

Memorandum 84-41

Subject: Study L-826 - Probate Law and Procedure (Transfer of Property of Small Value)

Existing California law permits devisees or certain closely-related heirs of a decedent to collect the decedent's personal property without the need for administration of the estate if the estate contains no real property and the estate value is \$30,000 or less. Prob. Code §§ 630-632. The Commission has recommended broadening these provisions to permit the estate to contain real property of a gross value of \$10,000 or less (although no provision for transferring real property is included) and to increase the maximum estate value to \$60,000. These recommendations are contained in Assembly Bill 2270 which has passed the Assembly.

We have received several letters suggesting that we provide a summary procedure for transferring real property of small value. One letter was from attorney Valerie Merritt for the Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association. Another was from attorney Jon A. Baker, a copy of which is attached to this Memorandum as Exhibit 1.

At the September 1983 meeting, the Commission asked the staff to develop a proposal for summary transfer of real property. A staff draft of such a proposal is attached as Exhibit 2. The staff draft has the following features:

(1) It provides for a court order after notice and hearing. An affidavit without more appears to be insufficient to transfer marketable title to real property. See 2 A. Bowman, Ogden's Revised California Real Property Law § 29.27, at 1449 (Cal. Cont. Ed. Bar 1975). The court order may be used not only to transfer real property, but may also be used to compel one holding the decedent's personal property to turn it over to the person collecting by affidavit.

(2) It provides the same value limits as the revised provisions for collection of personal property (total estate worth \$60,000 or less, real property worth \$10,000 or less), and also provides that the procedure may not be used if there are proceedings pending in California for probate or administration.

(3) The procedure may be used by the same persons who may use the collection procedure for personal property (devisees under the decedent's will, or intestate takers if not more remote than the decedent's spouse, issue, parents, grandparents, or issue of parents).

(4) Notice must be given by personal service or by mail to each person named in the decedent's will, to the decedent's spouse, issue, parents, grandparents, and issue of parents, and to the California Attorney General when a charitable gift may be involved. This is similar to the notice required on a petition for probate of the decedent's will (Prob. Code § 328) and on a petition for an order setting aside community property to the surviving spouse without administration (Prob. Code § 653).

(5) The court's order is given prima facie but not conclusive effect, and does not preclude later proceedings for probate or administration if brought within five years after the court's order. This appears necessary because the decedent's will is not probated, and therefore cannot be conclusive evidence of the devisee's title. *Reed v. Hayward*, 23 Cal.2d 336, 339, 144 P.2d 561 (1943); 7 B. Witkin, *Summary of California Law Wills and Probate* § 229, at 5739 (8th ed. 1974). If the decedent has apparently died intestate, there is the possibility of the prima facie entitlement being upset by a later-discovered will. 7 B. Witkin, *supra* § 509, at 5930.

(6) Rights of a purchaser or encumbrancer for value are protected in the absence of notice of the commencement of probate or administration.

(7) Petitioners who take real or personal property pursuant to a court order become personally liable for the unsecured debts of the decedent, not to exceed the net value of the property taken. The personal liability ceases one year after the court makes its order, except for liability asserted in pending actions. This is the same as the rule when a surviving spouse obtains a court order setting aside a small estate. Prob. Code § 645.3; cf. Prob. Code § 649.4.

Respectfully submitted,

Robert J. Murphy III
Staff Counsel

EXHIBIT 1

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January 9, 1984

RECEIVED
JAN 10 1984

Matthew S. Rae, Jr.
Darling, Hall & Rae
523 West Sixth Street, Suite 400
Los Angeles CA 90014

DARLING, HALL & RAE

Dear Mr. Rae:

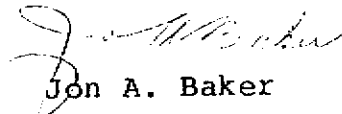
Judge Richard P. Byrne suggested I write to you about an area of probate law which I feel desperately needs to be reformed.

The problem involves the transfer of title to low value land. Although my concern could, and probably should, apply to all real property, the problem is particularly acute with regard to desert lots and acreage which have a value of under \$10,000.

You may not be aware of it, but there are thousands of parcels of land, particularly in San Bernardino County, that are virtually unsalable except during two to three boom years each decade. Typically, the property is held in joint tenancy, then one spouse dies, and the second spouse holds the property until his or her death. Frequently, the owners live out of state and/or the desert property is the only asset in their estate which requires a full probate. Most law firms, including mine, have found it unprofitable to probate these properties with the result that the property, through delinquent taxes, is ultimately lost to the heirs.

What I propose is a Summary Administration whereby the property can be transferred directly to the surviving heirs living today (or to their assigns) without a full probate, or worse still, without having to go through a series of probates.

Sincerely,


Jon A. Baker

JAB/adm

cc: The Honorable Richard P. Byrne
The Honorable Donald R. Egan

EXHIBIT 2

16887

Probate Code §§ 630.010-632.100 (added)CHAPTER 9.5. COLLECTION OF SMALL ESTATES WITHOUT
ADMINISTRATIONArticle 1. Definitions and General Provisions§ 630.010. Definitions

630.010. As used in this chapter:

(a) "Decedent's personal property" includes money due to the decedent, tangible and intangible personal property of the decedent, and evidences of interest, indebtedness, or right.

(b) "Person holding the decedent's personal property" includes a person, representative, corporation, officer, or body owing money to the decedent, having custody of the decedent's personal property, or acting as registrar or transfer agent of evidences of interest, indebtedness, or right.

Comment. Section 630.010 is drawn from portions of former Sections 630 and 631.

15103

§ 630.020. Conditions for application of chapter

630.020. (a) Subject to subdivision (b), the procedure provided by this chapter may not be used unless all of the following conditions are satisfied:

(1) No proceedings for probate of the decedent's will or for administration of the decedent's estate have been commenced in this state.

(2) The gross value of the decedent's real property in this state does not exceed ten thousand dollars (\$10,000).

(3) The gross 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 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 sixty thousand dollars (\$60,000).

(b) For the purpose of this chapter, any property or interest therein or lien thereon which, at the time of the decedent's death, was held by the decedent as joint tenant, or in which the decedent had a life or other estate terminable upon the decedent's death, or which was held by the decedent and passed to the decedent's surviving spouse pursuant to Section 649.1, shall be excluded in determining the property or estate of the decedent or its value.

Comment. Paragraphs (2) and (3) of subdivision (a) of Section 630.020 continue subdivision (a) of former Section 630. Paragraph (1) is new, but is consistent with the last sentence of former Section 631 under which administration proceedings took precedence over the summary collection provisions. See Broll, Summary Administration, in 1 California Decedent Estate Administration § 3.14, at 124 (Cal. Cont. Ed. Bar 1971). Subdivision (b) continues former Section 632.

404 801

§ 630.030. Authority of guardian, conservator, trustee, or custodian

630.030. For the purposes of this chapter:

(a) A guardian or conservator of the estate of a person entitled to collect the decedent's property may act on behalf of such person without authorization or approval of the court in which the guardianship or conservatorship proceeding is pending.

(b) A trustee of a trust entitled under the decedent's will to any of the decedent's property may act on behalf of the trust.

(c) If the decedent's will nominates a custodian to receive a bequest to a beneficiary under the Uniform Gifts to Minors Act or the Uniform Transfers to Minors Act of any state and the nomination has not been revoked, the custodian may act on behalf of the beneficiary.

Comment. Subdivision (a) of Section 630.030 is drawn from subdivision (b) of Section 650. Subdivision (b) is new. Subdivision (c) is drawn from subdivision (c) of former Section 630.

14924

§ 630.040. Later probate or administration not precluded

630.040. Collection of the decedent's property as provided in this chapter, whether or not a court order is obtained pursuant to Article 3

(commencing with Section 632.010), does not preclude later proceedings for probate of the decedent's will or for administration of the decedent's estate.

Comment. Section 630.040 continues the substance of the last sentence of former Section 631. See *Brezzo v. Brangero*, 51 Cal. App. 79, 81, 196 P. 87 (1921); Evans, Comments on the Probate Code of California, 19 Calif. L. Rev. 602, 607 (1931).

14918

Article 2. Collection of Personal Property by Affidavit

§ 631.010. Persons who may collect personal property of intestate decedent

631.010. (a) Subject to subdivision (b), if the decedent died intestate, the decedent's personal property may be collected as provided in this article by all of the persons entitled to the decedent's property by intestate succession.

(b) If any person entitled to the decedent's property by intestate succession is more remote from the decedent than the decedent's surviving spouse, issue, grandparents, parents, and the issue of parents, the decedent's personal property may not be collected as provided in this article.

Comment. Section 631.010 is drawn from a portion of subdivision (b) of former Section 630. See also Section 630.010 ("decedent's personal property" defined).

404 394

§ 631.020. Persons who may collect personal property of testate decedent

631.020. If the decedent died leaving a will, the decedent's personal property may be collected as provided in this article by the persons (including a trust) entitled under the will to the decedent's personal property, regardless of whether any such person is related to the decedent.

Comment. Section 631.020 is drawn from a portion of subdivision (b) of former Section 630. See also Section 630.010 ("decedent's personal property" defined).

15104

§ 631.030. Persons who must join in affidavit; contents of affidavit

631.030. An affidavit made pursuant to this article shall be executed by all persons who are entitled to any portion of the decedent's personal property as legatees or devisees under the decedent's will, if

any, or as intestate takers, and shall set forth all of the following to the best of the affiant's knowledge:

(a) The decedent's name.

(b) The date of the decedent's death.

(c) That no proceedings have been commenced in any jurisdiction for probate of the decedent's will or for administration of the decedent's estate.

(d) Whether the decedent died leaving a will or died intestate.

(e) If the decedent died leaving a will, the names, ages, and addresses of all persons named in the decedent's will, and whether each such person is named as legatee or devisee, executor, trustee, or otherwise.

(f) If the decedent died intestate, the names, ages, and addresses of the decedent's surviving spouse, issue, grandparents, parents, and issue of parents.

(g) That, as required by Section 630.030, the gross value of the decedent's real property in this state does not exceed ten thousand dollars (\$10,000), and the gross value of the decedent's real and personal property in this state does not exceed sixty thousand dollars (\$60,000).

(h) A description of the decedent's personal property in this state which affiants seek to collect pursuant to this article.

Comment. The requirement of the introductory clause of Section 631.030 that all persons entitled to any portion of the decedent's estate join in making the affidavit continues the substance of a portion of former Section 630. See Broll, Summary Administration, in 1 California Decedent Estate Administration § 3.10, at 122 (Cal. Cont. Ed. Bar 1971). Subdivisions (a) through (h), prescribing the contents of the affidavit, codify existing practice. See id. § 3.13, at 123. Former Section 630 merely required that the affidavit show the right of the affiants to collect the decedent's property. A declaration under penalty of perjury may be used in lieu of an affidavit under this article. See Code Civ. Proc. § 2015.5. See also Section 630.010 ("decedent's personal property" defined).

12810

§ 631.040. Effect of furnishing affidavit

631.040. (a) Upon furnishing an affidavit made pursuant to this article to a person holding the decedent's personal property, the affiants are entitled to have the property transferred to them. If the decedent had evidence of ownership of the property, such as a stock certificate,

bank passbook, or promissory note, the affiants shall present such evidence to the person holding the property. A transfer agent of a security shall change the registered ownership on the books of the corporation from the decedent to the affiant or affiants entitled to the security.

(b) Receipt of the affidavit by the person holding the decedent's personal property constitutes sufficient acquittance for payment of money, delivery of property, or changing registered ownership pursuant to this article and discharges the person from any further liability. The person holding the decedent's personal property has no duty to inquire into the truth of any facts stated in the affidavit.

Comment. Subdivision (a) of Section 631.040 continues the substance of a portion of former Section 630. The second sentence of subdivision (a) is new. Subdivision (b) continues the substance of the first sentence of former Section 631. See also Section 630.010 ("decedent's personal property" defined; "person holding the decedent's personal property" defined). Payment or transfer pursuant to Section 631.040 does not preclude later probate of the decedent's will or administration of the decedent's estate. Section 630.040. The duty to pay the debt or deliver the property under this article may be enforced by court order. Sections 632.010, 632.070.

045 101

§ 631.050. Restitution if estate proceedings commenced; no liability to creditors

631.050. (a) If proceedings for probate of the decedent's will or for administration of the decedent's estate are commenced, each person who has collected the decedent's personal property as provided in this article and still has the property in his or her possession is liable for restitution of the property to the estate. If the property is no longer in his or her possession, he or she is liable for restitution to the estate of the value of the property as of the date of its disposition, together with the net income he or she has received from the property.

(b) Persons who collect the decedent's property as provided in this article do not thereby become personally liable for debts of the decedent.

Comment. Section 631.050 codifies the rule under former Section 631. See Broll, Summary Administration, in 1 California Decedent Estate Administration § 3.14, at 124 (Cal. Cont. Ed. Bar 1971).

Article 3. Court Order for Transfer of Property

§ 632.010. Purposes for which petition may be filed

632.010. If the conditions specified in Section 630.020 are satisfied, a petition may be filed under this article for either or both of the following:

(a) An order compelling transfer of the decedent's personal property as provided in Article 2 (commencing with Section 631.010).

(b) An order for transfer of the decedent's real property as provided in this article.

Comment. This article provides a new procedure for obtaining a court order for transfer of property of a small estate (see Section 630.020) without the need for probate or administration. Prior law did not afford a procedure for compelling transfer of the decedent's personal property, or for transferring the decedent's real property, short of proceedings for probate or administration. See also Section 630.010 ("decedent's personal property" defined).

12767

§ 632.020. Persons who may file petition if decedent died intestate

632.020. (a) Subject to subdivision (b), if the decedent died intestate and all persons entitled to take the decedent's property by intestate succession join in the petition, a petition under this article may be filed by such persons.

(b) If any person entitled to the decedent's property by intestate succession is more remote from the decedent than the decedent's surviving spouse, issue, grandparents, parents, and the issue of parents, a petition may not be filed under this article.

Comment. Section 632.020 is drawn from a portion of subdivision (b) of former Section 630.

404 384

§ 632.030. Persons who may file petition if decedent died testate

632.030. (a) If the decedent died leaving a will disposing of real property in this state and all persons (including a trust) entitled under the will to the real property join in the petition, a petition to obtain the real property under this article may be filed by such persons.

(b) If the decedent died leaving a will disposing of personal property and all persons (including a trust) entitled under the will to the decedent's personal property join in the petition, a petition to obtain the personal property under this article may be filed by such persons.

Comment. Section 632.020 is drawn from a portion of subdivision (b) of former Section 630.

045 064

§ 632.040. Venue

632.040. A petition under this article shall be filed in the superior court of the county specified in Section 301.

Comment. Section 632.040 provides for the same venue for a petition filed under this article as a petition for letters testamentary or of administration.

045 086

§ 632.050. Contents of petition

632.050. A petition filed under this article shall be verified and shall state all of the following:

- (a) The date of death of the decedent.
- (b) The street number, street, city, county, and state of the decedent's residence at the time of his or her death.
- (c) Whether the decedent died leaving a will or died intestate.
- (d) Whether estate proceedings for the decedent have been commenced in any jurisdiction and, if so, where such proceedings are pending.
- (e) The names, ages, residences, and relation to the decedent of all of the following persons who are living: the decedent's spouse, issue, grandparents, parents, and issue of parents.
- (f) If the decedent died leaving a will, the names, ages, residences, and relation to the decedent (if any) of the devisees and legatees of the decedent. If the decedent's will is available to the petitioners, a copy of the will shall be attached to the petition.
- (g) The character and estimated value of the decedent's personal property in this state.
- (h) The character and estimated value of the decedent's real property in this state.
- (i) A description of the property which the petitioners seek pursuant to this article and a statement of its value.
- (j) That if the court makes an order assigning property to the petitioners, proceedings are later had in this state for probate of the decedent's will or for administration of the estate, and the court in such proceedings determines that petitioners should contribute to payment

of liabilities of the estate, petitioners agree to pay to the estate such amount, not to exceed the net value of the property assigned to them, as may be fixed by the court.

(k) That if the court makes an order assigning property to the petitioners, petitioners consent to the personal jurisdiction of the courts of this state for the purpose of any proceeding relating to the decedent's estate or relating to any liability assumed by petitioners under this article.

Comment. Subdivisions (a), (b), and (e) through (h) of Section 632.050 are drawn from Section 326 (petition for probate of will) and 440 (petition for letters of administration). See also Section 753 (court decree fixing liabilities of devisees and legatees to pay debts).

100 910

§ 632.060. Hearing and notice

632.060. (a) The clerk shall set the petition for hearing.

(b) At least 20 days before the hearing, petitioners shall give notice of the hearing to each person named in the decedent's will, if any, as devisee, legatee, or executor, and to the decedent's surviving spouse, issue, grandparents, parents, and issue of parents, except that no notice need be given to such persons who join in the petition.

(c) The notice required by subdivision (b) shall be given by personal service or by mail, with postage prepaid, addressed to the person at his or her business, residence, or mailing address if known to the petitioners, or, if not known, at the county seat of the county in which the petition is filed.

(d) If the decedent's will may involve a testamentary trust for charitable purposes (other than a charitable trust with a designated trustee who resides in this state), or a bequest or devise for charitable purposes without an identified legatee, devisee, or beneficiary, notice shall also be given to the Attorney General, addressed to the office of the Attorney General at Sacramento, California.

Comment. Section 632.060 is drawn from Section 327, 328, and 653(a). If the court deems the notice given under section 632.050 to be insufficient, the court may require such further notice as it deems proper. Section 1204.

405 853

§ 632.070. Inventory and appraisalment

632.070. The court may, in its discretion and in the interest of justice, require petitioners to file an inventory and appraisalment as

provided in Chapter 9 (commencing with Section 600) before the court makes an order pursuant to Section 632.080. Petitioners may appraise the assets which an executor or administrator could appraise under Section 605.

Comment. Section 632.070 is drawn from Section 657.

368 218

§ 632.080. Court order; effect of order

632.080. (a) If petitioners establish that they are all of the persons entitled under the decedent's will or by intestate succession to the property which is the subject of the petition, the court shall make an order describing the property, determining that petitioners are entitled to the property, and, in the case of a will, the specific property interests of each petitioner.

(b) Subject to Section 632.120, a court order under this section shall be given prima facie effect, but is not conclusive and does not preclude proceedings for probate of the decedent's will or for administration of the decedent's estate commenced within five years after the court's order. The presumption established by this subdivision is a presumption affecting the burden of proof.

Comment. Subdivision (a) of Section 632.080 is drawn from Section 655(a) (community or quasi-community property passing to surviving spouse). The first sentence of subdivision (b) is drawn from Probate Code Sections 204(b) [AB 2255] and 631. Compare Section 655 (conclusiveness of order determining that property is community or quasi-community property passing to surviving spouse). The second sentence of subdivision (b) provides that the presumption is one affecting the burden of proof. Compare Probate Code §§ 204(b) and 212 [AB 2255] (presumption affecting the burden of producing evidence). The presumption is one affecting the burden of proof rather than the burden of producing evidence because the presumption implements the public policy in favor of stability of title to property. See Evid. Code § 605; see also Evid. Code § 603.

When an order is made under this section, a certified copy of the order shall be recorded in the county in which the real property is situated. Section 1222.

12765

§ 632.090. Order protecting creditors of decedent's business

632.090. If any part of the property passing to petitioners under this article is an unincorporated business which the decedent was operating or managing at the time of death, the court may require petitioners to

file a list of all known creditors of the business and the amount owing to each of them. The court may make any order necessary to protect the creditors, including requiring petitioners to file an undertaking.

Comment. Section 632.090 is drawn from Section 656.

12764

§ 632.100. Personal liability for decedent's debts

632.100. Subject to Section 632.110:

(a) Petitioners who take the decedent's property pursuant to an order made under this article are personally liable for the unsecured debts of the decedent.

(b) The personal liability of any petitioner shall not exceed the value at the date of the decedent's death of the property taken by that petitioner, less the amount of any liens and encumbrances on the property.

(c) The personal liability ceases one year after the court makes its order, except with respect to any actions or proceedings then pending in court. In any action based upon such a debt, the petitioners may assert any defenses, counterclaims, or setoffs which would have been available to the decedent if the decedent had not died.

Comment Section 632.100 is drawn from Section 645.3.

368 240

§ 632.110. Restitution if estate proceedings commenced

632.110. If proceedings for probate of the decedent's will or for administration of the decedent's estate are commenced within five years after the court's order made under this article:

(a) Each petitioner shall be liable for restitution of the property to the estate if the property is still in his or her possession. If the property is no longer in the petitioner's possession and the court in which the estate proceedings are pending determines that someone other than the petitioners is entitled to all or part of the property, each petitioner shall be liable for restitution to the estate of the value of the property as of the date of its disposition, together with the net income received by each petitioner from the property.

(b) The personal liability imposed on petitioners by Section 632.100 shall cease and all creditors of the decedent shall file their claims in the estate proceeding. Nothing in this section extends the period during which petitioners are personally liable for the decedent's debts under Section 632.100.

Comment. Section 632.110 is new. Subdivision (a) is comparable to the rule where the decedent's personal property is collected by affidavit. See Broll, Summary Administration, in 1 California Decedent Estate Administration § 3.14, at 124 (Cal. Cont. Ed. Bar 1971); cf. Estate of Kevil, 98 Cal. App.2d 388, 392, 220 P.2d 555 (1950). See also Prob. Code §§ 300 (decedent's property subject to possession of executor or administrator), 581 (executor or administrator entitled to possession of decedent's property).

404 381

§ 632.120. Rights of purchaser or encumbrancer for value protected

632.120. The rights of a purchaser or encumbrancer for value of the property taken by petitioners under this article shall not be impaired by proceedings for probate of the decedent's will or for administration of the decedent's estate commenced without notice before the acquisition of such rights or commenced after the acquisition of such rights.

Comment. Section 632.120 is drawn from Probate Code Section 205 [AB 2255] and 322.