

## Memorandum 85-88

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

Attached is a staff draft of a Tentative Recommendation Relating to Collection or Transfer of Small Estate Without Administration. This staff draft is presented for Commission consideration and revision and approval before it is sent out to interested persons and organizations for review and comment.

The staff draft is a revised draft of material considered at the May 1985 meeting. At that meeting, the Commission did not review details of the proposed legislation. The Commission determined to abolish the "close relative" requirement, a requirement that limits the use of the affidavit procedure in an intestate succession case to cases where the successors are "close relatives" listed in the statute. Also, the staff suggested that the proposed legislation be revised to adopt the basic approach suggested by the Executive Committee of the Estate Planning, Trust & Probate Law Section, and the Commission directed the staff to prepared a revised draft of the material along the lines suggested by the staff.

The proposed legislation contained in the attached Tentative Recommendation is designed to deal with two matters of concern to probate practitioners:

(1) The existing affidavit procedure for collection or transfer of personal property lacks sufficient detail. For example, the existing statute does not specify the liability of the person who collects or has title transferred. The proposed legislation contains provisions to fill in the gaps in the existing statute.

(2) The existing statute does not contain any provisions to permit a successor to real property of small value to obtain a marketable title to the property unless the estate is probated. The proposed legislation provides new summary procedures that permit the successor to obtain a marketable title.

The preliminary portion of the attached tentative recommendation outlines the existing law and the changes the proposed recommendation would make in existing law.

The Commission has not previously reviewed the proposed legislation. A "Draftsman's Note" under various sections identifies matters for your special attention.

The staff hopes that it will be possible to revise the attached tentative recommendation after the meeting to incorporate any revisions made by the Commission at the meeting and that the revised tentative recommendation can then be distributed to local bar associations and other interested persons for review and comment.

The Commission should consider whether it wishes to submit this recommendation to the 1986 legislative session as a separate proposal. This would permit a careful legislative consideration of the details of the proposal, would encourage interested persons and organizations to make a careful review of the proposal, and would make the revised procedure available for use on and after January 1, 1987. The proposed legislation would be given the same section numbers that it would have in the new Estates and Trusts Code, so there would be no need to renumber the provisions when the new code is enacted.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary

STATE OF CALIFORNIA  
CALIFORNIA LAW  
REVISION COMMISSION

STAFF DRAFT  
(not approved by Commission)

TENTATIVE RECOMMENDATION

relating to

PROBATE LAW

(COLLECTION OR TRANSFER OF SMALL ESTATE WITHOUT ADMINISTRATION)

August 1985

Important Note: This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be considered when the Commission determines the recommendation it will make to the California Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation. COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE SENT TO THE COMMISSION NOT LATER THAN NOVEMBER 15, 1985.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

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September 10, 1985

**LETTER OF TRANSMITTAL**

The California Law Revision Commission is now devoting its time and resources almost exclusively to the study of probate law and procedure. The goal is to submit an entire new code to the Legislature for enactment in 1987. The Commission is now sending drafts of portions of the new code to interested persons and organizations for review and comment.

This tentative recommendation sets forth the Commission's tentative conclusions concerning the portion of the new code relating to the collection or transfer of small estates without administration (existing Prob. Code §§ 630-632).

The preliminary portion of the tentative recommendation indicates the principal substantive revisions the proposed legislation would make in existing law.

The proposed legislation is drafted as a part of the new code. In some cases, you may find a reference to other portions of the new code that are in rough draft form and not yet available for distribution for review and comment.

A Comment follows each section of the proposed legislation. The Comment gives the source of the section and indicates any changes the section would make in existing law.

Comments showing the disposition of each existing section that would be superseded by the proposed legislation can be found at the end of the tentative recommendation.

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## COLLECTION OR TRANSFER OF SMALL ESTATE WITHOUT ADMINISTRATION

## EXISTING LAW

Section 630 of the Probate Code provides a summary means for the collection of a decedent's personal property where the gross value of the decedent's real and personal property in this state does not exceed \$60,000 and the gross value of the decedent's real property in this state does not exceed \$10,000.

In determining the value of the decedent's estate for the purposes of Section 630, all of the following property is excluded:

- Property held by the decedent as a joint tenant.<sup>1</sup>
- Property in which the decedent had a life or other estate terminable upon the decedent's death.<sup>2</sup>
- Property which passed to the decedent's surviving spouse under the decedent's will or by intestate succession.<sup>3</sup>

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1. Prob. Code § 632. See Prob. Code §§ 210-212 (recording affidavit or court order where title to real property affected by death of a person).
  2. Prob. Code § 632. The exclusion for life estates and estates terminable upon the decedent's death embraces life interests in trusts and contractual rights (such as life insurance or employee retirement) that terminate at death, as well as life interests in other property. See O. McCarroll, 1 California Decedent Estate Administration Supplement § 3.6, at 76 (Cal. Cont. Ed. Bar 1985).
  3. Prob. Code § 632. See Prob. Code § 649.1 (property passing to surviving spouse). See also Prob. Code §§ 650-658 (determination or confirmation of property passing to surviving spouse).

--State registered property (vehicles, vessels, mobilehomes, manufactured homes, commercial coaches, and truck campers).<sup>4</sup>

--Amounts due the decedent for services in the armed forces of the United States.<sup>5</sup>

--Compensation not exceeding \$5,000 owing to the decedent for services from any employment.<sup>6</sup>

In most cases in which successors seek to settle the affairs of a decedent's estate without probate or administration, much of the decedent's personal property will be in their possession. The procedures of Section 630 do not deal directly with such property. Section 630 merely facilitates the transfer of property from third persons by enabling successors "without procuring letters of administration, or awaiting the probate of the will" to:

--"collect any money due the decedent."

--"receive the tangible personal property of the decedent."

--"have any evidences of a debt, obligation, interest, right, stock, or chose in action transferred" to them.

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4. Prob. Code § 630. Special provisions permit transfer of registration of state registered property without probate if the decedent does not own other property that would require probate of the decedent's estate. See Health & Safety Code § 18102 (manufactured home, mobilehome, commercial coach, or truck camper); Vehicle Code §§ 5910 (vehicle), 9916 (vessel).

5. Prob. Code § 630.

6. Prob. Code § 630.

The claimant to the decedent's property makes an affidavit or declaration under penalty of perjury showing the claimant's right to the property and gives the affidavit or declaration to the debtor, custodian, registrar, or transfer agent.<sup>7</sup> The claimant is then entitled to collect the money or property and to have any evidences of interest, indebtedness, or right transferred.<sup>8</sup> The person making the payment or transfer need not inquire into the truth of the affidavit or declaration; the claimant's receipt is a sufficient discharge of liability.<sup>9</sup>

The summary procedure can be used only if the person who succeeds to the decedent's property is the sole beneficiary or all the beneficiaries under the decedent's will (whether or not related to the decedent) or is the decedent's surviving spouse, child, issue of a deceased child, parent, brother, sister, issue of a deceased brother or sister, or grandparent.<sup>10</sup>

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7. Prob. Code § 630.

8. Prob. Code § 630.

9. Prob. Code § 631. See also Prob. Code § 630(d) (transfer agent of security).

10. Prob. Code § 630. The summary procedure also may be used by any of the following: The guardian or conservator of the estate of any person bearing the required relationship to the decedent, a trustee named in a trust agreement executed by the decedent during his or her lifetime, the primary beneficiaries of which bear the required relationship to the decedent, and the custodian where the decedent's will nominates a custodian to receive a gift to a beneficiary under the Uniform Gifts to Minors Act or the Uniform Transfers to Minors Act of any state.  
Id.

The summary procedure is merely a collection mechanism and does not give title to the person collecting the property as against other claimants to the property.<sup>11</sup> Moreover, the collected property may be subjected to the possession and control of an executor or administrator<sup>12</sup> who may use the property to satisfy claims against the decedent's estate<sup>13</sup> or distribute it to those persons entitled to succeed to the decedent's estate.<sup>14</sup>

#### NEW CODE

The new code fills in gaps in the existing summary procedure and provides two new procedures to permit summary transfer of record of title to real property.

#### Affidavit Procedure for Collection or Transfer of Personal Property

Size and type of estate. During recent years, the Commission has reviewed the provisions relating to the size and type of estate that

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11. See *Brezzo v. Brangero*, 51 Cal. App. 79, 81, 196 P. 87 (1921). See also *Estate of Kevil*, 98 Cal. App.2d 388, 220 P.2d 555 (1950).
  12. An unpaid creditor or a person who takes a portion of the decedent's property by testate or intestate succession can institute a probate proceeding. See Prob. Code §§ 323 (persons entitled to have will probated), 422 (persons entitled to obtain letters of administration of the estate of person dying intestate). See also *In re Edwards' Estate*, 154 Cal. 91, 97 P. 23 (1908) (right of creditor to petition for probate of will).
  13. Prob. Code § 300. See also Prob. Code § 631 (payment or transfer to the successor "shall not preclude administration when necessary to enforce payment of the decedent's debts").
  14. See *Brezzo v. Brangero*, 51 Cal. App. 79, 196 P. 87 (1921).



qualifies to use the affidavit procedure for collection or transfer of personal property. Two recommendations were submitted to the Legislature as a result of this review.<sup>15</sup> The enactment of the legislation proposed in these recommendations increased the maximum estate value, permitted collection or transfer of personal property even where the estate includes real property of small value, and excluded certain state registered property in determining the value of the decedent's estate.<sup>16</sup> No further revision of this area of the law is recommended.

Persons authorized to use affidavit procedure. Probate Code Section 630 permits use of the affidavit procedure by the person or persons who have the right to succeed to the property of the decedent if the person or persons are:

--The sole beneficiary or all of the beneficiaries under the will of the decedent, regardless of whether or not any beneficiary is related to the decedent.

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15. Recommendation Relating to Distribution of Estates Without Administration, 17 Cal. L. Revision Comm'n Reports 421 (1984); Recommendation Relating to Transfer Without Probate of Certain Property Registered by the State, 18 Cal. L. Revision Comm'n Reports 129 (1986).
  16. 1984 Cal. Stat. ch. 451 (increase in maximum estate value; permits affidavit procedure to be used even if estate includes real property interest of small value); 1985 Cal. Stat. ch. \_\_\_ [AB 196] (adds to the types of property excluded in determining gross value of decedent's property the following: all vehicles registered or titled under the Vehicle Code (instead of "motor vehicles"), vessels numbered under the Vehicle Code, and manufactured homes and truck campers registered under the Health and Safety Code).

--The decedent's surviving spouse, children, issue of deceased children, parents, brothers, sisters, issue of a deceased brother or sister, or grandparents.

--The guardian or conservator of the estate of any person bearing the required relationship to the decedent.

--The trustee named under a trust agreement executed by the decedent during his or her lifetime, the primary beneficiaries of which bear the required relationship to the decedent, if such person or persons has or have the right to succeed to the property of the decedent.

The relatives who are authorized to use the affidavit procedure have been broadened by a series of amendments since Section 630 was originally enacted.<sup>17</sup> Section 630 now permits use of the affidavit

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17. As originally enacted in 1931, Section 630 permitted use of the affidavit procedure by the decedent's surviving spouse, child, parent, brother, or sister. 1931 Cal. Stat. ch. 281, as amended by 1931 Cal. Stat. ch. 1089 § 1. In 1937, "lawful issue of deceased children" was added. 1937 Cal. Stat. ch. 181, § 1. In 1959, "the lawful issue of a deceased brother or sister" was added. 1959 Cal. Stat. ch. 195. In 1976, "the trustee named under a trust agreement executed by the decedent during his lifetime, the primary beneficiaries of which bear such relationship to the decedent" was added. 1976 Cal. Stat. ch. 1028, § 1. In 1982, Section 630 was amended to make clear that beneficiaries under the decedent's will could use the summary procedure, "regardless of whether or not any beneficiary is related to the decedent." 1982 Cal. Stat. ch. 520, § 5. In 1984, "grandparents" was added. 1984 Cal. Stat. ch. 451, § 9.

procedure by almost any relative likely to inherit the decedent's property. Yet there will be occasional cases where the decedent dies without a will and the relative who takes by intestate succession is not one described in Section 630. In such a case, no matter how small the decedent's estate, it will be necessary to probate the estate in order to collect or transfer the estate of the decedent.

The great majority of the states do not restrict use of their summary procedure for collection or transfer of estate property to a limited class of relatives; any successor in interest, whether by will or intestate succession, may use the procedure.<sup>18</sup> By way of

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18. Alabama Code §§ 43-2-691, 43-2-692 (1982); Alaska Stat. §§ 13.16.680, 13.16.685 (Supp. 1984); Arizona Rev. Stat. Ann. §§ 14-3971, 14-3972 (1984); Arkansas Stat. Ann. §§ 62-2127 (Supp. 1983) 62-2128 (1971); Connecticut Gen. Stat. Ann. § 45-266 (West Supp. 1984); Florida Stat. Ann. § 735.301 (West Supp. 1984); Hawaii Rev. Stat. §§ 560:3-1201, 560:3-1202 (Supp. 1983); Idaho Code §§ 15-3-1201, 15-3-1202 (1979); Illinois Ann. Stat. ch. 110 1/2 § 25-1 (Smith-Hurd Supp. 1984); Indiana Code Ann. §§ 29-1-8-1, 29-1-8-2 (West 1979); Louisiana Code Civ. Proc. Ann. Arts. 3431, 3432, 3434 (West Supp. 1985); Maine Rev. Stat. Ann. tit. 18-A, §§ 3-1201, 3-1202 (1981); Missouri Ann. Stat. § 473.097 (Vernon Supp. 1984); Montana Code Ann. §§ 72-3-1101, 72-3-1102 (1983); Nebraska Rev. Stat. §§ 30-24, 125, 30-24, 126 (1979); New Jersey Rev. Stat. §§ 3:B10-3, 3:B10-4 (1984); New Mexico Stat. Ann. § 45-3-1201 (Supp. 1984), 45-3-1202 (1978); North Carolina Gen. Stat. § 28A-25-1 (1982); North Dakota Cent. Code § 30.1-23-01, 30.1-23-02 (1981); Oregon Rev. Stat. §§ 114.515, 114.525, 114.535 (1981); South Dakota Codified Laws Ann. § 30-11A-1 (1977); Tennessee Code Ann.

(Footnote continued to page 8)

contrast, under Section 630, an intestate successor who does not bear the requisite relationship to the decedent can receive property to which the successor is entitled only after administration of the small estate. The new code follows the approach taken in the great majority of other states and permits any successor in interest to use the summary procedure, thereby fully implementing the policy of avoiding costs and delays of administration when a small estate is involved by permitting all entitled successors to collect personal property by affidavit or declaration. This approach is consistent with the existing California rule that a successor who takes under the decedent's will may use the summary procedure, whether or not the successor is related to the decedent.

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(Footnote continued from page 7)

§§ 30-4-103, 30-4-104 (1984); Texas Prob. Code Ann. §§ 137 (Vernon Supp. 1984), 139, 140 (Vernon 1980); Utah Code Ann. §§ 75-3-1201, 75-3-1202 (1978); Virginia Code §§ 64.1-132.2, 64.1-132.2 (1984); Wisconsin Stat. Ann. § 867.03 (West Supp. 1984); Wyoming Stat. § 2-1-210 (1981). See Uniform Probate Code § 3-1201 (1980) (no close relative requirement). See also Delaware Code Ann., tit. 12, §§ 2306 (Supp. 1984), 2307 (1979) (limited to spouse of the decedent or any person who is a grandparent of the decedent, a lineal descendant of a grandparent of the decedent, the personal representative of any of the foregoing who may be deceased, or the guardian or trustee of any of the foregoing who may be incapacitated, or the trustee of a trust created by the decedent); Massachusetts Gen. Laws Ann. ch. 195, § 16 (1981) (limited to decedent's surviving spouse, child, grandchild, parent, brother, sister, niece, nephew, aunt, or uncle and includes state department of mental health and state department of public welfare where decedent was receiving public assistance); Nevada Rev. Stat. § 146.080 (1979) (provision drawn from existing California law and limited to the surviving spouse, the children, issue of deceased children, parents, brothers and sisters of the decedent).

Forty-day delay before summary procedure can be used. The new code includes a procedural requirement not found in existing law. The successors must wait 40 days before presenting the affidavit or declaration to the holder of the property. This new restriction insures a reasonable period during which persons who may be entitled to a decedent's property can learn of the decedent's death and determine whether administration of the estate is desirable.<sup>19</sup> In addition, a forced waiting period increases the likelihood that the decedent's debts--particularly those that are billed regularly--will come to the attention of the decedent's successors.

Presenting decedent's evidence of ownership. If the decedent had an instrument that evidences ownership (such as a stock certificate, bank passbook, or promissory note) and the evidence of ownership is not presented by the person seeking the delivery or transfer of the property, the person making the delivery or transfer may be liable to another person who later presents the outstanding evidence of

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19. The new 40-day delay requirement is consistent with existing Probate Code Section 649.2 (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). The new code contains a separate provision that permits a surviving spouse to collect salary owing to the deceased spouse without waiting for a 40-day period to elapse.

ownership and requests delivery or transfer of the property. The existing statute does not deal with this problem.<sup>20</sup>

The new code requires that the affidavit or declaration be accompanied by the decedent's evidence of ownership, if available.<sup>21</sup> If the evidence of ownership is not presented, the new code permits the holder of the property to require the person seeking the delivery or transfer of the property to provide a satisfactory indemnification or bond to hold the holder harmless.<sup>22</sup>

Inventory and appraisalment. Under existing law, there is no requirement that there be an inventory and appraisalment in order to collect or transfer property of a small estate.<sup>23</sup> The new code permits use of the summary procedure only if the affidavit or declaration is accompanied by an inventory and appraisalment by a probate referee of any real property (but not personal property) in the decedent's estate. This new requirement recognizes that the value

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20. Other statutes do deal with the problem. See the statutes cited in note 21 infra.
  21. This requirement is consistent with 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).
  22. This provision is drawn in part from Financial Code Section 6652 (issuance of new evidence of account by savings and loan association).
  23. An appraisalment by a probate referee is not required for estates subject to summary probate proceedings pursuant to Section 630. Prob. Code § 605(a)(2)(B).

of real property may be difficult to determine. If the decedent's estate does not include any real property, no inventory and appraisement is required.

Proof of identity of claimants to estate. The existing statute does not deal with the problem of the proof of identity of the persons executing the affidavit or declaration. The new code includes a provision that is designed to provide clear rules as to the type of identification that reasonably may be relied upon to establish the identity of a person executing an affidavit or declaration.<sup>24</sup>

Enforcement of duty to transfer property to successor. The existing statute does not expressly provide a remedy if the holder of the decedent's property refuses to surrender the property or to transfer the record title to the decedent's successor. The new code expressly provides a remedy against the holder who refuses to pay, deliver, or transfer any personal property or evidence thereof when presented with the affidavit or declaration showing the right of the successor (together with any required evidence of ownership, inventory and appraisement, and proof of identity of the persons executing the affidavit or declaration). 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

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24. The new provision 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.

the property. And, if the court finds that the holder acted unreasonably in refusing to pay, deliver, or transfer the property, the person entitled to the property is also entitled to attorney's fees.

Liability of persons to whom payment, delivery, or transfer is made. Probate Code Section 631 provides that "payment or transfer shall not preclude administration when necessary to enforce payment of the decedent's debts." The existing statute contains no other provision concerning the liability of the person who obtains possession of or title to property using the summary procedure. The new code includes comprehensive provisions governing this liability.

Under the new code, a person to whom payment, delivery, or transfer made is personally liable for the unsecured debts of the decedent. Any such debt may be enforced against the person in the same manner it could have been enforced against the decedent if the decedent had not died. The personal liability is limited to the fair market value (at the date of the decedent's death) of the property paid, delivered, or transferred to the person on whom liability is imposed, less the amount of any liens and encumbrances on the property.

The new code also makes a person to whom payment, delivery, or transfer is made personally liable to any person having a superior right to the property by testate or intestate succession from the decedent. An action to enforce this liability must be commenced within five years after the affidavit or declaration was presented to the holder of the property. This five-year statute of limitations is



comparable to that provided for recovery of property of a missing person if the missing person appears after the distribution of his or her property.<sup>25</sup>

If proceedings for administration of the decedent's estate are commenced, the new code makes each person to whom payment, delivery, or transfer of the decedent's property is made and who still has the property liable for restitution of the property to the estate. If the person no longer has the property, the person 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. A five-year statute of limitations is provided for enforcement of this liability.

The remedies described above are in addition to any remedies available by reason of any fraud or intentional wrongdoing.

#### Court Order Determining Succession to Real Property

The new code contains 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 can be used only to determine succession to real property, whether or not the decedent's estate includes personal property, and only where the gross value of the real and personal property in the decedent's estate does not exceed \$60,000.<sup>26</sup>

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25. Prob. Code § 1358.

26. The property described supra in the text accompanying notes 1-6 is excluded in determining the value of the decedent's estate.

The new procedure is drawn from existing Probate Code Sections 650-655, which provide for an order determining that property passed to a surviving spouse. An inventory and appraisal by a probate referee of the real property is required. The person who receives the property pursuant to the court order is personally liable for the unsecured debts of the decedent. This liability is limited to the fair market value (at the date of the decedent's death) of the real property received by the person on whom liability is imposed, less the amount of any liens and encumbrances on the property.

Affidavit Procedure for Transfer of Real Property of Small Estate

The new code provides a new procedure, drawn from a recently enacted Arizona statute,<sup>27</sup> that permits use of an affidavit to transfer title to real property as of record where the gross value of all real property in the decedent's estate located in California, as shown by an inventory and appraisal by a probate referee, does not exceed \$10,000.<sup>28</sup> The procedure can be used only after six months from the death of the decedent. The affidavit is filed in the superior court and must have attached an inventory and appraisal of

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27. The Arizona statute was enacted in 1983. See Ariz. Rev. Stat. Ann. §§ 14-3971, 14-3972 (Supp. 1984-85). For a discussion of the Arizona statute, see Effland, Handling Real and Personal Property At Death Without Administration Under the 1983 Amendments to the Arizona Probate Code, Ariz. B. J., Dec.-Jan. 1984, at 34, 36.

28. The value of the real property described supra in the text accompanying notes 1-6 is excluded in determining the value of the real property in the decedent's estate.

the real property and must contain a notary public's certificate of acknowledgment identifying each person executing the affidavit.

Upon receipt of the affidavit and the required fee, the court clerk, upon determining that the affidavit is complete and has the required attachments, shall file the affidavit and attachments and issue a certified copy of the affidavit without the attachments. The certified copy of the affidavit is recorded in the office of the county recorder of the county where the real property is located.

A good faith purchaser, lessee, or lender has the same rights and protections as a purchaser, lessee, 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.

The person designated as the successor to property in the certified copy of the affidavit is personally liable for the unsecured debts of the decedent. The person also is personally liable to any person having a superior right of the property by testate or intestate succession. If proceedings for administration of the decedent's estate are commenced, the person is liable for restoration of the property or its value. These liabilities are limited. If restoration to the estate is required, the person is liable for restoration of the real property to the estate. If the person no longer has the real property, the person is liable for restitution to the estate of the fair market value of the interest the person received in the property as of the date of its disposition, together with the net income the

person received from the property. In other cases, the liability is limited to the fair market value at the date of the decedent's death of the property received, less the amount of any liens and encumbrances on the property.

Outline of Draft Statute

## DIVISION 8. DISPOSITION OF ESTATE WITHOUT ADMINISTRATION

## PART 1. COLLECTION OR TRANSFER OF SMALL ESTATE WITHOUT ADMINISTRATION

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- § 9506. Successor of the decedent

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

- § 9530. Transfer of personal property without probate
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- § 9538. No pending probate proceeding; later probate proceeding not precluded
- § 9539. Personal liability for decedent's unsecured debts
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## CHAPTER 4. COURT ORDER DETERMINING SUCCESSION TO REAL PROPERTY

- § 9550. No pending probate proceeding
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- § 9552. Contents of petition; inventory and appraisement
- § 9553. Notice of hearing
- § 9554. Court order
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CHAPTER 5. AFFIDAVIT PROCEDURE FOR TRANSFER OF REAL PROPERTY  
OF SMALL ESTATE

- § 9580. Filing affidavit in superior court
- § 9581. Filing fee
- § 9582. Issuance and recording of certified copy of affidavit
- § 9583. Effect of recorded affidavit
- § 9584. Personal liability for decedent's unsecured debts
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- § 9586. Restitution if estate proceeding commenced
- § 9587. Limitation on liability
- § 9588. Other remedies not affected

DIVISION 8. DISPOSITION OF ESTATE WITHOUT ADMINISTRATION

PART 1. COLLECTION OR TRANSFER OF SMALL ESTATES  
WITHOUT ADMINISTRATION

CHAPTER 1. DEFINITIONS

§ 9500. Construction of words and phrases

9500. Unless the provision or context otherwise requires, the words and phrases defined in this chapter govern the construction of this part.

Comment. Sections 9502-9506 provide definitions of terms used in this part.

§ 9502. Holder of the decedent's property

9502. "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 9502 is drawn from language of a portion of subdivision (b) of former Probate Code 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

§ 9506. Successor of the decedent

9506. (a) "Successor of the decedent" means:

(1) If the decedent died leaving a will, the sole beneficiary or all of the 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 the property of the decedent under the decedent's will.

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

(b) For the purposes of this section, "the property of the decedent" means the particular property of the decedent which is sought to be collected, received, or transferred under Chapter 3 (commencing with Section 9530) or the real property described in the court order under Section 9554 or the real property described in an affidavit under Section 9580.

Comment. Paragraph (1) of subdivision (a) of Section 9506 is drawn from a portion of subdivision (b) of former Probate Code Section 630. A guardian, conservator, or custodian may act on behalf of the person entitled to the property. See Section 9511. 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 9511.

Paragraph (2) of subdivision (a) expands the provision of subdivision (b) of former Probate Code 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 or sisters, issue of deceased brothers or sisters, and grandparents. Under paragraph (2), the persons who can use the summary provisions of this part are not so limited.

Subdivision (b) is new. The definition of "successor of the decedent" requires that an affidavit or declaration be executed by all of the persons who succeed to the particular property sought to be collected, received, or transferred (see Sections 9530 and 9580) and that a petition be verified by all of the persons who succeed to the particular real property that is the subject of the petition (see Section 9551).

DRAFTSMAN'S NOTE. Subdivision (a)(2) of Section 9506 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 and considered and reaffirmed this decision at the May 1985 meeting.

#### CROSS-REFERENCES

##### Definitions

Property § 62

Surviving spouse § 78

Trust § 82

Trustee § 84

Will § 88

Persons who may act for successor § 9511



CHAPTER 2. GENERAL PROVISIONS

§ 9510. Exclusions in determining property or estate of decedent or its value

9510. (a) 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 9600, 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.

(b) 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 9840) of the Vehicle Code.

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

(c) For the purpose of this part, 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.

Comment. Paragraph (1) of subdivision (a) of Section 9510 continues former Probate Code Section 632 without substantive change. 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. O. McCarroll, 1 California Decedent Estate Administration Supplement § 3.6, at 76 (Cal. Cont. Ed. Bar 1985).

Paragraph (2) of subdivision (a) is new and is the same in substance as subdivision (b) of former Probate Code Section 647. Paragraph (2) is a special application of paragraph (1) of subdivision (a) of Section 9510 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 Probate Code Section 632 (now paragraph (1) of subdivision (a) of Section 9510), 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 (b) continues without substantive change the portion of subdivision (a) of former Probate Code Section 630 that excluded certain state registered property in determining the estate or its value. The excluded property can be transferred, without probate, under special statutory provisions. See Health & Safety Code § 18102 (manufactured homes, mobilehomes, commercial coaches, and truck campers), Veh. Code §§ 5910 (vehicles), 9916 (vessels).

Subdivision (c) continues without substantive change the portion of subdivision (a) of former Probate Code Section 630 that provided 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 9530-9545 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 Estates & Trusts Code §§ 160 (payment of money due to decedent to person designated by decedent), 9640 (collection by surviving spouse of compensation, not exceeding \$5,000, owed by employer to decedent).

CROSS-REFERENCES

Definitions

Community property § 28  
Personal property § 58  
Property § 62  
Real property § 68  
Surviving spouse § 78

§ 9511. Authority of guardian, conservator, trustee, or custodian

9511. 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 9511 is drawn from subdivision (d) of former Probate Code Section 650 and is consistent with the portion of subdivision (b) of former Probate Code 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 Probate Code 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 Probate Code Section 630.

CROSS-REFERENCES

Definitions

Property § 62  
Trust § 82  
Trustee § 84  
Will § 88  
Uniform Transfers to Minors Act §§ 3900-3925

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

§ 9530. Transfer of personal property without probate

9530. Excluding the property described in Section 9510, if the gross value of the decedent's real and personal property in this state does not exceed sixty thousand dollars (\$60,000) and the gross value of the decedent's real property, if any, in this state does not exceed ten thousand dollars (\$10,000) and if 40 days have elapsed since the death of the decedent, the successor of the decedent to the decedent's interest in the property 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 9530 continues without substantive change a portion of former Probate Code Section 630 with the addition of the requirement that 40 days have elapsed since the death of the decedent. The new 40-day requirement is consistent with Section 9620 (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 9640.

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 9530. See also Section 9510 (exclusions).

(2) The gross value of the decedent's real property in this state (excluding certain property) does not exceed \$10,000. See Section 9530. See also Section 9510 (exclusions).

(3) No proceeding for the administration of the decedent's estate is pending or has been conducted in California. See Section 9538.

(4) Not less than 40 days have elapsed since the death of the decedent. See Section 9530.

(5) The person who seeks to collect the money, receive the property, or have the evidences transferred is the successor of the

decedent. See Section 9531. The affidavit or declaration required by Section 9531 must be executed by all the successors who have an interest in the property sought to be collected, received, or transferred. See Section 9506 (defining "successor of the decedent").

The procedure under this chapter cannot be used for real property. See Section 9545. For a procedure for obtaining, without probate, a court order determining the persons who succeed to real property of a decedent (limited to a case where the gross value of decedent's real and personal property in this state does not exceed \$60,000), see Sections 9550-9557. For an affidavit procedure for obtaining marketable title to real property of a decedent without probate (limited to a case where the gross value of decedent's real property in this state does not exceed \$10,000), see Sections 9580-9588. 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 9650-9660. See also Sections 9620-9622 (right of surviving spouse to dispose of real property).

#### CROSS-REFERENCES

##### Definitions

- Personal property § 58
- Property § 62
- Real property § 68
- Security § 70
- Successor of the decedent § 9506
- Will § 88

Persons authorized to act on behalf of successor § 9511

DRAFTSMAN'S NOTE. Section 9530 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 subject to a 40-day delay requirement. California also has a 40-day delay requirement under existing 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. The draft statute attached to Memorandum 85-72 (passage of property to surviving spouse without administration), includes a special provision (Sections 9640-9645) 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 may not exceed \$5,000. This amount could be collected by affidavit without regard to the value of the decedent's estate.

§ 9531. Furnishing of affidavit

9531. To collect money, receive tangible personal property, or have evidences transferred under this chapter, an affidavit or a declaration under penalty of perjury under the laws of the State of California shall be furnished to the holder of the decedent's property stating all of the following:

(a) The decedent's name.

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

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

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

(e) The gross value of the decedent's real and personal property in California, excluding the property described Section 9510 of the California Estates and Trusts Code, does not exceed sixty thousand dollars (\$60,000).

(f) The gross value of the decedent's real property in California, excluding any real property described in Section 9510 of the California Estates and Trusts Code, does not exceed ten thousand dollars (\$10,000).

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

(h) The affidavit is executed by the successor of the decedent (as defined in Section 9506 of the California Estates and Trusts Code) to the decedent's interest in the described property.

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

(j) 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.

Comment. Section 9531 supersedes portions of subdivision (b) of former Probate Code Section 630. The portions of Section 9531 prescribing the contents of the affidavit or declaration are new and replace the provision of former Probate Code Section 630 that required that the person or persons furnish an affidavit or declaration "showing the right of the person or persons to receive such money or property, or to have such evidences transferred." The affidavit or declaration must be executed by all successors of the decedent who have an interest in the property sought to be collected, received, or transferred. See Section 9506 (defining "successor of the decedent").

CROSS-REFERENCES

Definitions

Holder of the decedent's property § 9502  
Person § 56  
Personal property § 58  
Property § 62  
Successor of the decedent § 9506  
Real property § 68  
Persons authorized to act on behalf of successor § 9511

§ 9532. Presenting decedent's evidence of ownership

9532. (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 or declaration to the holder of the decedent's property.

(b) If the decedent had evidence of ownership of property described in the affidavit or declaration and the evidence of ownership is not presented with the affidavit or declaration to the holder of the decedent's 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 9532 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 ownership 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 § 9502  
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 9532 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.

§ 9533. Inventory and appraisal of real property required

9533. If the estate of the decedent includes any real property, other than real property described in Section 9510, the affidavit or declaration shall be accompanied by an inventory and appraisal of the real property. The appraisal shall be made as set forth in [Chapter 9 (commencing with Section 600)].

Comment. Section 9533 is new. Under former law, the affidavit or declaration alone was sufficient. Even though the procedure provided in this chapter may be used to collect or transfer personal property only, if the estate includes any real property (not including real property held in joint tenancy or other real property described in Section 9510), an appraisal of the real property by a probate referee is required. Even though an appraisal of the real property is required, the inventory and appraisal need not include an inventory and appraisal of the personal property in the decedent's estate. If the decedent's estate does not include any real property, no inventory and appraisal is required. For provisions relating to real property, see Chapter 4 (commencing with Section 9550) (court order determining succession to real property) and Chapter 5 (commencing with Section 9580) (affidavit procedure for transfer of real property of small estate).

CROSS-REFERENCES

Definitions

Real property § 68

DRAFTSMAN'S NOTE. Section 9533 imposes a new requirement not found in existing law. Under existing law, an affidavit or declaration alone is sufficient to collect or transfer personal property in a small estate (not exceeding \$60,000 with not exceeding \$10,000 in real property). Section 9533 requires that the affidavit or declaration be accompanied by an appraisal by a probate referee if the estate includes any real property, even though only personal property may be collected or transferred pursuant to such affidavit or declaration.



§ 9534. Proof of identity of persons executing the affidavit

9534. (a) Reasonable proof of the identity of each person executing the affidavit or declaration 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 or declaration is personally known to the holder.

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

(c) If the affidavit or declaration 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 or declaration is reasonable proof of identity for the purposes of this section.

(d) If the affidavit or declaration 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 or declaration is reasonable proof of identity of the person executing the affidavit or declaration.

(f) Unless the affidavit or declaration contains a notary public's certificate of acknowledgment of the identity of the person, the holder shall note on the affidavit or declaration either that the person executing the affidavit or declaration is personally known or a description of the identification provided by the person executing the affidavit or declaration.

Comment. Section 9534 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 or declaration. 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.

Under subdivision (f), the holder must make a notation as required by subdivision (f) for each person executing the affidavit or declaration excluding only the person or persons for whom the affidavit or declaration contains a notary public's certificate of acknowledgment of identity.

#### CROSS-REFERENCES

##### Definitions

Holder of the decedent's property § 9502

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 or declaration. A representative of the California Bankers Association suggested that the statute address 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 9534 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.

##### § 9535. Transfer of property to successor

9535. (a) If the requirements of Sections 9530 to 9534, inclusive, are satisfied:

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

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

(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. If an action is brought against the holder under this section, the court shall award attorney's fees to the persons bringing the action if the court finds that the holder of the decedent's property acted unreasonably in refusing to pay, deliver, or transfer the property to them as required by this section.

Comment. Section 9535 is a new provision comparable to Section 9643 (collection by affidavit by surviving spouse of compensation owed to deceased spouse).

Subdivision (a) of Section 9535 is drawn from portions of former Probate Code Section 630. The person paying, delivering, or transferring the property is protected from liability. See Section 9536. Payment or transfer pursuant to Section 9535 does not preclude later administration of the decedent's estate. See Section 9538. As to the liabilities of the person receiving the property, see Sections 9539-9543.

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 9656 (court order determining that property is property belonging to or passing to a surviving spouse).

#### CROSS-REFERENCES

##### Definitions

Holder of the decedent's property § 9502  
Personal property § 58  
Property § 62  
Security § 70

DRAFTSMAN'S NOTE. Section 9535 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.

§ 9536. Protection of transferor from liability

9536. If the requirements of Sections 9530 to 9534, inclusive, are satisfied, receipt by the holder of the decedent's property of the affidavit or declaration 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 or declaration.

Comment. Section 9536 continues the first sentence of former Probate Code Section 631 without substantive change but with the addition of the clarifying introductory clause and the addition of the language drawn from Section 3916 (Uniform Transfers to Minors Act) that makes clear that the holder has no duty to see to the application of the property or evidence thereof.

CROSS-REFERENCES

Definitions

Holder of the decedent's property § 9502

Property § 62

§ 9537. Claim against estate in probate

9537. When the money or property claimed in an affidavit or declaration 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 or declaration 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 or declaration 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 9537 continues former Probate Code Section 631.1 without substantive change.

## CROSS-REFERENCES

### Definitions

Devisee § 34  
Heirs § 44  
Personal representative § 60  
Property § 62  
Will § 88

### § 9538. No pending probate proceeding; later probate proceeding not precluded

9538. (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 9538 is a new provision that is consistent with the last sentence of former Probate Code Section 631. See generally 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 Probate Code Section 631. See generally 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

### § 9539. Personal liability for decedent's unsecured debts

9539. Subject to Section 9542, 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 9539 is drawn from Section 6611 (small estate set-aside), but Section 9539 does not

include the one-year limitation on the duration of personal liability provided by Section 6611. Instead, Section 9539 follows Section 9633 (enforcement of liability of deceased spouse against surviving spouse) and Section 9556 (enforcement of debt against petitioners who receive low value real property under court order made in summary proceeding). Section 9539 (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 9539 is limited. See Section 9542.

#### 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 or declaration. Nor does it deal with the liability of the person who receives property using the affidavit or declaration 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 9539-9543.

##### § 9540. Personal liability to person having superior right

9540. Subject to Section 9542, 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 or declaration was presented under this chapter to the holder of the decedent's property.

Comment. Section 9540 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 9541. The liability under Section 9540 is limited. See Section 9542. 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 § 9502  
Property § 62

### § 9541. Restitution if estate proceeding commenced

9541. Subject to Section 9542, 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 or declaration was presented under this chapter to the holder of the decedent's property.

Comment. Section 9541 requires restitution to the decedent's estate if probate proceedings are commenced. This liability is limited. See Section 9542. 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 § 9502  
Property § 62

### § 9542. Limitation on liability

9542. (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 9539 or 9540 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 9541.

(b) The property or amount required to be restored to the estate under Section 9541 shall be reduced by any property or amount paid by the person to satisfy a liability under Sections 9539 or 9540.

(c) The aggregate of the personal liability of a person under Sections 9539 and 9540 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 9542 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

#### § 9543. Other remedies not affected

9543. The remedies available under Sections 9539 to 9542, inclusive, are in addition to any remedies available by reason of any fraud or intentional wrongdoing.

Comment. Section 9543 is a new provision that 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.

#### § 9544. Payment of costs and fees of public administrator

9544. 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 9544 continues subdivision (e) of former Probate Code Section 630 without substantive change.



## CROSS-REFERENCES

### Definitions

Property § 62

#### § 9545. Chapter does not apply to real property

9545. The procedure provided in this chapter may not be used to obtain possession or the transfer of real property.

Comment. Section 9545 continues the last sentence of subdivision (b) of former Probate Code Section 630 with language changes for clarification only and without substantive change.

## CROSS-REFERENCES

### Definitions

Real property § 68

#### 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 existing Sections 650-655 (order determining that property passed to surviving spouse).

Unlike the existing Section 650 procedure, this chapter does not permit the petitioner to obtain an order determining that personal property is property passing to the petitioner. Under this chapter, only an order determining that real property is property passing to the petitioner may be obtained. An earlier draft would have allowed the petitioner to obtain an order with respect to both real and personal property, but objection was made to that provision insofar as it related to personal property. The objection was based on the fear that including provision for personal property would result in financial institutions becoming unwilling to rely on an affidavit to release moneys. The Commission should determine whether it wishes to preclude use of the procedure provided in this chapter in a case where the registrar of record title to personal property will not transfer title of record upon receipt of an affidavit or declaration furnished by the successor of the decedent. Is there a justification for limiting the procedure under this chapter to real property when the procedure for a surviving spouse applies to both real and personal property?

#### § 9550. No pending probate proceeding

9550. 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 9550 makes the procedure provided by this chapter an alternative to the probate of a small estate.

§ 9551. Petition for court order determining succession to real property

9551. Exclusive of the property described in Section 9510, if a decedent dies leaving real property in this state and the gross value of the decedent's real and personal property in this state does not exceed sixty thousand dollars (\$60,000) 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 9550-9556 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 9650-9660 (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 Sections 9551 and 9552. See also Section 9510 (excluded property). Unlike Section 9530 (affidavit or declaration procedure), the procedure provided by this chapter may be used even if the gross value of the real property in the decedent's estate exceeds \$10,000, the only limitation for use of this chapter being that the gross value of the real and personal property not exceed \$60,000.

(2) No proceeding is pending or has been conducted in this state for administration of the decedent's estate. See Section 9550.

(3) The decedent died leaving real property in this state and 40 days have elapsed since the death of the decedent. See Section 9551.

(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 9551. See also Section 9506 (defining "successor of the decedent").

(5) The petition is accompanied by an inventory and appraisalment by a probate referee. See Section 9552.

(6) 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. See Section 9553.

CROSS-REFERENCES

Definitions

Real property § 68

Successor of the decedent § 9506

Will § 88

Persons authorized to act on behalf of successor § 9511

§ 9552. Contents of petition; inventory and appraisalment

9552. (a) The petition shall be verified by each of the petitioners, shall contain a request that the court make an order under Chapter 4 (commencing with Section 9550) of Part 1 of Division 8 of the Estates and Trusts 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 Section 9510 of the California Estates and Trusts Code, as shown by the inventory and appraisalment attached to the petition, does not exceed sixty thousand dollars (\$60,000).

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

(4) The facts upon which the petitioners based the allegation that the described real property property is property passing to the petitioners.

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

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

(7) 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.

(b) There shall be attached to the petition an inventory and appraisal in the form set forth in Section [600] of the decedent's real and personal property in this state, excluding the property described in Section 9510. The appraisal shall be made as set forth in [Chapter 9 (commencing with Section 600)]. The petitioner may appraise the assets which a personal representative could appraise under Section [605].

(c) 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 9552 is drawn in part from Section 9651 (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 9511.

#### CROSS-REFERENCES

##### Definitions

Devisee § 34

Heirs § 44

Person § 56

Personal property § 58

Real property § 68

Will § 88

Persons authorized to act on behalf of successor § 9511

##### § 9553. Notice of hearing

9553. 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 9553 is the same in substance as subdivision (b) of Section 9655 (petition for order determining property is property passing to surviving spouse).

##### § 9554. Court order

9554. (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, excluding the property described in Section 9510, 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) If the petition has attached an inventory and appraisalment that satisfies the requirements of subdivision (b) of Section 9552, the finding required by paragraph (1) of subdivision (b) of this section shall be made on the basis of the verified petition and the attached inventory and appraisalment unless evidence is offered by a person opposing the petition that the gross value of the decedent's real and personal property in California, excluding the property described in Section 9510, exceeds sixty thousand dollars (\$60,000).

Comment. Section 9554 states the findings required for a court order determining that the real property described in the order is property of the decedent passing to the petitioners.

The court does not make a finding under Section 9554 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, excluding the property described in Section 9510 of the Estates and Trusts Code, does not exceed \$60,000."

#### CROSS-REFERENCES

##### Definitions

Personal property § 58

Real property § 68

DRAFTSMAN'S NOTE. Section 9554 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 (excluding certain property) does not exceed \$60,000. No determination is made of the value of individual items of property. An inventory and appraisal of the real and personal property is required. Except for items that the personal representative is authorized generally to appraise, the appraisal must be made by a probate referee.

§ 9555. Finality of order

9555. 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 9555 is drawn from Section 9657 (property passing to surviving spouse).

CROSS-REFERENCES

Definitions

Person § 56

Real property § 68

§ 9556. Personal liability of petitioners

9556. (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 9556 is drawn from Section 6611 (small estate set aside), but Section 9556 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 9539.

§ 9557. Attorney's fee

9557. The attorney's fee for services performed in connection with the filing of a petition and obtaining a court order under this chapter shall be determined by private agreement between the attorney and the client and is not subject to approval by the court.

Comment. Section 9557 is comparable to Section 9660 (determination or confirmation of property passing or belonging to surviving spouse). See the Comment to Section 9660.

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. Nor does the Arizona statute require an inventory and appraisal of the real property by a probate referee; 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 9550) 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.

§ 9580. Filing affidavit in superior court

9580. (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, as shown by the inventory and appraisal attached to the affidavit, excluding the real property described in Section 9510 of the California Estates and Trusts Code, does not exceed ten thousand dollars (\$10,000).

(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 9506 of the California Estates and Trusts Code) 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.

(c) There shall be attached to the affidavit an inventory and appraisal in the form set forth in Section [600] of the decedent's real property in this state, excluding the real property described in Section 9510. The appraisal shall be made as set forth in [Chapter 9 (commencing with Section 600)].

(d) 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 9580-9588 provide a new procedure for obtaining a marketable title to real property in which the decedent's interest is shown by a probate referee's appraisal not to exceed \$10,000 gross value. The new procedure is drawn in part from a statute enacted in Arizona in 1983. See Ariz. Rev. Stat. Ann. §§ 14-3971, 14-3972 (Supp. 1984-85). For a discussion of the Arizona statute, see Effland, Handling Real and Personal Property At Death Without Administration Under the 1983 Amendments to the Arizona Probate Code, Ariz. B. J., Dec.-Jan 1984, at 34, 36.

#### CROSS-REFERENCES

##### Definitions

Person § 56

Real property § 68

Successor of the decedent § 9506

Will § 88

Persons authorized to act on behalf of successor § 9511

##### § 9581. Filing fee

9581. Notwithstanding any other provision of law, the total fee for the filing of an affidavit under Section 9580 and the issuance of one certified copy of the affidavit under Section 9582 is thirty-five dollars (\$35).

Comment. The fee provided by Section 9581 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?

##### § 9582. Issuance and recording of certified copy of affidavit

9582. Upon receipt of the affidavit and the required fee, the court clerk, upon determining that the affidavit is complete and has the required attachments, 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 9580.

#### CROSS-REFERENCES

##### Definitions

Real property § 68

§ 9583. Effect of recorded affidavit

9583. (a) A good faith purchaser or lessee of real property for value from, or a good faith lender to, a person designated as a successor to the property in a certified copy of an affidavit issued under Section 9582 and recorded in the county in which the real property is located has the same rights and protections as the purchaser, lessee, 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 9583 is designed to give the successors designated in the certified copy of the affidavit a marketable title to the real property. Good faith purchasers, lessees, 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 9583 protects good faith purchasers, lessees, 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 9586. The successor also is liable to an unsecured creditor (Section 9584) or to a person having a superior right to the property (Section 9585). This liability is limited. See Section 9587.

CROSS-REFERENCES

Definitions

Real property § 68

§ 9584. Personal liability for decedent's unsecured debts

9584. Subject to Section 9587, each person who is designated as a successor to property in a certified copy of an affidavit issued under Section 9582 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 9584 is the same in substance as Section 9539. See the Comment to that section. The liability under Section 9584 is limited. See Section 9587.

§ 9585. Personal liability to person having superior right

9585. Subject to Section 9587, each person who is designated as a successor to property in a certified copy of an affidavit issued under Section 9582 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 9582.

Comment. Section 9585 is comparable to Section 9540. The liability under Section 9585 is limited. See Section 9587.

CROSS-REFERENCES

Definitions

Person § 56

§ 9586. Restitution if estate proceeding commenced

9586. Subject to Section 9587, 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 9582 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 9582.

Comment. Section 9586 is comparable to Section 9541. 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

§ 9587. Limitation on liability

9587. (a) A person designated as a successor to property in a certified copy of an affidavit issued under Section 9582 is not liable under Section 9584 or 9585 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 9586.

(b) The interest in the property or amount required to be restored to the estate under Section 9586 shall be reduced by any property or amount paid by the person to satisfy a liability under Sections 9584 or 9585.

(c) The aggregate of the personal liability of a person under Sections 9584 and 9585 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 9587 is comparable to Section 9542.

CROSS-REFERENCES

Definitions

Person § 56

§ 9588. Other remedies not affected

9588. The remedies available under Sections 9584 to 9587, inclusive, are in addition to any remedies available by reason of any fraud or intentional wrongdoing.

Comment. Section 9588 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 1985 AB 196]

Comment. The portion of subdivision (a) of Section 630 describing the size of the estate to which the affidavit procedure applies is continued in Est. & Trusts Code § 9530 without substantive change. The portion of subdivision (a) which excluded certain state registered property is continued in Est. & Trusts Code § 9510(b) without substantive change. The portions of subdivision (a) which excluded amounts due for services in the armed forces of the United States and not exceeding \$5,000 in compensation owing to the decedent for services from any employment is continued in Section 9510(c) without substantive change.

The portion of subdivision (b) of Section 630 that limited use of the affidavit procedure in intestate succession cases to the relatives of the decedent listed in the subdivision is not continued. See Est. & Probate Code §§ 9506 (defining "successor of the decedent"), 9530 (persons authorized to use affidavit procedure).

The portion of subdivision (b) relating to the guardian or conservator of the estate is superseded by Est. & Trusts Code § 9511(a). The portion of subdivision (b) relating to a trustee is superseded by the last sentence of subdivision (a)(1) of Est. & Trusts Code § 9506 and by Est. & Trusts Code § 9511(b). The reference in subdivision (b) to the beneficiaries under the decedent's will is continued in Est. & Trusts Code § 9506(a)(1) and by the use of the defined term "successor of the decedent" in Est. & Trusts Code §§ 9530-9545 which supersede former Probate Code §§ 630-632. The portion of subdivision (b) that required that the person or persons listed has or have a right to succeed to the property of the decedent is continued in effect under Est. & Trusts Code § 9506 (defining "successor of the decedent").

The portion of subdivision (b) of Section 630 granting authority to collect money, receive tangible personal property, or have evidences transferred without probate is continued in Est. & Trusts Code § 9530, but is made subject to a 40-day delay and to other requirements. See the Comment to Est. & Trusts Code § 9530.

The reference in subdivision (b) of Section 630 to a "financial institution" has been omitted as unnecessary because a financial institution is included within the definition of "holder of the decedent's property" in Est. & Trusts Code § 9502 as a person "owing money to the decedent." See also Est. & Trusts Code § 65 (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 Est. & Trusts Code § 56.

The reference in subdivision (b) of Section 630 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 Est. & Trusts Code § 9502 and by use of the defined term in Est. & Trusts Code §§ 9530-9545 which supersede former Probate Code §§ 630-632.

The portion of subdivision (b) of Section 630 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 Est. & Trusts Code § 9531 which specifies the contents of the affidavit or declaration. See also Est. & Trusts Code §§ 9532 (presenting decedent's evidence of ownership), 9533 (inventory and appraisal of real property), 9534 (proof of identity).

The last sentence of subdivision (b) of Section 630 is restated in Est. & Trusts Code § 9545 without substantive change.

Subdivision (c) of Section 630 is restated in Est. & Trusts Code § 9511 without substantive change.

Subdivision (d) of Section 630 is continued in Est. & Trusts Code § 9535(a)(2) without substantive change.

Subdivision (e) of Section 630 is continued in Est. & Trusts Code § 9544 without substantive change.

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

Comment. The first sentence of Section 631 is continued without substantive change in Est. & Trusts Code § 9536 with the addition of clarifying language. See the Comment to Est. & Trusts Code § 9536. The last sentence is continued without substantive change in Est. & Trusts Code § 9538(b). See the Comment to that section.

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

Comment. Section 631.1 is continued without substantive change in Est. & Trusts Code § 9537.

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

Comment. Section 632 is continued without substantive change in Est. & Trusts Code § 9510(a)(1).