

## Memorandum 86-98

Subject: Study L-1045 - Preliminary Provisions and Definitions in the Probate Code

Attached to this memorandum is a draft of the recommendation relating to preliminary provisions and definitions in the Probate Code. This material is being submitted for approval for printing and inclusion in the 1987 probate bill.

A tentative recommendation containing a complete draft of the preliminary provisions and definitions, as drafted for the Estate and Trust Code (Sections 1-88), was distributed for comment in September, mainly for the purpose of providing the definitions to those who are reviewing the other substantive recommendations. We have not received any comments critical of this material.

This draft recommendation contains definitions previously approved for revision that are needed or useful in view of the likely content of the 1987 bill. The staff has avoided revisions in this recommendation that are purely technical or editorial or that are needed only for a part of the code that is not being revised in 1987. For example, the tentative recommendation reorganized the preliminary provisions in Sections 1-12 in a more logical order which is easily done in the process of enacting a new code but is cumbersome and confusing if done by amending existing provisions. The material omitted from this recommendation will be restored when the complete new code is assembled. The explanatory text of this recommendation has also been expanded from what was included in the tentative recommendation.

The staff has no policy issues to raise regarding this material. However, some minor changes have been made in the preliminary provisions and definitions:

§ 2. Continuation of existing law; construction of provisions drawn from uniform acts

The Commission has not considered the reference to other uniform acts in subdivision (b). This is not a substantive change.

§ 8. Reference to division, part, chapter, article, section, or part of section

The Commission has not seen the proposed change in this section.

§ 22. Account in an insured credit union

This is a retreaded version of the definition of "shares of an insured credit union"--Section 72 in the tentative recommendation. Using "account" makes drafting clearer, as in Section 46 ("insured account in a financial institution").

§ 52. Letters

The definition of letters of guardianship and conservatorship included in the tentative recommendation has been omitted here because we will not be including the Guardianship and Conservatorship Law in the 1987 probate bill.

Respectfully submitted,

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#L-1045

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11/18/86

Staff Draft

STATE OF CALIFORNIA  
California Law Revision Commission

RECOMMENDATION  
*relating to*  
THE PROBATE CODE

*Preliminary Provisions and Definitions*

December 1986

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

December 5, 1986

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

The California Law Revision Commission is devoting its time and resources almost exclusively to the study of probate law and procedure. The Commission's ultimate goal is to submit a new Estate and Trust Code to the Legislature. The new code will replace the existing Probate Code.

Pending preparation of the complete new code, however, the Commission is proposing substantial revisions in the existing Probate Code. This recommendation sets forth the Commission's proposed revisions relating to preliminary provisions and definitions, which would affect various provisions in Probate Code Sections 1-88.

The explanatory text of this recommendation indicates the background of this proposal and discusses the principal revisions it would make in existing law.

This recommendation has been prepared pursuant to 1980 Cal. Stat. res. ch. 37.

Respectfully submitted,

Arthur K. Marshall  
Chairperson

Staff Draft

**RECOMMENDATION**

relating to

**THE PROBATE CODE**

**PRELIMINARY PROVISIONS AND DEFINITIONS**

Preliminary Provisions

Section 2 of the Probate Code provides that provisions of the code that are the same as the Uniform Probate Code are to be construed to effectuate the general purpose of making the law uniform in states that have enacted the Uniform probate Code. The proposed legislation expands this section to cover all uniform acts, thus recognizing that provisions from many uniform acts have contributed to the California Probate Code.<sup>1</sup>

As an aid to interpreting the official comments to the sections of the Probate Code, the Comment to Section 2 includes a discussion of the language used to explain the relationship of a new provision to its predecessor. This material is intended to assist attorneys and judges in determining the legislative intent of a new provision.

Definitions

The proposed legislation makes a number of substantive and technical changes in definitions and also makes the definitions applicable to the new Division 7 (administration of estates of decedents).<sup>2</sup> The more important revisions are the following:

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1. See, e.g., Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act (1978), Prob. Code § 260 *et seq.*; Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act (1978), Prob. Code § 260 *et seq.*; Uniform International Wills Act, Prob. Code Prob. Code § 6380 *et seq.*; Revised Uniform Principal and Income Act, Prob. Code § 16300 *et seq.*; Uniform Simultaneous Death Act, Prob. Code § 225; Uniform Testamentary Additions to Trusts Act, Prob. Code § 6300 *et seq.*; Uniform Trustees' Powers Act, see Prob. Code §§ 16200-16249.

2. See Prob. Code § 20.

### Accounts

The existing general provisions contain definitions of "account"<sup>3</sup> and "financial institution."<sup>4</sup> In order to provide further guidance and detail, the proposed legislation adds definitions of "account in an insured credit union,"<sup>5</sup> "account in an insured savings and loan association,"<sup>6</sup> and "insured account in a financial institution."<sup>7</sup>

### Annulment of Marriage

The definition of "annulment of marriage" under existing law makes clear that the term includes an adjudication of nullity of marriage.<sup>8</sup> The proposed legislation deletes this term because it is unnecessary.

### Beneficiary

Under existing law, "beneficiary" is defined only for the purpose of trusts.<sup>9</sup> The proposed legislation adds a subdivision defining beneficiary to mean an heir or devisee in the case of a decedent's estate. This definition permits reference to "beneficiary" in other statutes relating to decedents' estates where no distinction needs to be made between heirs and devisees.

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3. Prob. Code § 21.

4. Prob. Code § 40.

5. This provision is drawn from the definition of this term in Probate Code Section 1443 applicable under the guardianship and conservatorship law, but defines "account" rather than "shares." The reference to the California Credit Union Share Guaranty Corporation and other forms of insurance or guaranty under the Financial Code are omitted from the general definition so that only fully insured shares are included in the definition.

6. This provision is drawn from the definition of this term in Probate Code Section 1406 (as added by 1986 Cal. Stat. ch. 783) applicable under the guardianship and conservatorship law.

7. This definition simplifies references in substantive provisions where, for example, a personal representative is permitted to deposit funds in an account in a bank, insured savings and loan association, or insured credit union, to the extent the account is insured.

8. Prob. Code § 22.

9. Prob. Code § 24.

### Child and Parent

Existing law defines "child" and "parent" in terms of the rules of intestate succession.<sup>10</sup> However, these definitions use the term "includes" so that there is an implication that the definition is broader than stated. The proposed legislation replaces the word "includes" with "means" in order to limit the scope of these definitions.

### Letters

A definition of "letters" is added by the proposed legislation. For the purposes of Division 7 (administration of estates of decedents), unless the context otherwise requires, "letters" means letters testamentary, letters of administration, letters of administration with the will annexed, and letters of special administration. This definition is intended to simplify drafting by avoiding the need to list the various types of letters in other provisions.

### Personal Property

The proposed legislation deletes the definition of "personal property."<sup>11</sup> The only purpose of this definition is to exclude leasehold interests in real property from personal property. However, the section is unnecessary for this purpose, since the definition of "real property" already provides that it includes leasehold interests.<sup>12</sup>

### Personal Representative

The proposed legislation adds a definition of "personal representative." Except where the context otherwise requires, personal representative means the executor, administrator, administrator with the will annexed, special administrator, successor personal representative, or a person who performs substantially the same

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10. See Prob. Code §§ 26 ("child" defined), 54 ("parent" defined).

11. Prob. Code § 58.

12. Prob. Code § 68.

function under the law of another jurisdiction governing the person's status. This provision, drawn from the Uniform Probate Code,<sup>13</sup> simplifies drafting by avoiding the need to refer to the list of persons who may be a personal representative.

Predeceased Spouse and Surviving Spouse

The existing definitions of "predeceased spouse"<sup>14</sup> and "surviving spouse"<sup>15</sup> are reworded in the proposed legislation to make their meanings clearer. The provisions in both definitions that exclude a person who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights are omitted in the proposed legislation. These provisions are confusing and unnecessary.

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13. Uniform Probate Code § 1-201(30) (1983).

14. Prob. Code § 59.

15. Prob. Code § 78.

RECOMMENDED LEGISLATION

The Commission's recommendations would be effectuated by enactment of the following legislation:

Probate Code § 2 (amended). Continuation of existing law; construction of provisions drawn from uniform acts

SEC. 1. Section 2 of the Probate Code is amended to read:

2. (a) ~~The provisions~~ A provision of this code, insofar as they ~~are it is~~ substantially the same as ~~a previously existing provisions provision~~ relating to the same subject matter, shall be construed as ~~restatements and continuations~~ a restatement and continuation thereof and not as ~~a new enactments~~ enactment.

(b) A provision of this code, insofar as it is the same in substance as a provision of the Uniform Probate Code or other uniform act, shall be so construed as to effectuate the general purpose to make uniform the law in those states which enact that provision ~~of the Uniform Probate Code~~.

Comment. Section 2 is amended to broadened its scope to cover all uniform acts, not just the Uniform Probate Code. See Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act (1978), see § 260 *et seq.*; Uniform Disclaimer of Transfers Under Nontestamentary Instruments Act (1978), § 260 *et seq.*; Uniform International Wills Act, § 6380 *et seq.*; Revised Uniform Principal and Income Act, § 16300 *et seq.*; Uniform Simultaneous Death Act, § 225; Uniform Testamentary Additions to Trusts Act, § 6300 *et seq.*; Uniform Trustees' Powers Act, see §§ 16200-16249. The other revisions in this section are nonsubstantive.

A number of terms and phrases are used in the official comments to the sections of this code to indicate the sources of the new statutory provisions and describe how they compare with prior law. The following discussion is intended to provide guidance in interpreting the terminology most commonly used in the official comments.

(1) Continues without change. A new provision "continues" a former provision "without change" if the two provisions are identical or nearly so. In some cases, there may be insignificant technical differences, such as where punctuation is changed without a change in meaning. Some comments may describe the relationship by simply stating that a new provision "continues" or is "the same as" a former provision.

(2) Restates without substantive change. A new provision "restates" a former provision "without substantive change" if the substantive law remains the same but the language differs to a significant degree. Some comments may describe the new provision as being the "same in substance."

(3) Exceptions, additions, omissions. If part of a former provision is "continued" or "restated," the comment may say that the

former provision is continued or restated but also note the specific differences as "exceptions to," "additions to," or "omissions from" the former provision.

(4) Generalizes, broadens, restates in general terms. A new provision may be described as "generalizing," "broadening," or "restating in general terms" a provision of prior law. This description means that a limited rule has been expanded to cover a broader class of cases.

(5) Supersedes, replaces. A provision "supersedes" or "replaces" a former provision if the new provision deals with the same subject as the former provision but treats it in a significantly different manner.

(6) New. A provision is described as "new" where it has no direct source in prior statutes.

(7) Drawn from, comparable to, similar to, consistent with. A variety of terms is used to indicate a source for a new provision, typically a source other than California statutes. For example, a provision may be "drawn from" a uniform act, model code, Restatement, or the statutes of another state. In such cases, it may be useful to consult any available commentary or interpretation of the source from which the new provision is drawn for background information.

(8) Codifies. A comment may state that a new provision "codifies" a case-law rule that has not previously been enacted into statutory law. A provision may also be described as codifying a Restatement rule, which may or may not represent existing common law in California.

(9) Makes clear, clarifies. A new provision may be described as "making clear" a particular rule or "clarifying" a rule as a way of emphasizing the rule, particularly if the situation under prior law was doubtful or contradictory.

Probate Code § 8 (amended). Reference to division, part, chapter, article, section, or part of section

SEC. 2. Section 8 of the Probate Code is amended to read:

8. Unless otherwise expressly stated:

(a) "Division" means a division of this code.

(b) "Part" means a part of the division in which that term occurs.

(c) "Chapter" means a chapter of the division or part, as the case may be, in which that term occurs.

(d) "Article" means an article of the chapter in which that term occurs.

(e) "Section" means a section of this code.

(f) "Subdivision" means a subdivision of the section in which that term occurs.

(g) "Paragraph" means a paragraph of the subdivision in which that term occurs.

(h) "Subparagraph" means a subparagraph of the paragraph in which that term occurs.

Comment. Section 8 is amended to add subdivision (h) defining "subparagraph."

Heading of Part 2 of Division 1 (amended). Definitions

SEC. 3. The heading of Part 2 (commencing with Section 20) of Division 1 of the Probate Code is amended to read:

PART 2. ~~WORDS-AND-PHRASES-DEFINED~~ DEFINITIONS

Probate Code § 20 (amended). Application of definitions

SEC. 4. Section 20 of the Probate Code is amended to read:

20. Unless the provision or context otherwise requires, the ~~words and-phrases-defined~~ definitions in this part govern the construction of Division 1 (commencing with Section 1), Division 2 (commencing with Section 100), Division 6 (commencing with Section 6100), Division 7 (commencing with Section 7000), Division 8 (commencing with Section 13000), Division 9 (commencing with Section 15000), and Division 10 (commencing with Section 20100).

Comment. Section 20 is amended to include a reference to Division 7 (commencing with Section 7000) relating to administration of decedents' estates. The other change is nonsubstantive.

Probate Code § 21 (amended). Account

SEC. 5. Section 21 of the Probate Code is amended to read:

21. ~~"Account" means~~ "Account," when used to mean a contract of deposit of funds between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit, share account, mutual capital certificate, and other like ~~arrangement~~ arrangements.

Comment. Section 21 is amended to add a reference to a mutual capital certificate and to make clear that the definition of "account" applies only to a contract of deposit of funds between a depositor and a financial institution. The term "account" is not used in the defined sense when it is used to refer to an accounting to the court. See, e.g., Sections 16062-16064 (trustee's duty to account).

CROSS-REFERENCES

Definition

Financial institution § 40  
Insured account in a financial institution § 46  
Mutual capital certificate § 23  
Savings account § 23  
Share account § 22

Probate Code § 22 (repealed). Annulment of marriage

SEC. 6. Section 22 of the Probate Code is repealed.

~~22. "Annulment of marriage" includes adjudication of nullity of marriage.~~

Comment. Former Section 22 is omitted because it is unnecessary, it being clear that an annulment includes an adjudication of nullity of marriage.

Probate Code § 22 (added). Account in an insured credit union

SEC. 7. Section 22 is added to the Probate Code, to read:

22. "Account in an insured credit union" means a share account in a credit union, either federally chartered or state licensed, that is insured under Title II of the Federal Credit Union Act.

Comment. Section 22 is new. Unlike Section 1443 (guardianship and conservatorship law), Section 22 does not include shares guaranteed by the California Credit Union Share Guaranty Corporation or comparable insurance or guaranty under Financial Code Section 14858. Section 22 refers to a share account in a credit union, rather than shares issued by a credit union, and thus is consistent with Section 21 ("account" defined). See also Fin. Code § 14865 (shares owned by member of credit union may be referred to as a share account).

Probate Code § 23 (added). Account in an insured savings and loan association

SEC. 8. Section 23 is added to the Probate Code, to read:

23. (a) "Account in an insured savings and loan association" means a savings account or mutual capital certificate of either of the following:

(1) A federal association.

(2) A savings association doing business in this state which is an "insured institution" as defined in Title IV of the National Housing Act (12 U.S.C. Sec. 1724, et seq.).

(b) As used in this section:

(1) "Federal association" has the meaning given that term in subdivision (b) of Section 5102 of the Financial Code.

(2) "Mutual capital certificate" has the meaning given that term in Section 5111 of the Financial Code.

(3) "Savings account" has the meaning given that term in Section 5116 of the Financial Code.

(4) "Savings association" has the meaning given that term in subdivision (a) of Section 5102 of the Financial Code.

Comment. Section 23 is new and is drawn from Section 1406 [as added by 1986 Cal. Stat. ch. 783].

Probate Code § 24 (amended). Beneficiary

SEC. 9. Section 24 of the Probate Code is amended to read:

24. ~~"Beneficiary," as it relates to trust beneficiaries, includes a person~~ "Beneficiary":

(a) As it relates to a beneficiary of the estate of a decedent who died intestate, means an heir and, as it relates to a beneficiary of the estate of a decedent who died intestate, means a devisee.

(b) As it relates to a trust beneficiary, means a beneficiary who has any present or future interest, vested or contingent, and also includes the an owner of an interest by assignment or by other transfer and as,

(c) As it relates to a beneficiary of a charitable trust, includes any person entitled to enforce the trust.

Comment. Section 24 is divided into subdivisions and amended to add subdivision (a), which is intended for drafting convenience. The revisions of subdivisions (b) and (c) are nonsubstantive.

Subdivision (a) defines "beneficiary" for the purposes of estate administration. If a decedent's estate is partly testate and partly intestate, "beneficiary" refers to a devisee as to property passing by will and to an heir as to property passing by intestate succession. Trust beneficiaries are not included within the term as used in subdivision (a). See Section 34 ("devisee" in the case of a devise to a trust or trustee does not include trust beneficiaries). However, a particular section may refer specifically to trust beneficiaries.

Subdivisions (b) and (c) define "beneficiary" for the purposes of the Trust Law. See Sections 15000-18201.

CROSS-REFERENCES

Definitions

- Devisee § 34
- Heirs § 44
- Trust § 82

Probate Code § 26 (amended). Child

SEC. 10. Section 26 of the Probate Code is amended to read:

26. "Child" ~~includes~~ means any individual entitled to take as a child under this code by intestate succession from the parent whose relationship is involved.

Comment. Section 26 is amended to replace "includes" with "means." This makes clear that "child" is limited to the persons who are entitled to take as a child by intestate succession.

#### CROSS-REFERENCES

##### Definitions

Parent § 54  
Intestate succession §§ 6408, 6408.5

#### Probate Code § 46 (added). Insured account in a financial institution

SEC. 11. Section 46 is added to the Probate Code, to read:

46. "Insured account in a financial institution" means an account in a bank, an account in an insured credit union, and an account in an insured savings and loan association, to the extent that the account is insured.

Comment. Section 46 is new and is intended to simplify references in other sections. The final clause of this section makes clear that the definition applies only to that part of an account that is insured. Thus, if a deposit in an insured account exceeds the limits of the insurance, the excess does not fall within this definition.

#### CROSS-REFERENCES

##### Definitions

Account § 21  
Account in an insured credit union § 22  
Account in an insured savings and loan association § 23  
Trustee's power to deposit trust funds in insured account § 16225

#### Probate Code § 52 (added). Letters

SEC. 12. Section 52 is added to the Probate Code, to read:

52. "Letters," as used in Division 7 (commencing with Section 7000), means letters testamentary, letters of administration, letters of administration with the will annexed, and letters of special administration.

Comment. Section 52 is new and is intended to simplify drafting. This section is drawn in part from Section 1-201(23) of the Uniform Probate Code (1977).

#### Probate Code § 54 (technical amendment). Parent

SEC. 13. Section 54 of the Probate Code is amended to read:

54. "Parent" ~~includes~~ means any individual entitled to take as a parent under this code by intestate succession from the child whose relationship is involved.

Comment. Section 54 is amended to replace "includes" with "means." This makes clear that "parent" is limited to the persons who are entitled to take as a parent by intestate succession.

#### CROSS-REFERENCES

##### Definitions

Child § 26

##### Probate Code § 58 (repealed). Personal property

SEC. 14. Section 58 of the Probate Code is repealed:

~~58. "Personal property" does not include a leasehold interest in real property.~~

Comment. Section 58 is repealed as unnecessary since its only purpose was to make clear that a leasehold interest in real property was not personal property. See Section 68 ("real property" includes leasehold interest in real property).

##### Probate Code § 58 (added). Personal representative

SEC. 15. Section 58 is added to the Probate Code, to read:

58. "Personal representative" means executor, administrator, administrator with the will annexed, special administrator, successor personal representative, or a person who performs substantially the same function under the law of another jurisdiction governing the person's status.

Comment. Section 58 is new and is drawn from the first sentence of Section 1-201(30) of the Uniform Probate Code. Where the context otherwise requires, personal representative should not be considered to include a special administrator. See Section 20. Unless the court grants broader powers, a special administrator appointed pursuant to Section 463 has limited powers. Thus, the use of "personal representative" in a section relating to a power that is beyond the authority of a special administrator does not include a special administrator.

##### Probate Code § 59 (amended). Predeceased spouse

SEC. 16. Section 59 of the Probate Code is amended to read:

59. (a) "Predeceased spouse" means a person who died before the decedent while married to the decedent, ~~except that the term does not include any of the following:~~ subject to the exceptions provided in subdivision (b).

~~(a) A person who obtains or consents to a final decree or judgment~~

~~of dissolution of marriage from the decedent or a final decree or judgment of annulment of their marriage, which decree or judgment~~

(b) If the person's marriage to the decedent was dissolved or annulled by a final judgment that is not recognized as valid in this state, unless they (1) subsequently the person is not a predeceased spouse of the decedent in either of the following cases:

(1) Where the person obtained or consented to the judgment, unless, after the judgment, the person and the decedent (A) participate in a marriage ceremony purporting to marry each ~~to~~ the other or (2) subsequently (B) live together as husband and wife.

~~(b) A person who, following a decree or judgment of dissolution or annulment of marriage obtained by the decedent,~~

(2) Where the decedent obtained the judgment and, after the judgment, the person participates in a marriage ceremony purporting to marry a third person.

~~(c) A person who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.~~

Comment. Section 59 is revised for clarity; these revisions are nonsubstantive. Former subdivision (c) is omitted as unnecessary and because it was confusing when read with the remainder of this section.

#### CROSS-REFERENCES

##### Definition

Dissolution of marriage § 36

#### Probate Code § 62 (technical amendment). Property

SEC. 17. Section 62 of the Probate Code is amended to read:

62. "Property" ~~includes both real and personal property or any interest therein and~~ means anything that may be the subject of ownership and includes both real and personal property and any interest therein.

Comment. Section 62 is revised to improve its wording. These revisions are nonsubstantive.

#### CROSS-REFERENCES

##### Definitions

Real property § 68

Probate Code § 78 (amended). Surviving spouse

SEC. 18. Section 78 of the Probate Code is amended to read:

78. ~~(a) "Surviving spouse" does not include any of the following;~~  
means a person who was married to the decedent at the time of the decedent's death, subject to the exceptions provided in subdivision (b).

~~(a) A person whose~~

~~(b) If the person's marriage to the decedent has been was dissolved or annulled unless, by virtue of a subsequent marriage, the person is married to the decedent at the time of death.~~

~~(b) A person who obtains or consents to a final decree or judgment of dissolution of marriage from the decedent or a final decree or judgment of annulment of their marriage, which decree or judgment by a final judgment that is not recognized as valid in this state, unless they (1) subsequently the person is not a surviving spouse of the decedent in either of the following cases:~~

~~(1) Where the person obtained or consented to the judgment, unless, after the judgment, the person and the decedent (A) participate in a marriage ceremony purporting to marry each to the other or (2) subsequently (B) live together as husband and wife.~~

~~(e) A person who, following a decree or judgment of dissolution or annulment of marriage obtained by the decedent,~~

~~(2) Where the decedent obtained the judgment and, after the judgment, the person participates in a marriage ceremony with purporting to marry a third person.~~

~~(d) A person who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.~~

Comment. Former subdivisions (a), (b), and (c) of Section 78 are revised for clarity; these revisions are nonsubstantive. Subdivision (b) has been revised to apply the rule concerning invalid judgments to the circumstances described in paragraph (2); formerly subdivision (c) did not refer to invalid judgments, unlike former subdivision (b). Former subdivision (d) is omitted as unnecessary and because it was confusing when read with the remainder of this section.

CROSS-REFERENCES

Definition

Dissolution of marriage § 36