8544 restate former Section 463 without substantive change and supersede a portion of former Section 460. Subdivision (b) (2) restates former Section 464, with the addition of a provision that the order remains in effect until appointment of a successor. Among the other powers that the court may grant the special administrator is the power to disclaim.

Subdivision (d) is new.

CROSS-REFERENCES

Definitions

- Interested person § 48
- Personal representative § 58
- Property § 62
- Real property § 68

§ 8545. General powers, duties, and obligations

8545. (a) Notwithstanding Section 8544, the court may grant a special administrator the same powers, duties, and obligations as a general personal representative where to do so appears proper. Notwithstanding Section 8541, if letters have not previously been issued to a general personal representative, the grant shall be on the same notice required under Section 8003 for appointment of a personal representative.

(b) The court may require as a condition of the grant that the special administrator give such additional bond as the court deems proper. From the time of approving and filing any required additional bond, the special administrator shall have the powers, duties, and obligations of a general personal representative.

(c) If a grant is made under this section, the letters shall recite that the special administrator has the powers, duties, and obligations of a general personal representative.

Comment. Section 8545 supersedes former Section 465. Instances where it might be proper to grant general powers, duties, and obligations include situations where:

(1) The special administrator is appointed pending determination of a will contest or pending an appeal from an order appointing or removing the personal representative.

(2) After appointment of the special administrator a will contest is instituted.

(3) An appeal is taken from an order revoking probate of a will.

A special administrator with general powers has the power to make distributions to the same extent as any other general administrator, unless limited by the court. See, e.g., *Estate of Buchman*, 132 Cal. App. 2d 81, 281 P.2d 608 (1955).

CROSS-REFERENCES

Definitions

- Letters § 52
- Personal representative § 58

§ 8546. Termination of authority

8546. (a) The powers of a special administrator cease on issuance of letters to a general personal representative or as otherwise directed by the court.

(b) The special administrator shall promptly deliver to the general personal representative:

(1) All property in the possession of the special administrator. The court may authorize the special administrator to complete a sale or other transaction affecting property in the possession of the special administrator.

(2) A list of all creditors' claims of which the special administrator has knowledge. The list shall show the name and address of each creditor, the amount of the claim, and what action has been taken with respect to the claim. A copy of the list shall be filed in the court.

(c) The special administrator shall render a verified account of the proceedings in the same manner as a general personal representative is required to do. If the same person acts as both special administrator and general personal representative, the account of the special administrator may be combined with the first account of the general personal representative.

Comment. Subdivisions (a) and (b) of Section 8546 restate former Section 466, with the addition of language expressly permitting court authorization of the special administrator to complete ongoing transactions. The personal representative may prosecute to final judgment any suit commenced by the special administrator. Section 8524 (successor personal representative). Subdivision (c) restates the first sentence of former Section 467, with the addition of language permitting a consolidated account where the special administrator and general personal representative are the same person.

CROSS-REFERENCES**Definitions**

Letters § 52

Person § 56

Personal representative § 59

Property § 62

§ 8547. Fees and commissions

8547. (a) Subject to the limitations of this section, the court shall fix the commission and allowances of the special administrator and the fees of the attorney of the special administrator.

(b) The commission and allowances of the special administrator shall not be allowed until the close of administration, unless the general personal representative joins in the petition for allowance of the special administrator's commission and allowances or the court in its discretion so allows. The total commission paid and extra allowances made to the special administrator and general personal representative shall not, together, exceed the sums provided in this division for commission and extra allowances for the services of a personal representative. If the same person does not act as both special administrator and general personal representative, the commission and allowances shall be divided in such proportions as the court deems just or as may be agreed to by the special administrator and general personal representative.

(c) The total fees paid to the attorneys both of the special administrator and the general personal representative shall not, together, exceed the sums provided in this division as compensation for the ordinary and extraordinary services of attorneys for personal representatives. When the same attorney does not act for both the special administrator and general personal representative, the fees shall be divided between the attorneys in such proportions as the court deems just or as agreed to by the attorneys.

(d) Fees of an attorney for extraordinary services to a special administrator may be awarded in the same manner and subject to the same standards as for extraordinary services to a general personal representative, except that the award of fees to the attorney may be made on settlement of the final account of the special administrator.

Comment. Subdivisions (a)-(c) of Section 8547 restate former Sections 467-468, with the addition of provisions limiting payment of the special administrator until close of administration and recognizing agreements of the special administrator,

personal representative, and attorneys as to division of fees and commissions. Subdivision (d) supersedes former Section 469.

CROSS-REFERENCES

Definitions

Personal representative § 59

Article 9. Nonresident Personal Representative

§ 8570. “Nonresident personal representative” defined

8570. As used in this article, “nonresident personal representative” means a nonresident of the state appointed as personal representative, or a resident of the state appointed as personal representative who later removes from and resides without the state.

Comment. Section 8570 is new. It is intended as a drafting aid.

CROSS-REFERENCES

Definitions

Personal representative § 59

§ 8571. Bond of nonresident personal representative

8571. Notwithstanding any other provision of this chapter and notwithstanding a waiver of a bond, the court in its discretion may require a nonresident personal representative to give a bond an amount determined by the court.

Comment. Section 8571 is new. It is a specific application of subdivision (c) of Section 8481 (waiver of bond).

CROSS-REFERENCES

Definitions

Nonresident personal representative § 8570

§ 8572. Secretary of State as attorney

8572. (a) Acceptance of appointment by a nonresident personal representative is equivalent to and constitutes an irrevocable and binding appointment by the nonresident personal representative of the Secretary of State to be the attorney of the personal representative for the purpose of this article. The appointment of the nonresident personal representative also applies to any personal representative of a deceased nonresident personal representative.

(b) All lawful processes, and notices of motion under Section 385 of the Code of Civil Procedure, in an action or proceeding against the nonresident personal representative with respect to the estate or founded on or arising out of the acts or omissions of the nonresident personal representative in that capacity may be served on the Secretary of State as the attorney of the nonresident personal representative.

Comment. Section 8572 restates former Section 405.1 without substantive change.

CROSS-REFERENCES

Definitions

Nonresident personal representative § 8570

§ 8573. Statement of address

8573. A nonresident personal representative shall sign and file with the court a statement of the permanent address of the nonresident personal representative. If the permanent address is changed, the nonresident personal representative shall promptly file in the same manner a statement of the change of address.

Comment. Section 8573 restates former Section 405.2, with the omission of the acknowledgment requirement.

CROSS-REFERENCES

Definitions

Nonresident personal representative § 8570

§ 8574. Manner of service

8574. (a) Service of process or notice of a motion under Section 385 of the Code of Civil Procedure in any action or proceeding against the nonresident personal representative shall be made by delivering to and leaving with the Secretary of State two copies of the summons and complaint or notice of motion and either of the following:

(1) A copy of the statement by the nonresident personal representative under Section 8573.

(2) If the nonresident personal representative has not filed a statement under Section 8573, a copy of the letters issued to the nonresident personal representative together with a written statement signed by the party or attorney of

the party seeking service that sets forth an address for use by the Secretary of State.

(b) The Secretary of State shall promptly mail by registered mail one copy of the summons and complaint or notice of motion to the nonresident personal representative at the address shown on the statement delivered to the Secretary of State.

(c) Personal service of process, or notice of motion, on the nonresident personal representative wherever found shall be the equivalent of service as provided in this section.

Comment. Section 8574 restates former Section 405.3 without substantive change.

CROSS-REFERENCES

Definitions

Letters § 52

Nonresident personal representative § 8570

§ 8575. Proof of service

8575. Proof of compliance with Section 8574 shall be made in the following manner:

(a) In the event of service by mail, by certificate of the Secretary of State, under official seal, showing the mailing. The certificate shall be filed with the court from which process issued.

(b) In the event of personal service outside the state, by the return of any duly constituted public officer qualified to serve like process, or notice of motion, of and in the jurisdiction where the nonresident personal representative is found, showing the service to have been made. The return shall be attached to the original summons, or notice of motion, and filed with the court from which process issued.

Comment. Section 8575 restates former Section 405.4 without substantive change.

CROSS-REFERENCES

Definitions

Nonresident personal representative § 8570

§ 8576. Effect of service

8576. (a) Except as provided in this section, service made under Section 8574 has the same legal force and validity as if made personally in this state.

(b) A nonresident personal representative served under Section 8574 may appear and answer the complaint within 30 days from the date of service.

(c) Notice of motion shall be served on a nonresident personal representative under Section 8574 not less than 30 days before the date of the hearing on the motion.

Comment. Section 8576 restates former Section 405.5 without substantive change.

CROSS-REFERENCES

Definitions

Nonresident personal representative § 8570

§ 8577. Noncompliance

8577. (a) Failure of a nonresident personal representative to comply with Section 8573 is cause for removal from office.

(b) Nothing in this section limits the liability of, or the availability of any other remedy against, a nonresident personal representative who is removed from office under this section.

Comment. Subdivision (a) of Section 8577 restates former Section 405.6 without substantive change. Subdivision (b) is new.

CROSS-REFERENCES

Definitions

Nonresident personal representative § 8570

CONFORMING REVISIONS AND REPEALS

Enactment of the proposed legislation will require conforming revisions in other statutes, as well as the repeal of existing provisions. A table of the conforming revisions and repeals follows. For the text of the conforming revisions and repeals, refer to the legislation introduced to effectuate this recommendation. For comments to the conforming revisions and repeals, see the Appendix published with this report.

Probate Code	Probate Code	Probate Code
320 (repealed)	401 (repealed)	462 (repealed)
321 (repealed)	402 (repealed)	463 (repealed)
322 (repealed)	403 (repealed)	464 (repealed)
323 (repealed)	404 (repealed)	465 (repealed)
324 (repealed)	405 (repealed)	466 (repealed)
326 (repealed)	405.1 (repealed)	467 (repealed)
327 (repealed)	405.2 (repealed)	468 (repealed)
328 (repealed)	405.3 (repealed)	469 (repealed)
328.3 (repealed)	405.4 (repealed)	480 (repealed)
328.7 (repealed)	405.5 (repealed)	481 (repealed)
329 (repealed)	405.6 (repealed)	500 (repealed)
330 (repealed)	406 (repealed)	501 (repealed)
331 (repealed)	407 (repealed)	502 (repealed)
332 (repealed)	408 (repealed)	510 (repealed)
333 (repealed)	409 (repealed)	511 (repealed)
334 (repealed)	410 (repealed)	512 (repealed)
351 (repealed)	420 (repealed)	520 (repealed)
352 (repealed)	421 (repealed)	521 (repealed)
360 (repealed)	422 (repealed)	522 (repealed)
361 (repealed)	423 (repealed)	523 (repealed)
362 (repealed)	424 (repealed)	524 (repealed)
370 (repealed)	425 (repealed)	525 (repealed)
371 (repealed)	426 (repealed)	526 (repealed)
372 (repealed)	427 (repealed)	540 (repealed)
372.5 (repealed)	440 (repealed)	541 (repealed)
373 (repealed)	441 (repealed)	541.1 (repealed)
374 (repealed)	442 (repealed)	541.5 (repealed)
380 (repealed)	443 (repealed)	542 (repealed)
381 (repealed)	450 (repealed)	543 (repealed)
382 (repealed)	451 (repealed)	544 (repealed)
383 (repealed)	452 (repealed)	549 (repealed)
384 (repealed)	453 (repealed)	550 (repealed)
385 (repealed)	460 (repealed)	553.3 (repealed)
400 (repealed)	461 (repealed)	553.5 (repealed)
		1298 (repealed)

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

relating to

Abatement

November 1987

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

(865)

NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

Cite this recommendation as *Recommendation Relating to Abatement*, 19 Cal. L. Revision Comm'n Reports 865 (1988).

CALIFORNIA LAW REVISION COMMISSION

4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739
(415) 494-1335

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VAUGHN R. WALKER

November 20, 1987

To: The Honorable George Deukmejian
Governor of California
and
The Legislature of California

The California Law Revision Commission is now devoting its time and resources almost exclusively to the study of probate law and procedure. The Commission is preparing a new code to replace the existing Probate Code.

The Commission has decided not to delay submitting all recommendations for the improvement of probate law until work on the new code is completed. This recommendation is one of those which is being submitted for enactment prior to the submission of the entire code.

The recommended legislation replaces the existing provisions governing abatement (existing Probate Code Sections 736 and 750 to 753).

This recommendation is submitted pursuant to Resolution Chapter 37 of the Statutes of 1980.

Respectfully submitted,

Ann E. Stodden
Chairperson

RECOMMENDATION

relating to

ABATEMENT

Existing statutory and case law require that if property not disposed of by a decedent's will and residuary property are not sufficient to pay debts, expenses of administration, or family allowance, then general and specific devises must be abated (reduced).¹ The proposed law extends the abatement rules to trusts and other donative transfers in addition to dispositions by will, since the same problems may also arise concerning nontestamentary dispositions.²

For purposes of abatement, the testator's spouse and kindred are preferred over nonrelatives. A gift to a nonrelative is exhausted before a comparable gift to a relative is reduced.³ The proposed law makes clear that the preference for relatives includes all those who might take from the decedent by intestate succession. This includes halfbloods, adoptees, persons born out of wedlock, and, in limited cases, stepchildren and foster children.⁴ The same policies that favor giving such persons an intestate share also favor giving such persons a preference in abatement.

Statutory language appears to require general and specific devises to abate proportionately,⁵ but case law makes clear that general devises must be exhausted before specific devises are reduced.⁶ The proposed law conforms

1. Prob. Code § 750. See also Prob. Code §§ 736, 751-753. If the will designates the property to be used to pay debts, expenses of administration, or family allowance, the will controls. Prob. Code §§ 750-751.

2. For this reason the new provisions are located with other rules of construction of wills, trusts, deeds, and other instruments.

3. Prob. Code § 752; Estate of De Santi, 53 Cal. App. 2d 716, 719-21, 128 P.2d 434 (1942); *In re Estate of Wever*, 12 Cal. App. 2d 237, 242-3, 55 P.2d 279 (1936).

4. See Prob. Code §§ 6406, 6408, 6408.5. *Cf.* Prob. Code § 6152.

5. Probate Code Section 750 states that "all property devised and bequeathed is liable . . . in proportion to the value or amount of the several devises and legacies."

6. Compare Prob. Code § 750 with Estate of Jenanyan, 31 Cal. 3d 703, 711-12, 646 P.2d 196, 183 Cal. Rptr. 525 (1982).

statutory language to existing case law by requiring general devises to be exhausted before specific devises are reduced.

Proportionate abatement is retained, however, in cases of omitted heirs.⁷ Application of the general abatement rule to such cases instead of the proportionate rule would likely result in the omitted spouse or child receiving a larger share than family members named in the will as residuary devisees,⁸ a result probably contrary to the testator's intent.

7. Prob. Code §§ 6562, 6573.

8. This is a consequence of the large, unanticipated share taken from the residuary devisees for the omitted spouse or child. An omitted spouse takes all community and quasi-community property and one-third or one-half of decedent's separate property. Prob. Code § 6560. An omitted child may take as much as half of the decedent's separate property. Prob. Code §§ 6401-6402, 6570. The testator's intent is more likely achieved by requiring general and specific devises to contribute proportionately with residuary devisees to make up the statutory share of the omitted spouse or child.

PROPOSED LEGISLATION

PART 4. ABATEMENT

§ 21400. Abatement subject to transferor's intent

21400. Notwithstanding any other provision of this part, if the instrument provides for abatement, or if the transferor's plan or if the purpose of the transfer would be defeated by abatement as provided in this part, the shares of beneficiaries abate as is necessary to effectuate the instrument, plan, or purpose.

Comment. Section 21400 generalizes a number of provisions in existing statutes, and is consistent with case law. See former Sections 736, 750-752; Estate of Jenanyan, 31 Cal. 3d 703, 713-14, 646 P.2d 196, 183 Cal. Rptr. 525 (1982). The text of the section is drawn from subdivision (b) of Section 3-902 of the Uniform Probate Code.

The provisions of this part apply to trusts and other instruments as well as to wills. See Section 21101 (division applicable to wills, trusts, and other instruments).

CROSS-REFERENCES

Definitions

Beneficiary § 24
Instrument § 21100
Transferor § 21100

§ 21401. Purposes for which abatement made

21401. Except as provided in Sections 6562 (omitted spouse) and 6573 (omitted children) and in Division 10 (commencing with Section 20100) (proration of taxes), shares of beneficiaries abate as provided in this part for all purposes, including payment of the debts, expenses, and charges specified in Section 11420, satisfaction of gifts, and payment of expenses on specifically devised property pursuant to Section 12003, and without any priority as between real and personal property.

Comment. Section 21401 supersedes a portion of the first sentence of former Section 750 and a portion of the introductory clause of former Section 751. The provision that there is no priority as between real and personal property restates a provision formerly found in the California statutes. See former

Section 754 (first sentence). It is consistent with existing case law. See, e.g., *In re Estate of Woodworth*, 31 Cal. 595, 614 (1867). See also Section 3-902 of the Uniform Probate Code. This section is subject to Section 21400 (abatement subject to transferor's intent).

CROSS-REFERENCES

Definitions

Beneficiary § 24

Property § 62

Real property § 68

§ 21402. Order of abatement

21402. (a) Shares of beneficiaries abate in the following order:

(1) Property not disposed of by the instrument.

(2) Residuary gifts.

(3) General gifts to persons other than the transferor's relatives.

(4) General gifts to the transferor's relatives.

(5) Specific gifts to persons other than the transferor's relatives.

(6) Specific gifts to the transferor's relatives.

(b) For purposes of this section, a "relative" of the transferor is a person to whom property would pass from the transferor under Section 6401 or 6402 (intestate succession) if the transferor died intestate and there were no other person having priority.

Comment. Paragraphs (1) and (2) of subdivision (a) of Section 21402 restate the first portion of the second sentence of former Section 750 and all of former Section 751, and generalize them to apply to other gifts as well as devises. The preference for specific gifts in paragraphs (5) and (6) over general gifts in paragraphs (3) and (4) continues the rule of *Estate of Jenanyan*, 31 Cal. 3d 703, 711-12, 646 P.2d 196, 183 Cal. Rptr. 525 (1982). The preference for relatives in paragraphs (4) and (6) over nonrelatives in paragraphs (3) and (5) continues the last portion of former Section 752. See also *Estate of Buck*, 32 Cal. 2d 372, 376, 196 P.2d 769 (1948); *Estate of De Santi*, 53 Cal. App. 2d 716, 719-21, 128 P.2d 434 (1942).

Under subdivision (b), "relatives" includes the transferor's blood relatives other than those who may not take from the transferor by intestate succession because of an adoption. Section

6408.5 (adoption). “Relatives” also includes a spouse, as well as other persons who are not blood relatives but who are considered to be children or parents of the transferor for purposes of Sections 6401 and 6402 by virtue of provisions such as Sections 6408 and 6408.5 (adoptive, foster parent, and stepparent relationships).

This section is subject to Section 21400 (abatement subject to transferor’s intent).

CROSS-REFERENCES

Classification of devises § 6154

Definitions

Beneficiary § 24

Instrument § 21100

Property § 62

Transferor § 21100

§ 21403. Abatement within classes

21403. (a) Subject to subdivision (b), shares of beneficiaries abate pro rata within each class specified in Section 21402.

(b) Gifts of annuities and demonstrative gifts are treated as specific gifts to the extent they are satisfied out of the fund or property specified in the gift and as general gifts to the extent they are satisfied out of property other than the fund or property specified in the gift.

Comment. Subdivision (a) of Section 21403 restates a portion of the second sentence of former Section 750 and a portion of former Section 752, and supersedes the first portion of former Section 753 (if preferred devise sold, all devisees must contribute), and generalizes them to apply to other gifts as well as devises.

Subdivision (b) supersedes the last portion of subdivision (c) of former Section 662, and generalizes it to apply to other gifts as well as devises.

This section is subject to Section 21400 (abatement subject to transferor’s intent).

CROSS-REFERENCES

Classification of devises § 6154

Definitions

Beneficiary § 24

Property § 62

§ 21404. No exoneration by abatement of specific gift

21404. If an instrument requires property that is the subject of a specific gift to be exonerated from a mortgage, deed of trust, or other lien, a specific gift of other property does not abate for the purpose of exonerating the encumbered property.

Comment. Section 21404 restates former Section 736 and generalizes it to apply to exoneration of personal as well as real property and to apply to other gifts as well as devises. This section is subject to Section 21400 (abatement subject to transferor's intent).

CROSS-REFERENCES

Definitions

Instrument § 21100

Property § 62

Specific devise not exonerated § 6170

§ 21405. Contribution in case of abatement

21405. (a) In any case in which there is abatement when a distribution is made during estate administration, the court shall fix the amount each distributee must contribute for abatement. The personal representative shall reduce the distributee's share by that amount.

(b) If a specific gift must be abated, the beneficiary of the specific gift may satisfy the contribution for abatement out of the beneficiary's property other than the property that is the subject of the specific gift.

Comment. Subdivision (a) of Section 21405 restates the last portion of former Section 753 without substantive change. Contribution may be required for abatement for any purpose, including sale of property for payment of debts or expenses or family allowance. See Section 21401 (purposes for which abatement made). Subdivision (b) is new.

CROSS-REFERENCES

Definitions

Beneficiary § 24

Personal representative § 58

Property § 62

§ 21406. Transitional provision

21406. (a) This part applies to a gift made on or after July 1, 1989. In the case of a gift made before July 1, 1989, the law that would have applied had this part not been enacted shall apply.

(b) For purposes of this section a gift by will is made on the date of the decedent's death.

CONFORMING REVISIONS AND REPEALS

Enactment of the proposed legislation will require conforming revisions in other statutes, as well as the repeal of existing provisions. A table of the conforming revisions and repeals follows. For the text of the conforming revisions and repeals, refer to the legislation introduced to effectuate this recommendation. For comments to the conforming revisions and repeals, see the Appendix published with this report.

Probate Code
736 (repealed)
750 (repealed)

Probate Code
751 (repealed)
752 (repealed)

Probate Code
753 (repealed)

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

relating to

Accounts

November 1987

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

(877)

NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

Cite this recommendation as *Recommendation Relating to Accounts*, 19 Cal. L. Revision Comm'n Reports 877 (1988).

CALIFORNIA LAW REVISION COMMISSION

4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739
(415) 494-1335

ANN E. STODDEN
Chairperson

FORREST A. PLANT
Vice Chairperson

ROGER ARNEBERGH

BON M. GREGORY

ASSEMBLYMAN ELMU M. HARRIS

SENATOR BILL LOCKYER

ARTHUR K. MARSHALL

EDWIN K. MARZEC

TIM PAONE

VAUGHN R. WALKER

November 20, 1987

To: The Honorable George Deukmejian
Governor of California
and
The Legislature of California

The California Law Revision Commission is now devoting its time and resources almost exclusively to the study of probate law and procedure. The Commission is preparing a new code to replace the existing Probate Code.

The Commission has decided not to delay submitting all recommendations for the improvement of probate law until work on the new code is completed. This recommendation is one of those which is being submitted for enactment prior to the submission of the entire code.

The recommended legislation replaces the existing provisions governing accounts (existing Probate Code Sections 920 to 933).

This recommendation is submitted pursuant to Resolution Chapter 37 of the Statutes of 1980.

Respectfully submitted,

Ann E. Stodden
Chairperson

RECOMMENDATION

relating to

ACCOUNTS

The provisions of existing law governing accounts¹ are generally restated in the proposed law without substantive change. There are a few specific changes worthy of note:

Contents of account. The existing probate account includes a number of items that are of limited value and fails to require some information that would make the account a more descriptive and useful document. The proposed law revises the account contents somewhat to make the probate account more analogous to a standard type of balance sheet.²

The account will include a summary statement of the significant aspects of the administration.³ The summary will be supported by schedules that break down each summary item into its component parts. For instance, the summary item of receipts might be broken down into the totals of interest income, dividend income, royalties received, and miscellaneous receipts. The exact breakdown will vary, depending on the nature of the estate. It will be unnecessary to show in the summary more than the total amount of each component part making up the total.⁴

This scheme encourages the use of sound bookkeeping practices. It will also save the time and expense of a narrative report of the details of each transaction. In case greater detail is required by a beneficiary or other interested person, the court is authorized by the proposed

1. Prob. Code §§ 920-933.

2. The concepts are derived from Craig, *California Probate Accounting Procedures*, 39 S. Cal. L. Rev. 316 (1966).

3. The summary includes, in addition to a report of administration, a statement of property in the estate, receipts, gains and losses on sales, and other acquisitions and dispositions of property.

4. For illustrative material, see American College of Probate Counsel, *National Fiduciary Accounting Standards* (1980).

law to require the personal representative to submit documents supporting the account for inspection and audit.

When interim account required. Interim accounts in estate administration are not required as a matter of course but only on petition of an interested person or on the court's own motion.⁵ Where there is a turnover or change in administration, either because the personal representative dies or becomes incapacitated, or because the personal representative resigns or absconds or the authority is otherwise terminated, an account should be required automatically without an interested person having to petition for one. The proposed law requires this in the interest of procedural efficiency. The automatic account requirement is subject to waiver by the interested parties.

Waiver of account. Existing law permits a waiver of an account by distributees of the estate.⁶ This provision could effectively enable beneficiaries to hide details of the administration from interested creditors who would otherwise be entitled to an account.⁷ The proposed law remedies this defect by making clear that creditors may petition the court to require an account notwithstanding waiver by the beneficiaries.

Contest of account. In a contest of an account an interested person may except to settlement of an allowed claim. Existing law permits a jury trial on issues of fact in the contest.⁸ The proposed law eliminates the jury trial provision. A jury trial on such a matter is an unnecessary imposition on the parties, the courts, and the persons required to serve as jurors, as well as an unwarranted expense. Accounts in other areas are considered to be matters appropriate for court review rather than review by a lay jury.⁹

The proposed law also makes clear that in addition to other appropriate proceedings, an interested person may

5. Prob. Code §§ 920, 921, 923, 932. A final account is required as a matter of course. Prob. Code § 921.

6. Prob. Code § 933.

7. Prob. Code §§ 921, 922 (account on petition of person interested in estate).

8. Prob. Code § 928.

9. See, e.g., Prob. Code §§ 1452 (no jury trial of guardianship or conservatorship account), 17006 (no jury trial of trust account).

obtain court review of actions by the personal representative through a contest of an account, in the interest of procedural efficiency.

Where a person contests an account without reasonable cause and in bad faith, the contestant may be held liable for litigation expenses incurred by the personal representative in defending the account.¹⁰ An equally or more significant problem may occur, however, where the personal representative acts unreasonably and in bad faith in resisting a contest of an account improperly prepared or presented, causing interested persons unwarranted trouble and expense. To address this matter, the proposed law provides a reciprocal rule that the personal representative is liable for litigation expenses of the contestant where the personal representative unreasonably and in bad faith resists a contest of an account.

10. Prob. Code § 927.

OUTLINE OF PROPOSED LEGISLATION

PART 8. ACCOUNTS

CHAPTER 1. GENERAL PROVISIONS

- § 10900. Contents of account
- § 10901. Production of supporting documents

CHAPTER 2. WHEN ACCOUNT REQUIRED

- § 10950. Court-ordered account
- § 10951. Final account
- § 10952. Account after authority terminated
- § 10953. Account where personal representative dies, absconds, or becomes incapacitated
- § 10954. When account is not required

CHAPTER 3. SETTLEMENT OF ACCOUNT

- § 11000. Notice of hearing
- § 11001. Contest of account
- § 11002. Hearing on account
- § 11003. Litigation expenses
- § 11004. Settlement of claim not paid in full
- § 11005. Settlement of claim not properly filed
- § 11006. Effect of order settling account

CHAPTER 4. COMPELLING ACCOUNT

- § 11050. Sanction for failure to account
- § 11051. Citation
- § 11052. Punishment for contempt

CONFORMING REVISIONS AND REPEALS

PART 8. ACCOUNTS

CHAPTER 1. GENERAL PROVISIONS

§ 10900. Contents of account

10900. (a) An account shall include both a financial statement as provided in subdivision (b) and a report of administration as provided in subdivision (c).

(b) The financial statement shall include a summary statement, together with supporting schedules, of:

- (1) Property in all inventories.
- (2) Receipts, excluding property listed in an inventory.
- (3) Gains on sales.
- (4) Other acquisitions of property.
- (5) Disbursements.
- (6) Losses on sales.
- (7) Other dispositions of property.
- (8) Property remaining on hand.

(c) The report of administration shall state the liabilities of the estate, including creditor claims, and all other matters necessary to show the condition of the estate. The statement of liabilities shall include the following information:

(1) Whether notice to creditors was given under Section 9050.

(2) Creditor claims filed, including the date of filing the claim, the name of the claimant, the amount of the claim, and the action taken on the claim.

(3) Creditor claims not paid, satisfied, or adequately provided for, whether the claim is due and the date due, the date any notice of rejection was given, whether the creditor has brought an action on the claim, and any property that is security for the claim by mortgage, deed of trust, lien, or other encumbrance.

Comment. Section 10900 supersedes former Section 920.3 and the first sentence of former Section 921.

Subdivision (b) is based on concepts developed in Note, *California Probate Accounting Procedures*, 39 S. Cal. L. Rev. 316 (1966). In the financial statement, each schedule should contain a breakdown of the summary item into its component parts. For

instance, the summary item of receipts might be broken down into the totals of interest income, dividend income, royalties received, and miscellaneous receipts. The exact breakdown would vary, depending on the nature of the estate. It would be unnecessary to show in the summary item more than the total amount of each component part making up the total. For illustrative material, see American College of Probate Counsel, National Fiduciary Accounting Standards (1980).

Since the purpose of the report of administration in subdivision (c) is to provide a complete summary of the estate's administration, additional statements may be necessary in order to clarify certain events or circumstances and to permit interested persons to understand the report. In certain instances, the report of administration may include such matters as that cash was invested in interest-bearing accounts or other proper investments (Section 9652). In the case of a final account, the report of administration must include the amount of fees and commissions paid or payable to the personal representative and to the attorney and must set forth the basis for determining the amount. See Section 10954(c) (when account is not required).

Likewise, the financial statement must include the information required by this section. This section does not, however, preclude a financial statement from including any other relevant information, such as a separate statement of account as to specific gifts, allocation of principal and income, taxable income and distributable net income, and current values of property in the estate.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

Verification required § 1284

§ 10901. Production of supporting documents

10901. On court order, or on request by an interested person filed with the clerk and a copy served on the personal representative, the personal representative shall produce for inspection and audit by the court or interested person the documents specified in the order or request that support an account.

Comment. Section 10901 supersedes former Section 925, extending the voucher procedure to supporting documents generally.

CROSS-REFERENCES

Definitions

Interested person § 48

Personal representative § 58

CHAPTER 2. WHEN ACCOUNT REQUIRED**§ 10950. Court-ordered account**

10950. (a) On its own motion or on petition of an interested person, the court may order an account at any time.

(b) The court shall order an account on petition of an interested person made more than one year after the last account was filed or, if no previous account has been filed, made more than one year after issuance of letters to the personal representative.

(c) The court order shall specify the time within which the personal representative must file an account.

Comment. Section 10950 supersedes portions of the first sentences of former Sections 921 and 922. The section is subject to Section 10954 (when account is not required).

CROSS-REFERENCES

Actions in chambers, Code Civ. Proc. § 166

Definitions

Interested person § 48

Letters § 52

Personal representative § 58

§ 10951. Final account

10951. The personal representative shall file a final account and petition for an order for final distribution of the estate when the estate is in a condition to be closed.

Comment. Section 10951 supersedes the second sentence of former Section 922 and is consistent with Section 11640 (petition and order for final distribution). The section is subject to Section 10954 (when account is not required). It should be noted that a

supplemental account may be required under Section 11642 (after-acquired or after-discovered property).

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 10952. Account after authority terminated

10952. A personal representative who resigns or is removed from office or whose authority is otherwise terminated shall, unless the court extends the time, file an account not later than 60 days after termination of authority. If the personal representative fails to so file the account, the court may compel the account pursuant to Chapter 4 (commencing with Section 11050).

Comment. Section 10952 supersedes former Section 923. The section is subject to Section 10954 (when account is not required). For an account where the personal representative dies, absconds, or becomes incapacitated, see Section 10953.

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 10953. Account where personal representative dies, absconds, or becomes incapacitated

10953. (a) As used in this section:

(1) "Incapacitated" means lack of capacity to serve as personal representative.

(2) "Legal representative" means the personal representative of a deceased personal representative or the conservator of the estate of an incapacitated personal representative.

(b) If a personal representative dies or becomes incapacitated and a legal representative is appointed for the deceased or incapacitated personal representative, the legal representative shall not later than 60 days after appointment, unless the court extends the time, file an account of the administration of the deceased or incapacitated personal representative.

(c) If a personal representative dies or becomes incapacitated and no legal representative is appointed for

the deceased or incapacitated personal representative, or if the personal representative absconds, the court may compel the attorney for the deceased, incapacitated, or absconding personal representative or attorney of record in the estate proceeding to file an account of the administration of the deceased, incapacitated, or absconding personal representative.

(d) The legal representative or attorney shall exercise reasonable diligence in preparing an account under this section. Verification of the account may be made on information and belief. The court shall settle the account as in other cases. The court shall allow reasonable compensation to the legal representative or the attorney for preparing the account; the amount allowed shall be a charge against the estate that was being administered by the deceased, incapacitated, or absconding personal representative.

Comment. Section 10953 restates former Section 932 with changes for internal consistency. The court referred to in this section is the court in which the estate of the original decedent is being administered.

CROSS-REFERENCES

Definitions

Personal representative § 58

Verification required § 1284

§ 10954. When account is not required

10954. (a) Notwithstanding any other provision of this part, the personal representative is not required to file an account if any of the following conditions is satisfied as to each person entitled to distribution from the estate:

(1) The person has executed and filed a written waiver of account or a written acknowledgment that the person's interest has been satisfied.

(2) Adequate provision has been made for satisfaction in full of the person's interest. This paragraph does not apply to a residuary devisee or a devisee whose interest in the estate is subject to abatement, payment of expenses, or accrual of interest or income.

(b) A waiver or acknowledgment under subdivision (a) shall be executed by the following persons:

(1) If the person entitled to distribution is an adult and competent, by that person.

(2) If the person entitled to distribution is a minor, by a person authorized to receive money or property belonging to the minor. If the waiver is executed by a guardian of the estate of the minor, the waiver may be executed without the need to obtain approval of the court in which the guardianship proceeding is pending.

(3) If the person entitled to distribution is a conservatee, by the conservator of the estate of the conservatee. The waiver may be executed without the need to obtain approval of the court in which the conservatorship proceeding is pending.

(4) If the person entitled to distribution is a trust, by the trustee, but only if the named trustee's written acceptance of the trust is filed with the court.

(5) If the person entitled to distribution is an estate, by the personal representative of the estate.

(6) If the person entitled to distribution is incapacitated, unborn, unascertained, or is a person whose identity or address is unknown, or is a designated class of persons who are not ascertained or are not in being, and there is a guardian ad litem appointed to represent the person entitled to distribution, by the guardian ad litem.

(c) Notwithstanding subdivision (a):

(1) The personal representative shall file a final report of administration at the time the final account would otherwise have been required. The final report shall include the amount of fees and commissions paid or payable to the personal representative and to the attorney and shall set forth the basis for determining the amount.

(2) A creditor whose interest has not been satisfied may petition under Section 10950 for an account.

Comment. Section 10954 restates former Section 933, with the elimination of beneficiaries whose interest will be satisfied in full from those whose waiver is required. The section also makes clear that an unpaid creditor may seek to require an account

notwithstanding a waiver by beneficiaries. The reference to a trustee's consent to act in subdivision (b) (4) has been replaced by a reference to the trustee's written acceptance of the trust. See Section 15600 (acceptance of trust by trustee). Subdivision (b) (6) is substituted for the former provision precluding waiver if a person entitled to distribution is unascertained. This section applies notwithstanding any other provision of this part, including but not limited to Section 10950 (court-ordered account).

CROSS-REFERENCES

Definitions

Person § 56

Personal representative § 58

Trust § 82

Trustee § 84

CHAPTER 3. SETTLEMENT OF ACCOUNT**§ 11000. Notice of hearing**

11000. (a) The personal representative shall give notice of the hearing as provided in Section 1220.

(b) In addition to the notice required by subdivision (a), notice of the hearing shall be given as provided in Section 1220 to all of the following persons:

(1) Each known heir whose interest in the estate is affected by the account.

(2) Each known devisee whose interest in the estate is affected by the account.

(3) The State of California, if any portion of the estate is to escheat to it and its interest is affected by the account.

(4) If the estate is insolvent, each creditor who has filed a claim that is allowed or approved but is unpaid.

(c) If the petition for approval of the account requests fees, the notice of hearing shall so state.

(d) If the account is a final account and is filed together with a petition for an order for final distribution of the estate, the notice of hearing shall so state.

Comment. Subdivisions (a) and (b) of Section 11000 restate the third sentence of former Section 926 without substantive change. Subdivisions (b) (4) and (c) are new. Subdivision (d)

restates the first portion of the second sentence of former Section 926(a) without substantive change. Notice must also be given to persons who have requested special notice. See Sections 1220(e), 1250, 1252.

CROSS-REFERENCES

Clerk to set matter for hearing § 1285

Definitions

Devisee § 34

Heirs § 44

Person § 56

Personal representative § 58

§ 11001. Contest of account

11001. All matters relating to an account may be contested for cause shown, including but not limited to:

(a) The validity of an allowed or approved claim not reported in a previous account and not established by judgment.

(b) The value of property for purposes of distribution.

(c) Actions taken by the personal representative not previously authorized or approved by the court, subject to Section 10590 (Independent Administration of Estates Act).

Comment. Section 11001 restates the first and fourth sentences of former Section 927, with the addition of a provision making clear the right of an interested person to obtain court review of actions by the personal representative through a contest of an account. See also Section 1043 (response or objection).

Subdivision (b) permits a contest of the value of property for purposes of distribution only, and not of the inventory and appraisal; a separate procedure is provided for a direct contest of appraisal values. See Section 8804 (objection to appraisal).

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 11002. Hearing on account

11002. (a) The court may conduct such hearing as may be necessary to settle the account, and may cite the personal representative to appear before the court for examination.

(b) The court may appoint one or more referees to examine the account and make a report on the account, subject to confirmation by the court. The court may allow a reasonable compensation to the referee to be paid out of the estate.

(c) The court may make such orders as the court deems necessary to effectuate the provisions of this section.

Comment. Section 11002 restates the third and fifth sentences of former Section 927, replacing the provision for examination under oath with a provision for a citation. The provision of former Section 928 for jury trial of a contest of an allowed claim is not continued. See Section 7200 (trial by jury). The provision for payment of referee compensation out of the estate is subject to Section 11003 (litigation expenses).

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 11003. Litigation expenses

11003. (a) If the court determines that the contest was without reasonable cause and in bad faith, the court may award against the contestant the fees, commissions, and costs of the personal representative and other expenses and costs of litigation, including attorney's fees, incurred to defend the account. The amount awarded is a charge against any interest of the contestant in the estate and the contestant is personally liable for any amount that remains unsatisfied.

(b) If the court determines that the opposition to the contest was without reasonable cause and in bad faith, the court may award the contestant the costs of the contestant and other expenses and costs of litigation, including attorney's fees, incurred to contest the account. The amount awarded is a charge against the fees and commission or other interest of the personal representative in the estate and the personal representative is liable personally and on the bond, if any, for any amount that remains unsatisfied.

Comment. Subdivision (a) of Section 11003 supersedes the second sentence of former Section 927. Subdivision (b) is new.

Litigation costs under Section 11003 include the costs of a referee appointed under Section 11002.

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 11004. Settlement of claim not paid in full

11004. If the personal representative has settled and paid a claim for less than its full amount, the personal representative shall receive credit in the account only for the amount actually paid.

Comment. Section 11004 restates the last portion of the first sentence of former Section 583 without substantive change.

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 11005. Settlement of claim not properly filed

11005. If a debt has been paid within the time prescribed in Section 9154 but without a claim having been filed and established in the manner prescribed by statute, in settling the account the court shall allow the amount paid if all of the following are proven:

- (a) The debt was justly due.
- (b) The debt was paid in good faith.
- (c) The amount paid did not exceed the amount reasonably necessary to satisfy the indebtedness.
- (d) The estate is solvent.

Comment. Section 11005 restates former Section 929, substituting the “did not exceed the amount reasonably necessary to satisfy the indebtedness” for the “was the true amount of the indebtedness” in subdivision (c). The addition of the limitation that the debt shall have been paid within the time prescribed in Section 9154 (claim filing period plus 30 days) codifies the effect of existing case law. *Cf.* Estate of Erwin, 117 Cal. App. 2d 203, 255 P.2d 97 (1953) (claim not made within claim filing period).

§ 11006. Effect of order settling account

11006. (a) Except as provided in subdivision (b), the order settling an account is conclusive against all interested persons.

(b) A person under legal disability has the right, at any time before entry of an order for final distribution of the estate, to move for cause to reopen and examine the account or to proceed by action against the personal representative or the sureties on the bond. In the action the order settling the account is prima facie evidence of the correctness of the account.

Comment. Section 11006 restates former Section 931, making clear that the exception in subdivision (b) applies only until entry of the order and not until physical distribution. As to the effect of fraud on the conclusiveness of the order, *cf.* *Lazzarone v. Bank of America*, 181 Cal. App. 3d 581, 226 Cal. Rptr. 855 (1986) (trust account), and *Bank of America v. Superior Court*, 181 Cal. App. 3d 705, 226 Cal. Rptr. 685 (1986) (guardianship account).

CROSS-REFERENCES

Definitions

Interested person § 48

CHAPTER 4. COMPELLING ACCOUNT

§ 11050. Sanction for failure to account

11050. Subject to the provisions of this chapter, if the personal representative does not file a required account, the court shall compel the account by punishment for contempt.

Comment. Section 11050 restates the third sentence of former Section 922 without substantive change. This chapter may also be used to compel an account by a personal representative whose authority is terminated. Section 10952.

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 11051. Citation

11051. (a) A citation shall be issued, served, and returned, requiring a personal representative who does not file a required account to appear and show cause why the personal representative should not be punished for contempt.

(b) If the personal representative purposefully evades personal service of the citation, the personal representative shall be removed from office.

Comment. Subdivision (a) of Section 11051 restates the last sentence of former Section 922 without substantive change. Subdivision (b) restates a portion of former Section 924 without substantive change.

CROSS-REFERENCES

Citations §§ 1240-1242

Definitions

Personal representative § 58

§ 11052. Punishment for contempt

11052. If the personal representative does not appear and file a required account, after having been duly cited, the personal representative may be punished for contempt or removed from office, or both, in the discretion of the court.

Comment. Section 11052 restates the last sentence of former Section 921 and restates a portion of former Section 924 without substantive change. See also Section 8505 (removal from office for contempt).

CROSS-REFERENCES

Definitions

Personal representative § 58

CONFORMING REVISIONS AND REPEALS

Enactment of the proposed legislation will require conforming revisions in other statutes, as well as the repeal of existing provisions. A table of the conforming revisions and repeals follows. For the text of the conforming revisions and repeals, refer to the legislation introduced to effectuate this recommendation. For comments to the conforming revisions and repeals, see the Appendix published with this report.

Probate Code

920 (repealed)

920.3 (repealed)

921 (repealed)

922 (repealed)

923 (repealed)

Probate Code

924 (repealed)

925 (repealed)

926 (repealed)

927 (repealed)

928 (repealed)

Probate Code

929 (repealed)

930 (repealed)

931 (repealed)

932 (repealed)

933 (repealed)

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

relating to

Litigation Involving Decedents

November 1987

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

(899)

NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

Cite this recommendation as *Recommendation Relating to Litigation Involving Decedents*, 19 Cal. L. Revision Comm'n Reports 899 (1988).

CALIFORNIA LAW REVISION COMMISSION

4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739
(415) 494-1335

ANN E. STODDEN
Chairperson

FORREST A. PLANT
Vice Chairperson

ROGER ARNEBERGH

BION M. GREGORY

ASSEMBLYMAN ELIHU M. HARRIS

SENATOR BILL LOCKYER

ARTHUR K. MARSHALL

EDWIN K. MARZEC

TIM PAONE

VAUGHN R. WALKER

November 20, 1987

To: The Honorable George Deukmejian
Governor of California
and
The Legislature of California

The California Law Revision Commission is now devoting its time and resources almost exclusively to the study of probate law and procedure. The Commission is preparing a new code to replace the existing Probate Code.

The Commission has decided not to delay submitting all recommendations for the improvement of probate law until work on the new code is completed. This recommendation is one of those which is being submitted for enactment prior to the submission of the entire code.

The recommended legislation replaces the existing provisions governing litigation involving a decedent (existing Probate Code Sections 707 to 721). The recommendation simplifies and clarifies the provisions governing litigation on a liability for which the decedent was insured, and consolidates existing provisions governing late claims in litigation.

This recommendation is submitted pursuant to Resolution Chapter 37 of the Statutes of 1980.

Respectfully submitted,

Ann E. Stodden
Chairperson

RECOMMENDATION

relating to

LITIGATION INVOLVING DECEDENTS

The existing statutes governing causes of action and pending actions and proceedings involving a decedent are dispersed among several codes and contain gaps, inconsistencies, and overlapping provisions.¹ The proposed law consolidates and reorganizes the statutes to the extent necessary to deal with claims in litigation involving a decedent. The Law Revision Commission anticipates a future recommendation that treats the entire body of law in a comprehensive manner.

The present recommendation makes the following substantive changes in the law governing claims in litigation involving a decedent.

Late Claims

A claim in probate is required as a condition for commencing or continuing litigation against the personal representative on a cause of action against a decedent.² Existing law tempers this requirement by permitting a late claim in some circumstances.³ The special late claim provisions differ from the general rules governing late claims in probate⁴ in numerous respects without apparent reason for the differences. The proposed law combines the special late claim provisions applicable to litigation with the

1. Relevant provisions include Civ. Code § 954; Code Civ. Proc. §§ 353, 353.5, 369, 377, and 385; Prob. Code §§ 573, 577, 707, 709, 709.1, 716, 720, and 721. For a general description of some of the statutes, see Marshall, *Suits Against Decedents*, 47 Cal. St. B.J. 588 (1972).

2. Prob. Code §§ 709, 716(a).

3. Prob. Code §§ 709, 720.

4. Prob. Code § 9103 (1987 Cal. Stat. ch. 923, § 93, operative July 1, 1988).

general probate late creditor claim provisions to provide a single scheme with the following features:

(1) The late claim is available for causes of action for non-business debts⁵ (including injury or death) and for pending litigation of any kind.

(2) The creditor must have been unaware of the administration for the first three and one-half months of the four-month creditor claim period.

(3) The application for leave to file a late claim must be made within 30 days after the creditor learns of the administration.

(4) The court may condition leave to file a late claim on terms that are just and equitable.

(5) The court may deny leave to file a late claim if it appears that allowance of the claim would cause unequal treatment among interested persons.

Insured Claims

Of the many statutes governing litigation involving a decedent, among the most complex and confusing are those relating to claims covered by insurance. The basic concept is simple—if a liability of the decedent is covered by insurance, the creditor may proceed directly against the insurer for recovery instead of through the estate or against successors in interest—but the statutes fail to implement this concept in a straightforward manner.⁶ The proposed law unifies the existing provisions, making the following changes of law in the process:

(1) The new provisions apply uniformly to actions pending at the death of the decedent and actions commenced after the decedent's death.⁷

5. A business creditor is held to a higher standard of knowledge of the probate proceeding than a non-business creditor. See Prob. Code § 9103(a)(3) (1987 Cal. Stat. ch. 923, § 93, operative July 1, 1988).

6. There are at least six different statutes that relate to this problem. Some provisions appear to be coordinated with each other, other provisions do not. See Code Civ. Proc. §§ 353, 385(b); Prob. Code §§ 707, 709, 709.1, 721.

7. Existing law provides variant treatment depending on whether or not there is litigation pending on the decedent's cause of action. Compare Prob. Code §§ 707 and 721 with Code Civ. Proc. § 385(b) and Prob. Code § 709.1.

(2) Court approval is not required before the plaintiff may commence or continue an action.⁸

(3) The estate of the decedent need not qualify for treatment under the affidavit procedure for collection or transfer of personal property.⁹

(4) The new provisions apply in any case where there is a claim for damages for which the decedent was insured, whether for injury to or death of a person caused by the wrongful act or neglect of the decedent, or otherwise.¹⁰

(5) The new provisions allow a direct proceeding against the insurer without regard to whether the insurer has accepted the defense of the cause or made an appearance on behalf of the decedent.¹¹

8. Compare Prob. Code § 707 and Code Civ. Proc. § 385(b) (court approval not required) with Prob. Code §§ 721 and 709.1 (court approval required). Among the considerations against court approval are the fact that only the insurer is at risk and no estate assets are involved, and that confusion is caused by overlapping jurisdiction of the probate and civil courts.

9. Prob. Code §§ 13100-13115. *Cf.* Prob. Code § 707 and Code Civ. Proc. § 385(b) (proceeding limited to small estate). Current use of the summary administration standard in limited situations causes a number of problems. It requires a petition in probate that would not otherwise be required in order to ensure that the estate qualifies. Marshall, *Suits Against Decedents*, 47 Cal. St. B.J. 588, 593 (1972). It has been suggested that if the claimant is in doubt, it should be assumed that the estate does not qualify. See Nelson, *Creditors' Claims*, in 1 California Decedent Estate Practice § 12.13 (Cal. Cont. Ed. Bar 1986). The proposed law avoids this problem by treating all claims covered by liability insurance in the same fashion and eliminating the need to determine whether the estate qualifies under Section 13100.

10. See Code Civ. Proc. § 385(b); Prob. Code § 707 (proceeding limited to claim for damages or injury to or death of a person caused by the wrongful act or neglect of the decedent). The reference to "injury" seems to mean personal injury. Witkin paraphrases the requirements of these sections by reference to personal injury. See 4 B. Witkin, *California Procedure Pleading* § 285, at 340 (3d ed. 1985). However, similar language in Probate Code Section 720 relating to a claim for "injuries" that is not the subject of a pending action has been interpreted to cover a claim based on fraud. *Estate of Hoertkorn*, 88 Cal. App. 3d 461, 464-67, 151 Cal. Rptr. 806 (1979). The proposed law avoids these confusing technicalities and dubious distinctions by treating all claims covered by insurance in the same manner. This is the approach of Section 3-803(c) (2) of the Uniform Probate Code (1982) which applies to claims protected by liability insurance.

11. *Cf.* Prob. Code § 709 (insurer must have accepted defense and made an appearance on behalf of decedent).

OUTLINE OF PROPOSED LEGISLATION**DIVISION 2. GENERAL PROVISIONS****PART 13. LITIGATION INVOLVING DECEDENT****CHAPTER 1. LIABILITY OF DECEDENT COVERED BY INSURANCE**

- § 550. Action authorized
- § 551. Statute of limitations
- § 552. Procedure
- § 553. Defenses
- § 554. Damages
- § 555. Application of chapter

**DIVISION 7. ADMINISTRATION OF ESTATES OF
DECEDENTS****PART 4. CREDITOR CLAIMS****CHAPTER 8. CLAIMS IN LITIGATION**

- § 9350. Claim prerequisite to bringing action
- § 9351. Claim prerequisite to continuing action
- § 9352. Tolling of statute of limitations
- § 9353. Bar of rejected claims
- § 9354. Venue and procedure for action on claim
- § 9355. Claim covered by insurance
- § 9356. Enforcement of security interest

CONFORMING REVISIONS AND REPEALS

Probate Code §§ 550-555 (added). Litigation involving decedent

SEC. _____. Part 13 (commencing with Section 550) is added to Division 2 of the Probate Code, to read:

PART 13. LITIGATION INVOLVING DECEDENT

CHAPTER 1. LIABILITY OF DECEDENT COVERED BY INSURANCE

§ 550. Action authorized

550. (a) Subject to the provisions of this chapter, an action to establish the decedent's liability for which the decedent was protected by insurance may be commenced or continued against the decedent's estate without the need to join as a party the decedent's personal representative or successor in interest.

(b) The remedy provided in this chapter is cumulative and may be pursued concurrently with other remedies.

Comment. This chapter replaces former subdivision (b) of Section 385 of the Code of Civil Procedure, former Probate Code Sections 707, 709.1, and 721, and the third sentence of former Probate Code Section 709. It makes the following significant changes in the law:

(1) The new provisions apply uniformly to actions pending at the death of the decedent and actions commenced after the decedent's death.

(2) Court approval is not required before the plaintiff may commence an action against the estate for the insured amount.

(3) The estate of the decedent need not otherwise qualify for treatment under Section 13100-13115 (affidavit procedure for collection or transfer of personal property).

(4) The new provisions apply in any case where there is a claim for damages for which the decedent was insured, whether for injury to or death of a person caused by the wrongful act or neglect of the decedent, or otherwise.

(5) The new provisions excuse a claim in probate only where the plaintiff is proceeding under this chapter, whether or not the insurer has otherwise accepted the defense of the cause or an appearance has been made on behalf of the decedent.

If the plaintiff seeks damages in excess of the insurance policy limits, the plaintiff must file a claim and establish the liability other than under this chapter. See Section 554 (damages). Subdivision (b) makes clear that this chapter does not preclude the establishment of liability by another procedure. See, e.g., Section 9000 *et seq.* (creditor claims).

The time limited for bringing an action under this chapter is one year after expiration of the applicable statute of limitations. See Section 551 (statute of limitations).

CROSS-REFERENCES

Claim covered by insurance § 9355

Definitions

Personal representative § 58

§ 551. Statute of limitations

551. If the limitations period otherwise applicable to the action has not expired at the time of the decedent's death, an action under this chapter may be commenced within one year after the expiration of the limitations period otherwise applicable.

Comment. Section 551 restates the last part of Code of Civil Procedure Section 353(b) without substantive change.

§ 552. Procedure

552. (a) An action under this chapter shall name as the defendant, "Estate of (name of decedent), Deceased." Summons shall be served on a person designated in writing by the insurer or, if none, on the insurer. Further proceedings shall be in the name of the estate, but otherwise shall be conducted in the same manner as if the action were against the personal representative.

(b) On motion of an interested person, or on its own motion, the court in which the action is pending may, for good cause, order the appointment and substitution of a personal representative as the defendant.

(c) An action against the estate of the decedent under this chapter may be consolidated with an action against the personal representative.

Comment. As to subdivisions (a) and (b) of Section 552, see the Comment to Section 550. Subdivision (c) makes clear that an action directed toward collecting from the insurance proceeds under this chapter may be consolidated with an action against the decedent's personal representative for the excess. Consolidation may be appropriate since the issues relating to liability are the same. See also Sections 550(b) (remedies cumulative), 553 (defenses).

CROSS-REFERENCES

Definitions

Interested person § 48

Personal representative § 58

§ 553. Defenses

553. The insurer may deny or otherwise contest its liability in an action under this chapter or by an independent action. Unless the personal representative is joined as a party, a judgment in the action under this chapter or in the independent action does not adjudicate rights by or against the estate.

Comment. See the Comment to Section 550.

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 554. Damages

554. (a) Except as provided in subdivision (b), the damages sought in an action under this chapter shall be within the limits and coverage of the insurance, or recovery of damages outside the limits or coverage of the insurance shall be waived. A judgment in favor of the plaintiff in the action is enforceable only from the insurance coverage and not against property in the estate.

(b) Where the amount of damages sought in the action exceeds the coverage of the insurance, subdivision (a) does not apply if both of the following conditions are satisfied:

(1) The personal representative is joined as a party to the action.

(2) The plaintiff files a claim under Section 9355.

Comment. Subdivision (a) of Section 554 restates former Section 721 (f) without substantive change, but makes clear that the rule limiting recovery is subject to the exception provided in subdivision (b). Subdivision (b) is generalized from the second sentence of former Section 707 (b). See also the Comment to Section 550.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 555. Application of chapter

555. (a) This chapter applies only to an action against a person who dies on or after July 1, 1989.

(b) The applicable law in effect before July 1, 1989, continues to apply to an action against a decedent who died before July 1, 1989, notwithstanding its repeal by the act that enacted this chapter.

Probate Code §§ 9350-9356 (added). Claims in litigation

SEC. _____. Chapter 8 (commencing with Section 9350) is added to Part 4 of Division 7 of the Probate Code, to read:

CHAPTER 8. CLAIMS IN LITIGATION

§ 9350. Claim prerequisite to bringing action

9350. An action may not be commenced against a decedent's personal representative on a cause of action against the decedent unless a claim is first filed as provided in this part and the claim is rejected in whole or in part.

Comment. Section 9350 restates former subdivision (c) of Section 9002 (claim requirement), but makes express the requirement implied in former law that the claim first be rejected in whole or in part. For the time within which a claim must be filed, see Section 9100 (claim period). For late claims, see Section 9103. An action may be brought to enforce a liability of the decedent without first filing a claim in the case of a secured obligation. Section 9356 (enforcement of security interest).

This section relates only to an action against the personal representative. It does not affect actions against other persons who are statutorily liable for the decedent's debts. See, e.g., Sections 13109 (affidavit procedure) and 13550-13554 (debts of deceased spouse). See also Sections 550-555 (liability of decedent covered by insurance).

CROSS-REFERENCES

Definitions

Claim § 9000

Personal representative § 58

§ 9351. Claim prerequisite to continuing action

9351. (a) An action or proceeding pending against the decedent at the time of death may not be continued against the decedent's personal representative unless a claim is first filed as provided in this part and the claim is rejected in whole or in part.

(b) No recovery shall be allowed in the action against property in the decedent's estate unless proof is made of the filing.

Comment. Subdivision (a) of Section 9351 restates the first sentence of former Section 709 with the addition of the implied requirement that the claim be rejected in whole or in part. The personal representative must notify creditors, including plaintiffs in actions against the decedent, if the personal representative has actual knowledge of the creditor. Section 9050 (notice required). For late claims, see Section 9103.

Subdivision (b) restates the second sentence of former Section 709 without substantive change.

CROSS-REFERENCES

Definitions

Claim § 9000

Personal representative § 58

§ 9352. Tolling of statute of limitations

9352. (a) The filing of a claim tolls the statute of limitations otherwise applicable to the claim until allowance, approval, or rejection.

(b) The allowance or approval of a claim in whole or in part further tolls the statute of limitations during the administration of the estate as to the part allowed or approved.

Comment. Section 9352 restates former subdivisions (a) and (c) of Section 9253 without substantive change. The provision relating to partial allowance is new.

CROSS-REFERENCES

Definitions

Claim § 9000

Personal representative § 58

§ 9353. Bar of rejected claims

9353. (a) Regardless of whether the statute of limitations otherwise applicable to a claim will expire before or after the following times, a claim rejected in whole or in part is barred as to the part rejected unless, within the following times, the creditor commences an action on the claim or the matter is referred to a referee or to arbitration:

(1) If the claim is due at the time the notice of rejection is given, three months after the notice is given.

(2) If the claim is not due at the time the notice of rejection is given, three months after the claim becomes due.

(b) The time during which there is a vacancy in the office of the personal representative shall be excluded from the period determined under subdivision (a).

Comment. Section 9353 restates former subdivision (d) of Section 9253 and former Section 9257(a) without substantive change. The provision relating to partial rejection is new.

CROSS-REFERENCES

Definitions

Claim § 9000

Personal representative § 58

§ 9354. Venue and procedure for action on claim

9354. (a) In addition to any other county in which an action may be commenced, an action on the claim may be commenced in the county in which the proceeding for administration of the decedent's estate is pending.

(b) The plaintiff shall file a notice of the pendency of the action with the court clerk in the estate proceeding, together with proof of giving a copy of the notice to the personal representative as provided in Section 1215.

Personal service of a copy of the summons and complaint on the personal representative is equivalent to the filing and giving of the notice. Any property distributed under court order, or any payment properly made, before the notice is filed and given is not subject to the claim. The personal representative, distributee, or payee is not liable on account of the prior distribution or payment.

(c) The prevailing party in the action shall be awarded court costs and, if the court determines that the prosecution or defense of the action against the prevailing party was unreasonable, the prevailing party shall be awarded reasonable litigation expenses, including attorney's fees.

Comment. Section 9354 restates subdivisions (b)-(d) of former Section 9257 without substantive change. See also Section 7050 (jurisdiction in superior court).

CROSS-REFERENCES

Definitions

Claim § 9000

Personal representative § 58

Property § 62

§ 9355. Claim covered by insurance

9355. (a) An action to establish the decedent's liability for which the decedent was protected by insurance may be commenced or continued under Section 550, and a judgment in the action may be enforced against the insurer, without first filing a claim as provided in this part.

(b) Unless a claim is first made as provided in this part, an action to establish the decedent's liability for damages outside the limits or coverage of the insurance may not be commenced or continued under Section 550.

(c) If the insurer seeks reimbursement under the insurance contract for any liability of the decedent, including but not limited to deductible amounts in the insurance coverage and costs and attorney's fees, an insurer defending an action under Section 550 shall file a claim as provided in this part. Failure to file a claim is a waiver of reimbursement under the insurance contract for any liability of the decedent.

Comment. Section 9355 replaces part of the first sentence of former Section 707, the third sentence of former Section 709, part

of former Section 709.1, and subdivision (a) of former Section 721. Section 9355, in conjunction with Section 550, makes the following significant changes in the former scheme:

(1) The new provisions apply uniformly to actions pending at the death of the decedent and actions commenced after the decedent's death.

(2) Court approval is not required before the plaintiff may commence an action against the estate for the insured amount.

(3) The estate of the decedent need not otherwise qualify for treatment under Section 13100-13115 (affidavit procedure for collection or transfer of personal property).

(4) The new provisions apply in any case where there is a claim for damages for which the decedent was insured, whether for injury to or death of a person caused by the wrongful act or neglect of the decedent, or otherwise.

(5) The new provisions excuse a claim in probate only where the plaintiff is proceeding under Section 550, whether or not the insurer has otherwise accepted the defense of the cause or an appearance has been made on behalf of the decedent.

Nothing in Section 9355 affects any applicable statutes of limitation relating to the action. *Cf.* Code Civ. Proc. § 353; Prob. Code § 551.

CROSS-REFERENCES

Definitions

Claim § 9000

Liability of decedent covered by insurance §§ 550-555

§ 9356. Enforcement of security interest

9356. The holder of a mortgage or other lien on property in the decedent's estate, including but not limited to a judgment lien, may commence an action to enforce the lien against the property that is subject to the lien, without first filing a claim as provided in this part, if in the complaint the holder of the lien expressly waives all recourse against other property in the estate.

Comment. Section 9356 restates former Section 716, omitting the provision relating to attorney's fees.

CROSS-REFERENCES

Definitions

Claim § 9000

Property § 62

CONFORMING REVISIONS AND REPEALS

Enactment of the proposed legislation will require conforming revisions in other statutes, as well as the repeal of existing provisions. A table of the conforming revisions and repeals follows. For the text of the conforming revisions and repeals, refer to the legislation introduced to effectuate this recommendation. For comments to the conforming revisions and repeals, see the Appendix published with this report.

Code of Civil Procedure

353 (amended)

385 (amended)

Probate Code

707 (repealed)

709 (repealed)

709.1 (repealed)

716 (repealed)

720 (repealed)

721 (repealed)

9002 (amended)

9103 (amended)

9253 (amended)

9257 (repealed)

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

relating to

Rules of Procedure in Probate

November 1987

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

(917)

NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

Cite this recommendation as *Recommendation Relating to Rules of Procedure in Probate*, 19 Cal. L. Revision Comm'n Reports 917 (1988).

CALIFORNIA LAW REVISION COMMISSION

4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739
(415) 494-1335

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November 20, 1987

To: The Honorable George Deukmejian
Governor of California
and
The Legislature of California

The California Law Revision Commission is now devoting its time and resources almost exclusively to the study of probate law and procedure. The Commission is preparing a new code to replace the existing Probate Code.

The Commission has decided not to delay submitting all recommendations for the improvement of probate law until work on the new code is completed. This recommendation is one of those which is being submitted for enactment prior to the submission of the entire code.

The recommended legislation replaces the existing general rules of procedure in the Probate Code (existing Probate Code Sections 300 to 304, and 1280 to 1299). The recommendation largely redrafts, reorganizes, and generalizes existing provisions, and fills in statutory gaps.

This recommendation is submitted pursuant to Resolution Chapter 37 of the Statutes of 1980.

Respectfully submitted,

Ann E. Stodden
Chairperson

RECOMMENDATION

relating to

RULES OF PROCEDURE IN PROBATE

Introduction

This recommendation proposes general procedural provisions. Most of these provisions are redrafted and reorganized versions of sections in the existing Probate Code. Included in this recommendation are general rules that apply to the entire code and some additional rules that apply only to the new division governing decedent estate administration.¹ The following discussion notes important changes and policy issues that are involved in the proposed legislation. Minor and technical changes are noted in the comments following the proposed sections.

Pleadings

The proposed law provides as a general rule that petitions, objections, responses, reports, and accounts are to be in writing and signed by the persons filing the paper. This rule generalizes provisions found in several procedures in the Probate Code.² As a general rule, responses and objections may also be made in writing at or before a hearing.³ The proposed law recognizes that the court has discretion to hear an oral response or objection

1. See Division 7 (commencing with Section 7000). Much of Division 7 is included in the Commission's 1987 probate bill, 1987 Cal. Stat. ch. 923 (operative July 1, 1988). The remainder of the material to be included in Division 7 is planned to be introduced in the 1988 legislative session. A new Division 3 (commencing with Section 1000) will be composed of general provisions including proposed Sections 1000-1049 and 1210 included in this recommendation and the general notice provisions set out in Sections 1200-1265 which are included in 1987 Cal. Stat. ch. 923 (operative July 1, 1988).

2. See, e.g., Prob. Code §§ 380 (will contest after probate), 440 (petition for letters of administration), 522 (removal of personal representative), 921 (filing of verified account), 1025.5 (report of status of administration).

3. See, e.g., Prob. Code §§ 370 (written grounds of opposition to probate of will), 442 (opposition to petition for administration), 927 (written exceptions to account), 1041 (written objection to delivery of estate of nonresident).

and determine it at the hearing or, in the alternative, to continue the hearing so that the response or objection may be reduced to writing. This proposal is generally consistent with some local court rules.⁴ If a party is absent from the county or for some other reason is unable to verify a petition, objection, or response, the proposed law permits the party's attorney to verify. Similarly, the party's attorney may sign the petition, objection, or response, unless the party is a fiduciary.

Guardian ad Litem

General provisions in the Code of Civil Procedure provide for the appointment of a guardian ad litem to represent the interests of a minor, an incompetent person, or a person for whom a conservator has been appointed.⁵ A guardian ad litem may also be appointed to represent the interests of unknown persons, persons not in being, or persons in a class that is unascertained.⁶ These general provisions are applicable to appointment of a guardian ad litem in estate administration proceedings and in other proceedings under the Probate Code except for proceedings relating to trusts. For many years, the statutes governing trust administration have provided separate statutory authority for appointment of a guardian ad litem.⁷

The proposed law generalizes the guardian ad litem provision as it has developed in the area of trust law and applies it to the entire Probate Code. This is largely a technical revision, but it has the effect of making probate

4. The usual practice is to grant a continuance if an objection is made orally at a hearing. See, e.g., Probate Policy Memorandum, Los Angeles County, 3.05, in California Local Probate Rules 19-13 (8th ed. Cal. Cont. Ed. Bar 1987); Probate Policy Memorandum, Orange County, 1.04, *id.* at 30-18; Probate Policy Memoranda, Riverside County, 6.0105, *id.* at 33-11; Probate Rules, Santa Barbara County, 414.J, *id.* at 42-11. Some local court rules appear to allow consideration of oral objections at the hearing. See, e.g., Rules of Probate Practice, Marin County, 107, *id.* at 21-5.

5. Code Civ. Proc. § 372.

6. Code Civ. Proc. § 373.5.

7. See former Prob. Code §§ 1120 (as amended by 1963 Cal. Stat. ch. 863, § 1) (testamentary trusts), 1138.7 (as added by 1970 Cal. Stat. ch. 849, § 2) (living trusts), 1215.3 (as added by 1974 Cal. Stat. ch. 171, § 1) (notice in trust proceedings). These provisions are generally restated without substantive change in the new Trust Law. Prob. Code § 17208.

practice consistent. The special Probate Code section would apply in place of the general provisions in the Code of Civil Procedure. Thus, the rules relating to minors who are 14 years of age or older, and to minors who are under 14 years old,⁸ would not apply in probate proceedings.

Jurisdiction and Power of Court

The proposed law continues the rule that proceedings for administration of decedents' estates are within the jurisdiction of the superior court.⁹ While recognizing the power of a superior court to organize in distinct departments to handle different types of cases, the proposed law eliminates any question as to the equitable powers of the court when it considers questions relating to estate administration by making clear that the superior court "sitting in probate" is a court of general jurisdiction.¹⁰

Jury Trial

The proposed law continues the general rule in estate administration that there is no right to a jury trial unless the right is expressly granted by statute.¹¹ For a jury trial to be available under the proposed law, however, a particular proceeding must expressly provide for a jury trial. The proposed law does not continue the rule that a jury trial is available by virtue of the provision applying the rules of practice in civil actions in any case where the Probate Code provides for issues of fact to be framed.¹²

8. Code Civ. Proc. § 373. These rules are made inapplicable by Probate Code Section 17208 (as well as by its predecessor sections) for the purpose of trust proceedings. There does not appear to be any reason to treat a 14-year-old differently in probate proceedings than in trust proceedings.

9. See Prob. Code §§ 300, 301.

10. This proposal is consistent with Probate Code Section 17001 in the Trust Law. For additional background, see *Recommendation Proposing the Trust Law*, 18 Cal. L. Revision Comm'n Reports 501, 575-82 (1986); see also Goldberg, *The Sterilization of Incompetents and the "Late Probate Court" in California: How Bad Law Makes Hard Cases*, 18 Pac. L.J. 1, 7-15 (1986).

11. Estate of Beach, 15 Cal. 3d 623, 642, 542 P.2d 994, 125 Cal. Rptr. 570 (1975); Heiser v. Superior Court, 88 Cal. App. 3d 276, 278-80, 151 Cal. Rptr. 745 (1979); see generally, 7 B. Witkin, California Procedure *Trial* §§ 82-83, at 84-85, §§ 87-88, at 87-88, § 96, at 94-95 (3d ed. 1985).

12. See Prob. Code § 1230 (continued in Prob. Code § 1280, 1987 Cal. Stat. ch. 923, § 60, operative July 1, 1988); see, e.g., Budde v. Superior Court, 97 Cal. App. 2d 615, 218 P.2d 103 (1950).

The proposed law thus rejects the line of cases that found the framing of factual issues to be an independent statutory ground for requiring a jury trial. This change is in line with the reasoning of *Estate of Beach*¹³ and *Heiser v. Superior Court*¹⁴ which applied a stricter standard for determining whether factual issues required a jury trial under former Probate Code Section 1230. This revision is also consistent with other recent probate legislation.¹⁵

Appealable Orders

Under existing law, there is no right to appeal an order in proceedings involving a decedent's estate unless specifically so provided.¹⁶ Appealable orders are listed in Probate Code Section 1297 (1987 Cal. Stat. ch. 923, § 60, operative July 1, 1988). The proposed law continues this approach but makes several revisions in the list of appealable orders.

The proposed law makes clear that an order granting or revoking letters of administration with the will annexed is appealable and that an order granting or revoking letters of special administration or special administration with general powers is not appealable.¹⁷

The authority to appeal an order granting or modifying a family allowance¹⁸ is expanded in the proposed law to permit appeal of an order terminating a family allowance.

13. 15 Cal. 3d 623, 642-44, 542 P.2d 994, 125 Cal. Rptr. 570 (1975).

14. 88 Cal. App. 3d 276, 279-81, 151 Cal. Rptr. 745 (1979).

15. See Prob. Code §§ 1452 (guardianships and conservatorships), 17006 (trusts). The Uniform Probate Code limits jury trials to cases where they are constitutionally required. See Uniform Probate Code § 1-306 (1982).

16. See the cases cited in 9 B. Witkin, *California Procedure Appeal* § 115, at 132 (3d ed. 1985).

17. Probate Code Section 1297(a) (1987 Cal. Stat. ch. 923, § 60, operative July 1, 1988) (restating former Prob. Code § 1240(a)) refers simply to granting or revoking letters. The more detailed provision in the proposed law codifies rules provided in the cases and in other sections. See *Estate of Smith*, 175 Cal. App. 2d 803, 805, 1 Cal. Rptr. 46 (1959) (appeal of order appointing public administrator as administrator with the will annexed); *Estate of Hughes*, 77 Cal. App. 3d 899, 901-02, 143 Cal. Rptr. 858 (1978) (order refusing to revoke letters of special administration not appealable); Prob. Code §§ 461, 465.

18. Prob. Code § 1240(e) (continued in Prob. Code § 1297(e), 1987 Cal. Stat. ch. 923, § 60, operative July 1, 1988).

This is consistent with the appealability of an order modifying a family allowance or refusing to grant a family allowance.¹⁹

Existing law permits the appeal of an order directing or authorizing the grant of an option to purchase real property.²⁰ The proposed law extends the provision to options to purchase personal property since the basic considerations are the same.

Existing law permits the appeal of an order fixing an inheritance tax or determining that none is due.²¹ The proposed law omits this provision in view of the repeal of the inheritance tax.²²

Stay on Appeal

Existing statutes relating to administration of decedents' estates do not provide special rules governing stays on appeal. Instead, reliance must be placed on general rules in the Code of Civil Procedure²³ and in the cases.²⁴ The proposed law does not attempt to revise the substance of this law, but makes it more accessible to probate practitioners by providing general rules governing stay on appeal that are drawn from guardianship and conservatorship law.²⁵

19. See Lyon, *Statutory Protections for Family Members*, in 2 California Decedent Estate Practice § 16.22 (Cal. Cont. Ed. Bar 1986).

20. Prob. Code § 1240(g) (continued in Prob. Code § 1297(g), 1987 Cal. Stat. ch. 923, § 60, operative July 1, 1988).

21. Prob. Code § 1240(p) (continued in Prob. Code § 1297(p), 1987 Cal. Stat. ch. 923, § 60, operative July 1, 1988).

22. A transitional provision will provide for appeals under the law prior to June 8, 1982, when the inheritance tax was repealed by an initiative.

23. See Code Civ. Proc. §§ 916-917.9.

24. See, e.g., Estate of Hultin, 29 Cal. 2d 825, 833, 178 P.2d 756 (1947) (order appointing executor); Estate of Sam Lee, 26 Cal. 2d 295, 296, 158 P.2d 193 (1945) (order appointing public administrator); Estate of Gibson, 233 Cal. App. 2d 125, 127-30, 43 Cal. Rptr. 302 (1965) (order appointing administrator).

25. See Prob. Code § 2751.

Judgment Roll

An appeal may be made on the papers in the judgment roll.²⁶ The contents of the judgment roll for purposes of the Probate Code are specified by statute.²⁷ The proposed law adds the statement of decision to the judgment roll; this reflects the practice in probate courts.²⁸

Liability for Costs

Several provisions of existing law deal in general terms with the liability of a personal representative for costs of litigation.²⁹ Probate Code Section 719 makes the personal representative personally liable for costs, but permits reimbursement from the estate unless the suit or proceeding in which costs were awarded was prosecuted or defended "without just cause." On the other hand, Probate Code Section 1282 (1987 Cal. Stat. ch. 923, § 60, operative July 1, 1988, restating Probate Code Section 1232) provides for costs to be paid by a party to proceedings or out of assets of the estate "as justice may require."

The new code adopts the general rule provided in Probate Code Section 1282 (1987 Cal. Stat. ch. 923, § 60, operative July 1, 1988, restating Probate Code Section 1232)

26. See Cal. R. Court 5; Abbott, *Designating the Record*, in California Civil Appellate Practice § 8.1, at 208, § 8.47-8.48, at 239-40 (Cal. Cont. Ed. Bar 2d ed. 1985).

27. Prob. Code § 1242 (continued in Prob. Code § 1299, 1987 Cal. Stat. ch. 923, § 60, operative July 1, 1988). The contents of the judgment roll in civil proceedings generally are specified in Code of Civil Procedure Section 670.

28. The proposed law also omits the provision in Probate Code Section 1299 (1987 Cal. Stat. ch. 923, § 60, operative July 1, 1988) that the papers making up the judgment roll need not be attached together. Until 1939, Code of Civil Procedure Section 670 required that the papers constituting the judgment roll be attached together. See 1939 Cal. Stat. ch. 733, § 1. This nonattachment provision derives from a cautious transitional provision apparently intended to make clear that the attachment requirement was in fact repealed. By now, it can safely be assumed that court clerks have become accustomed to the practice of not attaching the judgment roll papers together; consequently, this provision is surplus.

29. See Code Civ. Proc. § 1026; Prob. Code §§ 719 (1987 Cal. Stat. ch. 923, § 38, operative July 1, 1988), 1282 (1987 Cal. Stat. ch. 923, § 60, operative July 1, 1988). Special provisions govern the liability for costs in certain circumstances. See, e.g., Prob. Code §§ 383 (costs in probate revocation), 9653 (1987 Cal. Stat. ch. 923, § 93, operative July 1, 1988) (costs in action to recover fraudulently conveyed property), 9257 (1987 Cal. Stat. ch. 923, § 93, operative July 1, 1988) (disallowed creditor's claim by representative), 9255 (1987 Cal. Stat. ch. 923, § 93, operative July 1, 1988) (costs not allowed where creditor contests amount allowed in satisfaction of claim unless creditor prevails), 1002 (costs on preliminary distribution), 6544 (costs of proceedings for family allowance).

in preference to the rule of Probate Code Section 719. This eliminates the inconsistency under existing law and adopts the more general of the two rules. As under existing law,³⁰ the general statutory rule is subject to any contrary rule provided by statute or court rule.

Code of Civil Procedure Section 1026, as it applies to executors, administrators, and trustees, makes the estate liable for costs unless the court directs costs to be paid by the fiduciary personally "for mismanagement or bad faith in the action or defense." The new code retains this rule without substantive change.³¹

30. See Prob. Code § 1282 (1987 Cal. Stat. ch. 923, § 60, operative July 1, 1988) (restating former Prob. Code § 1232).

31. Section 1026 also applies to persons "expressly authorized by statute" to prosecute or defend an action. Section 1026 would be amended to add guardians and conservators to the list of fiduciaries covered by the section.

OUTLINE OF PROPOSED LEGISLATION

DIVISION 3. GENERAL PROVISIONS OF A PROCEDURAL NATURE

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- § 1001. Judicial Council and local court rules
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- § 1003. Appointment of guardian ad litem
- § 1004. Lis pendens

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Article 2. Disqualification of Judge

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Article 5. United States as Interested Person

§ 7280. United States as interested person

CONFORMING REVISIONS AND REPEALS

DIVISION 3. GENERAL PROVISIONS OF A PROCEDURAL NATURE

PART 1. GENERAL PROVISIONS

CHAPTER 1. RULES OF PRACTICE

§ 1000. General rules of practice

1000. Except to the extent that this code provides applicable rules, the rules of practice applicable to civil actions apply to and constitute the rules of practice in proceedings under this code.

Comment. Section 1000 replaces the first through the fourth sentences of former Section 1280 and the first paragraph of former Section 1283. This section provides a default rule that applies in circumstances where there is no special rule applicable in probate proceedings. For example, the general rules of practice apply to discovery, trials, new trials, appeals, and other matters of procedure. General rules of the Code of Civil Procedure do not apply, however, where this code provides a special rule. For example, jury trials are strictly limited in proceedings under this code. See Sections 1452 (jury trials in guardianship and conservatorship proceedings), 7200 (jury trials in estate administration), 17006 (jury trials in trust administration). The right to make a motion for a new trial in proceedings for administration of a decedent's estate is limited in Section 7220. The right to appeal in decedent estate administration is limited to the orders set out in Section 7240. Many other limitations are provided in this chapter and in other provisions throughout this code. This general rule is also subject to the rulemaking power of the courts. See Section 1001.

§ 1001. Judicial Council and local court rules

1001. (a) The Judicial Council may provide by rule for the practice and procedure under this code. Unless disapproved by the Judicial Council, a court may provide by local rule for the practice and procedure under this code. Judicial Council and local court rules shall be consistent with the applicable statutes.

(b) The Judicial Council may prescribe the form of the applications, notices, orders, and other documents required by this code. Any such form prescribed by the Judicial Council is deemed to comply with this code.

Comment. Section 1001 is consistent with the fourth paragraph of Section 6 of Article 6 of the California Constitution and with Government Code Section 68511. *Cf.* Section 1456 (guardianship and conservatorship).

§ 1002. Costs

1002. Unless it is otherwise provided by this code or by rules adopted by the Judicial Council, either the superior court or the court on appeal may, in its discretion, order costs to be paid by any party to the proceedings, or out of the assets of the estate, as justice may require.

Comment. Section 1002 restates former Section 1282 without substantive change. For special provisions relating to costs, see, e.g., Sections 383 (costs in probate revocation), 1002 (costs on preliminary distribution), 6544 (costs of proceedings for family allowance), 9255 (costs where creditor contests amount of allowed claim), 9257 (disallowed creditor's claim by representative), 9653 (costs in action to recover fraudulently conveyed property). See also Code Civ. Proc. § 1026 (costs in actions involving fiduciary estate).

§ 1003. Appointment of guardian ad litem

1003. (a) The court may, on its own motion or on request of a personal representative, guardian, conservator, trustee, or other interested person, appoint a guardian ad litem at any stage of a proceeding to represent the interest of any of the following persons, if the court determines that representation of the interest otherwise would be inadequate:

- (1) A minor.
- (2) An incapacitated person.
- (3) An unborn person.
- (4) An unascertained person.
- (5) A person whose identity or address is unknown.
- (6) A designated class of persons who are not ascertained or are not in being.

(b) If not precluded by a conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.

(c) The reasonable expenses of the guardian ad litem, including compensation and attorney's fees, shall be determined by the court and paid as the court orders, either out of the property of the estate involved or by the petitioner.

Comment. Section 1003 is a new provision that generalizes former Section 17208 (guardian ad litem in trust proceedings). Section 1003 is also comparable to Section 1-403(4) of the Uniform Probate Code (1982). The general provisions for appointment of a guardian ad litem in Code of Civil Procedure Sections 372-373.5 do not apply to the appointment of a guardian ad litem under this code. See Section 1000 (general rules of civil practice apply unless this code provides a different rule). A guardian ad litem may be appointed in situations where a guardian or conservator has already been appointed, if the need for a guardian ad litem exists. See Section 1455 (guardianship and conservatorship law does not limit authority to appoint guardian ad litem). This section is not intended to limit any power the court may have to appoint an attorney to represent the interests of an incapacitated person. If a beneficiary has an interest in only part of an estate, the court may not charge expenses to the whole estate, but only to the beneficiary's interest. See *Estate of Corotto*, 125 Cal. App. 2d 314, 325, 270 P.2d 498 (1954).

CROSS-REFERENCES

Definitions

Interested person § 48

Person § 56

§ 1004. Lis pendens

1004. If a proceeding affects the title to or the right of possession of real property, notice of the pendency of the proceeding may be filed under Section 409 of the Code of Civil Procedure.

Comment. Section 1004 is a new provision that generalizes former Sections 2523 (guardianship and conservatorship) and 9863 (claims of title in estate administration). Section 1004 does not refer to proceedings that "concern" title or the right of possession of real property, as does Code of Civil Procedure Section 409, and thus provides a more restrictive rule than would otherwise apply through the incorporation provision of Section

1000. Other provisions of the Code of Civil Procedure applicable to *lis pendens* apply under this code by virtue of Section 1000 (general rules of practice). See, e.g., Code Civ. Proc. § 409.1 (expunging *lis pendens*).

CROSS-REFERENCES

Definitions

Real property § 68

CHAPTER 2. PETITIONS AND OTHER PAPERS**§ 1020. Petitions, reports, accounts**

1020. Except as provided in Section 1023, a petition, objection, response, report, or account shall be in writing, signed by all of the petitioners, objectors, or respondents, or by all of the persons making the report or account, and filed with the court clerk.

Comment. Section 1020 generalizes several former provisions. See, e.g., former Sections 380 (will contest after probate), 440 (petition for letters of administration), 522 (removal of personal representative), 921 (filing of verified account), 1025.5 (report of status of administration). The introductory clause recognizes that the attorney for a nonfiduciary may sign a petition, objection, or response under certain circumstances. See Section 1023. See also Section 9630 (authority of joint personal representatives to act).

§ 1021. Verification required

1021. (a) All of the following shall be verified:

- (1) A petition, report, or account filed under this code.
- (2) An objection or response filed under this code to a petition, report, or account.

(b) Except as provided in Section 1023, the verification shall be made as follows:

(1) A petition shall be verified by the petitioner or, if there are two or more parties joining in the petition, by any of them.

(2) A report or account shall be verified by the person who has the duty to make the report or account or, if there are two or more persons having a duty to make the report or account, by any of them.

(3) An objection or response shall be verified by the objector or respondent or, if there are two or more parties joining in the objection or response, by any of them.

Comment. Section 1021 restates former Section 1284 without substantive change. Subdivision (a) is comparable to Sections 1450 (guardianship and conservatorship law) and 17201(a) (trust law).

Subdivision (b) restates former Section 1284(b) without substantive change. In the case of a corporate fiduciary, a responsible person, such as a corporate officer, should verify a report or account.

For an exception to the verification requirement, see Section 10953 (account where personal representative dies or becomes incompetent).

§ 1022. Affidavit or verified petition as evidence

1022. An affidavit or verified petition shall be received as evidence when offered in an uncontested proceeding under this code.

Comment. Section 1022 generalizes the first sentence of the second paragraph of former Section 1283. The declaration of an attorney is admissible as an affidavit under this section. Proceedings under this code include proceedings relating to the administration of estates of decedents and proceedings relating to the administration of estates of persons for whom a guardian or conservator has been appointed. See also Code Civ. Proc. § 2009 (affidavit may be used to establish record of birth).

§ 1023. Signing and verification by attorney

1023. If a petitioner, objector, or respondent is absent from the county or for some other cause is unable to sign or verify a petition, objection, or response, the person's attorney may do either or both of the following:

(a) Sign the petition, response, or objection, if the petitioner, objector, or respondent is not a fiduciary.

(b) Verify the petition, objection, or response.

Comment. Section 1023 provides exceptions to the general rules applicable to signing and verification under Sections 1020 and 1021. Subdivision (a) is a new provision that permits the attorney of a person who is not a personal representative, trustee, guardian, or conservator to sign a petition, response, or objection

in place of the person who would otherwise be required to sign under Section 1020.

Subdivision (b) permits verification by a party's attorney in limited circumstances. This provision is drawn in part from Code of Civil Procedure Section 446, but provides a different rule governing the situations where an attorney may make a verification in place of a party. The manner of verification, however, is governed by Code of Civil Procedure Section 446.

CROSS-REFERENCES

Definitions

Fiduciary § 39

CHAPTER 3. HEARINGS AND ORDERS

§ 1040. General hearing procedure

1040. The provisions of this chapter govern the hearing of all matters under this code, except where the statute that provides for the hearing of the matter prescribes a different procedure.

Comment. Section 1040 is new. It is intended to simplify the procedural statutes of this code and eliminate duplication and unnecessary variances by prescribing a uniform hearing procedure.

§ 1041. Clerk to set matters for hearing

1041. When a petition, report, account, or other matter that requires a hearing is filed with the court clerk, the clerk shall set the matter for hearing.

Comment. Section 1041 restates former Section 1285 without substantive change.

§ 1042. Notice of hearing

1042. A hearing under this code shall be on notice unless the statute that provides for the hearing dispenses with notice.

Comment. Section 1042 is new. For provisions permitting *ex parte* hearings, see, e.g., Sections 203 (proceedings to establish fact of death), 8541 (procedure for appointment of special administrator), 9735 (purchase of securities or commodities sold short), 10200 (sale or surrender for redemption or conversion of securities). See also Section 1220(f) (mailed notice dispensed with for good cause).

§ 1043. Response or objection

1043. (a) An interested person may appear and make a response or objection in writing at or before the hearing.

(b) An interested person may appear and make a response or objection orally at the hearing. The court in its discretion shall either hear and determine the response or objection at the hearing, or grant a continuance for the purpose of allowing a response or objection to be made in writing.

(c) A request for a continuance for the purpose of making a written response or objection shall not itself be considered as a response or objection, nor shall the failure to make a response or objection during the time allowed be considered as a response or objection.

Comment. Section 1043 supersedes a number of former provisions. See, e.g, former Sections 370 (written grounds of opposition to probate of will), 442 (opposition to petition for administration), 927 (written exceptions to account), 1041 (written objection to delivery of estate of nonresident). Section 1043 does not apply where a particular statute provides a different procedure. See Section 1040.

Subdivision (c) is a new provision. In the context of a will contest, this provision means that a potential contestant is not deemed to have contested the will merely because of a request for a continuance for the purpose of determining whether to contest the will.

§ 1044. Plaintiff and defendant

1044. The petitioner or other party affirming is the plaintiff and the party objecting or responding is the defendant.

Comment. Section 1044 restates the second sentence of former Section 1280 without substantive change.

§ 1045. Continuance or postponement

1045. The court may continue or postpone any hearing, from time to time, in the interest of justice.

Comment. Section 1045 continues former Section 1286 without change.

§ 1046. Hearing and order

1046. The court shall hear and determine any matter at issue and any response or objection presented, consider evidence presented, and make appropriate orders.

Comment. Section 1046 restates former Section 1287 without substantive change. The reference to consideration of evidence generalizes part of former Section 1103.

§ 1047. Recital of jurisdictional facts unnecessary

1047. Except as otherwise provided in this code, an order made in a proceeding under this code need not recite the existence of facts, or the performance of acts, upon which jurisdiction depends, but need only contain the matters ordered.

Comment. Section 1047 restates former Section 1290 without substantive change. For an exception to this section, see Section 8006 (jurisdictional facts in court order opening probate).

§ 1048. Entry and filing

1048. (a) Except as provided in subdivision (b), orders shall be either entered at length in the minute book of the court or signed by the judge and filed.

(b) An order for distribution shall be entered at length in a judgment book or other permanent record of the court.

Comment. Section 1048 restates former Section 1291 and part of the fourth sentence of former Section 1280 without substantive change.

§ 1049. Enforcement of order

1049. An order may be enforced as provided in Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure.

Comment. Section 1049 restates part of the last sentence of former Section 1280 without substantive change. It elaborates one aspect of Section 1000 (general rules of practice govern).

§ 1050. Judgment roll

1050. The judgment roll in a proceeding under this code consists of the following papers, where applicable:

(a) In all cases:

(1) The petition, application, contest, report, or account that initiates a particular proceeding.

(2) Any order directing notice of the hearing to be given.

(3) Any notice of the hearing, and any order to show cause made in the proceeding, with the affidavits showing publication, posting, or mailing of the notice or order as may be required by law or court order.

(4) Any citation, in case no answer or written opposition is filed by a party entitled, by law or court order, to notice of the proceeding by citation, with the affidavit or proof of service and, if service of the citation is made by publication, the affidavit of publication and the order directing publication.

(5) Any finding of the court or referee in the proceeding.

(6) The order or statement of decision made in the proceeding.

(7) Any letters of the personal representative.

(b) If an answer, demurrer, written opposition, or counter petition is filed in a proceeding:

(1) Pleadings and papers in the nature of pleadings.

(2) Any orders striking out a pleading in whole or in part.

(3) Any order made on demurrer, or relating to a change of parties, in the proceeding.

(4) The verdict of the jury, if any.

(c) If the proceeding is for the probate of a will, the will.

(d) If the proceeding is a contest of a will, for the revocation of the probate of a will, or for a preliminary or final distribution of property under a will:

(1) The will.

(2) The order admitting the will to probate.

(e) If the proceeding is for the settlement of the final account of a personal representative or for final distribution of property in an estate, the affidavit showing publication of notice to creditors.

Comment. Section 1050 restates former Section 1299 without substantive change. However, the former provision stating that the papers constituting the judgment roll need not be attached together is omitted as unnecessary. The reference to the statement of decision in subdivision (a) (6) is new. The reference in subdivision (d) to partial and ratable distributions has been replaced by a reference to preliminary distributions.

CROSS-REFERENCES

Appealable orders

Decedent's estate administration § 7240
 Guardianship and conservatorship § 2750
 Insurance or employee benefit trust § 6327
 Trust administration § 17207

Definitions

Letters § 52
 Personal representative § 58
 Will § 88

DIVISION 7. ADMINISTRATION OF ESTATES OF DECEDENTS

PART 1. GENERAL PROVISIONS

CHAPTER 1. PASSAGE OF DECEDENT'S PROPERTY

§ 7000. Passage of decedent's property

7000. Subject to Section 7001, title to a decedent's property passes on the decedent's death to the person to whom it is devised in the decedent's last will or, in the absence of such a devise, to the decedent's heirs as prescribed in the laws governing intestate succession.

Comment. Section 7000 restates the first part of former Section 300 without substantive change. The decedent's heirs are determined as provided in Part 2 (commencing with Section 6400) of Division 6 (intestate succession). The rule stated in Section 7000 is subject to limitations. See Section 7001 and the Comment thereto.

CROSS-REFERENCES

Definitions

Devise § 32
 Heirs § 44
 Person § 56
 Property § 62
 Will § 88

§ 7001. Limitations on passage of decedent's property

7001. The decedent's property is subject to administration under this code, except as otherwise provided by law, and is subject to the rights of beneficiaries, creditors, and other persons as provided by law.

Comment. Section 7001 restates the last part of former Section 300 without substantive change. Administration of the decedent's estate includes possession by the personal representative, control by the court, sale and other disposition of the property, charges of administration, and payment of debts and family allowance. The requirement of administration is subject to exceptions. See, e.g., Sections 160 (contract rights), 5100-5407 (multiple party accounts), 13000-13660 (disposition without administration), 15000-18201 (trusts), and the law governing joint tenancy. For provisions relating to the rights of beneficiaries, creditors, and others, see, e.g., Sections 100-105 (effect of death of married person on community and quasi-community property), 260-295 (disclaimers), 6146-6147 (lapsed gifts), 6510-11 (exempt property), 6520-6528 (probate homestead), 6540-6545 (family allowance), 6560-6573 (omitted spouse and children), 6600-6615 (small estate set-aside), 21400-21406 (abatement).

CROSS-REFERENCES

Definitions
Beneficiary § 24
Property § 62

CHAPTER 2. JURISDICTION AND COURTS

Article 1. Jurisdiction and Venue

§ 7050. Jurisdiction and authority of court or judge

7050. (a) The superior court has jurisdiction of proceedings under this code concerning the administration of the decedent's estate.

(b) The court in proceedings under this division is a court of general jurisdiction and the court, or a judge of the court, has the same power and authority with respect to the proceedings as otherwise provided by law for a superior court, or a judge of the superior court, including but not limited to the matters authorized by Section 128 of the Code of Civil Procedure.

Comment. Subdivision (a) of Section 7050 restates a provision of former Section 300 and the introductory part of former Section 301 without substantive change. Subdivision (a) is comparable to Section 2200 (jurisdiction of guardianship and conservatorship proceedings). Proceedings concerning administration of a decedent's estate include the probate of wills (Sections 8200-8273), appointment of personal representatives (Sections 8400-8577), and estate management (Sections 9600-10382). Where appropriate, the reference to the superior court in subdivision (a) means the department or judge of the court that deals with probate matters.

Subdivision (b) expands a provision of former Section 321 (the judge may make and issue all necessary orders and writs to enforce the production of wills and the attendance of witnesses) and abandons the former rule that the superior court "sitting in probate" was a court of limited jurisdiction. See 7 B. Witkin, *Summary of California Law Wills and Probate* §§ 233-34, at 5741-43 (8th ed. 1974). Subdivision (b) makes clear that the probate court, when considering cases brought before it under this division, has all the powers of the superior court exercising its general jurisdiction. Hence, while preserving the division of business among different departments of the superior court, this section rejects the limitation on the powers of the probate court that has been cited in appellate decisions. See, e.g., *Copley v. Copley*, 80 Cal. App. 3d 97, 106, 145 Cal. Rptr. 437 (1978). See also Section 17001 (full-power court under Trust Law).

§ 7051. Venue in case of domiciliary

7051. If the decedent was domiciled in this state at the time of death, the proper county for proceedings concerning administration of the decedent's estate is the county in which the decedent was domiciled, regardless of where the decedent died.

Comment. Section 7051 restates without substantive change the venue provisions of former Section 301 applicable to domiciliaries. The substitution of "domicile" for "residence" codifies existing law. See, e.g., *Estate of Phillips*, 269 Cal. App. 2d 656, 659, 75 Cal. Rptr. 301 (1969); *Estate of Brace*, 180 Cal. App. 2d 797, 802, 4 Cal. Rptr. 683 (1960); *Estate of Glassford*, 114 Cal. App. 2d 181, 186-87, 249 P.2d 908 (1952).

CROSS-REFERENCES

Petition for administration of estate § 8000

§ 7052. Venue in case of nondomiciliary

7052. If the decedent was not domiciled in this state at the time of death, the proper county for proceedings under this division is one of the following:

(a) If property of the nondomiciliary decedent is located in the county in which the nondomiciliary decedent died, the county in which the nondomiciliary decedent died.

(b) If no property of the nondomiciliary decedent is located in the county in which the nondomiciliary decedent died or if the nondomiciliary decedent did not die in this state, any county in which property of the nondomiciliary decedent is located, regardless of where the nondomiciliary decedent died. If property of the nondomiciliary decedent is located in more than one county, the proper county is the county in which a petition for ancillary administration is first filed, and the court in that county has jurisdiction of the administration of the estate.

Comment. Section 7052 restates the nondomiciliary venue provisions of former Section 301 without substantive change. The substitution of “domicile” for “residence” codifies existing law. See the Comment to Section 7051. See also Section 12511 (ancillary administration).

CROSS-REFERENCES

Petition for administration of estate § 8000

Article 2. Disqualification of Judge**§ 7060. Disqualification of judge**

7060. (a) In addition to any other ground provided by law for disqualification of a judge, a judge is disqualified from acting under this division, except to order the transfer of a proceeding as provided in Article 3 (commencing with Section 7070), in any of the following cases:

- (1) The judge is interested as a beneficiary or creditor.
- (2) The judge is named as executor or trustee in the will.
- (3) The judge is otherwise interested.

(b) A judge who participates in any manner in the drafting or execution of a will, including acting as a witness to the will, is disqualified from acting in any proceeding

prior to and including the admission of the will to probate or in any proceeding involving its validity or interpretation.

Comment. Section 7060 restates the first paragraph of former Section 303 without substantive change. For general provisions on disqualification, see Code Civ. Proc. §§ 170-170.8.

CROSS-REFERENCES

Definitions

Beneficiary § 24

Article 3. Transfer of Proceedings

§ 7070. Grounds for transfer

7070. The court or judge shall order a proceeding under this division transferred to another county if there is no judge of the court in which the proceeding is pending who is qualified to act. This section does not apply if a judge qualified to act is assigned by the chairman of the Judicial Council to sit in the county and hear the proceeding.

Comment. Section 7070 restates part of the second paragraph of former Section 303 without substantive change. Transfer of a proceeding under this article is in the same manner and with the same effect as transfer of actions and proceedings under the Code of Civil Procedure. See Section 1000 (general rules of practice govern); Code Civ. Proc. § 399 (transmittal of papers; jurisdiction of receiving court). These provisions supersede parts of former Sections 303 and 305.

§ 7071. Place of transfer

7071. Transfer of a proceeding under this article shall be to another county in which property of the decedent is located or, if there is no other county in which property of the decedent is located, to an adjoining county.

Comment. Section 7071 is new. The provision for transfer to an adjoining county continues a provision of the second paragraph of former Section 303.

§ 7072. Retransfer

7072. Upon petition of an interested person before the administration of the estate is closed, a proceeding transferred under this article may be retransferred to the

court in which the proceeding was originally commenced if the court determines that both of the following conditions are satisfied:

(a) Another person has become judge of the court where the proceeding was originally commenced who is not disqualified to act in the administration of the estate.

(b) The convenience of the parties interested would be promoted by the retransfer.

Comment. Section 7072 restates part of former Section 305 without substantive change.

CROSS-REFERENCES

Definition

Interested person § 48

CHAPTER 3. RULES OF PROCEDURE

Article 1. Trial by Jury

§ 7200. Trial by jury

7200. Except as otherwise expressly provided in this division, there is no right to a jury trial in proceedings under this division.

Comment. Section 7200 continues the general rule under prior law that there is no right to a jury in probate proceedings unless that right is granted by statute. *Estate of Beach*, 15 Cal. 3d 623, 642, 542 P.2d 994, 125 Cal. Rptr. 570 (1975); *Heiser v. Superior Court*, 88 Cal. App. 3d 276, 278-80, 151 Cal. Rptr. 745 (1979). This section supersedes the third and fourth sentences of former Section 1280 as applicable to estate administration proceedings. See also Sections 1452 (guardianship and conservatorship) and 17006 (trusts).

Article 2. New Trials

§ 7220. New trial

7220. A motion for a new trial may be made only in the following cases:

(a) Contest of a will or revocation of probate of a will.

(b) Cases in which a right to jury trial is expressly granted, whether or not the case was tried by a jury.

Comment. Section 7220 restates former Section 1281 without substantive change. There is no right to a jury trial unless expressly provided by statute. See Section 7200 (trial by jury).

Article 3. Appeals

§ 7240. Appealable orders and refusals to make orders

7240. An appeal may be taken from the making of, or the refusal to make, any of the following orders:

(a) Granting or revoking letters testamentary, letters of administration, or letters of administration with the will annexed, but not letters of special administration or letters of special administration with general powers.

(b) Admitting a will to probate or revoking the probate of a will.

(c) Setting aside a small estate under Section 6609.

(d) Setting apart a probate homestead or property claimed to be exempt from enforcement of a money judgment.

(e) Granting, modifying, or terminating a family allowance.

(f) Directing or authorizing the sale or conveyance or confirming the sale of property.

(g) Directing or authorizing the granting of an option to purchase property.

(h) Adjudicating the merits of a claim under Chapter 11 (commencing with Section 9860) of Part 5 of Division 7.

(i) Allocating debts under Chapter 3 (commencing with Section 11440) of Part 9 of Division 7.

(j) Settling an account of a personal representative.

(k) Instructing or directing a personal representative.

(l) Directing or allowing the payment of a debt, claim, devise, or attorney's fee.

(m) Determining the persons to whom distribution should be made.

(n) Distributing property.

(o) Determining that property passes to, or confirming that property belongs to, the surviving spouse under Section 13656.

(p) Authorizing a personal representative to invest or reinvest surplus money under Section 9732.

Comment. Section 7240 restates former Section 1297 without substantive change, except as follows:

(1) Subdivision (a) codifies the former rules that orders granting or revoking letters of administration with the will annexed are appealable, but that letters of special administration or letters of special administration with general powers are not. See *Estate of Smith*, 175 Cal. App. 2d 803, 805, 1 Cal. Rptr. 46 (1959) (appeal of order appointing public administrator as administrator with the will annexed); *Estate of Hughes*, 77 Cal. App. 3d 899, 901-02, 143 Cal. Rptr. 858 (1978) (order refusing to revoke letters of special administration not appealable); former Sections 461, 465.

(2) Language in subdivision (e) permitting the appeal of an order terminating a family allowance is new.

(3) Subdivision (g) relating to options is not limited to real property options as was former subdivision (g).

(4) Subdivision (o) is not limited to orders determining that property is *community* property passing to the surviving spouse as was former subdivision (o).

(5) The right to appeal from an order relating to determination of heirship is omitted because this procedure is not continued. See the Comment to former Section 1190.

(6) Former subdivision (p) relating to appeals concerning inheritance tax is replaced by Section 7242 (transitional provision).

CROSS-REFERENCES

Definitions

Community property § 28

Devise § 32

Family allowance § 38

Probate homestead § 60

Property § 62

Surviving spouse § 78

Will § 88

Guardian ad litem § 1003

Judgment roll contents § 1050

§ 7241. Stay on appeal

7241. (a) Except as provided in subdivisions (b) and (c), an appeal under Section 7240 stays the operation and effect of the order.

(b) Notwithstanding that an appeal is taken from the order, for the purpose of preventing injury or loss to a person or property, the trial court may direct the exercise of the powers of the personal representative, or may appoint a special administrator to exercise the powers, from time to time, as though no appeal were pending. Acts of the personal representative or special administrator pursuant to the directions of the court made under this subdivision are valid, regardless of the result of the appeal.

(c) An appeal under Section 7240 does not stay the operation and effect of the order if the court requires an undertaking, as provided in Section 917.9 of the Code of Civil Procedure, and the undertaking is not given.

Comment. Section 7241 is new and is drawn from Section 2751 (stay on appeal in guardianship and conservatorship law). Subdivision (a) is consistent with the case-law rule under former law that the appeal of an order appointing a personal representative suspends the powers of the personal representative and stays proceedings in the probate court. See *Estate of Hultin*, 29 Cal. 2d 825, 833, 178 P.2d 756 (1947); *Estate of Gibson*, 233 Cal. App. 2d 125, 127-30, 43 Cal. Rptr. 302 (1965). However, the powers of a personal representative that are not the subject of an appeal are not affected by the appeal and may be exercised as appropriate. See also Code Civ. Proc. § 917.9 (discretion to require undertaking in case of automatic stay); Prob. Code § 9612 (effect of final order).

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 7242. Transitional provision

7242. Notwithstanding the repeal of former Section 1297, an appeal may be taken from an order or the refusal to make an order:

(a) Determining heirship or the persons to whom distribution should be made, pursuant to former Sections 1190 to 1192, inclusive.

(b) Fixing an inheritance tax or determining that none is due.

Comment. Section 7242 provides a rule governing appeals from procedures that are not continued. See the Comment to Section 7240. This section restates subdivisions (m) and (p) of former Section 1297.

Article 4. Orders and Transactions Affecting Property

§ 7260. “Transaction” defined

7260. As used in this article, “transaction” means a transaction affecting title to property in the estate, including but not limited to the following:

(a) In the case of real property, a conveyance (including a sale, option, or order confirming a sale or option), a lease, the creation of a mortgage, deed of trust, or other lien or encumbrance, the setting apart of a probate homestead, or the distribution of property.

(b) In the case of personal property, a transfer of the property or the creation of a security interest or other lien on the property.

Comment. Section 7260 is a new provision drawn from Section 2111(a) (guardianship and conservatorship law). This section is intended to simplify drafting in the other sections of this article.

CROSS-REFERENCES

Definitions

Probate homestead § 60

Property § 62

Real property § 68

§ 7261. Execution of instruments authorized or directed by court order

7261. If a transaction affecting real property in the estate is executed by the personal representative in accordance with the terms of a court order, the instrument shall include a statement that the transaction is made by authority of the order authorizing or directing the transaction and shall give the date of the order.

Comment. Section 7261 is drawn from Section 2111(c) (guardianship and conservatorship law) and is consistent with several provisions in other parts of the code. See Sections 9805

(execution of encumbrance), 9948 (execution of lease), 10314 (conveyance or assignment after confirmation).

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

Real property § 68

Transaction § 7260

§ 7262. Transfer or conveyance of property pursuant to court order

7262. A transaction executed by the personal representative in accordance with an order authorizing or directing the transaction has the same effect as if the decedent were living at the time of the transaction and had carried it out in person while having legal capacity to do so.

Comment. Section 7262 is drawn from Section 2111(d) (guardianship and conservatorship) and is consistent with several provisions in other parts of the code. See also Sections 9806 (effectiveness of encumbrance), 9868 (effectiveness of order in proceedings involving property claimed by another), 9948 (effectiveness of lease), 10314 (conveyance or assignment after confirmation). Whether or not after-acquired title is passed by an instrument executed by the personal representative depends on the terms of the instrument. See generally 3 B. Witkin, *Summary of California Law Real Property* § 86, at 1840, § 160, at 1900-01 (8th ed. 1973).

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

Real property § 68

Transaction § 7260

§ 7263. Recordation of order affecting real property

7263. If an order is made setting apart a probate homestead, confirming a sale or making a distribution of real property, or determining any other matter affecting title to real property in the estate, the personal representative shall record a certified copy of the order in the office of the county recorder in each county in which any portion of the real property is situated.

Comment. Section 7263 restates all but the last clause of former Section 1292 (recordation of order affecting real property) without substantive change. Recordation of an order for distribution of real property has the effect of a receipt by the distributee. See Section 11751 (receipt for distributed property).

CROSS-REFERENCES

Definitions

Personal representative § 58

Probate homestead § 60

Property § 62

Real property § 68

Article 5. United States as Interested Person

§ 7280. United States as interested person

7280. Where compensation, pension, insurance, or other allowance is made or awarded by a department or bureau of the United States government to a decedent's estate, the department or bureau has the same right as an interested person to request special notice, to commence and prosecute an action on the bond of a personal representative, and to file written exceptions to a personal representative's account or contest the account.

Comment. Section 7280 restates former Section 1288 without substantive change. See Section 58 ("personal representative" defined).

CONFORMING REVISIONS AND REPEALS

Enactment of the proposed legislation will require conforming revisions in other statutes, as well as the repeal of existing provisions. A table of the conforming revisions and repeals follows. For the text of the conforming revisions and repeals, refer to the legislation introduced to effectuate this recommendation. For comments to the conforming revisions and repeals, see the Appendix published with this report.

Code Civ. Proc.

153 (amended)
 166 (amended)
 904.1 (amended)
 1025 (amended)

Probate Code

300 (repealed)
 301 (repealed)
 302 (repealed)
 303 (repealed)
 304 (repealed)

Probate Code

305 (repealed)
 719 (repealed)
 1210 (added)
 1280 (repealed)
 1281 (repealed)
 1282 (repealed)
 1283 (repealed)
 1284 (repealed)
 1285 (repealed)
 1286 (repealed)
 1287 (repealed)

Probate Code

1288 (repealed)
 1289 (repealed)
 1290 (repealed)
 1291 (repealed)
 1292 (repealed)
 1293 (repealed)
 1297 (repealed)
 1299 (repealed)
 2523 (repealed)
 9863 (repealed)
 17208 (repealed)

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

relating to

Distribution and Discharge

December 1987

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

(953)

NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

Cite this recommendation as *Recommendation Relating to Distribution and Discharge*, 19 Cal. L. Revision Comm'n Reports 953 (1988).

CALIFORNIA LAW REVISION COMMISSION

4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739
(415) 494-1335

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December 10, 1987

To: The Honorable George Deukmejian
Governor of California
and
The Legislature of California

The California Law Revision Commission is now devoting its time and resources almost exclusively to the study of probate law and procedure. The Commission is preparing a new code to replace the existing Probate Code.

The Commission has decided not to delay submitting all recommendations for the improvement of probate law until work on the new code is completed. This recommendation is one of those which is being submitted for enactment prior to the submission of the entire code.

The recommended legislation replaces the existing provisions governing distribution and discharge (existing Probate Code Sections 956 to 1106). The recommendation preserves the general scheme of existing law, while making numerous procedural and minor substantive improvements for the purpose of simplifying and expediting the distribution and discharge process.

This recommendation is submitted pursuant to Resolution Chapter 37 of the Statutes of 1980.

Respectfully submitted,

Ann E. Stodden
Chairperson

RECOMMENDATION

relating to

DISTRIBUTION AND DISCHARGE

The proposed law generally restates and reorganizes for clarity the existing provisions governing distribution of the decedent's estate and discharge of the personal representative. While the scheme of existing law is largely preserved, the proposed law does make numerous minor or technical improvements that are noted in the Comments following the draft provisions. The more significant substantive changes are discussed below.

Costs of preliminary distribution proceeding. If a beneficiary petitions for preliminary distribution, existing law imposes the cost of the proceeding on the beneficiary.¹ This may be inappropriate, for example, where the beneficiary is forced to make the petition because of undue delay by the personal representative. The proposed law gives the court discretion whether to impose costs on the beneficiary or to apportion them between the beneficiary and the estate, as may be appropriate to the circumstances.

Supplemental account. Even though there is a final order for distribution made on the personal representative's final account, existing law provides for a supplemental account and settlement for receipts and disbursements occurring thereafter.² The proposed law avoids this awkward arrangement by simply providing that the personal representative is responsible for distribution under the court order for final distribution. This includes responsibility for proper disposition of income accruing during the distribution period. The court may supplement

1. Prob. Code § 1002.

2. Prob. Code § 1020.5.

this procedure with instructions or by requiring a supplemental account in an appropriate case. Where the court order fails to deal with after-acquired or after-discovered property, the personal representative may petition for instructions if not yet discharged, or the estate may be reopened.

Determination of persons entitled to distribution. Existing law provides a special procedure for determination of persons entitled to distribution.³ The procedure includes a jury trial and special evidentiary rules. There is nothing so unique about the determination made in such a proceeding that requires rules that differ from the general rules of civil practice that govern all other probate procedures, or that precludes the court from making the determination. The proposed law provides for court determination of persons entitled to distribution and eliminates the special evidentiary rules found in existing law.

Deceased distributee. A special problem occurs where a named distributee of the decedent's property dies before the property is distributed. Ordinarily in that situation the property must be distributed to the deceased distributee's estate for further probate. However, existing law avoids the need for a second probate by allowing direct distribution to the deceased distributee's heirs where the distributee was an unmarried minor who died intestate.⁴ It would also be appropriate to allow direct distribution to the deceased distributee's heirs where the amount to be distributed to the heirs is small and the heirs present an appropriate affidavit under the provisions governing distribution of small estates without administration.⁵ The proposed law implements such a procedure.

Unclaimed property. If personal property ordered distributed remains unclaimed a year after the order, the property may be sold and the proceeds deposited with the county treasury for safekeeping.⁶ The one year delay is

3. Prob. Code §§ 1080-1082.

4. Prob. Code § 1022.

5. Prob. Code §§ 13000 *et seq.*

6. Prob. Code § 1062.

unnecessary; the proposed law allows the personal representative to deposit whenever there is unclaimed property or the whereabouts of a beneficiary are unknown. If the distributee appears to claim the proceeds deposited with the court, existing law requires a court order on noticed hearing even though the claim is routine.⁷ The proposed law enables the order to be made *ex parte*, subject to court requirement of notice in appropriate cases.

Receipt of distributee. Before the personal representative may be discharged the personal representative must show the court that the estate property has been properly distributed.⁸ The proposed law replaces this requirement with a procedure by which the personal representative simply files receipts at or before the time of the petition for discharge.⁹ In the case of real property, a statement of the recording information for the court order for distribution or the personal representative's deed serves as a sufficient receipt.

Discharge procedure. The actual discharge of the personal representative after all estate property has been distributed under court order is a formality. The proposed law expedites the procedure by enabling discharge on *ex parte* application.

The proposed law also eliminates the existing requirement for production of satisfactory vouchers that the personal representative has performed all necessary acts.¹⁰ This requirement is largely ignored in practice. The personal representative's petition includes the same information and must be verified. In addition, the sureties on the bond of the personal representative remain liable.

7. Prob. Code § 1064.

8. Prob. Code § 1066.

9. The court may excuse the filing of a receipt on a showing that the personal representative is unable, after reasonable effort, to obtain a receipt and that the property has been delivered to or is in the possession of the distributee.

10. Prob. Code § 1066.

OUTLINE OF PROPOSED LEGISLATION

PART 10. DISTRIBUTION OF ESTATE

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Article 1. General Provisions

- § 11600. Petition for distribution
- § 11601. Notice of hearing
- § 11602. Opposition to petition
- § 11603. Hearing and order
- § 11604. Distribution to person other than beneficiary
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Article 2. Preliminary Distribution

- § 11620. Time for petition
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CHAPTER 2. DETERMINATION OF PERSONS ENTITLED TO DISTRIBUTION

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- § 11750. Responsibility for distribution
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CHAPTER 5. DEPOSIT WITH COUNTY TREASURER

- § 11850. When deposit with county treasurer authorized
- § 11851. Deposit of money; sale of personal property and deposit of proceeds
- § 11852. Receipt by county treasurer
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CHAPTER 6. DISTRIBUTION TO STATE

- § 11900. Distribution to State of California
- § 11901. Distribution in trust for a class
- § 11902. Disposition of property distributed to state
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CHAPTER 7. PARTITION OR ALLOTMENT OF PROPERTY

- § 11950. Right to partition or allotment
- § 11951. Petition
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PART 11. CLOSING ESTATE ADMINISTRATION**CHAPTER 1. TIME FOR CLOSING ESTATE**

- § 12200. Time required for closing or status report
- § 12201. Report of status of administration
- § 12202. Failure to petition or make report
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- § 12204. Failure of personal representative to comply with order
- § 12205. Sanction for failure to timely close estate
- § 12206. Testamentary limitation of time for administration

CHAPTER 2. DISCHARGE OF PERSONAL REPRESENTATIVE

- § 12250. Order of discharge
- § 12251. Discharge without administration
- § 12252. Administration after discharge

CONFORMING REVISIONS AND REPEALS

PART 10. DISTRIBUTION OF ESTATE

CHAPTER 1. ORDER FOR DISTRIBUTION

Article 1. General Provisions

§ 11600. Petition for distribution

11600. The personal representative or a beneficiary or other interested person may petition the court under this chapter for an order for preliminary or final distribution of the decedent's estate to the persons entitled thereto.

Comment. Section 11600 restates without substantive change a portion of the first sentence of former Section 1000 and a portion of the first paragraph of former Section 1020, with the exception of the reference to distribution of "priorities." For the time and manner prescribed for making a petition, see Sections 11620 (petition for preliminary distribution) and 11640 (petition for final distribution). See also Sections 12200-12206 (time for closing estate).

CROSS-REFERENCES

Definitions

Beneficiary § 24

Interested person § 48

Person § 56

Personal representative § 58

§ 11601. Notice of hearing

11601. (a) Notice of the hearing on the petition shall be given as provided in Section 1220.

(b) In addition to the notice required by subdivision (a), notice of the hearing shall be given as provided in Section 1220 to all of the following persons:

(1) Each known heir whose interest in the estate is affected by the petition.

(2) Each known devisee whose interest in the estate is affected by the petition.

(3) The State of California, if any portion of the estate is to escheat to it and its interest in the estate is affected by the petition.

(4) The State Controller, if property is to be distributed to the state because there are no known beneficiaries or if

property is to be distributed to a beneficiary whose whereabouts are unknown. A copy of the latest account filed with the court shall be served on the State Controller with the notice.

Comment. Paragraphs (1) to (3) of Section 11601(b) restate the third sentence of former Section 1000, the second paragraph of former Section 1020, and the second paragraph of former Section 1027, and supersede former Section 1200.5(12), increasing the notice period from 10 to 15 days. See also Sections 1206 (notice to known heirs or devisees) and 1252 (notice to be given to person requesting special notice).

Paragraph (b)(4) restates the third paragraph of former Section 1027, except that the time of notice is reduced from 30 days to 15.

Notice must be delivered personally or sent by mail. Sections 1215-1216, 1220. See also Sections 1201 (notice not required to be given to oneself or persons joining in petition) and 1285 (clerk to set matter for hearing).

CROSS-REFERENCES

Definitions

- Beneficiary § 24
- Devisee § 34
- Heirs § 44
- Person § 56
- Personal representative § 58
- Property § 62

§ 11602. Opposition to petition

11602. The personal representative or any interested person may oppose the petition.

Comment. Section 11602 restates without substantive change a portion of the last sentence of former Section 1000 and a portion of the first paragraph of former Section 1020.

CROSS-REFERENCES

Definitions

- Interested person § 48
- Personal representative § 58

§ 11603. Hearing and order

11603. (a) If the court determines that the requirements for distribution are satisfied, the court shall order distribution of the decedent's estate, or such portion as the court directs, to the persons entitled thereto.

- (b) The order shall:
- (1) Name the distributees and the share to which each is entitled.
 - (2) Provide that property distributed subject to a limitation or condition, including but not limited to an option granted under Chapter 16 (commencing with Section 9960) of Part 5, is distributed to the distributees subject to the terms of the limitation or condition.

Comment. Section 11603 restates portions of former Sections 584.3(e), 1001, and 1021 without substantive change. For the requirements for distribution, see Sections 11621 (preliminary distribution) and 11640 (final distribution).

§ 11604. Distribution to person other than beneficiary

11604. (a) This section applies where distribution is to be made to any of the following persons:

- (1) The transferee of a beneficiary.
- (2) Any person other than a beneficiary under an agreement, request, or instructions of a beneficiary or the attorney in fact of a beneficiary.

(b) The court on its own motion, or on motion of an interested person or of the public administrator, may inquire into the circumstances surrounding the execution of, and the consideration for, the transfer, agreement, request, or instructions, and the amount of any fees, charges, or consideration paid or agreed to be paid by the beneficiary.

(c) The court may refuse to order distribution or may order distribution on such terms as the court deems just and equitable if the court finds either of the following:

- (1) The fees, charges, or consideration paid or agreed to be paid by a beneficiary are grossly unreasonable.
- (2) The transfer, agreement, request, or instructions were obtained by duress, fraud, or undue influence.

(d) Notice of the hearing on the motion shall be served on the beneficiary and on the persons described in subdivision (a) at least 15 days before the hearing in the manner provided in Section 415.10 or 415.30 of the Code of Civil Procedure, as the court may direct.

Comment. Section 11604 restates former Section 1020.1, increasing the notice from 10 days to 15 and standardizing the manner of notice with other provisions in the code.

CROSS-REFERENCES

Definitions

Beneficiary § 24

Interested person § 48

Person § 56

§ 11605. Conclusiveness of order

11605. When a court order made under this chapter becomes final, the order binds and is conclusive as to the rights of all interested persons.

Comment. Section 11605 restates portions of former Sections 1003, 1021, and 1054. The court may correct clerical errors in orders as entered. Code Civ. Proc. § 473.

CROSS-REFERENCES

Definitions

Interested person § 48

Article 2. Preliminary Distribution**§ 11620. Time for petition**

11620. A petition may be made for an order for preliminary distribution of all or a portion of the share of a decedent's estate to which a beneficiary is entitled when two months have elapsed after letters are first issued to a general personal representative.

Comment. Section 11620 restates a portion of the first sentence of former Section 1000. Distribution of all or a portion of the share to which a beneficiary is entitled includes a payment on account of the share. The petition may be made by the personal representative, a beneficiary, or other interested person. Section 11600 (petition for distribution). If distribution is made before four months have elapsed, the distributee must give a bond in the amount of the distribution. Section 11622(a) (bond). If distribution is made after four months have elapsed, the court may require the distributee to give a bond. See Section 11622(b) (bond).

CROSS-REFERENCES

Definitions

Beneficiary § 24

Letters § 52

Personal representative § 58

§ 11621. Order for distribution

11621. (a) The court shall grant a petition under this article if at the hearing it appears that the distribution may be made without loss to creditors or injury to the estate or any interested person.

(b) The order for distribution shall be stayed until any bond required by the court is filed.

Comment. Section 11621 supersedes a portion of former Section 1001.

CROSS-REFERENCES

Definitions

Interested person § 48

§ 11622. Bond

11622. (a) If the court orders distribution before four months have elapsed after letters are first issued to a general personal representative, the court shall require a bond. The bond shall be in the amount of the distribution.

(b) If the court orders distribution after four months have elapsed after letters are first issued to a general personal representative, the court may require a bond. The bond shall be in the amount the court orders.

(c) Any bond required by the court shall be given by the distributee and filed with the court. The bond shall be conditioned on payment of the distributee's proper share of the debts of the estate, not exceeding the amount distributed.

Comment. Section 11622 supersedes a portion of former Section 1001.

CROSS-REFERENCES

Definitions

Letters § 52

Personal representative § 58

§ 11623. Distribution under Independent Administration of Estates Act

11623. Notwithstanding any other provision of this chapter, if authority is granted to administer the estate

without court supervision under the Independent Administration of Estates Act, Part 6 (commencing with Section 10400):

(a) The personal representative may petition the court for an order for preliminary distribution on notice as provided in Section 1220. Notwithstanding subdivision (f) of Section 1220, the court may not dispense with notice unless the time for filing creditor claims has expired.

(b) The aggregate of all property distributed under this section shall not exceed 50 percent of the net value of the estate. For the purpose of this subdivision, "net value of the estate" means the excess of the value of the property in the estate, as determined by all inventories and appraisals on file with the court, over the total amount of all creditor claims and of all liens and encumbrances recorded or known to the personal representative not included in a creditor claim, excluding any estate tax lien occasioned by the decedent's death.

Comment. Section 11623 supersedes former Section 1004. The court may order reduced notice (Section 1203) as well as prescribe an ex parte hearing in an appropriate case (Section 1220(f)). Subdivision (b) makes clear that the total of all distributions under this section may not exceed 50% of the net value of the estate. The provision of former law relating to dispensing with an account is omitted; an account is not statutorily required for an order of preliminary distribution as it is for an order for final distribution. See Section 10951 (final account). However, the court may not make an order under this section unless it is satisfied from the information presented to it that distribution may be made without loss to creditors or injury to the estate or any interested person. Section 11621 (order for distribution).

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 11624. Costs of proceeding

11624. The costs of a proceeding under this article shall be paid by the distributee or the estate in proportions determined by the court.

Comment. Section 11624 supersedes former Section 1002. Under this section the allocation of costs is left to the court, whether or not the personal representative is the petitioner. One factor in the exercise of the court's discretion could be whether the personal representative was negligent in failing to make prompt distribution, necessitating a petition under this chapter. For expenses of partition, see Section 11955.

Article 3. Final Distribution

§ 11640. Petition and order

11640. (a) When debts have been paid or adequately provided for, or the estate is insolvent, and the estate is in a condition to be closed, a petition shall be made for, and the court shall make, an order for final distribution of the estate.

(b) The court shall hear and determine and include in the order all questions arising under Section 6174 (ademption) or Section 6409 (advancement).

(c) If debts remain unpaid or not adequately provided for or if, for other reasons, the estate is not in a condition to be closed, the administration may continue for a reasonable time, subject to Chapter 1 (commencing with Section 12200) of Part 11 (time for closing estate).

Comment. Subdivision (a) of Section 11640 restates portions of former Section 956 and the first paragraphs of former Sections 1020 and 1027 with the addition of a reference to the insolvency of the estate. The petition may be made by the personal representative, a beneficiary, or other interested person. Section 11600 (petition for distribution).

Subdivision (b) restates a portion of former Section 1054 without substantive change. Unless there has been a waiver of accounts, the estate is not in a condition to be closed until final settlement of the accounts of the personal representative.

Subdivision (c) restates a portion of former Section 956, with the addition of a reference to the provisions governing the time for closing the estate. See Section 12201 (report of status of administration).

§ 11641. Distribution under court order

11641. When an order settling a final account and for final distribution becomes final, the personal representative may immediately distribute the property in the estate to the persons entitled to distribution, without further notice or proceedings.

Comment. Section 11641 supersedes the last portion of the second sentence of former Section 926.

CROSS-REFERENCES

Definitions

Person § 56

Personal representative § 58

Property § 62

§ 11642. After-acquired or after-discovered property

11642. Any property acquired or discovered after the court order for final distribution is made shall be distributed in the following manner:

(a) If the order disposes of the property, distribution shall be made in the manner provided in the order. The court may, in an appropriate case, require a supplemental account and make further instructions relating to the property.

(b) If the order does not dispose of the property, distribution shall be made either (1) in the manner ordered by the court on a petition for instructions or (2) under Section 12252 (administration after discharge), if the personal representative has been discharged.

Comment. Section 11642 supersedes former Section 1020.5 (supplementary account).

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

CHAPTER 2. DETERMINATION OF PERSONS ENTITLED TO DISTRIBUTION

§ 11700. Petition

11700. At any time after letters are first issued to a general personal representative and before an order for final distribution is made, the personal representative, or

any person claiming to be a beneficiary or otherwise entitled to distribution of a share of the estate, may file a petition for a court determination of the persons entitled to distribution of the decedent's estate. The petition shall include a statement of the basis for the petitioner's claim.

Comment. Section 11700 restates the first sentence of former Section 1080, but permits a petition until a final order for distribution is made. That time limit, unlike the time limit of former Section 1080, is jurisdictional. See Section 11704 (hearing); *cf.* 11605 (conclusiveness of order). A special administrator granted the powers, duties, and obligations of a general personal representative may not file a petition under this section if there is a will contest pending.

CROSS-REFERENCES

Definitions

Beneficiary § 24

Letters § 52

Person § 56

Personal representative § 58

§ 11701. Notice of hearing

11701. (a) Notice of the hearing on the petition shall be given as provided in Section 1220.

(b) In addition to the notice required by subdivision (a), notice of the hearing shall be given as provided in Section 1220 to all of the following persons:

(1) Each known heir whose interest in the estate is affected by the petition.

(2) Each known devisee whose interest in the estate is affected by the petition.

(3) The State of California if any portion of the estate is to escheat to it and its interest in the estate is affected by the petition.

Comment. Subdivision (a) of Section 11701 continues the second sentence of former Section 1080 without substantive change. Subdivision (b) supersedes the third sentence of former Section 1080. See also Sections 1206 (notice to known heirs or devisees) and 1252 (notice to be given to person requesting special notice).

Notice must be delivered personally or sent by mail. Sections 1215-1216, 1220. See also Sections 1201 (notice not required to be

given to oneself or persons joining in petition) and 1285 (clerk to set matter for hearing).

CROSS-REFERENCES

Definitions

- Beneficiary § 24
- Devisee § 34
- Heirs § 44
- Person § 56
- Personal representative § 58
- Property § 62

§ 11702. Responsive pleading

11702. (a) Any interested person may appear and, at or before the time of the hearing, file a written statement of the person's interest in the estate. The written statement may be in support of or in opposition to the petition. No other pleadings are necessary and the written statement of each claimant shall be deemed denied by each of the other claimants to the extent the written statements conflict.

(b) If a person fails timely to file a written statement:

(1) The case is at issue notwithstanding the failure and may proceed on the petition and written statements filed by the time of the hearing, and no further pleadings by other persons are necessary.

(2) The person may not participate further in the proceeding for determination of persons entitled to distribution, but the person's interest in the estate is not otherwise affected.

(3) The person is bound by the decision in the proceeding.

Comment. Subdivision (a) of Section 11702 restates the fifth and sixth sentences of former Section 1080 without substantive change, with the clarification that the written statement may be in support of or in opposition to the petition. Subdivision (b) is new and is comparable to Section 8251(c) (will contest).

CROSS-REFERENCES

Definitions

- Interested person § 48
- Person § 56

§ 11703. Attorney General as party

11703. The Attorney General shall be deemed to be a person entitled to distribution of the estate for purposes of this chapter if the estate involves or may involve any of the following:

(a) A charitable trust, other than a charitable trust with a designated trustee that may lawfully accept the trust.

(b) A devise for a charitable purpose without an identified beneficiary.

(c) An escheat to the State of California.

Comment. Section 11703 restates the last sentence of former Section 1080 without substantive change.

CROSS-REFERENCES

Definitions

Beneficiary § 24

Devise § 32

Person § 56

Trust § 82

Trustee § 84

§ 11704. Hearing

11704. (a) The court shall consider all evidence in the proceeding, including any petition filed under Section 11700 and any statement of interest filed under Section 11702. The court shall not hear or consider a petition filed after the time prescribed in Section 11700.

(b) The personal representative may file papers and otherwise participate in the proceeding as a party to assist the court.

Comment. Section 11704 restates without substantive change the second sentence and the first portion of the third sentence of former Section 1081, except that prior court order is not required for participation of the personal representative. The provisions of former Section 1081 for jury trial and special rules of evidence are not continued. The procedure applicable in a proceeding under this chapter is that applicable to civil actions generally. Section 1283 (general rules of practice govern).

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 11705. Court order

11705. (a) The court shall make an order that determines the persons entitled to distribution of the decedent's estate and specifies their shares.

(b) When the court order becomes final it binds and is conclusive as to the rights of all interested persons.

Comment. Subdivision (a) of Section 11705 restates the last portion of the second sentence of former Section 1081 without substantive change. Subdivision (b) restates former Section 1082 without substantive change.

**CHAPTER 3. DISTRIBUTION OF PROPERTY
IN ESTATE****§ 11750. Responsibility for distribution**

11750. (a) The personal representative is responsible for distribution of the property in compliance with the terms of the court order for distribution.

(b) A distributee may demand, sue for, and recover from the personal representative or any person in possession, property to which the distributee is entitled.

(c) A distribution of property made in compliance with the terms of the court order for distribution is valid as to a good faith purchaser of the property for value.

Comment. Subdivision (a) of Section 11750 is new. In the case of a distribution to a trust, the trustee is the distributee. *Cf.* Section 34 ("devisee" defined). With respect to after-discovered or after-acquired property, see Section 11642. Subdivision (b) restates a portion of former Section 1021. Subdivision (c) is new.

CROSS-REFERENCES**Definitions**

Person § 56

Personal representative § 58

Property § 62

§ 11751. Receipt for distributed property

11751. The personal representative shall obtain the receipt of the distributee for property in the estate distributed by the personal representative. In the case of real property, the personal representative shall record the

court order for distribution or the personal representative's deed or both in the county in which the real property is located. Recordation of the order or deed is deemed to be a receipt for the property.

Comment. Section 11751 is new. Failure of the personal representative to record the court order for distribution of real property or the personal representative's deed does not affect title of the distributee. See also Section 1222 (recordation of order affecting title to real property).

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

Real property § 68

§ 11752. Inventory by life tenant

11752. If personal property in the possession of a distributee is subject to possession by the distributee for life only, the personal representative shall demand an inventory of the property from the distributee. On receipt, the personal representative shall file the inventory with the court and deliver a copy to any distributee of the remainder.

Comment. Section 11752 supersedes former Section 1065.

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 11753. Filing receipts and discharge

11753. (a) Distribution in compliance with the court order entitles the personal representative to a full discharge with respect to property included in the order.

(b) The personal representative shall, before or at the time of the petition for discharge, file receipts for all property in the estate. In the case of real property, the personal representative shall file a statement that identifies the date and place or location of the recording and other appropriate recording information for the court order for distribution or the personal representative's deed.

(c) The court may excuse the filing of a receipt on a showing that the personal representative is unable, after reasonable effort, to obtain a receipt and that the property has been delivered to or is in the possession of the distributee.

Comment. Subdivision (a) of Section 11753 restates a portion of former Section 1003, but eliminates the reference to a personal representative “in this state.” For provisions governing discharge of the personal representative, see Section 12250-12252 (discharge of personal representative).

Subdivisions (b) and (c) are new. Recording information under subdivision (b) may include an instrument number and a book and page number where appropriate.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

CHAPTER 4. DECEASED DISTRIBUTE

§ 11801. Distribution despite death of beneficiary

11801. (a) Except as provided in subdivision (b), the share in a decedent’s estate of a beneficiary who survives the decedent but who dies before distribution shall be distributed under this chapter with the same effect as though the distribution were made to the beneficiary while living.

(b) Distribution may not be made under this chapter if the decedent’s will provides that the beneficiary is entitled to take under the will only if the beneficiary survives the date of distribution or other period stated in the will and the beneficiary fails to survive the date of distribution or other period.

Comment. Section 11801 restates the second paragraph of former Section 1023, omitting the reference to an improper distribution being void. A distribution made under court order is valid as to bona fide purchasers for value. See Section 11750 (responsibility for distribution). A provision in a will requiring survival to the date of distribution is satisfied by survival to the date distribution could and should have occurred. Estate of Taylor, 66 Cal. 2d 855, 428 P.2d 301, 59 Cal. Rptr. 437 (1967).

CROSS-REFERENCES

Definitions

Beneficiary § 24

Person § 56

Will § 88

§ 11802. Manner of distribution

11802. (a) Except as otherwise provided in this section, distribution shall be made to the personal representative of the estate of the beneficiary for the purpose of administration in the estate of the beneficiary.

(b) If the beneficiary was issue of the decedent and died intestate while under the age of majority and not having been married, distribution shall be made directly to the heirs of the beneficiary without administration in the estate of the beneficiary.

(c) If a person entitled to the beneficiary's share makes application under Division 8 (commencing with Section 13000) (disposition of estate without administration), distribution shall be made under Division 8.

Comment. Subdivision (a) of Section 11802 restates the first paragraph of former Section 1023 without substantive change. Subdivision (b) restates former Section 1022 without substantive change. Subdivision (c) is new.

CROSS-REFERENCES

Definitions

Beneficiary § 24

Heirs § 44

Person § 56

Personal representative § 58

CHAPTER 5. DEPOSIT WITH COUNTY TREASURER

§ 11850. When deposit with county treasurer authorized

11850. Subject to Section 11851, the personal representative may deposit property to be distributed with the county treasurer of the county in which the proceedings are pending in the name of the distributee in any of the following cases:

(a) The property remains in the possession of the personal representative unclaimed or the whereabouts of the distributee are unknown.

(b) The distributee refuses to accept or give a receipt for the property.

(c) The distributee is a minor or incompetent person who has no guardian, conservator, or other fiduciary to receive the property or person authorized to give a receipt for the property.

(d) For any other reason the property cannot be distributed, and the personal representative desires discharge. Notwithstanding Section 11851, deposit may not be made under this subdivision except on court order.

Comment. Section 11850 supersedes portions of former Sections 1060 and 1062. Section 11850 omits reference to a distributee who resides out of the state. Distribution should be made to the named distributee or any known assignee of the named distributee, regardless of the place of residence of the distributee.

It should be noted that distribution to the county treasurer under this section is permissive. Therefore, the personal representative may make distribution in any other manner that is appropriate. For example, distribution to a minor for whom no guardian has been appointed might be made under the Uniform Transfers to Minors Act (Sections 3905-3906) or other under another appropriate statute.

If the distributee is a nonresident minor or nonresident incompetent person who has a guardian, conservator, or other fiduciary of the estate legally appointed under the law of another jurisdiction, the distribution of the person's share should be made to the fiduciary. *Cf.* former Section 1061.

Money deposited with the county treasurer does not bear interest for the benefit of the distributee. See Gov't Code § 53844 (interest on funds in county treasury credited to general fund of county).

CROSS-REFERENCES

Definitions

Person § 56

Personal representative § 58

Property § 62

§ 11851. Deposit of money; sale of personal property and deposit of proceeds

11851. (a) If property authorized by Section 11850 to be deposited with the county treasurer consists of money, the personal representative may deposit the money.

(b) If property authorized by Section 11850 to be deposited with the county treasurer consists of personal property other than money, the personal representative may not deposit the personal property except on court order. If it appears to the court that sale is for the benefit of interested persons, the court shall order personal property sold, and the proceeds of sale, less expenses of sale allowed by the court, shall be deposited in the county treasury. If it appears to the court that sale is not for the benefit of interested persons, the court shall order personal property deposited with the State Controller, to be held subject to the provisions of Chapter 6 (commencing with Section 11900).

Comment. Section 11851 supersedes portions of former Sections 1060 and 1062.

CROSS-REFERENCES

Definitions

Interested person § 48

Personal representative § 58

§ 11852. Receipt by county treasurer

11852. The county treasurer shall give a receipt for a deposit made under this chapter and is liable on the official bond of the county treasurer for the money deposited. The receipt has the same effect as if executed by the distributee.

Comment. Section 11852 restates the last portions of former Sections 1060 and 1062, except that the provision for a receipt having the effect of a voucher is not continued. Personal property not ordered sold may be deposited with the State Controller. See Section 11851 (deposit of money; sale of personal property and deposit of proceeds).

§ 11853. Copy of order for distribution

11853. If money is deposited or is already on deposit with the county treasurer, the personal representative shall deliver to the county treasurer a certified copy of the order for distribution.

Comment. Section 11853 restates former Section 1060.1 without substantive change and supersedes former Section 1224. Personal property not ordered sold may be deposited with the State Controller. See Section 11851 (deposit of money; sale of personal property and deposit of proceeds).

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 11854. Claim of property deposited in county treasury

11854. (a) A person may claim money on deposit in the county treasury by filing a petition with the court that made the order for distribution. The petition shall show the person's claim or right to the property. The petition shall state the facts required to be stated in a petition filed under Section 1355 of the Code of Civil Procedure. On the filing of the petition, the same proceedings shall be had as are required by that section, except that the hearing shall be ex parte unless the court orders otherwise.

(b) If so ordered by the court, a copy of the petition shall be served on the Attorney General. The Attorney General may answer the petition, at the Attorney General's discretion.

(c) If the court is satisfied of the claimant's right to the property claimed, the court shall make an order establishing the right. On presentation of a certified copy of the order, the county auditor shall draw a warrant on the county treasurer for the amount of money covered by the order.

(d) A claim for money distributed in the estate of a deceased person made after the deposit of the property in the State Treasury is governed by the provisions of Chapter 3 (commencing with Section 1335) of Title 10 of Part 3 of the Code of Civil Procedure.

Comment. Section 11854 restates subdivision (a) of former Section 1064, but omits the provisions relating to property other than money deposited with the county treasurer. Such property may be deposited with the State Controller. See Section 11850 (when deposit with county treasurer authorized). Personal property not ordered sold may be deposited with the State

Controller. See Section 11851 (deposit of money; sale of personal property and deposit of proceeds).

Unlike the former provision, Section 11854 provides for an ex parte order with notice to the Attorney General as the court determines, and substitutes a court order for the certificate of right.

CROSS-REFERENCES

Definitions

Person § 56

Property § 62

Verification required § 1284

CHAPTER 6. DISTRIBUTION TO STATE

§ 11900. Distribution to State of California

11900. (a) The court shall order property that is not ordered distributed to known beneficiaries to be distributed to the state.

(b) Insofar as practicable, any real property or tangible personal property shall be converted to money before distribution to the state.

Comment. Section 11900 restates the last portion of the first paragraph of former Section 1027 without substantive change.

CROSS-REFERENCES

Definitions

Property § 62

Real property § 68

§ 11901. Distribution in trust for a class

11901. If the court orders distribution of property in the decedent's estate to the state, and the order includes words that otherwise create a trust in favor of unknown or unidentified persons as a class, the distribution shall vest in the state both legal and equitable title to the property.

Comment. Section 11901 restates the fourth paragraph of former Section 1027 without substantive change. The title of the state under this section is subject to the right of persons to claim the property as provided in this chapter. See Section 11903 (claims against property distributed to state).

CROSS-REFERENCES

Definitions

Person § 56

Property § 62

Trust § 82

§ 11902. Disposition of property distributed to state

11902. (a) If the court orders distribution to the state, the personal representative shall promptly:

(1) Deliver any money to the State Treasurer.

(2) Deliver any personal property other than money to the State Controller for deposit in the State Treasury.

(3) Cause a certified copy of the order to be recorded in the office of the county recorder of each county in which any real property is situated.

(b) At the time of making a delivery of property or recordation under this section, the personal representative shall deliver to the State Controller a certified copy of the order for distribution together with a statement of the date and place or location of each recording and other appropriate recording information.

Comment. Section 11902 restates without substantive change the fifth and sixth paragraphs of former Section 1027 and former Section 1028.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

Real property § 68

§ 11903. Claims against property distributed to state

11903. (a) Property distributed to the state shall be held by the State Treasurer for a period of five years from the date of the order for distribution, within which time any person may claim the property in the manner provided by Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.

(b) A person who does not claim the property within the time prescribed in this section is forever barred, and the property vests absolutely in the state, subject to the provisions of Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.

Comment. Section 11903 restates the eighth and ninth paragraphs of former Section 1027 without substantive change. It should be noted that under the general claim procedures of the

Code of Civil Procedure, the limitations bar may be tolled as to minors and incompetent persons in some situations. See, e.g., Code Civ. Proc. § 1441.

CROSS-REFERENCES

Definitions

Person § 56

Property § 62

§ 11904. No deposit in county treasury

11904. No deposit of property of an estate shall be made in the county treasury by a personal representative if any other property of the estate is or has been distributed to the state under this chapter, but the property that would otherwise be deposited in the county treasury shall be transmitted promptly to the State Treasurer or State Controller as provided in this chapter.

Comment. Section 11904 restates the seventh paragraph of former Section 1027 without substantive change. See also Section 7642 (general rules governing administration of estates apply to public administrator). Section 11904 is intended for the convenience of the claimant of property in only having to deal with one governmental agency. In the case of deposit of distribution of property to the state, money is delivered to the State Treasurer and personal property is delivered to the State Controller. See Section 11902 (disposition of property distributed to state).

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

CHAPTER 7. PARTITION OR ALLOTMENT OF PROPERTY

§ 11950. Right to partition or allotment

11950. (a) If two or more beneficiaries are entitled to the distribution of undivided interests in property and have not agreed among themselves to a partition, allotment, or other division of the property, any of them, or the personal representative at the request of any of them, may petition the court to make a partition, allotment, or other division of the property that will be equitable and will avoid the distribution of undivided interests.

(b) A proceeding under this chapter is limited to interests in the property that are subject to administration and does not include other interests except to the extent the owners of other interests in the property consent to be bound by the partition, allotment, or other division.

Comment. Section 11950 restates former Section 1100, making clear that the partition may affect only interests in the property that are subject to administration. Both real and personal property are subject to division under this chapter. See Section 62 (“property” defined). It should be noted that partitioned property may not be distributed except under the general provisions for distribution.

CROSS-REFERENCES

Definitions

Beneficiary § 24

Personal representative § 58

Property § 62

§ 11951. Petition

11951. (a) A petition under this chapter may be filed with the clerk at any time before distribution of the affected property has been ordered.

(b) The petition shall:

(1) Describe the property.

(2) State the names of the persons having or claiming undivided interests.

(3) Describe the undivided interests, so far as known to the petitioner.

Comment. Section 11951 restates the first and second sentences of former Section 1101 without substantive change, except that the petition may be filed before the time to make claims has expired.

CROSS-REFERENCES

Definitions

Person § 56

Property § 62

§ 11952. Parties and notice

11952. (a) Notice of the hearing shall be given as provided in Section 1220 to the personal representative and to the persons entitled to distribution of the undivided interests.

(b) At the hearing the persons entitled to distribution of the undivided interests shall be considered the parties to the proceeding whether or not they have appeared or filed a responsive pleading. No one shall be considered as a plaintiff or as a defendant.

(c) Any objection to the jurisdiction of the court shall be made and resolved in the manner prescribed in Chapter 11 (commencing with Section 9860) of Part 5.

Comment. Section 11952 supersedes former Section 1102 and the third, fourth, and fifth sentences of former Section 1101.

CROSS-REFERENCES

Clerk to set matter for hearing § 1285

Definitions

Person § 56

Personal representative § 58

§ 11953. Disposition of property

11953. (a) The court shall partition, allot, and divide the property so that each party receives property of a value proportionate to the party's interest in the whole.

(b) The court may direct the personal representative to sell property when, under the circumstances, sale would be more equitable than partition and when the property cannot conveniently be allotted to any one party. The sale shall be conducted in the same manner as other sales made during administration of an estate.

(c) Any two or more parties may agree to accept undivided interests.

Comment. Section 11953 restates former Section 1103 without substantive change.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 11954. Referees

11954. (a) The court, in its discretion, may appoint one or three referees to partition property capable of being partitioned, if requested to do so by a party. The number of referees appointed must conform to the request of at least one of the parties.

(b) The referees shall have the powers and perform the duties of referees in, and the court shall have the same powers with respect to their report as in, partition actions under Title 10.5 (commencing with Section 872.010) of Part 2 of the Code of Civil Procedure.

Comment. Section 11954 restates former Section 1104 without substantive change.

CROSS-REFERENCES

Definitions

Property § 62

§ 11955. Expenses

11955. The expenses of partition shall be equitably apportioned by the court among the parties, but each party must pay the party's own attorney's fees. The amount charged to each party shall be included and specified in the order and, to the extent unpaid, constitutes a lien on the property allotted to the party.

Comment. Section 11955 restates former Section 1105, with the addition of the requirement that expenses be specified in the order before they may become a lien on the property. Section 11955 is an exception to the general rules stated in Section 11624 (costs of proceeding).

CROSS-REFERENCES

Definitions

Property § 62

§ 11956. Effect of division

11956. (a) The partition, allotment, or other division made by the court shall control on proceedings for distribution, unless modified for good cause on reasonable notice.

(b) The proceedings leading to the partition, allotment, or other division may be reviewed on appeal from the order for distribution.

Comment. Section 11956 restates former Section 1106 without substantive change.

PART 11. CLOSING ESTATE ADMINISTRATION

CHAPTER 1. TIME FOR CLOSING ESTATE

§ 12200. Time required for closing or status report

12200. The personal representative shall either petition for an order for final distribution of the estate or make a report of status of administration not later than the following times:

(a) In an estate for which a federal estate tax return is not required, within one year after the date of issuance of letters.

(b) In an estate for which a federal estate tax return is required, within 18 months after the date of issuance of letters.

Comment. Section 12200 restates the first sentence of former Section 1025.5 without substantive change.

CROSS-REFERENCES

Definitions

Letters § 52

Personal representative § 58

Verification required § 1284

§ 12201. Report of status of administration

12201. If a report of status of administration is made under Section 12200:

(a) The report shall show the condition of the estate, the reasons why the estate cannot be distributed and closed, and an estimate of the time needed to close administration of the estate.

(b) The report shall be filed with the court. Notice of hearing of the report shall be given as provided in Section 1220 to persons then interested in the estate.

(c) On the hearing of the report, the court may order either of the following:

(1) That the administration of the estate continue for the time and on the terms and conditions that appear reasonable, if the court determines that continuation of administration is in the best interests of the estate or of interested persons.

(2) That the personal representative must petition for final distribution.

Comment. Section 12201 restates the second, third, and fourth sentences of former Section 1025.5, with the addition of an estimate of the time needed to close administration. Section 12201 also supersedes a portion of former 956 (“administration may continue for such time as may be reasonable”).

CROSS-REFERENCES

Definitions

Interested person § 48

Personal representative § 58

Verification required § 1284

§ 12202. Failure to petition or make report

12202. (a) If the personal representative does not petition or make a report within the time required by this chapter or prescribed by the court, the court may, on petition of any interested person or on its own motion, cite the personal representative to appear before the court and show the condition of the estate and the reasons why the estate cannot be distributed and closed.

(b) On the hearing of the citation, the court may either order the administration of the estate to continue, as provided in Section 12201, or order the personal representative to petition for final distribution.

Comment. Section 12201 restates the second paragraph of former Section 1025.5 without substantive change.

CROSS-REFERENCES

Citations § 1240 *et seq.*

Definitions

Interested person § 48

Personal representative § 58

§ 12203. Continuation of administration to pay family allowance

12203. (a) For purposes of this chapter, continuation of the administration of the estate in order to pay a family allowance is not in the best interests of the estate or interested persons unless the court determines both of the following:

(1) The family allowance is needed by the recipient to pay for necessities of life, including education so long as pursued to advantage.

(2) The needs of the recipient for continued family allowance outweigh the needs of the decedent's beneficiaries whose interests would be adversely affected by continuing the administration of the estate for this purpose.

(b) Nothing in this section shall be construed to authorize continuation of a family allowance beyond the time prescribed in Section 6543.

(c) Nothing in this section limits the power of the court to order a preliminary distribution of the estate.

Comment. Subdivision (a) of Section 12203 restates former Section 1026 without substantive change. Subdivision (b) makes clear the interrelation between this section and Section 6543 (termination of family allowance). Subdivision (c) is new.

CROSS-REFERENCES

Definitions

Beneficiary § 24

Interested person § 48

§ 12204. Failure of personal representative to comply with order

12204. Failure of the personal representative to comply with an order made under this chapter is grounds for removal from office.

Comment. Section 12204 restates the third paragraph of former Section 1025.5 without substantive change.

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 12205. Sanction for failure to timely close estate

12205. If the time taken for administration of the estate exceeds the time required by this chapter or prescribed by the court, the court may, on the hearing for final distribution or for an allowance on the commissions of the personal representative or on the fees of the attorney, reduce the commissions or fees by an amount the court deems appropriate, regardless of whether the commissions or fees otherwise allowable under the provisions of Sections

901 and 910 would be reasonable compensation for the services rendered, if the court determines that the time taken was within the control of the personal representative or attorney and was not in the best interest of the estate or interested persons. In making a determination under this section, the court shall take into account any action taken under Section 12202 as a result of a previous delay.

Comment. Section 12205 restates the fourth paragraph of former Section 1025.5, with the addition of a direction to the court to consider prior delays in setting sanctions.

CROSS-REFERENCES

Definitions

Interested person § 48

Personal representative § 58

§ 12206. Testamentary limitation of time for administration

12206. A limitation in a will of the time for administration of an estate is directory only and does not limit the power of the personal representative or the court to continue administration of the estate beyond the time limited if the continuation is necessary.

Comment. Section 12206 restates former Section 1025 without substantive change.

CROSS-REFERENCES

Definitions

Personal representative § 58

Will § 88

CHAPTER 2. DISCHARGE OF PERSONAL REPRESENTATIVE

§ 12250. Order of discharge

12250. When the personal representative has complied with the terms of the order for final distribution and has filed the appropriate receipts or the court has excused the filing of a receipt, the court shall, on ex parte petition, make an order discharging the personal representative from all liability incurred thereafter.

Comment. Section 12550 restates former Section 1066, except that the provision for production of vouchers is not continued, and the petition is made ex parte. The estate is fully administered for purposes of this section when all sums of money due from the personal representative have been paid, all property of the estate has been distributed to the persons entitled under court order, and all the acts lawfully required of the personal representative have been performed. As to after-discovered property, see Section 11642 (after-acquired or after-discovered property).

CROSS-REFERENCES

Definitions

Personal representative § 58
Verification required § 1284

§ 12251. Discharge without administration

12251. (a) At any time after appointment of a personal representative and whether or not letters have been issued, if it appears there is no property of any kind belonging to the estate and subject to administration, the personal representative may petition for the termination of further proceedings and for discharge of the personal representative. The petition shall state the facts required by this subdivision.

(b) Notice of the hearing on the petition shall be given as provided in Section 1220 to all interested persons.

(c) If it appears to the satisfaction of the court on the hearing that the facts stated in the petition are true, the court shall make an order terminating the proceeding and discharging the personal representative.

Comment. Section 12251 restates former Section 1068, with the addition of subdivision (b). Proceedings may be taken under this section without the return of an inventory provided for by Part 3 (commencing with Section 8800). See subdivision (a) (“at any time”).

CROSS-REFERENCES

Definitions

Interested person § 48
Letters § 52
Personal representative § 58
Property § 62
Petitions, reports, and accounts § 1020
Verification required § 1284

§ 12252. Administration after discharge

12252. If subsequent administration of an estate is necessary after the personal representative has been discharged because other property is discovered or because it becomes necessary or proper for any cause:

(a) The court shall appoint as personal representative the person entitled to appointment in the same order as is directed in relation to original appointment, except that the person who served as personal representative at the time of the order of discharge has priority.

(b) Notice of hearing of the appointment shall be given as provided in Section 1220 to interested persons. If property has been distributed to the State of California, a copy of any petition for subsequent appointment of a personal representative and the notice of hearing shall be given as provided in Section 1220 to the State Controller.

Comment. Section 12252 restates former Section 1067, conforming the notice provisions to Section 1220. As to after-discovered property, see Section 11642 (after-acquired or after-discovered property).

CROSS-REFERENCES

Definitions

Person § 56

Personal representative § 58

CONFORMING REVISIONS AND REPEALS

Enactment of the proposed legislation will require conforming revisions in other statutes, as well as the repeal of existing provisions. A table of the conforming revisions and repeals follows. For the text of the conforming revisions and repeals, refer to the legislation introduced to effectuate this recommendation. For comments to the conforming revisions and repeals, see the Appendix published with this report.

Probate Code
956 (repealed)
1000 (repealed)
1001 (repealed)
1002 (repealed)
1003 (repealed)
1004 (repealed)
1020 (repealed)
1020.1 (repealed)
1020.5 (repealed)
1021 (repealed)
1022 (repealed)
1023 (repealed)
1024 (repealed)

Probate Code
1025 (repealed)
1025.5 (repealed)
1026 (repealed)
1027 (repealed)
1028 (repealed)
1054 (repealed)
1055 (repealed)
1060 (repealed)
1060.1 (repealed)
1061 (repealed)
1062 (repealed)
1063 (repealed)
1064 (repealed)

Probate Code
1065 (repealed)
1066 (repealed)
1067 (repealed)
1068 (repealed)
1080 (repealed)
1081 (repealed)
1082 (repealed)
1100 (repealed)
1101 (repealed)
1102 (repealed)
1103 (repealed)
1104 (repealed)
1105 (repealed)
1106 (repealed)

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

relating to

Nondomiciliary Decedents

December 1987

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

(993)

NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

Cite this recommendation as *Recommendation Relating to Nondomiciliary Decedents*, 19 Cal. L. Revision Comm'n Reports 993 (1988).

CALIFORNIA LAW REVISION COMMISSION

4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739
(415) 494-1335

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VAUGHN R. WALKER

December 10, 1987

To: The Honorable George Deukmejian
Governor of California
and
The Legislature of California

The California Law Revision Commission is now devoting its time and resources almost exclusively to the study of probate law and procedure. The Commission is preparing a new code to replace the existing Probate Code.

The Commission has decided not to delay submitting all recommendations for the improvement of probate law until work on the new code is completed. This recommendation is one of those which is being submitted for enactment prior to the submission of the entire code.

The recommended legislation replaces the existing provisions governing nondomiciliary decedents (existing Probate Code Sections 360 to 362 and 1040 to 1043a). The recommendation enables the nondomiciliary personal representative to use the small estate affidavit procedure to obtain possession of the decedent's assets located in California, in preference to the more cumbersome publish-and-wait procedure of existing law. The recommendation also gives the nondomiciliary personal representative a priority for appointment in ancillary administration proceedings in California, and makes other

changes to harmonize California law with constitutional full faith and credit standards.

This recommendation is submitted pursuant to Resolution Chapter 37 of the Statutes of 1980.

Respectfully submitted,

Ann E. Stodden

Chairperson

RECOMMENDATION

relating to

NONDOMICILIARY DECEDENTS

Background

Primary administration of a decedent's estate is at the decedent's domicile. If a nondomiciliary decedent leaves property in California, ancillary administration (secondary probate) may be necessary in California to protect local creditors or to transfer title to real property.¹ Ancillary administration is time-consuming and expensive.²

California has a number of procedures that may be used as an alternative to ancillary administration:

(1) Close relatives of the decedent who are entitled to the decedent's personal property under the will or under the intestate succession laws of the decedent's domicile may use California's summary procedure for collection of personal property by affidavit.³

(2) If the decedent's estate is worth \$20,000 or less, the decedent's surviving spouse or minor children may use California's small estate set-aside provisions to collect the decedent's California real and personal property, whether or not there is an inconsistent will.⁴

(3) The decedent's surviving spouse may use California's summary procedure for collecting salary or other compensation due to the decedent for personal services, and for collecting real and property passing to the surviving spouse by will or intestate succession.⁵

1. See Durham, *Ancillary Administration*, in 3 California Decedent Estate Practice §§ 33.3-33.4 (Cal. Cont. Ed. Bar 1987); 2 A. Bowman, Ogden's Revised California Real Property Law § 29.27, at 1449 (Cal. Cont. Ed. Bar 1975).

2. Durham, *supra* note 1, §§ 33.16-33.17.

3. Code §§ 13100-13115; see Durham, *supra* note 1, § 33.17.

4. Prob. Code §§ 6600-6614; see Durham, *supra* note 1, § 33.17.

5. Prob. Code §§ 13600-13606.

(4) The personal representative appointed in the nondomiciliary decedent's domicile ("foreign personal representative") may come into California, collect the decedent's personal property and debts owed to the decedent, and remove the property from California without court proceedings in California, if the following steps are followed: The foreign personal representative publishes a notice to creditors, waits three months for possible objections and, if there are no objections, collects the property by showing proof of appointment and publication and presenting an affidavit of relevant facts.⁶

Recommendations

Recognition of Foreign Administration Proceedings

Existing law treats orders admitting wills to probate in sister states the same as orders in foreign nations.⁷ An order admitting a will to probate in another jurisdiction is recognized in this state if the California court finds (1) that all interested parties were given notice and an opportunity for contest, (2) that the order is final and not subject to revocation, (3) that the order is based on a finding that the decedent was domiciled at death in the other jurisdiction, and (4) that the will was valid according to the law of nondomiciliary decedent's domicile or of California. In general, the first three requirements are conditions to granting full faith and credit to the judgment of a sister state as required by the United States Constitution.⁸ The fourth requirement, which calls for reconsidering the validity of the nondomiciliary decedent's will, however, is not appropriate where a sister state has already determined its validity.

6. Prob. Code § 1043. If a creditor, heir, or devisee objects, this procedure may not be used.

7. Prob. Code § 362.

8. U.S. Const. art. IV, § 1. The constitutional provision applies by its terms only to states, but implementing legislation extends the coverage of the full faith and credit clause to territories and possessions of the United States. 28 U.S.C. § 1738 (1982). See generally 3 B. Witkin, *Summary of California Law Constitutional Law* § 16, at 3260, §§ 19-22, at 3262-66 (8th ed. 1974); E. Scoles & P. Hay, *Conflict of Laws* §§ 22.1-22.4 (1982).

Sister State Domiciliaries. The proposed law grants automatic recognition to a sister state order admitting a nondomiciliary's will to probate, unless an opponent of the will shows one of the following: (1) that the sister state order is not based on a finding that the decedent was domiciled in the sister state at the time of death, (2) that all interested parties were not given notice and an opportunity for contest in the sister state proceedings, or (3) that the determination in the sister state is not final. This approach comports with the substance of the law governing full faith and credit.

Foreign Nation Domiciliaries. The full faith and credit clause does not apply to judgments of foreign nations, but states have typically recognized such judgments on the same grounds as sister state judgments.⁹ This has been the policy of California since 1851.¹⁰ The proposed law retains this aspect of existing law, but also gives the court discretion to deny recognition if the order admitting the will in the foreign nation was made under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law. This discretion is drawn from the statute applicable to recognition of money judgments rendered in foreign nations.¹¹ In the case of a foreign nation order, the burden is on the proponent of the will to show (1) that the decedent was domiciled in the foreign nation, (2) that all interested parties were given notice and an opportunity for contest in the proceedings in the foreign nation, and (3) that the determination in the foreign nation is final.

9. See Smit, *International Res Judicata and Collateral Estoppel in the United States*, 9 UCLA L. Rev. 44, 45-56 (1962); Note, *Recognition of Foreign Country Judgments—A Case for Federalization*, 22 Tex. Int'l L. Rev. 331, 334-42 (1987). Courts in the United States have typically considered the following factors: (1) finality and conclusiveness, (2) jurisdiction, (3) claims of fraud, (4) notice and opportunity to be heard, (5) impartiality of the foreign judicial system, (6) public policy, (7) reciprocity. *Id.* at 336-42.

10. Code Civ. Proc. § 1324, as enacted by 1851 Cal. Stat. ch. 124, § 29.

11. Code Civ. Proc. § 1713.4(a)(1) (Uniform Foreign-Money Judgments Recognition Act). See also Smit, *International Res Judicata and Collateral Estoppel in the United States*, 9 UCLA L. Rev. 44, 46-47 (1962) (suggesting that due process may prevent recognition of a foreign nation judgment in the United States if basic due process standards are not satisfied).

Affidavit Procedure for Collection of Small Estates

The existing summary procedure for collection of accounts in a financial institution by a foreign personal representative requires publication of notice to creditors and beneficiaries and a 30-day wait for objections before the funds may be released.¹² In the case of a small account (an account of \$1,000 or less) the cost of publication is unduly great in relation to the size of the account. In the case of a large account the 30-day wait is unreasonably short when compared with the normal four-month creditor claim period.

The proposed law abandons these procedures in favor of the affidavit procedure for collection of personal property of small estates without administration.¹³ Under this procedure, a sister state personal representative would be able to bring an action to compel the holder of property to pay or deliver it to the sister state personal representative¹⁴ without the need to first petition for ancillary administration. Making this procedure available to the sister state personal representative puts the personal representative on essentially the same footing as a successor under the nondomiciliary decedent's will.¹⁵ The sister state personal representative would not be liable to creditors or other successors, however, if the property collected by affidavit is turned over to the nondomiciliary's estate for administration in the sister state.¹⁶

With the exception of this affidavit procedure, the proposed law retains the rule that a sister state or foreign nation personal representative who wants to bring suit in California to collect debts owed the decedent or other

12. Prob. Code § 1043a.

13. See Prob. Code §§ 13100-13115. For this purpose, the sister state personal representative would be treated in the same manner as a trustee, guardian, or conservator pursuant to Probate Code Section 13051. The procedure would not be available under the proposed law to a foreign nation personal representative.

14. See Prob. Code § 13105. As provided in Section 13105, the sister state personal representative would be entitled to attorney's fees where the holder of property has acted unreasonably in refusing to pay, deliver, or transfer the property.

15. See Prob. Code § 13006 ("successor of the decedent" defined).

16. See Prob. Code §§ 13109 (liability of transferee by affidavit to unsecured creditors), 13110 (liability of transferee to heir or devisee having superior rights).

property of the decedent must first be appointed as a local personal representative in California ancillary proceedings.¹⁷

Other Technical and Substantive Revisions

The proposed law deletes the requirement that the State Controller must consent to removal of the property from California in the case of informal collection of the decedent's personal property.¹⁸ The repeal of the California inheritance tax¹⁹ makes this provision unnecessary.

The proposed law gives a sister state personal representative a priority for appointment as a local personal representative.²⁰ A priority is also given to the nominee of the sister state personal representative. The sister state personal representative or the nominee must still qualify for appointment under relevant provisions.²¹

The proposed law makes clear that a sister state or foreign nation personal representative who does specified acts in California thereby submits to the jurisdiction of the California courts.²² This is consistent with general civil practice.²³

17. Under existing law, a foreign personal representative who has not also been appointed in California ordinarily may not sue in California. Code Civ. Proc. § 1913; 7 B. Witkin, Summary of California Law *Wills and Probate* § 58, at 5581 (8th ed. 1974); 4 B. Witkin, Summary of California Law *Pleading* § 98, at 134 (3d ed. 1985). Appointment of the foreign personal representative in a California ancillary proceeding confers the same powers the personal representative would have in a California domiciliary proceeding. Durham, *supra* note 1, § 33.41. Such powers include the power to maintain actions or proceedings in California. 7 B. Witkin, *supra*, § 337, at 5813; see Prob. Code §§ 573-577.

18. Prob. Code § 1043.

19. Rev. & Tax. Code § 13301.

20. This provision is drawn from Section 3-203 of the Uniform Probate Code (1982). Unlike the UPC provision, the proposed law does not give a priority to foreign nation personal representatives.

21. See Prob. Code § 8400 *et seq.*

22. This provision is drawn from Sections 4-301 and 4-302 of the Uniform Probate Code (1982).

23. Code Civ. Proc. § 410.10.

OUTLINE OF PROPOSED LEGISLATION**PART 13. NONDOMICILIARY DECEDENT****CHAPTER 1. DEFINITIONS**

- § 12500. Application of definitions
- § 12501. Ancillary administration
- § 12502. Foreign nation
- § 12503. Foreign nation personal representative
- § 12504. Local personal representative
- § 12505. Nondomiciliary decedent
- § 12506. Sister state
- § 12507. Sister state personal representative

CHAPTER 2. ANCILLARY ADMINISTRATION PROCEEDINGS**Article 1. Opening Ancillary Administration**

- § 12510. Commencement of proceedings
- § 12511. Venue in case of nondomiciliary decedent
- § 12512. Procedure
- § 12513. Preference for appointment as local personal representative

**Article 2. Probate of Nondomiciliary Decedent's Will
Admitted to Probate in Sister State or Foreign Nation**

- § 12520. Applicable procedure
- § 12521. Petition for probate of nondomiciliary decedent's will
- § 12522. Admission of will admitted to probate in sister state
- § 12523. Admission of will admitted to probate in foreign nation
- § 12524. Effect of admission of nondomiciliary decedent's will

Article 3. Application of General Provisions

- § 12530. Application of general provisions

**Article 4. Distribution of Property to Sister State
Personal Representative**

- § 12540. Conditions for distribution to sister state personal representative
- § 12541. Distribution of real property proceeds
- § 12542. Distribution where estate in sister state is insolvent

**CHAPTER 3. COLLECTION OF PERSONAL PROPERTY OF SMALL
ESTATE BY SISTER STATE PERSONAL REPRESENTATIVE
WITHOUT ANCILLARY ADMINISTRATION**

- § 12570. Collection of personal property of small estate without ancillary administration
- § 12571. Transfer of property to sister state personal representative
- § 12572. Action by sister state personal representative to compel payment, delivery, or transfer
- § 12573. Liability of sister state personal representative taking by affidavit

**CHAPTER 4. JURISDICTION OVER FOREIGN
PERSONAL REPRESENTATIVE**

- § 12590. Jurisdiction by act of foreign personal representative
- § 12591. Jurisdiction by act of decedent

CONFORMING REVISIONS AND REPEALS

DIVISION 7. ADMINISTRATION OF ESTATES OF DECEDENTS

PART 13. NONDOMICILIARY DECEDENT

CHAPTER 1. DEFINITIONS

§ 12500. Application of definitions

12500. Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this part.

Comment. Section 12500 is comparable to Section 20.

§ 12501. Ancillary administration

12501. “Ancillary administration” means proceedings in this state for administration of the estate of a nondomiciliary decedent.

Comment. Section 12501 is new. It is intended for drafting convenience.

CROSS-REFERENCES

Definitions

Nondomiciliary decedent § 12505

§ 12502. Foreign nation

12502. “Foreign nation” means a jurisdiction other than a state of the United States.

Comment. Section 12502 is new. It is intended for drafting convenience. “State” is defined in Section 74 as “any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.” See also 28 U.S.C. § 1738 (1982) (implementing the full faith and credit clause of the U.S. Constitution).

CROSS-REFERENCES

Definitions

State § 74

§ 12503. Foreign nation personal representative

12503. “Foreign nation personal representative” means a personal representative appointed in a jurisdiction other than a state of the United States.

Comment. Section 12503 is new. It is intended for drafting convenience.

CROSS-REFERENCES

Definitions

Personal representative § 58
State § 74

§ 12504. Local personal representative

12504. “Local personal representative” means a nondomiciliary decedent’s personal representative appointed in this state.

Comment. Section 12504 is new. It is intended for drafting convenience.

CROSS-REFERENCES

Definitions

Nondomiciliary decedent § 12505
Personal representative § 58

§ 12505. Nondomiciliary decedent

12505. “Nondomiciliary decedent” means a person who dies domiciled in a sister state or foreign nation.

Comment. Section 12505 is new. It is intended for drafting convenience. The term “nondomiciliary decedent” is not limited to a decedent who dies domiciled in a sister state (defined in Section 12506), but also includes a decedent who dies domiciled in a foreign nation (defined in Section 12502). However, some provisions of this part apply only to nondomiciliary decedents who die domiciled in a sister state. See Sections 12540-12541 (distribution of property to foreign personal representative) and 12570-12572 (collection of personal property of small estate without ancillary administration).

CROSS-REFERENCES

Definitions

Foreign nation § 12502
Sister state § 12506

§ 12506. Sister state

12506. “Sister state” means a state other than this state.

Comment. Section 12506 is new. It is intended for drafting convenience.

CROSS-REFERENCES

Definitions
State § 74

§ 12507. Sister state personal representative

12507. “Sister state personal representative” means a personal representative appointed in a sister state

Comment. Section 12507 is new. It is intended for drafting convenience.

CROSS-REFERENCES

Definitions
Personal representative § 58
Sister state § 12506

CHAPTER 2. ANCILLARY ADMINISTRATION**Article 1. Opening Ancillary Administration****§ 12510. Commencement of proceedings**

12510. Any interested person or a sister state or foreign nation personal representative may commence an ancillary administration proceeding by a petition to the court for either or both of the following:

- (a) Probate of the nondomiciliary decedent’s will.
- (b) Appointment of a local personal representative.

Comment. Section 12510 supersedes former Section 360, and continues part of the first sentence of former Section 361 without substantive change. As used in Section 12510, “interested person” includes the person named as executor in the decedent’s will. See Section 48. For the proper court, see Section 12511 (venue).

CROSS-REFERENCES

Definitions
Ancillary administration § 12501
Interested person § 48
Local personal representative § 12504
Nondomiciliary decedent § 12505
Will § 88

§ 12511. Venue in case of nondomiciliary decedent

12511. The proper county for an ancillary administration proceeding under this chapter is the county determined pursuant to Section 7052.

Comment. Section 12511 incorporates the nondomiciliary venue provision of Section 7052 and restates the last part of former Probate Code Section 360 without substantive change. See also Section 7050 (jurisdiction and authority of court or judge).

CROSS-REFERENCES

Definitions

Ancillary administration § 12501

§ 12512. Procedure

12512. Notice of an ancillary administration proceeding shall be given and, except as provided in Article 2 (commencing with Section 12520), the same proceedings had as in the case of a petition for probate of a will or appointment of a personal representative of a person who dies domiciled in this state.

Comment. Section 12512 restates the last sentence of former Section 361 without substantive change. See also Section 12530 (application of general provisions).

CROSS-REFERENCES

Definitions

Ancillary administration § 12501

Personal representative § 58

Will § 88

§ 12513. Preference for appointment as local personal representative

12513. If the decedent dies while domiciled in a sister state, a personal representative appointed by a court of the decedent's domicile has priority over all other persons except where the decedent's will nominates a different person to be the personal representative in this state. The sister state personal representative may nominate another person as personal representative and the nominee has the same priority as the sister state personal representative.

Comment. Section 12513 is a new provision drawn from Section 3-203 of the Uniform Probate Code (1982). This section

applies only where the nondomiciliary decedent has died while domiciled in a sister state, not where a person was domiciled in a foreign nation. Consequently, only sister state personal representatives, not foreign nation personal representatives, are entitled to the priority provided in this section. Section 12513 deals only with priority; the sister state personal representative must still qualify for appointment pursuant to Section 8400 *et seq.*

CROSS-REFERENCES

Definitions

Personal representative § 58

Sister state § 12506

Sister state personal representative § 12507

Article 2. Probate of Nondomiciliary Decedent's Will Admitted to Probate in Sister State or Foreign Nation

§ 12520. Applicable procedure

12520. (a) If a nondomiciliary decedent's will has been admitted to probate in a sister state or foreign nation and satisfies the requirements of this article, probate of the will in an ancillary administration proceeding is governed by this article.

(b) If a nondomiciliary decedent's will has been admitted to probate in a sister state or foreign nation, but does not satisfy the requirements of this article, the will may be probated in an ancillary administration proceeding pursuant to Part 2 (commencing with Section 8000).

Comment. Subdivision (a) of Section 12520 makes clear that the procedure of this article applies only where a sister state or foreign nation order admitting a will to probate satisfies the requirements of Sections 12522 or 12523. As provided in subdivision (b), the general provisions concerning opening administration apply where the sister state or foreign nation order is not entitled to recognition. See Section 8000 *et seq.* The general provisions also apply in any case where admission has not been sought in the sister state or foreign nation. See also Section 6113 (choice of law as to execution of will).

CROSS-REFERENCES

Definitions

Ancillary administration § 12501

Nondomiciliary decedent § 12505

Will § 88

§ 12521. Petition for probate of nondomiciliary decedent's will

12521. (a) A petition for probate of a nondomiciliary decedent's will under this article shall include both of the following:

(1) The will or an authenticated copy of the will.

(2) An authenticated copy of the order admitting the will to probate in the sister state or foreign nation or other evidence of the establishment or proof of the will in accordance with the law of the sister state or foreign nation.

(b) As used in this section, "authenticated copy" means a copy that satisfies the requirements of Article 2 (commencing with Section 1530) of Chapter 2 of Division 11 of the Evidence Code.

Comment. Section 12521 supersedes part of the first sentence of former Section 361. For the persons who may petition under Section 12521, see Section 12510.

CROSS-REFERENCES

Definitions

Foreign nation § 12502

Nondomiciliary decedent § 12505

Sister state § 12506

Will § 88

§ 12522. Admission of will admitted to probate in sister state

12522. If a will of a nondomiciliary decedent was admitted to probate, or established or proved, in accordance with the laws of a sister state, the court shall admit the will to probate in this state, and may not permit a contest or revocation of probate, unless one or more of the following are shown:

(a) The determination in the sister state is not based on a finding that at the time of death the decedent was domiciled in the sister state.

(b) All interested parties were not given notice and an opportunity for contest in the proceedings in the sister state.

(c) The determination in the sister state is not final.

Comment. Section 12522 supersedes former Section 362 to the extent that it applied to wills admitted to probate in sister states. Section 12522 presumes a sister state order admitting a will to probate to be valid. The burden is on an opponent of the will to show that the order is not entitled to full faith and credit in this state. The provision of former Section 362 that the will must be valid under the law of the testator's domicile at death or under the law of this state is not continued in Section 12522. For rules governing the validity of a will first offered for probate in this state, see Section 6113.

CROSS-REFERENCES

Definitions

Nondomiciliary decedent § 12505

Sister state § 12506

Will § 88

§ 12523. Admission of will admitted to probate in foreign nation

12523. (a) Except as provided in subdivision (b), if a will of a nondomiciliary decedent was admitted to probate, or established or proved, in accordance with the laws of a foreign nation, the court shall admit the will to probate in this state, and may not permit a contest or revocation of probate, if it appears from the order admitting the will to probate in the foreign nation, or otherwise appears, that all of the following conditions are satisfied:

(1) The determination in the foreign nation is based on a finding that at the time of death the decedent was domiciled in the foreign nation.

(2) All interested parties were given notice and an opportunity for contest in the proceedings in the foreign nation.

(3) The determination in the foreign nation is final.

(b) The court may refuse to admit the will, even though it is shown to satisfy the conditions provided in subdivision (a), where the order admitting the will was made under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law.

Comment. Section 12523 supersedes former Section 362 to the extent that it applied to wills admitted to probate in foreign nations. Under subdivision (a), the proponent of the will

admitted in the foreign nation has the burden of showing that the specified conditions are satisfied. The provision of former Section 362 that the will must be valid under the law of the testator's domicile at death or under the law of this state is not continued in Section 12523. For rules governing the validity of a will first offered for probate in this state, see Section 6113.

Subdivision (b) is a new provision drawn from the Uniform Foreign-Money Judgments Recognition Act. See Code Civ. Proc. § 1713.4(a)(1) (recognition of foreign nation money judgments).

CROSS-REFERENCES

Definitions

Foreign nation § 12502

Nondomiciliary decedent § 12505

Will § 88

§ 12524. Effect of admission of nondomiciliary decedent's will

12524. A nondomiciliary decedent's will admitted to probate under this article has the same force and effect as the will of a person who dies while domiciled in this state that is admitted to probate in this state.

Comment. Section 12524 restates part of former Section 362 without substantive change.

CROSS-REFERENCES

Definitions

Nondomiciliary decedent § 12505

Will § 88

Article 3. Application of General Provisions

§ 12530. Application of general provisions

12530. Except to the extent otherwise provided in this chapter, ancillary administration of a decedent's estate is subject to all other provisions of this division, including but not limited to opening estate administration, inventory and appraisal, creditor claims, estate management, independent administration, compensation, accounts, payment of debts, distribution, and closing estate administration.

Comment. Section 12530 makes clear that the general provisions relating to estate administration apply to administration under this chapter, except as otherwise provided. For exceptions, see, e.g., Section 12540 (conditions for distribution to sister state personal representative).

Article 4. Distribution of Property to Sister State Personal Representative

§ 12540. Conditions for distribution to sister state personal representative

12540. (a) If a person dies while domiciled in a sister state, the court in an ancillary administration proceeding may make an order for preliminary or final distribution of all or part of the decedent's personal property in this state to the sister state personal representative if distribution is in the best interest of the estate or interested persons.

(b) The court order shall be made in the manner and pursuant to the procedure provided in, and is subject to the provisions of, Chapter 1 (commencing with Section 11600) of Part 10.

Comment. Section 12540 supersedes parts of former Section 1000, part of the first sentence of former Section 1040, the last sentence of former Section 1041, and former Section 1042. This procedure applies only where the nondomiciliary decedent has died while domiciled in a sister state, not where the decedent died domiciled in a foreign nation. Consequently, distribution may be made to a sister state personal representative under this article, not to a foreign nation personal representative.

Under Section 12540 a petition may be made by the local personal representative, a beneficiary, or other interested person. See Section 11600 (petition for distribution). Notice of the hearing on the petition is given in the manner provided in Section 1220. Any interested person may oppose the petition. See Section 11602 (opposition to petition). Preliminary distribution may not be ordered unless two months have elapsed and distribution may be made without loss to creditors or injury to the estate or any interested person. See Sections 11620 (time for petition) and 11621 (order for distribution). Final distribution may not be ordered unless the estate is in a condition to be closed. See Section 11640 (petition and order). Distribution in

compliance with the court order entitles the local personal representative to a full discharge, and when the order becomes final it is conclusive against all interested persons. Sections 11753 (filing receipts and discharge) and 11605 (conclusiveness of order).

It should be noted that distribution may be made to a sister state personal representative in ancillary administration only upon a court determination that the distribution is in the best interest of the estate or interested persons. In other cases, distribution is made directly to the beneficiaries. See *In re Estate of Hudson*, 63 Cal. 454 (1883); Durham, *Ancillary Administration*, in 3 California Decedent Estate Practice § 33.50 (Cal. Cont. Ed. Bar 1987).

CROSS-REFERENCES

Definitions

- Ancillary administration § 12501
- Interested person § 48
- Nondomiciliary decedent § 12505
- Sister state § 12506
- Sister state personal representative § 12507

§ 12541. Distribution of real property proceeds

12541. If necessary to make distribution pursuant to this article, real property in the nondomiciliary decedent's estate may be sold and the court may order the proceeds to be distributed to the sister state personal representative. The sale shall be made in the same manner as other sales of real property of a decedent.

Comment. Section 12541 supersedes the last part of the first sentence and all of the second sentence of former Section 1040. This section is an exception to the normal rule where distribution is made to the beneficiaries. See Section 12530 (application of general provisions, including distribution rules). Section 12541 broadens the former provisions so that the court may order a sale of real property of the estate in the course of either preliminary or final distribution. This section is not intended to limit authority the sister state personal representative may have under the Independent Administration of Estates Act. See Sections 10400-10600.

CROSS-REFERENCES

Definitions

- Nondomiciliary decedent § 12505
 - Real property § 68
 - Sister state personal representative § 12507
- Sales of real property of decedents generally §§ 10050-10142

§ 12542. Distribution where estate in sister state is insolvent

12542. If the nondomiciliary decedent's estate in the sister state where the decedent was domiciled is insolvent, distribution may be made only to the sister state personal representative and not to the beneficiaries.

Comment. Section 12542 is new.

CROSS-REFERENCES

Definitions

Beneficiary § 24

Nondomiciliary decedent § 12505

Sister state personal representative § 12507

**CHAPTER 3. COLLECTION OF PERSONAL
PROPERTY OF SMALL ESTATE BY SISTER
STATE PERSONAL REPRESENTATIVE
WITHOUT ANCILLARY ADMINISTRATION**

§ 12570. Collection of personal property of small estate without ancillary administration

12570. If a nondomiciliary decedent's property in this state satisfies the requirements of Section 13100, a sister state personal representative may, without petitioning for ancillary administration, use the affidavit procedure provided by Chapter 3 (commencing with Section 13100) of Part 1 of Division 8 to collect personal property of the decedent.

Comment. Section 12570 permits a sister state personal representative to collect personal property of a small estate by using the affidavit procedure set out in Sections 13100-13115. The sister state personal representative is a successor in interest for this purpose. See Section 13051(d). The affidavit procedure for collecting real property (Sections 13200-13209) is not available to the sister state personal representative. However, the beneficiaries may employ the affidavit procedure even though the sister state personal representative may not. Where the estate in California does not qualify for collection under Section 13100 or where real property is involved, the sister state personal representative must use other procedures. This simplified procedure applies where the value of the property in this state does not exceed \$60,000 (as determined pursuant to Sections 13050 and 13100). Transfer to the sister state personal

representative under this procedure results in a transfer for the purposes of administration, whereas the general affidavit procedure results in transfer to the ultimate beneficiaries. This procedure is not available to foreign nation personal representatives. See Section 12507 (“sister state personal representative” defined).

CROSS-REFERENCES

Definitions

Ancillary administration § 12501

Nondomiciliary decedent § 12505

Sister state personal representative § 12507

§ 12571. Transfer of property to sister state personal representative

12571. The effect of payment, delivery, or transfer of personal property to the sister state personal representative pursuant to this chapter, and the effect of failure to do so, are governed by Chapter 3 (commencing with Section 13100) of Part 1 of Division 8.

Comment. Section 12571 makes clear that the rules concerning the effect of compliance with the affidavit procedure or refusal to comply are the same where the procedure is used by a sister state personal representative.

CROSS-REFERENCES

Definitions

Sister state personal representative § 12507

§ 12572. Action by sister state personal representative to compel payment, delivery, or transfer by holder

12572. The sister state personal representative may bring an action against a holder of the decedent’s property, and may be awarded attorney’s fees, as provided in subdivision (b) of Section 13105.

Comment. Section 12572 provides an exception to the general rule that a sister state personal representative may not bring an action in this state. See Code Civ. Proc. § 1913. Where property has been transferred to a successor by affidavit, the sister state personal representative does not have the power to bring an action under Section 13111(d) unless the sister state

personal representative is appointed as the local personal representative in ancillary administration.

CROSS-REFERENCES

Definitions

Holder of the decedent's property § 13002

Sister state personal representative § 12507

§ 12573. Liability of sister state personal representative taking by affidavit

12573. A sister state personal representative who takes property by affidavit under this chapter is not liable as a person to whom payment, delivery, or transfer of the decedent's property is made under Sections 13109 or 13110 to the extent that the sister state personal representative restores the property to the nondomiciliary decedent's estate in the sister state in compliance with Section 13111.

Comment. Section 12573 provides a special rule governing the liability of a sister state personal representative who takes personal property by an affidavit under this chapter. Under this section, the sister state personal representative is liable to creditors under Section 13110 or to heirs or devisees under Section 13111 only if the property collected by affidavit is not put in the estate for purposes of administration in the sister state.

CHAPTER 4. JURISDICTION OVER FOREIGN PERSONAL REPRESENTATIVE

§ 12590. Jurisdiction by act of foreign personal representative

12590. A sister state personal representative or foreign nation personal representative submits personally in a representative capacity to the jurisdiction of the courts of this state in any proceeding relating to the estate by any of the following actions:

(a) Filing a petition for ancillary administration.

(b) Receiving money or other personal property pursuant to Chapter 3 (commencing with Section 12570). Jurisdiction under this subdivision is limited to the amount of money and the value of personal property received.

(c) Doing any act in this state as a personal representative that would have given this state jurisdiction over the personal representative as an individual.

Comment. Section 12590 is new and is drawn from Section 4-301 of the Uniform Probate Code (1982).

CROSS-REFERENCES

Definitions

- Ancillary administration § 12501
- Foreign nation personal representative § 12503
- Personal representative § 58
- Sister state personal representative § 12507

§ 12591. Jurisdiction by act of decedent

12591. A sister state personal representative or foreign nation personal representative is subject to the jurisdiction of the courts of this state in a representative capacity to the same extent that the nondomiciliary decedent was subject to jurisdiction at the time of death.

Comment. Section 12591 is new. It is drawn from Section 4-302 of the Uniform Probate Code (1982) and is consistent with Section 410.10 of the Code of Civil Procedure and with case law. See *Mitsui Manufacturers Bank v. Tucker*, 152 Cal. App. 3d 428, 199 Cal. Rptr. 517 (1984). Nothing in this section excuses a creditor from compliance with any applicable creditor claim requirements in ancillary administration proceedings.

CROSS-REFERENCES

Definitions

- Foreign nation personal representative § 12503
- Nondomiciliary decedent § 12505
- Sister state personal representative § 12507

CONFORMING REVISIONS AND REPEALS

Enactment of the proposed legislation will require conforming revisions in other statutes, as well as the repeal of existing provisions. A table of the conforming revisions and repeals follows. For the text of the conforming revisions and repeals, refer to the legislation introduced to effectuate this recommendation. For comments to the conforming revisions and repeals, see the Appendix published with this report.

Code of Civil Procedure
1913 (amended)

Financial Code
6950 (amended)

Probate Code
301 (repealed)
360 (repealed)
361 (repealed)
362 (repealed)

Probate Code
1000 (repealed)
1040 (repealed)
1041 (repealed)
1042 (repealed)
1043 (repealed)
1043a (repealed)
13006 (amended)
13051 (amended)
13103 (amended)
13111 (amended)
13112 (amended)

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

relating to

Interest and Income During Administration

December 1987

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

(1019)

NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

Cite this recommendation as *Recommendation Relating to Interest and Income During Administration*, 19 Cal. L. Revision Comm'n Reports 1019 (1988).

CALIFORNIA LAW REVISION COMMISSION

4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739
(415) 494-1335

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VAUGHN R. WALKER

December 10, 1987

To: The Honorable George Deukmejian
Governor of California
and
The Legislature of California

The California Law Revision Commission is now devoting its time and resources almost exclusively to the study of probate law and procedure. The Commission is preparing a new code to replace the existing Probate Code.

The Commission has decided not to delay submitting all recommendations for the improvement of probate law until work on the new code is completed. This recommendation is one of those which is being submitted for enactment prior to the submission of the entire code.

The recommended legislation replaces the existing provisions governing interest and income during administration (existing Probate Code Sections 660 to 665). The recommendation limits the time the estate must bear expenses on specifically devised property to one year, reduces the interest rate payable on devised property to a rate more closely approximating market rates, and provides rules for trust distributions parallel to those applicable to estate distributions.

This recommendation is submitted pursuant to Resolution Chapter 37 of the Statutes of 1980.

Respectfully submitted,

Ann E. Stodden
Chairperson

(1021)

RECOMMENDATION

relating to

INTEREST AND INCOME DURING ADMINISTRATION

Expenses on Property Specifically Devised

Under existing law, expenses on specifically devised property during administration are charged first to any income from the property, and then to the residue as an expense of administration,¹ except that if the property is occupied rent free by the devisee, the devisee is charged with the expenses whether or not the property produces income.² The proposed law qualifies this rule by limiting the time such expenses are charged against the estate to one year after the testator's death; any expenses paid out of the estate after one year are a charge against the share of the specific devisee. Payment of expenses out of the estate is done as a convenience for the devisee who may have at the time no way of paying the expenses other than sale of the property. This convenience should not, however, have the effect of impairing the rights of other estate beneficiaries if administration is prolonged beyond a year.

Rate of Interest on Unpaid Devises

Under existing law, the rate of interest on a general pecuniary devise or on an overdue periodic payment is ten percent.³ This rate is higher than the likely return on funds being held by the estate, and therefore imposes an unfair penalty on the estate. The proposed law reduces the interest rate to one percentage point above the minimum rate that would be payable on a Series EE United States

1. McCarroll, 1 California Decedent Estate Supplement § 17.9, at 452 (Cal. Cont. Ed. Bar 1985).

2. Estate of Reichel, 28 Cal. App. 3d 156, 103 Cal. Rptr. 836 (1972).

3. The rate of interest is that payable on a money judgment entered in this state. Prob. Code § 663. The rate of interest on a money judgment is ten percent. Code Civ. Proc. § 685.010.

savings bond purchased one year after the date of the testator's death and held to maturity. The current rate is 5.84 percent.⁴ This formula will maintain the interest rate at a level close to that available to the personal representative in a passbook savings account, but will be sufficiently higher that the personal representative has an inducement to distribute and close the estate.

Interest on Trust Distributions

Although the California Revised Uniform Principal and Income Act is a well-developed scheme for allocating to the income and remainder beneficiaries of the trust interest and income that accrue during trust administration,⁵ the Act fails to address the issue of distributions from the trust. The proposed law parallels the law applicable to probate estate administration: if distribution of a general pecuniary gift from a trust is not made when due, the amount of the distribution accrues interest from the date it is due, except in the case of a distribution due on the death of the settlor, in which case interest begins to run one year after death. In the case of a required distribution of current income, the proposed law makes clear that the income is payable at least annually.⁶

4. This rate is 85% of the average return on five-year Treasury marketable securities rounded to the nearest one-quarter percent. A new rate is fixed every six months and is readily ascertainable. By specifying the rate of interest on savings bonds one year after the date of death, the proposed law uses a date close to the time interest must be computed and avoids having to recalculate interest every six months.

5. Prob. Code §§ 16300-16313.

6. The proposed law omits Probate Code Section 661 ("[i]n case of a bequest of the interest or income of a certain sum or fund, the interest or income accrues from the testator's death"). This omission is not a substantive change. Although the language "a certain sum or fund" is ambiguous, the cases have interpreted it to mean a testamentary trust. See, e.g., *Estate of Petersen*, 92 Cal. App. 2d 677, 682, 207 P.2d 607 (1949). The question of when income from a testamentary trust commences is governed by Probate Code Section 16304(a) (income commences at death if trust instrument is silent).

The question of when an income beneficiary is entitled to income from the trust must be distinguished from the question of when interest on a devise to the trust commences. Under the proposed law as well as existing law (Prob. Code § 663(a)), interest on a pecuniary devise in trust commences one year after death. If the trust is funded entirely by a pecuniary devise, the trust will have no income until either the devise is distributed to the trust or until the trust becomes entitled to interest on the undistributed devise (one year after death). Thus, although the California Revised Uniform Principal and Income Act provides that an income beneficiary is entitled to income from the date of death (Prob. Code § 16304(a)), if the devise is not distributed to the trust during the first year after death, there will be no income during this period for the trust to distribute to the income beneficiary. The proposed law makes this relationship clear.

OUTLINE OF PROPOSED LEGISLATION

DIVISION 7. ADMINISTRATION OF ESTATES OF DECEDENTS

PART 10. DISTRIBUTION OF ESTATE

CHAPTER 8. INTEREST AND INCOME DURING ADMINISTRATION

- § 12000. Application of chapter
- § 12001. Rate of interest
- § 12002. Income and expenses of specific devise
- § 12003. Interest on general pecuniary devise
- § 12004. Interest on annuity
- § 12005. Interest on devise for maintenance
- § 12006. Remaining income to residuary or intestate distributees
- § 12007. Transitional provision

CONFORMING REVISIONS AND REPEALS

DIVISION 7. ADMINISTRATION OF ESTATES OF DECEDENTS

PART 10. DISTRIBUTION OF ESTATE

CHAPTER 8. INTEREST AND INCOME DURING ADMINISTRATION

§ 12000. Application of chapter

12000. The provisions of this chapter apply where the intention of the testator is not indicated by the will.

Comment. Section 12000 restates without substantive change former Section 660 and the introductory clause of former Section 664(a). The language of Section 12000 is drawn from Sections 6140(b) and 6165 (rules of construction of wills).

CROSS-REFERENCES

Definitions

Will § 88

§ 12001. Rate of interest

12001. If interest is payable under this chapter:

(a) The rate of interest is one percentage point greater than the minimum rate that would be payable on a Series EE United States savings bond purchased one year after the date of the decedent's death and held to maturity. If there is no minimum rate payable on a Series EE United States savings bond, the rate of interest is three percentage points less than the legal rate on judgments in effect one year after the date of the decedent's death.

(b) The rate of interest provided in subdivision (a) shall remain fixed at the applicable rate in effect one year after the date of the decedent's death and shall not be recomputed in the event of a change in the applicable rate thereafter.

Comment. Section 12001 supersedes portions of subdivisions (a) and (c) of former Section 663. Under former Section 663, the rate of interest was that payable on a money judgment entered in this state. The rule of Section 12001 applies where the intention of the testator is not indicated by the will. Section 12000 (application of chapter). The minimum rate payable on a Series

EE United States savings bond may be obtained from a financial institution or from the U.S. Savings Bond Division of the Department of Treasury (1-800-U.S.BONDS).

§ 12002. Income and expenses of specific devise

12002. (a) Except as provided in subdivision (b), a specific devise does not bear interest.

(b) A specific devise carries with it income on the devised property from the date of death, less taxes and other expenses attributable to the devised property during administration of the estate.

(c) If income of specifically devised property is not sufficient to pay expenses attributable to the property, including taxes on the property, the deficiency shall be paid out of the estate until the property is distributed to the devisee or the devisee takes possession of or occupies the property, whichever occurs first. To the extent a deficiency paid out of the estate is attributable to the period that commences one year after the testator's death, whether paid during or after expiration of the one year period to which the expense is attributable, the amount paid is a charge against the share of the devisee, and the personal representative has an equitable lien on the specifically devised property as against the devisee in the amount paid.

Comment. Section 12002 is new. Section 12002 applies to specific devises of real and personal property. See Section 32 ("devise" defined). The rule of Section 12002 applies where the intention of the testator is not indicated by the will. Section 12000 (application of chapter).

Subdivision (a) codifies case law. See, e.g., *In re Estate of Daly*, 202 Cal. 284, 287, 260 P. 296 (1927) (stock).

Subdivision (b) codifies case law. See *Estate of McKenzie*, 199 Cal. App. 2d 393, 399-400, 18 Cal. Rptr. 680 (1962) (inheritance from another estate).

The first sentence of subdivision (c) is consistent with *Estate of Reichel*, 28 Cal. App. 3d 156, 103 Cal. Rptr. 836 (1972) (where specifically devised real property produces no income but is occupied rent free by the devisee from testator's death, expenses on the property are chargeable to the devisee). The second sentence of subdivision (c) limits the burden on the estate to the first year after the decedent's death. Expenses paid out by the

estate after the first year are ultimately borne by the distributee of the property. The equitable lien imposed by subdivision (c) is not good against a transferee of the property who gives fair consideration for the property without knowledge of the lien. See generally 1 J. Pomeroy, *Equity Jurisprudence* §§ 165, 171 (4) (5th ed. 1941); *cf.* Section 15685 and the Comment thereto (trustee's lien).

CROSS-REFERENCES

Definitions

Devise § 32

Devisee § 34

Personal representative § 58

Property § 62

§ 12003. Interest on general pecuniary devise

12003. If a general pecuniary devise, including a general pecuniary devise in trust, is not distributed within one year after the testator's death, the devise bears interest thereafter.

Comment. Section 12003 restates former Section 663(a), except that the rate of interest is specified in Section 12001. The rule of Section 12003 applies where the intention of the testator is not indicated by the will. Section 12000 (application of chapter).

CROSS-REFERENCES

Definitions

Devise § 32

Trust § 82

Rate of interest § 12001

§ 12004. Interest on annuity

12004. (a) An annuity commences at the testator's death and shall be paid at the end of the annual, monthly, or other specified period.

(b) If an annuity is not paid at the end of the specified period, it bears interest thereafter, but no interest accrues during the first year after the testator's death.

Comment. Subdivision (a) of Section 12004 restates former Section 663(b) without substantive change.

Subdivision (b) supersedes the portion of former Section 663(c) that related to annuities.

The rule of Section 12004 applies where the intention of the testator is not indicated by the will. Section 12000 (application of chapter).

CROSS-REFERENCES

Rate of interest § 12001

§ 12005. Interest on devise for maintenance

12005. A devisee of a devise for maintenance is entitled to interest on the amount of any unpaid accumulations of the payments held by the personal representative on each anniversary of the testator's death, computed from the date of the anniversary.

Comment. Section 12005 restates the portion of former Section 663(c) that related to devises for maintenance. The rule of Section 12005 applies where the intention of the testator is not indicated by the will. Section 12000 (application of chapter).

CROSS-REFERENCES

Definitions

Devise § 32

Devisee § 34

Personal representative § 58

Rate of interest § 12001

§ 12006. Remaining income to residuary or intestate distributees

12006. (a) Net income received during administration not paid under other provisions of this chapter and not otherwise devised shall be distributed pro rata as income among all distributees who receive either residuary or intestate property. If a distributee takes for life or for a term of years, the pro rata share of income belongs to the tenant for life or for the term of years.

(b) Net income under subdivision (a) includes net income from property sold during administration.

Comment. Section 12006 supersedes former Section 664. The former reference to a distribution to a beneficiary in trust as income to the trust is omitted; this matter is governed by Section 16305(a) (California Revised Uniform Principal and Income Act). The reference to intestate property is new, and recognizes that there may be a partial intestacy in a testate estate. The rule of Section 12006 applies to a person who receives either or both testate and intestate property.

The rule of Section 12006 applies where the intention of the testator is not indicated by the will. Section 12000 (application of chapter).

CROSS-REFERENCES

Definitions

Devise § 32

Property § 62

§ 12007. Transitional provision

12007. This chapter applies only in cases where the decedent died on or after July 1, 1989. In cases where the decedent died before July 1, 1989, the applicable law in effect before July 1, 1989, continues to apply.

CONFORMING REVISIONS AND REPEALS

Enactment of the proposed legislation will require conforming revisions in other statutes, as well as the repeal of existing provisions. A table of the conforming revisions and repeals follows. For the text of the conforming revisions and repeals, refer to the legislation introduced to effectuate this recommendation. For comments to the conforming revisions and repeals, see the Appendix published with this report.

Probate Code
660 (repealed)
661 (repealed)
662 (repealed)
663 (repealed)
664 (repealed)
665 (repealed)

Probate Code
6154 (added)
16304 (amended)
16305 (amended)
16314 (amended)

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Comments to Conforming Revisions
and Repeals

December 1987

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

(1031)

Cite this as *Comments to Conforming Revisions and Repeals*, 19
Cal. L. Revision Comm'n Reports 1031 (1988).

APPENDIX

COMMENTS TO CONFORMING REVISIONS AND REPEALS

Note. This appendix sets out the comments to sections that are revised or repealed in connection with the recommendations included in this publication. The bill introduced at the 1988 session of the Legislature to implement these recommendations should be consulted for the text of the conforming revisions. This appendix also sets out the comments to the provisions in an urgency bill introduced at the 1988 session of the Legislature to make technical and clarifying changes related to the Commission's earlier revisions of the Probate Code.

Civil Code § 63 (amended). Capacity of emancipated minor

Comment. Section 63 is amended to correct a section reference.

Civil Code § 990 (amended). Deceased personality

Comment. Section 990 is amended to conform terminology.

Civil Code § 1086 (amended). Agency listings

Comment. Paragraph (4) of subdivision (e) of Section 1086 is superseded by Civil Code Section 1089.5 (application of article).

Civil Code § 1089.5 (added). Application of article

Comment. Section 1089.5 is added to make clear that Sections 1086-1090 of the Civil Code apply to the placing of a listing under Section 10150 of the Probate Code in a multiple listing service, except that the Civil Code sections are subject to the limitations, conditions, and requirements of the Probate Code provisions relating to sales of property in a decedent's estate.

Civil Code § 2322 (amended). Authority of agent

Comment. Subdivision (c) of Section 2322 is amended to clarify the application of trustees' duties to agents acting under general authority. See Prob. Code §§ 16002 (duty of loyalty),

16004 (duty to avoid conflict of interest), 16005 (duty not to undertake adverse trust), 16009 (duty to keep property separate and identified). This is a nonsubstantive revision intended to make more specific the technical revision implemented in the 1986 legislation that enacted the Trust Law. See 1986 Cal. Stat. ch. 820, § 9. The purpose of this and the earlier amendment is to provide appropriate cross-references to the law that superseded the repealed sections concerning trustees' duties. Neither amendment is intended to change the law relating to the duties of agents.

Civil Code § 2417 (amended). Attorney in fact

Comment. Section 2417 is amended to correct a section reference.

Civil Code § 2467 (technical amendment). Estate transactions

Comment. Paragraph (5) of subdivision (a) of Section 2467 is amended to conform to Probate Code Section 15401(b) which precludes modification or revocation of a trust by an attorney in fact unless the trust instrument expressly so permits.

Code of Civil Procedure § 153 (amended). Documents under seal

Comment. Section 153 is amended to delete the former reference to papers in probate. This provision was unnecessary, since the seal is expressly provided for in the relevant statutes in these cases. See, e.g., Prob. Code §§ 2311 (letters of guardianship or conservatorship), 8405 (letters of personal representative).

Code of Civil Procedure § 166 (amended). Matters in chambers

Comment. Section 166 is amended to provide additional probate matters that may be heard and determined in chambers. The added provisions restate former provisions of the Probate Code without substantive change. See former Prob. Code §§ 460-464 (appointment of special administrator), 613-615 (citation to account), 703, 710-713, 718 (rejection of claim), 921-922 (citation to account), 1020.5 (notice of settlement of supplementary accounts). Section 166 is also amended to change the phrase "at chambers" to "in chambers" in conformity with modern usage.

Code of Civil Procedure § 353 (amended). Death of party before expiration of limitation period

Comment. The part of Section 353(b) that related to commencement of an action to enforce insurance liability is restated in Probate Code Section 551 (statute of limitations) without substantive change. In certain circumstances, a creditor claim in probate proceedings is a prerequisite to bringing an action against a decedent's personal representative. See Prob. Code § 9350.

Code of Civil Procedure § 385 (amended). Disability or death

Comment. The material formerly set out in Section 385(b) is replaced by Probate Code Sections 550-555 (liability of decedent covered by insurance). In certain circumstances, a creditor claim in probate proceedings is a prerequisite to continuing an action against a decedent. See Prob. Code § 9351.

Code of Civil Procedure § 580a (amended). Deficiency judgments

Comment. Section 580a is amended to correct terminology. See Prob. Code §§ 400-453 (probate referees).

Code of Civil Procedure § 904.1 (technical amendment). Appealable judgments and orders of superior court

Comment. Subdivision (j) of Section 904.1 is revised to conform to the terminology of the Probate Code. See Prob. Code § 7240 (appealable orders or refusals to make orders).

Code of Civil Procedure § 1026 (amended). Costs in actions by or against fiduciaries

Comment. Section 1026 is subdivided and amended to cover actions prosecuted or defended by a guardian or a conservator. The former reference to an executor or administrator is replaced by a reference to a personal representative. This is a nonsubstantive change. See Prob. Code § 58 ("personal representative" defined). For provisions governing liability for costs in proceedings under the Probate Code, see Prob. Code § 1002 and the Comment thereto.

Code of Civil Procedure § 1421 (amended). Escheated property

Comment. Section 1421 is amended to correct a section reference and to make other technical changes.

Code of Civil Procedure § 1441 (amended). Escheated property

Comment. Section 1441 is amended to reflect the repeal of Probate Code Section 1144 and its replacement, in part, by Probate Code Section 7663 (distribution of property), which provides for escheat to the county, and to reflect the repeal of Probate Code Section 1027 and its replacement, in part, by Probate Code Section 11900 (distribution to State of California).

Code of Civil Procedure § 1443 (amended). Payment to state

Comment. Section 1443 is amended to reflect the repeal of Probate Code Section 738 and its replacement by Probate Code Section 11428 (deposit for missing creditor), the repeal of Probate Code Section 1027 and its replacement, in part, by Probate Code Section 11900 (distribution to State of California, the repeal of Probate Code Section 1148 and its replacement by Probate Code Section 7643 (deposit with county treasurer), and the repeal of Probate Code Section 1144 and its replacement, in part, by Probate Code Section 7663 (distribution of property), which provides for escheat to the county.

Code of Civil Procedure § 1449 (amended). Presumption of payment or delivery

Comment. Section 1449 is amended to reflect the repeal of Probate Code Section 1147.5 and its replacement by Probate Code Section 7644 (deposit unclaimed in financial institution).

Code of Civil Procedure § 1913 (amended). Sister state judicial records

Comment. Section 1913 is divided into subdivisions and subdivision (b) is amended to recognize that a specific statute may provide for limited authority in California of a sister state personal representative. See Prob. Code §§ 12570-12573 (collection of personal property of small estate without ancillary administration).

Financial Code § 6950 (amended). Payment of nondomiciliary's account to personal representative; tax exemption

Comment. Section 6950 is revised to conform to the procedures and terminology of the Probate Code. See Prob. Code §§ 58 (personal representative), 12502 (foreign nation), 12504 (local personal representative), 12506 (sister state), 12507 (sister state personal representative). The authority of a foreign nation personal representative to collect property under this section has been deleted because a foreign nation personal representative is without power to act in an official capacity in California unless appointed in this state. See Prob. Code § 12520 and the Comment thereto.

**Food & Agricultural Code § 62708.5 (amended).
Producer-handlers**

Comment. Section 62708.5 is amended to delete the reference to the Probate Code definitions of degrees of lineal and collateral consanguinity. The Probate Code no longer includes such definitions, and the meaning of these concepts is well understood.

Government Code § 12598 (amended). Attorney General

Comment. Section 12598 is amended to correct section references.

Government Code § 13944 (amended). Escheated property

Comment. Section 13944 is amended to correct a section reference.

**Government Code § 26827 (amended). Fee for first papers
in probate**

Comment. Subdivision (a) of Section 26827 is revised to clarify the testamentary trust accountings that are subject to this provision. Subdivision (a) is also revised to include petitions under Probate Code Sections 13151 (order determining succession to real property) and 13650 (order determining or confirming property passing or belonging to surviving spouse). Subdivision (a) also recognizes the exception provided in Probate Code Section 13652, which excuses the fee otherwise applicable to a petition under Section 13650 if probate proceedings are already pending.

Subdivision (b) is revised to eliminate language repeated from subdivision (a). The provision relating to fees payable by a public administrator or the Department of Mental Health, formerly in subdivision (b), is generalized in Section 26827.5.

Government Code § 26827.4 (technical amendment). Fee for subsequent papers in probate

Comment. Subdivision (a) (1) of Section 26827.4 is revised to correct a cross-reference to petitions required under the Independent Administration of Estates Act.

Government Code § 26827.5 (added). Payment of fees by public administrator of State Department of Mental Health

Comment. Section 26827.5 is a new provision that generalizes a provision formerly set out in Section 26827(b). This section applies to all filing fees described in Sections 26827 and 26827.4, whereas the former provision appeared to apply only to part of Section 26827. In addition, this section refers to assets under the control of the official.

Government Code § 27430 (added). Creation and termination of office

Comment. Subdivision (a) of Section 27430 restates the first sentence of the first paragraph of former Welfare and Institutions Code Section 8000 without substantive change. Subdivision (b) restates former Welfare and Institutions Code Section 8002 without substantive change.

Government Code § 27431 (added). Appointment of public guardian

Comment. Subdivision (a) of Section 27431 restates the second sentence of the first paragraph of former Welfare and Institutions Code Section 8000 without substantive change. Subdivision (b) restates the second paragraph of former Welfare and Institutions Code Section 8000 without substantive change.

Government Code § 27432 (added). Consolidation of offices of public guardian and public administrator

Comment. Subdivision (a) of Section 27432 restates former Welfare and Institutions Code Section 8001 without substantive change. Subdivision (b) restates former Welfare and Institutions Code Section 8004 without substantive change. Subdivision (c) restates former Welfare and Institutions Code Section 8003 without substantive change.

Government Code § 27433 (added). Termination of authority of public guardian

Comment. The first sentence of Section 27422 restates former Welfare and Institutions Code Section 8005 without substantive change. The second sentence is new; it recognizes that letters may be issued to the office instead of the individual (Section 2922) pursuant to existing practice in some counties.

Government Code § 27434 (added). Official bond

Comment. Section 27434 restates former Welfare and Institutions Code Section 8008 without substantive change. See also Section 2922 (letters, oath, and bond). The public guardian is allowed a bond fee as an expense of administration. Section 2942 (expenses of public guardian).

Government Code § 27435 (added). Advance on expenses of public guardian

Comment. Section 27435 restates former Welfare and Institutions Code Section 8015 without substantive change. To the extent funds of the estate are insufficient for reimbursement under subdivision (a), the expenses advanced remain a county charge.

Government Code § 27436 (added). Public guardian as public representative payee

Comment. Section 27436 restates the third paragraph of former Welfare and Institutions Code Section 8000 without substantive change.

Government Code § 27444 (added). Expiration of term of office

Comment. Section 27444 reverses the rule of former Probate Code Section 1152 that a person acting as public administrator may complete administration of an estate even after termination of his or her tenure in office. The section also recognizes that letters may be issued to the office instead of the individual (Probate Code Section 7621). This codifies existing practice in some counties.

Government Code § 27643 (amended). Attorney for public administrator

Comment. Section 27643 is amended to correct section references.

Government Code § 29616 (repealed). Public administrator's report

Comment. The semiannual report to which former Section 29616 referred was repealed in 1981. See former Probate Code § 1153.

Government Code § 69503 (amended). Court records

Comment. Section 69503 is amended to correct a section reference.

Health & Safety Code § 1289.4 (amended). Long-term health care facilities

Comment. Section 1289.4 is amended to correct a section reference.

Health & Safety Code § 7902 (amended). Notice of hearing

Comment. Section 7902 is amended to correct a section reference.

Insurance Code § 11580.3 (amended). Award to minor

Comment. Section 11580.3 is amended to correct a section reference and make other technical changes.

Labor Code § 100.5 (amended). Preferred claims

Comment. Section 100.5 is amended to correct a section reference.

Military & Veterans Code § 1035.05 (amended). Veterans' Home

Comment. Section 1035.05 is amended to make clear that the Veterans' Home of California is considered a "beneficiary" within the meaning of the Probate Code provisions governing distribution, for proper interpretation of the law. Thus, for example, under Probate Code Section 7663 (distribution of property by public administrator), distribution must be made to the Veterans' Home if appropriate before funds may be delivered to the county treasurer.

Penal Code § 653.5 (repealed). Probate referees

Comment. Former Section 653.5 is not continued. As a result of the repeal of the inheritance tax, the appraisal function in probate proceedings is now limited to purposes other than inheritance taxation and is performed by probate referees. See Prob. Code §§ 8900-8964.

Probate Code § 20 (amended). Application of definitions

Comment. Section 20 is amended to make the definitions of this part applicable to the entire Probate Code except as provided in subdivision (b). This amendment does not make any substantive changes, except that the definitions now apply to the reorganized Division 3 (general provisions of a procedural nature).

Probate Code § 52(amended). Letters

Comment. Section 52 is amended for drafting convenience.

Probate Code § 58 (amended). Personal representative

Comment. Section 58 is amended to correct a section reference.

Probate Code § 260 (Division heading). Disclaimer of testamentary and other instruments

Comment. Division 2.5 (commencing with Section 260) is converted to Part 8 of Division 2 in order to effectuate the reorganization of the Probate Code.

Probate Code § 260 (amended). Definitions

Comment. Section 260 is amended to reflect the reorganization of Division 2.5 as Part 8 of Division 2.

Probate Code § 261 (repealed). “Account” defined

Comment. Former Section 261 duplicated Section 21 (“account” defined). See also Section 20 (application of definitions).

Probate Code § 268 (repealed). “Person” defined

Comment. Former Section 268 duplicated Section 56 (“person” defined). See also Section 20 (application of definitions).

Probate Code § 270 (repealed). “Totten trust account” defined

Comment. Former Section 270 duplicated Section 80 (“Totten trust account” defined). See also Section 20 (application of definitions).

Probate Code § 275 (amended). Authority to disclaim

Comment. Section 275 is amended to reflect the reorganization of Division 2.5 as Part 8 of Division 2.

Probate Code § 280 (amended). Filing of disclaimer

Comment. Section 280 is amended to reflect the reorganization of Division 2.5 as Part 8 of Division 2.

Probate Code § 284 (amended). Waiver of right to disclaim

Comment. Section 284 is amended to reflect the reorganization of Division 2.5 as Part 8 of Division 2.

Probate Code § 287 (amended). Transitional provision

Comment. Section 287 is amended to reflect the reorganization of Division 2.5 as Part 8 of Division 2.

Probate Code § 288 (amended). Disclaimer exclusive

Comment. Section 288 is amended to reflect the reorganization of Division 2.5 as Part 8 of Division 2.

Probate Code § 295 (amended). Effect of federal law

Comment. Section 295 is amended to reflect the reorganization of Division 2.5 as Part 8 of Division 2.

Probate Code § 300 (repealed). Passage of decedent's property

Comment. The first clause of former Section 300 is restated in Section 7000 (passage of decedent's property) without substantive change. See also Sections 32 ("devise" defined), 44 ("heirs" defined), and 62 ("property" defined). The persons who succeed to the decedent's estate are prescribed in the laws governing intestate succession, Part 2 (commencing with Section 6400) of Division 6 of the Probate Code.

The last clause of former Section 300 is restated in Section 7001 (limitations on passage of decedent's property) without substantive change. See the Comment to Section 7001. Administration under the Probate Code includes possession by the personal representative, control by the court, sale and other disposition of the property, charges of administration, and payment of debts and family allowance. See Divisions 6 (commencing with Section 6100) and 7 (commencing with Section 7000) of the Probate Code.

Probate Code § 300 (added). Appointment of trust company

Comment. Section 300 restates former Section 480 without substantive change.

Probate Code § 301 (repealed). Jurisdiction and venue

Comment. The introductory clause of former Section 301 is restated in Section 7050 (jurisdiction) without substantive change. The provision of former Section 301 relating to venue in cases involving domiciliaries is restated in Section 7051 (domiciliary venue) without substantive change. The provisions of former Section 301 relating to venue in cases involving nondomiciliaries are restated without substantive change in Section 7052 (nondomiciliary venue). See the Comment to Section 7052. The substitution of "domicile" for "residence" in Sections 7051-7052 codifies existing law. See the Comment to Section 7051. The reference to "exclusive" jurisdiction in the last clause of former Section 301 is omitted as surplus. See Section 7052(b).

Probate Code § 301 (added). Oath and bond of trust company

Comment. Section 301 restates former Section 481, but omits the reference to a trust company acting as a trustee. This matter is governed by Section 15602 (trust law).

Probate Code § 302 (repealed). Effect of order granting letters

Comment. Former Section 302 is restated in Section 8007 (determination of jurisdiction conclusive), which extends it to cover probate of a will as well as appointment of a personal representative.

Probate Code § 303 (repealed). Disqualification; transfer

Comment. The first paragraph of former Section 303 is restated in Section 7060 (disqualification of judge) without substantive change.

The second paragraph is restated in Sections 7070 (grounds for transfer) and 7071 (place of transfer). See also Section 1000 (general rules of civil practice govern); Code Civ. Proc. § 399 (transmittal of papers; jurisdiction of receiving court).

Probate Code § 304 (repealed). Right to letters upon transfer

Comment. Former Section 304 is omitted as unnecessary.

Probate Code § 305 (repealed). Retransfer

Comment. Former Section 305 is restated in Section 7072 (retransfer), which makes retransfer permissive rather than mandatory. See also Section 1000 (general rules of civil practice); Code Civ. Proc. § 399 (transmittal of papers).

Probate Code § 320 (repealed). Delivery of will by custodian

Comment. Former Section 320 is superseded by Section 8200 (delivery of will).

Probate Code § 321 (repealed). Production of will; attendance of witnesses

Comment. Former Section 321 is restated in Sections 8201 (order for production of will), 7050 (authority of court or judge), and 7375 (enforcement of order).

Probate Code § 322 (repealed). Purchaser or encumbrancer of real property

Comment. Former Section 322 is omitted. The section's major effect was to enable a title insurer to provide insurance in the occasional case in which title is insured in a purchaser from an heir without requiring administration proceedings, the insurance being predicated on the property's small value and satisfactory proof (usually by affidavit) of heirship. 2 Bowman, Ogden's Revised California Real Property Law § 29.82, at 1498 (1975). For this purpose, Sections 13200-13209 (affidavit procedure for real property of small value) provide a more complete and detailed procedure.

Probate Code § 323 (repealed). Who may petition for probate

Comment. Former Section 323 is restated in Section 8000 (petition) without substantive change.

Probate Code § 324 (repealed). Renouncement of right to letters

Comment. Former Section 324 is restated in Section 8001 (failure of person named executor to petition) without substantive change.

Probate Code § 326 (repealed). Contents of petition for probate

Comment. The first part of former Section 326 is restated in Section 8002 (contents of petition), which substitutes the address for the residence of heirs and devisees and adds an express requirement that a copy of the will be attached. The last part is restated in Section 8006(b) (court order) without substantive change.

Probate Code § 327 (repealed). Publication of notice

Comment. Former Section 327 is restated in Section 8003 (setting and notice of hearing), except that the 10 day minimum hearing period is increased to 15 days and the petitioner rather than the clerk has the duty of giving notice.

Probate Code § 328 (repealed). Service of notice

Comment. The first sentence of the first paragraph of former Section 328 is restated in Sections 8110 (persons on whom notice served), 7300 (service), and 7302 (mailing), with the addition of a provision limiting service to known heirs. The second sentence is restated in Section 8100 (form of notice).

The second paragraph is restated in Sections 8111 (service on Attorney General) and 7302 (mailing) without substantive change. The third paragraph is generalized in Section 7302 (mailing).

Probate Code § 328.3 (repealed). Duress, menace, fraud, or undue influence

Comment. Former Section 328.3 is restated in Section 6104 (will or revocation procured by duress, menace, fraud, or undue influence) without substantive change.

Probate Code § 328.7 (repealed). Conditional validity of will

Comment. Former Section 328.7 is restated in Section 6132 (conditional will) without substantive change.

Probate Code § 329 (repealed). Uncontested proceedings

Comment. The first two sentences of former Section 329 are restated in Section 8220 (evidence of subscribing witness) without substantive change. The third sentence is not continued because it is unnecessary. See Comment to Section 8221 (proof where no subscribing witness available). See also Evid. Code § 240 (“unavailable as witness”). The fourth sentence is restated in Section 8221 (proof where no subscribing witness available), with the exception of the language relating to a writing “at the end” of the will. The signatures of subscribing witnesses no longer must appear at the end. Section 6110 (execution).

Probate Code § 330 (repealed). Proof of will by authenticated copy

Comment. The first two sentences of former Section 330 are restated in Section 8202 (will detained outside California) without substantive change. The last sentence is superseded by Section 8220 and provisions following governing proof of will.

Probate Code § 331 (repealed). Proof of holographic will

Comment. Former Section 331 is restated in Section 8222 (proof of holographic will) without substantive change.

Probate Code § 332 (repealed). Record in minutes; foreign language will

Comment. The first sentence of former Section 332 is superseded by Section 8225 (admission of will to probate). The second sentence is superseded by Section 8002(b) (contents of petition).

Probate Code § 333 (repealed). Notice of death and petition for probate

Comment. Subdivision (a) of former Section 333 is restated in Section 8121 (publication of notice), but the posting provision is omitted because it is no longer necessary.

The introductory part of subdivision (b) is restated in Section 8123 (type size) without substantive change. The remainder of subdivision (b) is restated in Section 8100 (form of notice), except that reference to notice of the decedent's death is eliminated from the caption and a reference to the decedent's will is added to the notice.

Subdivision (c) is restated in Section 8124 (affidavit of publication) without substantive change.

Subdivision (d) is not continued because it is no longer necessary.

Probate Code § 334 (repealed). Minor error in publication

Comment. Former Section 334 is restated in Section 8122 (good faith compliance with publication requirement) without substantive change.

Probate Code § 351 (repealed). Petition for probate of lost or destroyed will

Comment. The first two sentences of former Section 351 are restated in Section 8223 (proof of lost or destroyed will), except that the requirement that the order admitting the will to probate be “set forth at length in the minutes” is omitted. The last sentence is restated and broadened in Section 8224 (subsequent admissibility of testimony).

Probate Code § 352 (repealed). Restraining order

Comment. Former Section 352 is superseded by Section 9614 (suspension of powers of personal representative).

Probate Code § 360 (repealed). Authority to probate foreign will

Comment. The first part of former Section 360 is superseded by Section 12510. The last part of former Section 360 is restated in Sections 12511 (venue in case of nondomiciliary) and 7050 (jurisdiction) without substantive change.

Probate Code § 361 (repealed). Procedure; notice

Comment. The first sentence of former Section 361 is superseded by Sections 12510, 12520, 12521, and 12522. See the Comments to these sections.

Probate Code § 362 (repealed). Effect of probate of foreign will

Comment. Former Section 362 is superseded by Sections 12522 (sister state proceedings) and 12523 (foreign nation proceedings). See the Comments to these sections. The provision relating to the validity of the will under the law of this state or other jurisdiction is omitted. In the case of sister state probate orders, it is contrary to full faith and credit principles to relitigate the validity of the will. See also Section 6113 (choice of law as to execution of will). In the case of foreign nation probate orders, the condition is automatically satisfied if probate has been granted and the order is to be given recognition.

Probate Code § 370 (repealed). Will contest

Comment. The first part of the first sentence of former Section 370 is superseded by Sections 1043 (response or objection) and 8004 (opposition). The last part of the first sentence is restated in Section 8250 (summons), except that the citation is replaced with a summons.

The second, third, and fourth sentences are restated in Section 8251 (responsive pleading), except that the time to answer after a demurrer is overruled is not conditioned on receipt of written notice.

Probate Code § 371 (repealed). Trial of contest

Comment. Former Section 371 is superseded by Section 8252 (trial), which does not continue the provision for jury trial.

Probate Code § 372 (repealed). Witnesses

Comment. Former Section 372 is restated in Section 8253 (evidence of execution), except that the limitation on production of witnesses outside the county is not continued. See also Section 7200 (general rules of practice govern) and Code Civ. Proc. § 1989 (compelling attendance of witnesses).

Probate Code § 372.5 (repealed). Contest without forfeiture

Comment. Former Section 372.5 is restated in Section 6112(d) without substantive change.

Probate Code § 373 (repealed). Verdict or judgment

Comment. Former Section 373 is superseded by Section 8254 (judgment). The provision for the special verdict of a jury is not continued because it is no longer necessary. See Section 8252 and Comment thereto (jury trial not continued).

Probate Code § 374 (repealed). Perpetuation of testimony

Comment. Former Section 374 is restated and broadened in Section 8224 (subsequent admissibility of testimony).

Probate Code § 380 (repealed). Contest after probate

Comment. Former Section 380 is restated in subdivision (a) of Section 8270 (petition for revocation), but reference to some of the specific grounds of opposition are omitted.

Probate Code § 381 (repealed). Citation

Comment. Former Section 381 is superseded by Section 8271 (summons), which substitutes a summons for the citation.

Probate Code § 382 (repealed). Revocation of probate

Comment. Former Section 382 is superseded by Section 8271(b) (summons) and 8272 (revocation). The provision for a jury trial is not continued. See Section 7204 (trial by jury).

Probate Code § 383 (repealed). Costs

Comment. Former Section 383 is superseded by Section 1002 (costs).

Probate Code § 384 (repealed). Conclusiveness

Comment. The first part of former Section 384 is restated in Section 8226(a) (effect of admission of will to probate) without substantive change. The last part is superseded by Section 8270(b) (petition for revocation).

Probate Code § 385 (repealed). Probate of other will

Comment. Former Section 385 is superseded by Section 8226(b) (effect of admission of will to probate).

Probate Code § 400 (repealed). Powers before issuance of letters

Comment. Former Section 400 is restated in Section 8400 (appointment necessary) without substantive change.

Probate Code § 401 (repealed). Competency to serve

Comment. Former Section 401 is superseded by Section 8402 (qualifications).

Probate Code § 402 (repealed). Executor indicated but not named

Comment. Former Section 402 is restated in Section 8421 (executor not specifically named) without substantive change.

Probate Code § 403 (repealed). Power to designate executor

Comment. Former Section 403 is restated in Section 8422 (power to designate executor) without substantive change.

Probate Code § 404 (repealed). Corporate executor

Comment. Former Section 404 is restated in Section 8423 (successor corporation as executor) without substantive change.

Probate Code § 405 (repealed). Absentee

Comment. The part of former Section 405 that related to a minor named as executor is restated in Section 8424 (minor named as executor) without substantive change. The part relating to a person absent from the state is not continued. See Section 8570 *et seq.* (nonresident personal representative).

Probate Code § 405.1 (repealed). Appointment of nonresident personal representative

Comment. Former Section 405.1 is restated in Section 8572 (Secretary of State as attorney) without substantive change.

Probate Code § 405.2 (repealed). Address of nonresident personal representative

Comment. Former Section 405.2 is restated in Section 8573 (statement of address) with the omission of the acknowledgment requirement.

Probate Code § 405.3 (repealed). Service on nonresident personal representative

Comment. Former Section 405.3 is restated in Section 8574 (manner of service) without substantive change.

Probate Code § 405.4 (repealed). Proof of service on nonresident personal representative

Comment. Former Section 405.4 is restated in Section 8575 (proof of service) without substantive change.

Probate Code § 405.5 (repealed). Effect of service on nonresident personal representative

Comment. Former Section 405.5 is restated in Section 8576 (effect of service) without substantive change.

Probate Code § 405.6 (repealed). Removal of nonresident personal representative

Comment. Former Section 405.6 is restated in Section 8577 (noncompliance) without substantive change.

Probate Code § 406 (repealed). Letters with will annexed

Comment. The first sentence of former Section 406 is restated and generalized in Section 8522 (vacancy where no personal representatives remain). The second sentence is superseded by Section 8440 (appointment of administrator with will annexed).

Probate Code § 407 (repealed). Objections

Comment. The first sentence of former Section 407 is restated in Sections 1043 (response or objection), 1046 (hearing and order), 8004 (opposition), and 8005 (hearing) without substantive change. The second sentence is superseded by Section 8420 (right to appointment as personal representatives).

Probate Code § 408 (repealed). Failure to appoint all named executors

Comment. Former Section 408 is restated in Section 8425 (when fewer than all executors appointed) without substantive change.

Probate Code § 409 (repealed). Administrators with will annexed

Comment. The first sentence of former Section 409 is restated in Section 8442 (authority of administrator with will annexed), with the addition of court discretion to permit exercise of a discretionary power or authority. The second sentence is restated in Section 8441 (priority for appointment) without substantive change. The third sentence is superseded by Section 8441.

Probate Code § 410 (repealed). Bond of administrator with will annexed

Comment. Former Section 410 is restated in Section 8480 (bond required) without substantive change.

Probate Code § 420 (repealed). Qualifications of administrator

Comment. Former Section 420 is restated in Section 8402 (qualifications) without substantive change.

Probate Code § 421 (repealed). Surviving partner

Comment. Former Section 421 is restated in Section 8402 (qualifications) without substantive change.

Probate Code § 422 (repealed). Priority for appointment as administrator

Comment. Former Section 422 is restated in Sections 8461 (priority for appointment), 8462 (priority of relatives), and 8463 (estranged spouse), with the addition of provisions to reflect changes in the law governing intestate succession and language recognizing the priority of relatives of a predeceased spouse, and expansion to include any lineal relative of the decedent who satisfies prescribed conditions.

Probate Code § 423 (repealed). Nominee

Comment. Former Section 423 is restated in Section 8465 (nominee of person entitled to appointment).

Probate Code § 424 (repealed). Whole blood and half blood

Comment. Former Section 424 is not continued. Wholeblood relatives are no longer preferred over halfblood relatives. Section 6406.

Probate Code § 425 (repealed). Equal priorities

Comment. The first clause of former Section 425 is restated in Section 8467 (equal priority) with the addition of authority to appoint a disinterested person where there is a conflict between persons of equal priority. The second clause is restated in Section 8466 (priority of creditor) but the requirement that there be a request of another creditor before the court may appoint another person is omitted.

Probate Code § 426 (repealed). Minors, incompetents, and conservatees

Comment. Former Section 426 is restated in Section 8464 (minors and incompetent persons) without substantive change.

Probate Code § 427 (repealed). Failure to claim letters

Comment. Former Section 427 is restated in Section 8468 (administration by any competent person) without substantive change.

Probate Code § 440 (repealed). Petition for letters

Comment. The first part of former Section 440 is superseded by Section 1020 (petitions, reports, accounts). The last paragraph is restated in Section 8006(b) (court order) without substantive change.

Probate Code § 441 (repealed). Notice of hearing

Comment. The first two sentences of former Section 441 are restated in Sections 8003 (setting and notice of hearing), 8110 (persons on whom notice served), and 7202 (clerk to set matters for hearing), except that the 10 day minimum notice period is increased to 15 days and the petitioner rather than the clerk has the duty of giving notice. See also Sections 7300 (service), 7302 (mailing), 7304 (notice to persons whose address is unknown). The third sentence is restated in Section 8100 (form of notice) without substantive change.

Probate Code § 442 (repealed). Contest

Comment. Former Section 442 is restated in Sections 1043 (response or objection) and 8004 (opposition) without substantive change.

Probate Code § 443 (repealed). Witnesses

Comment. Former Section 443 is restated in Section 8005 (hearing) without substantive change.

Probate Code § 450 (repealed). Petition for revocation of letters

Comment. Former Section 450 is superseded by Section 8503(a) (removal at request of person with higher priority) and Article 7 (commencing with Section 8520) (changes in administration) of Chapter 4 of Part 2 of Division 7.

Probate Code § 451 (repealed). Proceedings for revocation

Comment. Former Section 451 is superseded by Section 8500 (procedure for removal) and Article 7 (commencing with Section 8520) (changes in administration) of Chapter 4 of Part 2 of Division 7.

Probate Code § 452 (repealed). Prior right of spouse and relatives

Comment. Former Section 452 is superseded by Section 8503(a) (removal at request of person with higher priority).

Probate Code § 453 (repealed). Discretion to refuse letters

Comment. Former Section 453 is restated in Section 8503(b) (removal at request of person with higher priority) without substantive change.

Probate Code § 460 (repealed). Appointment of special administrator

Comment. The first clause of former Section 460 is superseded by Sections 8540 (grounds for appointment) and 8544 (special powers, duties, and obligations). The last clause is restated in Section 8541 (procedure for appointment) without substantive change.

Probate Code § 461 (repealed). Notice; preference for appointment

Comment. Former Section 461 is restated in Section 8541 (procedure for appointment) without substantive change. See also Section 7240 (appealable orders and refusals to make orders).

Probate Code § 462 (repealed). Bond and oath

Comment. Subdivisions (a) and (b) of former Section 462 are restated in Section 8542 (issuance of letters) without substantive change. Subdivision (a) (1) is restated in Section 8481 (waiver of bond) without substantive change. Subdivision (a) (2) is restated in Section 8543 (waiver of bond) without substantive change.

Probate Code § 463 (repealed). Powers and duties of special administrator

Comment. Former Section 463 is restated in Section 8544 (special powers, duties, and obligations) without substantive change.

Probate Code § 464 (repealed). Payment of amount secured by real property

Comment. Former Section 464 is restated in Section 8544(b)(2) (special powers, duties, and obligations) with the addition of a provision that the order remains in effect until appointment of a successor.

Probate Code § 465 (repealed). Appointment of special administrator in pending proceedings

Comment. Former Section 465 is superseded by Section 8545 (general powers, duties, and obligations).

Probate Code § 466 (repealed). Cessation of powers of special administrator

Comment. Former Section 466 is restated in Sections 8546(a)-(b) (termination of authority) and 8524 (successor personal representative), with the addition of language expressly permitting court authorization of the special administrator to complete ongoing transactions.

Probate Code § 467 (repealed). Account, fees, commissions

Comment. The first sentence of former Section 467 is restated in Section 8546(c) (termination of authority), with the addition of language expressly permitting a consolidated account where the special administrator and general personal representative are the same person. The second sentence is restated in Section 8547(a)-(c) (fees and commissions), with the addition of provisions limiting payment of the special administrator until close of administration and recognizing agreements of the special administrator, personal representative, and attorneys as to division of fees and commissions.

Probate Code § 468 (repealed). Division of commissions and fees

Comment. Former Section 468 is restated in Section 8547(b)-(c) (fees and commissions), with the addition of provisions limiting payment of the special administrator until close of administration and recognizing agreements of the special administrator, personal representative, and attorneys as to division of fees and commissions.

Probate Code § 469 (repealed). Fees for extraordinary services

Comment. Former Section 469 is superseded by Section 8547(d) (fees and commissions).

Probate Code § 480 (repealed). Trust company as fiduciary

Comment. Former Section 480 is restated in Sections 83 (“trust company” defined) and 300 (appointment of trust company) without substantive change.

Probate Code § 481 (repealed). Oath and bond of trust company

Comment. Former Section 481 is restated in Sections 83 (“trust company” defined) and 301 (oath and bond of trust company) without substantive change.

Probate Code § 500 (repealed). Letters formalities

Comment. Former Section 500 is superseded by Section 8405 (form of letters).

Probate Code § 501 (repealed). Form of letters testamentary or with will annexed

Comment. Former Section 501 is superseded by Sections 8405 (form of letters) and 7201 (Judicial Council to prescribe forms).

Probate Code § 502 (repealed). Form of letters of administration or special administration

Comment. Former Section 502 is superseded by Sections 8405 (form of letters) and 7201 (Judicial Council to prescribe forms).

Probate Code § 510 (repealed). Revocation of letters

Comment. The first sentence of former Section 510 is restated in Sections 8504 (subsequent probate of will) and 8525(b) (effect of vacancy) without substantive change. The second sentence is restated and broadened in Section 8524 (successor personal representative).

Probate Code § 511 (repealed). Joint personal representatives

Comment. Former Section 511 is restated in Section 8521 (vacancy where other personal representatives remain) without substantive change.

Probate Code § 512 (repealed). Successor administrator

Comment. Former Section 512 is restated in Section 8522 (vacancy where no personal representatives remain) without substantive change.

Probate Code § 520 (repealed). Resignation of personal representative

Comment. The first sentence of former Section 520 is restated in Sections 8520 (vacancy in office) and 8525(b) (effect of vacancy) without substantive change. The second sentence is superseded by Section 8523 (interim protection of estate). The third sentence is restated in Section 8525(b) (effect of vacancy) without substantive change.

Probate Code § 521 (repealed). Suspension and removal of personal representative

Comment. The substance of the first sentence of former Section 521 is restated in Sections 8500(b) (procedure for removal) and 8502 (grounds for removal), with the exception of the provision relating to permanent removal from the state, which is not continued. See Section 8570 *et seq.* (nonresident personal representative). The second sentence is not continued; it was impliedly repealed by former Section 1207 (service of citation), which is continued as Section 1242.

Probate Code § 522 (repealed). Hearing

Comment. Former Section 522 is restated in Section 8500(c) (procedure for removal) without substantive change.

Probate Code § 523 (repealed). Compelling attendance

Comment. Former Section 523 is restated in Section 8500(c) (procedure for removal) without substantive change.

Probate Code § 524 (repealed). Embezzlement, waste, or mismanagement

Comment. Former Section 524 is restated in Section 8502 (grounds for removal) without substantive change. See also Section 8500 (procedure for removal).

Probate Code § 525 (repealed). Validity of acts before revocation of letters

Comment. Former Section 525 is restated in Section 8525 (effect of vacancy) without substantive change.

Probate Code § 526 (repealed). Revocation for contempt

Comment. Former Section 526 is restated in Sections 8505 (contempt) and 8501 (revocation of letters), omitting the requirement of 30 days custody.

Probate Code § 540 (repealed). Oath

Comment. Former Section 540 is restated in Section 8403 (oath) without substantive change.

Probate Code § 541 (repealed). Bond

Comment. The first sentence of subdivision (a) of Section 541 is restated in Sections 8480 (bond required), 8481 (a) (waiver of bond), and 7061(a)(5) (actions at chambers) without substantive change. The second sentence is superseded by Section 8482(a) (amount of bond), which makes explicit the authority of the court to impose a fixed minimum bond.

Subdivision (b) is restated in Section 8481 (b) (waiver of bond) without substantive change.

Probate Code § 541.1 (repealed). Deposited property

Comment. Former Section 541.1 is restated in Sections 8401 (deposit in controlled account) and 8483 (reduction of bond by deposit of assets) without substantive change.

Probate Code § 541.5 (repealed). Allowance of cost of bond

Comment. Former Section 541.5 is superseded by Section 8486 (cost of bond).

Probate Code § 542 (repealed). Bond for sale of real property

Comment. Former Section 542 is superseded by Section 8482(b) (amount of bond).

Probate Code § 543 (repealed). Bond required by court

Comment. Former Section 543 is restated in Section 8481(c) (waiver of bond) without substantive change.

Probate Code § 544 (repealed). Bond of coexecutors and coadministrators

Comment. Former Section 544 is restated in Section 8480 (bond required) without substantive change.

Probate Code § 549 (repealed). Failure to file sufficient bond

Comment. The effect of former Section 549 is continued in Sections 8480 (bond required) and 8501 (revocation of letters). See also Section 8520 *et seq.* (changes in administration).

Probate Code § 550 (repealed). Petition to require bond

Comment. Former Section 550 is superseded by Section 9614 (suspension of powers of personal representative).

Probate Code § 553.3 (repealed). Reduction of bond

Comment. Former Section 553.3 is restated in Section 8484 (excessive bond) without substantive change.

Probate Code § 553.5 (repealed). Substitution of surety

Comment. Former Section 553.5 is restated in Section 8485 (substitution or release of sureties) without substantive change.

Probate Code § 600 (repealed). Filing inventory and appraisal

Comment. The first part of the first sentence of former Section 600 is restated in Section 8800 (inventory and appraisal required) without substantive change. See also Code Civ. Proc. § 166 (actions in chambers). The last part of the first sentence is superseded by Section 8404 (statement of duties and liabilities).

The second sentence is omitted because it no longer serves a useful purpose. The third and fourth sentences are restated in Section 8850 (contents of inventory) without substantive change. The fifth sentence is restated in Section 8802 (form of inventory and appraisal) without substantive change.

Probate Code § 601 (repealed). Community and separate property

Comment. Former Section 601 is restated in Section 8850 (contents of inventory), with the addition of a reference to quasi-community property.

Probate Code § 602 (repealed). Testator's claim against executor

Comment. Former Section 602 is continued in Section 8407 (appointment of personal representative) without substantive change.

Probate Code § 603 (repealed). Bequest to executor

Comment. Former Section 603 is restated in Section 8851 (discharge or devise of claims) without substantive change.

Probate Code § 604 (repealed). Oath

Comment. Former Section 604 is restated in Section 8852 (oath of personal representative) without substantive change.

Probate Code § 605 (repealed). Appraisement procedure

Comment. The introductory part of subdivision (a) of former Section 605 is superseded by Section 8900 (appraisal by personal representative, probate referee, and independent expert). Subdivision (a) (1) is superseded by Section 8901 (appraisal by personal representative). See also Sections 40 ("financial institution" defined) and 8800 (inventory and appraisal required).

Subdivision (a) (2) is restated in Sections 8902 (appraisal by probate referee), 8920 (designation by court), and Section 8903 (waiver of appraisal by probate referee) without substantive change.

Subdivision (a) (3) is restated in Section 8903(b)-(d) (waiver of appraisal by probate referee), with clarifying changes.

Subdivision (b) is superseded by Sections 450-453 (powers of probate referee). Subdivision (c) is restated in Section 8907 (fee for appraisal by personal representative) and expanded to preclude extra compensation not only for appraising cash items but also for appraising other property in the estate.

Subdivision (d) is omitted as unnecessary. See Section 6608. Subdivision (e) is omitted as unnecessary. See Sections 13103, 13152(b), 13200(c), and 13658.

Probate Code § 606 (repealed). Disqualification to act as referee

Comment. Former Section 606 is restated in Section 8923 (disqualification of probate referee) without substantive change.

Probate Code § 607 (repealed). Appointment of referee

Comment. Former Section 607 is omitted; the procedure provided in the section was ignored in practice.

Probate Code § 608 (repealed). Signing appraisalment

Comment. Former Section 608 is restated in Section 8905 (verification of appraisal), with the addition of an independent appraisal expert.

Probate Code § 608.5 (repealed). Objection to appraisalment

Comment. Former Section 608.5 is restated in Section 8906 (objection to inventory and appraisal), with the clarification that the procedure applies to the inventory as well as the appraisal.

Probate Code § 609 (repealed). Referee's commission, fees, expenses

Comment. The first part of the first sentence of the first paragraph of former Section 609 is restated in Sections 8960 (payment of commission and expenses) and 8961 (amount of commission and expenses) without substantive change. The last part of the first sentence is restated in Section 8963 (maximum and minimum commissions) without substantive change. The second sentence is restated in Section 8961 (amount of commission and expenses) without substantive change. The third sentence is omitted because it was an obsolete relic from the inheritance tax function of probate referees.

The second paragraph is restated in Section 8961 (amount of commission and expenses) without substantive change. The third paragraph is restated in Section 8963 (maximum and minimum commissions), with the addition of a provision for notice.

Probate Code § 609.5 (repealed). Division of fee

Comment. Former Section 609.5 is restated in Section 8964 (division of commission between referees) without substantive change.

Probate Code § 610 (repealed). Failure to file inventory

Comment. Former Section 610 is restated in Section 8804 (failure to timely file inventory and appraisal), which makes clear that failure to timely file the appraisal is included within the statute. Liability of the personal representative and of the sureties on the bond is joint and several. See Code Civ. Proc. § 996.410 *et seq.*

Probate Code § 611 (repealed). Newly discovered property

Comment. Former Section 611 is restated in Sections 8801 (supplemental inventory and appraisal) and 8804 (failure to timely file inventory and appraisal) without substantive change.

Probate Code § 612 (repealed). Double liability for embezzlement, etc.

Comment. Former Section 612 is restated in Section 8874 (wrongful taking, concealment, or disposition of property in estate) with the addition of a bad faith limitation.

Probate Code § 613 (repealed). Citation of suspected embezzler, etc.

Comment. The first two sentences of former Section 613 are restated in Section 8870 (subpoena to appear and be examined concerning decedent's property), substituting a petition for a complaint and a subpoena for a citation. The third sentence is superseded by Section 8872 (examination).

Probate Code § 614 (repealed). Examination of suspected embezzler, etc.

Comment. The first sentence of former Section 614 is superseded by Section 8870(c) (subpoena to appear and be examined concerning decedent's property). The third sentence is restated in Section 8871 (interrogatories) without substantive change. The second and fourth sentences are restated in Section 8872 (examination).

Probate Code § 615 (repealed). Citation of person entrusted with part of estate

Comment. Former Section 615 is restated in Section 8873 (subpoena to appear and account), substituting a petition for a complaint.

Probate Code § 660 (repealed). Testator's intention controls

Comment. Former Section 660 is restated in Section 12000 (application of chapter) without substantive change.

Probate Code § 661 (repealed). Bequest of interest or income of certain sum

Comment. Former Section 661 is superseded by Section 16304(a) (when right to interest accrues; apportionment of income).

Probate Code § 662 (repealed). Kinds of legacies

Comment. The first part of subdivision (a) of former Section 662 is restated in Section 6154(a) (specific devise) without substantive change. The last part of subdivision (a) (if specific gift fails, resort cannot be had to testator's other property) is superseded by Sections 21401 (order of abatement) and 6171-6173 (ademption).

Subdivision (b) is restated in Section 6154(c) (demonstrative devise) without substantive change.

The first part of subdivision (c) is restated in Section 6154(d) (annuity) without substantive change. The last part of subdivision (c) is restated in Section 21403(b) (abatement within classes) without substantive change.

Subdivision (d) is restated in Section 6154(f) (residuary devise) without substantive change.

Subdivision (e) is superseded by Section 6154(b) (general devise).

Probate Code § 663 (repealed). Interest; annuities

Comment. The provision of subdivision (a) of former Section 663 that interest on a general pecuniary legacy commences one year after death is restated in Section 12003 without substantive change. The provision of subdivision (a) that the rate of interest is that payable on a money judgment entered in this state is superseded by Section 12001.

Subdivision (b) is continued in Section 12004(a).

The part of subdivision (c) that related to interest on annuities is restated in Section 12004(b), the part that related to interest on a devise for maintenance is restated in Section 12005, the provision governing the interest rate is superseded by Section 12001, and the provision governing an income beneficiary of a trust is superseded by Section 16304(a) (when right to trust income arises).

Probate Code § 664 (repealed). Distribution of income from certain property

Comment. Subdivision (a) of former Section 664 is superseded by Sections 12000 (application of chapter) and 12006 (remaining income to residuary or intestate distributees).

Subdivision (b) is superseded by Section 16305(a) (income earned during administration of decedent's estate).

Probate Code § 665 (repealed). Transitional provision

Comment. Subdivision (a) of former Section 665 is generalized in Section 2(a). Subdivision (b) is omitted.

Probate Code § 707 (repealed). Insured claim

Comment. Former Section 707 is replaced by Sections 550-555 (liability of decedent covered by insurance) and 9355 (claim covered by insurance).

Probate Code § 709 (repealed). Claim pending against decedent

Comment. The first two sentences of former Section 709 are restated in Section 9351 (claim prerequisite to continuing action) without substantive change. The third sentence is replaced by Sections 550-555 (liability of decedent covered by insurance) and 9355 (claim covered by insurance).

The fourth sentence of the first paragraph and the second and third paragraphs of former Section 709 are restated in Section 9103 (late claim), with clarifying and generalizing changes made to combine it with former Section 720.

Probate Code § 709.1 (repealed). Continuation of pending action against estate

Comment. Former Section 709.1 is replaced by Sections 550-555 (liability of decedent covered by insurance) and 9355 (claim covered by insurance).

Probate Code § 716 (repealed). Enforcement of lien

Comment. Former Section 716 is restated in Section 9356 (enforcement of security interest), omitting the provision relating to attorney's fees.

Probate Code § 719 (repealed). Personal representative's liability for costs

Comment. Former Section 719 is not continued. See Prob. Code § 1002 (costs under Probate Code); see also Code Civ. Proc. § 1026 (costs in actions by or against fiduciaries).

Probate Code § 720 (repealed). Claim for damages for injury or death where no action pending

Comment. Former Section 720 is restated in Section 9103 (late claim) with clarifying and generalizing changes made to combine it with former Section 709.

Probate Code § 721 (repealed). Claim for liability covered by liability insurance

Comment. Former Section 721 is replaced by Sections 550-555 (liability of decedent covered by insurance) and 9355 (claim covered by insurance).

Probate Code § 736 (repealed). Exonerating encumbered property

Comment. Former Section 736 is restated in Sections 21400 (abatment subject to transferor's intent) and 21404 (exoneration by abatment of specific gift), which generalize it to apply to exoneration of personal as well as real property and to apply to other gifts as well as devises.

Probate Code § 750 (repealed). Abatement for payment of debts, expenses of administration, and family allowance

Comment. The first sentence of former Section 750 is restated in Sections 21400 (abatment subject to transferor's intent) and 21401 (purposes for which abatment made), which generalize it to apply to other gifts as well as devises. The second sentence is restated in Sections 21400 (abatment subject to transferor's intent) and 21402 (order of abatment), which generalize it to apply to other gifts as well as devises.

Probate Code § 751 (repealed). Order of payment of legacies

Comment. Former Section 751 is restated in Sections 21401 (purposes for which abatment made) and 21402 (order of abatment), which generalize it to apply to other gifts as well as devises.

Probate Code § 752 (repealed). Abatement within class; legacies to spouse or kindred

Comment. Former Section 752 is superseded by Sections 21400 (abatment subject to transferor's intent) and 21402 (order of abatment).

Probate Code § 753 (repealed). Contribution after sale of property

Comment. The first part of former Section 753 (if preferred devise sold, all others must contribute) is superseded by subdivision (a) of Section 21403 (abatment within classes). The last part of former Section 753 (court to decree each person's contribution when distribution is made) is restated in subdivision (b) of Section 21405 (contribution in case of abatment) without substantive change.

Probate Code § 920 (repealed). Accountability

Comment. Former Section 920 is a general provision that is omitted as unnecessary; the duty to account, the contents of accounts, and the settlement of accounts are governed by specific statutory provisions.

Probate Code § 920.3 (repealed). Investment in interest-bearing accounts

Comment. Former Section 920.3 is superseded by Section 10900 (contents of account). See the Comment to Section 10900.

Probate Code § 921 (repealed). Accounting required by court

Comment. The first sentence of former Section 921 is restated in Sections 10950 (court ordered account) and 10900 (contents of account), and in Code of Civil Procedure Section 166 (actions in chambers). The last sentence is restated in Section 11052 (punishment for contempt) without substantive change.

Probate Code § 922 (repealed). Enforcement of accounting

Comment. The first sentence of former Section 922 is restated in Sections 10950 (court ordered account) and 10900 (contents of account). The second sentence is superseded by Section 10951 (final account). The third sentence is restated in Section 11050 (sanction for failure to account) without substantive change. The last sentence is restated in Section 11051(a) (citation) without substantive change.

Probate Code § 923 (repealed). Accounting after authority revoked

Comment. Former Section 923 is superseded by Section 10952 (account after authority terminated).

Probate Code § 924 (repealed). Revocation of letters

Comment. Former Section 924 is restated in Sections 11051(b) (citation) and 11052 (punishment for contempt) without substantive change.

Probate Code § 925 (repealed). Vouchers

Comment. Former Section 925 is superseded by Section 10901 (production of supporting documents), which extends the voucher procedure to supporting documents generally.

Probate Code § 926 (repealed). Settlement of account

Comment. The first sentence of subdivision (a) of former Section 926 is restated in Section 1285 (clerk to set matter for hearing). The second sentence is restated in Sections 11000(c) (notice of hearing), 11641 (distribution under). Subdivisions (b) and (c) are restated in Section 11000 (notice of hearing) without substantive change.

Probate Code § 927 (repealed). Exceptions to account

Comment. The first sentence of former Section 927 is restated in Sections 11000 (contest of account) and 1043 (response or objection) without substantive change. The second sentence is superseded by Section 11003 (litigation expenses). The third and fifth sentences are restated in Section 11002(a) (hearing on account) without substantive change. The fourth sentence is restated in Section 11001 (contest of account) without substantive change. The last sentence is not continued because it is no longer necessary.

Probate Code § 928 (repealed). Jury trial

Comment. Section 928 is not continued. See Section 7200 (trial by jury).

Probate Code § 929 (repealed). Debts paid without verified claims

Comment. Former Section 929 is restated in Section 11005 (settlement of claim not properly filed) without substantive change.

Probate Code § 930 (repealed). Lost or destroyed vouchers

Comment. Former Section 930 is not continued. The voucher procedure was generally not used.

Probate Code § 931 (repealed). Order settling account

Comment. Former Section 931 is restated in Section 11006 (effect of order settling account) without substantive change.

Probate Code § 932 (repealed). Deceased or incompetent executor or administrator

Comment. Former Section 932 is restated in Section 10953 (account where personal representative dies or becomes incompetent) with changes for internal consistency.

Probate Code § 933 (repealed). Waiver of accounting

Comment. Former Section 933 is restated in Section 10954 (waiver of account) without substantive change.

Probate Code § 956 (repealed). Payment of debts, expenses, and charges

Comment. The first clause of former Section 956 is restated in Section 11640 (petition and order for final distribution) without substantive change. The last clause is superseded by Section 12201 (report of status of administration).

Probate Code § 1000 (repealed). Petition for preliminary distribution

Comment. The introductory part of the first half of the first sentence of former Section 1000 is restated in Sections 11620 (time for petition), 11621 (order for distribution), and 11622 (bond), which increase the 10 day notice period to 15 days. The remainder of the first half of the first sentence is restated without substantive change in Section 11600 (petition for distribution). The part of the first sentence of former Section 1000 applicable to estates of nondomiciliary decedents is superseded by Section 12540.

The second sentence is restated without substantive change in Section 1285 (clerk to set matters for hearing). The third sentence is restated without substantive change in Section 11601 (notice of hearing). The fourth sentence is restated without substantive change in Sections 1215 (mailing) and 1216 (personal delivery). The last sentence is restated without substantive change in Sections 11602 (opposition to petition) and 9630 (authority of joint personal representatives to act).

Probate Code § 1001 (repealed). Hearing on preliminary distribution

Comment. Former Section 1001 is superseded by Sections 11603(a) (hearing and order), 11621 (order for distribution), and 11622 (bond).

Probate Code § 1002 (repealed). Costs on preliminary distribution

Comment. Former Section 1002 is superseded by Section 11624 (costs of proceeding).

Probate Code § 1003 (repealed). Discharge

Comment. Former Section 1003 is restated in Sections 11753 (filing receipts and discharge) and 11605 (conclusiveness of order).

Probate Code § 1004 (repealed). Petition by personal representative

Comment. Former Section 1004 is restated without substantive change in Sections 11623 (distribution under Independent Administration of Estates Act), 1285 (clerk to set matters for hearing), and 11621 (order for distribution).

Probate Code § 1020 (repealed). Petition for final distribution

Comment. The first sentence of former Section 1020 is restated without substantive change in Sections 11640 (petition and order) and 11600 (petition for distribution). The second sentence is restated without substantive change in Sections 11602 (opposition to petition) and 9630 (authority of joint personal representatives to act). The third sentence is restated in Section 11601 (notice of hearing), which increases the 10-day notice period to 15 days. The fourth sentence is restated without substantive change in Sections 1215 (mailing) and 1216 (personal delivery).

Probate Code § 1020.1 (repealed). Distribution to transferees

Comment. Former Section 1020.1 is restated in Section 11604 (distribution to person other than heir or devisee), increasing the time of notice from 10 to 15 days and standardizing the manner of notice with other provisions in the code.

Probate Code § 1020.5 (repealed). Statement of receipts and disbursements

Comment. Former Section 1020.5 is not continued; it is superseded by Sections 11750 (responsibility for distribution), 11753 (filing receipts and discharge), and 11642 (after-acquired or after-discovered property).

Probate Code § 1021 (repealed). Decree of distribution

Comment. Former Section 1021 is restated without substantive change in Sections 11603(b) (hearing and order) and 11605 (conclusiveness of order and distribution).

Probate Code § 1021.5 (repealed). Property subject to option

Comment. Former Section 1021.5 is restated in Section 11603 (hearing and order for distribution) without substantive change.

Probate Code § 1022 (repealed). Intestate minor

Comment. Former Section 1022 is restated in Sections 11801-11802 (deceased distributee) without substantive change.

Probate Code § 1023 (repealed). Death of beneficiary before distribution

Comment. Former Section 1023 is restated in Sections 11801-11802 (deceased distributee) without substantive change.

Probate Code § 1024 (repealed). Payment of personal property taxes

Comment. Former Section 1024 is not continued, because it is unnecessary. Payment of taxes is an obligation of the personal representative (Section 9650), and the estate may not be distributed unless obligations of the estate are accommodated (Section 11621 (order for distribution)).

Probate Code § 1025 (repealed). Limit on time of administration

Comment. Former Section 1025 is restated without substantive change in Section 12206 (testamentary limitation of time for administration).

Probate Code § 1025.5 (repealed). Petition for final distribution or status of administration

Comment. The first sentence of the first paragraph of former Section 1025.5 is restated without substantive change in Sections 12200 (time required for closing or status report), 1284 (verification required), and 12201 (report of status of administration). The second, third, and fourth sentences are restated without substantive change in Section 12201 (report of status of administration).

The second paragraph is restated without substantive change in Section 12202 (failure to petition or make report). The third paragraph is restated without substantive change in Section 12204 (failure of personal representative to comply with order). The fourth paragraph is restated without substantive change in Section 12205 (sanction for failure to timely close estate).

Probate Code § 1026 (repealed). Continuation of administration; family allowance

Comment. Former Section 1026 is continued without substantive change in Section 12203 (continuation of administration to pay family allowance).

Probate Code § 1027 (repealed). Time for petition for distribution

Comment. The first sentence of former Section 1027 is restated without substantive change in Section 11640 (petition and order). The remainder of the first paragraph is restated without substantive change in Section 11900 (distribution to State of California).

The first sentence of the second paragraph is restated in Section 11601 (notice of hearing). The second sentence is restated without substantive change in Sections 1215 (mailing) and 1216 (personal delivery).

The third paragraph is restated without substantive change in Section 11601 (notice of hearing), except that the provision for 30 days notice is not continued. The fourth paragraph is restated without substantive change in Section 11901 (distribution in trust for a class). The fifth and sixth paragraphs are restated without substantive change in Section 11902 (disposition of property distributed to state). The seventh paragraph is restated without substantive change in Sections 11904 (no deposit in county treasury) and 7642 (general rules governing administration of estates apply to public administrator). The eighth and ninth paragraphs are restated without substantive change in Section 11903 (claims against property distributed to state).

Probate Code § 1028 (repealed). Distribution to state

Comment. Former Section 1028 is restated without substantive change in Section 11902 (disposition of property distributed to state).

Probate Code § 1040 (repealed). Court order for delivery of property to foreign personal representative

Comment. The first sentence of former Section 1040 is superseded by Sections 12540 and 12541. The second sentence of former Section 1040 is restated in the second sentence of Section 12541 without substantive change.

Probate Code § 1041 (repealed). Petition; notice; objections

Comment. The first sentence of former Section 1041 is superseded by Section 12540. The part of the second sentence of former Section 1041 that required the clerk to set the petition for hearing is continued in Section 7202. The part of the second sentence of former Section 1041 concerning notice and all of the third sentence are superseded by Section 12540.

Probate Code § 1042 (repealed). Discharge of local personal representative

Comment. Former Section 1042 is superseded by Section 12540. The former provision is broadened to apply to preliminary distributions as well as final distributions.

Probate Code § 1043 (repealed). Informal collection of personal property

Comment. Former Section 1043 is superseded by Sections 12570-12572 (collection of personal property of small estate without ancillary administration).

Probate Code § 1043a (repealed). Informal collection of accounts

Comment. Former Section 1043a is superseded by Sections 12570-12572 (collection of personal property of small estate without ancillary administration).

Probate Code § 1054 (repealed). Ademption or advancement

Comment. Former Section 1054 is restated without substantive change in Sections 11640 (petition and order) and 11605 (conclusiveness of order and distribution).

Probate Code § 1055 (repealed). Application of former law

Comment. Former Section 1055 is restated in Section 6179 without substantive change.

Probate Code § 1060 (repealed). Deposit with county treasurer for nonresidents, absentees, minors, etc.

Comment. The first part of former Section 1060 is superseded by Section 11850 (when deposit with county treasurer authorized). The last part is restated without substantive change in Section 11852 (receipt by county treasurer), except that the provision of a receipt having the effect of a voucher is not continued.

Probate Code § 1060.1 (repealed). Copy of decree of distribution

Comment. Former Section 1060.1 is restated without substantive change in Section 11853 (copy of order for distribution).

Probate Code § 1061 (repealed). Distribution to nonresident fiduciaries

Comment. Former Section 1061 is superseded by Section 11850 (when deposit with county treasurer authorized).

Probate Code § 1062 (repealed). Sale of unclaimed property

Comment. Former Section 1062 is superseded by Sections 11850 (when deposit with county treasurer authorized), 11851 (deposit of money; sale of personal property and deposit of proceeds), and 11852 (receipt by county treasurer).

Probate Code § 1063 (repealed). Annual account

Comment. Former Section 1063 is not continued.

Probate Code § 1064 (repealed). Claim for property deposited with county treasurer

Comment. Subdivision (a) of former Section 1064 is restated without substantive change in Section 11854 (claim of property deposited in county treasury). Subdivision (b) is not continued; it provided an infrequently used alternate procedure.

Probate Code § 1065 (repealed). Specific legacy for life

Comment. Former Section 1065 is not continued. For the receipt of the distributee, see Section 11751 (receipt for distributed property).

Probate Code § 1066 (repealed). Decree of discharge

Comment. Former Section 1066 is restated without substantive change in Section 12250 (order of discharge), except that the provision for production of vouchers is not continued and the petition is made ex parte.

Probate Code § 1067 (repealed). Subsequent administration

Comment. Former Section 1067 is restated without substantive change in Section 12252 (administration after discharge).

Probate Code § 1068 (repealed). Discharge

Comment. Former Section 1068 is restated without substantive change in Sections 12251 (discharge without administration), 1284 (verification required), and 1285 (clerk to set matter for hearing).

Probate Code § 1080 (repealed). Petition to determine heirship or right to distribution

Comment. The first sentence of former Section 1080 is restated without substantive change in Section 11700 (petition). The second and third sentences are superseded by Section 11701 (notice of hearing). The fourth and fifth sentences are restated without substantive change in Section 11702 (responsive pleading). The last sentence is restated without substantive change in Section 11703 (Attorney General as party).

Probate Code § 1081 (repealed). Trial

Comment. The first sentence of the first paragraph of former Section 1081, providing for jury trial, is not continued. The second and third sentences are restated without substantive change in Sections 11704 (hearing) and 11705 (court order). The second paragraph is superseded by Section 1283 (general rules of practice govern).

Probate Code § 1082 (repealed). Conclusiveness of decree

Comment. Former Section 1082 is restated without substantive change in Section 11705(b) (court order).

Probate Code § 1100 (repealed). Petition for partition

Comment. Former Section 1100 is restated without substantive change in Sections 11950 (right to partition or allotment) and 62 (“property” defined).

Probate Code § 1101 (repealed). Filing; citation

Comment. The first and second sentences of Section 1101 are restated without substantive change in Section 11951 (petition). The third, fourth, and fifth sentences are superseded by subdivision (a) of Section 11952 (parties and notice).

Probate Code § 1102 (repealed). Hearing and notice

Comment. Former Section 1102 is superseded by Section 11952 (parties and notice).

Probate Code § 1103 (repealed). Allocation of property

Comment. Former Section 1103 is restated without substantive change in Section 11953 (disposition of property).

Probate Code § 1104 (repealed). Reference

Comment. Former Section 1104 is restated without substantive change in Section 11954 (referees).

Probate Code § 1105 (repealed). Apportionment of expenses and liens

Comment. Former Section 1105 is restated without substantive change in Section 11955 (costs).

Probate Code § 1106 (repealed). Allotment by court

Comment. Former Section 1106 is restated without substantive change in Section 11956 (effect of division).

Probate Code § 1140 (repealed). Duties of public administrator

Comment. The first sentence of subdivision (a) of former Section 1140 is restated in Section 7601 (duty of public administrator), with the addition of misappropriation as a ground for taking possession or control of property. The court may also appoint the public administrator as special administrator. Section 8541 (procedure for appointment). The second sentence of subdivision (a) is restated in Section 7620 (authority of public administrator).

Subdivision (b) is restated without substantive change in Section 7621 (appointment of public administrator), with the addition of provisions for appointment of a public administrator on the court's own motion and for county recoupment from the estate of a bond fee.

Probate Code § 1140.5 (repealed). Property of alien indigents

Comment. Former Section 1140.5 is omitted. The county may not return alien indigents to their native land.

Probate Code § 1141 (repealed). Search for property, will, burial instructions

Comment. Former Section 1141 is restated without substantive change in Sections 7602 (search for property, will, and instructions for disposition of remains) and 7603 (providing information and access to public administrator), with the elimination of the requirement that there be reasonable grounds to believe the public administrator may be appointed personal representative.

Probate Code § 1142 (repealed). Compensation of public administrator

Comment. Former Section 1142 is restated without substantive change in Section 7622 (general rules governing administration of estates apply).

Probate Code § 1142.3 (repealed). Additional compensation

Comment. Former Section 1142.3 is restated without substantive change in Section 7623 (additional compensation).

Probate Code § 1142.5 (repealed). Deputy public administrator

Comment. Former Section 1142.5 is omitted as unnecessary. See, e.g., Gov't Code §§ 1190-1195 & 24100-24155, governing deputies and assistants.

Probate Code § 1143 (amended). Small estates

Comment. Section 1143 is amended to correct section references.

Probate Code § 1143 (repealed). Small estates

Comment. Former Section 1143 is superseded by Sections 7660-7666 (summary disposition of small estates).

Probate Code § 1144 (repealed). Fees; unclaimed property

Comment. Former Section 1144 is superseded by Sections 7660-7666 (summary disposition of small estates).

Probate Code § 1144.5 (repealed). Fees where personal representative appointed

Comment. Former Section 1144.5 is restated in Section 7604 (costs and fees for taking possession or control of property).

Probate Code § 1145 (repealed). Notice of intestate death of stranger

Comment. Former Section 1145 is superseded by Sections 7600 (report of public officer or employee) and 7600.5 (notice of death of patient).

Probate Code § 1146 (repealed). Duty to give notice of property of decedent

Comment. Former Section 1146 is restated without substantive change in Section 7600 (report of public officer or employee).

Probate Code § 1147 (repealed). Deposit of money of estate

Comment. The first sentence of the first paragraph of former Section 1147 is restated without substantive change in Section 7640 (deposit by public administrator). The second sentence is restated without substantive change in Section 7641 (withdrawal of amounts deposited). The second paragraph is restated in Section 7642 (interest on money deposited).

Probate Code § 1147.5 (repealed). Abandonment of money of estate

Comment. Former Section 1147.5 is restated without substantive change in Section 7644 (deposit unclaimed in financial institution).

Probate Code § 1148 (repealed). Disposition of personal property

Comment. Former Section 1148 is restated without substantive change in Section 7643 (deposit with county treasurer).

Probate Code § 1149 (repealed). Payment of fees

Comment. Former Section 1149 is omitted. Payment of fees is controlled by general rules governing payment of the expenses of administration. See, e.g., Sections 7622 (general rules governing administration of estates apply) and 7662 (payment of demands).

Probate Code § 1150 (repealed). Interest in expenditures

Comment. Former Section 1150 is omitted. General rules governing fiduciary obligations of the personal representative apply to the public administrator. Government Code Section 27443 provides an additional sanction.

Probate Code § 1152 (repealed). Expiration of office

Comment. Former Section 1152 is superseded by Government Code Section 27444 (expiration of term of office), which reverses the rule that a public administrator whose tenure is terminated may complete the administration of pending estates.

Probate Code § 1154 (repealed). Unclaimed funds

Comment. Former Section 1154 is restated in Section 7624 (payment of unclaimed funds), which allows 60 days instead of 10 days for making payment.

Probate Code § 1155 (repealed). Failure to account

Comment. Former Section 1155 is omitted. Special sanctions are unnecessary in view of applicable general sanctions.

Probate Code § 1190 (repealed). Petition to determine members of class

Comment. The procedure provided by former Sections 1190-1192 for determining membership in certain classes entitled to property other than by succession is omitted as unnecessary. Where proceedings for administration of a decedent's estate are pending, this issue is determined in proceedings for distribution. If proceedings for administration are not pending, an action to quiet title may be appropriate.

Probate Code § 1191 (repealed). Setting for hearing; notice

Comment. See the Comment to Section 1190.

Probate Code § 1192 (repealed). Hearing; conclusiveness of order

Comment. See the Comment to Section 1190.

Probate Code § 1203 (amended). Order shortening time

Comment. Section 1203 is amended to correct a section reference.

Probate Code § 1210 (added). Guardian or conservator acting for ward or conservatee

Comment. Section 1210 restates former Section 1289 without substantive change. See Section 48 ("interested person" defined).

Probate Code § 1250 (amended). Request for special notice

Comment. Section 1250 is amended to conform terminology.

Probate Code § 1252 (amended). Notice to be given to person requesting special notice

Comment. Section 1252 is amended to conform terminology.

Probate Code § 1280 (repealed). Trials

Comment. The first sentence of former Section 1280 is superseded by Section 1000 (general rules of practice). See the Comment to Section 1000. The second sentence is restated in Section 1044 without substantive change.

The third and fourth sentences are superseded by Sections 1000 (general rules of practice), 1452 (jury trial under guardianship and conservatorship law), 7200 (jury trial in estate administration), and 17006 (jury trial under Trust Law). See also Code Civ. Proc. §§ 309 (court may submit issue to jury not defined by pleadings), 631 (jury trial waived if not demanded).

The last sentence is restated in Sections 1047 (entry and filing) and 1048 (enforcement of order).

Probate Code § 1281 (repealed). New trials

Comment. Former Section 1281 is restated in Section 7220 without substantive change. The provision for new trial in proceedings to determine heirship and interests in estates is omitted because this procedure is not continued.

Probate Code § 1282 (repealed). Costs

Comment. Former Section 1282 is restated in Section 1002 without substantive change.

Probate Code § 1283 (repealed). Rules of practice

Comment. The first paragraph of former Section 1283 is superseded by Section 1000 (general rules of practice govern). See the Comment to Section 1000; see also Code Civ. Proc. § 2009 (affidavit may be used to establish record of birth). The first sentence of the second paragraph is superseded by Section 1022 (affidavit or verified petition as evidence) and Code of Civil Procedure Section 2009 (affidavit in uncontested proceedings to establish record of birth). The second sentence is restated in Section 8220 (evidence of subscribing witness) without substantive change.

Probate Code § 1284 (repealed). Verification required

Comment. Former Section 1284 is restated in Section 1021 without substantive change.

Probate Code § 1285 (repealed). Clerk to set matter for hearing

Comment. Former Section 1285 is restated in Section 1041 without substantive change.

Probate Code § 1286 (repealed). Continuance or postponement

Comment. Former Section 1286 is continued in Section 1045 without change.

Probate Code § 1287 (repealed). Hearing and order

Comment. Former Section 1287 is restated in Section 1046 without substantive change.

Probate Code § 1288 (repealed). United States as interested person

Comment. Former Section 1288 is restated in Section 7280 without substantive change.

Probate Code § 1289 (repealed). Guardian or conservator acting for ward or conservatee

Comment. Former Section 1289 is restated in Section 1210 without substantive change.

Probate Code § 1290 (repealed). Recital of jurisdictional facts

Comment. Former Section 1290 is restated in Section 1047 without substantive change.

Probate Code § 1291 (repealed). Entry and filing

Comment. Former Section 1291 is restated in Section 1048 without substantive change.

Probate Code § 1292 (repealed). Recordation of order affecting real property

Comment. Former Section 1292 is restated in Section 7263 (recordation of order affecting real property) without substantive change, except that the last clause relating to the effect of recording is omitted as unnecessary. See also Section 7262 (transfer or conveyance of property pursuant to court order).

Probate Code § 1293 (repealed). Delivery to county treasurer

Comment. Former Section 1293 is superseded by Section 11853.

Probate Code § 1297 (repealed). Appealable orders

Comment. Former Section 1297 is restated in Section 7240 without substantive change, except that the part of subdivision (m) relating to determination of heirship is omitted since this procedure is not continued.

Probate Code § 1298 (repealed). Effect of reversal of appointment

Comment. Former Section 1298 is replaced by Section 8406 (effect of reversal of appointment of personal representative). See the Comment to Section 8406.

Probate Code § 1299 (repealed). Judgment roll

Comment. Former Section 1299 is restated in Section 1050 without substantive change. However, the former provision to the effect that the papers constituting the judgment roll need not be attached together is omitted as unnecessary.

Probate Code § 1300 (repealed). Probate referee

Comment. Former Section 1300 is omitted; it no longer serves a useful purpose.

Probate Code § 1301 (repealed). Referee's powers

Comment. Subdivision (a) of former Section 1301 is restated in Section 451 (compelling appearance), with the addition of the reference to a guardian, conservator, or other fiduciary, since the

probate referee may appraise estates other than decedents' estates. Subdivision (b) is restated in Section 450 (general powers) without substantive change.

Probate Code § 1302 (repealed). Subpoenas

Comment. Former Section 1302 is restated in Section 451 (compelling appearance) without substantive change.

Probate Code § 1303 (repealed). Examination of witnesses

Comment. Former Section 1303 is restated in Section 452 (examination, testimony, and production of documents), with the addition of the reference to production of documents.

Probate Code § 1304 (repealed). Contempt

Comment. Former Section 1304 is superseded by Section 453 (protective orders and enforcement).

Probate Code § 1305 (repealed). Appointment of probate referees

Comment. The first sentence of the first paragraph of former Section 1305 is restated in Section 400(a) (appointment by Controller) and the first sentence of Section 401(a) (qualifications for appointment) without substantive change. The second sentence is restated in Section 401(b) (qualifications for appointment) without change. The third sentence is superseded by Section 400(b) (appointment by Controller).

The first sentence of the second paragraph is omitted; it is a transitional provision that no longer serves a function. The second sentence is restated in the first sentence of Section 403(a) (term of office of probate referee) without substantive change. The third sentence is restated in Section 403(b) (term of office of probate referee) without substantive change. The fourth sentence is omitted; it is a transitional provision that no longer serves a function. The fifth sentence is restated in the second sentence of Section 401(a) (qualifications for appointment) without substantive change. The sixth sentence is restated in the second sentence of Section 403(a) (term of office of probate referee) without substantive change.

Probate Code § 1306 (repealed). Qualification examinations

Comment. Former Section 1306 is restated in Section 402 (qualification examination) without substantive change.

Probate Code § 1307 (repealed). Training

Comment. Former Section 1307 is restated in Section 404(a) (standards for probate referee), making adoption of standards mandatory rather than permissive. This codifies existing practice.

Probate Code § 1308 (repealed). Removal

Comment. Subdivision (a) of former Section 1308 is restated in Section 404(b) (standards for probate referee) without substantive change. Subdivision (b) is omitted; the authority of the Controller to remove 10% of the probate referees in a county has not been used in modern times. Moreover, in a large county the terms of the probate referees are staggered so that the Controller will be able to replace probate referees continuously. See Section 403(b).

Probate Code § 1309 (repealed). Cessation of authority

Comment. Former Section 1309 is restated in Section 405 (termination of authority) without substantive change.

Probate Code § 1310 (repealed). Offenses

Comment. Former Section 1310 is omitted; it relates to illegal activities in connection with the inheritance tax, which has been abolished.

Probate Code § 1311 (repealed). Political activities

Comment. Former Section 1311 is restated in Section 406(a)-(b) (political activities of probate referee) without substantive change.

Probate Code § 1312 (repealed). Persons formerly engaged in prohibited political activities

Comment. Former Section 1312 (with the exception of the last sentence) is restated in Section 406(d) (political activities of probate referee). The last sentence is omitted; it is a transitional provision that no longer serves a function.

Probate Code § 1313 (repealed). Study of Law Revision Commission

Comment. Former Section 1313 is omitted. For the report of the California Law Revision Commission concerning administration of estates of decedents, see *Recommendation Relating to Inventory and Appraisal*, 19 Cal. L. Revision Comm'n Reports 741 (1988).

Probate Code § 2100 (amended). Law governing guardianships and conservatorships

Comment. Section 2100 is amended to refer to the general provisions in Division 3.

Probate Code § 2250 (amended). Temporary guardians and conservators

Comment. Subdivision (f) is added to Section 2250 to make clear that a temporary guardian or conservator may be appointed pending the appointment of a successor guardian or conservator to fill a vacancy in the office of guardian or conservator. Subdivision (f) is declaratory of existing law.

Probate Code § 2320 (amended). Amount of bond

Comment. Section 2320 is amended to reflect the repeal of former Section 541 and to conform terminology.

Probate Code § 2325 (amended). Bond of nonprofit corporation

Comment. Section 2325 is amended to conform terminology.

Probate Code § 2333 (amended). Action against sureties

Comment. Section 2333 is amended for conformity with Section 8488 (personal representatives).

Probate Code § 2430 (amended). Payments from principal and income

Comment. Subdivision (a) (4) (v) is added to Section 2431 to ensure court review of the public administrator's costs and fee for taking possession or control of property where another person is ultimately appointed guardian or conservator.

Probate Code § 2523 (repealed). Lis pendens in guardianship and conservatorship

Comment. Former Section 2523 is generalized in Section 1004.

Probate Code § 2580 (amended). Petition to authorize proposed action

Comment. Section 2580 is amended to correct a section reference.

Probate Code § 2610 (amended). Filing inventory and appraisal

Comment. Section 2610 is amended to correct a section reference and conform terminology.

Probate Code § 2616 (amended). Examination concerning assets of estate

Comment. Section 2616 is amended to correct a section reference.

Probate Code § 2631 (amended). Death of ward or conservatee

Comment. Section 2631 is amended to authorize payment of attorney's fees and other reasonable expenses of the guardian or conservator and to incorporate and expand provisions of former Welfare and Institutions Code Section 8012 (public guardian).

Probate Code § 3002 (amended). Community property

Comment. Section 3002 is amended to correct a section reference.

Probate Code § 3082 (amended). Examination concerning property

Comment. Section 3082 is amended to correct a section reference.

Probate Code § 3918 (amended). Successor custodian

Comment. Section 3918 is amended to correct a section reference.

Probate Code § 6104 (added). Effect of duress, menace, fraud, or undue influence

Comment. Section 6104 restates former Section 328.3 without substantive change.

Probate Code § 6105 (added). Conditional will

Comment. Section 6105 restates former Section 328.7 without substantive change.

Probate Code § 6112 (amended). Interested witness

Comment. Subdivision (d) of Section 6112 restates former Section 372.5 without substantive change.

Probate Code § 6154 (added). Classification of devises

Comment. Subdivision (a) of Section 6154 restates part of former Section 662(a) without substantive change. See also Estate of Ehrenfels, 241 Cal. App. 2d 215, 221, 50 Cal. Rptr. 358 (1966).

Subdivision (b) supersedes former Section 662(e) and is consistent with case law under the former provision. See, e.g., Estate of Jones, 60 Cal. App. 2d 795, 798, 141 P.2d 764 (1943).

Subdivision (c) restates former Section 662(b) without substantive change. The reference in subdivision (c) to a demonstrative devise as a “general” devise is new, but is consistent with prior law. See former Section 662(c) (if indicated fund fails, resort may be had to general assets as in case of general devise); 7 B. Witkin, Summary of California Law *Wills and Probate* § 214, at 5725 (8th ed. 1974) (same); Estate of Cline, 67 Cal. App. 2d 800, 805, 155 P.2d 390 (1945) (demonstrative devise is “in the nature of” a general devise; reference to particular fund is for convenient method of payment); Johnston, *Outright Bequests*, in California Will Drafting § 11.92, at 401 (Cal. Cont.

Ed. Bar 1965) (demonstrative devise is “similar to” general devise). For the priority that a demonstrative devise has over other general devises, see Section 21401(b).

Subdivision (d) is new. It incorporates the definition of “pecuniary gift” provided in Section 21120(b) (“pecuniary gift” means a transfer of property made in an instrument that either is expressly stated as a fixed dollar amount or is a dollar amount determinable by the provisions of the instrument).

Subdivision (e) restates the first clause of former Section 662(c) without substantive change. The reference in subdivision (e) to an annuity as a “general” devise is new, but is consistent with the last clause of former Section 662(c) (if indicated fund fails, resort may be had to general assets as in case of general devise) and with case law. See *Estate of Luckel*, 151 Cal. App. 2d 481, 493-95, 312 P.2d 24 (1957) (annuity is a “general charge on the testator’s whole estate”). For the priority that an annuity has over other general devises, see Section 21401(b).

Subdivision (f) restates former Section 662(f) without substantive change.

Probate Code § 6179 (added). Transitional provision

Comment. Section 6179 restates former Section 1055 without substantive change.

Probate Code § 6221.5 (amended). Execution of attestation clause

Comment. Section 6221.5 is amended to correct a section reference.

Probate Code § 6327 (amended). Appeals

Comment. Section 6327 is amended to correct a section reference.

Probate Code § 6527 (amended). Application of part

Comment. Section 6527 is amended to conform terminology.

Probate Code § 6607 (amended). Notice of hearing

Comment. Section 6607 is amended to correct section references and conform terminology.

Probate Code § 6608 (amended). Inventory and appraisal

Comment. Section 6608 is amended to correct section references and conform terminology.

Probate Code § 6803 (amended). Escheat of tangible personal property

Comment. Section 6803 is amended to correct a section reference.

Probate Code § 6805 (amended). Escheat of intangible property

Comment. Section 6805 is amended to correct a section reference.

Probate Code § 9001 (amended). Notice to creditors

Comment. Section 9001 is amended to correct a section reference.

Probate Code § 9002 (amended). Claim requirement

Comment. Subdivision (c) of Section 9002 is superseded by Chapter 8 (commencing with Section 9350) (claims in litigation).

Probate Code § 9050 (amended). Notice required

Comment. Section 9050 is amended to correct a section reference.

Probate Code § 9052 (amended). Form of notice

Comment. Section 9052 is revised for clarity.

Probate Code § 9103 (amended). Late claims

Comment. Section 9103 is amended to combine it with the fourth sentence of the first paragraph and the second and third paragraphs of former Section 709, which related to late claims in pending actions, and with former Section 720, which related to late claims involving causes of action not pending. The combination of provisions results in changes for purposes of clarification, generalization, and uniformity.

This section does not excuse the duty of the personal representative to give timely notice to a known creditor pursuant to Chapter 2 (commencing with Section 9050). A creditor has knowledge of the administration of an estate within the meaning of subdivision (a)(1) if the creditor has actual knowledge of the administration through receipt of notice given

under Section 9050 or otherwise, such as information from a newspaper clipping service. Constructive knowledge through publication of a notice of death or other information that does not come to the attention of the creditor is not knowledge for the purpose of subdivision (a) (1). The standard applicable to the creditor's attorney is different. The attorney is not held responsible for knowledge of the decedent's death unless the attorney is representing the creditor in the matter involving the decedent.

It should be noted that a petition under this section must be verified. See Section 1284. This section does not apply to certain public entity claims which involve a written notice or request to the public entity and a response time governed by other law. See Sections 9201 (claims governed by special statutes) and 9202 (claim by Director of Health Services).

Probate Code § 9253 (amended). Effect of statute of limitations

Comment. Former subdivisions (a) and (c) of Section 9253 are restated in Section 9352 (tolling of statute of limitations) without substantive change. Former subdivision (d) is combined with subdivision (a) of former Section 9257 and restated in Section 9353 (bar of rejected claims) without substantive change.

Probate Code § 9257 (repealed). Action on rejected claim

Comment. Subdivision (a) of former Section 9257 is combined with former subdivision (d) of Section 9253 and restated in Section 9353 (bar of rejected claims) without substantive change. Subdivisions (b)-(d) are restated in Section 9354(a)-(c) (action on claim) without substantive change.

Probate Code § 9605 (added). Claims against personal representative

Comment. Section 9605 restates parts of former Section 602 and extends the provisions from executors to all personal representatives. See also Section 8801 (contents of inventory).

Probate Code § 9614 (added). Suspension of powers of personal representative

Comment. Section 9614 supersedes former Sections 352 and 550. It is drawn from Section 3-607 of the Uniform Probate Code (1982). The provision for assessment of attorney's fees is new. Section 9614 includes but is not limited to the situation where the

personal representative is appointed before or pending probate of a will, or under a previous will, or where there is litigation over the bond of the personal representative and it is alleged that the estate is being wasted.

Probate Code § 9620 (amended). Summary determination of disputes

Comment. Section 9620 is amended to correct a section reference.

Probate Code § 9704 (amended). Delivery by person in possession

Comment. Section 9704 is amended to conform terminology.

Probate Code § 9863 (repealed). Lis pendens in proceedings involving property claimed by another person

Comment. Former Section 9863 is generalized in Section 1004.

Probate Code § 10003 (amended). Sales

Comment. Section 10003 is amended to correct a section reference.

Probate Code § 10005 (amended). Appraised value

Comment. Section 10005 is amended to conform terminology.

Probate Code § 10301 (amended). Posting notice

Comment. Section 10301 is amended to conform terminology.

Probate Code § 10405 (amended). Special administrator

Comment. Section 10405 is amended to conform terminology.

Probate Code § 12404 (amended). Missing persons

Comment. Section 12404 is amended to correct a section reference.

Probate Code § 12408 (amended). Determination of identity

Comment. Section 12408 is amended to correct a section reference.

Probate Code § 13006 (amended). Successor of decedent

Comment. Subdivision (b) of Section 13006 is revised to cover the situation where the succession to property is governed by the law of a jurisdiction other than California. See Sections 12502 (“foreign nation” defined), 12506 (“sister state” defined).

Probate Code § 13051 (amended). Authority of guardian, conservator, trustee, custodian, or foreign personal representative

Comment. Subdivision (d) is added to Section 13051 to permit a sister state personal representative to collect or transfer personal property pursuant to Chapter 3 (commencing with Section 13100). See Section 12507 (“sister state personal representative” defined). Section 12570 limits the power of the sister state personal representative to collection of personal property.

Probate Code § 13052 (amended). Date of valuation

Comment. Section 13052 is amended to correct terminology. See Probate Code Sections 400-453 (probate referees).

Probate Code § 13103 (amended). Appraisal of real property

Comment. Section 13103 is amended to correct terminology and section references. The phrase “in this state” is added in the first clause of Section 13103 for conformity with Section 13100.

Probate Code § 13109 (amended). Liability of person taking personal property by affidavit for decedent’s unsecured debts

Comment. Section 13109 is revised to make clear that the liability of a person who takes personal property by affidavit is not liable to a creditor whose claim is barred. See, e.g., Sections 9002(b) (bar of claims not filed in accordance with statute), 9257 (bar of rejected claims).

Probate Code § 13111 (amended). Restitution if estate proceeding commenced

Comment. Subdivision (a) of Section 13111 is revised and subdivision (f) is added to clarify the application of this section in the case of a nondomiciliary decedent. See Sections 12501 (“ancillary administration” defined), 12505 (“nondomiciliary decedent” defined).

Probate Code § 13112 (amended). Limitation on liability under Sections 13109 and 13110

Comment. Subdivision (a) of Section 13112 is revised to conform to the revision of Section 13111. See Section 13111(a). Proceedings in this state include ancillary administration. See the Section 13111(f) and the Comment thereto.

Probate Code § 13114 (amended). Public administrator or coroner holding property

Comment. Section 13114 is amended to correct terminology and section references.

Probate Code § 13152 (amended). Petition for determination of succession

Comment. Section 13152 is amended to correct terminology and section references.

Probate Code § 13154 (amended). Court order

Comment. Section 13154 is amended to correct terminology.

Probate Code § 13156 (amended). Liability of person taking real property by court order for decedent’s unsecured debts

Comment. Subdivision (d) is added to Section 13156 to make clear that the liability of a person who takes real property by court order under this chapter is not liable to a creditor whose claim is barred. See, e.g., Sections 9002(b) (bar of claims not filed in accordance with statute), 9257 (bar of rejected claims).

Probate Code § 13200 (amended). Affidavit for real property

Comment. Section 13200 is amended to correct terminology and section references.

Probate Code § 13203 (amended). Effect of recording

Comment. Section 13203 is amended to correct terminology.

Probate Code § 13204 (amended). Liability of person taking real property by affidavit for decedent's unsecured debts

Comment. Section 13204 is revised to make clear that the liability of a person who takes real property by affidavit is not liable to a creditor whose claim is barred. See, e.g., Sections 9002(b) (bar of claims not filed in accordance with statute), 9257 (bar of rejected claims).

Probate Code § 13501 (amended). Property of deceased spouse subject to administration

Comment. Section 13501 is amended to correct section references.

Probate Code § 13502 (amended). Election to administer property

Comment. Section 13502 is amended to correct terminology and section references.

Probate Code § 13503 (amended). Election to join property in administration

Comment. Section 13503 is amended to correct terminology.

Probate Code § 13550 (amended). Personal liability for debts

Comment. Section 13550 is amended to correct a section reference.

Probate Code § 13553 (amended). Exemption from liability

Comment. Section 13553 is amended to correct a section reference.

Probate Code § 13650 (amended). Petition for court order

Comment. Section 13650 is amended to correct section references.

Probate Code § 13655 (amended). Notice of hearing

Comment. Section 13655 is amended to correct section references.

Probate Code § 13656 (amended). Court order

Comment. Section 13656 is amended to correct section references.

Probate Code § 13658 (amended). Unincorporated business

Comment. Section 13658 is amended to correct terminology and section references.

Probate Code § 13659 (amended). Inventory and appraisal

Comment. Section 13659 is amended to correct terminology and section references.

Probate Code § 15401 (amended). Method of revocation

Comment. Subdivision (b) of Section 15401 is amended to make clear that the rule applicable to revocation by an attorney in fact applies to modification. This is consistent with the rule provided in Section 15402.

Probate Code § 16225 (amended). Trustee's power to make deposits in financial institutions

Comment. Subdivision (a) of Section 16225 is amended to conform the terminology of this section to the general definitions. See Sections 22 (account in an insured credit union), 23 (account in an insured savings and loan association), 40 (financial institution), 46 (insured account in a financial institution). This amendment is technical and nonsubstantive.

Probate Code § 16304 (amended). When right to income arises; apportionment of income

Comment. Subdivision (a) of Section 16304 is amended to make clear that the rules governing accrual of income on testamentary distributions in trust during an intervening period of estate administration are the rules applicable to estate administration.

The amendments in subdivision (d) are technical.

Subdivision (f) is added to fill a gap in the law. For accrual of interest on unpaid distributions of current income, see Section 16314 (interest on trust distributions).

Probate Code § 16305 (amended). Income earned during administration of decedent's estate

Comment. Subdivision (a) of Section 16305 is amended to correct section references. Subdivision (b) is amended to reflect the repeal of separate probate administration provisions relating to interest on the share of a trust income beneficiary; these provisions are superseded by Sections 16304 (when right to income arises) and 16314 (interest on trust distributions).

Probate Code § 16314 (added). Interest on trust distributions

Comment. Section 16314 is new. *Cf.* 21120(b) (“pecuniary gift” defined). The rate of interest payable on trust distributions parallels that payable in probate administration. See Section 12001 (rate of interest). The trust instrument may vary the rules provided in this section. See Section 16302.

Probate Code § 17208 (repealed). Appointment of guardian ad litem

Comment. Section 17208 is restated without substantive change and generalized in Section 1003 which applies to the entire Probate Code.

Probate Code § 21520 (amended). Marital deduction gifts

Comment. Section 21520 is amended to restore a missing word.

Probate Code § 21521 (amended). Chapter inapplicable to estate trust

Comment. Section 21521 is amended to make its application more precise.

Revenue & Taxation Code § 480 (amended). Change in ownership statement

Comment. Subdivision (b) of Section 480 is amended to require the statement of change in ownership at the time the inventory is filed. This may differ from the time the appraisal is filed. See Prob. Code § 8800 (inventory and appraisal required); see also Prob. Code § 8404 (statement of duties and liabilities). *Cf.* Prob. Code § 58 (“personal representative” defined).

Welfare & Institutions Code § 6254 (amended). Judicial commitments

Comment. Section 6254 is amended to delete the reference to former Section 1663 of the Probate Code which has been repealed. A court-ordered commitment to a United States government hospital is made pursuant to Section 5358 of the Welfare & Institutions Code. See also Welf. & Inst. Code §§ 4123 (transfer to federal institution), 5008(c) (intensive treatment in United States government hospital), 5366.1 (detention of person in facility of Veterans Administration or other agency of United States government), 6008 (conservatee admitted to hospital of United States government).

Welfare & Institutions Code §§ 8000-8016 (chapter heading)

Comment. The heading of Chapter 1, formerly commencing with Section 8000, is amended to reflect the relocation of former Sections 8000-8015 to the Government Code and the Probate Code and the retention of Section 8016 in this chapter.

Welfare & Institutions Code § 8000 (repealed). Public guardian

Comment. Former Section 8000 is restated in Government Code Sections 27430, 27431, and 27436 without substantive change.

Welfare & Institutions Code § 8001 (repealed). Public administrator as public guardian

Comment. Former Section 8001 is restated in Government Code Section 27432 without substantive change.

Welfare & Institutions Code § 8002 (repealed). Termination of office

Comment. Former Section 8002 is restated in Government Code Section 27430 without substantive change.

Welfare & Institutions Code § 8003 (repealed). Designation of guardian in place of public administrator

Comment. Former Section 8003 is restated in Government Code Section 27432 without substantive change.

Welfare & Institutions Code § 8004 (repealed). Designation of public administrator in place of guardian

Comment. Former Section 8004 is restated in Government Code Section 27432 without substantive change.

Welfare & Institutions Code § 8005 (repealed). Termination of authority

Comment. Former Section 8005 is restated in Government Code Section 27433 without substantive change.

Welfare & Institutions Code § 8006 (repealed). Application for appointment

Comment. Former Section 8006 is superseded by Probate Code Sections 2900, 2920, and 2922.

Welfare & Institutions Code § 8006.5 (repealed). Costs and fees

Comment. Former Section 8006.5 is restated in Probate Code Section 2902, which eliminates the maximum and minimum fees.

Welfare & Institutions Code § 8007 (repealed). Consent of department

Comment. Former Section 8007 is restated in Probate Code Section 2921 without substantive change.

Welfare & Institutions Code § 8008 (repealed). Official bond

Comment. Former Section 8008 is restated in Government Code Section 27434 without substantive change.

Welfare & Institutions Code § 8009 (repealed). Deposit of funds

Comment. Former Section 8009 is superseded by Probate Code Section 2940.

Welfare & Institutions Code § 8010 (repealed). Employment of attorneys

Comment. Former Section 8010 is restated in Probate Code Section 2941, with the addition of a reference to satisfactory pro bono or contingency fee arrangements.

Welfare & Institutions Code § 8011 (repealed). Appraisal of estate

Comment. Former Section 8011 is superseded by Probate Code Section 2943.

Welfare & Institutions Code § 8012 (repealed). Disposition of property on death of ward or conservatee

Comment. Former Section 8012 is superseded by Probate Code Section 2631.

Welfare & Institutions Code § 8013 (repealed). Claim for expenses

Comment. Former Section 8013 is restated in Probate Code Section 2942 without substantive change.

Welfare & Institutions Code § 8015 (repealed). Advancement of expenses

Comment. Former Section 8015 is restated in Government Code Section 27435 without substantive change.

Uncodified (added)

Comment. This section restates former Section 1055 without substantive change.

TABLE OF SOURCES

Note. The following table lists pages in this publication where a comment or other background material may be found relating to a particular section or group of sections in the Commission's 1988 probate legislation. Page numbers in parenthesis refer to the recommendation that relates to a particular conforming revision or repeal.

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