

First Supplement to Memorandum 82-26

Subject: Study L-611 - Probate Law (Missing Persons--Presumption
of Death)

Probate Code Sections 280-294 deal with the administration of estates of persons missing for seven years. (A copy of these sections is attached as Exhibit 2.) Section 280 provides for administration "as though such person were dead" in the manner provided generally, except as otherwise provided in Section 281-294.

The staff proposes to relocate these sections in Division 3 of the Probate Code dealing with administration. It is premature to attempt a full review of this procedure since it is intimately bound up with general provisions on administration of estates. There do not appear to be any significant defects in the existing procedure, although the language could be greatly improved. When the Commission undertakes revision of Division 3 of the Probate Code, we can suggest some further improvements in drafting and consider revising the procedure in light of the Uniform Probate Code.

The staff draft of the statute is attached to this memorandum as Exhibit 1.

Respectfully submitted,

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Staff Counsel

EXHIBIT 1

STAFF DRAFTADMINISTRATION OF ESTATES OF PERSONS
MISSING OVER SEVEN YEARSProbate Code §§ 280-294 (repealed). Administration of estates of persons missing over seven years

Comment. Former Sections 280-294 are continued in Chapter 23 (commencing with Section 1300) of Division 3 without substantive change. For a table showing the disposition of former law, see the Comment to Chapter 23 (commencing with Section 1300) of Division 3.

Probate Code §§ 1300-1313 (added). Administration of estates of persons missing over seven years

SEC. . Chapter 23 (commencing with Section 1300) is added to Division 3 of the Probate Code, to read:

CHAPTER 23. ADMINISTRATION OF ESTATES OF
PERSONS MISSING OVER SEVEN YEARS

Comment. Chapter 23 (commencing with Section 1300) continues former Chapter 2 (commencing with Section 280) of Division 2a without substantive change. Former Section 293 is not continued, however, because it was a transitional provision that has served its function. The following table shows the corresponding sections of this chapter and former law.

<u>Former Probate Code Sections 280-294</u>	<u>New Probate Code Sections 1300-1313</u>
280	1300
281	1301
282	1302
283	1303
284	1304
285	1305
286	1306
287	1307
288	1308
289	1309
290	1310
291	1311
292	1312
293	Not continued
294	1313

§ 1300. Missing person defined; administration as though dead

1300. Whenever any person owning property in this state has been absent from his or her last known place of residence for the continuous period of seven years, with his or her whereabouts for such period unknown to the persons most likely to know thereof, he or she shall be deemed to be a missing person, and all property of the missing person in this state may be administered as though the missing person were dead in the same manner as provided for the administration of deceased persons by this code, subject to the conditions, restrictions, and limitations prescribed in this chapter.

§ 1301. Jurisdiction; title of proceedings

1301. If the missing person was a resident of this state at the time of his or her disappearance, the superior court of the county of his or her residence shall have jurisdiction in the premises. If the missing person was a nonresident, the superior court in any county where any real property of the missing person is located, or of the county where any personal property is located in case there be no real property in the state, shall have jurisdiction in the premises. The title of all proceedings for administration of the estate of the missing person shall be entitled in the court and "In the matter of the estate of, a missing person."

§ 1302. Contents of petition; date of hearing

1302. Whenever a verified petition is presented to the court having jurisdiction by the spouse or any of the family or friends of the missing person representing that his or her whereabouts has been for seven years and still is unknown and that the missing person left an estate which requires administration, the clerk of the court shall appoint a day for hearing such petition, not less than three months from the date of filing. The petition may be for administration or probate of the last will, as the case may be, of the missing person and shall be verified to the best of the knowledge and belief of the petitioner. The petition shall set forth a statement of the facts required as in the case of the administration of estates of deceased persons, and shall also contain allegations as to the last known place of residence of the missing person, and when he or she disappeared therefrom, the fact that he or she has not been heard from by the persons most likely to hear (naming them and their relationship) for a period of seven years, and

the fact that his or her whereabouts is unknown to such persons and to the petitioner.

§ 1303. Notice of hearing

1303. Notice of hearing the petition for administration or probate of the last will of the missing person shall be published in the form of similar notices of hearing in the administration of estates of deceased persons pursuant to Section 6064 of the Government Code, the first publication to be at least three calendar months prior to the day set for the hearing of said petition. Within 20 days after the filing of the petition, copies of the notice shall be sent by registered mail to each person named in the petition as heir at law, next of kin, devisee, and legatee, and to the last known address of the missing person. Proof by affidavit of such publication and such mailing shall be filed at or prior to the hearing.

§ 1304. Hearing; appointment of executor or administrator; finding of time of disappearance

1304. At the time fixed for the hearing or at any time to which the hearing shall be postponed, the court shall hear the petition and the evidence sworn in support of or in opposition thereto, and, if satisfied that the allegations thereof are true, and that such person has remained missing and his or her whereabouts unknown continuously for a period of seven years, shall appoint some duly qualified person as administrator or executor as in the manner provided for the estates of deceased persons. If the court grants such order, the court shall fix the time when the missing person left his or her last place of residence and became missing and determine that his or her whereabouts have not been known continuously for a period of at least seven years. Upon the hearing, the court may consider the testimony of any witnesses likely to know the last place of residence and the whereabouts of the missing person, and may receive in evidence and consider the affidavits and depositions of other competent witnesses and give it such weight as the court may deem proper.

§ 1305. Suspension of sale, encumbrance or other disposition of property for one year

1305. Except for the purposes of paying taxes, assessments, liens, insurance premiums, allowing claims for debts contracted by the missing person before his or her disappearance or to prevent the depreciation of

property on account of neglect, or waste, or to specifically perform contracts made by the missing person before his or her disappearance, no sale, mortgage, or other disposition or distribution of the property of the missing person shall be had until the lapse of one year after the appointment and qualification of the executor or administrator.

§ 1306. Distribution; bond of distributee or assignee

1306. No distribution of the property of the missing person's estate to the heirs, devisees, or legatees shall be made in any event until after the lapse of the period of one year after the appointment and qualification of the executor or administrator; nor shall such distribution be made until after the lapse of three years after the appointment and qualification of the executor or administrator, unless the distributee or assignee execute and deliver to the representative of the estate a surety company bond in a penal sum not less than the value of the property distributed, and for such additional amount as the court may prescribe. The bonds shall be approved by the court, and conditioned for the return of the property or the value thereof to the representative of the estate in case the missing person be adjudicated, in the manner provided in this chapter, to be still living since the commencement of the seven-year period, and also conditioned to save the representative harmless from the damages and expenses of all suits brought by the missing person or anyone succeeding to his or her rights, by reason of such distribution having been made during the three-year period.

§ 1307. Petition by person claiming to be missing person

1307. If within three years after the appointment and qualification of a representative, any person files a verified petition claiming to be the missing person and causes a copy of the petition to be served personally or by registered mail upon the legal representative of the estate and upon each of the heirs, legatees, and devisees, the court shall determine the identity of the claimant. The court may upon application or on its own motion require the claimant to give security to be approved by the court for all costs and expenses involved in the hearing and ultimate determination thereof in case the issue be decided against the claimant.

§ 1308. Contents of petition

1308. The verified petition of the person claiming to be the missing person shall set forth the facts and circumstances of his or her

disappearance and continued absence and other facts and circumstances upon which he or she relies for his or her identification.

§ 1309. Vacation of proceedings; delivery of property to claimant

1309. If the claimant is determined to be the missing person, an order shall be made vacating all of the proceedings for administration, except those providing for the payment of taxes, assessments, liens, insurance premiums, allowed claims, the specific performance of contracts, preservation of the property, and any sale, encumbrance, or other disposition of the property made in compliance with an order of the court, and the residue of the estate, less fees, costs and expenses thus far incurred, shall be surrendered and delivered to the claimant.

§ 1310. Claim based on death of missing persons

1310. If within three years after the appointment and qualification of a representative any person appears and files a verified petition claiming that the missing person died subsequent to the commencement of the seven-year period and that the petitioner is entitled to the property or any portion thereof as successor in interest to the rights of the missing person because of his or her death, and if the claimant causes a copy of the petition to be served personally or by registered mail upon the legal representative of the estate and upon each of the heirs, legatees, and devisees, the court shall try and determine the truth of the petition. The court may upon application or on its own motion require the claimant to give security to be approved by the court for all costs and expenses involved in the hearing and ultimate determination thereof in case the issue be decided against the claimant. If the issue is determined in favor of the claimant, the court shall make and enter such order as the circumstances require.

§ 1311. Presumption of death; final distribution

1311. If no claim is made under Section 1307 or 1310, a conclusive presumption arises that the missing person died prior to the filing of the petition for administration or the probate of the will and the estate shall be finally distributed accordingly, so far as it has not already been accomplished. By order of the court the estate shall be closed, the liability of the representative and his or her sureties to claimants ended, the liability of distributees ended, and all bonds given by them canceled. If in any case the period of absence provided in Section 1300 exceeds 10 years at the time of filing the petition for

the appointment of an administrator or probate of the will, the estate may be finally distributed and closed at the end of one year, without a bond being given, with like effect as provided in this section at the expiration of the three-year period.

§ 1312. Limitation of actions

1312. After the expiration of the periods of time provided for the final distribution of the estate, and after the missing person has been absent for the period of 10 years, the statute of limitations shall be deemed to have run against all claimants, and no action, suit, petition, or proceeding in any form may be brought by the missing person or by persons claiming under the missing person, or otherwise claiming any interest in the estate, against the administrator or executor or against any surety on any bond or against any of the distributees, to recover any part of the estate.

§ 1313. Manner of administration and distribution of estate

1313. The administrator or executor to whom letters are issued as provided in this chapter shall administer and distribute the estate of a missing person in the same general manner, with the same method of procedure, and with the same force and effect as provided by this code for the administration and settlement of the estates of deceased persons, except as otherwise modified, limited, or directed by this chapter.

EXHIBIT 2

Probate Code Sections 280-294 (to be repealed)

Chapter 2

ADMINISTRATION OF ESTATES OF PERSONS
MISSING OVER SEVEN YEARS

- Sec.
280. Missing person defined; administration as though dead.
281. Jurisdiction; title of proceedings.
282. Petition; date of hearing; contents of petition.
283. Notice of hearing; publication; service on heirs, devisees and legatees.
284. Hearing; appointment of executor or administrator; finding of time of disappearance; evidence.
285. Suspension of sale, encumbrance or other disposition of property for one year; exceptions.
286. Distribution; suspension; bond of distributee or assignee.
287. Person claiming to be missing person; petition; service; issue of identity; security.
288. Person claiming to be missing person; contents of petition.
289. Vacation of proceedings; delivery of property to claimant; exceptions.
290. Death of missing person; petitioner; petition; service; hearing; security; order.
291. Presumption of death; final distribution; closing estate; discharge of security.
292. Limitation of actions.
293. Property and estates governed by chapter.
294. Manner of administration and distribution of estate.

§ 280. Missing person defined; administration as though dead

Whenever any person owning property in the State of California has been absent from his last known place of residence for the continuous period of seven years, with his whereabouts for such period unknown to the persons most likely to know thereof, he shall be deemed to be a missing person, and all property of such person in the State of California may be administered, as though such person were dead, in the same manner as provided for the administration of deceased persons by this code, subject to the conditions, restrictions and limitations hereinafter prescribed.

§ 2.)

§ 281. Jurisdiction; title of proceedings

If such person was a resident of this State at the time of his disappearance, the superior court of the county of his residence shall have jurisdiction in the premises; if a nonresident the superior court in any county where any real property of the missing person is located, or of the county where any personal property is located, in case there be no real property in the State, shall have jurisdiction in the premises. The title of all proceedings commenced and prosecuted under the preceding sections, shall be entitled in the court, and "In the matter of the estate of, a missing person."

§ 282. Petition; date of hearing; contents of petition

Whenever a verified petition is presented to the court having jurisdiction in the premises, as provided in section 281, by his spouse or any of his family or friends, representing that his whereabouts has been for such period of time and still is unknown and that he left an estate which requires administration, the clerk of the court shall appoint a day for hearing such petition, not less than three months from the date of filing. Said petition may be for administration or probate of the last will, as the case may be, of the missing person and shall be verified to the best of the knowledge and belief of the petitioner; said petition shall set forth a statement of the facts required as in the case of the administration of estates of deceased persons, and shall, in addition thereto, contain allegations as to the last known place of residence of the missing person, and when he disappeared therefrom; the fact that he has not been heard from by the persons most likely to hear (naming them and their relationship), for a period of seven years, and the fact that his whereabouts is unknown to such persons and to the petitioner.

§ 283. Notice of hearing; publication; service on heirs, devisees and legatees

283. Notice of hearing the petition for administration or probate of the last will of the missing person shall be published in the form of similar notices of hearing in the administration of estates of deceased persons, pursuant to Section 6065 of the Government Code, the first publication to be at least three calendar months prior to the day set for the hearing of said petition; and in addition, within 20 days after the filing of the petition, copies of the notice shall be sent by registered mail to each person named in the petition as heir-at-law, next of kin, devisee and legatee, and to the last known address of such missing person; and proof by affidavit of such publication and such mailing shall be filed at or prior to the hearing.

§ 284. Hearing; appointment of executor or administrator; finding of time of disappearance; evidence

At the time so fixed for hearing or at any time to which said hearing shall be postponed, the court must hear the petition and the evidence sworn in support of or in opposition thereto, and, if satisfied that the allegations thereof are true, and that such person has remained missing, and his whereabouts unknown, continuously for a period of seven years, must thereupon appoint some duly qualified person as administrator or executor as in the manner provided for the estates of deceased persons. If the court grant such order, the court shall fix and determine the time when such person left his last place of residence and abode and became missing and that his whereabouts have not been known continuously for a period of at least seven years. Upon the hearing, the court may consider the testimony of any witnesses likely to know the last place of residence, and whereabouts of said alleged missing person, and may likewise receive in evidence and consider the affidavits and depositions of other competent witnesses and give it such weight as the court may deem proper.

§ 285. Suspension of sale, encumbrance or other disposition of property for one year; exceptions

Except for the purposes of paying taxes, assessments, liens, insurance premiums, allowing claims for debts contracted by the missing person before his disappearance or to prevent the depreciation of property on account of neglect, or waste, or to specifically perform contracts made by the missing person before his or her disappearance, no sale, mortgage or other disposition or distribution of the property of said missing person shall be had until the lapse of one year after the appointment and qualification of the executor or administrator.

§ 286. Distribution; suspension; bond of distributee or assignee

No distribution of the property of said estate to the heirs, devisees or legatees, of the missing person shall be made in any event until after the lapse of the period of one year after the appointment and qualification of the executor or administrator; nor shall such distribution be made until after the lapse of three years after the appointment and qualification of the executor or administrator, unless the distributee or assignee execute and deliver to the representative of said estate a surety company bond in a penal sum not less than the value of the property distributed and for such additional amount, as the court may prescribe, said bonds to be approved by the court, and conditioned for the return of the property or the value thereof to the representative of the estate in case the missing person be adjudicated, in the manner hereinafter set forth, to be still living since the commencement of said seven year period, and also conditioned to save the representative harmless from the damages and expenses of all suits brought by the missing person or anyone succeeding to his or her rights, by reason of such distribution having been made during said period of three years.

§ 287. Person claiming to be missing person; petition; service; issue of identity; security

In case any person shall, within the period of three years after the appointment and qualification of a representative, file a verified petition, claiming to be the missing person and shall also cause a copy thereof to be served personally or by registered mail upon the legal representative and upon each of the heirs, legatees and devisees, an issue shall thereupon be presented to the court to determine the identity of the claimant which issue shall be tried and determined by the court. The court may upon application or of its own motion require the claimant to give security to be approved by the court for all costs, and expenses involved in the hearing and ultimate determination thereof, in case the issue be decided against the claimant. (Added

§ 288. Person claiming to be missing person; contents of petition

The verified petition of said claimant shall set forth the facts and circumstances of his disappearance and continued absence, and other facts and circumstances upon which he relies for his identification.

§ 289. Vacation of proceedings; delivery of property to claimant; exceptions

In the event that said issue be determined in favor of the claimant, and it be determined that the missing person be still living, then an order shall be made vacating all of the proceedings for administration, except those providing for the payment of taxes, assessments, liens, insurance premiums, allowed claims, the specific performance of contracts, preservation of the property, and any sale, encumbrance or other disposition of the property made in compliance with an order of the court; and thereupon the residue of said estate, less fees, costs, and expenses thus far incurred, shall be surrendered and delivered to said claimant.

§ 290. Death of missing person; petitioner; petition; service; hearing; security; order

In case any other person shall within said period of three years appear and file a verified petition, claiming in such petition that the missing person died subsequently to the commencement of said seven year period, and the petitioner is entitled to the property or any portion thereof, as successor in interest to the rights of the absent person because of his death; and if the claimant shall also cause a copy of the petition to be served either personally or by registered mail upon the legal representative of the estate and upon each of the heirs, legatees and devisees, an issue shall thereupon be tried and determined by the court as to the truth of the petition. The court may upon application or on its own motion require the claimant to give security to be approved by the court for all costs and expenses involved in the hearing and ultimate determination thereof, in case the issue be decided against the claimant.

In case the issue last aforesaid be determined in favor of the claimant, the court shall make and enter such order as the circumstances require.

§ 291. Presumption of death; final distribution; closing estate; discharge of security

In case no person makes claim during said period of three years, either to be the missing person, or to have succeeded to the rights of the missing person since the commencement of said seven year period by reason of the death of the missing person, a conclusive presumption shall arise that the missing person died prior to the filing of the petition for administration or the probate of his will; and the estate shall be finally distributed accordingly, so far as the same has not already been accomplished; and by order of the court the estate shall be closed and the liability of the representative and his sureties to claimants ended, and the liability of distributees ended, and all bonds given by them canceled. If in any case such period of absence as set forth in section 280 shall have exceeded 10 years at the time of filing the petition for the appointment of an administrator or probate of the will, then said estate may be finally distributed and closed, at the end of one year, without a bond being given, with like effect as hereinbefore provided for at the expiration of the three year period.

§ 292. Limitation of actions

After the expiration of the periods of time provided for the final distribution of said estate, and after said missing person shall have been absent and missing for the period of 10 years as aforesaid, the statute of limitations shall be deemed to have run against all claimants; and no action, suit, petition or proceeding in any form shall be brought by said missing person or persons claiming under him or otherwise claiming any interest in said estate, against the administrator or executor or against any surety on any bond or against any of the distributees, to recover any part or portion of said estate.

§ 293. Property and estates governed by chapter

The provisions of this chapter shall apply to the property and estates of all missing persons as herein defined, who have been missing and absent from their last known place of residence for the continuous period of seven years, whether such absence commenced heretofore and has been completed, or is still running, or shall hereafter commence to run.

§ 294. Manner of administration and distribution of estate

The administrator or executor to whom letters shall have been issued as provided in this chapter, shall administer and distribute the estate of such missing person in the same general manner, method of procedure and with the same force and effect as provided by this code for the administration and settlement of the estates of deceased persons, except as otherwise modified, limited or directed by the provisions of this act.