

Memorandum 87-72

Subject: Study L-800 - Nonresident Decedent (Revised Recommendation)

This memorandum implements decisions made at the September meeting when the Commission considered the comments received on the *Tentative Recommendation Relating to Nonresident Decedent* (July 1987). The recommendation has been substantially redrafted as a result of the decisions made in September. Accordingly, we plan to consider this material section by section. There are still several policy issues to be resolved. These and other matters are raised in the Notes following relevant sections in the draft.

Respectfully submitted,

Stan G. Ulrich
Staff Counsel

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September 14, 1987

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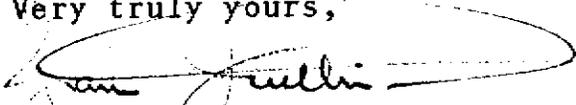
Re: LRC Memos: 87-204, Non-Resident Decedents
87-77, Substitution & Delegation etc.
LRC TR: Rules of Procedure

Dear John:

I have enclosed copies of Study Team 2's technical reports on the indicated memos and TR. The reports represent the opinions of the Executive Committee, with the additional comment to 86-204 if the PR is allowed to use the Affidavit Procedure he would become personally liable for the assets where he may not be otherwise liable under the local jurisdiction.

The reports are to assist in the technical and substantive review of those sections involved.

Very truly yours,


James V. Quillinan
Attorney at Law

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cc: Chuck Collier Jim Opel
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September 11, 1987

Mr. James V. Quillinan
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Re: LRC Memo 86-204 (Non-Resident Decedent)

Dear Jim:

The staff states that there is a problem with the affidavit procedure for collecting small estates because it is available only to the decedent's "successors" and not to the decedent's personal representative. I do not view that as a problem. The affidavit procedure is an economical and effective means of transferring small amounts of California property to successors at the least expense. I see no reason to subject the property to domiciliary administration, except where necessary to protect the interests of the heirs, devisees or creditors of a decedent. This is the standard which applies to estates of California decedents (Probate Code Section 13111(d)), and there is no reason to have a different standard for estates of non-California residents.

The staff states that successors who use the affidavit procedure acquire no right in the property other than possession. The successor who acquires possession has all of the rights of an ostensible owner, subject only to the obligations enclosed by the statute. The property is subject to subsequent administration as set forth in Section 13111, but the burden of proof is on the personal representative to establish that the property is necessary to protect the interests of the heirs, devisees, and creditors. Thus, the rights in the property acquired by the successors who use the affidavit procedure are substantial. The affidavit procedure is not limited to estates of California decedents, and should not be limited.

Mr. James V. Quillinan
September 11, 1987
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The staff recommends two alternative proposals: (1) allowing an out-of-state personal representative to subsequently collect the property from the successor; and (2) prohibiting the affidavit procedure where there is an out of state probate pending. I am opposed to the second proposal. California has a long-established public policy of allowing transfer of small estates to successors with the least cost possible. Requiring that all California small estates be subject to probate if an out of state probate is pending is a step backwards. I have no objection to allowing an out-of-state personal representative to subsequently collect property to the extent necessary for administration under the guidelines of Section 13111. Section 13111 already imposes liability on the successors if "proceedings for the administration of the decedent's estate are commenced." The section is not limited to proceedings in this state (cf. Probate Code Section 13101-(a)(4)), so the ability of a non-California personal representative to collect property from a successor is probably already the law. I do not believe it is not necessary to change the statute to so provide.

Very truly yours,



Kenneth M. Klug

Staff Draft

Recommendation

relating to

NONRESIDENT DECEDENT

Existing Law

Primary administration of a decedent's estate is at the decedent's domicile. If a nonresident decedent leaves property in California, ancillary administration (secondary probate) may be necessary in California to protect local creditors or to transfer title to real property.¹ Ancillary administration is time-consuming and expensive.²

California has a number of procedures that may be used as an alternative to ancillary administration:

(1) Close relatives of the decedent who are entitled to the decedent's personal property under the will or under the intestate succession laws of the decedent's domicile may use California's summary procedure for collection of personal property by affidavit.³

(2) If the decedent's estate is worth \$20,000 or less, the decedent's surviving spouse or minor children may use California's small estate set-aside provisions to collect the decedent's California real and personal property, whether or not there is an inconsistent will.⁴

(3) The decedent's surviving spouse may use California's summary procedure for collecting salary or other compensation due to the

1. See Durham, *Ancillary Administration*, in 3 California Decedent Estate Practice §§ 33.3-33.4 (Cal. Cont. Ed. Bar 1987); 2 A. Bowman, Ogden's Revised California Real Property Law § 29.27, at 1449 (Cal. Cont. Ed. Bar 1975).

2. Durham, *supra* note 1, §§ 33.16-33.17.

3. Prob. Code §§ 13100-13115; see Durham, *supra* note 1, § 33.17.

4. Prob. Code §§ 6600-6614; see Durham, *supra* note 1, § 33.17.

decedent for personal services, and for collecting real and property passing to the surviving spouse by will or intestate succession.⁵

(4) The personal representative appointed in the nonresident decedent's domicile ("foreign personal representative") may come into California, collect the decedent's personal property and debts owed to the decedent, and remove the property from California without court proceedings in California, if the following steps are followed: The foreign personal representative publishes a notice to creditors, waits three months for possible objections and, if there are no objections, collects the property by showing proof of appointment and publication and presenting an affidavit of relevant facts.⁶

Recommendations

Recognition of Foreign Administration Proceedings

Existing law treats orders admitting wills to probate in sister states the same as orders in foreign nations.⁷ An order admitting a will to probate in another jurisdiction is recognized in this state if the California court finds (1) that all interested parties were given notice and an opportunity for contest, (2) that the order is final and not subject to revocation, (3) that the order is based on a finding that the decedent was domiciled at death in the other jurisdiction, and (4) that the will was valid according to the law of nonresident decedent's domicile or of California. In general, the first three requirements are conditions to granting full faith and credit to the judgment of a sister state as required by the United States Constitution.⁸ The fourth requirement, which calls for reconsidering

5. Prob. Code §§ 13600-13606.

6. Prob. Code § 1043. If a creditor, heir, or devisee objects, this procedure may not be used.

7. Prob. Code § 362.

8. U.S. Const. art. IV, § 1. The constitutional provision applies by its terms only to states, but implementing legislation extends the coverage of the full faith and credit clause to territories and possessions of the United States. 28 U.S.C. § 1738 (1982). See generally 3 B. Witkin, *Summary of California Law Constitutional Law* §§ 16, at 3260, § 19-22, at 3262-66 (8th ed. 1974); E. Scoles & P. Hay, *Conflict of Laws* §§ 22.1-22.4 (1982).

the validity of the nonresident decedent's will, however, is not appropriate where a sister state has already determined its validity. The proposed law retains the basic elements of full faith and credit required to be given judgments of sister states and omits the invalid condition.

The full faith and credit clause does not apply to judgments of foreign nations, but states have typically recognized such judgments on the same grounds as sister state judgments.⁹ This has been the policy of California since 1851¹⁰ and is continued in the proposed law. Since the authority to relitigate the validity of the will as to sister states is omitted, it is also omitted as to foreign nations.

Affidavit Procedure for Collection of Small Estates

The existing summary procedure for collection of accounts in a financial institution by a foreign personal representative requires publication of notice to creditors and beneficiaries and a 30-day wait for objections before the funds may be released.¹¹ In the case of a small account (an account of \$1,000 or less) the cost of publication is unduly great in relation to the size of the account. In the case of a large account the 30-day wait is unreasonably short when compared with the normal four-month creditor claim period.

The proposed law abandons these procedures in favor of the affidavit procedure for collection of personal property of small

9. See Smit, *International Res Judicata and Collateral Estoppel in the United States*, 9 U.C.L.A. L. Rev. 44, 45-56 (1962); Note, *Recognition of Foreign Country Judgments--A Case for Federalization*, 22 Tex. Int'l L. Rev. 331, 334-42 (1987). Courts in the United States have typically considered the following factors: (1) finality and conclusiveness, (2) jurisdiction, (3) claims of fraud, (4) notice and opportunity to be heard, (5) impartiality of the foreign judicial system, (6) public policy, (7) reciprocity. *Id.* at 336-42.

10. Code Civ. Proc. § 1324, as enacted by 1851 Cal. Stat. ch. 124, § 29.

11. Prob. Code § 1043a.

estates without administration.¹² Under this procedure, a sister state personal representative would be able to bring an action to compel the holder of property to pay or deliver it to the sister state personal representative¹³ without the need to first petition for ancillary administration. Making this procedure available to the sister state personal representative puts the personal representative on essentially the same footing as a successor under the nonresident decedent's will.¹⁴

With the exception of this affidavit procedure, the proposed law retains the rule that a sister state or foreign nation personal representative who wants to bring suit in California to collect debts owed the decedent or other property of the decedent must first be appointed as a local personal representative in California ancillary proceedings.¹⁵

Other Technical and Substantive Revisions

The proposed law deletes the requirement that the State Controller must consent to removal of the property from California in the case of

12. See Prob. Code §§ 13100-13115. For this purpose, the sister state personal representative would be treated in the same manner as a trustee, guardian, or conservator pursuant to Probate Code Section 13051. The procedure would not be available under the proposed law to a foreign nation personal representative.

13. See Prob. Code § 13105. As provided in Section 13105, the sister state personal representative would be entitled to attorney's fees where the holder of property has acted unreasonably in refusing to pay, deliver, or transfer the property.

14. See Prob. Code § 13006 ("successor of the decedent" defined).

15. Under existing law, a foreign personal representative who has not also been appointed in California ordinarily may not sue in California. Code. Civ. Proc. § 1913; 7 B. Witkin, *Summary of California Law Wills and Probate* § 58, at 5581 (8th ed. 1974); 4 B. Witkin, *Summary of California Law Pleading* § 98, at 134 (3d ed. 1985). Appointment of the foreign personal representative in a California ancillary proceeding confers the same powers the personal representative would have in a California domiciliary proceeding. Durham, *supra* note 1, § 33.41. Such powers include the power to maintain actions or proceedings in California. 7 B. Witkin, *supra*, § 337, at 5813; see Prob. Code §§ 573-577.

informal collection of the decedent's personal property.¹⁶ The repeal of the California inheritance tax¹⁷ makes this provision unnecessary.

The proposed law makes clear that a foreign personal representative who does specified acts in California thereby submits to the jurisdiction of the California courts.¹⁸ This is consistent with general civil practice.¹⁹

16. Prob. Code § 1043.

17. Rev. & Tax. Code § 13301.

18. This provision is drawn from Sections 4-301 and 4-302 of the Uniform Probate Code (1982).

19. Code Civ. Proc. § 410.10.

Outline

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CONFORMING REVISIONS

COMMENTS TO REPEALED SECTIONS

PART 13. NONRESIDENT DECEDENT

CHAPTER 1. DEFINITIONS

§ 12500. Application of definitions

12500. Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this part.

Comment. Section 12500 is comparable to Section 20.

§ 12501. Ancillary administration

12501. "Ancillary administration" means proceedings in this state for administration of the estate of a nonresident decedent.

Comment. Section 12501 is new. It is intended for drafting convenience.

CROSS-REFERENCES

Definitions

Nonresident decedent § 12506

§ 12502. Authenticated copy

12502. "Authenticated copy" means a copy of a writing that satisfies the requirements of Article 2 (commencing with Section 1530) of Chapter 2 of Division 11 of the Evidence Code.

Comment. Section 12502 is drawn from part of the first sentence of former Section 361. It is intended for drafting convenience.

§ 12503. Foreign nation

12503. "Foreign nation" means a jurisdiction other than a state of the United States.

Comment. Section 12503 is new. It is intended for drafting convenience.

CROSS-REFERENCES

Definitions

State § 74

Note. See the Note following Section 12504.

§ 12504. Foreign nation personal representative

12504. "Foreign nation personal representative" means a personal representative appointed in a jurisdiction other than a state of the United States.

Comment. Section 12504 is new. It is intended for drafting convenience.

CROSS-REFERENCES

Definitions

Personal representative § 58

State § 74

Note. The staff has tentatively settled on the terminology "sister state personal representative" and "foreign nation personal representative." Using "sister state" makes it easier to distinguish between the terms. We had considered using "foreign state personal representative" instead of "sister state personal representative," which would be analogous to the terminology used in Financial Code Sections 1700-1785 relating to foreign banks. The Financial Code uses the terms "foreign (other nation) bank" and "foreign (other state) bank." The use of parenthetical qualifiers is a bit awkward. Largely because of the chameleonic character of "foreign" and "state," there is no ideal terminology. Some may object to using the gender-specific term "sister," but it is used in Code of Civil Procedure Sections 1710.10-1710.65 concerning enforcement of sister state money judgments (and enacted on Commission recommendation). Code of Civil Procedure Section 1913 also uses the term "sister state" with regard to judicial records of other states.

"State" is defined in Probate Code Section 74 as "any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States." This is consistent with the scope of the Full Faith and Credit Clause of the U.S. Constitution. Although the Clause applies by its terms only to states, its implementing legislation gives the same effect to records and judicial proceedings of the courts of "any State, Territory, or Possession of the United States." 28 U.S.C. § 1738 (1982).

By way of comparison, the foreign banking law limits "states" of the United States to the 50 states and the District of Columbia; "foreign nation" includes "Puerto Rico, Guam, American Samoa, the Virgin Islands, and any territory, trust territory, dependency, or insular possession of the United States." Fin. Code § 1700(j). Code of Civil Procedure Section 1713.1, part of the Uniform Foreign

Money-Judgments Recognition Act, defines "foreign state" to mean "any governmental unit other than the United States, or any state, district, commonwealth, territory, insular possession thereof, or the Panama Canal Zone [?], or the Trust Territory of the Pacific Islands." The statute governing enforcement of money judgments of other states of the United States uses the term "sister state judgment."

Code of Civil Procedure Section 17(7) provides that "'state,' when applied to the different parts of the United States, includes the District of Columbia and the territories." The court in Richard A. Viguerire [sic] Co. v. Noble, 101 Cal. App. 3d 62, 64-65, of 1968 as including a "state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar law or procedure is in effect or which has established enforcement procedures with or without court participation under a treaty, the application of which is extended to this state."

§ 12505. Local personal representative

12505. "Local personal representative" means a nonresident decedent's personal representative appointed in this state.

Comment. Section 12505 is new. It is intended for drafting convenience.

CROSS-REFERENCES

Definitions

Nonresident decedent § 12506

Personal representative § 58

§ 12506. Nonresident decedent

12506. "Nonresident decedent" means a person who dies domiciled in a sister state or foreign nation.

Comment. Section 12506 is new. It is intended for drafting convenience. The term "nonresident decedent" is not limited to a decedent who dies domiciled in a sister state (defined in Section 12507), but also includes a decedent who dies domiciled in a foreign nation (defined in Section 12503). However, some provisions of this part apply only to nonresident decedents who die domiciled in a sister state. See Sections 12540-12541 (distribution of property to foreign personal representative) and 12570-12572 (collection of personal property of small estate without ancillary administration).

CROSS-REFERENCES

Definitions

Foreign nation § 12503

Sister state § 12507

Note. Throughout this material it is assumed that the domicile of the nonresident decedent is clear. The staff wonders if the statute should provide for situations where there are conflicting claims of

domicile or should this be left to case law? Section 3-202 of the Uniform Probate Code (1982) provides in this connection as follows:

If conflicting claims as to the domicile of a decedent are made in a formal testacy or appointment proceeding commenced in this state, and in a testacy or appointment proceeding after notice pending at the same time in another state, the Court of this state must stay, dismiss, or permit suitable amendment in, the proceeding here unless it is determined that the local proceeding was commenced before the proceeding elsewhere. The determination of domicile in the proceeding first commenced must be accepted as determinative in the proceeding in this state.

We have retained the term "nonresident decedent" in this draft because it is easier to say than "nondomiciliary decedent." Technically, it would be more accurate to entitle this part "Nondomiciliary Decedent" and replace "nonresident" with "nondomiciliary" throughout.

§ 12507. Sister state

12507. "Sister state" means a state other than this state.

Comment. Section 12507 is new. It is intended for drafting convenience.

CROSS-REFERENCES

Definitions

State § 74

Note. See the Note following Section 12504.

§ 12508. Sister state personal representative

12508. "Sister state personal representative" means a personal representative appointed in a sister state

Comment. Section 12508 is new. It is intended for drafting convenience.

CROSS-REFERENCES

Definitions

Personal representative § 58

Sister state § 12507

Note. See the Note following Section 12504.

CHAPTER 2. ANCILLARY ADMINISTRATION

Article 1. Opening Ancillary Administration

§ 12510. Commencement of proceedings

12510. Any interested person may commence ancillary administration by a petition to the court for either or both of the following:

- (a) Probate of the nonresident decedent's will.
- (b) Appointment of a local personal representative.

Comment. Section 12510 supersedes former Section 360, and continues part of the first sentence of former Section 361 without substantive change. As used in Section 12510, "interested person" includes the person named as executor in the decedent's will. See Section 48. For the proper court, see Section 12511 (venue).

CROSS-REFERENCES

Definitions

Ancillary administration § 12501
Interested person § 48
Local personal representative § 12505
Nonresident decedent § 12506
Will § 88

Note. *The Commission should consider whether a person who has already been appointed as personal representative in a nonresident decedent's domicile should have a priority for appointment as a local personal representative in California. Section 3-203(g) of the Uniform Probate Code (1982) contains such a provision:*

(g) A personal representative appointed by a court of the decedent's domicile has priority over all other persons except where the decedent's will nominates different persons to be personal representative in this state and in the state of domicile. The domiciliary personal representative may nominate another, who shall have the same priority as the domiciliary personal representative.

§ 12511. Venue in case of nondomiciliary

12511. The proper county for ancillary administration is one of the following:

(a) If property of the nonresident decedent is located in the county in which the nonresident decedent died, the county in which the nonresident decedent died.

(b) If no property of the nonresident decedent is located in the county in which the nonresident decedent died or if the nonresident

decedent did not die in this state, any county in which property of the nonresident decedent is located, regardless of where the nonresident decedent died. If property of the nonresident decedent is located in more than one county, the proper county is the county in which a petition for ancillary administration is first filed, and the court in that county has jurisdiction of the administration of the estate.

Comment. Section 12511 restates the nondomiciliary venue provisions of former Section 301 without substantive change. The substitution of "domicile" for "residence" codifies existing law. See, e.g., Estate of Phillips, 269 Cal. App. 2d 656, 659, 75 Cal. Rptr. 301 (1969); Estate of Brace, 180 Cal. App. 2d 797, 802, 4 Cal. Rptr. 683 (1960); Estate of Glassford, 114 Cal. App. 2d 181, 186-87, 249 P.2d 908 (1952). See also Section 7050 (jurisdiction and authority of court or judge).

CROSS-REFERENCES

Definitions

Ancillary administration § 12501

Property § 62

Note. At the last meeting, the Commission decided to retain this section here and put a cross-reference to it in the comment to the appropriate section in the general rules of procedure, presumably Section 7051 (venue in case of domiciliary). See the Tentative Recommendation Relating to Rules of Procedure in Probate attached to Memorandum 87-81. Section 7052 (venue in case of nondomiciliary) is thus unnecessary and should be removed from the general rules. It should be noted that if probate proceedings are commenced under the general provisions (draft Section 8000 et seq.--see Memorandum 87-74), the venue would now be governed by this section, and not by the general provisions of Division 7. In other words, removing the nonresident decedent venue provision to the ancillary administration provisions (draft Section 12500 et seq.) is convenient for those who begin by looking to this part of the statute, but not to those who petition for probate under the general provisions. A petition under draft Section 8000 et seq. is necessary if the will of a nonresident decedent has not been admitted to probate in another jurisdiction or if the nonresident decedent did not leave a will. Perhaps it would be best to leave the nonresident decedent venue provision next to the resident venue provision and revise draft Section 12511 to read as follows: "The proper county for ancillary administration under this chapter is the county determined pursuant to Section 7052."

§ 12512. Procedure

12512. Notice of ancillary administration shall be given and, except as provided in Article 2 (commencing with Section 12520), the same proceedings had as in the case of a petition for probate of a will or appointment of a personal representative of a person who dies domiciled in this state.

Comment. Section 12512 restates the last sentence of former Section 361 without substantive change. See also Section 12530 (application of general provisions).

CROSS-REFERENCES

Definitions

Ancillary administration § 12501
Personal representative § 58
Will § 88

Article 2. Probate of Nonresident Decedent's Will Admitted to Probate in Sister State or Foreign Nation

§ 12520. Applicable procedure

12520. (a) If a nonresident decedent's will has been admitted to probate in a sister state or foreign nation and satisfies the requirements of this article, probate of the will in ancillary administration is governed by this article.

(b) If a nonresident decedent's will has been admitted to probate in a sister state or foreign nation, but does not satisfy the requirements of this article, probate of the will in ancillary administration is governed by Part 2 (commencing with Section 8000).

Comment. Subdivision (a) of Section 12520 makes clear that the procedure of this article is limited to situations where the will admitted to probate by an order that is entitled to recognition under this article. See Sections 12522 (sister state), 12523 (foreign nation). Subdivision (b) makes the general provisions concerning opening administration available where this article is not satisfied. See Section 8000 *et seq.*

CROSS-REFERENCES

Definitions

Ancillary administration § 12501
Nonresident decedent § 12506
Will § 88

Note. Like existing Sections 360-362, this article deals only with probate of a will in another state or country. Perhaps this statute should also deal with the effect of a determination in another jurisdiction that the decedent died intestate or that a will offered for probate is not valid. See the Note under Sections 12522 and 12523.

§ 12521. Petition for probate of will

12521. A petition for probate of a nonresident decedent's will under this article shall include both of the following:

(a) The will or an authenticated copy of the will.

(b) An authenticated copy of the order admitting the will to probate in the sister state or foreign nation or other evidence of the establishment or proof of the will in accordance with the law of the sister state or foreign nation.

Comment. Section 12521 supersedes part of the first sentence of former Section 361. For the persons who may petition under Section 12521, see Section 12510.

CROSS-REFERENCES

Definitions

Authenticated copy § 12502
Foreign nation § 12503
Nonresident decedent § 12506
Sister state § 12507
Will § 88

§ 12522. Admission of will admitted to probate in sister state

12522. If a will of a nonresident decedent was admitted to probate, or established or proved, in accordance with the laws of a sister state, the court shall admit the will to probate in this state, and may not permit a contest or revocation of probate, if it appears from the order admitting the will to probate in the sister state, or otherwise appears, that all of the following conditions are satisfied:

(a) The determination in the sister state is based on a finding that at the time of death the decedent was domiciled in that state.

(b) All interested parties were given notice and an opportunity to contest the will in the proceedings.

(c) The determination in the sister state is final and is not subject to revocation.

Comment. Section 12522 supersedes former Section 362 to the extent that it applied to wills admitted to probate in sister states. The provision of former Section 362 that the will must be valid under the law of the testator's domicile at death or under the law of this state is not continued in Section 12522. For rules governing the validity of a will first offered for probate in this state, see Section 6113.

CROSS-REFERENCES

Definitions

Nonresident decedent § 12506
Sister state § 12507
Will § 88

Note. This provision is consistent with the requirements of the full faith and credit clause of the U.S. Constitution, but it is doubtful that any statute can adequately state all the possibly applicable requirements. Section 3-408 of the Uniform Probate Code (1982) provides as follows:

A final order of a court of another state determining testacy, the validity of construction of a will, made in a proceeding involving notice to and an opportunity for contest by all interested persons must be accepted as determinative by the courts of this state if it includes, or is based upon, a finding that the decedent was domiciled at his death in the state where the order was made.

The comment to this section notes that it "should not be read to restrict the obligation of the local court to respect the judgment of another court when parties who were personally before the other court also are personally before the local court." This statement, to some extent, recognizes that the provision is not a complete statement of the circumstances under which one state will be required to recognize the judgments of another state. Neither the draft section nor the UPC section mention the defense of extrinsic fraud, but statutes usually take this approach since fraud exceptions are presumably universally available.

§ 12523. Admission of will admitted to probate in foreign nation

12523. If a will of a nonresident decedent was admitted to probate, or established or proved, in accordance with the laws of a foreign nation, the court shall admit the will to probate in this state, and may not permit a contest or revocation of probate, if it appears from the order admitting the will to probate in the foreign nation, or otherwise appears, that all of the following conditions are satisfied:

(a) The determination in the foreign nation is based on a finding that at the time of death the decedent was domiciled in the foreign nation.

(b) All interested parties were given notice and an opportunity to contest the will in the proceedings.

(c) The determination in the foreign nation is final and is not subject to revocation.

Comment. Section 12523 supersedes former Section 362 to the extent that it applied to wills admitted to probate in foreign nations. The provision of former Section 362 that the will must be valid under the law of the testator's domicile at death or under the law of this state is not continued in Section 12523. For rules

governing the validity of a will first offered for probate in this state, see Section 6113.

CROSS-REFERENCES

Definitions

Foreign nation § 12503

Nonresident decedent § 12506

Will § 88

Note. This section purports to require recognition of foreign judgments that under general law would not have to be recognized. It should also be said that the law in this area is unsettled. While states tend to apply the same concepts to recognition of sister state and foreign nation judgments, foreign nation judgments have been refused recognition on the basis of public policy, lack of reciprocity, essential fairness, and other factors. The question here is whether draft Section 12523 should recognize that the court has some discretion to refuse to accept the determination of a foreign nation that it does not have in the case of a sister state. The suggestion has been made that due process would prevent recognition of a foreign nation judgment in the United States, even though the normal standards applicable to full faith and credit have been satisfied. See Smit, *International Res Judicata and Collateral Estoppel in the United States*, 9 U.C.L.A. L. Rev. 44, 46-47 (1962).

The Uniform Foreign Money-Judgments Recognition Act (Code Civ. Proc. §§ 1713-1713.8) provides a more comprehensive approach to this problem in Section 1713.4:

1713.4. (a) A foreign [money] judgment is not conclusive if

(1) The judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(2) The foreign court did not have personal jurisdiction over the defendant; or

(3) The foreign court did not have jurisdiction over the subject matter.

(b) A foreign judgment need not be recognized if

(1) The defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend;

(2) The judgment was obtained by extrinsic fraud;

(3) The cause of action or defense on which the judgment is based is repugnant to the public policy of this state;

(4) The judgment conflicts with another final and conclusive judgment;

(5) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court; or

(6) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.

This appears to be a far more useful statement of the appropriate principles in this context than existing Section 362 or the draft section drawn from it. Should these principles be adapted in this section?

§ 12524. Effect of admission of nonresident decedent's will

12524. A nonresident decedent's will admitted to probate under this article has the same force and effect as the will of a person who dies while domiciled in this state that is admitted to probate in this state.

Comment. Section 12524 restates part of former Section 362 without substantive change.

CROSS-REFERENCES

Definitions

Nonresident decedent § 12506
Will § 88

§ 12525. Appointment of personal representative

12525. If a nonresident decedent's will is admitted to probate under this article, a personal representative shall be appointed to execute the will.

Comment. Section 12525 supersedes the last clause of former Section 362.

CROSS-REFERENCES

Definitions

Nonresident decedent § 12506
Personal representative § 58
Will § 88

Article 3. Application of General Provisions

§ 12530. Application of general provisions

12530. Except to the extent otherwise provided in this chapter, ancillary administration of a decedent's estate is subject to all other provisions of this division, including but not limited to opening estate administration, inventory and appraisal, creditor claims, estate management, independent administration, compensation, accounts, payment of debts, distribution, and closing estate administration.

Comment. Section 12530 makes clear that the general provisions relating to estate administration apply to administration by a foreign

personal representative under this chapter, except as otherwise provided. For exceptions, see, e.g., Section 12540 (conditions for distribution to sister state personal representative).

Article 4. Distribution of Property to Foreign
State Personal Representative

§ 12540. Conditions for distribution to sister state personal representative

12540. (a) In the case of a person who dies while domiciled in a sister state, the court in ancillary administration may make an order for preliminary or final distribution of all or part of the decedent's personal property in this state to the sister state personal representative if distribution is in the best interest of the estate or interested persons.

(b) The court order shall be made in the manner and pursuant to the procedure provided in, and is subject to the provisions of, Chapter 1 (commencing with Section 11600) of Part 10.

Comment. Section 12540 supersedes parts of former Section 1000, part of the first sentence of former Section 1040, the last sentence of former Section 1041, and former Section 1042. This procedure applies only where the nonresident decedent has died while domiciled in a sister state, not to person who was domiciled in a foreign nation. Consequently, distribution may be made to a sister state personal representative under this article, not to a foreign nation personal representative.

Under Section 12540 a petition may be made by the local personal representative, a beneficiary, or other interested person. See Section 11600 (petition for distribution). Notice of the hearing on the petition is given in the manner provided in Section 1220. Any interested person may oppose the petition. See Section 11602 (opposition to petition). Preliminary distribution may not be ordered unless two months have elapsed and distribution may be made without loss to creditors or injury to the estate or any interested person. See Sections 11620 (time for petition) and 11621 (order for distribution). Final distribution may not be ordered unless the estate is in a condition to be closed. See Section 11640 (petition and order). Distribution in compliance with the court order entitles the local personal representative to a full discharge, and when the order becomes final it is conclusive against all interested persons. Sections 11753 (filing receipts and discharge) and 11605 (conclusiveness of order).

It should be noted that distribution may be made to a sister state personal representative in ancillary administration only upon a court determination that the distribution is in the best interest of the estate or interested persons. In other cases, distribution is made directly to the beneficiaries. See *In re Estate of Hudson*, 63 Cal. 454 (1883); Durham, *Ancillary Administration*, in 3 California Decedent Estate Practice § 33.50 (Cal. Cont. Ed. Bar 1987).

CROSS-REFERENCES

Definitions

Ancillary administration § 12501
Interested person § 48
Nonresident decedent § 12506
Sister state § 12507
Sister state personal representative § 12508

§ 12541. Distribution of real property or its proceeds

12541. The court may direct that real property in the nonresident decedent's estate be distributed to the sister state personal representative or, if necessary to make distribution pursuant to this article, the court may direct that real property in the nonresident decedent's estate be sold and the proceeds distributed to the sister state personal representative. The sale shall be made in the same manner as other sales of real property of a decedent.

Comment. Section 12541 supersedes the last part of the first sentence and all of the second sentence of former Section 1040. Section 12541 broadens the former provisions so that the court may order a sale of real property of the estate in the course of either preliminary or final distribution.

CROSS-REFERENCES

Definitions

Nonresident decedent § 12506
Real property § 68
Sister state personal representative § 12508
Sales of real property of decedents generally §§ 10050-10142

CHAPTER 3. COLLECTION OF PERSONAL PROPERTY OF SMALL
ESTATE BY SISTER STATE PERSONAL REPRESENTATIVE
WITHOUT ANCILLARY ADMINISTRATION

§ 12570. Collection of personal property of small estate without
ancillary administration

12570. If a nonresident decedent's property in this state satisfies the requirements of Section 13100, a sister state personal representative may, without petitioning for ancillary administration, use the affidavit procedure provided by Chapter 3 (commencing with Section 13100) of Part 1 of Division 8 to collect personal property of the decedent.

Comment. Section 12570 permits a sister state personal representative to collect personal property of a small estate by using the affidavit procedure set out in Sections 13100-13115. The sister

state personal representative is a successor in interest for this purpose. See Section 13051(d). The affidavit procedure for real property (Sections 13200-13209) is not available to the sister state personal representative. Where the estate in California does not qualify for collection under Section 13100 or where real property is involved, the sister state personal representative must use other procedures. This simplified procedure applies where the value of the property in this state does not exceed \$60,000 (as determined pursuant to Sections 13050 and 13100). Transfer to the sister state personal representative under this procedure results in a transfer for the purposes of administration, whereas the general affidavit procedure results in transfer to the ultimate beneficiaries. This procedure is not available to foreign nation personal representatives. See Section 12508 ("sister state personal representative" defined).

CROSS-REFERENCES

Definitions

Ancillary administration § 12501

Nonresident decedent § 12506

Sister state personal representative § 12508

Note. The procedure of this chapter is consistent with some comments of Kenneth M. Klug (Exhibit 1) on behalf of Team 2 of the Executive Committee of the State Bar Estate Planning, Trust and Probate Law Section. Specifically, Mr. Klug states that he is opposed to limiting the affidavit procedure and is favor of the "long-established public policy of allowing transfer of small estates to successors with the least cost possible. Mr. Klug also suggests that the "ability of a non-California personal representative to collect property from a successor is probably already the law. I do not believe it is [now] necessary to change the statute to so provide."

This draft does not deal with the right of a sister state personal representative to recover from successors, but rather includes the sister state personal representative among potential successors. (See the proposed amendment of Section 13015 in the Conforming Revisions, below.) The draft does make clear that a foreign nation personal representative may not use the affidavit procedure.

§ 12571. Transfer of property to sister state personal representative

12571. The effect of payment, delivery, or transfer of personal property to the sister state personal representative pursuant to this chapter, and the effect of failure to do so, are governed by Chapter 3 (commencing with Section 13100) of Part 1 of Division 8.

Comment. Section 12571 makes clear that the rules concerning the effect of compliance with the affidavit procedure or refusal to comply are the same where the procedure is used by a sister state personal representative.

CROSS-REFERENCES

Definitions

Sister state personal representative § 12508

Note. James V. Quillinan (Exhibit 1), in his cover letter forwarding Team 2's report on the earlier draft, notes that "if the PR is allowed to use the Affidavit Procedure he would become personally liable for the assets where he may not be otherwise liable under the local jurisdiction." It is not clear whether this is viewed as a bad thing. Nor is it a necessary conclusion from the affidavit procedure, since Probate Code Section 13112 excuses liability if administration proceedings have been commenced (not literally limited to proceedings in this state) and the "requirements" of Section 13111 are satisfied. It is unclear how Section 13111 would apply here since subdivision (d) of that section provides that an action to enforce the liability of recipients of property by affidavit may be brought only by the personal representative. Perhaps the adaptation provisions in this chapter should provide that the sister state personal representative is liable only to the extent that the property has not been distributed to the beneficiaries of the will and that such beneficiaries are liable under Sections 13109-13112 to the extent that they have received the property.

Further work will have to be done on this problem to clarify the liability of the sister state personal representative for restitution, net income, or fair market value under Sections 13109-13112.

§ 12572. Action by sister state personal representative to compel payment, delivery, or transfer

12572. The sister state personal representative may bring an action against a holder of the decedent's property, and may be awarded attorney's fees, as provided in subdivision (b) of Section 13105.

Comment. Section 12572 provides an exception to the general rule that a sister state personal representative may not bring an action in this state. See Code Civ. Proc. § 1913.

CROSS-REFERENCES

Definitions

Holder of the decedent's property § 13002

Sister state personal representative § 12508

Note. This exception to the normal rule appears necessary to make the affidavit procedure work.

CHAPTER 4. JURISDICTION OVER FOREIGN PERSONAL REPRESENTATIVE

§ 12590. Jurisdiction by act of foreign personal representative

12590. A sister state personal representative or foreign nation personal representative submits personally in a representative capacity to the jurisdiction of the courts of this state in any proceeding relating to the estate by any of the following actions:

(a) Filing a petition for ancillary administration.

(b) Receiving money or other personal property pursuant to Chapter

3 (commencing with Section 12570). Jurisdiction under this subdivision is limited to the amount of money and the value of personal property received.

(c) Doing any act in this state as a personal representative that would have given this state jurisdiction over the personal representative as an individual.

Comment. Section 12590 is new and is drawn from Section 4-301 of the Uniform Probate Code (1982).

CROSS-REFERENCES

Definitions

Ancillary administration § 12501
Authenticated copy § 12502
Foreign nation personal representative § 12504
Personal representative § 58
Sister state personal representative § 12508

Note. This section may not be needed since the Commission has decided to adapt the affidavit procedure for collection of small estates instead of the UPC procedure that gives a foreign personal representative broader authority to act in another jurisdiction without first being appointed there. We have eliminated the earlier provision relating to filing proof of authority since that procedure has been eliminated. However, this section may still be useful in this more limited form.

§ 12591. Jurisdiction by act of decedent

12591. A sister state personal representative or foreign nation personal representative is subject to the jurisdiction of the courts of this state in a representative capacity to the same extent that the nonresident decedent was subject to jurisdiction at the time of death.

Comment. Section 12591 is new. It is drawn from Section 4-302 of the Uniform Probate Code (1982) and is consistent with Section 410.10 of the Code of Civil Procedure and with case law. See Mitsui Manufacturers Bank v. Tucker, 152 Cal. App. 3d 428, 199 Cal. Rptr. 517 (1984). Nothing in this section excuses a creditor from compliance with any applicable creditor claim requirements in ancillary administration proceedings.

CROSS-REFERENCES

Definitions

Foreign nation personal representative § 12504
Nonresident decedent § 12506
Sister state personal representative § 12508

CONFORMING REVISIONS

Code of Civil Procedure § 1913 (amended). Sister state judicial records

SEC. . Section 1913 of the Code of Civil Procedure is amended to read:

1913. The effect of a judicial record of a sister state is the same in this state as in the state where it was made, except that it can only be enforced here by an action or special proceeding, and except also that the authority of a guardian, conservator, or committee, or of an executor or administrator, does not extend beyond the jurisdiction of the government under which such person was invested with authority, except to the extent authorized by statute.

Comment. Section 1913 is amended to recognize that a specific statute may provide for limited authority in California of a sister state personal representative or foreign nation personal representative. See Prob. Code §§ 12570-12572 (collection of personal property of small estate without ancillary administration).

Probate Code § 13006. Successor of decedent

SEC. . Section 13006 of the Probate Code is amended to read:

13006. "Successor of the decedent" means:

(a) If the decedent died leaving a will, the sole beneficiary or all of the beneficiaries who succeeded to a particular item of property of the decedent under the decedent's will. For the purposes of this part, the trustee of a trust created during the decedent's lifetime is a beneficiary under the decedent's will if the trust succeeds to the particular item of property under the decedent's will.

(b) If the decedent died without a will, the sole person or all of the persons who succeeded to the particular item of property of the decedent under Sections 6401 and 6402 or, if the law of a sister state or foreign nation governs succession to the particular item of property, under the law of the sister state or foreign nation.

Comment. Subdivision (b) of Section 13006 is revised to cover the situation where the succession to property is governed by the law of a jurisdiction other than California. See Sections 12503 ("foreign nation" defined), 12507 ("sister state" defined).

Probate Code § 13051 (amended). Authority of guardian, conservator, trustee, custodian, or foreign personal representative

SEC. . Section 13051 of the Probate Code is amended to read:

13051. For the purposes of this part:

(a) A guardian or conservator of the estate of a person entitled to any of the decedent's property may act on behalf of the person without authorization or approval of the court in which the guardianship and conservatorship proceeding is pending.

(b) A trustee of a trust created during the decedent's lifetime may act on behalf of the trust.

(c) If the decedent's will nominates a custodian to receive a devise to a beneficiary under the Uniform Gifts to Minors Act or the Uniform Transfer to Minors Act of any state and the nomination has not been revoked, the custodian may act on behalf of the beneficiary until such time as the custodianship terminates.

(d) A sister state personal representative may act on behalf of the beneficiaries as provided in Chapter 3 (commencing with Section 12570) of Part 13 of Division 7.

Comment. Subdivision (d) is added to Section 13051 to permit a sister state personal representative to collect or transfer personal property pursuant to Chapter 3 (commencing with Section 13100). See Section 12508 ("sister state personal representative" defined). Section 12570 limits the power of the sister state personal representative to collection of personal property.

DISPOSITION OF EXISTING SECTIONS

§ 301 (repealed). Jurisdiction and venue

Comment. The introductory clause of former Section 301 is restated in Section 7050 (jurisdiction) without substantive change. The provisions of former Section 301 relating to venue in cases involving domiciliaries is restated in Section 7051 (domiciliary venue) without substantive change. The provisions of former Section 301 relating to venue in cases involving nondomiciliaries are restated without substantive change in Section 12511 (venue in case of nonresident decedent). See the Comment to Section 12511. The substitution of "domicile" for "residence" in Sections 7051 and 12511 codifies existing law. See the Comment to Sections 7051 and 12511. The reference to "exclusive" jurisdiction in the last clause of former Section 301 is omitted as surplus. See Sections 7052(b), 12511(b).

§ 360 (repealed). Authority to probate foreign will

Comment. Former Section 360 is superseded by Section 12510. See also Section 7050 (jurisdiction).

§ 361 (repealed). Procedure; notice

Comment. The first sentence of former Section 361 is superseded by Sections 12510, 12520, 12521, and 12522.

§ 362 (repealed). Effect of probate of foreign will

Comment. Former Section 362 is restated in Sections 12522 (sister state proceedings) and 12523 (foreign nation proceedings), except that the provision relating to the validity of the will under the law of this state or other jurisdiction is omitted. In the case of sister state probate orders, it is contrary to full faith and credit principles to relitigate the validity of the will. In the case of foreign nation probate orders, the condition is automatically satisfied if probate has been granted and the order is to be given recognition.

§ 1000 (repealed). Petition for preliminary distribution

Comment. . . . The part of the first sentence of former Section 1000 applicable to estates of nonresident decedents is superseded by Section 12540.

§ 1040 (repealed). Court order for delivery of property to foreign personal representative

Comment. The first sentence of former Section 1040 is superseded by Sections 12540 and 12541. The second sentence of former Section 1040 is restated in the second sentence of Section 12541 without substantive change.

§ 1041 (repealed). Petition; notice; objections

Comment. The first sentence of former Section 1041 is superseded by Section 12540. The part of the second sentence of former Section 1041 that required the clerk to set the petition for hearing is continued in Section 7202. The part of the second sentence of former Section 1041 concerning notice and all of the third sentence are superseded by Section 12540.

§ 1042 (repealed). Discharge of local personal representative

Comment. Former Section 1042 is superseded by Section 12540. The former provision is broadened to apply to preliminary distributions as well as final distributions.

§ 1043 (repealed). Informal collection of personal property

Comment. Former Section 1043 is superseded by Sections 12570-12572 (collection of personal property of small estate without ancillary administration).

§ 1043a (repealed). Informal collection of accounts

Comment. Former Section 1043a is superseded by Sections 12570-12572 (collection of personal property of small estate without ancillary administration).