

Memorandum 84-66

Subject: Study L-658 - Distribution of Small Estate Without Administration

Section 630 of the Probate Code provides a summary means for the collection of a decedent's personal property without the need for administration of the decedent's estate where the gross value of the decedent's real and personal property in this state is \$60,000 or less and the gross value of the decedent's real property in this state is \$10,000 or less.

The summary procedure can be used only if the person entitled to the decedent's property is a closely related heir or the sole beneficiary or all the beneficiaries under the decedent's will (whether or not related to the decedent). The person entitled to the property makes an affidavit showing his or her right and gives it to the debtor, custodian, registrar, or transfer agent. The claimant is then entitled to collect the money or property and to have any evidences of interest, indebtedness, or right transferred. The person making the payment or transfer need not inquire into the truth of the affidavit; the claimant's receipt is a sufficient discharge of liability. The payment or transfer does not preclude administration where necessary to enforce payment of the decedent's debts.

The affidavit procedure cannot be used to transfer the record title to real property. Unless the real property in a small estate passes to a surviving spouse, it is necessary to probate the estate in order to acquire a marketable title to the real property. Where the decedent's heir or beneficiary is the surviving spouse, the surviving spouse can obtain an order determining that real property of the deceased spouse passed to the surviving spouse and avoid the need for probate administration in order to acquire a marketable title. But there is no comparable procedure for obtaining a court determination and order where the heir or beneficiary is not a surviving spouse even where the gross value of the real property does not exceed \$10,000.

The Commission is informed that if a decedent dies owning real property of little value, such as a desert lot or speculative mineral rights, the property is sometimes abandoned by the decedent's heirs or

devisees because the cost of administration may exceed the value of the property. To deal with this situation, the Commission has tentatively decided to recommend that a new procedure be provided to permit the close relatives or beneficiaries of the decedent who take a small estate to obtain a court order determining and describing the property that passes to each of them and determining that no administration is necessary. This will permit the heirs or beneficiaries to obtain an order that makes the title to the real property marketable. It also will permit an order to be obtained where needed to assist the heir or beneficiary to collect a debt owed to the decedent, to obtain possession of the decedent's personal property, or to secure a correction in the registered title to personal property. The attached staff draft statutory provisions are drawn from those that are used by a surviving spouse to obtain an order that described property is property passing to the surviving spouse.

The staff draft also eliminates the \$10,000 cap on the gross value of real property in a small estate but retain the \$60,000 limitation of the gross value of the real and personal property in the estate. This change will effectuate a suggestion set out in Exhibit 1 to the First Supplement to Memorandum 84-66 (Probate, Trust and Estate Planning Section of the Beverly Hills Bar Association).

The staff draft also excludes in determining the value of a small estate "vehicles" (not just "motor vehicles"), vessels numbered under the Vehicle Code, and manufactured homes registered under the Health and Safety Code. See the discussion below.

Where the decedent leaves no other property necessitating probate, special statutory provisions permit a closely related heir of the deceased owner to use a statement under penalty of perjury to secure the transfer of registration of ownership or title to a vehicle, vessel, or manufactured home, mobilehome, or commercial coach. The staff has reviewed these special provisions and makes the following recommendations:

(1) The special provisions should be extended to permit them to be used by a beneficiary who takes the registered property under the deceased owner's will. This will make the special provisions consistent with Section 630 of the Probate Code which permits use of an affidavit to secure transfer of registration or record title to a beneficiary under the decedent's will without the need for probate. Since the special provisions apply only where the decedent left no other property neces-

sitating probate, the recommended extension will avoid the need for probate of the decedent's estate merely to secure a transfer of the registration of ownership or title to the beneficiary under the will.

(2) Transfer of ownership of the title or interest of the decedent in a vessel should be permitted irrespective of the value of the vessel. Now registration of a vessel can be transferred only if the total value of the decedent's property in this state does not exceed the amount specified in Section 630 of the Probate Code, but registration of a vehicle, manufactured home, mobilehome, or commercial coach can be transferred irrespective of its value.

(3) Technical and conforming revisions should also be made in the special provisions.

You should study the attached staff draft and the comments to the sections with care prior to the meeting so you can determine whether the approach of the statute is sound and whether any revisions should be made in the statute.

Respectfully submitted,

John H. DeMouilly,
Executive Secretary

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of
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May 2, 1984

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

Gentlemen:

Upon reading the article dated Spring, 1984, the evaluation of the UPC vs. the existing Probate Code of California in the State Bar News (Charles A. Collier, Jr., author) I was heartened to see the apparently thorough job you have done.

I am a sole practitioner in the Central Coast area and have two or three probate matters going at a time. The usual size is under \$100,000 so simplicity is important.

I feel the present system is good and serves the public well. The concept of finality for claims and available court supervision is important. Smaller estates under Probate Code Section 630 are simply administered without a probate filing. The suggestion for an increase to \$50,000 is good, but many small estates have a piece of real property also. Some way of quick transfer should be allowed where the property appraises at less than \$25,000 or so.

Since the repeal of the inheritance tax law, everyone has it better. I am convinced the present system is not anachronistic or overly supervised. In uncontested probates (90% of all) the judge generally approves any reasonable plan or idea even when the law says otherwise (where heirs agree). Most matters are actually unsupervised by the court, not overly supervised.

I am convinced our system can compare favorably to any. Keep up the good work.

Yours very truly,


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May 17, 1984

Chairman, California Law Review
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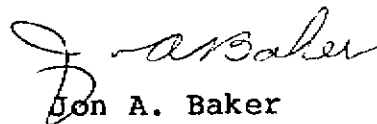
Dear Sir or Madam:

In January, I was one of the people who brought to your attention the need to revise the probate code to permit small or low-value real properties, especially in the desert area of Southern California, to be passed to heirs and devisees without the need for a full probate. This could be done for all decedents in the form of a Summary Administration as suggested by the enclosed letter from Judge Donald R. Egan.

To this extent, I had contacted a Matthew S. Rae, Jr. and he may have forwarded one of my letters to you. At the time of my letter I also received a letter from the Honorable Donald R. Egan who sits in the Desert courtroom and has to confront these small low value desert situations on a daily basis. Apparently, I had never forwarded his letter to you and want to include it now in the event that it still might be timely.

I would greatly appreciate knowing the ultimate outcome of the commission's recommendation and do hope that some needed, worthwhile legislation will result.

Sincerely,


Jon A. Baker

JAB/adm

Encl. Copy of letter from
The Honorable Donald R. Egan

CHAMBERS OF
The Superior Court
VICTORVILLE, CALIFORNIA 92392
DONALD R. EGAN, JUDGE

January 20, 1984

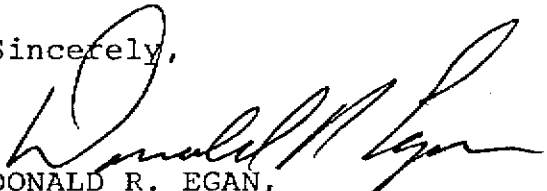
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Dear Mr. Baker:

This will acknowledge receipt of a copy of your letter dated January 9, 1984 addressed to Mr. Matthew S. Rae, Jr.

I believe your suggestion that legislation be drafted to cover the transfer of title to low value land to the surviving heirs by means of Summary Administration is a good one. We constantly run into this problem involving acreage in the desert where the value of the land really doesn't warrant the expense of going through probate. In fact, I believe it would be reasonable if such legislation could cover any unimproved property or acreage with an appraised value of less than \$20,000. It appears to me that Probate Code Section 640, etc. relating to transfer of an estate of a value of less than \$20,000 to a surviving spouse or minor children could be used as a format.

Sincerely,


DONALD R. EGAN,
Judge of the Superior Court

DRE/gj

cc/file

STAFF DRAFT

An act to amend Section 18102 of the Health and Safety Code, to amend the headings of Article 2 (commencing with Section 640) and Article 3 (commencing with Section 650) of, and to add Article 4 (commencing with Section 659.1) to, Chapter 10 of Division 3 of, and to amend Section 630 of, the Probate Code, and to amend Sections 5910 and 9916 of, and to add Section 9852.5 to, the Vehicle Code, relating to decedents' estates.

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

380 27

Health & Safety Code § 18102 (amended). Transfer of manufactured home, mobilehome, or commercial coach without probate

SECTION 1. Section 18102 of the Health and Safety Code is amended to read:

18102. (a) Upon the death of a registered or legal owner of a manufactured home, mobilehome, or commercial coach registered under this part, without the decedent leaving other property necessitating probate, ~~unless the manufactured home, mobilehome, or commercial coach is, by will, otherwise bequeathed,~~ and irrespective of the value of the manufactured home, mobilehome, or commercial coach, the following person may secure a transfer of registration of the title or interest of the decedent:

(1) The surviving husband or wife or other heir or beneficiary in the order named in Section 630 of the Probate Code unless the manufactured home, mobilehome, or commercial coach is, by will, otherwise bequeathed.

(2) The beneficiary who takes the manufactured home, mobilehome, or commercial coach under the will of the decedent where the manufactured home, mobilehome, or commercial coach is, by will, so bequeathed.

(b) The person authorized by subdivision (a) may secure a transfer of registration of the title or interest of the decedent upon presenting to the department all of the following:

~~(a)~~ (1) The appropriate certificate of title and registration card, if available.

~~(b)~~ A certified statement of the heir or beneficiary setting forth his or her interest in the estate of the decedent.

~~(c) The names and addresses of any other heirs or beneficiaries.~~

~~(d) If required by the department, a certificate of the death of the decedent.~~

~~(e) A statement that there are no creditors of the decedent or, if so, that creditors of the decedent have been paid in full or their claims have been otherwise discharged.~~

(2) A certificate of the heir or beneficiary under penalty of perjury containing the following statements:

(A) The date and place of the decedent's death.

(B) The decedent left no other property necessitating probate and no probate proceeding is now being or has been conducted in this state for the decedent's estate.

(C) The undersigned is entitled to the manufactured home, mobilehome, or commercial coach either (i) as the surviving heir(s) named in Section 630 of the Probate Code if the decedent left no will or (ii) as the beneficiary(ies) under the decedent's last will if the decedent left a will, and no one has a right to the decedent's manufactured home, mobilehome, or commercial coach that is superior to that of the undersigned.

(D) There are no creditors of the decedent or, if there are, the creditors of the decedent have been paid in full or their claims have been otherwise discharged.

(3) If required by the department, a certificate of the death of the decedent.

(4) If required by the department, the names and addresses of any other heirs or beneficiaries.

Comment. Section 18102 is amended to permit a beneficiary who takes a manufactured home, mobilehome, or commercial coach under the decedent's will to secure a transfer of registration of the title or interest of the decedent without the need to probate the decedent's estate. Since Section 18102 applies only where the decedent left no other property necessitating probate, the amendment to Section 18102 avoids the need to probate the decedent's estate merely to secure a transfer of registration of the title or interest of the decedent. The amendment makes Section 18102 consistent with Section 630 of the Probate Code which avoids the need for probate by permitting the beneficiaries under the decedent's will to "have any evidences of a debt, obligation, interest, right, stock, or chose in action transferred" to the beneficiary entitled to the property upon furnishing the person acting as registrar or transfer agent with an affidavit or declaration under penalty of perjury showing the right of the persons to have such evidences transferred. For comparable provisions, see Vehicle Code §§ 5910 (vehicle), 9916 (vessel).

SEC. 2. Section 630 of the Probate Code is amended to read:

630. (a) Subject to Section 632, subdivision (b) applies only where ~~the gross value of the decedent's real property in this state, if any, does not exceed ten thousand dollars (\$10,000) and~~ the gross value of the decedent's real and personal property in this state (excluding any ~~motor~~ vehicle registered under the Vehicle Code, any vessel numbered under the Vehicle Code, or any manufactured home, 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) The surviving spouse, the children, the issue of deceased children, ~~a grandparent, parent~~ parents, brothers or sisters of the decedents, the issue of a deceased brother or sister, the grandparents, or the guardian or conservator of the estate of any person bearing such relationship to the decedent, or the trustee named under a trust agreement executed by the decedent during his or her lifetime, the primary beneficiaries of which bear such relationship to the decedent, if such person or persons has or have a right to succeed to the property of the decedent, or the sole beneficiary, or all of the beneficiaries under the last will of the decedent, regardless of whether or not any beneficiary is related to the decedent, may, without procuring letters of administration, or awaiting the probate of the will, collect any money due the decedent (including money of the decedent on deposit in a financial institution as defined in Section 40), receive the tangible personal property of the decedent, and have any evidences of a debt, obligation, interest, right, stock, or chose in action transferred to such person or persons upon furnishing the person, representative, corporation, officer or body owing the money, having custody of such property or acting as registrar or transfer agent of such evidences of debt, obligation, interest, right, stock, or chose in action, with an affidavit or declaration under

penalty of perjury showing the right of the person or persons to receive such money or property, or to have such evidences transferred. Nothing in this subdivision applies to real property or an interest in real property.

(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 and the other conditions of subdivisions (a) and (b) are satisfied, the custodian may collect the bequest as provided in subdivision (b) if the beneficiary has not attained the age at which the custodianship is to terminate.

(d) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subdivision (b) and is discharged from liability in so doing as provided in Section 631.

(e) A public administrator who has taken charge of the estate of a decedent as provided in Section 1140 may refuse to pay money or deliver property of the estate pursuant to this article if payment of the costs and fees described in Section 1144.5, subject to the dollar limitations specified in that section, has not first been made or adequately assured to the satisfaction of the public administrator.

Comment. Subdivision (a) of Section 630 is amended to eliminate the \$10,000 limitation on the value of real property in the decedent's estate and to expand the types of property that are excluded in determining the gross value of the decedent's property to include all vehicles registered under the Vehicle Code, vessels numbered under the Vehicle Code, and manufactured homes registered under the Health & Safety Code. These additional types of property are covered by special statutory provisions comparable to the special statutory provisions that cover the types of property formerly excluded under Section 630 (motor vehicles, mobilehomes, and commercial coaches). See Health & Safety Code § 18102 (manufactured homes, mobilehomes, and commercial coaches), Vehicle Code §§ 5910 (vehicles), 9916 (vessels).

Subdivision (b) of Section 630 is amended so that the heirs of the decedent are listed in the same order as provided for intestate succession under Section 6402. This change is needed because some special statutory provisions provide that the decedent's surviving heirs take in the order named in Section 630. Health & Safety Code § 18102, Vehicle Code §§ 5910, 9916.

SEC. 3. The heading of Article 2 (commencing with Section 640) of Chapter 10 of Division 3 of the Probate Code is amended to read:

Article 2. ~~Setting Aside Estates Not Exceeding Two Thousand-Five Hundred Dollars in Value~~ Small Estate to Surviving Spouse
or Minor Children

SEC. 4. The heading of Article 3 (commencing with Section 650) of Chapter 10 of Division 3 of the Probate Code is amended to read:

Article 3. Court Determination or Confirmation of Community Property Passing or Belonging to Surviving Spouse

SEC. 5. Article 4 (commencing with Section 659.1) is added to Chapter 10 of Division 3 of the Probate Code, to read:

Article 4. Court Determination of Passage of Property of Small Estate

§ 659.1. "Small estate" defined

659.1. (a) For the purposes of this article, a decedent's estate is a "small estate" if the gross value of the decedent's real and personal property in this state (excluding any vehicle registered under the Vehicle Code, any vessel numbered under the Vehicle Code, or any manufactured home, 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) In determining the property or estate of the decedent or its value under subdivision (a), there shall be excluded 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.

Comment. Subdivision (a) of Section 659.1 is drawn from subdivision (a) of Section 630 (collection of personal property by affidavit). [But the types of property that are excluded in determining the gross value of the decedent's property under Section 630 are expanded by Section 659.1 to include all vehicles registered under the Vehicle Code, vessels numbered under the Vehicle Code, and manufactured homes registered under the Health & Safety Code. These additional types of property are covered by special statutory provisions comparable to the special statutory provisions that cover the types of property excluded under Section 630 (motor vehicles, mobilehomes, and commercial coaches). See Health & Safety Code § 18102 (manufactured homes, mobilehomes, and commercial coaches), Vehicle Code §§ 5910 (vehicles), 9916 (vessels).]

Subdivision (b) of Section 659.1 is drawn from Section 632 (collection of personal property by affidavit). Under this subdivision, property held in joint tenancy and other interests that terminate at death are excluded from the value of the decedent's estate in determining value under subdivision (a). It should be noted that these exclusions embrace life interests in trusts and contractual rights (such as insurance and employee retirement) that terminate at death, as well as life interests in other property. O. McCarroll, 1 California Decedent Estate Administration Supplement §§ 3.6, 3.7, at 69 (Cal. Cont. Ed. Bar 1984). Thus, for example, amounts passing under a Totten Trust account or under P.O.D. provision of a deposit account with a financial institution (see Financial Code §§ 852.5, 6854, 14854.5, 18318.5) are excluded. Also excluded is property passing to a designated beneficiary under a provision of the type described in Section 160.

405 929

§ 659.2. "Close relatives of the decedent" and "devisees" defined

659.2. As used in this article:

(a) "Close relatives of the decedent" means the surviving spouse, the children, the issue of deceased children, parents, brothers and sisters, the issue of a deceased brother or sister, or grandparents, of the decedent.

(b) "Devisee" has the meaning given that term by Section 34.

Comment. Subdivision (a) of Section 659.2 provides a definition that is consistent with the relatives who may collect personal property of the decedent by affidavit under Section 630 in a case where the decedent died without a will. The definition of "devisee" adopts the definition provided by Section 34.

405 940

§ 659.3. Petition for determination that administration of small estate unnecessary

659.3. A petition may be filed under this article in the superior court of the county in which the estate of a decedent may be administered

alleging that administration of the estate is unnecessary because the estate is a small estate and the decedent either (a) died intestate and the estate passed to close relatives of the decedent or (b) died testate and the estate passed to devisees under the will of the decedent, whether or not any devisee is related to the decedent.

Comment. Section 659.3 permits a petition to be filed under this article if the decedent's estate is a small estate (defined in Section 659.1) and the decedent's estate either passed to close relatives of the decedent (defined in Section 659.2) by intestate succession or to devisees (defined in Section 659.2) under the decedent's will. The devisees under the decedent's will need not be related to the decedent. Although existing law provides for the collection of personal property of a small estate by affidavit (Section 630), prior law did not provide a procedure for obtaining a court order determining that no administration of a small estate is necessary and determining the person or persons to whom the estate passed.

405 947

§ 659.4. Persons who may file petition

659.4. (a) If the decedent died intestate, a petition may be filed under this article only if all the close relatives of the decedent entitled to take the decedent's property by intestate succession join in the petition.

(b) If the decedent died testate, a petition may be filed under this article only if all the devisees under the will of the decedent join in the petition.

Comment. Section 659.4 is consistent with a portion of Section 630 (collection of personal property by affidavit). The terms "close relatives of the decedent" and "devisee" are defined in Section 659.2.

404 990

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

659.5. For the purposes of this article:

(a) A guardian or conservator of the estate of a person entitled to take property of the decedent by intestate succession or under the decedent's will 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 to take property of the decedent under the decedent's will 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 of 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 with respect to the custodial property if the beneficiary has not attained the age at which the custodianship is to terminate.

(d) The personal representative of the estate of a person entitled to take property of the decedent by intestate succession or under the decedent's will may act on behalf of the deceased person entitled to take the property and that person's estate.

Comment. Subdivisions (a), (b), and (c) of Section 659.5 is drawn from portions of Section 630 (collection of personal property by affidavit). Subdivision (d) is drawn from a portion of Section 650 (passage of property to surviving spouse without administration).

405 982

§ 659.6. Contents of Petition

659.6. 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 facts necessary to determine the county in which the estate of the decedent may be administered.

(c) That the decedent's estate in this state is a small estate as defined in Section 659.1 of the Probate Code.

(d) The character and estimated value of the real property of the decedent's estate in this state.

(e) The character and estimated value of the personal property of the decedent's estate in this state.

(f) That no proceedings for the administration of the decedent's estate have been commenced in this state.

(g) Whether estate proceedings for the decedent have been commenced in another jurisdiction and, if so, the jurisdiction where such proceedings are pending or were conducted.

(h) The names, ages, and addresses and the relationship to the decedent of all of the following persons who are living, which are known to the petitioners: The decedent's spouse, issue, parents, issue of parents, and grandparents.

(i) If the decedent died leaving a will, the names, ages, and addresses and the relationship (if any) to the decedent of the devisees under the decedent's will, the names and addresses of all persons named as executors of the will of the decedent, and the names and addresses of all persons appointed in another jurisdiction as executors of the will or administrators of the estate of the decedent, which are known to the petitioners. A copy of the will shall be attached to the petition.

(j) A description of the property of the decedent which the petitioners allege is property passing to the petitioners, the interest of each petitioner in the described property, and the facts upon which this allegation is based.

(k) That, if the court makes an order determining that property of the decedent has passed to the petitioners, the petitioners consent to the personal jurisdiction of the courts of this state for the purpose of any proceeding relating to any liability assumed by petitioners under Section 659.11 of the Probate Code.

Comment. Section 659.6 is drawn from subdivision (a) of Section 650 (passage of property to surviving spouse without administration), and from Sections 326 (petition for probate of will) and 440 (petition for letters of administration). "Devisee" is defined in Section 659.2.

406 164

§ 659.7. Hearing and notice

659.7. The clerk shall set the petition for hearing. 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 or executor, and to the decedent's surviving spouse, issue, parents, issue of parents, and grandparents, except that no notice need be given to persons who join in the petition. The notice 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.

Comment. Section 659.7 is drawn from Section 653 (passage of property to surviving spouse without administration). If the court determines that the notice given under Section 659.7 is not sufficient, the court may require such further notice as it deems proper. See Section 1204. "Devisee" is defined in Section 659.2.

§ 659.8. Inventory and appraisal

659.8. If the court determines that the interest of justice so requires, the court in its discretion may require that the petitioners file an inventory and appraisal before the court makes an order pursuant to Section 659.9. The inventory and appraisal shall be in the form set forth in Section 600. The appraisal shall be made as set forth in Chapter 9 (commencing with Section 600). The petitioners may appraise the assets which an executor or administrator could appraise under Section 605.

Comment. Section 659.8 is drawn from Section 657 (passage of property to surviving spouse without administration).

§ 659.9. Court order; effect of order

659.9. (a) If the court finds that the estate is a small estate and that all of the property in the estate is property passing to the petitioners and that no proceedings for the administration of the estate are pending in this state, the court shall issue an order determining and describing the property that passes to each of the petitioners and determining that no administration is necessary. The court may issue any further orders which may be necessary to cause delivery or transfer of the property or its proceeds to the petitioners entitled to the property or its proceeds.

(b) In the absence of fraud in the procurement of the order, when an order under this article becomes final, the order is conclusive on all persons, whether or not they are in being, except where the order is based on the erroneous assumption of the death of the decedent.

Comment. Subdivision (a) of Section 659.9 is drawn in part from Section 655 (passage of property to surviving spouse without administration). Subdivision (b) is drawn from Section 645.1 and subdivision (c) of Section 655. "Small estate" is defined in Section 659.1.

Section 659.9 authorizes the court to issue any orders that may be necessary to cause delivery or transfer of the property or its proceeds to the petitioners entitled to the property or its proceeds. An order under Section 659.9 will be useful where there has been an unsuccessful attempt under Section 630 either (1) to collect personal property by affidavit or (2) by affidavit to have record title to personal property transferred to petitioners. Likewise, although ordinarily no court proceeding or court order is necessary, in some cases an order under

Section 659.9 may be useful to secure the transfer of registration of title or interest to a vehicle (Vehicle Code § 5910), vessel (Vehicle Code § 9916), manufactured home, mobilehome, or commercial coach (Health & Safety Code § 18102).

406 227

§ 659.10. Order protecting creditors of decedent's business

659.10. If the decedent's small estate includes an unincorporated business which the decedent was operating or managing at the time of death, the court may require petitioners to provide a list of all known creditors of the business and the amount owing to each of them. The court may issue any order necessary to protect the creditors of the business, including the filing of an undertaking.

Comment. Section 659.10 is drawn from Section 656. "Small estate" is defined in Section 659.1.

406 228

§ 659.11. Personal liability for decedent's debts

659.11. (a) A petitioner who takes property of the decedent pursuant to an order made under this article is personally liable for the unsecured debts of the decedent. The personal liability of a 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.

(b) Any debt described in subdivision (a) may be enforced against the petitioner in the same manner as it could have been enforced against the decedent if the decedent had not died. In any action based upon the debt, the petitioner may assert any defenses, cross-complaints, or setoffs which would have been available to the decedent if the decedent had not died.

Comment. Section 659.11 is drawn from Sections 645.3 except that Section 659.11 does not include the one-year limitation on the duration of personal liability provided by Section 645.3. Instead, Section 659.11 follows subdivision (c) of Section 649.4, and Section 659.11 (by providing that any action based on the debt is subject to the same defenses that would have been available to the decedent if the decedent had not died) adopts the same statute of limitations that would have applied in an action against the decedent on the debt had the decedent not died.

§ 659.12. Proceedings for administration of decedent's estate

659.12. (a) A petition under this article may not be filed if proceedings for the administration of the decedent's estate are pending in this state.

(b) If a petition for probate of the decedent's will or for administration of the decedent's estate is filed in this state before an order has been issued under Section 659.9 and has become final:

- (1) The order, if any, shall be set aside.
- (2) The petition filed under this article shall be denied.

Comment. Section 659.12 makes clear that the procedure provided by this article is authorized only if there will be no administration of the decedent's estate in this state. However, when the order under this article becomes final, it is conclusive on all persons, whether or not they are in being, unless there is fraud in the procurement of the order or the order is based on the erroneous assumption of the death of the decedent. See Section 659.9.

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Vehicle Code § 5910 (amended). Transfer of vehicle without probate

SEC. 6. Section 5910 of the Vehicle Code is amended to read:

5910. (a) Upon the death of an owner or legal owner of ~~any vehicles~~ a vehicle registered under this code without the decedent leaving other property necessitating probate, ~~the surviving husband or wife or other heir in the order named in Section 630 of the Probate Code, unless the vehicle is by will otherwise bequeathed,~~ and irrespective of the value of the vehicle, the following person may secure a transfer of registration of the title or interest of the decedent:

(1) The surviving husband or wife or other heir in the order named in Section 630 of the Probate Code unless the vehicle is, by will, otherwise bequeathed.

(2) The beneficiary who takes the vehicle under the will of the decedent where the vehicle is, by will, so bequeathed.

(b) The person authorized by subdivision (a) may secure a transfer of registration of the title or interest of the deceased decedent upon presenting to the department ~~the~~ all of the following:

(1) The appropriate certificate of ownership and registration card, if available, and a certified statement of the person setting forth the fact of survivorship or heirship, and the names and addresses

of any other heirs, and, if required by the department, a certificate of the death of the deceased together with a statement that there are no creditors of the deceased or, if so, that the creditors of the deceased have been paid in full or the claims have been otherwise discharged.

(2) A certificate of the heir or beneficiary under penalty of perjury containing the following statements:

(A) The date and place of the decedent's death.

(B) The decedent left no other property necessitating probate and no probate proceeding is now being or has been conducted in this state for the decedent's estate.

(C) The undersigned is entitled to the vehicle either (i) as the surviving heir(s) named in Section 630 of the Probate Code if the decedent left no will or (ii) as the beneficiary(ies) under the decedent's last will if the decedent left a will, and no one has a right to the decedent's vehicle that is superior to that of the undersigned.

(D) There are no creditors of the decedent or, if there are, the creditors of the decedent have been paid in full or their claims have been otherwise discharged.

(3) If required by the department, a certificate of the death of the decedent.

(4) If required by the department, the names and addresses of any other heirs or beneficiaries.

(c) The department may prescribe a combined form for use under this section and Section 9916.

Comment. Section 5910 is amended to permit a beneficiary who takes a vehicle under the decedent's will to secure a transfer of registration of the title or interest of the decedent without the need to probate the decedent's estate. Since Section 5910 applies only where the decedent left no other property necessitating probate, the amendment to Section 5910 avoids the need to probate the decedent's estate merely to secure a transfer of registration of the title or interest of the decedent. The amendment makes Section 5910 consistent with Section 630 of the Probate Code which avoids the need for probate by permitting the beneficiaries under the decedent's will to "have any evidences of a debt, obligation, interest, right, stock, or chose in action transferred" to the beneficiary entitled to the property upon furnishing the person acting as registrar or transfer agent with an affidavit or declaration under penalty of perjury showing the right of the persons to have such evidences transferred. For comparable provisions, see Health & Safety Code § 18102 (manufactured home, mobilehome, or commercial coach), Vehicle Code § 9916 (vessel). Subdivision (c) of Section 5910, which permits a combined form, is consistent with the prior practice which used a combined form.

Vehicle Code § 9852.5 (added). Vessel coownership registration

SEC. 7. Section 9852.5 is added to the Vehicle Code, to read:

9852.5. Ownership of an undocumented vessel subject to registration may be held by two (or more) coowners as follows:

(a) A vessel may be registered in the names of two (or more) persons as coowners in the alternative by the use of the word "or." A vessel so registered in the alternative shall be deemed to be held in joint tenancy. Each coowner shall be deemed to have granted to the other coowners the absolute right to dispose of the title and interest in the vessel. Upon the death of a coowner the interest of the decedent shall pass to the survivor as though title or interest in the vessel was held in joint tenancy unless a contrary intention is set forth in writing upon the application for registration.

(b) A vessel may be registered in the names of two (or more) persons as coowners in the alternative by the use of the word "or" and if declared in writing upon the application for registration by the applicants to be community property, or tenancy in common, shall grant to each coowner the absolute power to transfer the title or interest of the other coowners only during the lifetime of such coowners.

(c) A vessel may be registered in the names of two (or more) persons as coowners in the conjunctive by the use of the word "and" and shall thereafter require the signature of each coowner or his personal representative to transfer title to the vessel, except where title to the vessel is set forth in joint tenancy, the signature of each coowner or his or her personal representative shall be required only during the lifetime of the coowners, and upon death of a coowner title shall pass to the surviving coowner.

(d) The department may adopt suitable abbreviations to appear upon the certificate of ownership and certificate of number to designate the manner in which title to the vessel is held if set forth by the coowners upon the application for registration.

Comment. Section 9852.5 is drawn from Section 4150.5 (vehicles).

Vehicle Code § 9916 (amended). Transfer of vessel without probate

SEC. 8. Section 9916 of the Vehicle Code is amended to read:

9916. (a) Upon the death of an owner or legal owner of any vessel

numbered under this code without the decedent leaving other property necessitating probate, the surviving husband or wife or other heir in the order named in Section 630 of the Probate Code, unless the vessel is by will otherwise bequeathed, and if the total value of the decedent's property in this state does not exceed the amount specified in Section 630 of the Probate Code, and irrespective of the value of the vessel, the following person may secure a transfer of ownership of the title or interest of the decedent:

(1) The surviving husband or wife or other heir in the order named in Section 630 of the Probate Code unless the vessel is, by will, otherwise bequeathed.

(2) The beneficiary who takes the vessel under the will of the decedent where the vessel is, by will, so bequeathed.

(b) The person authorized by subdivision (a) may secure a transfer of ownership of the title or interest of the deceased decedent upon presenting to the department the all of the following:

(1) The appropriate certificate of ownership and certificate of number, if available, and a certified statement of the person setting forth the fact of survivorship or heirship, and the names and addresses of any other heirs, and, if required by the department, a certificate of the death of the deceased, together with a statement that there are no creditors of the deceased or, if so, that the creditors of the deceased have been paid in full or the claims have been otherwise discharged.

(2) A certificate of the heir or beneficiary under penalty of perjury containing the following statements:

(A) The date and place of the decedent's death.

(B) The decedent left no other property necessitating probate and no probate proceeding is now being or has been conducted in this state for the decedent's estate.

(C) The undersigned is entitled to the vessel either (i) as the surviving heir(s) named in Section 630 of the Probate Code if the decedent left no will or (ii) as the beneficiary(ies) under the decedent's last will if the decedent left a will, and no one has a right to the decedent's vessel that is superior to that of the undersigned.

(D) There are no creditors of the decedent or, if there are, the creditors of the decedent have been paid in full or their claims have been otherwise discharged.

(3) If required by the department, a certificate of the death of the decedent.

(4) If required by the department, the names and addresses of any other heirs or beneficiaries.

Comment. Section 9916 is amended (1) to permit a beneficiary who takes a vessel under the decedent's will to secure a transfer of ownership of the title or interest of the decedent without the need to probate the decedent's estate and (2) to eliminate the provision that made the section not applicable if the total value of the decedent's property in this state exceeds the amount specified in Section 630 of the Probate Code.

Since Section 9916 applies only where the decedent left no other property necessitating probate, the amendment making Section 9916 apply where the beneficiary takes the vessel under the decedent's will avoids the need to probate the decedent's estate merely to secure a transfer of ownership of the title or interest of the decedent. This amendment makes Section 9916 consistent with Section 630 of the Probate Code. See the Comment to Section 5910.

Elimination of the provision making Section 9916 not applicable where the value of decedent's property in this state exceeds the amount specified in Probate Code Section 630 makes Section 9916 consistent with Section 5910 (vehicles) and Health & Safety Code Section 18102 (manufactured home, mobilehome, or commercial coach).