

Memorandum 82-89

Subject: Study L-626 - Probate Law and Procedure (Missing Persons)

Attached is a draft of the Recommendation Relating to Missing Persons. We distributed it to approximately 67 persons. The three persons who submitted comments on this particular recommendation all approved it. Justice Robert Kingsley states that the recommendation seems well drawn. The American Association of Retired Persons State Legislative Committee finds that the recommendation is "in the best interests of older persons in California . . . [and] we will support effectuating legislation when the opportunity arises." Kenneth James Arnold, San Francisco lawyer, states that the recommendation "seems fine to me."

The staff recommends that the Commission approve the attached recommendation for printing and that the proposed legislation be submitted to the 1983 session of the Legislature. We know of no opposition to the recommendation.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

STAFF DRAFT

STATE OF CALIFORNIA

CALIFORNIA LAW
REVISION COMMISSION

RECOMMENDATION

relating to

MISSING PERSONS

July 28, 1982

Important Note. This staff draft of a recommendation reflects the Commission's tentative conclusions. It is being distributed to interested persons and organizations so that they can make their views known to the Commission. Any comments sent to the Commission will be considered at the Commission's September 1982 meeting when the Commission determines what recommendation, if any, it will make to the California Legislature. It is just as important to advise the Commission that you approve the draft as it is to advise the Commission that you object to the draft or that you believe that it needs to be revised.

COMMENTS ON THIS STAFF DRAFT SHOULD BE SENT TO THE COMMISSION NOT LATER THAN AUGUST 31, 1982.

The Commission often substantially revises tentative drafts as a result of the comments it receives. Hence, this staff draft is not necessarily the recommendation the Commission will submit to the Legislature.

California Law Revision Commission
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CALIFORNIA LAW REVISION COMMISSION

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LETTER OF TRANSMITTAL

By Resolution Chapter 37 of the Statutes of 1980, the Legislature directed the Law Revision Commission to study the California Probate Code and to consider whether any provisions of the Uniform Probate Code should be enacted in California.

The Commission recommends that provisions permitting the appointment of a conservator of the estate for a missing person be substituted for the existing provisions for the appointment of a trustee to protect and manage the property of a person missing for more than 90 days. If this substitution is made, the detailed provisions of the guardianship-conservatorship law (which govern all aspects of the management of the estate) will apply. These provisions will replace the incomplete and inadequate provisions that now govern the trustee's management of the estate.

The Commission also recommends that the existing provisions for probate of the estate of a missing person be modernized. The length of the absence that gives rise to the presumption of death should be lowered from seven to five years. The normal provisions governing administration of estates of decedents should apply but should be supplemented by special provisions protecting the rights of a missing person who reappears.

RECOMMENDATION

relating to

MISSING PERSONS

Introduction

A person may disappear and leave property that needs to be managed and protected. Ultimately, if the missing person does not reappear, his or her estate is distributed to those persons who would receive it if the missing person were dead. The Commission has reviewed the existing law that applies in these situations, and this recommendation is the result.

Protection of Property of Missing Person

Existing law provides for appointment of a trustee to protect and manage the property of a person missing for more than 90 days.¹ The Commission recommends that the existing provisions be replaced by provisions permitting the appointment of a conservator of the estate for a missing person.²

A conservatorship is the mechanism now used where a person is "substantially unable to manage his or her own financial resources" by reason of mental incapacity.³ A conservatorship is an equally appropriate mechanism where the inability to manage one's financial affairs is due to physical absence. The conservatorship provisions are detailed and

1. Prob. Code §§ 260-272. These provisions fall into the class of statutes where management of the missing person's property is based on the assumption of the continued life of the missing person. See Jalet, Mysterious Disappearance: The Presumption of Death and the Administration of the Estates of Missing Persons or Absentees, 54 Iowa L. Rev. 177, 226-27, 231-36 (1968). Such statutes have been upheld against constitutional challenges on the basis of the need to preserve the missing person's property during his or her absence and to protect the interests of the missing person's dependents. See Day v. Metropolitan Life Ins. Co., 11 Cal. App. 681, 54 P.2d 502 (1936).
2. In the case of a missing minor, a guardian can be appointed pursuant to Probate Code Section 1514.
3. Prob. Code § 1801.

will cover all aspects of the management of the estate of the missing person.⁴ Use of a conservatorship for the estate of a missing person has precedent in existing statutory provisions which allow a conservatorship for one class of missing person--the "absentee."⁵

Under existing law, a person must be missing for at least 90 days before a trustee may be appointed; and a trustee may be appointed only for a missing person who is a resident of this state.⁶ However, it is the practice to appoint a temporary conservator in a case where the person has not yet been missing for 90 days or where the missing person is a nonresident.⁷ The recommended legislation follows existing practice and permits the filing of a petition for the appointment of a conservator of the estate for a missing person without the requirement that the person have been missing for 90 days or that the missing person be a resident of this state. This permits the use of the procedure where there is an immediate need for the protection and management of the missing person's property,⁸ and provides a more adequate procedure for the protection and management of the property of a missing nonresident.⁹

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4. See Prob. Code §§ 2400-2644. In contrast, the provisions governing the trustee's management of the estate of a missing person are incomplete and inadequate. See Prob. Code §§ 265, 267-269.
 5. See Prob. Code § 1803. An "absentee" is a member of the armed forces or a federal employee who is missing. See Prob. Code § 1403. For special provisions applicable where the proposed conservatee is an "absentee," see Prob. Code §§ 1840-1844. See also Prob. Code §§ 1813 and 1864.
 6. Prob. Code § 260.
 7. See 3 J. Goddard, Probate Court Practice § 1921 (2d ed. 1977); S. Ross, L. Pruett, & M. Levine, California Conservatorships Supplement § 3.24, at 46 (Cal. Cont. Ed. Bar 1981).
 8. Under the general provisions of the guardianship-conservatorship law, a temporary guardian or conservator may be appointed in an appropriate case pending the appointment of a permanent conservator. See Prob. Code §§ 2250 (petition for appointment of temporary guardian or conservator), 2252 (powers and duties of temporary guardian or conservator).
 9. See note 4, supra.

Administration of Estate of Person
Presumed Dead

Existing law provides for the administration of the estate of a person missing for seven years as though the person were dead.¹⁰ Although the seven-year period is the same as the common law presumption of death, technically the presumption is not conclusive at that time. Thus, property in the estate of a missing person may not be distributed until one year after the appointment and qualification of the executor or administrator.¹¹ And, the distributee must give a bond in favor of the missing person if the distribution is made before the person has been missing for 10 years.¹² Only after final distribution and at least 10 years after the missing person disappeared is the statute of limitations deemed to have run against all claimants.¹³

The Commission recommends that this scheme be revised with a view toward shortening the time limits and simplifying the procedure. Specifically, the Commission recommends the following:

(1) The length of the absence that gives rise to the presumption of death should be lowered from seven to five years.¹⁴ The five-year

10. Prob. Code §§ 280-294.

11. Prob. Code §§ 285, 286.

12. Prob. Code §§ 286, 291.

13. Prob. Code § 292.

14. The recommended legislation also makes clear that the court must be satisfied there has been a diligent search or inquiry in an effort to explain the missing person's absence before the five-year presumption of death applies. This is drawn from Uniform Probate Code (1977) § 1-107(3). Under the recommended provision the person's death is presumed to have occurred at the end of the five-year period unless there is sufficient evidence for determining an earlier date of death. Existing law follows the majority or "English" rule that there is no presumption as to the time of death, but only as to the fact of death. See Jalet, Mysterious Disappearance: The Presumption of Death and the Administration of the Estates of Missing Persons or Absentees, 54 Iowa L. Rev. 177, 189 (1968); Roca, When Did Ulysses Die or Mysterious Disappearances and Life Insurance, 23 Geo. Wash. L. Rev. 172, 188-89 (1954).

The recommended legislation also revises the general presumption of death in Section 667 of the Evidence Code to adopt the five-year missing period. The Evidence Code provision applies in nonprobate situations, most importantly in cases involving insurance and also in determining survivorship in joint tenancies. The duration of absence should be the same for probate and nonprobate situations.

missing period is consistent with the period provided in the Uniform Probate Code¹⁵ and with the general trend in states that have considered this area of the law in recent years.¹⁶

(2) The normal provisions governing administration of estates should be applicable once the five-year missing period has run.

(3) The rights of the missing person should be protected by permitting a missing person who reappears to recover his or her estate remaining in the hands of the personal representative and also to recover from distributees within a five-year period after distribution to the extent that recovery from the distributee is equitable in view of all the circumstances.¹⁷

(4) The statutory scheme outlined above should replace the existing provisions that prevent distribution in the first year after appointment and qualification of the personal representative and that require the distributee to give a bond in a case where the person has been missing less than 10 years.

15. See Uniform Probate Code (1977) § 1-107(3). An earlier uniform act, which was not well received, provided that the issue of death of a missing person is to be decided as a question of fact based on the evidence and not on the basis of any particular period of absence. See Uniform Absence as Evidence of Death and Absentees' Property Act § 1 (1939).

16. At least 14 states provide a five-year period, some of them independently of the Uniform Probate Code. Minnesota has adopted a four-year period. There is precedent for the five-year period in California since that is the period of absence applicable in bigamy situations. See Civil Code §§ 4401(2), 4425(b). In its study of the Uniform Probate Code, the State Bar concluded that "there appears to be no objection to the five-year period provided under the UPC." State Bar of California, *The Uniform Probate Code: Analysis and Critique* 7 (1973).

17. This is drawn from Uniform Probate Code (1977) § 3-412(5).

Proposed Legislation

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

An act to amend Section 667 of the Evidence Code, to amend Sections 3700 and 3703 of, to amend the heading of Chapter 5 (commencing with Section 3700) of Part 8 of Division 4 of, to add Sections 1461.7 and 1804 to, to add Chapter 23 (commencing with Section 1300) to Division 3 of, to add Article 5 (commencing with Section 1845) to Chapter 1 of Part 3 of Division 4 of, to add a heading immediately preceding Section 3700 of, to add a heading immediately preceding Section 3701 of, to add Article 3 (commencing with Section 3710) and Article 4 (commencing with Section 3720) to Chapter 5 of Part 8 of Division 4 of, and to repeal Division 2a (commencing with Section 260) of, the Probate Code, relating to missing persons.

The people of the State of California do enact as follows:

40320

Evidence Code § 667 (amended). Presumption of death

SECTION 1. Section 667 of the Evidence Code is amended to read:

667. A person not heard from in ~~seven~~ five years is presumed to be dead.

Comment. Section 667 is amended to adopt a five-year missing period. This period is consistent with Probate Code Section 1301 (administration of estates of persons missing five years) and Civil Code Sections 4401(2), 4425(b) (five-year absence in bigamy situations). Except for the change in the duration of the missing period from seven to five years, the amendment of Section 667 has no effect on the case law interpreting this section.

3250

Probate Code §§ 260-295.4 (repealed). Administration of estates of missing persons

SEC. 2. Division 2a (commencing with Section 260) of the Probate Code is repealed.

Comment. Chapter 1 (commencing with Section 260) of Division 2a, relating to a trustee for the estate of a person missing over 90 days, is superseded by the provisions of guardianship-conservatorship law that provide for the appointment of a conservator of the estate to administer the estate of a missing person. See Sections 1461.7, 1804, 1845-1849.5.

Chapter 2 (commencing with Section 280), relating to the administration of the estate of a person missing over seven years, is superseded by Chapter 23 (commencing with Section 1300) of Division 3.

Chapter 3 (commencing with Section 295), relating to the administration of estates of missing federal employees or members of the armed forces, is superseded by provisions of Division 4 that provide for the management and disposition of the missing person's property without a court proceeding. See Sections 3700 and 3710-3720.

40302

Probate Code §§ 1300-1309 (added). Administration of estates of missing persons presumed dead

SEC. 3. Chapter 23 (commencing with Section 1300) is added to Division 3 of the Probate Code, to read:

CHAPTER 23. ADMINISTRATION OF ESTATES OF
MISSING PERSONS PRESUMED DEAD

§ 1300. Missing person defined

1300. As used in this chapter, unless the provision or context otherwise requires, "missing person" means a person who is presumed to be dead under Section 1301.

Comment. Section 1300, which permits use of the phrase "missing person" for convenient reference, continues the terminology of former Section 280.

28756

§ 1301. Presumption of death for purposes of administration

1301. In proceedings under this division, a person 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 to establish that death occurred earlier.

Comment. The first sentence of Section 1301 supersedes a portion of former Section 280 (person deemed missing person if absent for seven years). The second sentence is new. Section 1301 is the same in substance as Uniform Probate Code Section 1-107(3). See also Evid. Code §§ 667 (general presumption of death), 1282 (finding of presumed death by federal employee).

§ 1302. Manner of administration and distribution of missing person's estate

1302. The estate of a missing person may be administered and distributed, as though the person were dead, in the manner provided generally for the administration and distribution of estates of deceased persons, subject to the provisions of this chapter.

Comment. Section 1302 continues the substance of a portion of former Section 280 and supersedes former Sections 285, 286, and 294. See also Section 1308 (recovery of property by missing person upon reappearance).

40313

§ 1303. Jurisdiction of court

1303. (a) If the missing person was a resident of this state at the time of the person's disappearance, the superior court of the county of the person's last known place of residence has jurisdiction for the purposes of this chapter.

(b) If the missing person was a nonresident of this state at the time of the person's disappearance, the superior court of any county where any real property of the missing person is located, or of the county where any personal property is located if there is no real property in this state, has jurisdiction for the purposes of this chapter.

Comment. Section 1303 continues a portion of former Section 281.

40316

§ 1304. Petition for administration or probate

1304. (a) A petition may be filed in the court having jurisdiction under Section 1303 for the administration of the estate or the probate of the last will, as the case may be, of a missing person.

(b) The petition may be filed by any one or more of the following:

- (1) The spouse or a member of the family of the missing person.
- (2) A person interested in the estate of the missing person.
- (3) A friend of the missing person.

(c) In addition to the matters otherwise required in a petition for administration or probate, the petition shall state all of the following:

- (1) The last known place of residence of the missing person.

(2) The time of the person's disappearance.

(3) That the missing person has not been heard from by the persons most likely to hear (naming them and their relationship to the missing person) for a period of five years and the whereabouts of the missing person is unknown to those persons and to the petitioner.

(4) A description of any search or inquiry made concerning the whereabouts of the missing person.

(d) The petition shall be verified to the best knowledge and belief of the petitioner.

Comment. Section 1304 supersedes a portion of former Section 282. Pursuant to subdivision (c) and Section 1302, the general requirements for a petition for probate (see Section 326) or a petition for letters of administration (see Section 440) are applicable.

40318

§ 1305. Time for hearing; notice of hearing

1305. (a) When the petition is filed, the clerk of the court shall set the petition for hearing by the court on a day not less than three months from the date of filing.

(b) Notice of hearing on the petition shall be published in the form of similar notices of hearing in the administration of estates of deceased persons, pursuant to Section 6064 of the Government Code, the first publication to be at least three calendar months prior to the day set for the hearing.

(c) Within 20 days after the filing of the petition, notice of the hearing on the petition shall be:

(1) Served on the persons listed in Section 328 in the manner prescribed in that section.

(2) Sent by registered mail to the missing person at his or her last known address.

(d) Proof of such publication, service, and mailing shall be filed at or prior to the hearing.

Comment. Subdivision (a) of Section 1305 continues a portion of former Section 282. The remainder of Section 1305 supersedes former Section 283. See also Section 5 (certified mail equivalent of registered mail).

§ 1306. Determination whether person is person presumed to be dead;
search for missing person

1306. (a) At the hearing, the court shall determine whether the alleged missing person is a person who is presumed to be dead under Section 1301. In addition to the testimony at the hearing, the court may receive in evidence and consider the affidavits and depositions of persons likely to have heard from or know the whereabouts of the alleged missing person.

(b) If the court is not satisfied that a diligent search or inquiry has been made for the missing person, the court may order the petitioner to conduct a reasonably diligent search and to report the results of the search. The court may order the search to be made in any manner that seems advisable, including any or all of the following methods:

(1) Inserting in one or more suitable periodicals a notice requesting information from any person having knowledge of the whereabouts of the missing person.

(2) Notifying law enforcement officials and public welfare agencies in appropriate locations of the disappearance of the missing person.

(3) Engaging the services of an investigator.

(c) The costs of any search ordered by the court pursuant to subdivision (b) shall be paid by the petitioner if there is no administration or by the estate of the decedent if there is administration.

Comment. Subdivision (a) of Section 1306 is drawn from the last sentence of former Section 284. Subdivisions (b) and (c) are drawn from subdivision (b) of Section 3-403 of the Uniform Probate Code.

28757

§ 1307. Appointment of executor or administrator and determination of
date of disappearance

1307. If the court finds that the alleged missing person is a person presumed to be dead under Section 1301, the court shall do both of the following:

(a) Appoint an executor or administrator for the estate of the missing person in the manner provided for the estates of deceased persons.

(b) Determine the date of the missing person's death.

Comment. Section 1307 continues the substance of a portion of former Section 284. See also Sections 1301 (death presumed at end of five-year period unless sufficient evidence of earlier death), 1302 (manner of administration and distribution).

40319

§ 1308. Recovery of property by missing person upon reappearance

1308. If the missing person reappears, the missing person may recover all of the following:

(a) Property of the missing person's estate in the hands of the executor or administrator.

(b) Property of the missing person's estate or its proceeds in the hands of distributees, or the value of distributions received by them, to the extent that any recovery from distributees is equitable in view of all of the circumstances. No action for recovery may be brought against a distributee after the expiration of five years from the date the property is distributed.

Comment. Section 1308 supersedes former Sections 287-290 and is drawn from the last paragraph of Section 3-412 of the Uniform Probate Code. The five-year statute of limitations on actions to recover from distributees supersedes portions of former Sections 291 and 292.

29177

§ 1309. Application of chapter

1309. (a) This chapter applies only to cases where a petition is filed under Section 1304 after December 31, 1983. If a petition is filed under Section 1304 after December 31, 1983, the required period of absence of the alleged missing person may include a period of absence that commenced to run before that date.

(b) This chapter does not apply to any proceeding under former Sections 280 to 294 that is pending on December 31, 1983, and the law that applies to such proceeding on December 31, 1983, shall continue to apply after that date.

Comment. Section 1309 is drawn in part from former Section 293.

Probate Code § 1461.7 (added). Notice of hearing on petition, report, or account where conservatee is a missing person

SEC. 4. Section 1461.7 is added to the Probate Code, to read:

1461.7. Unless the court for good cause dispenses with such notice, notice of the time and place of the hearing on a petition, report, or account, together with a copy of the petition, report, or account, shall be given to the same persons who are required to be given notice under Section 2581 for the period and in the manner provided in this chapter if both of the following conditions exist:

(a) A conservator of the estate has been appointed under Article 5 (commencing with Section 1845) of Chapter 1 of Part 3 for a person who is missing and whose whereabouts is unknown.

(b) The petition, report, or account is filed in the conservatorship proceeding under any one or more of the following provisions:

(1) Section 1861 or 2423.

(2) Article 7 (commencing with Section 2540) of Chapter 6 of Part 4.

(3) Section 2570, 2571, 2580, 2592, or 2620.

(4) Chapter 8 (commencing with Section 2640) of Part 4.

(5) Chapter 9.5 (commencing with Section 2670) of Part 4.

(6) Chapter 3 (commencing with Section 3100) of Part 6.

Comment. Section 1461.7 supersedes portions of former Section 268 which provided for giving notice of hearings on certain estate management matters to persons who had an interest in the estate of a missing person for whom a trustee had been appointed. Section 1461.7 adopts by reference Section 2581 (notice to persons known to the petitioner to have a possible interest in the conservatee's estate if the conservatee were dead). The listing of the petitions, reports, and accounts to which Section 1461.7 applies is drawn from Sections 1461 and 1461.5.

28830

Probate Code § 1804 (added). Conservator of estate of missing person

SEC. 5. Section 1804 is added to the Probate Code, to read:

1804. Subject to Section 1800, a conservator of the estate may be appointed for a person who is missing and whose whereabouts is unknown.

Comment. Section 1804 is a new provision that supersedes the former procedure for appointing a trustee for the property of a missing person. See former Sections 260-272 and the Comment thereto. For special provisions applicable where the proposed conservatee is a missing

person, see Article 5 (commencing with Section 1845). See also Section 1461.7 (notice of hearing on petition, report, or account). If a minor is a missing person, a guardianship of the estate may be established for the minor. See Section 1514 (guardian may be appointed if it appears necessary or convenient).

29221

Probate Code §§ 1845-1849.5 (added). Special provisions applicable where proposed conservatee is a missing person

SEC. 6. Article 5 (commencing with Section 1845) is added to Chapter 1 of Part 3 of Division 4 of the Probate Code, to read:

Article 5. Special Provisions Applicable Where
Proposed Conservatee is a Missing Person

§ 1845. Appointment of conservator for missing person; procedure

1845. (a) Except as otherwise provided in this article, a conservator of the estate of a person who is missing and whose whereabouts is unknown shall be appointed as provided in Article 3 (commencing with Section 1820).

(b) This article does not apply where the proposed conservatee is an absentee as defined in Section 1403.

Comment. Subdivision (a) of Section 1845 is comparable to Section 1840 (conservatee who is an "absentee"). The appointment of a conservator is governed by other provisions where the proposed conservatee is an absentee as defined in Section 1403. See Article 4 (commencing with Section 1840).

9414

§ 1846. Petition; additional contents

1846. In addition to the other required contents of the petition, if the proposed conservatee is a person who is missing and whose whereabouts is unknown, the petition shall state all of the following:

(a) The proposed conservatee owns or is entitled to the possession of real or personal property situated in this state.

(b) The proposed conservatee is missing and his or her whereabouts is unknown.

(c) The estate of the proposed conservatee requires attention, supervision, and care.

Comment. Section 1846 supersedes a portion of former Section 260 (appointment of trustee of estate of missing person). Section 1846 continues the substance of the standard for appointment of a trustee under former Section 260 with two changes: First, the requirement of former Section 260 that the missing person be a resident of California is not continued. This omission permits the appointment of a conservator of the estate of a missing person who is a nonresident but who has property in California that requires the attention, supervision, and care of a conservator. Second, the requirement of former Section 260 that the person be missing for 90 days is not continued. Under Section 1800, a conservator may be appointed only if the need therefor is established to the satisfaction of the court. This requirement protects against premature establishment of a conservatorship and, at the same time, permits the protection of the property of a person who has been missing less than 90 days. Under some circumstances, the court may decline to appoint a permanent conservator pending further developments but may appoint a temporary conservator. See Sections 2250 (petition for appointment of temporary conservator pending the final determination of the court upon the petition for the appointment of the conservator). See also Section 2252 (powers and duties of temporary conservator). In other circumstances, the court may determine that a permanent conservator should be appointed without delay.

29339

§ 1847. Notice of hearing

1847. In addition to the persons and entities to whom notice of hearing is required under Section 1822, if the proposed conservatee is a person who is missing and whose whereabouts is unknown:

(a) A copy of the petition for appointment of a conservator and notice of the time and place of the hearing on the petition shall be mailed at least 15 days before the hearing to the proposed conservatee at the last known address of the proposed conservatee.

(b) Notice of the time and place of the hearing shall also be published pursuant to Section 6061 of the Government Code in a newspaper of general circulation in the county in which the proposed conservatee was last known to reside if the proposed conservatee's last known address is in this state.

(c) Pursuant to Section 1462, the court may require that further or additional notice of the hearing be given.

Comment. Section 1847 supersedes former Section 261 and is drawn from Section 1842 (notice of hearing where proposed conservatee is an "absentee"). Unlike Section 1842, which requires notice to be published in the county where the hearing will be held, Section 1847 requires

notice to be published in the county where the proposed conservatee was last known to reside if his or her last known address is in this state. Publishing notice in this county is more likely to give actual notice to the proposed conservatee. If the last known address is not in this state, Section 1842 does not require the publication of a notice of the time and place of the hearing; but, in such a case, the court may require publication within or without this state pursuant to the authority given the court under subdivision (c). Subdivision (c) of Section 1847 continues the substance of a portion of former Section 261 and makes clear that the court may require such additional notice as is appropriate under the circumstances of the particular case.

Nothing in this section limits the authority of the court in determining the need to establish a conservatorship to require that a search be made for the missing person before a conservator is appointed. Whether to require such a search and the type of search to be required is left to the court's discretion. In exercising this discretion, the court can take into consideration all the circumstances of the particular case, including the nature of the disappearance, the character and amount of the estate, and the circumstances of the persons who have an interest in the proceeding. For example, the court may dispense with a search if the missing person's estate is nominal, there are dependents entitled to support, and the funds necessary for support would be significantly reduced by the cost of the search. In other cases, no purpose would be served by a court-ordered search, as where the proposed conservatee is lost at sea.

29341

§ 1848. Certain general requirements for establishment of conservatorship not applicable

1848. In a proceeding to appoint a conservator of the estate of a person who is missing and whose whereabouts is unknown, the following acts are not required:

- (a) Issuance of a citation to the proposed conservatee pursuant to Section 1823.
- (b) Service of a citation and petition pursuant to Section 1824.
- (c) Production of the proposed conservatee at the hearing pursuant to Section 1825.
- (d) Performance of the duties of the court investigator pursuant to Section 1826.
- (e) Performance of any other act that depends upon knowledge of the location of the proposed conservatee.

Comment. Section 1848 excuses performance of any duty under the general provisions that depends upon knowledge of the whereabouts of the missing person. This section does not limit the authority of the court to require that an attempt be made to locate the missing person. See the Comment to Section 1847.

§ 1849. Appointment of conservator

1849. A conservator of the estate of a person who is missing and whose whereabouts is unknown may be appointed only if the court finds all of the following:

(a) The proposed conservatee owns or is entitled to the possession of real or personal property situated in this state.

(b) The proposed conservatee remains missing and his or her whereabouts remains unknown.

(c) The estate of the proposed conservatee requires attention, supervision, and care.

Comment. Section 1849 supersedes a portion of former Section 260 (appointment of trustee of estate of missing person). See the Comment to Section 1846. For a special provision relating to notice of hearing on a petition, report, or account, see Section 1461.7.

28474

§ 1849.5. Application of article; authority of trustee under prior law

1849.5. (a) This article applies only to cases where a petition is filed under this article after December 31, 1983. After December 31, 1983, a petition may be filed under this article regardless of when the proposed conservatee became missing or how long the proposed conservatee has been missing.

(b) If a trustee was appointed pursuant to former Section 262, the provisions of former Sections 260 to 272, inclusive, continue to apply to the case after December 31, 1983, unless, upon a petition filed under this article after December 31, 1983, the trustee is replaced by a conservator.

Comment. Subdivision (a) of Section 1849.5 provides for the immediate availability of a conservatorship pursuant to this article, notwithstanding the time when the missing person disappeared. Hence, the 90-day period provided by former Section 260 is not applicable after December 31, 1983.

Subdivision (b) makes clear that a trusteeship created under former law may continue to operate under the provisions of former law, but makes the provisions of this article available on petition.

Probate Code - heading for Chapter 5 (commencing with Section 3700) of Part 8 of Division 4 (technical amendment)

SEC. 7. The heading of Chapter 5 (commencing with Section 3700) of Part 8 of Division 4 of the Probate Code is amended to read:

CHAPTER 5. PERSONAL PROPERTY OF ABSENTEES
ABSENT FEDERAL PERSONNEL

Probate Code - heading for Article 1 (commencing with Section 3700) of Chapter 5 of Part 8 of Division 4 (added)

SEC. 8. A heading is added immediately preceding Section 3700 of the Probate Code, to read:

Article 1. Definitions

40307

Probate Code § 3700 (technical amendment). Definitions

SEC. 9. Section 3700 of the Probate Code is amended to read:

3700. As used in this chapter:

(a) "Absentee" is defined in Section 1403.

(b) "Certificate of missing status" means the official written report complying with Section 1283 of the Evidence Code and showing the determination of the secretary of the military department or the head of the department or agency concerned or the delegate of the secretary or head that the absentee is in missing status.

~~(b)~~ (c) "Eligible spouse" means the spouse of an absentee who has not commenced an action or proceeding for judicial or legal separation, divorce, annulment, adjudication of nullity, or dissolution of the marriage of the spouse and the absentee.

~~(e)~~ (d) "Family of an absentee" means an eligible spouse, if any, or if no eligible spouse, the child or children of an absentee, equally, or if no child or children, the parent or parents of an absentee, equally, provided these persons are dependents of the absentee as defined in Section 401 of Title 37 of the United States Code, and the guardian of the estate or conservator of the estate of any person bearing such relationship to the absentee.

~~(d)~~ (e) "Secretary concerned" is defined in Section 1440.

Comment. Subdivision (b) of Section 3700 continues the substance of former Section 295(2) and a provision formerly set out in Section 3703(b). Subdivision (d) is amended to continue a limitation provided by former Section 295(4) and apply it to the procedure set out in Article 2 (commencing with Section 3701).

09031

Probate Code - heading for Article 2 (commencing with Section 3701) of Chapter 5 of Part 8 of Division 4 (added)

SEC. 10. A heading is added immediately preceding Section 3701 of the Probate Code, to read:

Article 2. Court Proceeding to Set Aside
Personal Property of Absentee

40308

Probate Code § 3703 (technical amendment). Contents of petition

SEC. 11. Section 3703 of the Probate Code is amended to read:

3703. (a) The petition shall contain all of the following:

(1) A statement that the petition is filed under this chapter.

(2) In its caption, the last known military rank or grade and the social security account number of the absentee.

(3) A specific description and estimate of the value of all of the absentee's property, wherever situated (including all sums due the absentee from the United States).

(4) A designation of the property to be set aside, and the facts establishing that setting aside the property is necessary and in the best interest of the absentee.

(5) If the property is to be set aside for the benefit of the spouse of the absentee, an allegation that the spouse is an eligible spouse.

(6) So far as known to the petitioner, the names and residences of all persons comprising the family of the absentee, and an allegation whether a guardian of the estate or a conservator of the estate of any member of the family of the absentee has been appointed.

(b) There shall be attached to the petition a certificate ~~complying~~ with Section 1283 of the Evidence Code showing the determination of the secretary of the military department or the head of the department

~~or agency concerned or the delegate of the secretary or head that~~
~~the absentee is in of~~ missing status. The certificate of missing status
shall be received as evidence of that fact and the court shall not
determine the status of the absentee inconsistent with the status shown
in the certificate.

Comment. The requirements for the certificate formerly set forth
in subdivision (b) of Section 3703 are continued in the definition
provided by Section 3700(b).

40309

Probate Code §§ 3710-3712 (added)

SEC. 12. Article 3 (commencing with Section 3710) is added to
Chapter 5 of Part 8 of Division 4 of the Probate Code, to read:

Article 3. Management and Disposition of Personal
Property of Absentee Without Court Proceeding

40310

§ 3710. Authority of family of absentee to manage and dispose of
personal property of absentee

3710. The family of an absentee may collect, receive, dispose of,
or engage in any transaction relating to the absentee's personal property
situated in California without any judicial proceeding if all the follow-
ing conditions are satisfied:

(a) The absentee owns no real property situated in California.

(b) The aggregate value of all of the absentee's personal property
situated in California is five thousand dollars (\$5,000) or less, exclu-
ding any money owed the absentee by the United States.

(c) The family of the absentee needs to dispose of such personal
property to provide for shelter, food, health care, education, transpor-
tation, or the maintenance of a reasonable and adequate standard of
living for the family of the absentee.

Comment. Section 3710 continues the substance of the first paragraph
of former Section 295.1.

§ 3711. Transfer of evidence of absentee's property right; discharge of third persons from liability

3711. (a) If the conditions set forth in Section 3710 are satisfied, the family of the absentee may have any evidence of interest, indebtedness, or right attributable to the absentee's personal property transferred to the family of the absentee, or transferred to the person to whom the property is to be sold or transferred by the family of the absentee, upon furnishing the person (including any governmental body) having custody of the property both of the following:

(1) A certificate of missing status.

(2) An affidavit stating under oath that the provisions of this article are applicable and that the aggregate value of all property received pursuant to this affidavit, together with all other property previously received under this article, does not exceed five thousand dollars (\$5,000).

(b) The receipt of a certificate of missing status and affidavit under subdivision (a) constitutes sufficient acquittance for any payment of money or delivery of property made pursuant to this article and fully discharges the recipient from any further liability concerning the money or property without the necessity of inquiring into the truth of any of the facts stated in the affidavit.

Comment. Subdivision (a) of Section 3711 continues the substance of the second paragraph of former Section 295.1. Subdivision (b) continues the substance of former Section 295.2.

40314

§ 3712. Action by absentee

3712. The time within which an absentee may commence an action against any person who executes an affidavit and receives property pursuant to this article commences to run on the earlier of the following dates:

(a) Ninety days after the absentee returns to the continental United States after the termination of the condition that caused the classification of an absentee.

(b) Two years after the termination of the condition that caused the classification of an absentee.

Comment. Section 3712 continues the substance of former Section 295.3.

Probate Code § 3720 (added). Absentee's power of attorney

SEC. 13. Article 4 (commencing with Section 3720) is added to Chapter 5 of Part 8 of Division 4 of the Probate Code, to read:

Article 4. Absentee's Power of Attorney

§ 3720. Power of attorney

3720. If an absentee executed a power of attorney that expires during the period that occasions absentee status, the power of attorney continues in full force and effect until 30 days after the absentee status is terminated. Any person who acts in reliance upon the power of attorney when accompanied by a copy of a certificate of missing status is not liable for relying or acting upon the power of attorney.

Comment. Section 3720 continues the substance of former Section 295.4, but eliminates unnecessary language.