

First Supplement to Memorandum 83-58

Subject: Study L-826 - Probate Law and Procedure (Disposition of Estates Without Administration)

We have received three letters commenting on the Commission's Tentative Recommendation Relating to Disposition of Estates Without Administration which is attached to the basic memorandum (Memo 83-58). These letters are attached to this supplement as Exhibits 1 through 3. Two of the letters approve of the tentative recommendation (see Exhibits 2 and 3). The third letter is from the Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association (Exhibit 1), and raises certain problems with the tentative recommendation. These problems are discussed below.

Absence of Dollar Limit for Use of Affidavit Procedure by Surviving Spouse

Under existing law, when the deceased spouse dies intestate, or dies testate leaving community or quasi-community property to the surviving spouse, the property passes to the surviving spouse "and no administration is necessary." Prob. Code § 202. If the surviving spouse so desires, he or she may petition under Probate Code Section 650 for a court order determining the nature of the property, that it passes to the surviving spouse, and that no administration is necessary. The order is conclusive on all persons, whether or not they are in being. Prob. Code § 655.

If there is no real property in the estate and the total estate value is \$30,000 or less, the surviving spouse may collect the decedent's property by presenting an affidavit to the holder of the property. Prob. Code § 630. The holder of the property may turn it over to the surviving spouse without any exposure to liability for so doing. Prob. Code § 631.

The Commission's tentative recommendation increases the maximum estate value for use of the affidavit procedure to \$50,000 for certain close relatives of the decedent, but where the claimant is the decedent's surviving spouse, the Commission's proposal permits use of the affidavit procedure with no maximum limit on estate value and without regard to whether the decedent owns any California real property. The Los Angeles Probate Section thinks it inadvisable to remove all limits on estate

size for use of the affidavit procedure by the surviving spouse. Their arguments are as follows:

(1) It is inconsistent to permit the surviving spouse to use an affidavit procedure for estates of any size, and also to keep the Section 650 petition as an alternative. The staff disagrees. The surviving spouse may want an order under Section 650 to bind other potential claimants, or may prefer the speed and simplicity of the affidavit procedure. The surviving spouse should have this choice.

(2) When the surviving spouse petitions under Section 650, the will must be proved. When the estate is large, this provides an important protection to other heirs and beneficiaries. To permit the surviving spouse to bypass the Section 650 procedure entirely by using the affidavit procedure is not desirable where the estate is large, since it fails adequately to protect other heirs and beneficiaries. The staff finds some force in this argument. What is the Commission's view?

Use of Affidavit Procedure Notwithstanding Presence of Real Property Interest of Small Value

The Los Angeles Probate Section argues that the affidavit procedure should be usable notwithstanding the presence in the estate of a real property interest of \$10,000 or less. (See Exhibit 1.) The staff thinks this is a good suggestion, and would revise subdivision (a) of Section 630 as follows:

630. (a) Subject to Section 632, subdivision (b) applies only ~~where a decedent leaves no real property, nor interest therein nor lien thereon, in this state, if the total value of the decedent's real property in this state does not exceed ten thousand dollars (\$10,000), and the total value of the decedent's real and personal property in this state (excluding any motor vehicle, or mobilehome or commercial coach registered under the provisions of Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code, of which the decedent is the owner or legal owner) over and above all liens and encumbrances on such property at the date of death, over and above any amounts due to the decedent for services in the armed forces of the United States, and over and above the amount of salary not exceeding five thousand dollars (\$5,000), including compensation for unused vacation, owing to decedent for services from any employment, does not exceed fifty thousand dollars (\$50,000), except that subdivision (b) applies to the surviving spouse of the decedent without regard to the value of the estate and without regard to whether the decedent leaves real property or interest therein or lien thereon in this state.~~

The Los Angeles Probate Section also recommends permitting the affidavit procedure to be used to transfer real property interests. The staff thinks there is merit in this suggestion. In May, the staff wrote

to the California Land Title Association for their views on whether insurable title to real property could be obtained if the property were passed by affidavit and without administration of the estate. We have just received a letter indicating that the California Land Title Association has appointed a special subcommittee to address the question and that we may expect a response to our inquiry in the near future. A copy of this letter is attached as Exhibit 4. After we have heard from the special subcommittee, we will make a recommendation to the Commission on the question of applying the affidavit procedure to real property.

Intestate Share of Surviving Spouse

The Commission's tentative recommendation includes a proposal to restore the Commission's original recommendation that all separate property of an intestate decedent pass to the surviving spouse (except where the decedent leaves issue of another union). The Los Angeles Probate Section is supportive of this in principle, but wonders whether it is "advisable to push this matter again so soon after the prior defeat" of the proposal by the Legislature. Actually, this proposal was not defeated by the Legislature, but rather was withdrawn by staff before the Senate Judiciary hearing in order to eliminate opposition to the bill. The Assembly Judiciary Committee and the full house of the Assembly approved AB 25 with this proposal in its originally-recommended form. The Senate did not have an opportunity to address the policy issue involved. So now is the time to present the issue squarely for legislative resolution.

Technical Problem

The Los Angeles Probate Section is concerned about the apparent repeal of Probate Code Sections 202 to 205 with no replacement sections. However, the version of AB 25 that has gone to the Governor contains the former substance of AB 68, including new Sections 649.1 to 649.5, the replacement sections for Probate Code Sections 202 to 205.

Respectfully submitted,

Robert J. Murphy III
Staff Counsel

**Los Angeles County
Bar Association**

Probate and Trust Law Section

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Los Angeles, California 90055

September 6, 1983

Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94306Re: Tentative Recommendations L-641, L-651,
L-653, L-810 and L-826; July 22, 1983
Request for Survey of Views

Dear Sirs:

Speaking on behalf of the Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association, we wish to comment on these Tentative Recommendations and respond to the Request for Survey of Views as follows:

L-826, Disposition of Estates without Administration

The first problem we have with the tentative recommendation is that the report assumes that former §§ 202 through 205 were re-enacted as Probate §§ 649.1 through 649.4 in the current legislature. It is our understanding those provisions were contained in A.B. 68, later deleted from A.B. 68, and that A.B. 68 has been chaptered as Chapter 290 without those provisions. Therefore, it is our understanding that former §§ 202 through 205 are not in existence in California law, effective January 1, 1985. This report purports to amend Sections 649.1, 649.3 and 649.4, and therefore would presumably re-enact them. Section 649.2 should be added to the report.

It is inconsistent to both streamline and simplify the procedure of a surviving spouse claiming property passing to him or her under §650 et seq., and to allow the surviving spouse an affidavit procedure under §630 et seq. without any dollar limitation. If you allow an affidavit procedure without any dollar limitation, then there seems no reason to continue any separate proceeding under §650 et seq. If we are going to continue separate proceedings under §650 et seq., the surviving spouse should be limited to the same \$50,000 limitation of §630 et seq., as any other claimant. Furthermore, since the process of proving a valid will affords some protection to heirs and beneficiaries, it should not be entirely dispensed with in large estates. Otherwise, the changes to §630 et seq., appear to be salutary.

Many states have summary proceedings for small estates which include interests in real property. It seems pointless to institute probate proceedings to pass clear title if the only real property is a desert lot worth \$5,000, or a lessor's working interest in oil property which generates income of \$150 per year, or a reservation of mineral rights from previously sold real property. In these circumstances, many title insurers and oil companies are willing to recognize an effective transfer without probate proceedings. Others won't. Collection by an affidavit filed with the real property records of the county where the property is located would clear title without burdening our courts, attorneys or citizens with probate administration of these estates with small interests in real property. Accordingly, we would suggest the following changes to Section 630:

(1) Subsection (a) shall commence with the following language:

"(a) Subject to Section 632, subdivision (b) applies only where a decedent leaves real property, or an interest therein or lien thereon, in this state with a total value of not more than ten thousand dollars (\$10,000.00) and the total value of all of the decedent's property in this state,"

(2) Subsection (b) shall be amended by deleting "or" before "chose in action" in the two places where it occurs and by adding after "chose in action" the words "or other property."

(3) A new subsection (d) shall be added to read:

"(d) Any affidavit or declaration prepared pursuant to subdivision (b) which affects an interest in real property shall be acknowledged before a notary public and recorded in the Office of the County Recorder in the county in which such real property is located."

So long as all separate property is passing to the surviving spouse, we believe that it will be salutary to treat separate and community property the same under §649.1 and §§ 650 et seq. If nothing else, it will eliminate the cost of the courts having to determine what is separate property and what is community property, merely for purposes of administration when there is no other effect to the determination.

The changes to Probate Code § 6401 are to return it to the way it read when A.B. 25 was introduced in the legislature last year. However, A.B. 25 was amended by the legislature to change §6401 to a version which more closely approximates existing law.

Law Revision Commission
September 6, 1983

In a letter to the Assembly Judiciary Committee dated February 10, 1983, we concurred that the provisions of proposed sections 6401(c)(1) and (2) may be more accurate reflections of the intentions of the public than existing law. One fact situation which is apparently not contemplated by your commentary is the following: (1) Wife has children by first marriage; (2) Husband and wife have children by second marriage; (3) Husband would like his property to go to his children; (4) Husband dies intestate with separate property. It appears that the legislature, with input from the public, believes these changes are not advisable. While our section will concur in this change to the intestate succession provisions, we wonder if it is advisable to push this matter again so soon after the prior defeat.

We would like you to carefully examine our comments when revising your recommendations. Our comments represent the practical experience of probate practitioners who regularly deal with the probate courts. We support those changes we believe to be true improvements. We can not support those changes we believe would adversely affect the rights of estate beneficiaries or that would make the probate process worse rather than better.

Executive Committee

By _____
Valerie J. Merritt
Secretary - Treasurer



Charles A. Dunkel
Vice President
Trust Officer

August 19, 1983

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94306

Re: L-826: Disposition of Estates Without Administration

Gentlemen:

Your tentative recommendation relating to the above subject meets with my approval. I have no suggestions for improvement.

Sincerely,

Vice President and Trust Officer

CAD:SC:7080

Law Revision Commission:

8/21/83

Gentlemen:

I agree with your tentative
Recommendation relating to Disposition of
Estates without administration in the
essence of simplification of estate
administration.

Thank you

Henry Angerbauer CPA

 **TICOR TITLE INSURANCE**

September 1, 1983

California Law Revision Commission
4000 Middlefield Road, Room D2
Palo Alto, California 94306

Attention: Robert J. Murphy III
Staff Counsel

Re: Special Subcommittee of the CLTA Forms and Practices Committee
Study of Succession of Community and Quasi-community Property

Dear Mr. Murphy:

Your letter of May 10, 1983 addressed to the California Land Title Association (Attention: Larry Green) was referred to the Association's Forms and Practices Committee. In the committee's last meeting of the 1982-83 year, which was held in the early part of June, the committee decided to appoint a special sub-committee to respond to your inquiries and to provide whatever assistance we can concerning the subject matter. During the summer months I was asked by the incoming chairman of the Forms and Practices Committee, Mr. Robert L. Reyburn, to be the chairman of this special subcommittee. The other members are:

Mr. Gordon Granger
Stewart Title Guaranty Co.
2200 W. Loop South
Houston, Texas 77001

Mr. Robert L. Manuele
Transamerica Title Insurance Co.
1150 S. Olive Street, Ste. 2000
Los Angeles, California 90015

Mr. Robert G. Rove
Title Insurance Co. of Minnesota
400 Second Avenue South
Minneapolis, Minnesota 55401

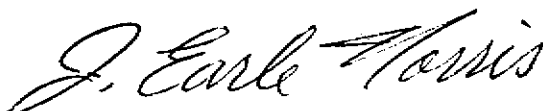
Mr. Richard M. Klarin
Commonwealth Land Title Insurance Co.
8383 Wilshire Blvd., Suite 701
Beverly Hills, California 90211

Presently, I have provided to the special subcommittee members a package of materials for their study and comment concerning this subject, looking specifically towards responding to your direct inquiries in your letter of May 10, 1983. This package of materials included the commission's report to the Senate Committee on Assembly Bills 25, 26 and 68. I also noted to the committee members that Assembly Bill 26 had passed and was chaptered on July 23, 1983 as Chapter 342, and that Assembly Bill 68 was enacted as an urgency measure on July 15, 1983 as Chapter 290, Statutes of 1983.

California Law Revision Commission
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September 1, 1983

We look forward to formulating responses to your inquiries in the near future. In the meantime, if there is any other pertinent material available with regards to the subject, I would appreciate your forwarding such material to me, which I will distribute, or forwarding such material directly to the subcommittee members.

Very truly yours,



J. Earle Norris
Vice President and
Senior Associate Title Counsel

JEN:cm

cc: Gordon Granger
Robert L. Manuele
Robert G. Rove
Richard M. Klarin
Robert L. Reyburn
Clark Staves
James Wickline