

Memorandum 85-48

Subject: Study L-1030 - Probate Code (Collection or Transfer of Small Estate Without Administration)

Attached to this memorandum is a draft statute relating to the collection or transfer of small estates without administration. This draft supersedes existing Probate Code Sections 630-632. The draft includes new provisions relating to a court order determining succession to real property of a small estate and an affidavit procedure for the transfer of real property of small value.

The draft continues existing law with some significant changes. The policy issues raised by the draft are noted in the "Draftsman's Note" which follows the text and Comment to various sections of the draft. At the meeting, we will consider the draft section by section.

Attached as Exhibit 1 are Comments showing the disposition of the existing sections that would be superseded by the attached draft and Comments to the conforming revisions that would be required by the attached draft.

Attached as Exhibit 2 is a copy of the Arizona statute and background material relating to that statute. Some of the provisions of the draft statute attached to this memorandum are drawn from the Arizona statute.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

Outline of Draft Statute

DIVISION 8. DISPOSITION OF ESTATE WITHOUT ADMINISTRATION

PART 2. COLLECTION OR TRANSFER OF SMALL ESTATES
WITHOUT ADMINISTRATION

CHAPTER 1. DEFINITIONS

- § 9600. Construction of words and phrases
- § 9602. County assessment roll
- § 9603. Holder of the decedent's property
- § 9604. Real property
- § 9606. Successor of the decedent

CHAPTER 2. GENERAL PROVISIONS

- § 9610. Gross value of decedent's property in this state must not exceed \$60,000; exclusion in determining value
- § 9611. Authority of guardian, conservator, trustee, or custodian

CHAPTER 3. AFFIDAVIT PROCEDURE FOR COLLECTION
OR TRANSFER OF PERSONAL PROPERTY

- § 9630. Transfer of personal property without probate
- § 9631. Furnishing of affidavit
- § 9632. Presenting decedent's evidence of ownership
- § 9633. Proof of identity of persons executing the affidavit
- § 9634. Transfer of property to successor
- § 9635. Protection of transferor from liability
- § 9636. Claim against estate in probate
- § 9637. No pending probate proceeding; later probate proceeding not precluded
- § 9638. Personal liability for decedent's unsecured debts
- § 9639. Personal liability to person having superior right
- § 9640. Restitution if estate proceeding commenced
- § 9641. Limitation on liability
- § 9642. Other remedies not affected
- § 9643. Payment of costs and fees of public administrator
- § 9644. Chapter does not apply to real property

CHAPTER 4. COURT ORDER DETERMINING SUCCESSION TO REAL PROPERTY

- § 9650. No pending probate proceeding
- § 9651. Petition for court order determining succession to real property
- § 9652. Contents of petition
- § 9653. Notice of hearing
- § 9654. Court order

- § 9655. Finality of order
- § 9656. Personal liability of petitioners
- § 9657. Attorney's fee
- § 9658. Inventory and appraisalment

CHAPTER 5. AFFIDAVIT PROCEDURE FOR TRANSFER OF REAL PROPERTY
OF SMALL ESTATE

- § 9680. Filing affidavit in superior court
- § 9681. Filing fee
- § 9682. Issuance and recording of certified copy of affidavit
- § 9683. Effect of recorded affidavit
- § 9684. Personal liability for decedent's unsecured debts
- § 9685. Personal liability to person having superior right
- § 9686. Restitution if estate proceeding commenced
- § 9687. Limitation on liability
- § 9688. Other remedies not affected

DIVISION 8. DISPOSITION OF ESTATE WITHOUT ADMINISTRATION
PART 2. COLLECTION OR TRANSFER OF SMALL ESTATES
WITHOUT ADMINISTRATION

CHAPTER 1. DEFINITIONS

§ 9600. Construction of words and phrases

9600. Unless the provision or context otherwise requires, the words and phrases defined in this chapter govern the construction of this part.

Comment. Sections 9602-9606 provide definitions of terms used in this part.

§ 9602. County assessment roll

9602. "County assessment roll means the county assessment roll that was the current roll (as defined in Section 125 of the Revenue and Taxation Code) at the time the decedent died.

Comment. Section 9602 is new. See Rev. & Tax. Code § 125 ("Current roll" means the roll containing the property on which current taxes are a lien).

§ 9603. Holder of the decedent's property

9603. "Holder of the decedent's property" means the person owing money to the decedent, having custody of tangible personal property of the decedent, or acting as registrar or transfer agent of the evidences of a debt, obligation, interest, right, security, or chose in action belonging to the decedent.

Comment. Section 9603 is drawn from language of a portion of subdivision (b) of former Section 630. A person owing money to the decedent includes a financial institution. See Section 56 (defining "person").

CROSS-REFERENCES

Definitions

Person § 56
Personal property § 58
Security § 70

§ 9604. Real property

9604. "Real property" includes any interest in real property.

Comment. Section 9604 is new.

§ 9606. Successor of the decedent

9606. "Successor of the decedent" means:

(a) If the decedent died leaving a will, the beneficiary or beneficiaries who succeeded to the property of the decedent under the decedent's will. For the purposes of this part, the trustee of a trust created during the decedent's lifetime is a beneficiary under the decedent's will if the trust succeeds to property of the decedent under the decedent's will.

(b) If the decedent died without a will, the surviving spouse of the decedent or, if none, the person or persons who succeeded to the property of the decedent under Section 6402.

Comment. Subdivision (a) of Section 6906 is drawn from a portion of subdivision (b) of former Section 630. A trustee of a trust created by the will of the decedent is not a beneficiary under the decedent's will for the purposes of this part. See the Comment to Section 9611. Subdivision (b) of Section 6906 expands the provision of subdivision (b) of former Section 630 which limited the heirs who could use the former summary affidavit procedure to the following relatives of the decedent: surviving spouse, children, issue of deceased children, parents, brothers and sisters, issue of deceased brothers and sisters, and grandparents. Under subdivision (b), the persons who can use the summary provisions of this part are not so limited.

DRAFTSMAN'S NOTE. Subdivision (b) of Section 9606 does not continue the "close relative" requirement of former law. The Commission decided at the January 1985 meeting not to continue this requirement in the new statute.

CROSS-REFERENCES

Definitions

Property § 62
Surviving spouse § 78
Trust § 82
Trustee § 84
Will § 88

CHAPTER 2. GENERAL PROVISIONS

§ 9610. Gross value of decedent's property in this state must not exceed \$60,000; exclusions in determining value

9610. (a) The procedures provided by Chapter 3 (commencing with Section 9630) and Chapter 4 (commencing with Section 9650) may be used

only if the gross value of the decedent's real and personal property in this state, excluding the property described in subdivisions (b), (c), and (d), does not exceed sixty thousand dollars (\$60,000).

(b) For the purposes of this part:

(1) Any property or interest 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 interest terminable upon the decedent's death, or which was held by the decedent and passed to the decedent's surviving spouse pursuant to Section 9500, shall be excluded in determining the property or estate of the decedent or its value.

(2) A multiple-party account to which the decedent was a party at the time of the decedent's death shall be excluded in determining the property or estate of the decedent or its value, whether or not all or a portion of the sums on deposit are community property, to the extent that the sums on deposit belong after the death of the decedent to a surviving party, P.O.D. payee, or beneficiary. As used in this paragraph, the terms "multiple-party account," "party," "P.O.D. payee," and "beneficiary" have the meaning given those terms by Section 5101.

(c) For the purposes of this part, all of the following property shall be excluded in determining the property or estate of the decedent or its value:

(1) Any vehicle registered under Division 3 (commencing with Section 4000) of the Vehicle Code or titled under Division 16.5 (commencing with Section 38000) of the Vehicle Code.

(2) Any vessel numbered under Division 3.5 (commencing with Section 98401) of the Vehicle Code.

(3) Any manufactured home, mobilehome, commercial coach, or truck camper registered under the provisions of Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code.

(d) For the purpose of subdivision (a), the value of the following property shall be excluded in determining the value of the decedent's property in this state:

(1) Any amounts due to the decedent for services in the armed forces of the United States.

(2) The amount, not exceeding five thousand dollars (\$5,000), of salary or other compensation, including compensation for unused vacation, owing to the decedent for personal services from any employment.

(e) For the purposes of this section, the gross value of the decedent's interest in real property shall be determined from the full cash value of the property as determined from the county assessment roll.

Comment. Subdivisions (a), (c), and (d) of Section 9610 continue the substance of subdivision (a) of former Section 630, except that Section 9610 does not continue the provision of former Section 630 that precluded the use of affidavit procedure to collect or transfer personal property if the decedent's estate in this state included real property having a gross value exceeding \$10,000. This omission has no effect on the limitation of former Section 630 that the gross value of the decedent's real and personal property in this state (with some exclusions) not exceed \$60,000, and this limitation is continued in Section 9610.

Paragraph (1) of subdivision (b) continues former Section 632. It should be noted that the exclusion for an interest that terminates at death embraces life interests in trusts and contractual rights (such as insurance and employee retirement or death benefits) that terminate at death, as well as life interests in other property. McCarroll, California Decedent Estate Administration Supp. § 3.6 at 69 (Cal. Cont. Ed. Bar 1984). Paragraph (2) of subdivision (b) is new and is the same as subdivision (b) of former Section 647. Paragraph (2) is a special application of paragraph (1) of subdivision (b) of Section 9610 and continues prior law by making clear that funds in a multiple-party account as defined in Section 5101 are excluded in determining the property or estate of the decedent or its value to the extent that the funds belong after the death of the decedent to a surviving party, P.O.D. payee, or beneficiary. Under former Section 632 (now paragraph (1) of subdivision (b) of Section 9610), joint tenancy accounts were expressly excluded from the decedent's estate, and Totten trust accounts and P.O.D. accounts were presumably also excluded as an estate terminable upon the decedent's death. Paragraph (2) excludes multiple-party account funds, whether or not they are community property under Section 5305, to the extent that the funds pass to a surviving party, P.O.D. payee, or beneficiary. To the extent that the funds do not belong after the death of the decedent to a surviving party, P.O.D. payee, or beneficiary, the funds are includable in the decedent's estate for the purpose of this part. Cf. Estate of Pezzola, 112 Cal. App.3d 752, 169 Cal. Rptr. 464 (1980).

Subdivision (c) continues former law. The excluded property can be transferred, without probate, under special statutory provisions. See Health and Safety Code § 18102 (manufactured homes, mobilehomes, commercial coaches, and truck campers), Veh. Code §§ 5910 (vehicles), 9916 (vessels). [Note. The Comment to subdivision (c) assumes that Commission's Recommendation Relating to Transfer Without Probate of Title to Certain Property Registered by the State (submitted to 1985 legislative session) in Assembly Bill 196 is enacted.]

Subdivision (d) provides a salary exclusion in determining the value of the decedent's property. Although this exclusion does not prevent the use of the affidavit procedure under Sections 9630-9640 to collect salary owed to the decedent, other procedures for collection of the salary owed to the decedent may be available. See, e.g., Gov't Code §§ 12479 (designation by state employee of person to receive warrants upon employee's death), 53245 (designation by public employee of person to receive warrants upon employee's death). See also Prob. Code §§ 160 (payment of money due to decedent to person designated by decedent), 9550 (collection by surviving spouse of compensation, not exceeding \$5,000, owed by employer to decedent).

Subdivision (e) is a new provision drawn from the Arizona statute. See 1983 Ariz. Stats. ch. 196 (Ariz. Rev. Stats. §§ 14-3971, 14-3972). For a discussion of the Arizona statute, see Effland, Handling Real and Personal Property at Death Under the 1983 Amendments to the Arizona Probate Code, Arizona Bar J. December-January 1984 at 35. Using full cash value as determined from the assessment roll avoids the need for an appraisal of the property and, at the same time, provides sufficient assurance that use of the summary procedure is restricted to relatively small estates. See also Section 9602 (defining "county assessment roll").

CROSS-REFERENCES

Definitions

- Community property § 28
- County assessment roll § 9602
- Personal property § 58
- Property § 62
- Real property § 9604
- Surviving spouse § 78

DRAFTSMAN'S NOTE. Section 9610 defines what constitutes a small estate for the purposes of the affidavit procedure used to collect or transfer personal property by affidavit. The same definition is used in the new provisions relating to a court order determining succession to real property.

Section 9610 retains the substance of existing law with three changes:

(1) Subdivision (a) requires (as does existing law) that the gross value of the decedent's real and personal property in this state not exceed \$60,000. Omitted from subdivision (a) is the requirement of existing law that the gross value of the real property in the estate not exceed \$10,000 in value. This omission was suggested by various local bar associations.

(2) The existing provisions excluding state registered property (vehicles and the like) in determining whether the property exceeds \$60,000 in value are expanded by subdivision (c) to include the additional types of property that would be added by 1985 Assembly Bill 196 (recommended by the Law Revision Commission). These separate types of state registered property are transferred without probate under provisions of the Health and Safety Code and Vehicle Code.

(3) A new provision is added in subdivision (e) to provide that the gross value of the decedent's interest in real property shall be determined from the full cash value of the property as determined for

real property tax purposes. This provision is drawn from the Arizona statute. Under the existing affidavit procedure, there is no similar standard for determining the value of the decedent's real property. Existing law requires merely that the affidavit state that the value of the decedent's real and personal property in this state does not exceed \$60,000 in value (and that the value of the real property does exceed \$10,000 in value, a requirement to be eliminated). There is no direction to the person executing the affidavit as to how the value of the real property is to be determined. The addition of the provision requiring use of the full cash value as determined for real property tax purposes will provide a standard to be used by the person executing the affidavit, and the use of this standard will provide some certainty in determining value for the purpose of determining whether the affidavit procedure can be used to transfer title to personal property. It should be noted that gross value of the property is used; liens and encumbrances are not subtracted in determining the value. Hence, the value used will have no relationship to the decedent's interest in the property. For example, the decedent may own a tract of real property having gross value of \$50,000 but the liens and encumbrances may reduce the decedent's equity in the property to \$5,000. Or the property may be owned outright, and the decedent's equity in the property be \$50,000. The purpose of using the gross value is to make it easy to determine those cases where we will permit use of the summary affidavit procedure. In the interest of simplicity, we use the gross value and ignore the liens and encumbrances. The gross value determined from the assessed value for property tax purposes is sufficiently accurate for use as a screen to select cases where the affidavit procedure can be used. There is no need to place a precise current value on the real property merely for the purpose of selecting those cases where the summary affidavit procedure can be used.

The definition of what constitutes a small estate for the purposes of the affidavit procedure is also used in the new provision relating to a court order determining succession to real property. This will provide a consistent standard for use to transfer personal property and to transfer real property. Use of a different standard to transfer real property could result, for example, in an ability to transfer personal property interests but not real property interests in the same estate.

§ 9611. Authority of guardian, conservator, trustee, or custodian

9611. For the purposes of this part:

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

(b) A trustee of a trust created during the decedent's lifetime may act on behalf of the trust.

(c) If the decedent's will nominates a custodian to receive a devise to a beneficiary under the Uniform Gifts to Minors Act or the Uniform Transfer to Minors Act of any state and the nomination has not been revoked, the custodian may act on behalf of the beneficiary until such time as the custodianship terminates.

Comment. Subdivision (a) of Section 9611 is drawn from subdivision (d) of former Section 650 and is consistent with the portion of subdivision (b) of former Section 630 which referred to the guardian or conservator of the estate. Subdivision (b) is new and supersedes the portion of subdivision (b) of former Section 630 which referred to a trustee. The trustee must be the trustee of a living trust created by the decedent or by another during the decedent's lifetime or of a testamentary trust created by another who died during the decedent's lifetime; the trustee of a trust created by the decedent's will is not included under subdivision (b). Subdivision (c) is drawn from subdivision (c) of former Section 630.

CROSS-REFERENCES

Definitions

Property § 62
Trust § 82
Trustee § 84
Will § 88

CHAPTER 3. AFFIDAVIT PROCEDURE FOR COLLECTION OR TRANSFER OF PERSONAL PROPERTY

§ 9630. Transfer of personal property without probate

9630. Subject to the provisions of this chapter and Chapter 2 (commencing with Section 9610), if 40 days have elapsed since the death of the decedent, the successor of the decedent may do any one or more of the following without procuring letters of administration or awaiting the probate of the will:

- (a) Collect any money due the decedent.
- (b) Receive any tangible personal property of the decedent.
- (c) Have any evidences of a debt, obligation, interest, right, security, or chose in action belonging to the decedent transferred, whether or not secured by a lien on real property.

Comment. Section 9630 is drawn from a portion of former Section 630.

The requirement that 40 days have elapsed since the death of the decedent is new. The new 40-day requirement is consistent with Section 9520 (surviving spouse has power to deal with and dispose of real property after 40 days from the death of other spouse). For similar requirements, see Health & Safety Code § 18102 (requirement

that 40 days have elapsed from death of owner to permit transfer of registration of manufactured home, mobilehome, commercial coach, or truck camper using affidavit procedure), Veh. Code § 9916 (requirement that 40 days have elapsed from death of owner to permit transfer of ownership of vessel using affidavit procedure). For a provision permitting a surviving spouse to collect salary owing to the deceased spouse without waiting for a 40-day period to elapse, see Section 9550.

The procedure provided by this chapter can be used only if all of the following conditions are satisfied:

(1) The gross value of the decedent's real and personal property in this state (excluding certain property) does not exceed \$60,000. See Section 9610.

(2) No proceeding for the administration of the decedent's estate is pending or has been conducted in California. See Section 9637.

(3) Not less than 40 days have elapsed since the death of the decedent. See Section 9630.

(4) The person who seeks to collect the money, receive the property, or have the evidences transferred is the successor of the decedent. See Section 9631. See also Section 9606 (defining "successor of the decedent").

The procedure under this chapter can not be used for real property. See Section 9644. For a procedure for obtaining, without probate, a court order determining the persons who succeed to real property of a decedent (limit as to value of decedent's estate), see Sections 9650-9656. For an affidavit procedure for obtaining marketable title to real property of a decedent without probate (limit as to value of the real property), see Sections 9680-9688. For a procedure permitting a surviving spouse to obtain a court order that real property passed to the surviving spouse (without limit as to the value of the real property), see Sections 9560-9571. See also Sections 9520-9521 (right of surviving spouse to dispose of real property).

CROSS-REFERENCES

Definitions

- Personal property § 58
- Real property § 9604
- Security § 70
- Successor of the decedent § 9606
- Will § 88

DRAFTSMAN'S NOTE. Section 9630 includes a new requirement that 40 days have elapsed since the death of the decedent before the affidavit procedure can be used to collect personal property. No such delay is required by existing law.

Other states that have a summary procedure generally require that 30 days have elapsed after the death of the decedent before the procedure can be used. Some of these states are Arizona, Delaware, Missouri, and Texas. Arkansas has a 45-day delay requirement. Transfer in California of title of certain state registered property is proposed to be subject to a 40-day delay requirement. (1985 Assembly Bill 196.) California also has a 40-day delay requirement under Section 649.2 (surviving spouse has power to deal with and

dispose of real property after 40 days from the death of other spouse). The delay requirement allows time for persons interested in the estate to take some action before a summary distribution is made.

If there is to be a 40-day delay in collection of personal property by affidavit, we need to deal with the needs of a surviving spouse during the interim. In the draft statute attached to Memorandum 85-47 (passage of property to surviving spouse without administration), the staff proposes a special provision (Section 9550) to permit a surviving spouse to collect compensation owing to the deceased spouse without delay. The amount that could be collected under that special provision is not to exceed \$5,000. This amount could be collected by affidavit without regard to the value of the decedent's estate.

§ 9631. Furnishing of affidavit

9631. (a) To collect money, receive tangible personal property, or have evidences transferred under this chapter, an affidavit shall be furnished to the holder of the decedent's property stating all of the following:

(1) The decedent's name.

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

(3) At least 40 days have elapsed since the death of the decedent.

(4) No proceeding is now being or has been conducted in California for administration of the decedent's estate.

(5) The gross value of the decedent's real and personal property in California, excluding the property described in subdivisions (b), (c), and (d) of Section 9610 of the California Probate Code, does not exceed sixty thousand dollars (\$60,000). The gross value of the decedent's interest in any real property is determined from the full cash value of the property as determined from the county assessment roll as defined in Section 9602 of the California Probate Code.

(6) A description of the property of the decedent that is to be paid, delivered, or transferred.

(7) The affidavit is executed by the successor of the decedent (as defined in Section 9606 of the California Probate Code) to the decedent's interest in the described property.

(8) No other person has a right to the interest of the decedent in the described property.

(9) Each person signing the affidavit affirms that all of the statements in the affidavit are true and further acknowledges that any false statement may subject the person to penalties relating to perjury.

(b) A declaration under penalty of perjury under the laws of the State of California may be used in place of an affidavit under this chapter.

Comment. Section 9631 supersedes portions of subdivision (b) of former Section 630. The portions of Section 9631 prescribing the contents of the affidavit and the method for determining the value of real property are new.

CROSS-REFERENCES

Definitions

County assessment roll § 9602

Holder of the decedent's property § 9603

Person § 56

Personal property § 58

Property § 62

Successor of the decedent § 9606

Real property § 9604

Persons authorized to act on behalf of heir or beneficiary § 9611

§ 9632. Presenting decedent's evidence of ownership

9632. (a) If the decedent had evidence of ownership of property described in the affidavit (such as a stock certificate, bank passbook, or promissory note), the evidence of ownership, if available, shall be presented with the affidavit to the holder of the decedent's property.

(b) If the decedent had evidence of ownership of property described in the affidavit and the evidence of ownership is not presented with the affidavit to the holder of the property, the holder may require, as a condition for the payment, delivery, or transfer of the property, an indemnification or bond in a reasonable amount determined by the holder to be sufficient to indemnify the holder against all liability, claims, demands, loss, damages, costs, and expenses that the holder may incur or suffer by reason of the payment, delivery, or transfer of the property.

Comment. Section 9632 is new. Subdivision (a) is comparable to Health & Safety Code § 18102 and Vehicle Code §§ 5910 and 9916 (transfer upon affidavit of manufactured home, mobilehome, commercial coach, truck camper, vehicle, or vessel upon furnishing affidavit and appropriate certificate of ownership or title and registration card, if available). See also Financial Code Section 6950 (payment of deposit account upon presentation of evidence of account, if any). Subdivision (b) is included to protect the holder against the possible

claim of another where there is outstanding evidence of ownership. The provision is drawn in part from Financial Code Section 6652 (issuance of new evidence of account by savings and loan association).

CROSS-REFERENCES

Definitions

Holder of the decedent's property § 9603
Property § 62

DRAFTSMAN'S NOTE. Existing law does not deal with the problem of an outstanding instrument that evidences ownership, such as a stock certificate, bank passbook, or promissory note. The existing provisions relating to transfer of title to state registered property require the presentation of the registration or title document, if available. Section 9632 deals with this matter and requires presentation of the evidence of ownership, if available. If the evidence of ownership is not presented, the holder of the property may require the person seeking the delivery or transfer of the property to provide a satisfactory indemnification or bond to hold the holder harmless.

§ 9633. Proof of identity of persons executing the affidavit

9633. (a) Reasonable proof of the identity of each person executing the affidavit shall be provided to the holder of the decedent's property.

(b) Reasonable proof of identity is provided for the purposes of this section if both of the following requirements are satisfied:

(1) The person executing the affidavit is personally known to the holder.

(2) The person executes the affidavit in the presence of the holder.

(c) If the affidavit is executed in the presence of the holder, a written statement under penalty of perjury by a person personally known to the holder affirming the identity of the person executing the affidavit is reasonable proof of identity for the purposes of this section.

(d) If the affidavit is executed in the presence of the holder, the holder may reasonably rely on any of the following as reasonable proof of identity for the purposes of this section:

(1) An identification card or driver's license issued by the California Department of Motor Vehicles that is current or has been issued within five years.

(2) A passport issued by the Department of State of the United States that is current or has been issued within five years.

(3) Any of the following documents if the document is current or has been issued within five years and contains a photograph and description of the person named on it, is signed by the person, and bears a serial or other identifying number:

(A) A passport issued by a foreign government that has been stamped by the United States Immigration and Naturalization Service.

(B) A driver's license issued by a state other than California.

(C) An identification card issued by a state other than California.

(D) An identification card issued by any branch of the armed forces of the United States.

(e) For the purposes of this section, a notary public's certificate of acknowledgment identifying the person executing the affidavit is reasonable proof of identity of the person executing the affidavit.

(f) If the affidavit does not contain a notary public's certificate of acknowledgment of the identity of the persons executing the affidavit, the holder shall note on the affidavit for each person either that the person executing the affidavit is personally known or a description of the identification provided by the person executing the affidavit.

Comment. Section 9633 is a new provision that is designed to provide clear rules as to the type of identification that reasonably can be relied upon to establish the identity of a person executing an affidavit. The section is drawn from Civil Code Section 1185 (acknowledgment of instrument by notary public) but does not permit a driver's license issued by a Canadian or Mexican public agency to be used as reasonable proof of identity.

CROSS-REFERENCE

Definitions

Holder of the decedent's property § 9603

Property § 62

State § 74

DRAFTSMAN'S NOTE. The existing statute does not deal with the problem of the requirement of proof of identity of the persons executing the affidavit. A representative of the California Bankers Association has suggested that the statute deal with the question of the

responsibility of the holder of the property to identify the person or persons to whom the property is to be delivered. Section 9633 deals with this matter. The section is drawn from the provision governing the duty of the notary public to reasonably identify the person acknowledging an instrument.

§ 9634. Transfer of property to successor

9634. (a) If the requirements of Sections 9630 to 9633, inclusive, are satisfied:

(1) The person or persons executing the affidavit are entitled to have the property described in the affidavit paid, delivered, or transferred to them.

(2) A transfer agent of a security described in the affidavit shall change the registered ownership on the books of the corporation from the decedent to the person or persons executing the affidavit.

(b) If the holder of the decedent's property refuses to pay, deliver, or transfer any personal property or evidence thereof, the person or persons entitled to the property may recover the property or compel its payment, delivery, or transfer in an action brought for that purpose against the holder of the property.

Comment. Subdivision (a) of Section 9634 is drawn from portions of former Section 630. The person paying, delivering, or transferring the property is protected from liability. See Section 9635. Payment or transfer pursuant to Section 9634 does not preclude later administration of the decedent's estate. See Section 9637. As to the liabilities of the person receiving the property, see Sections 9638-9642.

Subdivision (b) is new and makes clear that the duty imposed by subdivision (a) can be enforced by an action against the holder. This remedy is in addition to the remedies against the holder if the decedent's estate is probated. See also Section 9567 (court order for delivery of property to surviving spouse made in proceeding to determine property passing to surviving spouse).

CROSS-REFERENCES

Definitions

Holder of the decedent's property § 9603
Personal property § 58
Property § 62
Security § 70

DRAFTSMAN'S NOTE. Section 9634 is a new provision that imposes a duty on the holder to transfer the property to the successors of the decedent if the statutory requirements are satisfied and permits the

successors to bring an action to recover the property or to compel the transfer if the holder does not comply with the statute. The provision is drawn from the Arizona statute.

§ 9635. Protection of transferor from liability

9635. Receipt by the holder of the decedent's property of the affidavit constitutes sufficient acquittance for the payment of money, delivery of property, or changing registered ownership of property pursuant to this chapter and discharges the holder from any further liability with respect to the money or property. The holder has no duty to see to the application of the property or evidence thereof or to inquire into the truth of any statement in the affidavit.

Comment. Section 9635 continues the substance of the first sentence of former Section 631.

CROSS-REFERENCES

Definitions

Holder of the decedent's property § 9603
Property § 62

§ 9636. Claim against estate in probate

9636. When the money or property claimed in an affidavit presented under this chapter is that of a deceased heir or devisee of a deceased person whose estate is being administered in this state, the personal representative of the person whose estate is being administered shall present the affidavit to the court in which the estate is being administered. The court shall direct the personal representative to pay the money or deliver the property to the person or persons who furnished the affidavit to the extent that the decree of distribution determines that the deceased heir or devisee was entitled to the money or property under the will or the laws of succession.

Comment. Section 9636 continues the substance of former Section 631.1.

CROSS-REFERENCES

Definitions

Devisee § 34
Heirs § 44

Personal representative § ____
Property § 62
Will § 88

§ 9637. No pending probate proceeding; later probate proceeding not precluded

9637. (a) The procedure provided by this chapter may be used only if no proceeding for the administration of the decedent's estate is pending or has been conducted in California.

(b) Payment, delivery, or transfer of a decedent's property pursuant to this chapter does not preclude later proceedings for administration of the decedent's estate.

Comment. Subdivision (a) of Section 9637 is a new provision that is consistent with the last sentence of former Section 631. See Broll, Summary Administration, in 1 California Decedent's Estate Administration § 3.14, at 124 (Cal. Cont. Ed. Bar 1971).

Subdivision (b) is drawn from the last sentence of former Section 631. See Brezzo v. Brangero, 51 Cal. App. 79, 81, 196 P. 87 (1921); Evans, Comments on the Probate Code of California, 19 Calif. L. Rev. 602, 607 (1931).

CROSS-REFERENCES

Definitions

Property § 62

§ 9638. Personal liability for decedent's unsecured debts

9638. Subject to Section 9641, a person to whom payment, delivery, or transfer of the decedent's property is made under this chapter is personally liable for the unsecured debts of the decedent. Any such debt may be enforced against the person 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 person may assert any defenses, cross-complaints, or setoffs that would have been available to the decedent if the decedent had not died.

Comment. The first sentence of Section 9638 is drawn from Section 6611 (small estate set-aside), but Section 9638 does not include the one-year limitation on the duration of personal liability provided by Section 6611. Instead, Section 9638 follows Section 9543 (enforcement of debt against surviving spouse) and Section 9656 (enforcement of debt against petitioners who receive low value real property under court order made in summary proceeding). Section 9538 (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. The liability under Section 9638 is limited. See Section 9641.

CROSS-REFERENCES

Definitions

Property § 62

DRAFTSMAN'S NOTE. The existing statute does not deal with the situation where the decedent's estate is probated after personal property has been paid, delivered, or transferred pursuant to an affidavit. Nor does it deal with the liability of the person who receives property using the affidavit procedure if there later proves to be a person with a superior right to the property or if there are unpaid unsecured creditors. This chapter contains provisions governing these matters. See Sections 9638-9642.

§ 9639. Personal liability to person having superior right

9639. Subject to Section 9641, a person to whom payment, delivery, or transfer of the decedent's property is made under this chapter is personally liable to any person having a superior right to the property by testate or intestate succession from the decedent. An action to enforce the liability under this section is forever barred five years after the affidavit was presented under this chapter to the holder of the decedent's property.

Comment. Section 9639 is new. The section makes clear that a person having a superior right to the property by testate or intestate succession can bring an action against the person who received the property. This remedy is an alternative to petitioning for the probate of the decedent's estate. See Section 9640. The liability under Section 9639 is limited. See Section 9641. The five-year statute of limitations is comparable to that provided under Section [1358] for recovery of property of a missing person if the missing person appears after the distribution of his or her property.

CROSS-REFERENCES

Definitions

Holder of the decedent's property § 9603

Property § 62

§ 9640. Restitution if estate proceeding commenced

9640. Subject to Section 9641, if proceedings for the administration of the decedent's estate are commenced, each person to whom payment, delivery, or transfer of the decedent's property is made under this chapter and who still has the property is liable for

restitution of the property to the estate, or, if the person no longer has the property, is liable for restitution to the estate of the fair market value of the property as of the date of disposition of the property, together with the net income the person received from the property. An action to enforce the liability under this section is forever barred five years after the affidavit was presented under this chapter to the holder of the decedent's property.

Comment. Section 9640 requires restitution to the decedent's estate if probate proceedings are commenced. This liability is limited. See Section 9641. The five-year statute of limitations is comparable to that provided under Section [1358] for recovery of property of a missing person if the missing person appears after the distribution of his or her property.

CROSS-REFERENCES

Definitions

Holder of the decedent's property § 9103
Property § 62

§ 9641. Limitation on liability

9641. (a) A person to whom payment, delivery, or transfer of the decedent's property has been made under this chapter is not liable under Section 9638 or 9639 if proceedings for the administration of the decedent's estate are commenced and the person restores the property or its fair market value and net income to the estate in compliance with Section 9640.

(b) The property or amount required to be restored to the estate under Section 9640 shall be reduced by any property or amount paid by the person to satisfy a liability under Sections 9638 or 9639.

(c) The aggregate of the personal liability of a person under Sections 9638 and 9639 shall not exceed the fair market value at the date of the decedent's death of the decedent's property paid, delivered, or transferred under this chapter to that person, less the amount of any liens and encumbrances on the property.

Comment. Section 9641 is new and limits the liability of a person to whom payment, delivery, or transfer of the decedent's property is made under this chapter to the property or amount received.

CROSS-REFERENCES

Definitions

Property § 62

§ 9642. Other remedies not affected

9642. The remedies available under Sections 9638 to 9641, inclusive, are in addition to any remedies available by reason of any fraud or intentional wrongdoing.

Comment. Section 9642 makes clear that the remedies provided in this chapter for creditors and persons having a superior right to the property do not limit any other remedies that are available by reason of fraud or intentional wrongdoing.

§ 9643. Payment of costs and fees of public administrator

9643. 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 pursuant to this chapter 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. Section 9643 is the same in substance as subdivision (e) of former Section 630.

CROSS-REFERENCES

Definitions

Property § 62

§ 9644. Chapter does not apply to real property

9644. Nothing in this chapter applies to real property.

Comment. Section 9644 continues the substance of the last sentence of subdivision (b) of former Section 630.

CROSS-REFERENCES

Definitions

Real property § 9604

CHAPTER 4. COURT ORDER DETERMINING SUCCESSION TO REAL PROPERTY

DRAFTSMAN'S NOTE. This chapter provides a new procedure for obtaining, without the need for a probate proceeding, a court order determining that real property of the decedent passed to one or more persons by intestate succession or under the decedent's will. The procedure is drawn from Sections 650-655 (order determining that property passed to surviving spouse).

Unlike the Section 650 procedure, this chapter does not permit the petitioner to obtain an order determining that personal property is property passing to the petitioner. An earlier draft would have allowed the petitioner to obtain such an order, but objections were made to that provision based on the fear that including the provision would result in financial institutions becoming unwilling to rely on an affidavit to release moneys.

§ 9650. No pending probate proceeding

9650. The procedure provided by this chapter may be used only if no proceeding is being or has been conducted in this state for administration of the decedent's estate.

Comment. Section 9650 makes the procedure provided by this chapter an alternative to the probate of a small estate.

§ 9651. Petition for court order determining succession to real property

9651. Subject to the provisions of this chapter and Chapter 2 (commencing with Section 9610), if a decedent dies leaving real property in this state and 40 days have elapsed since the death of the decedent, the successor of the decedent to the real property, without procuring letters of administration or awaiting the probate of the will, may file a petition in the superior court of the county in which the estate of the decedent may be administered requesting a court order determining that the petitioner has succeeded to the real property and that administration of the decedent's estate is unnecessary.

Comment. Sections 9650-9656 are new and provide a procedure for obtaining, without the need for a probate proceeding, a court order determining that real property of the decedent passed to one or more persons by intestate succession or under the decedent's will. The new procedure is drawn from Sections 9560-9571 (order determining that property passed to surviving spouse).

The procedure provided by this chapter can be used only if all of the following conditions are satisfied:

(1) The gross value of the decedent's real and personal property in this state (excluding certain property) does not exceed \$60,000. See Section 9610.

(2) No proceeding is pending or has been conducted in this state for administration of the decedent's estate. See Section 9650.

(3) The decedent died leaving real property in this state and 40 days have elapsed since the death of the decedent. See Section 9651.

(4) The petition is joined in by all those who have succeeded to the real property by intestate succession or under the decedent's will. See Section 9651. See also Section 9606 (defining "successor of the decedent").

(5) Notice is given to all heirs and devisees of the decedent, to the executor named in the decedent's will, and to all other persons named in the decedent's will, so far as known to the petitioner. Section 9653.

CROSS-REFERENCES

Definitions

Real property § 9604

Successor of the decedent § 9606

Will § 88

Persons authorized to act on behalf of heir or beneficiary § 9611

§ 9652. Contents of petition

9652. (a) The petition shall be verified by all the petitioners, shall contain a request that the court make an order under Chapter 4 (commencing with Section 9650) of Part 2 of Division 8 of the Probate Code determining that the real property described in the petition is property passing to the petitioners and that no administration of the decedent's estate is necessary, and shall state all of the following:

(1) The facts necessary to determine that the petition is filed in the proper county.

(2) The gross value of the decedent's real and personal property in California, excluding the property described in subdivisions (b), (c), and (d) of Section 9610 of the California Probate Code, does not exceed sixty thousand dollars (\$60,000). The gross value of the decedent's interest in real property is determined from the full cash value of the property as determined from the county assessment roll as defined in Section 9602 of the California Probate Code.

(3) The full cash value of the decedent's real property in this state as determined from the county assessment roll as defined in Section 9602 of the California Probate Code.

(4) No proceeding is now being or has been conducted in California for administration of the decedent's estate.

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

(6) The names, addresses, relationships, and ages of the heirs and devisees of the decedent, the names and addresses of all persons named as executors of the will of the decedent, and the names and addresses of all other persons named in the will of the decedent, so far as known to any petitioner.

(7) A description of the real property in this state which the petitioners allege is property of the decedent passing to the petitioners.

(8) The facts upon which the petitioners base the allegation that the described property is property passing to the petitioners.

(b) If the petitioners base the allegation that the described property is property passing to the petitioners under the will of the decedent, a copy of the will shall be attached to the petition.

Comment. Section 9652 is drawn in part from Section 9561 (petition for order determining property is property passing to surviving spouse). A guardian, conservator, trustee, or custodian is authorized to act as petitioner on behalf of the person to whom the real property passes. See Section 9611.

CROSS-REFERENCES

Definitions

County assessment roll § 9602

Devisee § 34

Heirs § 44

Person § 56

Personal property § 58

Real property § 9614

Will § 88

Persons authorized to act on behalf of heir or beneficiary § 9611

DRAFTSMAN'S NOTE. Paragraphs (2) and (3) of subdivision (a) are designed to assure that the estate is one that satisfies the requirements of Section 9610.

§ 9653. Notice of hearing

9653. Notice of the hearing on the petition shall be given to the persons and in the manner prescribed in Article 2 (commencing with Section 7240) of Chapter 2 of Part 2 of Division 7.

Comment. Section 9653 is the same in substance as subdivision (b) of Section 9566 (petition for order determining property is property passing to surviving spouse).

DRAFTSMAN'S NOTE. If subdivision (b) of Section 9566 is changed, Section 9653 should be conformed to the change.

§ 9654. Court order

9654. (a) If the court makes the findings required under subdivision (b), the court shall issue an order determining (1) that real property, to be described in the order, of the decedent is property passing to the petitioners and the specific property interest of each petitioner in the described property and (2) that no administration of the decedent's estate is necessary.

(b) The court may make an order under this section only if the court makes all of the following findings:

(1) The gross value of the decedent's real and personal property in California, determined as provided in Section 9610, does not exceed sixty thousand dollars (\$60,000).

(2) Not less than 40 days have elapsed since the death of the decedent.

(3) No proceeding is now being or has been conducted in this state for administration of the decedent's estate.

(4) The real property described in the order is property of the decedent passing to the petitioners.

(c) Unless evidence is offered by a person opposing the petition that the gross value of the decedent's real and personal property in California, determined as provided in Section 9610, exceeds sixty thousand dollars (\$60,000), the finding required by paragraph (1) of subdivision (b) shall be made on the basis of the verified petition and, if the court requires, evidence satisfactory to the court of the full cash value of the real property as determined from the county assessment roll. The court shall not make a separate determination of the value of the decedent's interest in the real property.

(d) No inventory and appraisal of the decedent's estate shall be required. Whether or not an inventory and appraisal is filed under Section 9658, the value of the decedent's interest in the real property shall be determined from the full cash value of the property as determined from the county assessment roll.

Comment. Section 9654 is designed to permit the petitioners to obtain a court order that will provide a marketable title to the decedent's real property in case of a small estate without the need to

incur the expense of an appraisal of the decedent's estate. See also Section [605(a)(2)(B)] (appraisal by probate referee not required for estates subject to summary proceedings pursuant to Section [630]) and Section [657] (inventory and appraisal not required for petition by surviving spouse under [Section 650]).

The court does not make a finding under Section 9654 as to the value of specific items or parcels of property; the court makes a finding only that "the gross value of the decedent's real and personal property in California, determined as provided in Section 9610 of the Probate Code, does not exceed \$60,000." For the purposes of making this finding, real property is valued at its full cash value as determined from the county assessment roll. Section 9658 permits the petitioner to file an inventory and appraisal, made as set forth in [Chapter 9 (commencing with Section 600)], in a proceeding under this chapter. This will permit the petitioner to obtain an independent appraisal made by a probate referee if such an appraisal determining "fair market value" would be useful to the petitioner for the purposes of the adjusted basis for federal capital gains taxes, but the inventory and appraisal has no relevance to the requirement of subdivision (b)(1) that the court make a finding that the gross value of the decedent's real and personal property in California, determined as provided in Section 9610, does not exceed \$60,000. The determination as provided in Section 9610 is made using the assessed value for property tax purposes, not the "fair market value" determined by an inventory and appraisal made by a probate referee. See also the Comment to Section 9658.

CROSS-REFERENCES

Definitions

County assessment roll § 9602
Personal property § 58
Real property § 9604

DRAFTSMAN'S NOTE. Section 9654 provides for a court order determining that the real property of the decedent described in the order is property passing to the petitioner. The order may not be issued unless 40 days have elapsed since the death of the decedent. The court determines only that the gross value of the decedent's real and personal property in this state does not exceed \$60,000. No determination is made of the value of individual items of property or of the "fair market value" of the real property described in the order. However, a separate provision (Section 9658) authorizes the filing of an inventory and appraisal made by a probate referee. This will permit the petitioner to obtain an independent appraisal determining "fair market value" if that would be useful to the petitioner for the purposes of the adjusted basis for federal capital gains taxes. It should be noted, however, that an inventory and appraisal by a probate referee is not required to obtain an adjusted basis.

§ 9655. Finality of order

9655. Upon becoming final, an order under this chapter determining that real property is property passing to the petitioners is conclusive on all persons, whether or not they are in being.

Comment. Section 9655 is drawn from Section 9568 (property passing to surviving spouse).

CROSS-REFERENCES

Definitions

Person § 56

Real property § 9604

DRAFTSMAN'S NOTE. Section 9655 should conform to the language ultimately adopted for use in the comparable provision (Section 9568) relating to the court order determining property passing to a surviving spouse.

§ 9656. Personal liability of petitioners

9656. (a) Subject to subdivisions (b) and (c), the petitioners who receive the decedent's property pursuant to an order under this chapter are personally liable for the unsecured debts of the decedent.

(b) The personal liability of any petitioner shall not exceed the fair market value at the date of the decedent's death of the property received by that petitioner pursuant to an order under this chapter, less the amount of any liens and encumbrances on the property.

(c) In any action or proceeding based upon an unsecured debt of the decedent, the petitioners may assert any defense, cross-complaint, or setoff which would have been available to the decedent if the decedent had not died.

Comment. Section 9656 is drawn from Section 6611 (small estate set aside), but Section 9656 does not include the one-year limitation on the duration of personal liability provided by Section 6611. See the discussion in the Comment to Section 9638.

§ 9657. Attorney's fee

9657. The attorney's fee for services performed in connection with the filing of a petition and obtaining a court order under this chapter is determined by private agreement between the attorney and the client and is not subject to approval of the court.

Comment. Section 9657 is comparable to Section 9571 (determination or confirmation of property passing or belonging to surviving spouse). See the Comment to Section 9571.

§ 9658. Inventory and appraisal

9658. Within three months after the filing of a petition under this chapter or within such further time as the court [or judge] for reasonable cause may allow, the petitioner may file with the clerk of the court an inventory and appraisal in the form set forth in [Section 600]. The appraisal shall be made as set forth in [Chapter 9 (commencing with Section 600)]. The petitioner may appraise the assets which an personal representative could appraise under [Section 605].

Comment. Section 9658 is drawn from the first three sentences of former Section 657, now Section 9570. An inventory and appraisal is not necessary and may not be required for the purposes of making an order under this chapter. See Section 9654. However, Section 9658 permits the petitioner to file an inventory and appraisal in a proceeding under this chapter. This will permit the petitioner to obtain an independent appraisal made by a probate referee if such an appraisal determining "fair market value" would be useful to the petitioner for the purpose of the adjusted basis for federal capital gains taxes. It should be noted, however, that an independent appraisal by a probate referee is not required to obtain an adjusted basis, and a valuation by an expert appraiser may be more useful to the petitioner in some cases for the purposes of federal capital gains taxes. The filing of an inventory and appraisal under this section has no effect on the requirement of subdivision (b)(1) of Section 9654 that the court make as finding that the gross value of the decedent's real and personal property in California, determined as provided in Section 9610, does not exceed \$60,000, since the determination as provided in Section 9610 is made using the assessed value for property tax purposes, not the "fair market value" determined by an inventory and appraisal made by a probate referee.

CHAPTER 5. AFFIDAVIT PROCEDURE FOR TRANSFER OF REAL PROPERTY
OF SMALL ESTATE

DRAFTSMAN'S NOTE. This chapter provides a new procedure that permits use of an affidavit to transfer title of real property as of record where the real property does not have gross value in excess of \$10,000. The procedure is drawn from the Arizona statute. The Arizona statute does not require that the affidavit contain a certificate of acknowledgment of a notary public identifying each person executing the affidavit; this is required by the provisions of the new chapter. The affidavit is filed with the court clerk who issues a certified copy of the affidavit (without the attachments). The certified copy is recorded in the property records in the county to clear the title to the property.

Although Chapter 4 (commencing with Section 9650) permits the court order determining ownership of real property to be made if 40 days have elapsed from the date of the decedent's death, the affidavit procedure for real property under this chapter cannot be used until six months have elapsed from the date of the decedent's death. This follows the Arizona statute and recognizes that the court proceeding involves notice to the heirs and devisees of the decedent but the affidavit procedure does not. The delay of six months allows persons interested in the decedent's estate to commence a proceeding to probate the estate.

§ 9680. Filing affidavit in superior court

9680. (a) After six months from the death of a decedent, a person or persons claiming as successor of the decedent to the decedent's interest in real property may file in the superior court in the county in which the decedent was domiciled at the time of death, or if the decedent was not domiciled in this state at the time of death then in any county in which real property of the decedent is located, an affidavit describing the real property and the interest of the decedent therein and stating all of the following:

(1) The gross value of all real property in the decedent's estate located in California does not exceed ten thousand dollars (\$10,000). The value of the decedent's interest in the real property is determined from the full cash value of the property as determined from the county assessment roll as defined in Section 9602 of the California Probate Code.

(2) At least six months have elapsed since the death of the decedent as shown in a certified copy of decedent's death certificate attached to the affidavit.

(3) No proceeding is now being or has been conducted in California for administration of the decedent's estate.

(4) Funeral expenses, expenses of last illness, and all unsecured debts of the decedent have been paid.

(5) The affidavit is executed by the successor of the decedent (as defined in Section 9606 of the California Probate) to the decedent's interest in the described property.

(6) No other person has a right to the interest of the decedent in the described property.

(7) Each person signing the affidavit affirms that all statements in the affidavit are true and further acknowledges that any false statement may subject the person to penalties relating to perjury.

(b) For each person executing the affidavit, the affidavit shall contain a notary public's certificate of acknowledgment identifying the person. If the person or persons executing the affidavit claim under the decedent's will, a copy of the will shall be attached to the affidavit.

Comment. Sections 9680-9684 provide a new procedure for obtaining a marketable title to real property in which the decedent's interest did not exceed \$10,000 gross value. The new procedure is drawn in part from a statute enacted in Arizona in 1983. See 1983 Ariz. Stats. ch. 196 (Ariz. Rev. Stats. §§ 14-3971, 14-3972). For a discussion of the Arizona statute, see December-January 1984 Arizona Bar Journal at 36.

Section 9680 ties the value of the real property to that shown on the assessment roll for the year of the death of the decedent. This value is easily and inexpensively determined, and its use serves to limit the use of the procedure provided by this chapter to cases where the property is of relatively small value.

CROSS-REFERENCES

Definitions

Person § 56

Real property § 9604

Successor of the decedent § 9606

Will § 88

Persons authorized to act on behalf of heir or beneficiary § 9611

§ 9681. Filing fee

9681. Notwithstanding any other provision of law, the total fee for the filing of an affidavit under Section 9680 and the issuance of one certified copy of the affidavit under Section 9682 is thirty-five dollars (\$35).

Comment. The fee provided by Section 9681 is the total fee. No additions to the \$35 fee are to be made for such fees as a law library fee, judges' retirement fee, reporter's fee, or the like.

DRAFTSMAN'S NOTE. Is \$35 an appropriate fee?

§ 9682. Issuance and recording of certified copy of affidavit

9682. Upon receipt of the affidavit and the required fee, the court clerk, upon determining that the affidavit is complete, shall file the affidavit and attachments and shall issue a certified copy of

the affidavit without the attachments. The certified copy shall be recorded in the office of the county recorder of the county where the real property is located.

Comment. See the Comment to Section 9680.

CROSS-REFERENCES

Definitions

Real property § 9604

§ 9683. Effect of recorded affidavit

9683. (a) A good faith purchaser of real property for value from or a good faith lender to a person designed as a successor to the property in a certified copy of an affidavit issued under Section 9682 and recorded in the county in which the real property is located has the same rights and protections as the purchaser or lender would have if the person designated as a successor in the recorded certified copy of the affidavit had been named as a distributee of the real property in a decree of distribution that had become final.

(b) The issuance and recording of a certified copy of an affidavit under this chapter does not preclude later proceedings for administration of the decedent's estate.

Comment. Subdivision (a) of Section 9683 is designed to give the successors designated in the certified copy of the affidavit a marketable title to the real property. Good faith purchasers and lenders are protected to the same extent as they are protected when they deal with the distributee under a final decree of distribution. See Section [1021] (effect of final decree of distribution). Although Section 9683 protects good faith purchasers and lenders, it does not preclude later probate proceedings. See subdivision (b). The successor designated in the recorded affidavit has a duty to restore the property, or its value if the property has been disposed of, to the estate if proceedings are later commenced for administration of the decedent's estate. See Section 9686. The successor also is liable to an unsecured creditor (Section 9684) or to a person having a superior right to the property (Section 9685). This liability is limited. See Section 9687.

CROSS-REFERENCES

Definitions

Real property § 9604

§ 9684. Personal liability for decedent's unsecured debts

9684. Subject to Section 9687, each person who is designated as a successor to property in a certified copy of an affidavit issued under Section 9682 is personally liable for the unsecured debts of the decedent. Any such debt may be enforced against the person 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 person may assert any defense, cross-complaint, or setoff that would have been available to the decedent if the decedent had not died.

Comment. Section 9684 is the same in substance as Section 9638. See the Comment to that section. The liability under Section 9684 is limited. See Section 9687.

§ 9685. Personal liability to person having superior right

9685. Subject to Section 9687, each person who is designated as a successor to property in a certified copy of an affidavit issued under Section 9682 is personally liable to any person having a superior right to the property by testate or intestate succession from the decedent. An action to enforce the liability under this section is forever barred five years after the certified copy of the affidavit is issued under Section 9682.

Comment. Section 9685 is comparable to Section 9639. The liability under Section 9685 is limited. See Section 9687.

CROSS-REFERENCES

Definitions

Person § 56

§ 9686. Restitution if estate proceeding commenced

9686. Subject to Section 9687, if proceedings for administration of the decedent's estate are commenced, each person who is designated as a successor to property in a certified copy of an affidavit issued under Section 9682 and who still has his or her interest in the property is liable for restitution of that interest to the estate, or, if the person no longer has the interest, is liable for restitution to the estate of the fair market value of the interest as of the date of its disposition, together with the net income the person received from the property. An action to enforce the liability under this section is forever barred five years after the certified copy of the affidavit is issued under Section 9682.

Comment. Section 9686 is comparable to Section 9640. See the Comment to that section. The five-year statute of limitations is comparable to the five-year statute of limitations for adverse possession. See Code Civ. Proc. § 318.

CROSS-REFERENCES

Definitions

Person § 56

§ 9687. Limitation on liability

9687. (a) A person designated as a successor to property in a certified copy of an affidavit issued under Section 9682 is not liable under Section 9684 or 9685 if proceedings for the administration of the decedent's estate are commenced and the person restores his or her interest in the property or its fair market value and net income to the estate in compliance with Section 9686.

(b) The interest in the property or amount required to be restored to the estate under Section 9686 shall be reduced by any property or amount paid by the person to satisfy a liability under Sections 9684 or 9685.

(c) The aggregate of the personal liability of a person under Sections 9684 and 9685 shall not exceed the fair market value at the date of the decedent's death of the decedent's property received by that person under this chapter, less the amount of any liens and encumbrances on that property.

Comment. Section 9687 is comparable to Section 9641.

CROSS-REFERENCES

Definitions

Person § 56

§ 9688. Other remedies not affected

9688. The remedies available under Sections 9684 to 9687, inclusive, are in addition to any remedies available by reason of any fraud or intentional wrongdoing.

Comment. Section 9688 makes clear that the remedies provided in this chapter for creditors and persons having a superior right to the property by testate or intestate succession do not limit any other remedies that are available by reason of fraud or intentional wrongdoing.

DISPOSITION OF REPEALED PROBATE CODE SECTIONS

Probate Code § 630 (repealed). Affidavit procedure for estates not exceeding \$ 60,000 [as proposed to be amended by recommendation to 1985 Legislature]

Comment. Subdivision (a) of Section 630 is superseded by Section 9610. The former limitation that the gross value of the real property in the estate not exceed \$10,000 is not continued.

The listing of the relatives of the decedent and the requirement that they have a right to succeed to the property of the decedent in subdivision (b) of Section 630 is not continued. See Section 9606 (defining "successor of the decedent") and Section 9630 (persons authorized to use affidavit procedure). The substantive effect of the reference in subdivision (b) to the guardian or conservator of the estate is continued in subdivision (a) of Section 9611. The portion of subdivision (c) relating to a trustee is superseded by the last sentence of subdivision (a) of Section 9606 and subdivision (b) of Section 9611. The reference in subdivision (b) to the beneficiaries under the decedent's will is continued in subdivision (a) of Section 9606 and by use of the defined term "successor of the decedent" in Sections 9630-9644 which supersede former Sections 630-632. The portion of subdivision (b) granting authority to collect money, receive tangible personal property, or have evidences transferred without probate is continued in Section 9630. The reference in subdivision (b) to a "financial institution" is omitted as unnecessary because a financial institution is included within the definition of "holder of the decedent's property" in Section 9603 as a person "owing money to the decedent". See also Section 56 (defining "person"). The phrase "person, representative, corporation, officer or body" in subdivision (b) has been omitted as unnecessary in view of the broad definition of "person" in Section 56. The reference to the "person . . . 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" is continued in the definition of "holder of the decedent's property" in Section 9603, and by use of the defined term in Sections 9630-9644 which supersede former Sections 630-632. The portion of subdivision (b) referring to furnishing an affidavit or declaration under penalty of perjury showing the right of the person or persons to receive the money or property or to have the evidences transferred is superseded by Section 9631. The substance of the last sentence of subdivision (b) is continued in Section 9644.

Subdivision (c) is continued in substance in subdivision (c) of Section 9611.

Subdivision (d) is continued in substance in paragraph (2) of subdivision (a) of Section 9634.

Subdivision (e) is continued in substance in Section 9643.

Probate Code § 631 (repealed). Effect of receipt of affidavit

Comment. The substance of the first sentence of Section 631 is continued in Section 9635. The substance of the last sentence of Section 631 is continued in substance in subdivision (b) of Section 9637. See Brezzo v. Brangero, 51 Cal. App. 79, 81, 196 P. 87 (1921); Evans, Comments on the Probate Code of California, 19 Calif. L. Rev. 602, 607 (1931).

Probate Code § 631.1 (repealed). Claim against estate in probate

Comment. Section 631.1 is continued in substance in Section 9636.

Probate Code § 632 (repealed). Exclusion of estate terminable upon death and of property passing to surviving spouse

Comment. Section 632 is continued in substance in paragraph (1) of subdivision (b) of Section 9610. See the Comment to Section 9610.

CONFORMING AMENDMENTS IN OTHER CODES

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

Comment. The phrase "heir in the order named in Section 630 of the Probate Code" in Section 18102 is replaced by the phrase "the person or persons who succeeded to the property under Section 6402 of the Probate Code." Section 630 has been repealed.

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

Comment. The phrase "heir in the order named in Section 630 of the Probate Code" in Section 5901 is replaced by the phrase "the person or persons who succeeded to the property under Section 6402 of the Probate Code." Section 630 has been repealed.

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

Comment. The phrase "heir in the order named in Section 630 of the Probate Code" in Section 9916 is replaced by the phrase "the person or persons who succeeded to the property under Section 6402 of the Probate Code." Section 630 has been repealed.

Memo 85-48
ARIZONA STATE
UNIVERSITY

TEMPE, ARIZONA 85287

COLLEGE OF LAW

August 6, 1984

John H. DeMouilly
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, California 94306

Dear John:

Following up on our conversation at Keystone, I enclose a copy of the statute Arizona enacted in 1983 relative to transfer of real property by affidavit and a copy of the article I wrote which was published in the Arizona Bar Journal (with corrections of the printing error in the form). So far as I know, all title companies are accepting the affidavit here in Arizona.

I would appreciate your sending copies of the California legislation enacted this year in the area of probate, which we discussed, including your version of the Uniform Transfers to Minors Act.

Many thanks.

Sincerely,



Richard W. Effland
Professor of Law

RWE:af

Enc.

ARTICLE 12. TRANSFER OF TITLE TO SMALL ESTATES BY AFFIDAVIT AND SUMMARY ADMINISTRATION PROCEDURE

Laws 1983, Ch. 196, § 3, substituted "Transfer of Title to Small Estates by Affidavit and Summary Administration Procedure" for "Collection of Personal Property by Affidavit and Summary Administration Procedure" as the heading for this article.

Laws 1983, Ch. 196, § 4 provides:

"The procedure for transferring title to real and personal property as provided in title 14, chapter 3, article 12, [Section 14-3971 et seq.] Arizona Revised Statutes, shall be effective for estates of decedents dying before or after the effective date of this act."

§ 14-3971. Collection of personal property by affidavit; ownership of vehicles; affidavit of succession to real property

A. At any time after the death of a decedent, any employer owing wages, salary, or other compensation for personal services of the decedent shall pay to the surviving spouse of the decedent the amount owing, not in excess of five thousand dollars, upon being presented an affidavit made by or on behalf of the spouse stating that the affiant is the surviving spouse of the decedent, or is authorized to act on behalf of the spouse, and that no application or petition for the appointment of a personal representative is pending or has been granted in this state.

B. Thirty days after the death of a decedent, any person indebted to the decedent, having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness, deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating that:

1. The value of all of the personal property in decedent's estate, wherever located, less liens and encumbrances, does not exceed thirty thousand dollars.
2. Thirty days have elapsed since the death of the decedent.
3. No application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction.
4. The claiming successor is entitled to payment or delivery of the property.

C. 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 subsection B.

D. The motor vehicle division shall transfer title of a motor vehicle from the decedent to the successor or successors upon presentation of an affidavit as provided in subsection B and upon payment of the necessary fees.

E. Six months after the death of a decedent, a person or persons claiming as successor or successors to the decedent's interest in real property, including any debt secured by a lien on real property, may file in the court in the county in which the decedent was domiciled at the time of death, or if the decedent was not domiciled in this state then in any county in which real property of the decedent is located, an affidavit describing the real property and the interest of the decedent therein and stating that:

1. The value of all real property in the decedent's estate located in this state, less liens and encumbrances against the real property as of the date of death, does not exceed fifteen thousand dollars. The value of the decedent's interest shall be determined from the full cash value of the property as shown on the assessment rolls for the year in which the decedent died, except that in the case of a debt secured by a lien on real property the value shall be determined by the unpaid principal balance due on the debt as of the date of death.

2. Six months have elapsed since the death of the decedent as shown in a certified copy of decedent's death certificate attached to the affidavit.

3. No application or petition for appointment of a personal representative is pending or has been granted in any jurisdiction.

4. Funeral expenses, expenses of last illness, and all unsecured debts of the decedent have been paid.

5. The person or persons signing the affidavit are entitled to the real property by reason of the allowance in lieu of homestead and exempt property, by intestate succession as sole heir or heirs, or by devise under a valid last will of the decedent, the original of which is attached to the affidavit or has been probated.

6. No other person has a right to the interest of the decedent in the described property.

7. No federal or Arizona estate tax is due on decedent's estate.

8. The person or persons signing the affidavit affirm that all statements in the affidavit are true and material and further acknowledge that any false statement may subject the person or persons to penalties relating to perjury and subornation of perjury.

F. The normal filing fee shall be charged for the filing of an affidavit under subsection E unless waived by the court as provided by §§ 12-301 or 12-302. Upon receipt of the affidavit the registrar, upon determining that the affidavit is complete, shall cause to be issued a certified copy of the affidavit without attachments, and the copy shall be recorded in the office of the recorder in the county where the real property is located.

G. Nothing in this section shall limit the rights of heirs and devisees under § 14-3901.

§ 14-3972. Effect of affidavit

A. The person paying, delivering, transferring or issuing personal property or the evidence thereof pursuant to affidavit is discharged and released to the same extent as if he dealt with a personal representative of the decedent. He is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit. If any person to whom an affidavit is delivered refuses to pay, deliver, transfer or issue any personal property or evidence thereof, it may be recovered or its payment, delivery, transfer or issuance compelled upon proof of their right in a proceeding brought for the purpose by or on behalf of the persons entitled thereto. Any person to whom payment, delivery, transfer or issuance is made is answerable and accountable therefor to any personal representative of the estate or to any other person having a superior right.

B. The motor vehicle division issuing title pursuant to affidavit is discharged and released to the same extent as if it dealt with a personal representative of the decedent. It is not required to see to the application of the personal property or evidence thereof or to inquire into the truth of any statement in the affidavit.

C. A purchaser of real property from or lender to the person or persons designated as successor or successors in a certified copy of an affidavit issued under § 14-3971 and recorded in the county in which the real property is located is entitled to the same protection as a person purchasing from or lending to a distributee who has received a deed of distribution from a personal representative, as provided in § 14-3910.

succession. (My) (Our) relation to the decedent is _____

3. The description of the real property in the decedent's estate and the interest of the decedent therein are as follows:

4. The value of all real property, including any debt secured by a lien on real property, in the decedent's estate located in this state, less liens and encumbrances against said real property as of the date of death, does not exceed fifteen thousand (\$15,000.00) dollars.

5. No application or petition for appointment of a personal representative is pending or has been granted in any jurisdiction.

6. All funeral expenses, expenses of last illness, and all unsecured debts of the decedent have been paid.

7. The person(s) signing this affidavit (is) (are) entitled to the real property in the decedent's estate by reason of:

- ___ The allowance in lieu of homestead and exempt property.
- ___ Intestate succession as sole heir(s).
- ___ By devise under a valid last will of the decedent, the original of which is attached hereto or has been probated in _____

8. No other person has a right to the interest of the decedent in the described real property.

9. No federal or Arizona estate tax is due on decedent's estate.

10. (I) (We) affirm that all statements in this affidavit are true and material and further acknowledge that any false statement will subject (me) (us) to penalties relating to perjury and subornation of perjury.

Dated this _____ day of _____, 19____.

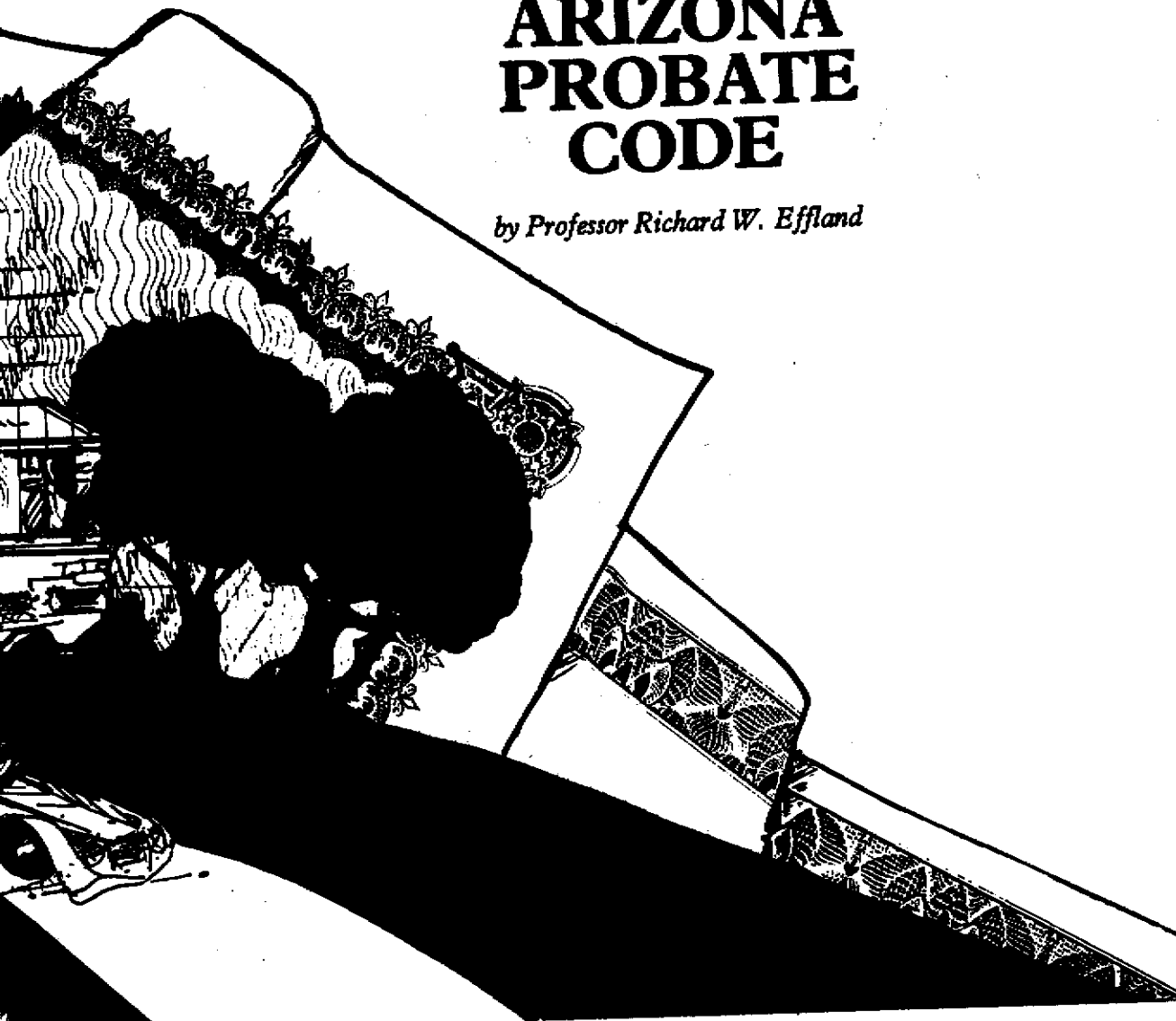
Subscribed and sworn to before me this _____ day of _____, 19____, by _____

Notary Public

My commission expires:

**HANDLING
REAL AND
PERSONAL PROPERTY
AT DEATH
WITHOUT
ADMINISTRATION
UNDER THE 1983
AMENDMENTS
TO THE
ARIZONA
PROBATE
CODE**

by Professor Richard W. Effland



Richard W. Effland

Chapter 196, passed by the 36th Legislature and approved by the Governor on April 20, became effective July 27, 1983. It is a significant expansion of the prior Arizona Probate Code section for transfer of property of a decedent by affidavit rather than administration under Court procedures. It substantially increases the amount of property which can be transferred by affidavit; it also for the first time permits transfer of interests in real property without administration.


Before the amendment, Section 14-3971B permitted transfer of personal property by affidavit if the value of decedent's entire estate did not exceed \$10,000. Whenever the estate included an interest in real property, the statutory affidavit procedure was not available. However, some title companies have been willing to issue title policies on the basis of affidavits of succession, particularly if the

value of the realty is small. The \$10,000 amount was set in 1976, when the \$5,000 figure in the original Probate Code as enacted in 1973 was increased.

S.B. 1069 as originally introduced in the Senate in January of this year would have created a new statutory section (14-3975) to provide for transfer of title to real property without necessity of administration. Because the value of real property is much more difficult to determine than the value of personal property such as bank accounts, stocks and bonds, and motor vehicles, the bill as passed by the Senate tied the value to that shown on the assessment rolls for the year of death of the decedent. It would have required that the affidavit, which could be made 30 days after death, would become effective 6 months after filing. The procedure would have been available only to heirs in an intestate estate.

When the bill reached the

House, there was strong sentiment for a very substantial increase in the amount of property which could be transferred without administration. An unofficial committee composed of Larry Dahl, Chairman of the Legislative Committee of the Land Title Association of Arizona; Nancy Burnett, an employee of Harris Trust Company and a council member of the State Bar Section on Real Property, Probate and Trusts; William Perkins of Jennings, Strouss & Salmon, representing the Land Title Association of Arizona with respect to legislative matters and also a council member of the State Bar Section on Real Property, Probate and Trusts; and myself was also asked to make recommendations regarding technical features of the proposed procedure. The committee met for several long sessions and made its recommendations to a



**CONCEPTS IN HOME
ENTERTAINMENT ENVIRONMENTS**

Incorporating
**STATE OF THE ART AUDIO, VIDEO, CONTEMPORARY
FURNITURE AND ACCESSORIES**

**ADS • KLIPSCH
JBL • McINTOSH
BOSE • MITSUBISHI
DUAL • NAKAMICHI
REVOX • PIONEER
YAMAHA • B & O**

"You'll Like What You Hear And See"

We design, engineer, and install audio and video systems for residential and commercial environments. When you choose your audio/video components and accessories, you may also complete your entertainment center from selective lines of contemporary occasional furniture in various textures to create the richest sounds from your stereo. Complete your decor from our unique line of decorator accessories. It's a pleasure to offer our customers numerous concepts in home entertainment to enhance their living and working environments.

"Serving The Needs Of The Particular For Over A Decade."

Jerry's
**CONCEPTS IN HOME
ENTERTAINMENT
ENVIRONMENTS**

Phoenix-334 E. Camelback 263-9410
Tucson-5750 E. Broadway 747-7267

WHY VIDEOTAPE DEPOSITIONS?

- EXPERT TESTIMONY ACCORDING TO YOUR SCHEDULE... NOT THE WITNESS'
- SAVES COSTLY FEES OF EXPERT WITNESS.
- MORE EFFECTIVE THAN READING FROM A TRANSCRIPT.
- DEPOSITIONS ON LOCATION OR IN OUR STUDIO
- NO SPECIAL ROOM OR LIGHTING NEEDED
- COLOR OR BLACK & WHITE WITH LATEST MODEL LOW LIGHT CAMERAS

We have the latest color or black and white equipment with the new low light camera.

PUT THE POWER OF VIDEOTAPED DEPOSITIONS TO WORK FOR YOU
CALL THE EXPERTS

McFATE REPORTING SERVICE, INC.



1145 W. McDowell Rd., Phoenix, Arizona 85007 • 602/257-0052



SANDRA W. McFATE

the principal of McFate Reporting Service, Inc. has been an official and freelance court reporter in Phoenix over 25 years. "Sandy" has taught videotape deposition workshops for court reporters, video technicians, judges and lawyers and is recognized as a leading authority and expert throughout the United States on the proper methods of videotaping depositions. She will cooperate and work with other court reporting firms in the taking of videotape depositions.

For additional information or a demonstration of a videotape deposition, contact McFate Reporting Service, Inc. 257-0052.

**A New Service that
Saves Time, Saves Money, and
Strengthens your Case!**

Subcommittee of the House Judiciary Committee. These recommendations were submitted to the Subcommittee and were in large part incorporated in the bill as finally passed, although the dollar amounts were set by the Subcommittee.

Chapter 196 allows decedent's successors to transfer property without administration as follows:

(1) Personal property up to \$30,000 in value can be transferred by affidavit, 30 days after decedent's death.

(2) Decedent's interest in real property can be transferred by filing an affidavit with the court 6 months after death. The decedent's interest must not exceed \$15,000; but because the value is determined from the cash value shown on the assessment rolls for the year of death (an objective figure) and that value is about half of full market value, the procedure is really available for real property worth about \$30,000. Note also that liens or incumbrances are subtracted in determining value. Thus a piece of realty assessed at \$60,000 on tax rolls and subject to a \$50,000 mortgage or

deed of trust would easily qualify for the procedure. Moreover, when property is owned by a husband and wife as community property, and one of the spouses dies, the decedent's interest is only half. Thus community real property assessed at \$100,000 on the tax rolls and subject to a \$70,000 mortgage would still be within the statutory limit on death of one spouse.

Note the procedure for real property: (1) six months must have elapsed from the date of decedent's death.

(2) An affidavit in the form set forth in the statute must be filed in court, with a certified copy of the death certificate attached. The form approved by the Superior Court for Maricopa County appears as Appendix I. If decedent had a will devising the realty, the original must also be attached, unless previously probated. Because the Probate Code allows informal probate without appointment of a personal representative, lawyers may prefer to probate any will informally within the 6 months period even though the estate appears to be such that the affidavit procedures can be used

to transfer title. Note that the real property affidavit requires payment of all unsecured debts of the decedent. In estates where the allowances and exemption from creditors (ARS §§14-2401 through 14-2404) are to be utilized to cut off creditors, a summary administration would become necessary.

(3) A filing fee will normally be charged by the court; it can be waived. The Registrar has a limited function: to see that the affidavit is in proper form, that it is accompanied by a certified copy of the death certificate, and that, in a testate estate, the original of the will is attached or has been previously probated. The Registrar will then direct that a certified copy of the affidavit (without the attachments) be issued. Appendix II shows the Order used in Maricopa County. It is this certified copy which then should be recorded in the county recorder's office and becomes the basis for assuring title in the successor. The representatives of the title companies believed that the court filing rather than filing directly with the county recorder served as a deterrent to possible fraud.

Continued on page 39

The new procedures can be used for estates of decedents who died before the effective date. (Section 4, of the Act).

Under ARS 14-3971 before the amendment a problem existed regarding transfer of a security interest in real property. Suppose the owner of real estate sold it and retained a security interest for payment of part of the purchase price. Was his interest personal property -- the debt -- or was it real estate? The amended section resolves this problem and characterizes the interest as "real property". Hence the interest must be transferred by filing the affidavit with the Court and then filing with the county recorder's office a certified copy issued by the Court.

The act does not affect three other affidavit practices. An affidavit to collect wages or salary up to \$5,000 can still be used prior to application or petition for administration (ARS 14-3971A). In cases where no administration has been commenced and three years have passed since death, so that claims of unsecured creditors are barred (ARS 14-3803), title companies may insure title to real property on the basis of an affidavit of succession, under ARS §14-3901, (see new §14-3971G), even though the value of the realty exceeds \$15,000. Finally, a foreign domiciliary personal representative may use the affidavit procedure under ARS §14-4201, or under ARS §6-237 as to bank accounts.

Although the affidavit procedure for real property does not require title companies to insure on the basis of the recorded certified copy, the Act gives a purchaser from the person or persons designated as successor to the decedent's title the same protection as one purchasing from the successor named in a deed of distribution from a personal representative. It also protects a lender acting on the same basis. (ARS §14-3972C, new) This should enable title companies to insure with only the normal policy exceptions.

In assessing the size of estate which can be handled without administration, the following factors should be kept in mind:

(1) only half of community property is within the estate subject to administration, although a personal representative would have power over both halves if necessary to pay community debts;

(2) joint tenancy property with right of survivorship belongs to the survivor without administration;


(3) revocable trusts set up by the decedent during lifetime are not part of the probate estate,

unless the trust agreement fails to give the principal to named beneficiaries at death of the settlor;

(4) multiple party financial accounts (joint accounts, trust accounts, and POD accounts) pass to the surviving party without administration;

(5) life insurance payable to named beneficiaries is not subject to administration;

(6) death benefits under retirement and pension plans may similarly be payable directly



collins-clare travel
corporate travel professionals

Vida Weyer, CTC
Irene Kells, CTC
Margaret Stiles, CTC
John Faulds, CTC
CTC-Certified Travel Counselors

3815 E. Indian School Road
Phoenix, Arizona 85018
955-3000

LAW LIBRARIES ARE TOO EXPENSIVE

(They don't have to be!)

Law libraries are expensive because they are out of control. Most aren't cataloged and indexed. Revisions are often filed late, improperly, or *not at all*. Valuable unused books die on the shelves. New sets are bought without careful planning and *cost too much*. We offer controls and savings.

- We will:
- Save 40% to 60% on new additions to the library
 - Broker unused sets for additional profits
 - Offer computer-based supporting services
 - Train employees to file, catalog, index and maintain the library
 - Do an ongoing profile and analysis of the practice and the library.

We are a law library management and development company. We can increase the bottom line profits of the firm. *We will guarantee it!*

Francis Marion of the Southwest

7155 E. Thomas Rd., Suite 7
Scottsdale, Arizona 85251

602-990-4418

"Your success in the future may well depend on the investment you make in your law library today!"

to other named beneficiaries;

(7) property may pass to a survivor by means of a contractual provision for transfer at death, such as joint annuities or partnership interests, all without administration.

The bulk of a decedent's wealth may thus pass to his or her family without administration under present law. The changes in the scope of transfer of remaining probate assets by affidavit make it possible to eliminate administration in estates of very substantial size.

There are situations in which use of the new procedure is not advisable even though it may be possible. Whenever there are substantial or potential claims against the decedent, administration is desirable to settle issues of liability. When there is disagreement among the successors, as may be the case where a second spouse and children of the decedent by a prior marriage are involved, administration serves a psychological end of assuring all parties that they are receiving their "legal" shares.

Use of the affidavit procedures does not foreclose later administration if it becomes necessary. Examples of such situations would be the following:

(1) although the affidavit for real property recites that all unsecured claims have been paid, a disputed claim is in fact still outstanding;

(2) although the affidavit recites that certain persons are entitled to the property as heirs or devisees, a later discovered will devises the property to a different person.

The requirement that six months must elapse before the affidavit to transfer real property may be filed serves to minimize the number of cases in which new claims, either of creditors or of successors, may arise unexpectedly. The creditor or successor may, as appropriate, petition or apply for appointment of a personal representative. Because the affidavit procedure is not itself administration but merely constitutes evidence of title transfer, the personal representative can still recover the property in the hands of the persons taking by affidavit or, if

Continued on page 43

APPENDIX I
IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

IN THE MATTER OF THE ESTATE OF	}	No. _____
	}	AFFIDAVIT FOR TRANSFER OF
	}	TITLE TO REAL PROPERTY
Decedent.	}	
_____	}	
STATE OF ARIZONA)	
)	ss.
COUNTY OF MARICOPA)	

_____, being first duly sworn on oath depose(s) and say(s):

1. _____ died on _____ 19 _____, more than six (6) months prior to the execution of this affidavit as shown in the certified copy of decedent's death certificate attached hereto, and

_____ Decedent at the time of death was domiciled in the County of Maricopa, State of Arizona.

_____ Decedent at the time of death was not domiciled in the State of Arizona and was domiciled in _____ State of _____, and owned real property located in the County of Maricopa, State of Arizona.

2. Affiant(s) is(are) the successor(s) to the decedent's interest in real property (and) (or) a debt secured by a lien on real property and entitled to decedent's property by will or intestate succession. (My) (Our) relation to the decedent is _____

3. The description of the real property in the decedent's estate and the interest of the decedent therein are as follows:

4. The value of all real property, including any debt secured by a lien on real property, in the decedent's estate located in this state, less liens and encumbrances against said real property as of the date of death, does not exceed fifteen thousand (\$15,000.00) dollars.

5. No application or petition for appointment of a personal representative is pending or has been granted in any jurisdiction.

6. All funeral expenses, expenses of last illness, and all unsecured debts of the decedent have been paid.

7. The person(s) signing this affidavit (is) (are) entitled to the real property in the decedent's estate by reason of:

_____ The allowance in lieu of homestead and exempt property.

_____ Intestate succession as sole heir(s).

_____ By devise under a valid last will of the decedent, the original of which is attached hereto or has been probated in _____

8. No other person has a right to the interest of the decedent in the described real property.

9. No federal or Arizona estate tax is due on decedent's estate.

10. (I) (We) affirm that all statements in this affidavit are true and material and further acknowledge that any false statement may subject (me) (us) to penalties relating to perjury and subornation of perjury.

Dated this _____ day of _____, 19 _____.

Subscribed and sworn to before me this _____ day of _____, 19 _____, by _____

Notary Public

My commission expires: _____

