

12/12/86

Memorandum 87-2

Subject: Study L-1025 - Creditor Claims (Draft of Recommendation)

Attached to this memorandum is a staff draft of the recommendation relating to creditor claims and payment of debts. The draft has been revised to implement changes made by the Commission at the December meeting in Burbank. We need to complete our review of comments we have received on the recommendation before we can approve the recommendation for printing and submission to the Legislature. We have not again reproduced letters commenting on the recommendation, since copies of these letters were previously distributed for the December meeting, but we do discuss the points raised in Notes following the sections to which they relate.

Respectfully submitted,

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APPENDIX

12/12/86

Staff Draft

Recommendation Relating To:

CREDITOR CLAIMS
PAYMENT OF DEBTS

The provisions of the proposed legislation governing creditor claims and payment of debts generally follow both the organization and substance of existing law. The proposed legislation accomplishes some reorganization and also makes many simplifications and technical and clarifying changes. Minor substantive changes are noted in the Comments to the specific provisions of the proposed legislation; major changes are described below.

CREDITOR CLAIMS

Notice to Creditors

Under existing law, the only notice required to be given to creditors is published notice of the commencement of administration proceedings.¹ The effect of published notice is that claims of creditors are barred if not presented within four months.² Even if the existence of a creditor is actually known to the personal representative, existing law enables the personal representative to bar the creditor's claim simply by publication and passage of time.

The existing law on this point is inequitable and is of questionable constitutionality. Recent developments in the United States Supreme Court and in sister state jurisdictions raise the

1. Prob. Code §§ 333, 700.

2. Prob. Code § 707.

likelihood that the existing scheme violates due process of law.³ The proposed legislation replaces the existing scheme with provisions for actual notice to creditors.

Under the proposed legislation, the personal representative would continue to publish notice to creditors; this will help achieve *in rem* effect in probate. In addition, the personal representative would serve notice on creditors actually known to the personal representative within four months after commencement of administration proceedings. For this purpose, the personal representative would not be charged with a duty to make a special search for creditors or to speculate as to potential creditors who might have a claim against the decedent, but the personal representative would be required only to notify persons who have actually demanded payment by the decedent or the estate in the form of a bill, request for payment, or the like. To minimize the notice burden, the personal representative would not be required to give notice where the personal representative waives formal probate claim requirements and pays a bill or request for payment without a claim.⁴ A creditor would have 30 days after the creditor learns of the probate in which to make a formal claim, but in no case would the creditor be barred before the standard four month claim period has run. The proposed legislation also establishes outside limits for entertaining creditor claims--one year after the personal representative is appointed or the time an order for final distribution is made, whichever occurs first.

The Law Revision Commission believes this scheme to be both fair and constitutional, as well as workable within the context of decedent estate administration.

3. See, e.g., *Mennonite Board of Missions v. Adams*, 130 S.Ct. 2706 (1983) and *Continental Insurance Co. v. Mosely*, 653 P.2d 158 (1982) and 683 P.2d 20 (1984).

4. See discussion of "How Claim is Made", *infra*.

How Claim is Made

Existing law requires claims to be either filed directly with the court or presented to the personal representative.⁵ This scheme creates two sorts of problems. The filing of a claim directly with the court imposes an added burden on the personal representative to examine court files to make sure no claim is overlooked. If the claim is presented to the personal representative, the creditor may have a difficult time later proving to the court that the claim was actually made if, for some reason, the personal representative ignores it. For these reasons, the proposed legislation requires the claim to be filed both with the court and with the personal representative. This will simplify the administrative problem of the personal representative as well as assure the creditor that the claim is securely lodged with the court.

Often a creditor may demand payment through presentation of a monthly statement or other routine bill. As a matter of practice, the personal representative may pay the bill, even though not made as a formal claim. The proposed legislation recognizes this practice by expressly authorizing the personal representative to waive formal requirements and pay the debt as if it were a properly made claim. This procedure would apply only during the four month formal creditor claim period and only if the debt is justly due, is paid in good faith, and the estate is solvent.⁶

Time for Making Claims

Existing law requires a creditor's claim to be made within four months after first issuance of letters to a personal representative.⁷ The proposed legislation revises this requirement consistent with provisions for actual notice to creditors, discussed above. In addition, the proposed legislation permits subsequent amendment or revision of a claim after the time for making the claim has expired.

5. Prob. Code § 700.

6. These requirements are drawn from Probate Code Section 929.

7. See discussion *supra* under "Notice to Creditors".

However, an amendment or revision may not be made to increase the amount of the claim after the four month period has run, and may not be made for any purpose after either a year has passed since the claim period began to run or the court has made an order for final distribution. This will add flexibility to the law without impairing the ability to administer and close estates expeditiously.

Late Claims

A creditor who was out of state during the claim period and did not receive notice is entitled to make a late claim.⁸ The proposed legislation limits this procedure to a non-business creditor who was out of state during the entire claim period. A creditor doing business in the state should be held to the same requirements as other creditors.

Time for Personal Representative or Court to Act

Existing law provides that a creditor may treat a claim as rejected and bring an action on the claim if the personal representative or court fails to act on the claim within 10 days after the claim is made.⁹ As a practical matter, this period is unrealistically short. The proposed legislation allows the personal representative and the court 30 days in which to act.

Allowance or Rejection of Claim

The proposed legislation provides for a single document for allowance or rejection of a claim. This will simplify the forms and papers used and will help ensure uniformity of procedure among the various jurisdictions. The proposed legislation encourages the Judicial Council to develop official forms for allowance and rejection of claims.

Alternative Resolution of Disputed Claim

Existing law provides a means for referring a disputed claim to a disinterested person for determination.¹⁰ This procedure is inefficient, since it provides an unsatisfied party with the

8. Prob. Code § 707(a).

9. Prob. Code § 712.

10. Prob. Code § 718(1).

opportunity to have the court overrule the determination, thereby perpetuating the dispute. The proposed legislation eliminates this procedure in favor of a conclusive determination by a court commissioner or judge pro tempore,¹¹ and adds an alternative procedure for binding arbitration of the disputed claim. The arbitration procedure is drawn from the guardianship and conservatorship law.¹² The proposed legislation also generalizes these procedures for use in resolving other disputes besides creditor claims, and relocates them among general estate management provisions.

Action on Rejected Claim

If a creditor brings an unsuccessful action to enforce a claim that has previously been rejected, the proposed legislation gives the court discretion to impose reasonable attorney's fees on the creditor. This provision will help minimize unnecessary litigation over a claim that has already been reviewed and rejected once before by the personal representative or the court. The provision is drawn from the requirement in existing law that a personal representative who is also a creditor must pay reasonable attorney's fees if the personal representative brings an unsuccessful action on the claim.¹³

11. Prob. Code § 718(2).

12. Prob. Code § 2406.

13. Prob. Code § 703.

Allocation of Debts Between Spouses

Existing law provides a mechanism for allocating responsibility for marital debts between a surviving spouse and property in the estate of a deceased spouse.¹⁸ Notwithstanding this procedure, the law fails to make clear the substantive basis for the allocation. There is some indication that allocation may be based on the character of the debt as community or separate, but this practice is not supported by statutory language.¹⁹

The proposed legislation makes clear that the allocation is to be based on the liability the spouses would have had for the debt at the time of death. This has the effect of incorporating a known body of law governing liability for marital debts,²⁰ and avoids the problems inherent in litigation over "separate" versus "community" character of a debt.²¹

18. Prob. Code § 980.

19. See, e.g., Reppy, Debt Collection from Married Californians: Problems Caused by Transmutations, Single-Spouse Management, and Invalid Marriage, 18 San Diego L.Rev. 143, 180-181 (1981).

20. Civ. Code §§ 5120.010-5122.

21. Whether a marital debt is separate or community in character is highly problematical. Such a determination made after one of the spouses is deceased and no longer able to testify is suspect.

CREDITOR CLAIMS AND PAYMENT OF DEBTS

Probate Code §§ 9000-11456 (added). Administration of estates of decedents

SEC. . Division 7 (commencing with Section 9000) is added to the Probate Code, to read:

DIVISION 7. ADMINISTRATION OF ESTATES OF DECEDENTS

PART 4. CREDITOR CLAIMS

CHAPTER 1. GENERAL PROVISIONS

§ 9000. "Claim" defined

9000. As used in this division:

(a) "Claim" means a demand for payment for any of the following, whether due, not due, or contingent, and whether liquidated or unliquidated:

(1) Liability of the decedent whether arising in contract, tort, or otherwise.

(2) Liability for taxes incurred before the decedent's death, other than property taxes and assessments secured by real property liens.

(3) Liability of the estate for funeral expenses of the decedent.

(b) "Claim" does not include a dispute regarding title of a decedent to specific property alleged to be included in the decedent's estate.

Comment. Section 9000 is new. It is drawn from former Probate Code Section 707 and Section 1-201(4) of the Uniform Probate Code. A claim not filed as provided in this part is barred. Section 9002 (claim requirement).

Subdivision (a)(1) defines "claim" broadly to include all claims against the decedent whether in contract, tort, or otherwise, including claims for damages for injuries to or death of a person or injury to property and all claims against the personal representative of a decedent who in his or her lifetime has wasted, destroyed, taken or carried away or converted to his or her own use, the property of another person or committed any trespass on the real property of another person.

Subdivision (a)(2) restates former Section 707.5(c), with clarifying changes relating to tax liability of the decedent. A claim for a tax liability is required only as to liabilities against the

decedent at the time of death. Those arising after death as estate and gift taxes are not subject to claim requirements. Secured property taxes and assessments, whether incurred before or after death, are not subject to claim requirements.

While the term "claim" does not include administration expenses such as personal representative and attorney fees, it does include funeral expenses under subdivision (a)(3). This continues a provision of former Section 707(a).

A claim need not be filed in the case of foreclosure of a lien on property in the decedent's estate. See Section [716(b)] (enforcement of security interest). With regard to title to property, see Sections 9860-9865 (conveyance or transfer of property claimed to belong to decedent or other person).

§ 9001. Notice to creditors

9001. (a) The giving of notice of administration of the estate of the decedent under Chapter 2 (commencing with Section 9050) of this part, and the publication or posting of notice of hearing of the petition to administer the estate under Division 3 (commencing with Section 300), constitute notice to creditors of the requirements of this part.

(b) Nothing in subdivision (a) affects a notice or request to a public entity required by Chapter 6 (commencing with Section 9250).

Comment. Subdivision (a) of Section 9001 restates the first portion of former Section 700, with the addition of the reference to the giving of notice to creditors. Subdivision (b) is intended for cross-referencing purposes only.

CROSS-REFERENCES

Definitions

Public entity § 9250

§ 9002. Claim requirement

9002. Except as otherwise provided by statute:

(a) All claims shall be filed in the manner and within the time prescribed in this part.

(b) A claim that is not filed as prescribed in this part is barred.

(c) The holder of a claim may not maintain an action on the claim unless the claim is first filed as prescribed in this part.

Comment. Section 9002 generalizes a portion of the first sentence of former Section 707 and a portion of former Section 716(a). Section 9002 applies to all claims, whether due, not due, or contingent, and whether liquidated or unliquidated, and whether in contract, tort, or

otherwise, including claims for funeral expenses and claims for damages for injuries to or death of a person or injury to property and all claims against the executor or administrator of any testator or intestate who in his or her lifetime has wasted, destroyed, taken or carried away or converted to his or her own use, the property of another person or committed any trespass on the real property of another person. See Section 9000 ("claim" defined).

The requirement that a claim be filed as prescribed in this part is subject to exception under other provisions. See Section 9154 (waiver of formal defects). See also Sections [716(b)] (enforcement of security interest), [721] (claim covered by insurance).

CROSS-REFERENCES

Definition

Claim § 9000

9003. Payment of claims

9003. A claim that is established under this part shall be included among the debts to be paid in the course of administration.

Comment. Section 9003 restates the first portion of the first sentence of former Section 713 without substantive change. For payment of debts, see Part 9 (commencing with Section 11400); see also Section 11421 (immediate payment of priority debts).

CROSS-REFERENCES

Definitions

Claim § 9000

CHAPTER 2. NOTICE TO CREDITORS

§ 9050. Notice required

9050. (a) If, within the time prescribed in paragraph (1) of subdivision (a) of Section 9100, the personal representative has knowledge of a creditor of the decedent, the personal representative shall give notice of administration of the estate to the creditor, subject to Section 9054. The notice shall be given in the manner provided in Article 2 (commencing with Section 1215) of Chapter 22 of Division 3. For the purpose of this subdivision, a personal representative has knowledge of a creditor of the decedent if the personal representative is aware that the creditor has demanded payment from the decedent or the estate.

(b) The giving of notice under this chapter is in addition to the publication or posting of the notice of hearing of the petition to administer the decedent's estate under Division 3 (commencing with Section 300).

§ 9051. Time of notice

9051. (a) Except as provided in subdivision (b), the notice shall be given within the time prescribed in paragraph (1) of subdivision (a) of Section 9100.

(b) If the personal representative first has knowledge of a creditor within 30 days before expiration of the time prescribed in subdivision (a), the notice shall be given within 30 days after the personal representative first has knowledge of the creditor.

Comment. Failure of the personal representative to give notice within the time required by Section 9051 does not preclude a creditor from filing a claim within the time prescribed in Section 9100 (claim period).

GROSS-REFERENCES

Definitions

Letters § 52

Personal representative § 58

§ 9052. Form of notice

9052. The notice shall be in substantially the following form:

NOTICE OF ADMINISTRATION OF

ESTATE OF _____, DECEDENT

To creditors of _____, deceased:

Letters were issued to _____, personal representative, on _____, 19__, in Estate No. ____ in the Superior Court of California, County of _____, for the administration of the estate of the decedent. You must file copies of your claim with both the court and the personal representative within four months from the date of issuance of the letters or 30 days from the date of mailing or delivery of this notice, whichever is later, as provided in Section 9100 of the California Probate Code. A claim form may be obtained from

the court clerk. For your protection, you are encouraged to file your claim with the personal representative by certified mail, with return receipt requested.

(Name and address of personal
representative or attorney)

PROOF OF NOTICE

I am at least 18 years of age and not a party to the proceeding.

I gave a copy of the notice to: _____

Notice was given by one of the following means (check appropriate space):

_____ personally delivering the copy to the person notified at:

1. ____ (date) 2. ____ (time) 3. _____ (address)

_____ placing the copy in the United States mail, in a sealed envelope,
with postage paid at:

1. ____ (date) 2. ____ (place) 3. _____ (mailing address)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

____ (date) _____ (type or print name) _____ (signature)

Comment. Section 9052 prescribes the form of notice given to creditors. Although proof of notice is not required to be filed with the court, the proof must be completed so that the creditor will know the time within which a claim must be made. The proof of notice may also be useful if a question arises later.

Note. The Commission decided at the December 1986 meeting in Burbank to delete the proof of service from the notice form, since Section 9051 no longer requires filing of the proof of service. However, the staff has retained the proof of service in this draft for the reasons stated in the Comment to this section.

§ 9053. Immunity of personal representative and attorney

9053. (a) If the personal representative or attorney in good faith believes that notice to a particular creditor is or may be required by this chapter and gives notice based on that belief, neither the personal representative nor the attorney is liable to any person for giving the notice whether or not required by this chapter.

(b) If the personal representative or attorney in good faith fails to give notice required by this chapter, neither the personal representative nor the attorney is liable to any person for the failure. Liability, if any, for the failure in such a case is on the estate.

(c) Nothing in this chapter imposes a duty on the personal representative to make a search for creditors of the decedent.

Comment. Subdivision (a) of Section 9053 is intended to encourage full and adequate notice in cases where it is a close question whether a personal representative has actual knowledge of a creditor within the meaning of Section 9050. If, for example, the personal representative reasonably believes that notice may be required and if the notice given generates claims or litigation that would not otherwise have arisen, Section 9053 immunizes the personal representative from liability even though notice turns out not to have been legally required.

Subdivision (b) protects the personal representative against inadvertent and other good faith failures to give a required notice to a creditor. The remedy, if any, of a creditor who suffers loss as a result of such a failure is against the estate and not against the personal representative.

Subdivision (c) implements the principle that the personal representative need not make a special search for creditors, but must only notify those who come to the attention of the personal representative during the course of administration. Section 9050 (notice required). However, subdivision (c) does not authorize the personal representative willfully to ignore information that would likely impart knowledge of a creditor, and inferences and presumptions may be available to demonstrate knowledge of the personal representative.

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 9054. When notice not required

9054. Notwithstanding Section 9050, the personal representative need not give notice to a creditor known to the personal representative in any of the following cases:

(a) The creditor has filed a claim as prescribed in this part.

(b) The creditor has demanded payment and the personal representative elects to treat the demand as a claim under Section 9154.

Comment. Section 9054 eliminates the need for notice to a creditor who has filed a satisfactory claim in the administration proceeding. The personal representative may waive formal defects in a demand for payment made during the four month claim period and accept the demand as a statutory claim, thereby avoiding the need for additional notice to the creditor. Section 9154 (waiver of formal defects).

CROSS-REFERENCES

Definitions

Claim § 9000

Personal representative § 58

CHAPTER 3. TIME FOR FILING CLAIMS

§ 9100. Claim period

9100. (a) A creditor shall file a claim before expiration of the following times, whichever is later:

(1) Four months after the date letters are first issued to a general personal representative.

(2) Thirty days after the date of the giving of notice under Chapter 2 (commencing with Section 9050) or after the creditor otherwise has knowledge of the administration of the estate of the decedent.

(b) A creditor may not file a claim after the time the court makes an order for final distribution of the estate or one year after letters are first issued to a general personal representative, whichever occurs earlier.

Comment. Section 9100 supersedes the last portion of subdivision (a) and subdivision (c) of former Section 700 and portions of former Sections 704.2 and 704.4.

If letters are issued by more than one court or if subsequent letters are issued by the same court, the four month period of subdivision (a)(1) and the one year period of subdivision (b) commence on the first issuance of letters to a general personal representative. In the case of a special administrator granted the powers of a general personal representative, the claim period commences to run on first issuance of letters reciting the general powers of the special administrator.

The notice referred to in subdivision (a)(2) is prescribed in Chapter 2 (commencing with Section 9050) (notice to creditors). A creditor has knowledge of the administration of an estate within the meaning of subdivision (a)(2) if the creditor has actual knowledge of the administration; 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 this subdivision.

CROSS-REFERENCES

Definitions

Claim § 9000

Letters § 52

Personal representative § 58

§ 9101. Time not extended by vacancy in office

9101. A vacancy in the office of the personal representative that occurs before expiration of the time for filing a claim does not extend the time.

Comment. Section 9101 restates former Section 700(b) without substantive change. A vacancy includes the resignation, death, or removal of the personal representative from office. See, e.g., Sections 520-526 (resignation, suspension, and removal).

CROSS-REFERENCES

Definitions

Claim § 9000

Personal representative § 58

§ 9102. Where personal representative acts on claim after expiration of time

9102. A claim that is filed before expiration of the time for filing the claim is timely even if acted on by the personal representative or by the court after expiration of the time.

Comment. Section 9102 restates the last sentence of former Section 712 without substantive change.

CROSS-REFERENCES

Definitions

Claim § 9000

Personal representative § 58

§ 9103. Late claims

9103. (a) A claim may be filed at any time within one year after the time prescribed in paragraph (1) of subdivision (a) of Section 9100 and before an order for final distribution has been made if it appears to the satisfaction of the court that any of the following conditions is satisfied:

(1) The creditor was out of the state during the entire period prescribed in paragraph (1) of subdivision (a) of Section 9100 and did not receive notice. This paragraph does not apply to a business creditor who does business in the state.

(2) The creditor in good faith filed a claim in another proceeding for the same decedent that is not consolidated with the present proceeding and in which letters are not issued.

(b) Property distributed under court order and payments properly made before a claim is filed under this section are not subject to the claim, regardless whether the claim is later established in whole or in part.

Comment. Section 9103 restates the second and third sentences of former Section 707(a), but limits subdivision (a)(1) to nonbusiness creditors, and business creditors who do not do business in the state, who were out of state during the entire claim period.

CROSS-REFERENCES

Definitions

Claim § 9000
Letters § 52
Property § 62

§ 9104. Amended or revised claim

9104. If a claim is filed within the time prescribed in Section 9100, the creditor may later amend or revise the claim. An amendment or revision may not be made to increase the amount of the claim after the time for filing a claim has expired, and may not be made for any purpose after the earlier of the time the court makes an order for final distribution of the estate or one year after letters are first issued to a general personal representative.

Comment. Section 9104 is new. If letters are issued by more than one court or if subsequent letters are issued by the same court, the one year period commences on the first issuance of letters to a general personal representative. In the case of a special administrator granted the powers of a general personal representative, the period commences to run on first issuance of letters reciting the general powers of the special administrator.

CROSS-REFERENCES

Definitions

Claim § 9000
Letters § 52
Personal representative § 58

CHAPTER 4. FILING OF CLAIMS

§ 9150. How claim is filed

9150. (a) A claim may be filed by the creditor or a person acting on behalf of the creditor.

(b) A claim shall be filed with both the court and the personal representative.

(c) A claim is deemed filed when either of the following occurs, whichever is earlier:

(1) A copy of the claim is filed with the court clerk.

(2) A copy of the claim is mailed or delivered to the personal representative or attorney.

(d) Notwithstanding subdivision (b), the failure of either the court or the personal representative to receive a copy of an otherwise properly filed claim does not invalidate the filing so long as the other receives a copy of the claim.

Comment. Subdivision (a) of Section 9150 generalizes a provision of former Section 704.2. A person acting on behalf of the creditor may include the personal representative or the guardian or conservator of the estate of the creditor. For the form of the claim, see Section 9153.

Subdivisions (b)-(d) supersede former Section 700(a). Under the former provision, the creditor was required either to file the claim with the court or present the claim to the personal representative. Section 9150 requires the claim to be filed with both. See also Section 9153 (form of claim). However, the claim is deemed filed when filed with either, even if the other does not receive a copy of the claim. The court clerk must accept the claim when and as received, and must not attempt to reject the claim on the basis of formal defects.

CROSS-REFERENCES

Definitions

Claim § 9000

Person § 56

Personal representative § 58

Mailing § 1215

§ 9151. Documentary support of claim

9151. (a) A claim shall be supported by the affidavit of the creditor or a person on behalf of the creditor stating:

(1) If the claim is due, the amount of the claim, the facts supporting the claim, that no payments have been made on the claim that are not credited, and that there are no offsets to the claim.

(2) If the claim is not due, or is contingent, the facts supporting the claim.

(3) If the affidavit is made by a person other than the creditor, the reason it is not made by the creditor.

(b) The personal representative may require satisfactory vouchers or proof to be produced to support the claim. If the creditor includes an original voucher with the claim, the creditor may withdraw the voucher after a copy is attached to the claim.

Comment. Section 9151 restates former Section 705 without substantive change. The claim may be supported by a declaration under penalty of perjury in lieu of an affidavit. Code Civ. Proc. § 2015.5. The affidavit may be made on information and belief. Cf. Code Civ. Proc. § 446.

CROSS-REFERENCES

Definitions

Claim § 9000

Person § 56

Personal representative § 58

§ 9152. Claim based on written instrument

9152. (a) If a claim is based on a written instrument, either the original or a copy of the original with all endorsements shall be attached to the claim. If a copy is attached, the original instrument shall be exhibited to the personal representative or court or judge on demand unless it is lost or destroyed, in which case the fact that it is lost or destroyed shall be stated in the claim.

(b) If the claim or a part of the claim is secured by a mortgage, deed of trust, or other lien that is recorded in the office of the recorder of the county in which the property subject to the lien is situated, it is sufficient to describe the mortgage, deed of trust, or lien and refer to the date or volume and page of its record.

Comment. Section 9152 restates former Section 706 without substantive change. A creditor need not file a claim in order to enforce a secured obligation against the security if recourse against other property in the estate is waived. *Section 716(b) (enforcement of security interest).*

CROSS-REFERENCES

Actions in chambers, Code Civ. Proc. § 166

Definitions

Claim § 9000

Personal representative § 58

Enforcement of security interest § 716(b)

§ 9153. Form of claim

9153. (a) The Judicial Council may prescribe the form of the claim. Such a form is deemed to comply with this chapter.

(b) Any claim form adopted by the Judicial Council shall inform the creditor that the claim must be filed with both the court and the personal representative, and shall include a requirement that the creditor state under penalty of perjury that the creditor has filed the claim with both.

Comment. Subdivision (a) of Section 9153 is consistent with Government Code Section 68511.

§ 9154. Waiver of formal defects

9154. Notwithstanding any other provision of this part, if a creditor makes a written demand for payment within the time prescribed in paragraph (1) of subdivision (a) of Section 9100, the personal representative may waive formal defects and elect to treat the demand as a claim that is filed and established under this part by paying the amount demanded before the expiration of 30 days after the four month period if all of the following conditions are satisfied:

(a) The debt was justly due.

(b) The debt was paid in good faith.

(c) The amount paid was the true amount of the indebtedness over and above all payments and set-offs.

(d) The estate is solvent.

Comment. Section 9154 is drawn from Section 929 (accounts). It authorizes the personal representative to waive technical claim requirements such as the form and manner of filing a claim in appropriate cases. This may be useful, for example, for regular bills received by the personal representative in the ordinary course of business concerning which there is no dispute. This authority enables the personal representative to avoid the need for additional notice to the creditor. Section 9054 (when notice not required). For approval of the personal representative's account where payment is made without prior court order, see Sections 11422 (payment of debts on court order) and 929 (accounts).

CROSS-REFERENCES

Definitions

Claim § 9000

Personal representative § 58

CHAPTER 5. CLAIMS BY SURVIVING SPOUSE

Note. The Beverly Hills Bar Association would like to add a cross reference from this entire chapter to Chapter 3 of Part 9 (allocation of debts between estate and surviving spouse). That could be done here, if helpful, although the staff thinks cross-references after the individual sections in this chapter might have a better chance of making it into the annotated codes, as well as of being seen by practitioners.

§ 9200. Claim by surviving spouse for payment of debt of decedent

9200. (a) The surviving spouse may file a claim for payment of a debt of the deceased spouse to the extent the surviving spouse is personally liable for the debt under Section 13550.

(b) The claim shall include all of the following:

(1) The reason the debt is not barred by Section 13552.

(2) A statement whether the debt remains unpaid or has been paid by the surviving spouse.

(3) An inventory and appraisal of the separate property of the surviving spouse and any community and quasi-community property not administered in the estate, and a statement of the amount of the liens and encumbrances on the property, as of the date of death of the deceased spouse. The statement may identify any property that is exempt from enforcement of a money judgment.

Comment. Section 9200 restates former Section 704.2, except that the claim may not be filed after the order for final distribution and may be required to be filed earlier. Section 9100 (claim period).

CROSS-REFERENCES

Definitions

Claim § 9000

Community property § 28

Property § 62

Quasi-community property § 66

Surviving spouse § 78

Note. Existing law requires that a claim of the surviving spouse for payment of a debt of the decedent for which the surviving spouse is also liable must be filed before a petition for final distribution is filed. This draft imposes the same four month limitation period applicable to other creditors. State Bar Study Team 3 questions this limitation. "The study team has not experienced difficulties with the extended claims period and would prefer to retain it to cover situations where the surviving spouse pays debts during the claims period but for one reason or another does not call them to the

attention of the attorney for the personal representative until after the claims period has expired." The staff is sympathetic to this argument, but then the same argument can be made for any creditor of the estate. Won't the ability of the surviving spouse to make a late claim be just as disruptive as a late claim by any other creditor would be?

§ 9201. Claim by surviving spouse for payment of debt of surviving spouse

9201. (a) The surviving spouse may file a claim for the payment of a debt of the surviving spouse for which property administered in the estate is liable.

(b) The claim shall include all of the following:

(1) A statement whether the debt remains unpaid or has been paid by the surviving spouse.

(2) An inventory and appraisal of the separate property of the surviving spouse and any community and quasi-community property not administered in the estate, and a statement of the amount of the liens and encumbrances on the property, as of the date of death of the deceased spouse. The statement may identify any property that is exempt from enforcement of a money judgment.

Comment. Section 9201 restates former Section 704.4 and broadens it consistent with general principles of liability of marital property for debts. See Civil Code §§ 5120.010-5122. The claim may not be filed after the order for final distribution and may be required to be filed earlier. Section 9100 (claim period).

CROSS-REFERENCES

Definitions

Claim § 9000

Community property § 28

Property § 62

Quasi-community property § 66

Surviving spouse § 78

Note. The Beverly Hills Bar Association asks whether the inventory and appraisal under this section is to be done by the probate referee. As drawn, the law neither requires nor precludes use of the probate referee. The Commission in the past has not been inclined to require use of the probate referee in this situation, but to leave it to the surviving spouse to select an appraiser of the surviving spouse's property. Presumably the surviving spouse would select a probate referee, since we are told that the probate referee is able to do appraisals less expensively than other appraisers.

§ 9202. Treatment of claim of surviving spouse

9202. (a) A claim of the surviving spouse filed under this chapter shall be allowed in the proportion allocated to the estate under Chapter 3 (commencing with Section 11440) of Part 9.

(b) The claim may be discharged by any of the following means:

(1) Payment to the surviving spouse.

(2) Payment to the creditors of the surviving spouse or deceased spouse as identified in the claim.

(3) A credit allowed the spouse in the order allocating debts made under Chapter 3 (commencing with Section 11440) of Part 9.

Comment. Section 9202 continues former Section 713.5 without substantive change.

CROSS-REFERENCES

Definitions

Claim § 9000

Surviving spouse § 78

CHAPTER 6. CLAIMS BY PUBLIC ENTITIES

§ 9250. Claim by public entity required

9250. (a) Except as provided in this chapter, a claim by a public entity shall be filed within the time otherwise prescribed in this part. Any claim not so filed is barred, including any lien imposed for the claim.

(b) As used in this chapter, "public entity" has the meaning provided in Section 811.2 of the Government Code, and includes an officer authorized to act on behalf of the public entity.

Comment. Section 9250 restates former Section 707.5(a), with the addition of the reference to an authorized officer. See, e.g., Section 9252 (claim by Director of Health Services). "Public entity" is defined in Government Code Section 811.2 to include the State, the Regents of the University of California, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the State. This section does not govern obligations owed to the United States.

CROSS-REFERENCES

Definitions

Claim § 9000

§ 9251. Claims governed by other statutes

9251. (a) Notwithstanding any other provision of this part, a claim arising under a law or code listed in subdivision (b) is barred only after written notice or request to the public entity and expiration of the period provided in the applicable statute. If no written notice or request is made the claim is barred at the time otherwise provided in the law or code.

(b)	<u>Law or Code</u>	<u>Applicable Statute</u>
	Sales and Use Tax Law (commencing with Section 6001 of the Revenue and Taxation Code)	Section 6487.1 of the Revenue and Taxation Code
	Bradley-Burns Uniform Local Sales and Use Tax law (commencing with Section 7200 of the Revenue and Taxation Code)	Section 6487.1 of the Revenue and Taxation Code
	Transactions and Use Tax Law (commencing with Section 7251 of the Revenue and Taxation Code)	Section 6487.1 of the Revenue and Taxation Code
	Motor Vehicle Fuel License Tax Law (commencing with Section 7301 of the Revenue and Taxation Code)	Section 7675.1 of the Revenue and Taxation Code
	Use Fuel Tax Law (commencing with Section 8601 of the Revenue and Taxation Code)	Section 8782.1 of the Revenue and Taxation Code
	Personal Income Tax Law (commencing with Section 17001 of the Revenue and Taxation Code)	Section 19266 of the Revenue and Taxation Code
	Cigarette Tax Law (commencing with Section 30001 of the Revenue and Taxation Code)	Section 30207.1 of the Revenue and Taxation Code
	Alcoholic Beverage Tax Law (commencing with Section 32001 of the Revenue and Taxation Code)	Section 32272.1 of the Revenue and Taxation Code

Unemployment Insurance Code	Section 1090 of the Unemployment Insurance Code
State Hospitals for the Mentally Disordered (commencing with Section 7200 of the Welfare and Institutions Code)	Section 7277.1 of the Welfare and Institutions Code
Medi-Cal Act (commencing with Section 14000 of the Welfare and Institutions Code)	Section 9252 of the Probate Code
Waxman-Duffy Prepaid Health Plan Act (commencing with Section 14200 of the Welfare and Institutions Code)	Section 9252 of the Probate Code

Comment. Section 9251 continues former Section 707.5(b) and a portion of the first sentence of subdivision (a) of former Section 700.1 without substantive change.

CROSS-REFERENCES

Definitions

Claim § 9000

Public entity § 9250

§ 9252. Claim by Director of Health Services

9252. (a) If the decedent has received or may have received health care under the provisions of Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code, a beneficiary, the personal representative, or a person in possession of property of the decedent, shall give the Director of Health Services notice of the decedent's death. The notice shall be given by mail addressed to the director at the Sacramento office of the director.

(b) A notice given under this section shall include a copy of the decedent's death certificate.

(c) The director has four months after notice is given in which to file a claim.

Comment. Section 9252 restates subdivision (b), a portion of the first sentence of subdivision (a), and the first sentence of subdivision (c), of former Section 700.1 without substantive change.

CROSS-REFERENCES

Definitions

Beneficiary § 24
Claim § 9000
Personal representative § 58
Property § 62
Mailing § 1215

§ 9253. Distribution before claim

9253. (a) The written notice or request to a public entity required by this chapter shall be made not later than 90 days after the date of the decedent's death. Failure of a person to give the written notice or request does not affect the validity of any proceeding under this division.

(b) If property in the estate is distributed before expiration of the time within which a public entity must file a claim, the public entity is entitled to a claim against the distributees to the full extent of the public entity's claim, or each distributee's share of the distributed property, whichever is less. The public entity's entitlement against distributees shall include interest at a rate equal to that earned in the Pooled Money Investment Account, Article 4.5 (commencing with Section 16480) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code, from the date of distribution or the date of filing the claim by the public entity, whichever is later, plus other accruing costs as in the case of enforcement of a money judgment.

Comment. Section 9253 restates subdivision (d), a portion of the first sentence of subdivision (a), and the last two sentences of subdivision (c), of former Section 700.1, and generalizes them to apply to all public entities.

CROSS-REFERENCES

Definitions

Claim § 9000
Person § 56
Property § 62
Public entity § 9250

§ 9254. Priority of claims not affected by chapter

9254. Nothing in this chapter shall be construed to affect the order of priority of claims provided for under other provisions of law.

(6) Amount allowed or rejected by personal representative.

(7) Whether personal representative is authorized to act under the Independent Administration of Estates Act.

(8) A statement that the creditor has three months in which to act on a rejected claim.

(d) The Judicial Council may prescribe an allowance or rejection form. Use of a form prescribed by the Judicial Council is deemed to satisfy the requirements of this section.

Comment. Section 9300 supersedes portions of former Sections 710, 711, and 714. Under Independent Administration of Estates the personal representative may allow, pay, reject, contest, or compromise any claim without court supervision. Section 10502(k) (*specific independent administration powers*). However, court supervision is necessary where the personal representative is the creditor. Section 9302.

CROSS-REFERENCES

Definitions

Claim § 9000

Letters § 52

Personal representative § 58

Independent Administration of Estates Act § 10400 et seq.

Note. Subdivision (b) requires the personal representative to file the allowance or rejection of the claim with the court clerk. The reason for this requirement is that the clerk must present allowed claims to the court for approval. Section 9301 (procedure by court). Wilbur L. Coats objects to filing with the court; he suggests that the personal representative should serve the allowance or rejection on the creditor and retain a copy in the personal representative's file for six months after final distribution has been ordered. This proposal obviously won't work, since the filing with the court triggers the mechanism for court approval. Maybe he is objecting to the requirement of court approval--see discussion in the note to Section 9301. More likely he sees subdivision (b) as imposing a new requirement of filing in the case of independent administration, since (b) appears to require filing in all cases, whether or not court approval is required. The staff would clear up this confusion by adding express language to subdivision (b) that the procedure applies only if the personal representative is not authorized to act under the Independent Administration of Estates Act. Cf. Section 9301 (procedure by court). The Comment would note that allowance of a claim under independent administration may be reviewed in an accounting, and rejection of a claim under independent administration may be contested by an action on the claim in the same manner as under supervised administration.

The Beverly Hills Bar Association would add several new items to the allowance or rejection notice--(1) Whether the personal representative is a creditor [in which case the claim must be presented to the court pursuant to Section 9302], (2) The date a copy of the claim was mailed or delivered to the personal representative, and (3) The date the claim was filed with the court. As to the first

requirement, BHBA believes it is needed so that the clerk will know to present it to the court, not just put it in the file. This would implement the concept of Judge Harlan K. Veal of the San Mateo County Superior Court that routine claims not be sent to the judge, only claims by the personal representative or attorney. The other two requirements suggested by BHBA "will show if the claim was served and filed on time."

The Beverly Hills Bar Association would add to the form of the claim or rejection notice the following material for clarity of procedure: "It shall include a form for return of proof of service with a statement under penalty of perjury that the person making the claim has served a copy of the claim on the attorney of record or the personal representative."

§ 9301. Procedure by court

9301. If the personal representative is not authorized to act under the Independent Administration of Estates Act:

(a) Immediately on the filing of the allowance of a claim, the clerk shall present the claim and allowance to the court or judge for approval or rejection.

(b) On presentation of a claim and allowance, the court or judge may, in its discretion, examine the creditor and others on oath and receive any evidence touching the validity of the claim. The court or judge shall indorse approval or rejection on the claim, and the date of the approval or rejection.

Comment. Section 9301 supersedes portions of former Sections 708, 710, 711, and 713.

CROSS-REFERENCES

Actions in chambers, Code Civ. Proc. § 166

Definitions

Claim § 9000

Personal representative § 58

Independent Administration of Estates Act § 10400 et seq.

Register of actions and preservation of records, Gov't Code §§ 69845-6

Note. This section requires court approval of claims allowed by the personal representative. Keith P. Bartel, Chairman of the Probate Section of the San Mateo County Bar Association, suggests that the Commission consider eliminating submission of allowed creditor claims to the court, except where the claim is that of the personal representative or an estate beneficiary. He points out the frustration of some probate judges in dealing with approval of massive numbers of creditor claims after allowance by the personal representative. "This requirement is curious since almost always the Judge has no independent basis on which to do anything other than approve the claim." In this connection, the staff notes that regardless of court approval, the

claim is reviewed again at the time of the accounting. Probate Code § 921 (account must include "the claims filed or presented against the estate, giving the name of each creditor, the nature of the claim, when it became due or will become due, whether it was allowed or rejected by him, or not yet acted upon"). Elimination of the additional court approval step would simplify much of the drafting of the creditor claims provisions. See, e.g., Note to Section 11423 (interest).

§ 9302. Where personal representative is creditor

9302. (a) If the personal representative is a creditor of the decedent, the clerk shall present the claim to the court or judge for approval or rejection.

(b) If the court or judge approves the claim, the claim shall be paid in the course of administration.

(c) If the court or judge rejects the claim, the personal representative may bring an action against the estate. Summons shall be served on the judge, who shall appoint an attorney at the expense of the estate to defend the action.

Comment. Section 9302 restates former Section 703 without substantive change. An approved claim is paid as other claims in the course of administration. If the personal representative fails to recover on an action, the personal representative must pay costs, and may be required to pay reasonable litigation expenses, including attorney's fees. Section 9307 (action on rejected claim).

CROSS-REFERENCES

Actions in chambers, Code Civ. Proc. § 166

Definitions

Claim § 9000

Personal representative § 58

Note. This section requires the personal representative to present the personal representative's own claims against the estate directly to the court for approval or rejection. Warren L. Sanborn proposes that this requirement be extended to claims of counsel for the personal representative as well. It is not unusual, because of the nature of estate proceedings and the manner in which they often follow conservatorships or other representation of the decedent, for the attorney to have a claim against the estate. "Because of his fiduciary position and the influence which the attorney has over the personal representative, Court approval of his claims seems advisable." The State Bar study team does not share this concern. They point out that fees in a conservatorship proceeding are generally fixed by the court and need not be reviewed again in probate. Other fees can be submitted by the personal representative to the court for approval if the personal representative has a question about them. "The study team would change its mind if advised by the court that pre-death claims by attorneys for personal representatives are subject to abuse or constitute a problem."

Once the claim is presented to the court, there is no procedure provided. Compare Section 9301 (procedure by court). Beryl A. Bertucio says that although she has appeared before judges who held an evidentiary hearing on the personal representative's claim, with notice to the beneficiaries, she does not recall whether there is specific authority for such a procedure. "It does seem a reasonable intermediate measure before things escalate to litigation."

§ 9303. Effect of statute of limitations

9303. (a) The filing of a claim does not toll the statute of limitations otherwise applicable to the claim except during the time prescribed in Section 9306.

(b) A claim barred by the statute of limitations otherwise applicable to the claim may not be allowed by the personal representative or approved by the court or judge.

(c) The allowance of a claim by the personal representative and approval by the court or judge tolls the statute of limitations otherwise applicable to the claim during the administration of the estate.

Comment. Subdivision (a) of Section 9303 codifies existing case law. See, e.g., *Nally v. McDonald*, 66 Cal. 530, 6 P. 390 (1885). Subdivisions (b) and (c) restate the first and third sentences of former Section 708 without substantive change.

CROSS-REFERENCES

Actions in chambers, Code Civ. Proc. § 166

Definitions

Claim § 9000

Personal representative § 58

§ 9304. Allowed and approved claims

9304. The validity of an allowed or approved claim may be contested by any interested person at any time before settlement of the account of the personal representative in which it is first reported as an allowed or approved claim. This section does not apply to a claim established by a judgment.

Comment. Section 9304 restates a portion of the first sentence of former Section 713 without substantive change. For claims established by judgments, see Chapter 8 (commencing with Section 9350).

CROSS-REFERENCES

Definitions

Claim § 9000

Interested person § 48

Personal representative § 58

Exception to account § 927

Note. Existing law requires the personal representative to make immediate payment of priority debts (funeral expenses, expenses of last illness, family allowance, wage claims). See Section 11421. Benjamin D. Frantz believes it is appropriate in such a situation to preclude further contest by any person. After all, such a claim must be both allowed and approved before it is payable in the course of administration.

§ 9305. Partial allowance

9305. (a) The personal representative may allow a claim, or the court may approve a claim, in part. The allowance or approval shall state the amount for which the claim is allowed or approved.

(b) A creditor who refuses to accept the amount allowed or approved in satisfaction of the claim may bring an action on the claim in the manner prescribed in Section 9307. The creditor may not recover costs in the action unless the creditor recovers an amount greater than that allowed or approved.

Comment. Section 9305 continues former Section 717 without substantive change.

CROSS-REFERENCES

Definitions

Claim § 9000

Personal representative § 58

§ 9306. Failure of personal representative or court to act

9306. If within 30 days after a claim is filed the personal representative or court or judge has refused or neglected to act on the claim, the refusal or neglect may, at the option of the creditor, be deemed equivalent to the giving of a notice of rejection on the 30th day.

Comment. Section 9306 supersedes the first sentence of former Section 712. Section 9306 substitutes a 30-day period for the 10-day period formerly provided. For tolling of the statutory period, see Section 9303 (effect of statute of limitations).

CROSS-REFERENCES

Definitions

Claim § 9000

Personal representative § 58

Note. This section extends existing law from 10 days to 30 days. Howard Serbin supports this proposed change, noting that "current law provides far too little time."

§ 9307. Action on rejected claim

9307. (a) A rejected claim is barred unless the creditor brings an action on the claim or the matter is referred to a referee or to arbitration within the following times, excluding the time during which there is a vacancy in the office of the personal representative:

(1) If the claim is due at the date of giving the notice of rejection, three months after the date of notice.

(2) If the claim is not due at the date of giving the notice of rejection, three months after the claim becomes due.

(b) An action on the claim shall be brought in the county in which the proceeding for administration of the decedent's estate is pending.

(c) Within 10 days after the complaint is filed the plaintiff shall file a notice of the pendency of the action with the clerk in the estate proceedings, together with proof of giving a copy of the notice to the personal representative in the manner provided in Article 2 (commencing with Section 1215) of Chapter 22 of Division 3. Personal service of a copy of the summons and complaint on the personal representative within the 10 day period 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.

(d) If the creditor fails to recover, the creditor shall pay court costs and, in the court's discretion, reasonable litigation expenses (including attorney's fees).

Comment. Subdivisions (a) and (c) of Section 9307 restate a portion of the first sentence and the second, third, and fourth sentences of former Section 714 and of former Section 715, except that the time after which an action on a rejected claim that is not yet due must be brought is increased from two months to three months. The fact that an action has been brought on a rejected claim or that the time within which the action must be brought has not expired, does not preclude closing estate administration where the amount in dispute is paid into court. See Section 11426 (trust for installment or contingent debt).

Subdivision (b) is new; the superior court sitting in probate has concurrent jurisdiction over an action on a creditor's claim. Section 301 (jurisdiction in superior court).

Subdivision (d) generalizes a provision of former Section 703.

A dispute over a claim may be submitted to a temporary judge or to arbitration under Sections 9620-9621 (summary determination of disputes).

CROSS-REFERENCES

Definitions

Claim § 9000

Personal representative § 58

Submission of dispute to arbitration § 9621

Submission of dispute to temporary judge § 9620

Note. Existing law requires an action on a rejected claim, if the claim is not yet due, to be brought within two months after it becomes due. The new statute extends this period to three months, for parallelism with the three month period for bringing an action on a rejected claim that is currently due. This extension seems to Warren L. Sanborn unnecessary. "We are not discussing payment of the claim, merely filing of an action. It would be beneficial to determine the claim as early as possible; therefore, the time period provided in (a)(1) appears more than sufficient." In other words, he suggests that an action on a rejected claim not yet due should be required within three months after rejection, the same as an action on a claim that is due. This would certainly help prevent the estate from being tied up for long periods.

An action on a claim must be brought in the county in which administration is pending. The Beverly Hills Bar Association would add the requirement that the claim be brought in the same district of the superior court, in the case of a county with more than one superior court location.

Once an action on a rejected claim is commenced, the creditor must file notice of pendency of the action within 10 days. Distributions and payments made before notice is filed are not subject to the pending action. What happens if the 10 day period is not complied with? The matter is not jurisdictional and the lawsuit may be prosecuted nonetheless; the relevant factor is that the estate may be validly depleted until the notice is filed. The 10 day limitation does not appear to serve a useful purpose, and the staff would eliminate it.

CHAPTER 8. CLAIMS ESTABLISHED BY JUDGMENT

§ 9350. Money judgment against decedent

9350. (a) Subject to Section 9353, after the death of the decedent the following money judgments are payable in the course of administration and are not enforceable against property in the estate of the decedent under the Enforcement of Judgments Act:

(1) A money judgment against the decedent during the decedent's lifetime.

(2) A money judgment against a decedent who died after trial and submission of the case to a judge sitting without a jury for decision or after a verdict.

(3) A money judgment against the personal representative on a claim against the estate of the decedent.

(b) Except as provided in Section 9351, a judgment referred to in subdivision (a) shall be filed in the same manner as other claims.

Comment. Section 9350 continues former Section 730(a)-(b) without substantive change. For an exception to the rule of Section 9350, see Section 9353 (property under levy of execution). Section 9350 applies to federal as well as state judgments.

CROSS-REFERENCES

Definitions

Claim § 9000

Personal representative § 58

Note. This section lists the types of money judgments that may not be satisfied through the enforcement of judgments statute but must be satisfied in the normal course of estate administration. This listing implies that there are some judgments that are not to be satisfied in the course of administration. Yet the listing is nearly complete, and it doesn't make any sense to send the few judgments not listed through the enforcement of judgments statute rather than estate administration. The staff would revise this section to provide simply that all money judgments against the decedent or estate or against the personal representative on a claim against the decedent or estate are payable in the course of administration and are not enforceable under the enforcement of judgments statute.

§ 9351. Money judgment against personal representative

9351. When a money judgment against a personal representative in a representative capacity becomes final, it conclusively establishes the validity of the claim for the amount of the judgment. The judgment shall provide that it is payable out of property in the decedent's estate in the course of administration. An abstract of the judgment shall be filed in the administration proceedings.

Comment. Section 9351 continues former Section 731 without substantive change.

CROSS-REFERENCES

Definitions

Claim § 9000

Personal representative § 58

§ 9352. Enforcement of non-money judgment

9352. (a) Notwithstanding the death of the decedent, a judgment for the possession of property or a judgment that requires a sale of property may be enforced under the Enforcement of Judgments Law. Nothing in this subdivision authorizes enforcement under the

(b) To convert the attachment lien into a judgment lien, the levying officer shall, after entry of judgment in the action in which the property was attached and before the expiration of the attachment lien do one of the following:

(1) Serve an abstract of the judgment and a notice that the attachment lien has become a judgment lien on the person holding property under the attachment.

(2) Record or file in any office where the writ and notice of attachment are recorded or filed an abstract of the judgment and a notice that the attachment lien has become a judgment lien. If the attached property is real property, the plaintiff or the plaintiff's attorney may record the required abstract and notice with the same effect as if recorded by the levying officer.

(c) After the death of the decedent, any members of the decedent's family who were supported in whole or in part by the decedent may claim an exemption provided in Section 487.020 of the Code of Civil Procedure for property levied on under the writ of attachment if the right to the exemption exists at the time the exemption is claimed. The personal representative may claim the exemption on behalf of members of the decedent's family. The claim of exemption may be made at any time before the time the abstract and notice has been served, recorded, or filed under subdivision (b) with respect to the property claimed to be exempt. The claim of exemption shall be made in the same manner as an exemption is claimed under Section 482.100 of the Code of Civil Procedure.

Comment. Section 9354 continues former Section 732 without substantive change.

CROSS-REFERENCES

Definitions

Person § 56

Personal representative § 58

Property § 62

Real property § 68

PART 9. PAYMENT OF DEBTS

CHAPTER 1. DEFINITIONS

§ 11400. Application of definitions

11400. Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this part.

§ 11401. Debt

11401. "Debt" means:

(a) A claim that is established under Part 4 (commencing with Section 9000) or that is otherwise payable in the course of administration.

(b) An expense of administration.

(c) A charge against the estate including, but not limited to, taxes, expenses of last illness, and family allowance.

Comment. Section 11401 is new. It is intended for drafting convenience.

Subdivision (a) includes debts payable under the Independent Administration of Estates Act that are not established under Section 9000 et seq. (creditor claims), as well as other debts paid even though not presented through the formal claim procedure. See Sections 9154 (waiver of formal defects), 929 (accounts), and 11422 (payment of demands on court order).

CROSS-REFERENCES

Definitions

Claim § 9000

Family allowance § 38

§ 11402. Wage claim

11402. "Wage claim" means a claim for wages, not exceeding two thousand dollars (\$2,000), of each employee of the decedent for work done or personal services rendered within 90 days before the death of the decedent.

Comment. Section 11402 restates the first sentence of former Section 950(6) and a portion of former Section 951, and increases the amount from \$900 to \$2,000.

CROSS-REFERENCES

Definitions
Claim § 9000

CHAPTER 2. GENERAL PROVISIONS

§ 11420. Priority for payment

11420. (a) Debts shall be paid in the following order of priority among classes of debt:

- (1) Expenses of administration.
- (2) Funeral expenses.
- (3) Expenses of last illness.
- (4) Family allowance.
- (5) Wage claims.

(6) Obligations secured by a mortgage, deed of trust, or other lien, including but not limited to a judgment lien, in the order of their priority, so far as they may be paid out of the proceeds of the property subject to the lien. If the proceeds are insufficient, the part of the obligation remaining unsatisfied shall be classed with general debts.

- (7) General debts.

(b) Except as otherwise provided by statute, the debts of each class are without preference or priority one over another. No debt of any class shall be paid until all those of prior classes are paid in full. If property in the estate is insufficient to pay all debts of any class in full, each debt in that class shall be paid a proportionate share.

(c) Notwithstanding any other provision of this chapter, debts having preference by the laws of the United States or of this state shall be given the preference required by such laws.

Comment. Section 11420 restates former Section 950 and a portion of former Section 952, except that Section 11420 makes clear that United States and California preferred debts must be recognized to the extent required by law. Subdivision (a)(7) includes judgments that are not liens rendered against the decedent during lifetime. See Section 9350 (money judgment against decedent). Subdivision (b) supersedes the third sentence of former Section 953.

CROSS-REFERENCES

Definitions

Debt § 11401
Family allowance § 38
Property § 62
Wage claim § 11402

Note. Expenses of last illness are given a high priority by statute. Howard Serbin questions whether last illness claims of the Director of Health Services under Probate Code Section 700.1 should be included in this priority. "I question whether 700.1 was intended to adhere to the detriment of other priority creditors in an insolvent estate. It may be these claims should be considered general debts. They are often large claims that leave little left for other creditors."

The Franchise Tax Board points out that their tax claims are priority claims and should be specifically listed in the priority scheme in subdivision (a), rather than a general reference made to state and federal priority claims in subdivision (c). Unlike subdivision (a), subdivision (c) is really just a cross-referencing provision--it does not create priorities as subdivision (a) does. In fact, existing law does not even refer to federal and state priorities. It would make subdivision (a) difficult to deal with to try to include all the state and federal priorities that exist. The most the staff would do on this point would be to include a specific reference to the Franchise Tax Board priority in the Comment, thus: "See, e.g., Rev. & Tax. Code § 19265 (priority of claim for taxes under Personal Income Tax Law)." In addition, subdivision (c) could be made a part of the introduction to (a): "Debts shall be paid in the following order of priority among classes of debt, except that debts having preference by the laws of the United States or of this state shall be given the preference required by such laws."

§ 11421. Immediate payment of priority debts

11421. As soon as the personal representative has sufficient funds, after retaining sufficient funds to pay expenses of administration and debts having preference by the laws of the United States or of this state, the personal representative shall pay the following debts:

- (a) Funeral expenses.
- (b) Expenses of last illness.
- (c) Family allowance.
- (d) Wage claims.

Comment. Section 11421 restates the first portion of former Section 951, with the addition of the reference to other debts given preference by federal or state law. See, e.g., Estate of Muldoon, 128 Cal. App. 2d 284, 275 P.2d 597 (1954) (federal preference); Estate of Jacobs, 61 Cal. App. 2d 152, 142 P.2d 454 (1943) (state preference).

Section 11421 is an exception to the rule of Section 11422 (payment of debts on court order) in that payment under Section 11421 is required even though the court has not ordered payment.

CROSS-REFERENCES

Definitions

Debt § 11401
Family allowance § 38
Personal representative § 58
Wage claim § 11402

Note. Howard Serbin supports this proposal.

The Franchise Tax Board points out an inconsistency between this section and the Personal Income Tax Law, which precludes payment of any claims before tax claims are satisfied, except for expenses of administration, funeral expenses, and expenses of last illness. Rev. & Tax. Code § 19265. Thus the requirement of this section that wage claims be paid immediately conflicts with the prohibition of the Personal Income Tax Law. The Franchise Tax Board would resolve this discrepancy by requiring immediate payment of the tax. The staff thinks a better solution would be to revise the Personal Income Tax Law to be consistent with this section--after all, immediate payment is required under the section only after sufficient funds for payment of taxes have been reserved.

§ 11422. Payment of debts on court order

11422. (a) Except as provided in Section 11421 (immediate payment of priority debts), the personal representative is not required to pay a debt until payment has been ordered by the court.

(b) On the settlement of any account of the personal representative after the time prescribed in in paragraph (1) of subdivision (a) of Section 9100 has expired, the court shall order payment of debts, as the circumstances of the estate permit. If property in the estate is insufficient to pay all of the debts, the order shall specify the amount to be paid each.

(c) If the estate will be exhausted by the payment ordered, the account of the personal representative constitutes a final account, and notice of hearing shall be the notice given for the hearing of a final account. The personal representative is entitled to a discharge when the personal representative has complied with the terms of the order.

(d) Nothing in this section precludes settlement of an account of a personal representative for payment of a debt without payment having been previously ordered by the court.

Comment. Subdivision (a) of Section 11422 restates the last portion of former Section 951 without substantive change. Subdivisions (b) and (c) restate the first, second, and fourth sentences of former Section 952. Subdivision (d) is new.

Section 11422 makes clear that the notice of hearing of an account that will result in the estate being exhausted must comply with the requirements for notice of hearing of a final account. See Section 926 (final account). Discharge may be obtained by court order. Section 1066 (order of discharge).

For approval of the personal representative's account where payment is made without prior court order, see Sections 9154 (waiver of formal defects) and 929.

CROSS-REFERENCES

Definitions

Debt § 11401
Personal representative § 58
Property § 62
Settlement of account § 929
Waiver of formal defects § 9154

§ 11423. Interest

11423. (a) Interest accrues on a debt from the date the court orders payment of the debt until the date the debt is paid. Interest accrues at the legal rate on judgments.

(b) Notwithstanding subdivision (a), in the case of a debt based on a written contract, interest accrues at the rate and in accordance with the terms of the contract. The personal representative may, by order of the court, pay all or part of the interest accumulated and unpaid at any time when there are sufficient funds, whether the debt is then due or not.

Comment. Section 11423 supersedes former Section 733. The legal rate of interest on judgments is provided in Code of Civil Procedure Section 685.010.

CROSS-REFERENCES

Definitions

Debt § 11401
Personal representative § 58

Note. Under existing Section 733, interest on contract debts accrues at the rate and time specified in the contract, whereas interest on other debts accrues at the legal rate (10%) upon approval of the debt by the court. The contract rate rule is subject to the limitation that in the case of an insolvent estate, interest may not exceed the legal rate from the date of first publication of notice to creditors. The tentative recommendation simplifies this scheme somewhat by running interest from the date the court orders payment and by eliminating the insolvent estate exception.

Some members of the Beverly Hills Bar Association feel that the present rule has worked well and equitably and see no need for a revision. For instance, the change in time of accrual of interest on non-contract debts from the date of approval by the court to the date the court orders payment has the effect of delaying interest, since the date of the court order is usually much later than the date of approval. The date of approval is preferable since it protects creditors better and treats contract and non-contract debts more nearly alike.

This view is not shared by other commentators, however. Howard Serbin suggests that the statute provide explicitly that court approval of a claim does not start interest running. Warren L. Sanborn also believes the date of approval is inappropriate. "It is next to impossible to make payment on the same day that the Court approves payment of the debt....It does not seem proper to penalize the estate for a normal delay in payment that would be satisfactory if done other than by an estate." He suggests a 30 day grace period after approval before interest starts to accrue.

The staff has a different concern: Tying accrual to court approval won't work for independent administration, since there is no court approval, only allowance by the personal representative and court ordered payment on approval of accounting. We don't know how this is handled under existing law, but we need to be sensitive to the independent administration situation in any proposals we come up with in this area.

The Beverly Hills Bar Association also believes the contract rate of interest should not exceed the legal rate. They state two reasons: "First, the approval of a claim by the court gives the debtor security that the claim will be paid. Second, the period of probate administration is a condition usually not contemplated by the parties and will often result in a delay of payment of a debt. Payment of a rate higher than the legal rate of interest not only unfairly favors some creditors over others, but may work a hardship on the estate when administration of the estate extends over a long period." The staff questions whether it is constitutionally permissible to impair the obligation of a contract in the way suggested by the Beverly Hills Bar Association. The State Bar study team and the Executive Committee prefer this section as written, instead of the interest limitation suggested by BHBA.

The Franchise Tax Board observes that the Personal Income Tax Law provides for interest on unpaid taxes at an adjusted annual rate equal to the prime rate. The staff believes this case should be recognized by statute. A subdivision (c) could be added to provide: "(c) Notwithstanding subdivision (a), in the case of a debt for unpaid taxes or any other debt for which interest is expressly provided by statute, interest accrues at the rate and in accordance with the terms of the statute."

§ 11424. Enforcement of order for payment

11424. (a) The personal representative shall pay a debt to the extent of the order for payment of the debt.

(b) An order for payment of a debt may be enforced in the manner provided for the enforcement of a money judgment generally.

Comment. Section 11424 restates former Section 954. The personal representative is liable personally and on the bond for failure to make payment ordered by the court. See Sections 9601-9603 (general provisions on liability of personal representative). For provisions on abatement of devises, see Sections 750-753.

CROSS-REFERENCES

Definitions

Debt § 11401

Personal representative § 58

§ 11425. Payment of debt not due

11425. If a creditor whose debt is not due assents to a deduction from the debt of the legal interest for the time until the debt is due, the creditor is entitled to payment of the debt.

Comment. Section 11425 restates the second sentence of former Section 953 without substantive change.

CROSS-REFERENCES

Definitions

Debt § 11401

§ 11426. Trust for installment or contingent debt

11426. (a) Notwithstanding any other statute, the court may in its discretion appoint a trustee to whom payment of a debt that is contingent or is payable in installments shall be made, with the direction that the trustee invest the payment in investments that would be proper for a personal representative or as authorized by the court. The court in determining the amount of the payment shall compute the present value of the debt, giving consideration to a reasonable interest rate on the amount to be invested.

(d) The trustee shall pay the debt as ordered by the court. On completion of payment, any excess in possession of the trustee shall be paid or distributed in accordance with the order for distribution.

Comment. Section 11426 restates former Section 953.1, omitting the transitional provision, which is no longer necessary, and authorizing investments that would be proper for a personal representative rather than for a savings bank.

CROSS-REFERENCES

Definitions

Debt § 11401

Personal representative § 58

§ 11427. Disputed and contingent debts

11427. Except as otherwise provided in this part, if a debt is not due, or is contingent or disputed, the amount of the debt or the part that would be payable if the debt were due, established, or absolute, shall be paid into court. The amount paid into court shall remain there, to be paid over to the creditor when the debt is due, established, or absolute or, if the debt is not established, to be paid over or distributed as the circumstances of the estate require.

Comment. Section 11427 restates the first sentence of former Section 953 without substantive change. Payment into court under this section is subject to the general provisions of Section 11420 relating to priority of payment; if the estate is insolvent, payment may not be made under this section unless payment of proportionate shares is ordered. For other provisions relating to payment of installment and contingent debts and debts not yet due, see Sections 11425 (payment of debt not yet due) and 11426 (trust for installment or contingent debt).

CROSS-REFERENCES

Definitions

Debt § 11401

Note. This section in effect allows an estate to be tied up by any person claiming a debt, whether or not the claim has any validity. The staff has been concerned about this situation. We have now received a letter from a State Bar Special Committee on Creditor's Claims and Final Distribution. The letter indicates dissatisfaction with the existing state of the law, and suggests approaches the Special Committee is investigating to deal with the problems of existing law. The letter indicates that the Special Committee is planning to undertake drafting responsibility on this matter. The staff believes this is a fine approach, and recommends that the Commission simply monitor the State Bar's activities in this area.

§ 11428. Deposit for unknown creditor

11428. (a) Whenever an estate is in all other respects ready to be closed, and it appears to the satisfaction of the court, on affidavit or evidence taken in open court, that a debt has not been

and cannot be paid because the creditor cannot be found, the court or judge shall make an order fixing the amount of the payment and directing the personal representative to deposit the payment with the county treasurer of the county in which the proceedings are pending.

(b) The county treasurer shall give a receipt for the deposit, for which the county treasurer is liable on the official bond. The receipt shall be treated by the court or judge in favor of the personal representative with the same force and effect as if executed by the creditor.

(c) A deposit with the county treasurer under the provisions of this section shall be received, accounted for, and disposed of as provided by Section 1444 of the Code of Civil Procedure. A deposit in the State Treasury under the provisions of this section shall be deemed to 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 11428 restates former Section 738 without substantive change. The amount of the deposit under this section includes interest on the debt from the date payment was ordered. Section 11423 (interest).

GROSS-REFERENCES

Actions in chambers, Code Civ. Proc. § 166

Definitions

Debt § 11401

Personal representative § 58

§ 11429. Omitted creditor

11429. (a) When the accounts of the personal representative have been settled and an order made for the payment of debts and distribution of the estate, a creditor whose debt was not included in the order for payment has no right to require creditors who have been paid or distributees to contribute to the payment of the debt.

(b) Nothing in this section precludes recovery against the personal representative on the bond or otherwise by a creditor whose debt was not included in the order for payment.

Comment. Section 11429 supersedes former Section 955.

CROSS-REFERENCES

Definitions

Debt § 11401

Personal representative § 58

Notice to creditors § 9050

Note. The Probate, Trust and Estate Planning Section of the Beverly Hills Bar Association suggests addition of the following provision:

If the personal representative failed to give notice to creditors as prescribed by law, the creditor may recover on the bond of the personal representative for the amount for which the claim would properly have been allowed.

They point out that such a provision was included in an earlier Commission draft but was deleted because proof of publication is required before letters are issued. They note that the statute now requires actual notice to known creditors, so this provision is appropriate. "The idea would be to make it clear the creditor has the remedy of going against the representative's bond if the creditor can demonstrate that it should have received notice but did not."

The staff is concerned that a specific reference to failure to give notice might be read to imply there is no liability for other failures of the personal representative, such as failure to list acknowledged debts in the court order or failure to pay a debt included in the order. The staff thinks the reference in subdivision (b) of the current draft to recovery on the bond is sufficient.

CHAPTER 3. ALLOCATION OF DEBTS BETWEEN ESTATE AND SURVIVING SPOUSE

Note. The Probate, Trust and Estate Planning Section of the Beverly Hills Bar Association would like to insert a general cross-reference at this point to claims made by the surviving spouse. See Sections 9200-9202. The staff believes a more effective cross-reference could be made following the individual sections of this chapter.

§ 11440. When allocation may be made

11440. If it appears that a debt of the decedent is also payable in whole or in part by the surviving spouse, the personal representative or any interested person may petition for an order to allocate responsibility for the debt at any time before an order for final distribution is made.

Comment. Section 11440 restates former Section 980(a) without substantive change, but allows the petition to be made at any time before the court order for final distribution. Under this section a petition may be made by a creditor of the surviving spouse in a case where the estate is also liable for the debt. See Section 48 ("interested person" defined).

CROSS-REFERENCES

Definitions

Debt § 11401
Interested person § 48
Personal representative § 58
Surviving spouse § 78

§ 11441. Petition for allocation

11441. The petition shall include a statement of all of the following:

(a) All debts of the decedent known to the petitioner that are alleged to be subject to allocation.

(b) The reason why the debts of the decedent should be allocated.

(c) The allocation and the basis for allocation alleged by the petitioner.

Comment. Section 11441 restates former Section 980(b) without substantive change.

CROSS-REFERENCES

Definitions

Debt § 11401

§ 11442. Inventory of property of surviving spouse

11442. If it appears from the petition that allocation would be affected by the value of the separate property of the surviving spouse and any community property and quasi-community property not administered in the estate and if an inventory and appraisal of the property has not been provided by the surviving spouse, the court shall make an order to show cause why the information should not be provided.

Comment. Section 11442 restates former Section 980(c) without substantive change.

CROSS-REFERENCES

Definitions

Community property § 28
Property § 62
Quasi-community property § 66
Surviving spouse § 78

§ 11443. Notice of hearing

11443. A copy of the petition, the order to show cause, and notice of the hearing of the petition shall be served on the surviving spouse and the personal representative not less than 15 days before the time set for the hearing in the same manner provided for in Section 415.10 or 415.30 of the Code of Civil Procedure or in the manner authorized by the court. Notice of the hearing of the petition and the order to show cause shall be given to other persons as provided in Section 1220.

Comment. Section 11443 restates former Section 980(d) without substantive change.

CROSS-REFERENCES

Definitions

Personal representative § 58
Surviving spouse § 78

Note. *The staff will conform this provision to the general notice provisions being developed.*

§ 11444. Allocation

11444. (a) The personal representative and the surviving spouse may provide for allocation by agreement and, on a determination by the court that the agreement substantially protects the rights of interested persons, the allocation provided in the agreement shall be ordered by the court.

(b) In the absence of an agreement, each debt of the decedent shall be apportioned based on all of the property of the spouses liable for the debt at the date of death that is not exempt from enforcement of a money judgment, in the proportion determined by the value of the property less any liens and encumbrances at the date of death, adjusted to take into account any right of reimbursement that would have been available if the property were applied to the debt at the date of death, and the responsibility to pay the debt shall be allocated accordingly.

Comment. Section 11444 restates former Section 980(e) without substantive change. Section 11444 makes clear that allocation of liability is to be based on rules applicable to liability of marital property for debts during marriage. See Civil Code Sections 5120.010-5122.

CROSS-REFERENCES

Definitions

Debt § 11401
Interested person § 48
Personal representative § 58
Property § 62
Surviving spouse § 78

§ 11445. Order implementing allocation

11445. On making a determination as provided in this chapter, the court shall make an order that:

(a) Directs the personal representative to charge the amounts allocated to the surviving spouse against any property or interests of the surviving spouse that are in the possession of the personal representative.

(b) Summarily directs the surviving spouse to make payment of the allocation to the personal representative to the extent that property or interests of the surviving spouse that are in the possession of the personal representative are insufficient to satisfy the allocation.

(c) Directs the personal representative to make payment of the amounts allocated to the estate.

Comment. Section 11445 restates former Section 980(f) without substantive change.

CROSS-REFERENCES

Definitions

Personal representative § 58
Property § 62
Surviving spouse § 78

§ 11446. Funeral expenses and last illness expenses

11446. Notwithstanding any other statute, funeral expenses and expenses of last illness shall be charged against the estate of a deceased spouse and shall not be allocated to, or charged against the community share of, the surviving spouse, whether or not the surviving spouse is financially able to pay the expenses and whether or not the surviving spouse or any other person is also liable for the expenses.

Comment. Section 11446 restates former Section 951.1 without substantive change.

CROSS-REFERENCES

Definitions

Person § 56

Surviving spouse § 78

Note. The Probate, Trust and Estate Planning Section of the Beverly Hills Bar Association wonders what the relationship is of the rights of creditors covered by this section to the rights of the surviving spouse. Does this section override the general rules of the Family Law Act that impose liability on a spouse for necessities of life provided to the other spouse?

The staff believes it is the clear intent of this section to override the general Family Law Act rules, and the legislative history of the statute supports this. As originally enacted in 1957 the statute provided merely that the debts were to be satisfied "primarily" from the estate of the decedent. A 1970 amendment eliminated this qualification and required that the debts are to be satisfied out of the estate of the decedent "and shall not be charged to the community share of a surviving spouse."

The provision is of questionable merit. It precludes charging the community share of the surviving spouse, but by implication allows the creditor to recover against separate property of the surviving spouse under the Family Law Act. Moreover, where the estate is insolvent, it seems appropriate that a creditor who extended necessities of life to the decedent should be able to recover from the community share of the surviving spouse. The staff would add a provision that limits this section to a solvent estate.

REPEALERS

Probate Code §§ 700-738 (repealed). Presentation and payment of claims

SEC. . Chapter 12 (commencing with Section 700) of Division 3 of the Probate Code is repealed.

Comment. For disposition of the provisions of this chapter, see the Appendix to this report.

Probate Code §§ 950-956 (repealed). Payment of debts, expenses, and charges

SEC. . Article 4 (commencing with Section 950) of Chapter 15 of Division 3 of the Probate Code is repealed.

Comment. For disposition of the provisions of this article, see the Appendix to this report.

Probate Code § 980 (repealed). Apportionment of taxes

SEC. . Article 5 (commencing with Section 980) of Chapter 15 of Division 3 of the Probate Code is repealed.

Comment. For disposition of Section 980, see the Appendix to this report.

APPENDIX

DISPOSITION OF REPEALED SECTIONS

CHAPTER 12. PRESENTATION AND PAYMENT OF CLAIMS

ARTICLE 1. PRESENTATION

Probate Code § 700 (repealed)

Comment. Subdivision (a) of former Section 700 is superseded by Sections 9001 (notice to creditors), 9100 (claim period), 9150 (how claim is filed), and 58 ("personal representative" defined). Subdivision (b) is restated in Section 9101 (time not extended by vacancy in office) without substantive change. Subdivision (c) is restated in Section 9100 (claim period) without substantive change.

Probate Code § 700.1 (repealed)

Comment. Subdivision (b), a portion of the first sentence of subdivision (a), and the first sentence of subdivision (c), of former Section 700.1 are restated in Sections 9251 (claims governed by other statutes), 9252 (claim by Director of Health Services), and 7150 (mailing) without substantive change. Subdivision (d), a portion of the first sentence of subdivision (a), and the last two sentences of subdivision (c) are restated in Section 9253 (distribution before claim) and generalized to apply to all public entities.

Probate Code § 703 (repealed)

Comment. Former Section 703 is restated in Sections 9302 (where personal representative is creditor) and 9307 (action on rejected claim) without substantive change.

Probate Code § 704 (repealed)

Comment. Former Section 704 is not continued. A judge who is a creditor is disqualified. Section 303 (disqualification of judge).

Probate Code § 704.2 (repealed)

Comment. Former Section 704.2 is restated in part in Sections 9200 (claim by surviving spouse for payment of debts of decedent) and 9150 (how claim is filed) without substantive change, and is superseded in part by Section 9100 (claim period).

Probate Code § 704.4 (repealed)

Comment. Former Section 704.4 is restated in part in Section 9201 (claim by surviving spouse for payment of debt of surviving spouse) and broadened for consistency with general principles of liability of marital property for debts, and is superseded in part by Section 9100 (claim period).

Probate Code § 705 (repealed)

Comment. Former Section 705 is restated in Section 9151 (documentary support of claim) without substantive change.

Probate Code § 706 (repealed)

Comment. Former Section 706 is restated in Section 9152 (claim based on written instrument) without substantive change.

Probate Code § 707 (repealed)

Comment. The first sentence of subdivision (a) of former Section 707 is continued in Sections 9000 ("claim" defined) and 9002 (claim requirement) without substantive change. See also Section 9100 (claim period). The substance of the second sentence is continued in Sections 9002(b) (claim requirement) and 9103 (late claims). The remainder of subdivision (a) is restated and limited in Section 9103 (late claims), except for the last sentence, which is not continued. See Gov't Code §§ 69845-6 (register of actions, preservation of records).

Subdivision (b) [See Second Supplement to Memorandum 86-202].

Probate Code § 707.5 (repealed)

Comment. Subdivision (a) of former Section 707.5 is restated in Section 9250 (claim by public entity required) without substantive change. Subdivision (b) is continued in Section 9251 (claims governed by other statutes) without substantive change. Subdivision (c) is restated in Section 9000(a) ("claim" defined) without substantive change. Subdivision (d) is continued in Section 9254 (priority of claims not affected by chapter) without substantive change. Subdivision (e) is continued in Section 9255 (limitation on application of chapter) without substantive change.

Probate Code § 708 (repealed)

Comment. The first sentence of former Section 708 is restated in Section 9303(b) (effect of statute of limitations) without substantive change. The second sentence is restated in Section 9301(b) (procedure by court) without substantive change. The third sentence is restated in Section 9303(c) (effect of statute of limitations) without substantive change.

Probate Code § 709 (repealed)

Comment. [See Second Supplement to Memorandum 86-202].

Probate Code § 709.1 (repealed)

Comment. [See Second Supplement to Memorandum 86-202].

Probate Code § 710 (repealed)

Comment. The first two sentences of former Section 710 are not continued. The third sentence is superseded by Section 9300 (procedure by personal representative). The last two sentences are superseded by Section 9301 (procedure by court).

Probate Code § 711 (repealed)

Comment. The first sentence of former Section 711 is superseded by Section 9300 (procedure by personal representative). The second sentence is superseded by Section 9301 (procedure by court).

Probate Code § 712 (repealed)

Comment. The first sentence of former Section 712 is superseded by Section 9306 (failure of personal representative or court to act). The second sentence is not continued; the procedure was not used. The last sentence is restated in Section 9102 (where personal representative acts on claim after expiration of time) without substantive change.

Probate Code § 713 (repealed)

Comment. The first sentence of former Section 713 is restated in Sections 9003 (payment of claims) and 9304 (allowed and approved claims). The second sentence is not continued. See Gov't Code §§ 69845-6 (register of actions, preservation of records).

Probate Code § 713.5 (repealed)

Comment. Former Section 713.5 is continued in Section 9202 (treatment of claim of surviving spouse) without substantive change.

Probate Code § 714 (repealed)

Comment. The first sentence of former Section 714 is superseded by Section 9300 (procedure by personal representative). The substance of a portion of the first sentence and the second, third, and fourth sentences is restated in Section 9307 (action on rejected claim). The fifth sentence is not continued).

Probate Code § 715 (repealed)

Comment. Former Section 715 is restated in Section 9307(a) (action on rejected claim).

Probate Code § 716 (repealed)

Comment. Subdivision (a) of former Section 716 is restated in Sections 9002 (claim requirement) and 9150 (how claim is made). Subdivisions (b) and (c) [See Second Supplement to Memorandum 86-202].

Probate Code § 717 (repealed)

Comment. Former Section 717 is continued in Section 9305 (partial allowance) without substantive change.

Probate Code § 718 (repealed)

Comment. Subdivision (1) of former Section 718 is not continued. Subdivision (2) is superseded by Section 9620 (submission of dispute to temporary judge).

§ 718.5 (repealed)

Comment. The portion of the first sentence of former Section 718.5 relating to compromises or settlements after the time for filing creditor's claims has expired is replaced by Section 9830. See the Comment to Section 9830. The portion of the first sentence of former Section 718.5 relating to compromises or settlements before the time for filing creditor's claims has expired is superseded by Section 9831.

The second and third sentences of former Section 718.5 are restated in Section 9837 without substantive change, except that Section 9837 expands those who may file a petition to include any interested person who has obtained the written approval of the personal representative to file the petition, and mailed notice under Section 1221 must be given at least 15 days before the hearing instead of the ten days under former Section 1200.5. The requirement that that the petition be verified is continued in Section 1284. The requirement that the clerk set the petition for hearing is continued in Section 1285.

The fourth sentence of former Section 718.5 is replaced by Section 1293. The last sentence of former Section 718.5 is replaced by Section 9612.

§ 718.6 (repealed)

Comment. Former Section 718.6 is restated in Section 9850 without substantive change, except that notice must be given at least 15 days before the hearing under Section 1221, instead of the ten days under former Section 1200.5.

§ 718.7 (repealed)

Comment. Former Section 718.7 is restated in Section 9851 without substantive change, except that notice must be given at least 15 days before the hearing under Section 1221, instead of the ten days under former Section 1200.5.

§ 719 (repealed)

Comment. Former Section 719 [See RJM]; see also Code Civ. Proc. § 1026 (costs in actions by or against fiduciaries).

Probate Code § 720 (repealed)

Comment. [See Second Supplement to Memorandum 86-202].

Probate Code § 721 (repealed)

Comment. [See Second Supplement to Memorandum 86-202].

ARTICLE 2. RULES AS TO PAYMENT OF CLAIMS

Probate Code § 730 (repealed)

Comment. Subdivisions (a) and (b) of former Section 730 are continued in Section 9350 (money judgment against decedent) without substantive change. Subdivision (c) is continued in Section 9353 (property under levy of execution) without substantive change. Subdivision (d) is continued in Section 9352 (enforcement of non-money judgment) without substantive change.

Probate Code § 731 (repealed)

Comment. Former Section 731 is continued in Section 9351 (money judgment against personal representative) without substantive change.

Probate Code § 732 (repealed)

Comment. Former Section 732 is continued in Section 9354 (converting attachment lien to judgment lien) without substantive change.

Probate Code § 733 (repealed)

Comment. Former Section 733 is superseded by Section 11423 (interest).

Probate Code § 736 (repealed)

Comment. [To be disposed of in another context.]

Probate Code § 737 (repealed)

Comment. [See RJM.]

Probate Code § 738 (repealed)

Comment. Former Section 738 is restated in Section 11428 (deposit with county treasurer) without substantive change.

ARTICLE 4. PAYMENT OF DEBTS, EXPENSES, AND CHARGES

Probate Code § 950 (repealed)

Comment. Former Section 950 is restated in Sections 11401 ("debt" defined), 11402 ("wage claim" defined), and 11420 (priority for payment), which increase the amount of a preferred wage claim and make clear that debts given priority by other state law or by federal law retain their priority.

Probate Code § 951 (repealed)

Comment. Former Section 951 is restated in Sections 11402 ("wage claim" defined) and 11421 (immediate payment of priority debts) without substantive change.

Probate Code § 951.1 (repealed)

Comment. Former Section 951.1 is restated in Section 11446 (funeral expenses and last illness expenses), with the addition of a reference to state and federal priorities.

Probate Code § 952 (repealed)

Comment. Former Section 952 is restated in Sections 11420 (priority for payment) and 11422 (payment of debts on court order) without substantive change.

Probate Code § 953 (repealed)

Comment. The first sentence of former Section 953 is restated in Section 11427 (disputed and contingent claims) without substantive change. The second sentence is restated in Section 11425 (payment of debt not due) without substantive change. The third sentence is superseded by Section 11420(b) (priority for payment).

Probate Code § 953.1 (repealed)

Comment. Former Section 953.1 is restated in Section 11426 (trust for installment or contingent debt), with the exception of the transitional provision, which is no longer necessary.

Probate Code § 954 (repealed)

Comment. Former Section 954 is restated in Sections 11424 (enforcement of order for payment) and and superseded by Sections 9601-9603 (general provisions on liability of personal representative).

Probate Code § 955 (repealed)

Comment. Former Section 955 is superseded by Section 11429 (omitted creditor).

Probate Code § 956 (repealed)

Comment. Former Section 956 is superseded by Chapter 1 (commencing with Section 11600) of Part 10 of Division 7 of the (order for distribution) and Chapter 1 (commencing with Section 12200) of Part 11 of Division 7 of the (time for closing estate).

ARTICLE 5. APPORTIONMENT OF DEBTS

Probate Code § 980 (repealed)

Comment. The first sentence of subdivision (a) of former Section 980 is restated in Section 11440 (when allocation may be made), which allows petition at any time before the order for final distribution is made. The second sentence is superseded by Section 48 ("interested person" defined). Subdivision (b) is restated in Section 11441 (petition for allocation) without substantive change. Subdivision (c) is restated in Section 11442 (inventory of property of surviving spouse) without substantive change. Subdivision (d) is restated in Section 11443 (notice of hearing) without substantive change. Subdivision (e) is restated in Section 11444 (allocation) without substantive change, making clear that allocation of liability is to be based on rules applicable to liability of marital property for debts during marriage. Subdivision (f) is restated in Section 11445 (order implementing allocation) without substantive change.

CONFORMING CHANGES

Prob. Code § 58 (amended). Personal representative

SEC. . Section 58 of the Probate Code is amended to read:

58. (a) "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.

(b) "General personal representative" excludes a special administrator, except a special administrator having the powers, duties, and obligations of a general personal representative under Section 465.

Comment. Subdivision (b) of Section 58 is drawn from Section 465 and former Section 700, and from Section 1-201(3) of the Uniform Probate Code. The defined term is used in Sections 9050 (notice required), 9051 (time of notice), 9100 (claim period), 9104 (amended or revised claim), and 9154 (waiver of formal defects).

Prob. Code § 303 (amended). Disqualification of judge

SEC. . Section 303 of the Probate Code is amended to read:

303. (a) No will shall be admitted to probate or letters of administration granted or other proceeding had (except the ordering of a transfer as hereinafter provided in subdivision (b)), before any judge who is interested as ~~an heir of the decedent, or as a legatee or devisee under a will, or when he~~ a beneficiary or creditor, or is named as executor or trustee in the will, or is in any other manner interested or disqualified from acting. A judge who was a witness to a 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.

(b) When a petition is filed praying for the admission of a will to probate or for the granting of letters of administration, or when proceedings are pending with respect to an estate, and there is no judge of the superior court in that county qualified to act, the court or judge must make an order transferring the proceedings to the superior court of an adjoining county, and the clerk, on receipt of the clerk's fee, must transmit to the clerk of the court to which the

proceedings are transferred a certified copy of the order together with all papers in the proceedings on file in his the clerk's office; and thereafter the court to which the proceedings are transferred shall exercise the same jurisdiction over the estate and all matters relating to the administration thereof as if it had original jurisdiction. But such transfer shall not be ordered when some other judge qualified to act is assigned by the chairman of the judicial council to sit in the county where such proceedings are pending, to hear such proceedings.

Comment. Section 303 is amended to make clear that a judge who is a creditor of an estate is disqualified from acting in the proceeding. This supersedes former Section 704 (claim by judge). The other changes in the section are technical. See Section 24 ("beneficiary" defined).

Prob. Code § 333 (amended). Notice of death

SEC. . Section 333 of the Probate Code is amended to read:

[set out text of section in full, with following change in (b):]

IF YOU ARE A CREDITOR or a contingent creditor of the deceased, you must file your claim with the court ~~or present it to~~ and the personal representative appointed by the court within four months from the date of first issuance of letters as provided in Section 700 9100 of the Probate Code of California. The time for filing claims will not expire prior to four months from the date of the hearing noticed above.

Comment. Section 333 is amended for conformity with the creditor claims procedure, Part 4 (commencing with Section 9000) of Division 7.