

#L-600

7/15/82

Memorandum 82-75

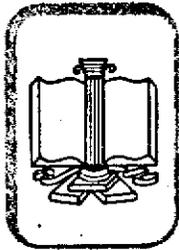
Subject: Study L-600 - Probate Code (Probate Code Section 772)

The attached letter (Exhibit 1) notes what appears to be a technical deficiency in the legislation enacted in 1980 relating to notice in probate proceedings. This was not legislation recommended by the Commission.

The staff suggests that the attached letter be furnished to the Estate Planning, Trust and Probate Law Section. That Section would appear to be the best organization to evaluate the letter and to propose any necessary corrective legislation.

Respectfully submitted,

John H. DeMouilly
Executive Secretary



McGEORGE SCHOOL OF LAW

UNIVERSITY OF THE PACIFIC 3200 Fifth Avenue, Sacramento, California 95817

June 9, 1982

Law Revision Commission
400 Middlefield Road, Room D/2
Palo Alto, CA 94306

Re: Probate Code Section 772

Gentlemen:

Prior to 1980, Section 772 provided in part that (except for Sections 757, 770 and 771) personal property may be sold only after notice posted at the Courthouse of the County in which the proceedings are pending at least ten days before the sale. In 1980, Section 772 was amended by substituting "personal property may be sold only after notice is given by the Clerk in the manner provided in Section 1200 and by the executor or administrator in the manner specified by Section 1200.5."

Section 755 provides that (except for Sections 770, 771 and 772) all sales must be confirmed by the Court at a hearing set by the Clerk and noticed as provided by Sections 1200 and 1200.5.

Prior to 1980, the notice under Section 772 was properly signed and posted by the personal representative, as witness the forms in CEB California Decedent Estate Administration and CEB California Probate Workflow Manual Revised.

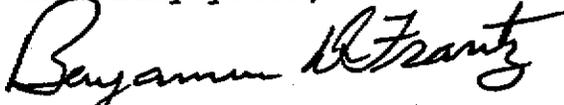
Sections 1200 and 1200.5 are concerned only with notices of hearing by the Court and become operative only after the personal representative has sold property requiring Court confirmation. The County Clerk is in no way interested in giving notice of intended sale of personal property because he is not involved in the administration of the estate but only in the procedural matters resulting in confirmation by the Court.

Because the personal representative should be empowered to sell personal property after giving proper notice, I commend this problem

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for your early attention in the hope that emergency legislation
may provide appropriate corrective relief.

Very truly yours,

A handwritten signature in cursive script that reads "Benjamin D. Frantz". The signature is written in dark ink and is positioned above the typed name.

BENJAMIN D. FRANTZ
Professor of Law

BDF:bk

cc: Christopher D. Dworin
Research Attorney
California Continuing Education
of the Bar