

Memorandum 84-51

Subject: Study L-626 - Wills and Intestate Succession (Application of 1983 Legislation Where Decedent Died Before January 1, 1985)

Assembly Bill 25 repealed and amended a number of sections in the Probate Code and other codes. It enacted a number of new sections. Other bills introduced in 1983 and 1984 affect the same sections. An important part of the follow-up legislation on Assembly Bill 25 is the addition of provisions that make clear the extent to which repealed sections will continue to apply to cases where the decedent died before January 1, 1985.

Some of the provisions of Assembly Bill 25 merely continue former law without significant change. There is no need to preserve the prior law in these cases. The applicability of other provisions depends on something other than when the decedent died. For example, the applicability of a provision may depend on when a contract was made, when a divorce occurred, or when someone other than the decedent died. The staff has concluded that no general provision can deal adequately with these matters. For this reason, we have made a careful study of each provision of Assembly Bill 25 to determine whether the application of the provision should be limited and whether prior law should be saved and, if so, under what circumstances.

We have prepared an analysis of Assembly Bill 25 which shows how we recommend each provision of the bill be treated. This analysis is in two parts. Part 1 (Exhibit 1--white) covers the individual sections of Assembly Bill 25 (other than new Divisions 1, 2, and 6). Part 2 (Exhibit 2--green) covers the three new divisions. We propose that the Commission go through this analysis at the meeting, section by section.

Also attached are proposed new Probate Code sections (Exhibit 3--yellow) and proposed uncodified sections (Exhibit 4--pink). These provisions if approved by the Commission, and any others approved by the Commission, would be added to Assembly Bill 2290. The attached section-by-section analysis of Assembly Bill 25 refers to the proposed Probate Code sections and uncodified sections.

We attach a copy of Assembly Bill 25. We will send you a copy of the latest version of Assembly Bill 2290 as soon as it is available in printed form.

Respectfully submitted,

John H. DeMouly
Executive Secretary

EXHIBIT 1

ANALYSIS OF ASSEMBLY BILL 25

PART 1. INDIVIDUAL SECTIONS (OTHER THAN DIVISIONS 1, 2, AND 6)

Civil Code § 63 (amended)

AB 25 amended subdivision (a)(18) to substitute a reference to Probate Code Section 649.1 for the former reference to Section 202.

The application of this change is limited by proposed Probate Code Section 649.7.

Civil Code § 224.1 (amended)

AB 25 amended to delete specific statutory references to former Probate Code sections repealed by AB 25.

AB 25 amendment made no substantive change; the statutory references eliminated were unnecessary. No need to limit application of amendment.

Civil Code § 226.12 (new)

This section was added by AB 25 and is amended by AB 2290. No need to limit this section; it merely provides for notice to be given to natural parent in case of a stepparent adoption. Notice gives notice of effect of stepparent adoption. Notice will be given in cases of adoption after operative date of new section--January 1, 1985.

Civil Code § 730.05 (amended)

AB 25 amended this section to make reference to Chapter 11 (commencing with Section 660) of Division 3 of the Probate Code and to Section 663 of the Probate Code.

No need to limit application of the amendment. Section 665 is being added to Probate Code to provide that Chapter 11 (commencing with Section 660) is a restatement and continuation of former law and not a new enactment and also that a reference in an instrument to the former law is deemed a reference to the corresponding provision in Chapter 11.

Civil Code § 1389.4 (amended)

AB 25 amended this section to make a substantive change in the section. A new, uncodified section would be added to make clear that the amendment applies only where the donee dies on or after January 1, 1985.

Civil Code § 1624 (amended)

AB 25 amended this Statute of Frauds section to eliminate from its scope "an agreement to devise or bequeath any property or to make any provision for any person by will."

The amendment to Probate Code Section 150 in AB 2290 preserves the prior law under Civil Code Section 1624 where the contract was "made on or before December 31, 1984."

Civil Code § 4352 (amended)

AB 25 amended this section to revise the notice in judgment declaring marriage or dissolving marriage. The section was further revised by urgency legislation enacted at the 1984 session (AB 2558) which becomes operative on July 1, 1984, and the urgency legislation will not require any further revision.

Civil Code § 5129 (repealed)

AB 25 repealed this section. The substance of this section is continued in Section 6412 of the Probate Code and that Probate Code section is made applicable whether the decedent died before, on, or after January 1, 1985, by subdivision (b) of proposed Probate Code Section 6414.

Civil Code § 5135.5 (added)

AB 25 added this section. There is no need to limit the application of the section since Probate Code § 147(b) saves prior law where a property settlement is made before January 1, 1985.

Code Civ. Proc. § 353.5 (amended)

AB 25 amended this section to substitute a reference to Section 649.4 of the Probate Code for the former reference to Section 205.

There is no need to limit the application of this amendment in this section; the application of the amendment is limited by subdivision (b) of proposed Section 649.7 of the Probate Code.

Code Civ. Proc. § 377 (amended)

AB 25 amended this section to insert a reference to "Part 2 (commencing with Section 6400) of Division 6 of the Probate Code" for the former reference to former Division 2 (commencing with Section 200).

There is no need to limit the application of this amendment in this section; the application of the amendment is limited by subdivision (c) of proposed Probate Code Section 6414.

Code Civ. Proc. § 1443 (amended)

AB 25 amended this section to add references to two new Probate Code sections. There is no need to limit the application of this amendment; the section deals with the manner of handling property paid to the state or an officer or employee thereof under any section of the Probate Code, whether or not listed in the section.

Ed. Code § 24606 (amended)

AB 25 amended this section to insert references to simultaneous death provisions of AB 25. The section relates to payments out of the teachers retirement fund in case of a simultaneous death. The section is operative on January 1, 1985, and would apply thereafter.

Govt. Code § 21371 (amended)

AB 25 amended this section to insert reference to simultaneous death provisions of AB 25. The section relates to payments out of state retirement fund in case of a simultaneous death. The section is operative January 1, 1985, and would apply thereafter.

Penal Code § 3524 (amended)

AB 25 amended this section to insert a reference to Part 2 (commencing with Section 6400) of Division 6 of the Probate Code for the former reference to former Division 2 (commencing with Section 200). There is no need to limit the application of this amendment in this section; the application of the amendment is limited by subdivision (c) of proposed Probate Code Section 6414.

General Provisions (commencing with Section 1 and including the title thereof) of the Probate Code (repealed)

AB 25 repealed Probate Code Sections 1 to 11, inclusive. Except for one obsolete section which is not continued, all of these sections are continued in new Sections 1 to 12 of the Probate Code. There is no need to limit the effect of the repeal of these provisions.

Division 1 (commencing with Section 20) of the Probate Code (repealed)

AB 25 repealed this division. Generally this division remains applicable in cases where the decedent or testator died before January 1, 1985. A specific provision makes any new provision of the Probate Code specifically applicable in cases where this general rule is not followed. See proposed Probate Code Section 6103.

Division 2 (commencing with Section 200) of the Probate Code (repealed)

AB 25 repealed this division. Generally this division remains applicable to cases where the decedent died before January 1, 1985. A specific provision makes any new provision of the Probate Code specifically applicable in cases where this general rule is not followed. See proposed Probate Code § 6414.

Division 2b (commencing with Section 296) of the Probate Code (repealed)

AB 25 repealed this division. Proposed Probate Code Section 226 continues this division for cases where none of the persons the priority of whose death is in issue died on or after January 1, 1985.

Prob. Code § 282 (amended)

AB 25 amended Probate Code Section 282, relating to disclaimers, which become operative on January 1, 1984. AB 25 amended the section to add subdivision (b) which is contained in a revised form in AB 2290. Out of an abundance of caution, the staff has prepared an uncodified section to provide: "Subdivision (b) of Section 282 of the Probate Code applies only to cases where the disclaimer is filed on or after January 1, 1983." A policy issue is presented whether this uncodified section is a desirable one.

Prob. Code § 300 (amended)

AB 25 amended Probate Code Section 300 to substitute a reference to Part 2 (commencing with Section 6400) of Division 6 for the former reference to former Division 2 (commencing with Section 200). The applicability of prior law is preserved by proposed Section 6414 where the decedent

died before January 1, 1985, and that section further provides that any reference to the new part shall be deemed to be a reference to the former division where the decedent died before January 1, 1985.

Prob. Code § 323 (amended)

AB 25 merely made a technical amendment to this section to delete a reference to nuncupative wills, which are no longer authorized since 1982. No limitation on the application of the AB 25 amendment is needed.

Prob. Code §§ 328.3, 328.7 (added)

AB 25 added these new sections. A proposed uncodified section would limit the application of the sections to cases where the decedent dies on or after January 1, 1985.

Prob. Code § 350 (repealed)

AB 25 repealed this section. A proposed uncodified section would preserve the section where the testator died before January 1, 1985.

Prob. Code § 351 (amended)

AB 25 amended this section. The amendments are not substantive except for one that permits filed written testimony of witnesses used to establish a lost or destroyed will to be used in a subsequent will contest proceeding not only where the witness "has died or has permanently removed from the state" as under prior law but also where the witness "otherwise has become unavailable as a witness" (added by AB 25). The amendment makes Section 351 consistent with the Evidence Code (See Evid. Code § 240, defining "unavailable as a witness"). This provision making the rule concerning the admission of filed testimony under Section 351 consistent with the Evidence Code should not be limited to cases where the decedent died on or after January 1, 1985. If the issue of whether the evidence is admissible arises after the amendment becomes operative, the issue should be determined under the amended section.

Prob. Code § 372.5 (added)

AB 25 added this section and AB 2290 amends the section. A proposed uncodified section would limit the applicability of the section to cases where the decedent died on or after January 1, 1985.

Prob. Code § 632 (amended)

AB 25 amended this section to substitute a reference to Section 649.1 for the former reference to Section 202 and the section is also amended by Assembly Bill 2270. Proposed Section 649.7 would preserve prior law where the decedent died before January 1, 1985, and would provide further that where prior law applies the reference is deemed to be a reference to former Section 202.

Prob. Code §§ 640, 641, 645, and 645.3

AB 25 amended these sections. Proposed Section 647.5 would limit the changes made by the amendments to cases where the decedent died on or after January 1, 1985, and would preserve prior law where the decedent died before January 1, 1985.

Article 2.5 (commencing with Section 649.1). Administration of Community and Quasi-Community property

AB 25 added this article and Sections in the article (§§ 649.1, 649.3, 649.4) are amended by Assembly Bill 2270. Proposed Section 649.7 would limit the application of the article to cases where the decedent died on or after January 1, 1985. Prior law is preserved for cases where the decedent died before January 1, 1985, and in such case a reference in other statutory provisions to the new article is deemed to be a reference to the corresponding provision of the former statutory provisions.

Prob. Code §§ 650, 655 (amended by AB 25), 650, 653, 655, 656 (amended by AB 2270)

The amendments made by AB 25 and AB 2270 to the above listed sections would be limited by proposed Section 658 to cases where the decedent died on or after January 1, 1985, and the prior law would be preserved for cases where the decedent died before January 1, 1985.

Chapter 11 (commencing with Section 660) (repealed)

AB 25 repealed this chapter. An uncodified section would preserve the chapter for any case where the decedent died before January 1, 1985.

Chapter 11 (commencing with Section 660) (added)

AB 25 added this new chapter. The chapter relates to legacies and interest and continues the substance of former law (Prob. Code §§ 160-

173) and its application should not be limited to cases where the decedent dies after December 31, 1984. See proposed Section 665.

Prob. Code § 704.2 (amended)

AB 25 amended this section to substitute references to Section 649.4 for the former references to Section 205. Proposed Section 649.7 would preserve prior law where the decedent died before January 1, 1985, and would provide further that where prior law applies the reference is deemed to be a reference to former Section 205.

Prob. Code § 736 (amended)

AB 25 amended this section and AB 2290 also amends the section. A proposed uncodified section would limit the amendment to cases where the testator dies on or after January 1, 1985, and would preserve prior law if the testator died before January 1, 1985.

Prob. Code § 1026 (added)

AB 25 added this section to provide a limitation and standard concerning when continuation of the administration of an estate for the purpose of paying a family allowance is in the best interests of the estate or the persons interested therein. This is a useful provision and the staff does not believe that it should be limited to cases where the decedent dies after December 31, 1984.

Prob. Code §§ 1050, 1051, 1052, 1053 (repealed), 1054 (amended)

AB 25 repealed the four sections listed above and amended the other. Proposed Section 1055 would limit the application of the repeals and the amendment to cases where the decedent died on or after January 1, 1985, and would preserve the prior law for cases where the decedent died before January 1, 1985.

Prob. Code §§ 1139, 1139.6, 1215 (amended)

AB 25 amended these sections to substitute a reference for the new provisions relating to Trust for Insurance or Employee Benefits for the reference to the superseded provisions. The new provisions continue the substance of the former provisions. The application of the new provisions should not be limited nor should the amendments to Sections 1139, 1139.6, and 1215. See proposed Section 6330.

Prob. Code § 1871 (amended)

AB 25 amended this section to delete an unnecessary reference to other statutory provisions. There is no need to defer the application of the amendment since the amendment has no substantive effect.

Prob. Code § 2580 (amended)

AB 25 amended this section to substitute a reference to Section 649.1 for the former reference to Section 202. Proposed Section 649.7 would preserve prior law where the decedent died before January 1, 1985, and would provide further that where prior law applies the reference is deemed to be a reference to former Section 202.

Prob. Code § 3012 (amended)

AB 25 amended this section to delete an unnecessary reference to other statutory provisions. There is no need to defer the application of the amendment since the amendment has no substantive effect.

EXHIBIT 2

ANALYSIS OF ASSEMBLY BILL 25

PART 2. NEW DIVISIONS 1, 2, and 6

DIVISION 1 (COMMENCING WITH SECTION 1) OF PROBATE CODE (NEW)

Part 1 (commencing with Section 1). Preliminary Provisions

This part continues former Sections 1, 2, 4, 5, 6, 7, 8, 9, 10, and 11 without substantive change and adds subdivision (b) to Section 2 (construction of Uniform Probate Code Provisions), adds a new Section 3 (application of provisions where decedent died prior to January 1, 1985), and new Section 12 ("shall" is mandatory and "may" is permissive).

There is no need to limit the applicability of this part to cases where the decedent died on or after January 1, 1985.

Part 2 (commencing with Section 20). Words and Phrases Defined

This part contains definitions for Division 1, 2, and 6. The definitions merely give meaning to the provisions in those divisions. It would not be appropriate to limit the applicability of this part to cases where the decedent died on or after January 1, 1985, because some of the provisions in Divisions 1, 2, and 6 apply without regard to when the decedent died. For example, a provision may apply depending on when a contract or agreement is made, and some provisions apply whether or not the decedent died before January 1, 1985.

DIVISION 2 (COMMENCING WITH SECTION 100) OF PROBATE CODE (NEW)

Part 1 (commencing with Section 100). Effect of Death of Married Person on Community and Quasi-Community Property

Section 102 revises former law to make what may be a significant change. Accordingly, proposed Section 105 would limit the application of this part to cases where the decedent died on or after January 1, 1985, and save prior law for cases where the decedent died before January 1, 1985.

Part 2 (commencing with Section 120). Surviving Spouse's Right in California Real Property of Nondomiciliary Decedent

This part continues prior law without substantive change. There is no reason to preserve prior law for cases where the decedent dies prior to January 1, 1985.

Part 3 (commencing with Section 140). Contractual Arrangements Relating to Rights at Death

Chapter 1 (Sections 140-147) Surviving Spouse's Waiver of Rights

Section 147 is set out in amended form in Amendment 36 to AB 2290 which is attached to Memorandum 84-50. Under Section 147 the applicability of Chapter 1 (Sections 140-147) turns on when the agreement was made, not when the deceased spouse died. The amendment adequately prescribes the applicability of new Sections 140-147.

Chapter 2 (commencing with Section 150). Contracts Concerning Will or Succession

Section 150 is amended in AB 2290 to provide that a contract to make a will or devise, or not to revoke a will or devise, or to die intestate, if made on or before December 31, 1984, can only be established under the law applicable to the contract on December 31, 1984. This preserves prior law to the extent necessary. Note that the date of the death of the decedent is not significant in connection with this section.

Chapter 3 (commencing with Section 160). Provisions in Written Instruments

Section 160 presents a significant policy issue whether the application of this section should be limited so that the section will not apply if the issue of the validity of the provision is in issue after the section becomes operative. The section does not validate a provision in a contract, gift, conveyance, or trust that is not otherwise valid under substantive law; the section merely makes clear that the provision is valid even though the otherwise valid instrument does not comply with the requirements for the execution of a will. Proposed Section 161 would limit the application of the section to cases where the decedent dies on or after January 1, 1985, and the law applicable prior to January 1, 1985, would continue to apply where the decedent died before January 1, 1985. This limitation probably is of little significance since the staff is not aware of any California case where an otherwise valid

instrument of the type described in the section was held invalid because it had testamentary effect and was not executed in compliance with the requirements for execution of a will.

Part 4 (commencing with Section 200). Effect of Homicide

Proposed Section 207 would limit the application of this part to cases where the decedent was killed on or after January 1, 1985, and would preserve prior law for cases where the decedent was killed before January 1, 1985.

Part 5 (commencing with Section 220). Simultaneous Death

Chapter 1 (commencing with Section 220). General Provisions

Proposed Section 226 would limit the application of this chapter to a case where a person the priority of whose death is in issue dies on or after January 1, 1985, and would preserve prior law for cases where none of the persons the priority of whose death is in issue died on or after January 1, 1985.

Chapter 2 (commencing with Section 230). Proceedings to Determine Survival

This chapter consists of procedural provisions permitting a petition to be filed to determine whether one person survived another. The procedure can be used in a case where the substantive law is determined under repealed provisions. See Section 230(e). The procedure is drawn from prior law. It would be difficult to limit the applicability of the procedure to cases where a person died on or after January 1, 1985, because in some cases the presumption of death that arises after five years will be involved but the court may determine that the missing person died at or about the time the person disappeared rather than at the end of the five years. The staff believes that there would be fewer problems if the use of the procedure is not limited to cases where one of the persons whose time of death is in issue died on or after January 1, 1985.

Part 6 (commencing with Section 240). Division by Representation

Proposed Section 241 would limit the application of this section to cases where the death of the decedent in the case of intestate succession, or of the testator or trustor, occurs on or after January 1, 1985, and would apply prior law where the death occurs before January 1, 1985.

DIVISION 6 (COMMENCING WITH SECTION 6100). WILLS AND INTESTATE
SUCCESSION (NEW)

Part 1 (commencing with Section 6100). Wills

Chapter 1 to 7, inclusive (§§ 6100-6302)

Proposed Section 6103 makes these chapters applicable only where the decedent died on or after January 1, 1985, and saves prior law for cases where the decedent died before January 1, 1985. This general rule applies unless otherwise specifically provided.

Chapter 8 (commencing with Section 6320). Trust for Insurance or Employee Benefits

Proposed Section 6330 provides that this chapter is a restatement and continuation of former law and that a reference in a written instrument to former law shall be deemed to be a reference to the corresponding provisions of this chapter. Since this chapter is the same in substance as former law, there is no reason to continue prior law.

Chapter 9 (commencing with Section 6340). Devise Subject to California Uniform Transfers to Minors Act

Most of the sections in this chapter are repealed by the bill (AB 2492) enacting the new California Uniform Transfers to Minors Act. Other sections are amended to conform to the new Uniform Act. This chapter operates in coordination with the new Uniform Act and should not be limited in its application.

Chapter 11 (commencing with Section 6380). Uniform International Wills Act

This chapter is a restatement and continuation of former law. Proposed Section 6390 so provides and also provides that a reference in a written instrument to former law shall be deemed to be a reference to the corresponding provision of this chapter.

Part 2 (commencing with Section 6400). Intestate Succession

Proposed Section 6414 makes this part applicable only where the decedent died on or after January 1, 1985, and saves prior law for cases where the decedent died before January 1, 1985. One section which continues the substance of prior law is made applicable by proposed Section 6414 whether the decedent died before, on, or after January 1, 1985.

Part 3 (commencing with Section 6500). Family Protection

Chapter 1 (Temporary Possession of Family Dwelling and Exempt Property), Chapter 2 (Setting Aside Exempt Property Other Than Family Dwelling), and Chapter 3 (Setting Aside Probate Homestead) continue the substance of prior law and there is no need to save prior law. Also, Section 6528 makes an important clarification concerning the relationship between the probate homestead law and the declared homestead law and this provision should not be limited in its application. Chapter 4 (Family Allowance) makes a significant change--it permits the court, in its discretion, to award family allowance to a "parent of the decedent who was actually dependent in whole or in part upon the decedent for support." Nevertheless, the staff believes that this chapter should apply to any pending proceeding and that prior law should not be saved. Chapter 5 (commencing with Section 6560). Spouse and Children Unprovided For in Will

Proposed Section 6580 restricts the application of this chapter to cases where the testator died on or after January 1, 1985, and saves prior law for cases where the decedent died before January 1, 1985.

Part 4 (commencing with Section 6800). Escheat of Decedent's Property

This part continues the substance of prior existing law and there is no reason to preserve prior law.

EXHIBIT 3

CODIFIED SECTIONS

SEC. _____. Section 105 is added to the Probate Code, to read:

105. This part applies only where the decedent died on or after January 1, 1985, and the law applicable prior to January 1, 1985, continues to apply where the decedent died before January 1, 1985.

SEC. _____. Section 161 is added to the Probate Code, to read:

161. This part applies only where the decedent died on or after January 1, 1985, and the law applicable prior to January 1, 1985, continues to apply where the decedent died before January 1, 1985.

SEC. _____. Section 207 is added to the Probate Code, to read:

207. This part applies only where the decedent was killed on or after January 1, 1985, and the law applicable prior to January 1, 1985, continues to apply where the decedent was killed before January 1, 1985.

SEC. _____. Section 225 is added to the Probate Code, to read:

225. Section 103 and this chapter shall, insofar as they are the same in substance as the Uniform Simultaneous Death Act, be so construed and interpreted as to effectuate the general purpose to make uniform the law in those states which enact that act.

SEC. _____. Section 226 is added to the Probate Code, to read:

226. This chapter applies only where a person the priority of whose death is in issue died on or after January 1, 1985, and the law applicable prior to January 1, 1985, continues to apply where none of the persons the priority of whose death is in issue died on or after January 1, 1985.

SEC. _____. Section 241 is added to the Probate Code, to-read:

241. Section 240 applies only where the death of the decedent in the case of intestate succession or of the testator or trustor occurs on

or after January 1, 1985, and the law applicable prior to January 1, 1985, shall continue to apply where the death occurs before January 1, 1985.

SEC. _____. Section 647.5 is added to the Probate Code, to read:

647.5. This article, as amended by Chapter 842 of the Statutes of 1983, applies only to cases where the decedent died on or after January 1, 1985. If the decedent died before January 1, 1985, the case shall be governed by this article as it would exist if Sections 640, 641, 645, and 645.3 not been amended by Chapter 842 of the Statutes of 1983.

SEC. _____. Section 649.7 is added to the Probate Code, to read:

649.7 (a) This article applies only to cases where the decedent died on or after January 1, 1985. If the decedent died before January 1, 1985, the case shall be governed by the law that would have applied had former Sections 201 to 206, inclusive, not been repealed.

(b) Where any of the following provisions is applied in a case where the decedent died before January 1, 1985, any reference in such provision to a section of this article shall be deemed to be a reference to the corresponding provision of former Sections 201 to 206, inclusive:

- (1) Section 63 of the Civil Code.
- (2) Section 353.5 of the Code of Civil Procedure.
- (3) Sections 632, 704.2, and 2580 of the Probate Code.

SEC. _____. Section 658 is added to the Probate Code, to read:

658. (a) As used in this section, "1983-84 amendments" means the amendments made to Sections 650 and 655 by Chapter 842 of the Statutes of 1983 and the amendments made to Sections 650, 653, 655, and 656 by Assembly Bill No. 2270 of the 1983-84 Regular Session if Assembly Bill No. 2270 is enacted in 1984 and amends those sections.

(b) This article, as amended by the 1983-84 amendments, applies only to cases where the decedent died on or after January 1, 1985. If the decedent died before January 1, 1985, the case shall be governed by this article as it would exist if it had not been amended by the 1983-84 amendments.

SEC. _____. Section 665 is added to the Probate Code, to read:

665. (a) The provisions of this chapter, insofar as they are substantially the same as former Chapter 8 (commencing with Section 160) of former Division 1, repealed by Section 18 of Chapter 842 of the Statutes of 1983, shall be construed as restatements and continuations thereof and not as new enactments.

(b) After December 31, 1984, a reference in a written instrument, including a will or trust, to a provision of former Chapter 8 (commencing with Section 160) of former Division 1 shall be deemed to be a reference to the corresponding provision of this chapter.

SEC. _____. Section 1055 is added to the Probate Code, to read:

1055. The repeal of Sections 1050, 1051, 1052, and 1053, and the amendment of Section 1054, by Chapter 842 of the Statutes of 1983 apply only to cases where the decedent died on or after January 1, 1985. If the decedent died before January 1, 1985, the case shall be governed by this article as it would exist had Chapter 842 of the Statutes of 1983 not been enacted.

SEC. _____. Section 6103 is added to the Probate Code, to read:

6103. Except as otherwise specifically provided, Chapter 1 (commencing with Section 6100), Chapter 2 (commencing with Section 6110), Chapter 3 (commencing with Section 6120), Chapter 4 (commencing with Section 6130), Chapter 5 (commencing with Section 6140), Chapter 6 (commencing with Section 6200), and Chapter 7 (commencing with Section 6300) apply only where the testator died on or after January 1, 1985, and the law applicable prior to January 1, 1985, continues to apply where the testator died before January 1, 1985.

SEC. _____. Section 6330 is added to the Probate Code, to read:

6330. This chapter, insofar as it is substantially the same as former Chapter 10 (commencing with Section 175) of former Division 1, repealed by Section 18 of Chapter 842 of the Statutes of 1983, shall be construed as a restatement and continuation thereof and not as a new enactment. After December 31, 1984, a reference in a written instrument to the previously existing provisions relating to the subject matter of this chapter shall be deemed to be a reference to the corresponding provisions of this chapter.

SEC. _____. Section 6390 is added to the Probate Code, to read:

6390. The provisions of this chapter shall be construed as restatements and continuations of former law and not as new enactments. After December 31, 1984, a reference in a written instrument, including but not limited to a will, to the former law shall be deemed to be a reference to the corresponding provision of this chapter.

SEC. _____. Section 6414 is added to the Probate Code, to read:

6414. (a) Except as provided in subdivision (b), this part applies only where the decedent died on or after January 1, 1985, and the law applicable prior to January 1, 1985, continues to apply where the decedent died before January 1, 1985.

(b) Section 6412 applies whether the decedent died before, on, or after January 1, 1985.

(c) Where any of the following provisions is applied in a case where the decedent died before January 1, 1985, any reference in such provision to this part shall be deemed to be a reference to former Division 2 (commencing with Section 200) which was repealed by Section 19 of Chapter 842 of the Statutes of 1983:

- (1) Section 377 of the Code of Civil Procedure.
- (2) Section 3524 of the Penal Code.
- (3) Section 300 of the Probate Code.

SEC. _____. Article 3 (commencing with Section 6580) is added to Chapter 5 of Part 3 of Division 6 of the Probate Code, to read:

Article 3. Testator's Death Before January 1, 1985

6580. This chapter applies only where the testator died on or after January 1, 1985, and the law applicable prior to January 1, 1985, continues to apply where the testator died before January 1, 1985.

EXHIBIT 4

UNCODIFIED SECTIONS

SEC. _____. Section 1389.4 of the Civil Code, as amended by Chapter 842 of the Statutes of 1983, applies only to cases where the donee dies on or after January 1, 1985. If the donee died before January 1, 1985, Section 1389.4 of the Civil Code as it would exist had it not been so amended shall continue to apply.

SEC. _____. Subdivision (b) of Section 282 of the Probate Code applies only to cases where the disclaimer is filed on or after January 1, 1985.

SEC. _____. Sections 328.3 and 328.7, added to the Probate Code by Chapter 842 of the Statutes of 1983, and Section 372.5, added to the Probate Code by Chapter 842 of the Statutes of 1983 and amended by this Act, apply only to cases where the decedent died on or after January 1, 1985.

SEC. _____. Notwithstanding the repeal of Section 350 of the Probate Code, the section shall continue to apply to any case where the testator died before January 1, 1985.

SEC. _____. Notwithstanding the repeal of former Chapter 11 (commencing with Section 660) of Division 3 of the Probate Code by Section 39 of Chapter 842 of the Statutes of 1983, that chapter shall continue to apply to any case where the decedent died before January 1, 1985.

SEC. _____. Section 736 of the Probate Code, as amended by Chapter 842 of the Statutes of 1983 and by this act, applies only to cases where the testator dies on or after January 1, 1985. If the testator died before January 1, 1985, Section 736 of the Probate Code as it would exist had it not been so amended shall continue to apply.