

Memorandum 84-35

Subject: Study L-657 - Probate Law and Procedure (Procedure for
Objecting to Appraisement of Estate Property)

Prior to the repeal of the inheritance tax in California, there was a statutory procedure for any interested person to object to the report of the probate referee and to obtain a court hearing. Former Rev. & Tax. Code §§ 14510-14513. Since the repeal of these provisions by initiative measure in 1982, there has been no express statutory provision for an interested person to challenge the appraisement of estate property by the probate referee or by the executor or administrator, although it may be that this could be done when the accounts are presented. This matter was brought to the Commission's attention at the September 1983 meeting in a letter from attorney Luther Avery (see First Supplement to Memo 83-62). Attorney Edward Brennan, who is also a probate referee, agreed that there was a problem.

An express statutory procedure for objecting to the appraisement of the executor, administrator, or probate referee could be provided by the following section:

Probate Code § 608.5 (added). Objection to appraisement

608.5. (a) At any time prior to final distribution of the estate, an interested person may file with the court a written objection to the appraisement by the executor, administrator, or probate referee.

(b) The clerk shall fix a time, not less than 10 days after the filing, for a hearing on the objection.

(c) The person objecting shall give notice of the hearing, together with a copy of the objection, to the persons and in the manner provided in Section 1200.5. If the appraisement was made by the probate referee, the person objecting shall also mail a copy of the objection and of the notice to the probate referee at least 10 days before the time set for the hearing.

(d) The person objecting to the appraisement has the burden of proof.

(e) Upon completion of the hearing, the court may make such order as it deems appropriate.

Comment. Section 608.5 is new and is drawn from former Sections 14510-14513 of the Revenue and Taxation Code.

If this section is approved, Section 1200.5 (special notice) should be conformed to add an objection to an appraisalment to the list of matters of which special notice may be requested.

Respectfully submitted,

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