

Memorandum 85-34

Subject: Study L-1025 - Probate Code (Presentation of Claims)

This memorandum presents a redraft of the existing Probate Code provisions governing creditors' claims. Some of the more significant changes and policy issues presented by the draft are raised in this memorandum.

§ 7900. "Claim" defined

Both the State Bar and the Los Angeles County Bar suggest that the term "claim" be defined. We have derived Section 7900 from the definition found in the Uniform Probate Code, combined with a few provisions of existing California law.

§ 7901. Notice to creditors

Chuck Collier has called our attention to some interesting developments in the law relating to due process rights of creditors in probate proceedings. The first development is the United States Supreme Court case of Mennonite Board of Missions v. Adams, 103 S.Ct. 2706 (1983). This case holds that in a foreclosure sale on a mortgage, due process requires actual notice of the sale to persons having interests in the property, where the names of the interested persons are known or reasonably ascertainable.

Although the Mennonite case is limited to protection of interests in property, its reasoning has been extended by the Nevada Supreme Court in Continental Insurance Co. V. Moseley, 683 P.2d 20 (1984), to require actual notice to general creditors rather than published notice in probate proceedings. While this case goes well beyond the Mennonite holding, we think the point made is a good one--if the names and addresses of general creditors of the decedent are known or reasonably ascertainable, actual notice should be given.

The staff has added subdivision (b) to the draft to raise this policy issue for Commission resolution. If the Commission adopts the policy of the draft, we would probably relocate it to the general notice portion of the Code so that the requirement will not be buried in creditors' claims.

§ 7911. Documentary support of claim

Section 7911 continues the existing requirement that a claim be supported by an affidavit and the existing authority of the personal representative to require satisfactory proof of a claim. The staff questions whether an affidavit is really necessary with most routine claims such as ordinary monthly bills, and suggests that the authority of the personal representative to require satisfactory proof is sufficient. The Commission should consider deleting the affidavit requirement.

§ 7923. Late claims

A late claim is permitted in the case of a creditor who was out of state and did not receive notice of the petition for administration. The Los Angeles County Bar believes the "antiquated references to out-of-state creditors should be eliminated." The State Bar has also been uncomfortable with this provision in the past, noting that some out-of-state creditors to whom payments are made out of state have branch offices in California. The staff draft preserves existing law on this point, but the Commission should decide whether this is desirable.

§ 7934. Claim covered by insurance

Existing law provides that the plaintiff need not make a claim against the estate, and may sue the estate without appointment of a personal representative, if the liability is covered by insurance and the plaintiff seeks to recover only the limits of the insurance coverage. However, the existing statutes show numerous fine distinctions depending on such matters as whether the action was pending at the decedent's death or commenced after the decedent's death, with no apparent reason for the distinctions.

The staff draft consolidates the various provisions in one, based primarily on existing Section 721, which seems to be the most complete and systematic of the various relevant provisions. The major change in the consolidation is that prior court approval is not required to commence an action within the policy limits and serving the insurer. As one comment forwarded to us by the State Bar notes, there seems to be no reason for the prior court approval requirement "if plaintiff is satisfied with policy limits."

§ 7962. Effect of statute of limitations

It appears that the statute of limitations on a claim made against the estate continues to run until the claim is acted upon by the personal representative, and if the claim is allowed, the statute is thereafter tolled. The State Bar notes that this can create a trap for the creditor. "Consideration should be given to providing that whenever a claim is filed it tolls the statute of limitations on that claim pending administration of the estate, except in the case of rejection." The Los Angeles County Bar disagrees. "We do not see any reason why the death of a person followed by the filing of a creditor's claim should toll the statute of limitations. If there is a problem, we think an explicit warning to would-be creditors on the creditor's claim form should solve the problem." What approach does the Commission wish to take?

§ 7965. Failure of personal representative or court to act

The State Bar and Los Angeles County Bar agree that existing law, which allows the creditor to treat a claim as rejected if not acted upon within 10 days after filing, is unrealistically short. They suggest a 30-day period. The staff has made this change, and also extended the time to 30 days after presentation, for uniformity.

§ 7967. Action on rejected claim

We have added a provision to Section 7967 to award attorney's fees against a claimant who after the claim is rejected brings a civil action and loses. This is modeled after a similar provision where the claimant is the personal representative. See Section 7915.

Because of the time involved in resolving an action brought on a rejected claim, the State Bar has suggested either that such actions be given a statutory priority or that the probate court be authorized to try the case. The concept of the statutory priority the staff does not believe will be particularly helpful in a congested court--there are too many statutory priorities already. The general jurisdiction of the probate court to hear and determine all probate matters, the staff believes is desirable. This issue is raised in Memorandum 85-11 (Probate Code--Jurisdiction, etc.).

§ 7968. Reference to determine disputed claim

This section provides for a summary procedure for a referee to determine a disputed claim, by agreement of the parties, without plead-

ings, discovery, or jury trial. The State Bar and Los Angeles County Bar both question whether the discovery limitation is necessary. The staff notes that when this procedure was reviewed in 1979 for incorporation in the guardianship and conservatorship law, the discovery limitation was preserved. Probate Code § 2405.

It should also be noted that the guardianship and conservatorship law omitted a parallel provision for appointment of a "disinterested person" to act as a referee, whose decision merely establishes or rejects the claim but does not preclude further litigation over it. Commissioner Stodden has criticized this provision in estate administration, noting that it is not used and that it "gives a claimant two bites of the apple." The staff has omitted this provision from the draft.

On the other hand, the staff has added, as Section 7969, an alternative provision for submission of a disputed claim to arbitration. This provision is drawn from the guardianship and conservatorship law. Probate Code § 2406.

Respectfully submitted,

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EXHIBIT 1

26263

CHAPTER 5. CREDITORS' CLAIMS

Article 1. General Provisions§ 7900. "Claim" defined

7900. (a) As used in this division, "claim" includes:

(1) Liability of the decedent whether arising in contract, tort, or otherwise.

(2) Liability of the estate that arises at or after the death of the decedent, other than expenses of administration.

(3) Liability for taxes, other than property taxes, special assessments, assessments, gift taxes, and estate taxes.

(b) The term does not include demands and disputes regarding title of a decedent to specific assets alleged to be included in the estate.

Comment. Section 7900 is new. It is drawn from Section 1-201(4) of the Uniform Probate Code. While the term "claim" excludes administration expenses such as personal representative and attorney fees, it includes other post mortem debts such as funeral expenses. This continues a provision of former Section 707. The provisions relating to tax liability continue the substance of former Section 707.5(c). With regard to title to property, see Section [851.5].

31190

§ 7901. Notice to creditors

7901. (a) Publication or posting of the notice of hearing of the petition to administer the decedent's estate pursuant to Chapter 2 (commencing with Section 7230) of Part 2 constitutes notice to the creditors of the decedent of the requirements of this chapter.

[(b) In addition to the notice provided in subdivision (a), the personal representative shall serve notice on each creditor whose name and address is known or is reasonably ascertainable by the personal representative.]

Comment. Subdivision (a) of Section 7901 continues the substance of the first portion of former Section 700. [Subdivision (b) is new.]

§ 7902. Claim requirement

7902. Except as otherwise provided by statute:

(a) All claims, whether due, not due, or contingent, liquidated or unliquidated, shall be made in the manner and within the time prescribed in this chapter.

(b) Any claim not so made is barred forever.

Comment. Section 7902 continues the substance of and generalizes a portion of the first sentence of former Section 707. Section 7902 applies to all claims, whether in contract, tort, or otherwise, including claims for funeral expenses and claims for damages for injuries to or death of a person or injury to property and all claims against the executor or administrator of any testator or intestate who in his or her lifetime has wasted, destroyed, taken or carried away or converted to his or her own use, the property of another person or committed any trespass on the real property of another person. See Section 7900 ("claim" defined). The requirement that a claim be made is subject to exception pursuant to other provisions. See, e.g., Sections 7934 (claim covered by insurance), 8534 (settlement of claim not properly made or allowed).

CROSS-REFERENCES

Definition

Claim § 7900

31062

Article 2. Making of Claims

§ 7910. How claim is made

7910. (a) A claim is made by filing the claim in the office of the clerk or by presenting the claim to the personal representative.

(b) A claim may be made by the claimant or by a person in behalf of the claimant.

Comment. Subdivision (a) of Section 7910 continues the substance of a portion of former Section 700(a); it is intended to simplify drafting. Subdivision (b) generalizes a provision of former Section 704.2; a person acting in behalf of the claimant may include the personal representative or the guardian or conservator of the estate of the claimant.

CROSS-REFERENCES

Definition

Clerk § 29

§ 7911. Documentary support of claim

7911. (a) A claim shall be supported by the affidavit of the claimant or a person in behalf of the claimant stating, to the knowledge of the affiant:

(1) If the claim is due, the amount is justly due, no payments have been made on the claim that are not credited, and there are no offsets to the claim.

(2) If the claim is not due, or is contingent, the particulars of the claim.

(3) If the affidavit is made by a person other than the claimant, the reason therefor.

(b) The personal representative may require satisfactory vouchers or proof to be produced in support of the claim. If the claimant includes with the claim an original voucher, the claimant may withdraw the voucher after a copy is attached to the claim.

Comment. Section 7911 continues the substance of former Section 705.

Query. Existing Section 705 includes provisions relating to retrieval of an "original voucher." Are originals (rather than copies) actually submitted, and if so, are statutory provisions on this point necessary?

30686

§ 7912. Claim founded upon written instrument

7912. (a) If a claim is founded on a written instrument, the original need not be included with the claim, but a copy of the original with all endorsements shall be attached to the claim. The original instrument shall be exhibited to the personal representative or court upon demand unless it is lost or destroyed, in which case its loss or destruction shall be stated in the claim.

(b) If the claim or a part of the claim is secured by a mortgage, deed or trust, or other lien that is recorded in the office of the recorder of the county in which the security is situated, it shall be sufficient to describe the mortgage, deed of trust, or lien and refer to the date or volume and page of its record.

Comment. Section 7912 continues the substance of former Section 706.

CROSS-REFERENCES

Actions at chambers § 7123

§ 7913. Procedure when claim filed

7913. (a) A claim filed with the clerk shall be made in duplicate. The clerk shall immediately mail or deliver to the personal representative, when appointed, or the attorney of the personal representative, one of the duplicates of the claim.

[(b) The clerk shall enter in the register every claim filed, giving the name of the claimant, amount of the claim, rate of interest if any, and date of filing.]

Comment. Subdivision (a) of Section 7913 continues the substance of the first two sentences of former Section 710. Subdivision (b) continues the substance of the last sentence of former Section 707(a).

CROSS-REFERENCES

Definition

Clerk § 29

Query. Existing Section 707(a) requires the clerk to enter in the register every claim filed, and other statutory provisions require entry in the register of actions taken relating to a claim. What is the purpose of these requirements, and can they be eliminated?

29336

§ 7914. Claim presented by notary

7914. If a claim is presented by a notary, the certificate of the notary, under seal, is prima facie evidence of the presentation and the date thereof.

Comment. Section 7914 continues the substance of the second sentence of former Section 712.

Query. Existing Section 712 refers to presentation of a claim by a notary as prima facie evidence of the presentation and its date. Is a notary used (the Judicial Council form does not include a space for notary acknowledgment), and if so does the notary actually present the claim? How else is the date of presentation established?

29203

§ 7915. Where personal representative is creditor

7915. (a) If the personal representative is a creditor of the decedent, the personal representative shall file the claim with the clerk. The clerk shall present the claim to the court for approval or rejection.

(b) If the court allows the claim, the claim shall be paid as other claims in due course of administration.

(c) If the court rejects the claim, the personal representative may bring an action against the estate. Summons shall be served upon the judge, who shall appoint an attorney, at the expense of the estate, to defend the action. If the personal representative fails to recover, the personal representative shall pay all costs, including reasonable attorney's fees, to be fixed by the court.

Comment. Section 7915 continues the substance of former Section 703.

CROSS-REFERENCES

Definition

Clerk § 29

Actions at chambers § 7123

28844

§ 7916. Where judge is creditor

7916. (a) If the judge before whom administration of the estate is pending is a creditor of the decedent, the judge shall make the claim in the same manner as other creditors.

(b) If the personal representative allows the claim, the judge shall designate, in writing, another judge of the court of the same or an adjoining county who, upon presentation of the claim, is vested with power to approve or reject it.

(c) If the personal representative rejects the claim, or if the judge designated pursuant to subdivision (b) rejects the claim, the claimant has the same right to bring an action for its recovery as other persons whose claims are rejected.

Comment. Section 7916 continues the substance of former Section 704.

Query. Existing Section 704 deals with the probate judge who is also a creditor of the estate. Does this provision make any sense in light of Section 303 which disqualifies a judge who is in any manner interested in the estate?

28277

Article 3. Time for Making Claims

§ 7920. Four-month claim period

7920. (a) Except as otherwise provided by statute, a claim shall be made within four months after letters are issued to a general personal representative.

(b) For the purpose of this section, if letters are issued by more than one court or if subsequent letters are issued by the same court, the four-month period commences upon the first issuance of letters to a general personal representative.

Comment. Section 7920 continues the substance of the last portion of subdivision (a) and subdivision (c) of former Section 700. In the case of a special administrator granted the powers of a general personal representative, the nonclaim period commences to run upon first issuance of letters reciting the general powers of the special administrator.

CROSS-REFERENCES

Definition

General personal representative § 59

28276

§ 7921. Time not extended by vacancy in office

7921. A vacancy in the office of the personal representative before expiration of the time for making a claim does not extend the time.

Comment. Section 7921 continues the substance of former Section 700(b). A vacancy occurs where the personal representative resigns, dies, or is removed from office. Section 7390.

28275

§ 7922. Where personal representative acts on claim after expiration of time

7922. A claim that is made before expiration of the time for making the claim is timely made even though acted upon by the personal representative or by the court after expiration of the time.

Comment. Section 7922 continues the substance of the last sentence of former Section 712.

28027

§ 7923. Late claims

7923. (a) A claim may be made at any time within one year after the time prescribed in Section 7820 and before petition for final distribution has been filed if it is made to appear by affidavit to the satisfaction of the court that any of the following conditions is satisfied:

- (1) The claimant was out of the state and did not receive notice.

(2) The claimant in good faith filed a claim in another proceeding for the same decedent which is not consolidated with the present proceeding, and in which letters are not issued.

[(b) Neither the making of a claim pursuant to this section, nor its later establishment in whole or in part, shall make property distributed pursuant to court order or any payments properly made before making of the claim subject to the claim.]

Comment. Section 7923 continues the substance of the second and third sentences of former Section 707(a).

Note. Subdivision (b) is subject to further review in connection with other code provisions.

Query. Section 707(a) permits the late filing of a claim where the claimant "had in good faith filed a claim in another proceeding for the same decedent which has not been consolidated with the present proceeding, and in which letters had not been issued." To what does this provision refer, and does it have any application other than perhaps as special legislation to take care of one case that arose sometime in the past?

27874

Article 4. Claims in Civil Actions

§ 7930. Claim prerequisite to action

7930. Except as otherwise provided in this article, no holder of a claim [against an estate] shall maintain an action on the claim unless the claim is first made as provided in this chapter.

Comment. Section 7930 continues the substance of former Section 716(a).

Query. Existing Section 716 bars an action on a claim "against an estate" unless the claim is first filed or presented. Is this intended to draw a distinction between a claim against the estate and one against the decedent? If not, is there a consistent set of terminology we should use to distinguish between debts incurred by the decedent and those incurred by the estate, and between suits against the estate and suits against the personal representative?

27853

§ 7931. Enforcement of security interest

7931. (a) The holder of a mortgage or lien, including but not limited to a judgment lien, may bring an action to enforce the lien against the property subject to the lien, whether or not a claim is first made, if in the complaint the holder of the lien expressly waives all recourse against any other property of the estate.

(b) Notwithstanding subdivision (a), no attorney's fees shall be recovered in the action unless a claim is first made as provided in this chapter.

Comment. Section 7931 continues the substance of former Section 716(b)-(c).

27815

§ 7932. Claim involving pending action

7932. (a) If an action is pending against the decedent at the time of death, the plaintiff shall make the claim in the same manner as if no action were pending. No recovery shall be had against the decedent's estate in the action except upon proof that the claim was made as provided in this chapter.

(b) Notwithstanding subdivision (a), if the claim is not made within the time for making a claim, the court may thereafter allow the claim to be filed, upon the claimant's verified petition and notice of hearing given pursuant to Section [1200.5], if the court finds that the claim was not timely made because neither the claimant nor the claimant's attorney had actual knowledge of the decedent's death at least 15 days before expiration of the time for making a claim. No relief shall be granted unless the petition is filed within a reasonable time after discovery of decedent's death, and in any event within one year after expiration of the time for making a claim and before petition for final distribution has been filed. Allowance of the claim shall be on such terms as may be just and equitable, and shall be subject to the following conditions:

[(1) Any property distributed pursuant to court order or any payment properly made before notice of the petition is not subject to the claim.

(2) If, at the time of filing the petition, assets of the estate have been paid to general creditors or distributed by decree of preliminary distribution to heirs or devisees (in either case after expiration of the time for making a claim)[?], and it appears that the filing and later establishment of the claim, in the circumstances, would cause or tend to cause unequal treatment between heirs, devisees, or creditors, then permission to file the claim shall be denied.]

Comment. Section 7932 continues the substance of portions of former Section 709.

CROSS-REFERENCES

Definition

Devisee § 32

Note. Subdivision (b) (1) and (2) are subject to further review in connection with other code provisions.

27809

§ 7933. Claim for injury or death not involving pending action

7933. (a) If a claim for damages for injuries to, or death of, a person is not made within the time for making a claim, and no action is pending against the decedent at the time of death, the court shall permit the filing of the claim upon application of the claimant made not later than one year after accrual of the claimant's cause of action, and upon such notice and hearing, if any, as the court may order. The court shall impose reasonable conditions upon the filing of the claim to avoid unequal treatment between the heirs, devisees, or creditors of the estate. The court shall, if required, appoint or reappoint a personal representative.

[(b) Neither the filing of a claim pursuant to this section nor its later establishment, in whole or in part, shall make property distributed pursuant to court order or any payments properly made before notice of the application subject to the claim. The personal representative, distributee, or payee is not liable on account of the prior distribution or payment.]

[(c) This section is not applicable to claims of public entities under Section 7951.]

Comment. Section 7933 continues the substance of former Section 720.

CROSS-REFERENCES

Definition

Devisees § 34

Note. Interrelation of this section with CCP § 353 is under study. Subdivision (b) is subject to further review in connection with other code provisions. Whether subdivision (c) is meaningful is under study.

§ 7934. Claim covered by insurance

7934. (a) Notwithstanding any other provision of law and without prior court approval, the making of a claim shall not be required and a civil action commenced before or after the death of the decedent may be maintained by a claimant to establish, to the limits of the insurance protection only, a liability of the decedent for which the decedent was protected by liability insurance.

(b) The action by the claimant shall name as the defendant "Estate of (name of decedent), Deceased." Summons shall be served upon the insurer. Further proceedings shall be in the name of the estate, but otherwise shall be conducted in the same manner and have the same effect as if the action were against the personal representative. For good cause, the court in which the civil action is pending, upon motion of an interested person or upon its own motion, may order the appointment and substitution of a personal representative as the defendant.

(c) The insurer may deny or otherwise contest its liability by cross-complaint in the action or by an independent action against the claimant, but the judgment on the cross-complaint or in the independent action shall not adjudicate rights by or against the estate.

(e) A judgment in favor of claimant in an action pursuant to this section shall be enforceable only from the insurance protection and shall not create a lien upon any property of the estate.

(f) The remedies of this section are cumulative, and may be pursued concurrently with other remedies.

Comment. Section 7934 continues the substance of former Sections 707(b), 709.1, and 721, and a portion of former Section 709, with the following changes:

(1) The provisions are applied uniformly to actions pending at the death of the decedent and actions commenced after the decedent's death.

(2) Court approval is not required before the plaintiff may commence an action against the estate.

(3) The insurer need not have accepted the defense of the cause and made an appearance in a pending action.

(4) The estate of the decedent need not otherwise qualify for Section [630] treatment.

Section 7934 applies in any case where there is a claim for damages for which the decedent was insured, whether for injury to or death of a person caused by the wrongful act or neglect of the decedent, or otherwise. This section applies where the amount of damages sought in the action does not exceed the maximum amount of the insurance or where recovery in excess of the maximum amount is waived. If the amount of

damages sought exceeds the insurance policy limits, a claim is necessary with respect to the amount in excess.

Nothing in Section 7934 affects any applicable statutes of limitation relating to the action. Cf. Code Civ. Proc. § 353.

Note. The interrelation of this provision with CCP § 385(b) (pending proceedings) is under review.

Query. Section 707(b), along with Sections 709.1, 721, and a portion of Section 709, deal with claims covered by insurance. They seem to be interrelated and to overlap somewhat, but the fine distinctions among the various provisions are too subtle for us to discern. We have attempted to simplify and consolidate these provisions in Section 7934 of the draft. Is this section sufficient?

31182

Article 5. Claims by Surviving Spouse

§ 7940. Claim by surviving spouse for payment of debt of decedent

7940. (a) The surviving spouse may make a claim for payment of ^a debt of the deceased spouse to the extent the surviving spouse is personally liable for the debt pursuant to Section [649.4]. The claim shall be made before the filing of a petition for final distribution.

(b) The claim shall include all of the following:

(1) The reason why the debt is not barred by [subdivision (d) of Section 649.4].

(2) A statement whether the debt remains unpaid or has been paid by the surviving spouse.

(3) An inventory of the [separate] property of the surviving spouse and any [community] property not administered in the estate and a statement of the value of the property less the amount of the liens and encumbrances upon the property, as of the date of death of the deceased spouse. The statement may identify any property that is exempt from enforcement of a money judgment.

Comment. Section 7940 continues the substance of former Section 704.2.

Note. Subdivision (b)(3) will be reviewed in connection with Section 980.

31066

§ 7941. Claim by surviving spouse for payment of debt of surviving spouse

7941. (a) The surviving spouse may make a claim for the payment of a debt of the surviving spouse for which property administered in the

estate is liable. The claim shall be made before the filing of a petition for final distribution.

(b) The claim shall include all of the following:

(1) A statement whether the debt remains unpaid or has been paid by the surviving spouse.

(2) An inventory of the [separate] property of the surviving spouse and any [community] property not administered in the estate and a statement of the value of the property less the amount of the liens and encumbrances upon the property as of the date of death of the deceased spouse. The statement may identify any property that is exempt from enforcement of a money judgment.

Comment. Section 7941 continues the substance of former Section 704.4 but broadens it consistent with general principles of liability of marital property for debts. See Civil Code §§ 5120.010-5122.

Note. Subdivision (b)(2) will be reviewed in connection with Section 980.

32808

§ 7942. Treatment of claim of surviving spouse

7942. (a) A claim of the surviving spouse made pursuant to this article shall be allowed in the proportion allocated to the estate pursuant to Section [980].

(b) The claim may be discharged by any of the following means:

(1) Payment to the surviving spouse.

(2) Payment to the creditors of the surviving spouse or deceased spouse as identified in the claim.

(3) A credit allowed the spouse in the order allocating debts made pursuant to Section [980].

Comment. Section 7942 continues the substance of former Section 713.5.

30938

Article 6. Claims by Public Entities

§ 7950. Claim by public entity required

7950. (a) Except as otherwise provided in this article, a claim by a public entity shall be made within the time prescribed in this chapter. Any claim not so made is barred forever, including any lien imposed for the claim.

(b) As used in this section, "public entity" has the meaning prescribed in Section 811.2 of the Government Code.

Comment. Section 7950 continues the substance of subdivision (a) of former Section 707.5. See Section 7900 ("claim" defined).

30947/NZ

§ 7951. Claims governed by other statutes

7951. (a) A claim arising under a law or code listed in subdivision (b) is barred only after written request to the agency and expiration of the period provided for in the applicable statute. If no written request is made the claim is barred at the time otherwise provided in the law or code.

(b)	Law or Code	Applicable Statute
	Sales and Use Tax Law (commencing with Section 6001 of the Revenue and Taxation Code)	Section 6487.1 of the Revenue and Taxation Code
	Bradley-Burns Uniform Local Sales and Use Tax Law (commencing with Section 7200 of the Revenue and Taxation Code)	Section 6487.1 of the Revenue and Taxation Code
	Transactions and Use Tax Law (commencing with Section 7251 of the Revenue and Taxation Code)	Section 6487.1 of the Revenue and Taxation Code
	Motor Vehicle Fuel License Tax Law (commencing with Section 7301 of the Revenue and Taxation Code)	Section 7675.1 of the Revenue and Taxation Code
	Use Fuel Tax Law (commencing with Section 8601 of the Revenue and Taxation Code)	Section 8782.1 of the Revenue and Taxation Code
	Personal Income Tax Law (commencing with Section 17001 of the Revenue and Taxation Code)	Section 19266 of the Revenue and Taxation Code
	Cigarette Tax Law (commencing with Section 30001 of the Revenue and Taxation Code)	Section 30207.1 of the Revenue and Taxation Code
	Alcoholic Beverage Tax Law (commencing with Section 32001 of the Revenue and Taxation Code)	Section 32272.1 of the Revenue and Taxation Code

Unemployment Insurance
Code

Section 1090 of the
Unemployment Insurance
Code

Welfare and Institutions
Code

Section 7277.1 of the
Welfare and Institutions
Code

Comment. Section 7951 continues the substance of former Section 707.5(b).

31154

§ 7952. Limitation on application of article

7952. This article does not apply to liability for the restitution of amounts illegally acquired through the means of any fraudulent, false, or incorrect claim or representation, or any forged or unauthorized endorsement.

Comment. Section 7952 continues the substance of former Section 707.5(e).

31157

§ 7953. Priority of claims not affected by article

7953. Except as provided in Section 7854, nothing in this article shall be construed to affect the order of priority of claims provided for under other provisions of law.

Comment. Section 7953 continues the substance of former Section 707.5(d).

31446

§ 7954. Claim by Director of Health Services

7954. If the decedent has received or may have received health care under the provisions of Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code, the heirs, devisees, personal representative, or the persons in possession of any property of the decedent shall give the Director of Health Services notice of the death no later than 90 days after the date of death. The notice shall be mailed addressed to the director at the Sacramento office of the director.

(b) A notice given pursuant to this section shall include a copy of the decedent's death certificate.

(c) The director has four months after notice is given pursuant to this section in which to make a claim. If assets of the estate have been distributed, the director is entitled to a claim against the distributees to the full extent of the director's claim, or each distributee's share of the distributed assets, whichever is less. The director's entitlement against distributees shall include interest at a rate of interest equal to that earned in the Pooled Money Investment Fund from the date of distribution or the date of making the claim by the director, whichever is later, plus other accruing costs as in the case of other executions.

(d) Failure to comply with the provisions of this section does not affect the validity of any proceeding under this division.

Comment. Section 7954 continues the substance of former Section 700.1.

CROSS-REFERENCES

Mailing § 7150

31450

Article 7. Allowance and Rejection of Claims

§ 7960. Procedure by personal representative

7960. Upon presentation of a claim to the personal representative, or upon transmittal of a claim filed with the court, the personal representative shall allow or reject it. [The allowance or rejection shall be in writing filed with the clerk, and with the date of the allowance or rejection endorsed on the writing.]

Comment. Section 7960 continues the substance of portions of former Sections 710 and 711.

Query. Existing Sections 710 and 711 require allowance or rejection of a claim by the personal representative or the judge to be filed with the clerk. What is the reason for the filing, and can it be eliminated?

31455

§ 7961. Procedure by court

7961. (a) If the personal representative allows a claim, the clerk, immediately after the filing of the allowance, shall present the claim and allowance to the court for approval or rejection. [The clerk shall, at the same time, indorse on the claim the date of presentation to the court.]

(b) When the claim is presented to the court, the court may, in its discretion, examine the claimant and others on oath, and hear any legal evidence touching the validity of the claim. The court shall indorse upon the claim approval or rejection, and the date of the approval or rejection.

[(c) If the court approves the claim, the approval shall be filed with the clerk within 30 days and the date of approval, together with the amount approved, shall be entered in the register by the clerk.]

Comment. Section 7961 continues the substance of portions of former Sections 708, 710, 711, and 713.

CROSS-REFERENCES

Actions at chambers § 7123

31185

§ 7962. Effect of statute of limitations

7962. (a) No claim barred by the statute of limitations shall be allowed by the personal representative or approved by the court.

(b) No claim that has been allowed is affected by the statute of limitations, pending administration of the estate.

Comment. Section 7962 continues the substance of the first and third sentences of former Section 708.

CROSS-REFERENCES

Actions at chambers § 7123

31456

§ 7963. Allowed and approved claims

7963. (a) Every claim allowed by the personal representative and approved by the court shall be ranked among the acknowledged debts of the estate, to be paid in due course of administration.

(b) The validity of an allowed and approved claim may be [contested] by any interested person at any time before settlement of the account of the personal representative in which it is first reported as an allowed and approved claim. This subdivision does not apply to a claim established by a judgment against [the personal representative.]

Comment. Section 7963 continues the substance of the first sentence of former Section 713. For claims established by judgments, see

CROSS-REFERENCES

Definition

Interested person § 48

32242

§ 7964. Notice of rejection

7964. When a claim is rejected either by the personal representative or by the court, written notice of rejection shall be given by the personal representative to the claimant. If it appears to the satisfaction of the court that the residence of the claimant is not known, and that the claimant cannot be found, the court shall order the notice to be given by filing it with the clerk.

Comment. Section 7964 continues the substance of the first and last sentences of former Section 714.

Query. Existing Section 714 includes a procedure for service of notice of rejection on the clerk where the residence of the claimant is not known. Isn't the claimant's mailing address on the claim, and why shouldn't this be preferred to the residence of the claimant?

32244

§ 7965. Failure of personal representative or court to act

7965. If within 30 days after a claim is made, the personal representative or court has refused or neglected to act on the claim, the refusal or neglect may, at the option of the claimant, be deemed equivalent to a rejection on the 30th day.

Comment. Section 7965 supersedes the first sentence of former Section 712. Section 7965 substitutes a 30-day period for the 10-day period formerly provided.

32245

§ 7966. Partial allowance

7966. (a) The personal representative may allow, or the court may approve, a claim in part. The allowance or approval shall state the amount for which the claim is allowed or approved.

(b) A claimant who refuses to accept the amount allowed or approved in satisfaction of the claim may bring an action on the claim in the manner prescribed in Section 7967. The claimant shall recover no costs in the action unless the claimant recovers a greater amount than that allowed or approved.

Comment. Section 7966 continues the substance of former Section 717.

32246

§ 7967. Action on rejected claim

7967. (a) A rejected claim is forever barred unless, within three months after the date of service of the notice of rejection, if the claim is then due or, if not, within two months after it becomes due, the claimant brings an action for recovery of the claim [in the proper court] against the personal representative. The time during which there is a vacancy in the administration is not included in any limitation prescribed in this subdivision for bringing suit upon a rejected claim.

(b) Within 10 days after the filing of the complaint the plaintiff shall file [or cause to be filed] in the estate proceedings, in the office of the clerk, a notice of the pendency of the action. If the notice is not so filed, the personal representative shall incur no liability as a result of any distribution of the estate. [Personal service of a copy of the summons and complaint upon the personal representative within the 10-day period is equivalent to filing the notice.]

(c) If the claimant fails to recover, the claimant shall pay all costs, including reasonable attorney's fees, to be fixed by the court in which the action is brought.

Comment. Subdivision (a) of Section 7967 continues the substance of a portion of the first sentence and the second, third, and fourth sentences of former Section 714 and of former Section 715. Subdivision (c) is comparable to the last sentence of Section 7915(c) (where personal representative is creditor).

CROSS-REFERENCES

Definition

Clerk § 29

Query. Section 714 requires filing of a notice of pendency of an action, but excuses the requirement if the personal representative is personally served. What is the reason for the filing requirement, since the personal representative will be served in every case, personally or by mail, as the defendant in the action?

§ 7968. Reference to determine disputed claim

7968. If the personal representative doubts the correctness of a claim, or has rejected a claim in whole or in part, or has failed to act on the claim within the time provided in Section 7965, the personal representative may do either of the following:

(a) Enter into an agreement in writing with the claimant to refer the matter in controversy to a commissioner or referee who is regularly attached to the court and designated in the agreement or to a judge pro tempore designated in the agreement. The agreement shall be filed with the clerk, who shall thereupon, with the approval of the court, enter an order referring the matter to the designated person. The commissioner or referee shall have the powers of a judge pro tempore. The designated person shall proceed promptly to hear and determine the matter in controversy by summary procedure, without any pleadings, discovery, or jury trial. The designated person shall make and file a decision in writing in which the facts found and conclusions of law shall be separately stated, and cause a copy of the decision to be mailed promptly to the parties. Judgment shall be entered on the decision and shall be as valid and effective as if it had been rendered by a judge of the court in an action against the personal representative commenced by ordinary process.

(b) Enter into an agreement in writing with the claimant that a judge sitting in probate, pursuant to the agreement and with the written consent of the judge, both filed with the clerk, may hear and determine the matter in controversy pursuant to the procedure provided in subdivision (a). [The agreement and consent shall be filed within the time specified in Section 7967 for bringing an independent action.]

Comment. Section 7968 continues the substance of former Section 718(2).

32452

§ 7969. Submission of claim to arbitration

7969. The personal representative may enter into an agreement in writing with a person having a disputed claim against the decedent or the estate, or with a person against whom the decedent or the estate has a disputed claim, to submit the matter in controversy to arbitration

under Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure, but no such agreement is effective unless it is first approved by the court and a copy of the approved agreement is filed in the proceeding.

Comment. Section 7969 is drawn from Section 2406 (guardianship and conservatorship).

Note. This section applies to actions by as well as against the estate, and may be relocated.

100/888

Article 8. Claims Established by Judgment

§ 7980. Money judgment against decedent

7980. (a) After the death of the decedent, the following judgments are not enforceable under the Code of Civil Procedure against the estate of the decedent but are payable in the due course of administration:

(1) A judgment upon a claim for money rendered against the decedent during the decedent's lifetime.

(2) A judgment upon a claim for money rendered against a decedent who died after trial and submission of the case to a judge sitting without a jury for decision or after a verdict.

(3) A judgment rendered against the personal representative upon a claim for money against the estate of the decedent.

(b) Except as provided in Section 7881, a judgment referred to in subdivision (a) shall be filed or presented in the same manner as other claims.

Comment. Section 7980 continues the substance of former Section 730(a)-(b). For an exception to the rule of Section 7980, see Section 7983.

32693

§ 7981. Money judgment against personal representative

7981. When a judgment rendered against a personal representative upon a claim for money [against the estate of the decedent] becomes final, it conclusively establishes the validity of the claim for the amount of the judgment. The judgment shall provide that it is payable in the due course of administration. An abstract of the judgment shall be [filed] in the administration proceedings.

Comment. Section 7981 continues the substance of former Section 731.

32801

§ 7982. Enforcement of non-money judgment

7982. (a) Notwithstanding the death of the decedent, a judgment for the possession of property or a judgment that requires a sale of property may be enforced under the Code of Civil Procedure. Nothing in this subdivision authorizes enforcement under the Code of Civil Procedure against any property of the estate of the decedent other than the property described in the judgment for possession or sale.

(b) After the death of the decedent, any demand for money against the estate that is not satisfied from the property described in the judgment for possession or sale shall be made as a claim in the same manner as other claims and is payable in the due course of administration.

Comment. Section 7982 continues the substance of former Section 730(d).

32802

§ 7983. Property under levy of execution

7983. If any property of the decedent is levied upon under a writ of execution before the decedent dies, the property levied upon may be sold or collected to satisfy the judgment. The officer making the sale or collection shall account to the personal representative for any surplus. If the judgment is not so satisfied, the balance of the judgment remaining unsatisfied is payable in the due course of administration.

Comment. Section 7983 continues the substance of former Section 730(c).

32803

§ 7984. Converting attachment lien to judgment lien

7984. (a) Pursuant to subdivision (b), an attachment lien may be converted into a judgment lien upon property of the estate subject to the attachment lien in either of the following cases:

(1) Where the judgment debtor dies after entry of judgment in an action in which the property was attached.

(2) Where a judgment is entered after the death of the defendant in an action in which the property was attached.

(b) To convert the attachment lien into a judgment lien, after entry of judgment in the action in which the property was attached and prior to the expiration of the attachment lien, the levying officer shall serve an abstract of the judgment and a notice that the attachment lien has become a judgment lien upon the person holding property pursuant to the attachment or shall record or file an abstract of the judgment and a notice that the attachment lien has become a judgment lien in any office where the writ and notice of attachment are recorded or filed. If the attached property is real property, the plaintiff or the plaintiff's attorney may record the required abstract and notice with the same effect as if recorded by the levying officer. The judgment lien has the same priority as the attachment lien.

(c) After the death of the decedent, any members of the decedent's family who were supported in whole or in part by the decedent may claim an exemption provided in Section 487.020 of the Code of Civil Procedure for property levied upon pursuant to the attachment if the right to the exemption exists at the time the exemption is claimed. The personal representative may claim the exemption on behalf of such members of the decedent's family. The claim of exemption may be made at any time prior to the time the abstract and notice has been served, recorded, or filed under subdivision (b) with respect to the property claimed to be exempt. The claim of exemption shall be made in the same manner as an exemption is claimed under Section 482.100 of the Code of Civil Procedure.

Comment. Section 7984 continues the substance of former Section 732.

32804

Article 9. Payment of Claims
[Subject to reorganization]

§ 7993. Interest on claims

7993. (a) Except as provided in subdivision (b), no greater rate of interest shall be paid upon any claim after its allowance and approval than 10 percent per annum. If the estate is insolvent, no greater rate of interest shall be paid upon any debt, [from the time of the first publication of notice to creditors,] than is allowed upon judgments.

(b) For claims based upon written contract, the rate of interest specified in the contract shall be paid in accordance with the terms of the contract until the claim is paid in full.

(c) If any debt of the decedent bears interest, whether made as a claim or not, the personal representative, by order of the court, may pay the amount then accumulated and unpaid, or any part of such amount, at any time when there are [sufficient funds properly applicable to the payment], whether the claim is then due or not. The interest shall thereupon cease to accrue upon the amount paid.

Comment. Section 7993 continues the substance of former Section 733.

3320

§ 7997. Deposit for unknown claimant

7997. (a) Whenever an estate is in all other respects ready to be closed, and it is made to appear to the satisfaction of the court, by affidavit or by evidence taken in open court, that an allowed and approved claim has not been and cannot be paid because the claimant cannot be found, the court shall make an order fixing the amount of the claim, with interest, if any, and directing the personal representative to deposit that amount with the county treasurer of the county in which the proceedings are pending.

(b) The county treasurer shall give a receipt for the deposit, and is liable for the deposit upon the official bond of the county treasurer. The receipt shall be deemed and received by the court as a voucher in favor of the personal representative with the same force and effect as if executed by the claimant.

(c) Any money deposited with the county treasurer under the provisions of this section shall be received, accounted for, and disposed of as provided by Section 1444 of the Code of Civil Procedure. Any money deposited in the State Treasury under the provisions of [this?] section shall be deemed to be so deposited under the provisions of Article 1 (commencing with Section 1440) of Chapter 6 of Title 10 of Part 3 of the Code of Civil Procedure.

Comment. Section 7997 continues the substance of former Section 738.

CROSS-REFERENCES

Code Civ. Proc. § 166, Actions at chambers

EXHIBIT 2

3420

§ 29. Clerk

29. "Clerk" means the clerk of the court having jurisdiction of the estate of a decedent.

Comment. Section 29 is new. It is intended for drafting convenience.

999/320

§ 59. Personal representative

59. (a) "Personal representative" means executor, administrator, administrator with will annexed, special administrator, or successor personal representative.

(b) "General personal representative" excludes special administrator, except a special administrator granted the powers, duties, and obligations of a general personal representative pursuant to Section 7435.

Comment. Section 59 is drawn from Section 1-201(30) of the Uniform Probate Code.

3323

Code of Civil Procedure § 353 (amended)

SEC. ____ . Section 353 of the Code of Civil Procedure is amended to read:

353. (a) If a person entitled to bring an action dies before the expiration of the time limited for the commencement ~~thereof~~ of the action, and the cause of action survives, an action may be commenced by ~~his representatives~~ the personal representative, after the expiration of that time, and within six months from ~~his~~ the date of death.

(b) If a person against whom an action may be brought dies before the expiration of the time limited for the commencement ~~thereof~~ of the action, and the cause of action survives, an action may be commenced against ~~his representatives~~ the personal representative, after the expiration of that time, and within one year after the ~~issuing of letters testamentary or of administration~~ issuance of letters, or an action against the estate provided for by subdivision (b) of Section

385 of the Code of Civil Procedure, ~~subdivision (b) of Section 707~~
~~of the Probate Code or Section 721~~ or Section 7934 of the Probate Code
may be commenced within one year after the expiration of the time other-
wise limited for the commencement ~~thereof~~ of the action.

EXHIBIT 3

Probate Code § 700 (repealed)

Comment. The substance of subdivision (a) of former Section 700 is continued in Sections 7901 (notice to creditors), 7910 (how claim is made), 7920 (four-month claim period), and 59 ("general personal representative" defined). The substance of subdivision (b) is continued in Section 7821 (time not extended by vacancy in office). The substance of subdivision (c) is continued in Section 7920(b) (four-month claim period).

Probate Code § 700.1 (repealed)

Comment. The substance of former Section 700.1 is continued in Sections 7954 (claim by Director of Health Services) and 7150 (mailing).

Probate Code § 703 (repealed)

Comment. The substance of former Section 703 is continued in Section 7915 (where personal representative is creditor).

Probate Code § 704 (repealed)

Comment. The substance of former Section 704 is continued in Section 7916 (where judge is creditor).

Probate Code § 704.2 (repealed)

Comment. The substance of former Section 704.2 is continued in Sections 7940 (claim by surviving spouse for payment of debts of decedent) and 7910 (how claim is made).

Probate Code § 704.4 (repealed)

Comment. The substance of former Section 704.4 is continued in Section 7941 (claim by surviving spouse for payment of debts of surviving spouse), broadened for consistency with general principles of liability of marital property for debts.

Probate Code § 705 (repealed)

Comment. The substance of former Section 705 is continued in Section 7911 (documentary support of claim).

Probate Code § 706 (repealed)

Comment. The substance of former Section 706 is continued in Section 7912 (claim founded upon written instrument).

Probate Code § 707 (repealed)

Comment. The substance of the first sentence of subdivision (a) of former Section 707 is continued in Sections 7900 ("claim" defined), 7902 (claim requirement), and 7913 (procedure when claim filed). See also Section 7920 (four-month claim period). The substance of the second sentence is continued in Sections 7902 (claim requirement) and 7923 (late claims). The substance of the remainder of subdivision (a) is continued in Section 7923 (late claims).

Subdivision (b) is superseded by Section 7934 (claim covered by insurance).

Probate Code § 707.5 (repealed)

Comment. The substance of subdivision (a) of former Section 707.5 is continued in Section 7950 (claim by public entity required). The substance of subdivision (b) is continued in Section 7951 (claims governed by other statutes). The substance of subdivision (c) is continued in Section 7900(a)(3) ("claim" defined). The substance of subdivision (d) is continued in Section 7953 (priority of claims not affected by article). The substance of subdivision (e) is continued in Section 7952 (limitation on application of article).

Probate Code § 708 (repealed)

Comment. The substance of the first sentence of former Section 708 is continued in Section 7962(a) (effect of statute of limitations). The substance of the second sentence is continued in Section 7961(b) (procedure by court). The substance of the third sentence is continued in Section 7962(b) (effect of statute of limitations).

Probate Code § 709 (repealed)

Comment. The substance of former Section 709 is continued in Sections 7932 (claim involving pending action) and 7934 (claim covered by insurance).

Probate Code § 709.1 (repealed)

Comment. Section 709.1 is superseded by Section 7934 (claim covered by insurance).

Probate Code § 710 (repealed)

Comment. The substance of the first two sentences of former Section 710 is continued in Section 7913 (procedure when claim filed). The substance of the third sentence is continued in Section 7960 (procedure by personal representative). The substance of the last two sentences is continued in Section 7961 (procedure by court).

Probate Code § 711 (repealed)

Comment. The substance of the first sentence of former Section 711 is continued in Section 7960 (procedure by personal representative).

The substance of the second sentence is continued in Section 7961 (procedure by court).

Probate Code § 712 (repealed)

Comment. The first sentence of former Section 712 is superseded by Section 7965 (failure of personal representative or court to act). The substance of the second sentence is continued in Section 7914 (claim presented by notary). The substance of the last sentence is continued in Section 7922 (where personal representative acts on claim after expiration of time).

Probate Code § 713 (repealed)

Comment. The substance of the first sentence of former Section 713 is continued in Section 7963 (allowed and approved claims). The substance of the second sentence is continued in Section 7961 (procedure by court).

Probate Code § 713.5 (repealed)

Comment. The substance of former Section 713.5 is continued in Section 7942 (treatment of claim of surviving spouse).

Probate Code § 714 (repealed)

Comment. The substance of a portion of the first sentence and fifth sentence of former Section 714 is continued in Section 7964 (notice of rejection). The substance of a portion of the first sentence and the second, third, and fourth sentences is continued in Section 7967 (action on rejected claim).

Probate Code § 715 (repealed)

Comment. The substance of former Section 715 is continued in Section 7967(a) (action on rejected claim).

Probate Code § 716 (repealed)

Comment. The substance of subdivision (a) of former Section 716 is continued in Sections 7930 (claim prerequisite to action) and 7910(a) (how claim is made). The substance of subdivisions (b) and (c) is continued in Section 7931 (enforcement of security interest).

Probate Code § 717 (repealed)

Comment. The substance of former Section 717 is continued in Section 7965 (partial allowance).

Probate Code § 718 (repealed)

Comment. Subdivision (1) of former Section 718 is not continued. The substance of subdivision (2) is continued in Section 7968 (reference to determine disputed claim).

Probate Code § 718.5 (repealed)

Comment. [To be disposed of in another context.]

Probate Code § 718.6 (repealed)

Comment. [To be disposed of in another context.]

Probate Code § 718.7 (repealed)

Comment. [To be disposed of in another context.]

Probate Code § 719 (repealed)

Comment. [To be disposed of in another context.]

Probate Code § 720 (repealed)

Comment. The substance of former Section 720 is continued in Section 7933 (claim for injury or death not involving pending action).

Probate Code § 721 (repealed)

Comment. The substance of former Section 721, with the exception of subdivision (b) is continued in Section 7934 (claim covered by insurance). Subdivision (b) is superseded by the introductory portion of Section 7934(a).

Probate Code § 730 (repealed)

Comment. The substance of subdivisions (a) and (b) of former Section 730 is continued in Section 7980 (money judgment against decedent). The substance of subdivision (c) is continued in Section 7983 (property under levy of execution). The substance of subdivision (d) is continued in Section 7982 (enforcement of non-money judgment).

Probate Code § 731 (repealed)

Comment. The substance of former Section 731 is continued in Section 7981 (money judgment against personal representative).

Probate Code § 732 (repealed)

Comment. The substance of former Section 732 is continued in Section 7984 (converting attachment lien to judgment lien).

Probate Code § 733 (repealed)

Comment. The substance of former Section 733 is continued in Section 7993 (interest on claims).

Probate Code § 736 (repealed)

Comment. [To be disposed of in another context.]

Probate Code § 737 (repealed)

Comment. [To be disposed of in another context.]

Probate Code § 738 (repealed)

Comment. The substance of former Section 738 is continued in Section 7997 (deposit for unknown claimant).