

9/2/92

Memorandum 82-80

Subject: Priorities for Consideration of Topics

Background

The Commission has followed the practice of establishing each year at its September meeting the priorities for the coming calendar year. This memorandum contains the staff's recommendations as to priorities during 1983.

By statute, the Commission may study only those topics that have been authorized for Commission study by a concurrent resolution adopted by the Legislature. The Commission is now authorized to study 31 topics. They are listed in the draft of the Annual Report attached to Memorandum 82-79. Almost two-thirds of these topics are continued on the calendar of topics so that the Commission will continue to have authority to study and make recommendations for any needed corrective legislation in statutes enacted upon Commission recommendation. Some of the remaining topics would--for one reason or another--not be suitable for study at this time. There are, however, a number of topics that compete for priority for study at this time. These are discussed below.

Summary of Recommendations

The Legislature has directed by statute that one topic be given priority--the statutes of limitations on felonies. Our consultant on this topic is scheduled to make a progress report on the background study on this topic at the September meeting. His background study is scheduled for delivery not later than March 1, 1983. We plan to commence our consideration of the topic at our March or April 1983 meeting. Stan Ulrich will have the primary responsibility for this study. We plan to submit our recommendation to the 1984 legislative session.

The Commission has four other major studies on its calendar of topics:

(1) Probate Code. (The Commission has previously determined that this topic be given top priority. The staff recommends that the topic be given top priority during 1983 after the study of statutes of limitations on felonies. See discussion below.)

(2) Community Property. (The Commission has previously determined that this topic be given some priority. The staff recommends that the

topic be given some priority during 1983 with a view to submitting one or more recommendations to the 1984 Legislature dealing with particular aspects of the topic. See discussion below.)

(3) Marketable Title Act and Related Matters. (The Commission has previously determined that this topic be given consideration when staff resources and Commission meeting time permit it to be considered. See discussion below.)

(4) Adoption. (The Commission has determined to defer consideration of this topic. The topic is a major one. Work on other major topics will not allow sufficient staff resources and Commission meeting time to be devoted to this topic during 1983.)

To the extent that staff resources and Commission meeting time permit, the staff would present recommendations dealing with minor topics or particular aspects of minor topics to the Commission for its consideration during 1983.

Probate Code Study

The staff recommends that the Probate Code study be given a top priority during 1983. We expect that a significant amount of staff and Commission time will be needed to deal with problems in connection with the recommendation to be submitted to the 1983 Legislature relating to wills and intestate succession. We believe that the Commission should commence its consideration of Division 3 of the Probate Code (relating to administration of estates of decedents) during 1983. It is not realistic to expect that this division can be the subject of a comprehensive recommendation to the 1984 Legislature. However, perhaps some aspects of the division can be the subject of separate recommendations to the 1984 Legislature. For example, the provisions relating to administration of trusts might be the subject of a separate recommendation. The Succession Without Administration Amendments to the Uniform Probate Code could be studied with the view possibly to submitting a separate recommendation to the 1984 Legislature. See Exhibit 1 attached. At this time, we have not made an analysis of how Division 3 could be broken up for study. Bob Murphy will devote his time almost exclusively to this study. If the Commission decides to continue to give the Probate Code top priority, Stan Ulrich also will devote the major portion of his time to the study (other than the time required by the study of

the statutes of limitations on felonies). The Executive Secretary would also devote a significant amount of his time to the study.

Community Property Study

The Commission has considered a staff study concerning the problems created by the manner in which title to property is held by married persons. This matter affects creditor' remedies, probate law, and division of property on marriage dissolution. The staff would give a priority to this matter with a view to submitting a recommendation to the 1984 Legislature. We could also work into this recommendation the provisions of our recommendation relating to rights of the parties to multiple-party accounts. In addition, there are various problems in need of legislative attention that could be the subject of separate recommendations to the 1984 Legislature. The Assistant Executive Secretary would devote a substantial portion of his time to this study if the Commission decides to continue to give the topic priority. His efforts would be to develop solutions to particular problems in the community property field, rather than an effort to develop comprehensive legislation to deal with the entire subject. If the Commission seeks to develop comprehensive legislation, the staff believes that either the Probate study must be given a low priority or the Commission must realize that it will be many years before the comprehensive legislation will be ready to submit to the Legislature. We prefer to deal with those problems that are in need of immediate attention at this time and to begin work on the development of the comprehensive legislation after we have completed the Probate Code study. The Executive Secretary also would devote some time to this study.

Marketable Title Act Study

The staff would give this study low priority. However, when staff resources and Commission time permits we would submit recommendations on particular aspects of the topic for Commission consideration.

An important law review article will soon be published relating to equitable servitudes and covenants. The Commission's study in the field of real property law was motivated to a significant extent by the hope that it might be possible to develop legislation that provided for a property interest that would serve the functions of equitable servitudes and covenants and provide adequate remedies. When this article is

published, the staff will present it for Commission review when time is available on the Commission's meeting schedule. The Assistant Executive Secretary will be responsible for this study.

Respectfully submitted,

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information

Outline of Succession Without Administration Amendments to Uniform Probate Code

The Uniform Probate Code (UPC) offers the most flexible system of estate administration available to states. Now the 14 states which have adopted the major provisions of UPC could offer their citizens the simplest of all administration schemes with no judicial interference.

"Succession Without Administration" amounts to acceptance of the assets and assumption of the debts of an undisputed estate by its heirs or devisees — whether or not there is a will. This sidesteps the traditional "executor" and attendant red tape.

"The concept of succession without administration is drawn from civil law and is a variation of the method which is followed largely on the continent of Europe, in Louisiana and in Quebec," say drafters of Succession Without Administration amendments to UPC.

The amendments were completed and adopted during the 1982 annual meeting of the National Conference of Commissioners on Uniform State Laws.

They would enable intestate heirs or "residuary devisees under a will" to become "universal successors" by filing an application with the probate court. An official of the court could approve an application as soon as five days after the decedent's death. If there were no challenges from other successors or creditors, and other simple criteria were met, the official could certify that the applicants were the universal successors to the assets of the estate and responsible for its liabilities and distribution.

"The liability of universal successors who assume the decedent's debts is subject to any defenses that would have been available to the decedent," the proposal states. "Other than liability arising from fraud, conversion or other wrongful conduct of a successor, the personal liability of each universal successor to any creditor, claimant, or other heir, devisee or person entitled to decedent's property shall not exceed the proportion of the claim that the universal successor's share bears to the share of all heirs and residuary devisees." Since the debts of the decedent might exceed the value of the estate, this procedure means that a successor's liability could exceed his share of the estate.

So if a family suspected that the assets of an estate would not cover its debts, the family could opt for appointment of a "personal representative" of the decedent. This would be a simple procedure that would limit liability to the value of the estate.

Drafters believe the Succession Without Administration concept should be added to the probate law of every state. However, wide variations in the organization and content of these laws discouraged immediate preparation of a single text of the new proposal that would work well in all states.

Therefore, ULC limited itself to proposing a text that would work well in UPC states. In non-UPC states, the Succession Without Administration amendments to UPC will serve to publicize and illustrate the new concept and will be useful as a model to be adapted to their statutes until a "free-standing" act can be developed.

States presently counted as enacting UPC or equivalent legislation are: Alaska, Arizona, Colorado, Idaho, Maine, Michigan, Minnesota, Montana, Nebraska, New Jersey, New Mexico, North Dakota, Pennsylvania and Utah.