

#L-625

7/8/82

Fifteenth Supplement to Memorandum 82-70

Subject: Study L-625 - Probate Code (Tentative Recommendation--  
Conforming Revisions in Other Codes)

Attached is the portion of the recommended legislation that would make necessary conforming revisions in sections in other codes. You should not overlook the revision of Evidence Code Section 667 in the attached material.

Respectfully submitted,

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Executive Secretary

## CONFORMING REVISIONS IN OTHER CODES

Civil Code § 1389.4 (amended). Power of appointment

SEC. \_\_\_\_ . Section 1389.4 of the Civil Code is amended to read:

1389.4. (a) Except as provided in subdivision (b), if an appointment by will or by instrument effective only at the death of the donee is ineffective because of the death of an appointee before the appointment becomes effective and the appointee leaves issue surviving the donee, the ~~surviving~~ issue of such appointee who survive the donee by 120 hours shall take the appointed property ~~γ per stirpes and not per capita,~~ in the same manner as the appointee would have taken had the appointee survived the donee except that the property shall pass only to persons who are permissible appointees, including those permitted under Section 1389.5. If the surviving issue are all of the same degree of kinship they take equally, but if of unequal degree then those of more remote degree take by representation as provided in Section 220.060.

(b) This section does not apply if either the donor or donee manifests an intent that some other disposition of the appointive property shall be made.

Comment. Section 1389.4 is amended to make the rule of representation in the case of a lapsed power of appointment the same as under the general anti-lapse statute. See Section 204.050 (applying the rule of representation of Section 220.060). See also Probate Code §§ 114.510-114.550 (proceeding to determine whether one person survived another by 120 hours).

07438

Civil Code § 1624 (amended). Statute of frauds

SEC. \_\_\_\_ . Section 1624 of the Civil Code is amended to read:

1624. The following contracts are invalid, unless the same, or some note or memorandum thereof, is in writing and subscribed by the party to be charged or by his agent:

1. An agreement that by its terms is not to be performed within a year from the making thereof;
2. A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in Section 2794;
3. An agreement made upon consideration of marriage other than a mutual promise to marry;

4. An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent is in writing, subscribed by the party sought to be charged;

5. An agreement authorizing or employing an agent, broker, or any other person to purchase or sell real estate, or to lease real estate for a longer period than one year, or to procure, introduce, or find a purchaser or seller of real estate or a lessee or lessor of real estate where such lease is for a longer period than one year, for compensation or a commission;

6. An agreement which by its terms is not to be performed during the lifetime of the promisor ~~; or an agreement to devise or bequeath any property, or to make any provision for any person by will ;~~ ;

7. An agreement by a purchaser of real property to pay an indebtedness secured by a mortgage or deed of trust upon the property purchased, unless assumption of said indebtedness by the purchaser is specifically provided for in the conveyance of such property.

Comment. Section 1624 is amended to delete the last portion of subdivision 6 (agreement to devise or bequeath property or to make any provision by will) which is superseded by Probate Code Section 111.110.

368/217

Civil Code § 4352 (amended). Notice concerning will

SEC. \_\_\_\_ . Section 4352 of the Civil Code is amended to read:

4352. Every interlocutory and final judgment declaring a marriage a nullity or dissolving a marriage shall contain the following notice:

Notice: Please review your will. ~~Unless a provision is made in the property settlement agreement, this court proceeding does not affect your will and the ability of your former spouse to take under it.~~ A final judgment of dissolution or annulment of marriage revokes any disposition made by your will to your former spouse. You should also review your insurance policies, retirement benefit plans, and other matters that you may want to change in view of the dissolution or annulment of your marriage.

Comment. Section 4352 is amended to reflect the change in the law concerning the effect of divorce or annulment on provisions in the will of one spouse in favor of the other. See Prob. Code § 202.030 and the Comment thereto.

368/254

Civil Code § 5129 (repealed). Courtesy and dower abolished

SEC. \_\_\_\_ . Section 5129 of the Civil Code is repealed.

~~5129. No estate is allowed the husband as tenant by courtesy upon the death of his wife, nor is any estate in dower allotted to the wife upon the death of her husband.~~

Comment. Former Section 5129 is continued in substance in Section 220.130 of the Probate Code.

405/989

Education Code § 24606 (amended). State Teachers' Retirement System; provisions applicable in simultaneous death and similar situations

SEC. . Section 24606 of the Education Code is amended to read:

24606. ~~Where the member or retirant and the beneficiary have died and there is no sufficient evidence that they have died otherwise than simultaneously~~ The provisions of Chapter 6 (commencing with Section 114.010) of Part 3 of Division 1 of the Probate Code, when applicable, govern the distribution of the proceeds of any death benefit shall be distributed as if the member had survived the beneficiary, payable under this system. In applying Chapter 6 (commencing with Section 114.010) of Part 3 of Division 1 of the Probate Code with respect to proceeds payable to a beneficiary, membership in the system shall be considered as having the same status as an insurance policy.

Comment. Section 24606 is revised in a manner consistent with Government Code Section 21371 (comparable provision of Public Employees' Retirement Law). For provisions relating to insurance policies, see Probate Code Sections 114.020(b), 114.050. See also Probate Code §§ 114.510-114.550 (proceeding to determine whether one person survived another by required period of survival to take as survivor).

Evidence Code § 667 (amended). Presumption of death

SEC. \_\_\_\_ . Section 667 of the Evidence Code is amended to read:

667. A person ~~not heard from in seven years~~ who is absent for a continuous period of five years, during which time the person has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry, is presumed to be dead. The person's death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

Comment. Section 667 is amended to be consistent with Probate Code Section 1301 (administration of estates of persons missing five years). See also Civil Code §§ 4401(2), 4425(b) (five-year absence in bigamy situations).

405/993

Government Code § 21371 (technical amendment). Public Employees' Retirement Law; provisions applicable in simultaneous death and similar situations

SEC. . Section 21371 of the Government Code is amended to read:

21371. The provisions of ~~the Uniform Simultaneous Death Act~~ Chapter 6 (commencing with Section 114.010) of Part 3 of Division 1 of the Probate Code, when applicable, ~~shall~~ govern the distribution of money payable under this system, including but not limited to retirement allowance accrued but not received prior to death and refund of member contributions. In applying ~~said act~~ Chapter 6 (commencing with Section 114.010) of Part 3 of Division 1 of the Probate Code with respect to benefits payable to a beneficiary, membership in the system shall be considered as ~~in~~ having the same status as an insurance policies policy .

Comment. Section 21371 is amended to reflect the repeal of the Uniform Simultaneous Death Act (former Probate Code Sections 296-296.8) and the enactment of Probate Code Sections 114.010-114.550. For provisions relating to insurance policies, see Probate Code Sections 114.020(b), 114.050. See also Probate Code §§ 114.510-114.550 (proceeding to determine whether one person survived another by required period of survival to take as survivor).

Revenue and Taxation Code § 13409 (technical amendment). Disclaimers

SEC. \_\_\_\_ . Section 13409 of the Revenue and Taxation Code is amended to read:

13409. Transfers of any interest in real or personal property and all rights and powers relating to the same which have been duly disclaimed pursuant to the provisions of Chapter ~~11~~ ~~(commencing with Section 190)~~ 4 (commencing with Section 112.010) of Part 3 of Division 1 of the Probate Code or in any other valid manner, shall be subject to the inheritance tax only if, and to the same extent and in the same manner as, the same would have been subject to such tax if such interest, rights and powers had been originally created in favor of and transferred to the same persons and in the same shares in which they are effectively distributed or otherwise disposed of, after giving full effect to such disclaimers pursuant to the governing instrument, if any, and Chapter ~~11~~ ~~(commencing with Section 190)~~ 4 (commencing with Section 112.010) of Part 3 of Division 1 of the Probate Code and all other applicable law.

Comment. Section 13409 is amended to correct the cross-reference to the disclaimer provisions of the Probate Code in view of the recodification of those provisions.

404/170

Revenue and Taxation Code § 15209 (technical amendment). Disclaimer not deemed a gift

SEC. \_\_\_\_ . Section 15209 of the Revenue and Taxation Code is amended to read:

15209. A disclaimer of an interest in real or personal property or of rights or powers relating to the same pursuant to the provisions of Chapter ~~11~~ ~~(commencing with Section 190)~~ 4 (commencing with Section 112.010) of Part 3 of Division 1 of the Probate Code, or in any valid manner, shall not be deemed to constitute a gift by the person so disclaiming for purposes of the gift tax imposed by Section 15201.

Comment. Section 15209 is amended to correct the cross-reference to the disclaimer provisions of the Probate Code in view of the recodification of those provisions.