

0239a  
February 6, 1986

Note. Changes may be made in this Agenda. For meeting information, please call John H. DeMouilly (415) 494-1335.

Time

Feb. 14 (Friday) 9:00 a.m. - 4:00 p.m.  
(The Commission plans to work through lunch.)

Place

601 Board Room  
State Bar Building  
555 Franklin Street  
San Francisco

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

San Francisco

February 14, 1986

1. Minutes of January 16-17 Meeting (sent 2/4/86)
2. Administrative Matters

Schedule for Work on New Estates and Trusts Code

Memorandum 86-20 (sent 1/31/86)  
See Schedule attached to Final Agenda

3. 1986 Legislative Program Generally

Memorandum 86-24 (handout at meeting)

Assembly Bill 2625 - Comprehensive Probate Bill

Memorandum 86-15 (sent 1/31/86)  
First Supplement to Memorandum 86-15 (sent 1/23/86)  
Second Supplement to Memorandum 86-15 (sent 1/28/86)  
Third Supplement to Memorandum 86-15 (to be sent if needed)

Assembly Bill 2652 - Comprehensive Trust Bill

Memorandum 86-16 (sent 1/24/86)  
First Supplement to Memorandum 86-16 (enclosed)  
Second Supplement to Memorandum 86-16 (to be sent if needed)

Special  
Order of  
Business at  
9:30 a.m.

4. Study L-655 - Estates and Trusts Code (Probate Referees)

Memorandum 86-18 (sent 1/31/86)  
First Supplement to Memorandum 86-18 (enclosed)

5. Study L-1050 - Estates and Trusts Code (Notice in Guardianship and Conservatorship Proceedings)  
Memorandum 85-108 (sent 12/12/85; another copy sent 1/23/86)
6. Study L-700 - Estates and Trusts Code (Testamentary Capacity of Conservatee)  
Memorandum 86-22 (sent 2/4/86)
7. Study L-1050 - Estates and Trusts Code (Sterilization of Conservatee)  
Memorandum 85-109 (sent 12/18/85; another copy sent 1/23/86)  
First Supplement to Memorandum 85-109 (sent 1/31/86)
8. Study L-1029 - Estates and Trusts Code (Marital Deduction Gifts)  
First Supplement to Memorandum 85-63 (sent 6/7/85; another copy sent 1/23/86)  
Second Supplement to Memorandum 85-63 (sent 1/31/86)
9. Study L-1029 - Estates and Trusts Code (Closing Estate Administration)  
Memorandum 86-21 (sent 1/31/86)  
Draft Statute (attached to Memorandum)
10. Study L-1033 - Estates and Trusts Code (Establishing Identity of Heirs)  
Memorandum 85-89 (sent 10/17/85; another copy sent 1/23/86)  
Draft Statute (attached to Memorandum)  
First Supplement to Memorandum 85-89 (sent 12/18/85; another copy sent 1/23/86)
11. Study L-1035 - Estates and Trusts Code (Administration of Estates of Missing Persons Presumed Dead)  
Memorandum 85-91 (sent 10/17/85; another copy sent 1/23/86)  
Draft Statute (attached to Memorandum)  
First Supplement to Memorandum 85-91 (sent 12/31/85; another copy sent 1/23/86)
12. Study L-1010 - Estates and Trusts Code (Opening Estate Administration)  
Memorandum 86-17 (No Contest Clauses) (sent 2/4/86)  
Memorandum 86-23 (Notice to Creditors) (enclosed)
13. Study L-1040 - Estates and Trusts Code (Public Administrators)  
Memorandum 86-19 (sent 1/24/86)  
Draft Statute (attached to Memorandum)  
First Supplement to Memorandum 86-19 (sent 1/24/86)  
Second Supplement to Memorandum 86-19 (sent 1/28/86)  
Third Supplement to Memorandum 86-19 (to be sent)

Special  
Order of  
Business at  
12:00 noon.

Special  
Order of  
Business at  
2:00 p.m.

14. Study L - Terminology Used in Comments to Indicate How New Section Compares to Existing Law

Memorandum 85-113 (sent 1/10/86; another copy sent 1/23/86)

To be Considered if Time Permits

15. Handbook of Practices and Procedures

Memorandum 85-107 (sent 12/12/85; another copy sent 1/23/86)  
Draft of Revised Handbook (attached to Memorandum)

16. Topics and Priorities for 1988 and Thereafter

Memorandum 85-94 (sent 1/23/86)  
First Supplement to Memorandum 85-94 (sent 1/31/86)

SCHEDULE FOR WORK ON ESTATES AND TRUSTS CODE

FEBRUARY MEETING

Preliminary Consideration of New Material

Probate Referees  
Guardianship-Conservatorship Law  
    Notice Provisions  
    Sterilization of Conservatee  
Establishing Identity of Heirs  
Administration of Estates of Missing Persons Presumed Dead  
Public Administrators

MARCH MEETING

Approve Tentative Recommendations for Distribution for Comment

Opening Estate Administration  
Independent Administration  
Distribution and Discharge  
Presentation and Payment of Claims  
Guardianship-Conservatorship Law (Notice; Sterilization)

Approval for Distribution

Compensation, Commissions, and Fees (Staff Prepared Questionnaire)

Preliminary Consideration of New Material

Estate Management  
Abatement; Distribution of Interest and Income  
Definitions

APRIL MEETING

Approve Tentative Recommendations for Distribution for Comment

Definitions  
Public Administrators  
Establishing Identity of Heirs  
Administration of Estates of Missing Persons Presumed Dead  
Estate Management

Preliminary Consideration of New Material

Inventory and Appraisal (including Probate Referees)  
Multiple-Party Accounts  
Ancillary Administration  
Anti-Lapse Statute

MAY MEETING

Approve Tentative Recommendation for Distribution for Comment

Inventory and Appraisal (including Probate Referees)  
Multiple-Party Accounts  
Ancillary Administration

Preliminary Consideration of New Material

Compensation, Commissions, and Fees  
Notices  
Rules of Procedure  
Orders  
Appeals  
Operative Date of New Code

JUNE MEETING

Approve Tentative Recommendations for Distribution for Comment

Anti-Lapse Statute  
Abatement; Distribution of Interest and Income  
Compensation, Commissions, and Fees  
Notices  
Rules of Procedure  
Orders  
Appeals  
Operative Date of New Code

Preliminary Consideration of New Material

Review for technical and substantive changes and prepare Comments

Preliminary Provisions and Definitions  
General Provisions  
Disclaimers  
Guardianship-Conservatorship Law  
Management of Disposition of Community Property Where Spouse  
Lacks Legal Capacity  
Authorization of Medical Treatment for Adult Without  
Conservator  
Other Protective Proceedings  
California Uniform Transfers to Minors Act  
Wills  
Intestate Succession  
Family Protection  
Escheat of Decedent's Property  
Disposition Without Administration  
Trusts

JULY MEETING

Preliminary Consideration of New Material

Conforming Revisions of Sections in Other Codes  
Review Comments on Tentative Recommendations Sent Out For Comment

SEPTEMBER MEETING

Approve Text of New Estates and Trusts Code for Introduction

Arrange for introduction as preprinted bill

OCTOBER MEETING

Approve Printing of Recommendation for Estates and Trusts Code

NOVEMBER AND DECEMBER

Staff prepares Recommendation for Printing

FEBRUARY 1986 MEETING

Printed bill available for review and distribution

MARCH 1987 MEETING

Printed Commission Recommendation Available for Distribution  
Review Comments from Interested Persons on Bill Proposing New Code

NEW PROBATE STUDIES TO BE COMMENCED IN 1987

Uniform Transfers to Minors Act

Make possible to make outright gift to remain in custody until  
age 25

Co-custodians

Draft new Division 3 (Powers of Attorney; Powers of Appointment)

Claims Procedure for Trusts

MINUTES OF MEETING  
of  
CALIFORNIA LAW REVISION COMMISSION  
February 14, 1986  
SAN FRANCISCO

A meeting of the California Law Revision Commission was held in San Francisco on February 14, 1986.

Law Revision Commission

Present: Edwin K. Marzec, Chairperson                                  Ann E. Stodden  
                Arthur K. Marshall, Vice Chairperson

Absent: Bill Lockyer, Member of Senate                                  Bion M. Gregory  
                Alister McAlister, Member of Assembly                      Tim Paone  
                Roger Arnebergh

Staff Members

Present: John H. DeMouilly    Robert J. Murphy III  
                Nathaniel Sterling    Stan G. Ulrich

Consultants Present

Edward C. Halbach, Jr., Property and Probate Law  
Russell Niles, Property and Probate Law

Other Persons Present

Edward V. Brennan, California Probate Referees, San Diego  
James D. Devine, State Bar Estate Planning, Trust and  
                Probate Law Section, Monterey  
Nancy E. Ferguson, California Probate Referees, Chico  
Sandra Kass, Los Angeles County Bar Association, Los Angeles  
Robert A. Mills, State Bar Estate Planning, Trust and  
                Probate Law Section, San Francisco  
James Quillinan, State Bar Estate Planning, Trust and  
                Probate Law Section, Mountain View  
Matthew S. Rae, Jr., Private Attorney, Los Angeles  
Irving Reifman, Probate Referee, Los Angeles  
Gerald L. Scott, California Probate Referees, San Jose  
Shirley Yawitz, California Probate Referees, San Francisco

## ADMINISTRATIVE MATTERS

### MINUTES OF FEBRUARY 14, 1986, MEETING

The Minutes of the February 14, 1986, Meeting were approved as submitted by the staff after the following corrections were made:

- (1) On page 10, line 7, "§ 8173" was changed to "§ 8273".
- (2) On page 11, line 6, "proved" was changed to "provide".

### SCHEDULE ATTACHED TO AGENDA FOR WORK ON ESTATE AND TRUST CODE

The Commission noted the schedule for work on the Estate and Trust Code that was attached to the Agenda for the February meeting. The Chairperson has indicated it would be useful at the start of each meeting to review briefly where the Commission is on the Estate and Trust Code project and the matters that will be considered at that meeting and at future meetings. It was agreed that this would be a useful procedure.

### RECOGNITION OF OUTSTANDING SERVICE OF JUAN C. ROGERS

The Commission was advised that Juan C. Rogers, the Commission's Administrative Assistant, has retired because of illness. The Commission determined to send him flowers and an appropriate plaque as an expression of its regard for him and in recognition of his outstanding service as a member of the Commission's staff.

### FUTURE MEETINGS

The following is the schedule for future meetings.

#### March 1986

|               |                        |            |
|---------------|------------------------|------------|
| 13 (Thursday) | 3:00 p.m. - 10:00 p.m. | Sacramento |
| 14 (Friday)   | 9:00 a.m. - 6:00 p.m.  |            |

#### April 1986

|               |                        |        |
|---------------|------------------------|--------|
| 10 (Thursday) | 3:00 p.m. - 10:00 p.m. | Eureka |
| 11 (Friday)   | 8:30 a.m. - 6:00 p.m.  |        |

#### May 1986

|               |                        |            |
|---------------|------------------------|------------|
| 15 (Thursday) | 3:00 p.m. - 10:00 p.m. | Sacramento |
| 16 (Friday)   | 9:00 a.m. - 6:00 p.m.  |            |



June 1986

26 (Thursday) 3:00 p.m. - 10:00 p.m. Monterey  
27 (Friday) 9:00 a.m. - 6:00 p.m.

July 1986

17 (Thursday) 3:00 p.m. - 10:00 p.m. San Diego  
18 (Friday) 9:00 a.m. - 6:00 p.m.

September 1986

4 (Thursday) 3:00 p.m. - 10:00 p.m. Sacramento  
5 (Friday) 9:00 a.m. - 6:00 p.m.

November 1986

13 (Thursday) 3:00 p.m. - 10:00 p.m. Orange County  
14 (Friday) 9:00 a.m. - 6:00 p.m.

December 1986

4 (Thursday) 3:00 p.m. - 10:00 p.m. Los Angeles  
5 (Friday) 9:00 a.m. - 6:00 p.m.

1986 LEGISLATIVE PROGRAM

The Commission considered Memorandum 86-20 and the following report on the 1986 Legislative Program.

Set for Hearing in Second House

Assembly Bill 625 - Buol case urgency bill (Commission recommended legislation amended into existing bill) (Assembly Member McAlister has further amended bill to make other technical changes in family law) (Set for hearing by Senate Judiciary Committee on February 25)

Introduced

Assembly Bill 2625 - Comprehensive Probate Bill (Disposition of Estate Without Administration; Small Estate Set-Aside; Proration of Estate Taxes; Technical and Clarifying Revisions) (Set for Hearing on April 1)

Assembly Bill 2626 - Reservation of Legislative Power for Disposition of Property in Marriage Dissolution Cases (Set for hearing on February 25)

Assembly Bill 2652 - Comprehensive Trust Statute (Set for hearing on April 1)

Assembly Concurrent Resolution 93 - Continues Commission Authority to Study Topics Previously Authorized for Study (Set for hearing by Assembly Judiciary Committee on February 18)

Not Yet Introduced

Living Wills - Increases Duration of Living Will From Five to Seven Years (Neither McAlister nor Lockyer are willing to introduce this bill - Assembly Member Connelly also declined to introduce this bill).

Probate Clean Up - Definition of Account in Insured Association

and other technical and substantive revisions in Probate Code. These and other technical and substantive revisions approved by the Commission will be amended into Assembly Bill 2625 (distribution of estates without administration and other matters)

In view of the other legislative measures recommended for enactment in 1986 and the heavy burden on the staff in producing material for the new Estate and Trust Code, the Commission determined not to make any additional effort this session to obtain an author for the bill to extend the duration of the living will from five to seven years.

AUTHORIZATION FOR LEGAL STAFF TO CARRY OVER EXCESS VACATION HOURS INTO 1986

The Commission considered Memorandum 86-20 which discussed the schedule for work on the new Estate and Trust Code. The Commission recognized that it is important that this project be completed in time submission of the new code to the 1987 legislative session and that it will take a major effort on the part of the legal staff to produce the new Estate and Trust Code on this schedule. So that this important project can be kept on schedule, the Commission authorized the members of the legal staff to carry over into 1987 any excess vacation hours that they do not take in 1986 and that otherwise would be lost on December 31, 1986.

STUDY L - SCHEDULE FOR WORK ON NEW ESTATE AND TRUST CODE

The Commission briefly reviewed Memorandum 86-20.

Procedure for Preparation of New Code

The Commission noted the procedure outlined in Memorandum 86-20 for the preparation of the new Estate and Trust Code. The procedure was outlined in the memorandum as follows:

(1) Prepare draft statute. The first step is for the staff to prepare a draft statute of a portion of the new code for review by the Commission and the Executive Committee of the State Bar Section. Sometimes there will not be time for the Executive Committee to review the draft with care prior to the meeting at which it is first considered, but the Executive Committee will have a number of subsequent opportunities to give the Commission the benefit of its comments and suggestions.

(2) Prepare Tentative Recommendation. The next step is for the Commission and the staff to develop a Tentative Recommendation relating to that portion of the new code (with a draft statute and Comment to each statute section and a preliminary part that discusses the existing law and the changes recommended by the Commission). This step may take only one meeting or several meetings. This tentative recommendation should accurately reflect the views of the Commission at the time it is approved by the Commission for distribution to interested persons and organizations for review and comment. More than 400 persons and organizations have requested that they be sent copies of these tentative recommendations, including the Probate and Trust Sections of a number of local bar associations.

(3) Distribute Tentative Recommendation for review and comment. The next step is to distribute the Tentative Recommendation to interested persons for review and comment, allowing them several months to review the Tentative Recommendation and to submit their comments and suggestions to the Commission.

(4) Review comments received. When the time for submitting comments and suggestions on a particular Tentative Recommendation has expired and the Commission's schedule permits, the Commission will review the comments and suggestions received, make any needed revisions in the draft statute, and approve that portion of the draft statute for inclusion in the new Code. This step may be accomplished at only one meeting or several meetings may be required to revise the Tentative Recommendation to make the changes the Commission desires to make.

(4) Approve text of new code for introduction as a bill. When all of the Tentative Recommendations have been revised in light of the comments received and a draft of the entire new code has been prepared, the staff and the State Bar Section and hopefully others will go through the draft with a view to making the entire draft consistent and discovering and correcting any substantive and technical defects. This task is a substantial undertaking. The Commission will then consider the revised draft of the new code and approve the text of the new code for introduction as a bill.

(5) Prepare printed Recommendation. The staff will then review and revise the preliminary portion of the Commission's recommendation (the part that discusses the changes made in existing law and the reason for making the changes) and the Comment to each section of the new code, and the Comments to the repealed sections of the existing Probate Code. The staff is counting on the members of the Executive Committee to review the Comments with great care and to raise any matters of concern so that an appropriate revision can be made to correct the Comment or so that the Commission can determine any issue that involves policy.

(6) Print Recommendation. The last step in the process is to print the Commission's Recommendation. The printed Recommendation will contain the preliminary portion, the text of the statute with Comments, and Comments to repealed sections and disposition tables. Perhaps it will be necessary to omit the text of the statute from the printed Recommendation because of the cost of printing the Recommendation. The Commission should be aware that this last step requires time and that the schedule must allow sufficient time to perform this step. The printed Recommendation must be available to legislative staff and interested persons and organizations within sufficient time before the legislative hearings to permit analysis of the bill.

#### Requirements to Keep Project on Schedule

The Commission recognized that it will take a major effort on the part of the staff to produce the Estate and Trust Code on schedule. The Commission authorized the members of the legal staff to carry over into 1987 any excess vacation hours that otherwise would be lost on December 31, 1986.

#### Extra Commission Meeting Time

The Commission noted that extra Commission meeting time may be necessary, but the staff advised that it is not now possible to determine when, if ever, there will be a backlog of material for Commission consideration that will require extra meeting time.

#### Task of Executive Committee of State Bar Section

The Commission noted that the production of the Estate and Trust Code on schedule will require a major effort on the part of the Executive Committee of the State Bar Estate Planning, Trust and Probate Section.

#### STUDY L - ASSEMBLY BILL 2625

The Commission considered Memorandum 86-15, the First, Second, Third, and Fourth Supplements to Memorandum 86-15, proposed amendments to the Commission's comprehensive probate bill (AB 2625) attached to the basic memo and to the First and Fourth Supplements, and revised comments to the amended sections. The Commission also considered letters from the California Bankers Association, from Kathryn A. Ballsun, and from Charles Collier that were handed out at the meeting, copies of which are attached as Exhibits 1, 2, and 3 of these Minutes.

The Commission approved the following amendments to AB 2625:

AMENDMENTS TO ASSEMBLY BILL 2625

AMENDMENT 1

In line 1 of the title, after "amend" insert:  
Section 353.5 of the Code of Civil Procedure, to amend

AMENDMENT \_\_\_\_

In line 2 of the title, delete "605, 854, 910, and 1200.5"  
and insert:

20, 584.2, 584.3, 584.5, 584.6, 605, 707, 718.6, 771.3, 851.5, 854,  
910, 1080, 1191, 1200.5, and 1469

AMENDMENT \_\_\_\_

In line 5 of the title, after "13000)" insert a comma

AMENDMENT \_\_\_\_

In line 5 of the title, after the comma at the end of the  
line insert:  
to repeal and add Section 1406 of,

AMENDMENT \_\_\_\_

In line 8 of the title, strike out "and"

AMENDMENT \_\_\_\_

On page 3, strike out line 1 and insert:

SECTION 1. Section 353.5 of the Code of Civil Procedure is  
amended to read:

353.5. If a person against whom an action may be brought  
dies before the expiration of the statute of limitations for the  
commencement of the action and the cause of action survives, an action  
against the surviving spouse of the person which is brought pursuant  
to ~~Section 64914~~ Chapter 3 (commencing with Section 13550) of Part  
2 of Division 8 of the Probate Code may be commenced within four  
months after the death of the person or before the expiration of the

statute of limitations which would have been applicable to the cause of action against the person if the person had not died, whichever occurs later.

SEC. 2. Section 18102 of the Health and Safety

AMENDMENT —

On page 5, between lines 8 and 9, insert:

(c) If the department is presented with the documents described in paragraphs (1) and (2) of subdivision (b), no liability shall be incurred by the department or any officer or employee of the department by reason of the transfer of registration of the manufactured home, mobilehome, commercial coach, truck camper, or floating home pursuant to this section. The department or officer or employee of the department may rely in good faith on the statements in the certificate described in paragraph (2) of subdivision (b) and has no duty to inquire into the truth of any statement in the certificate. The person who secures the transfer of the manufactured home, mobilehome, commercial coach, truck camper, or floating home pursuant to this section is subject to the provisions of Sections 13109 to 13113, inclusive, of the Probate Code to the same extent as a person to whom transfer of property is made under Chapter 3 (commencing with Section 13100) of Part 1 of Division 8 of the Probate Code.

SEC. 3. Section 20 of the Probate Code is amended to read:

20. Unless the provision or context otherwise requires, the words and phrases defined in this part govern the construction of Divisions 1 (commencing with Section 1), 2 (commencing with Section 100), ~~and~~ 6 (commencing with Section 6100) , 8 (commencing with Section 13000), 9 (commencing with Section 15000), and 10 (commencing with Section 20100).

SEC. 4. Section 584.2 of the Probate Code is amended to read:

584.2. If an asset of an estate consists of any option right which is nontransferable save only by testate or intestate succession from the decedent, the executor or administrator may exercise such option and may use any funds or property in the estate in the acquisition of the property covered by such option if it would be in the best interests of the estate and those interested therein and if such exercise would add value to the estate, upon obtaining an order of the court. The petition for such an order shall be filed with the clerk who shall set the same for hearing by the court, ~~and shall give notice thereof~~ Notice of the hearing shall be given for the period and in the manner required by Section ~~1200 of this code~~ 1200.5, but the court may order the notice to be given for a shorter period, or dispensed with.

SEC. 5. Section 584.3 of the Probate Code is amended to read:

584.3. An executor or administrator shall have power, with approval of the court which ordered appointment of such executor or administrator, to grant an option to purchase real property of the estate for a period within or beyond the administration of the estate.

(a) To obtain such approval, the executor or administrator shall file a verified petition with the clerk describing the subject real property, stating the terms and conditions of the proposed option, and showing the advantage to the estate in giving such option.

(b) The purchase price of the real property subject to the option must be at least 90 percent of the appraised value of such real property, and such appraisal must have been made by the referee within 90 days prior to the date of filing the petition.

(c) The clerk shall set the petition for hearing by the court and give notice thereof in the manner provided in Section 1200. The executor or administrator shall also cause notice of the hearing to be mailed, postage prepaid, to all heirs, devisees, and legatees of the decedent who are known to the executor or administrator at least 10 days before the hearing, addressed to them, at their respective post office addresses as set forth therein.

(d) Upon the hearing, the court, upon proof that due notice of the hearing has been given, shall proceed to hear the petition and any objection thereto that may have been filed or presented, and examine into the advantage to the estate in granting the option. If it appears to the court that good reason exists and that it will be to the advantage of the estate for the option to be granted, and it does not appear that a higher offer of a sum exceeding the purchase price of the real property subject to the option, or a better offer with respect to terms of the option, may be obtained, the court shall make an order approving the granting of the option and directing that the executor or administrator give such option, prescribing the terms and conditions thereof. A higher offer with respect to the purchase price shall be subject to the provisions of Section 785 governing increased bids in sales of real property, and a better offer with respect to the terms of the option shall be one deemed to be materially more advantageous to the estate. A higher offer made either for cash or upon a credit, whether on the same or different credit terms, or a better offer, shall be considered only if the personal representative informs the court in person or by counsel that the offer is acceptable prior to the court's making its order approving the granting of the option.

(e) Where the option granted pursuant to subdivision (d) extends beyond the administration of the estate, the decree of final distribution shall provide that the real property subject to such option be distributed to the distributees subject to the terms and conditions of the option. Further, any option, whether within or beyond the administration of the estate, granted pursuant to subdivision (d) shall be subject to the provisions of ~~Section 12131/3~~ Chapter 4 (commencing with Section 884.010) of Title 5 of Part 2 of Division 2 of the Civil Code.

SEC. 6. Section 584.5 of the Probate Code is amended to read:

584.5. When the time for filing or presenting claims has expired and all uncontested claims have been paid or are sufficiently secured by mortgage, or otherwise, but the estate is not in a condition to be finally closed and distributed, the court may authorize a personal representative to invest and reinvest any surplus moneys in his hands in any manner provided by the will. If the personal representative believes it is advisable to make such investments, the personal representative shall file a verified petition showing the general condition of the estate and the types of investments which the personal representative proposes to make. The clerk shall set the petition for hearing by the court ~~and give notice thereof for the period and in the manner required by Section 1200.~~ The personal representative shall cause notice of the hearing and a copy of the petition to be mailed to all known legatees and devisees of property which is proposed to be invested, at their last known addresses, as provided in Section ~~1200~~ 1200.5, whether or not they have requested special notice or given notice of appearance. Where the property which is proposed to be invested is left by the will to a trustee, notice of the hearing and a copy of the petition shall be mailed to the trustee and to all persons in being who shall or may participate in the corpus or income of the trust, at their last known addresses, as provided in Section ~~1200~~ 1200.5, whether or not they have requested special notice or given notice of appearance.

SEC. 7. Section 584.6 of the Probate Code is amended to read:

584.6. At the time appointed, the court shall hear the petition if no objection thereto has been filed by any interested party, and if the court is satisfied that there is no substantial reason why some or all of the investment powers given by the will should not be exercised, it shall make an order authorizing the personal representative to invest and reinvest such portion of the proceeds of sales or any other surplus moneys of the estate as the court shall deem advisable in such types of investments as the personal representative has proposed and which are authorized by the will. The order may be for a limited period or until the administration of the estate is completed, and may be renewed, modified or terminated at any time, upon the petition of any person interested, ~~and a hearing after notice~~ Notice of the hearing on the petition shall be given for the period and in the manner required by Section ~~1200~~ 1200.5.

AMENDMENT \_\_\_\_\_

On page 5, line 9, strike out "SEC. 2." and insert:

SEC. 8.



AMENDMENT \_\_\_\_

On page 6, line 30, strike out "SEC. 3." and insert:  
SEC. 9.

AMENDMENT \_\_\_\_

On page 6, line 32, strike out "SEC. 4." and insert:  
SEC. 10.

AMENDMENT \_\_\_\_

On page 6, between lines 33 and 34, insert:

SEC. 11. Section 707 of the Probate Code is amended to read:

707. (a) Except as provided in subdivision (b) or Section 707.5 or Section 720, all claims arising upon contract, whether they are due, not due, or contingent, and all claims for funeral expenses and all claims for damages for injuries to or death of a person or injury to property and all claims against the executor or administrator of any testator or intestate who in his lifetime has wasted, destroyed, taken or carried away or converted to his own use, the property of another person or committed any trespass on the real property of another person, must be filed or presented within the time limited in the notice or as extended by the provisions of Section 709 of this code. Any claim not so filed or presented is barred forever, unless it is made to appear by the affidavit of the claimant to the satisfaction of the court that (1) the claimant had not received notice, by reason of being out of the state, or (2) the claimant had in good faith filed a claim in another proceeding for the same decedent which has not been consolidated with the present proceeding, and in which letters had not been issued. In either event the claim may be filed or presented at any time within one year after the expiration of such prescribed period and before petition for final distribution has been filed; provided, neither the filing or presentation of such claim nor its later establishment, in whole or in part, shall make property distributed pursuant to court order or any payments properly made before filing or presentation of such claim subject to the claim. The clerk must enter in the register every claim filed, giving the name of the claimant, the amount and character of the claim, the rate of interest, if any, and the date of filing.

(b) The filing and presentation of a claim is not required as a prerequisite to commencing an action against the decedent for damages for injury to or for the death of a person caused by the wrongful act or neglect of the decedent or to recover upon a judgment obtained in the action if (1) the decedent had liability insurance applicable to the cause of action, (2) the amount of damages sought in the action does not exceed the maximum amount of such insurance, and (3) the estate of the decedent otherwise qualifies for summary probate proceedings pursuant to ~~the provisions of Section 630~~ Chapter 3 (commencing with Section 13100) of Part 1 of Division 8 of the Probate Code. If the amount of damages sought in the action exceeds the

maximum amount of the insurance, filing and presentation of a claim is required only with respect to the amount sought in excess of the maximum amount of the insurance. The defendant in the action may be designated as "Estate of (name ~~and of~~ decedent), Deceased". No action shall be maintained under this subdivision unless the insurer has been served with a copy of the complaint.

SEC. 12. Section 718.6 of the Probate Code is amended to read:

718.6. If it shall appear to be to the advantage of the estate for the executor or administrator to accept a deed of property which is subject to a mortgage or deed of trust, in lieu of foreclosure of the mortgage or sale under the deed of trust, the court may authorize, upon such terms and conditions as may be imposed by the court, the acceptance of such deed, conveying such property to the heirs or devisees of the decedent, subject to administration, upon the petition of the executor or administrator or of any person interested in the estate, ~~and after notice~~ Notice of the hearing on the petition shall be given for the period and in the manner required by ~~Section 1200 of this Code~~ Section 1200.5.

SEC. 13. Section 771.3 of the Probate Code is amended to read:

771.3. If a person dies, having sold, but not delivered securities or commodities not owned by such person, the executor or administrator may purchase such securities or commodities as are required to perform such incomplete contract of sale, upon obtaining an order of court. A petition for such order shall be filed with the clerk, who shall set such order for hearing by the clerk, ~~and shall give notice thereof~~ Notice of the hearing on the petition shall be given for the period and in the manner required by Section ~~1200~~ 1200.5, but the court or judge may order the notice to be given for a shorter period or dispensed with. The order shall fix the terms and conditions of purchase, and when the maximum purchase price is fixed or when the securities or commodities are to be purchased upon an established stock, bond, or commodity exchange, no notice need be given.

SEC. 14. Section 851.5 of the Probate Code is amended to read:

851.5. If a person dies in possession of, or holding title to, real or personal property which, or some interest in which, is claimed to belong to another, or dies having a claim to real or personal property, title to or possession of which is held by another, the executor, administrator, or any claimant may file with the clerk of the court a verified petition setting forth the facts upon which the claim is predicated. Thereupon the clerk shall set the petition for hearing by the court ~~and give notice thereof for the period and in the manner required by Section 1200.~~ The petitioner shall cause notice of the hearing and a copy of the petition to be mailed to the

executor or administrator (if not the petitioner) and all known heirs, legatees and devisees at their last known addresses, as provided in Section ~~1200~~ 1200.5, whether they have requested special notice or given notice of appearance or not. The petitioner shall also cause notice of the hearing and a copy of the petition to be served in accordance with Title 5 (commencing with Section 410.10) of Part 2 of the Code of Civil Procedure on any other person who may have an interest in the property which is the subject of the petition, at least 30 days prior to the date set for hearing. Any interested person may request time for filing a response to the petition, for discovery proceedings, or for other preparation for such hearing and the court shall grant a continuance for a reasonable time for any of such purposes. Notice of pendency of such proceeding may be filed pursuant to Section 409 of the Code of Civil Procedure. Any person having or claiming title to or an interest in the property which is the subject of the petition, at or prior to the hearing, may object to the hearing of the petition if the petition is filed in a court which is not the proper court under any other provision of law for the trial of a civil action seeking the same relief and, if such objection be established, the court shall not grant the petition. If a civil action is pending in respect to the subject matter of a claim filed pursuant to this section and jurisdiction has been obtained in the court where the civil action is pending prior to the filing of such claim the court shall abate the petition until the conclusion of the civil action.

AMENDMENT \_\_\_\_

On page 6, line 34, strike out "SEC. 5." and insert:  
SEC. 15.

AMENDMENT \_\_\_\_

On page 6, line 38, after "probate" insert a comma

AMENDMENT \_\_\_\_

On page 7, strike out lines 4 to 6, inclusive, and insert:  
court. Notice of the hearing on the petition shall be given for the period and in the manner required by Section 1200.5.

AMENDMENT \_\_\_\_

On page 7, line 22, after "testator" insert a comma

AMENDMENT \_\_\_\_

On page 7, line 27, strike out "SEC. 6." and insert:  
SEC. 16.

AMENDMENT \_\_\_\_\_

On page 7, line 39, strike out "SEC. 7." and insert:  
SEC. 17.

AMENDMENT \_\_\_\_\_

On page 7, line 40, strike out "Coded" and insert:

Code

AMENDMENT \_\_\_\_\_

On page 8, between lines 1 and 2, insert:

SEC. 18. Section 1080 of the Probate Code is amended to read:

1080. Anytime after the commencement of the time for filing or presenting claims and prior to the time a petition for final distribution has been filed, the executor or administrator, or any person claiming to be an heir of the decedent or entitled to distribution of the estate or any part thereof, may file a petition setting forth his or her claim or reason and praying that the court determine who are entitled to distribution of the estate. The clerk shall set the petition for hearing by the court, ~~and give notice thereof~~ Notice of the hearing shall be given for the period and in the manner required by Section ~~1200~~ 1200.5. At least 10 days before the date set for the hearing of the petition by the court, the petitioner also shall cause notice of the hearing thereof to be mailed to ~~the executor or administrator and to~~ all legatees and devisees and to all known heirs of the decedent, ~~and to all persons (or their attorneys, if they have appeared by attorney) who have requested notice as provided in Section 1202 of this code, or who have given notice of appearance in person or by attorney,~~ addressed to them at ~~their respective post office addresses given in their requests for special notice or notice of appearance, if any, otherwise at their~~ respective offices or places of residence, if known, and if not, at the county seat of the county where the proceedings are pending, or to be personally served upon such persons. Any person may appear and file a written statement setting forth his interest in the estate. No other pleadings are necessary and the allegations of each claimant shall be deemed to be denied by each of the other claimants to the extent that they conflict with any claim of the latter.

Whenever any estate involves, or may involve, a charitable trust, other than a charitable trust with a designated trustee which may lawfully accept such trust or involves or may involve a bequest or devise for a charitable purpose without an identified legatee, devisee, or beneficiary thereof, or an escheat to the State of California, the Attorney General shall be deemed to be a person entitled to distribution within the meaning of this section and shall be entitled to file the petition referred to in this section and shall be given written notice of the hearing in the same manner as legatees and devisees.

SEC. 19. Section 1191 of the Probate Code is amended to read:

1191. The clerk shall set the petition for hearing by the court, and give notice thereof in the manner provided in Section 1200. The petitioner shall cause notice of the hearing to be given in the manner specified in Notice of the hearing shall be given for the period and in the manner required by Section 1200.5.

AMENDMENT \_\_\_\_\_

On page 8, line 2, strike out "SEC. 8." and insert:

SEC. 20.

AMENDMENT \_\_\_\_\_

On page 9, line 14, after "which" insert:

(A) notice is required to be given for the period and in the manner provided by Section 1200.5 or (B)

AMENDMENT \_\_\_\_\_

On page 10, between lines 8 and 9, insert:

SEC. 21. Section 1406 of the Probate Code is repealed.

~~1406. Account in an insured savings and loan association means any of the following:~~

~~(a) Shares issued by a federal savings and loan association~~

~~(b) Investment certificates issued by a state-chartered building and loan association of savings and loan association doing business in this state which is an insured institution as defined in Title IV of the National Housing Act~~

~~(c) Shares issued by a state-chartered building and loan association of savings and loan association doing business in this state which does not issue investment certificates and which is an insured institution as defined in Title IV of the National Housing Act~~

SEC. 22. Section 1406 is added to the Probate Code, to read:

1406. (a) "Account in an insured savings and loan association" means a savings account or mutual capital certificate of either of the following:

(1) A federal association.

(2) A savings association doing business in this state which is an "insured institution," as defined in Title IV of the National Housing Act (12 U.S.C. Sec. 1724 et seq.).

(b) As used in this section:

(1) "Federal association" has the same meaning as defined in subdivision (b) of Section 5102 of the Financial Code.

(2) "Mutual capital certificate" has the same meaning as defined in Section 5111 of the Financial Code.

(3) "Savings account" has the same meaning as defined in Section 5116 of the Financial Code.

(4) "Savings association" has the same meaning as defined in subdivision (a) of Section 5102 of the Financial Code.

SEC. 23. Section 1469 of the Probate Code is amended to read:

1469. When a provision of this division applies the provisions of this code applicable to executors or administrators to proceedings under this division, a reference to Section 1200 or Section 1200.5 in the provisions applicable to executors or administrators shall be deemed to be a reference to this chapter.

AMENDMENT \_\_\_\_

On page 10, line 9, strike out "SEC. 9." and insert:  
SEC. 24.

AMENDMENT \_\_\_\_

On page 12, line 9, strike out "are not pending, a petition filed" and insert:

have not yet been commenced, a petition

AMENDMENT \_\_\_\_

On page 12, line 10, strike out ", but need not, be filed" and insert:

be filed concurrently

AMENDMENT \_\_\_\_

On page 12, line 12, after "decedent" insert:  
, or, if no such petition for probate or for administration is being filed, a petition under this chapter may be filed independently.

AMENDMENT \_\_\_\_

On page 12, line 14, after the first "the" insert:  
entry of the order of

AMENDMENT \_\_\_\_

On page 14, line 20, strike out "encumbraces" and insert:  
encumbrances

AMENDMENT \_\_\_\_

On page 14, line 29, strike out "justicy" and insert:  
justify

AMENDMENT \_\_\_\_

On page 15, line 15, after "title" insert:  
to

AMENDMENT \_\_\_\_

On page 16, line 15, after "court" insert:  
in the same proceeding

AMENDMENT \_\_\_\_

On page 16, line 19, strike out "fees" and insert:  
fee

AMENDMENT \_\_\_\_

On page 16, line 23, after the first "court" insert:  
in the same proceeding

AMENDMENT \_\_\_\_

On page 16, line 25, strike out "This chapter applies" and  
insert:  
Sections 6600 to 6613, inclusive, apply

AMENDMENT \_\_\_\_

On page 16, between lines 28 and 29, insert:  
6615. On and after January 1, 1987, a reference in any  
statute of this state, or in a written instrument, including a will or  
trust, to a provision of former Sections 640 to 647.5, inclusive,  
shall be deemed to be a reference to the comparable provisions of this  
chapter.

AMENDMENT \_\_\_\_

On page 16, line 29, strike out "SEC. 10." and insert:  
SEC. 25.

AMENDMENT \_\_\_\_

On page 19, between lines 26 and 27, insert:

13053. On and after January 1, 1987, a reference in any statute of this state, or in a written instrument, including a will or trust, to a provision of former Probate Code Sections 630 to 632, inclusive, shall be deemed to be a reference to the comparable provisions of Chapter 3 (commencing with Section 13100).

AMENDMENT \_\_\_\_

On page 20, line 8, after "13101." insert:

(a)

AMENDMENT \_\_\_\_

On page 20, line 14, strike out "(a)" and insert:

(1)

AMENDMENT \_\_\_\_

On page 20, line 15, strike out "(b)" and insert:

(2)

AMENDMENT \_\_\_\_

On page 20, line 16, strike out "(c)" and insert:

(3)

AMENDMENT \_\_\_\_

On page 20, line 17, after "decedent" insert

as shown in a certified copy of decedent's death certificate attached to this affidavit or declaration

AMENDMENT \_\_\_\_

On page 20, line 18, strike out "(d)" and insert:

(4)



AMENDMENT \_\_\_\_

On page 20, line 21, strike out "(e)" and insert:  
(5)

AMENDMENT \_\_\_\_

On page 20, line 25, strike out "(f)" and insert:  
(6)

AMENDMENT \_\_\_\_

On page 20, line 28, strike out "(g)" and insert:  
(7)

AMENDMENT \_\_\_\_

On page 20, line 31, strike out "(h)" and insert:  
(8)

AMENDMENT \_\_\_\_

On page 20, line 32, strike out "(1)" and insert:  
(A)

AMENDMENT \_\_\_\_

On page 20, lines 32 and 33, strike out "(the affiants or declarants are)"

AMENDMENT \_\_\_\_

On page 20, line 36, strike out "(2)" and insert:  
(B)

AMENDMENT \_\_\_\_

On page 21, line 2, strike out "(1)" and insert:  
(9)

AMENDMENT \_\_\_\_

On page 21, line 4, strike out "(j)" and insert:  
(10)

AMENDMENT \_\_\_\_

On page 21, line 7, strike out "(k)" and insert:  
(11)

AMENDMENT \_\_\_\_

On page 21, between lines 9 and 10, insert:

(b) Where more than one person executes the affidavit or declaration under this section, the statements required by subdivision (a) shall be modified as appropriate to reflect that fact.

(c) A certified copy of the decedent's death certificate shall be attached to the affidavit or declaration.

AMENDMENT \_\_\_\_

On page 24, line 2, after "13106." insert:

(a)

AMENDMENT \_\_\_\_

On page 24, between lines 12 and 13, insert:

(b) If the requirements of Sections 13100 to 13104, inclusive, are satisfied, the holder of the decedent's property is not liable for any taxes due to this state by reason of paying money, delivering property, or changing registered ownership of property pursuant to this chapter.

AMENDMENT \_\_\_\_

On page 25, line 10, strike out "Any" and insert:

In addition to any other liability the person has under Sections 13109 to 13112, inclusive, any

AMENDMENT \_\_\_\_

On page 25, line 17, after the second "the" insert:  
person liable under this subdivision presents the

AMENDMENT \_\_\_\_

On page 25, line 18, strike out "is presented"

AMENDMENT \_\_\_\_

On page 25, line 22, strike out "five" and insert:  
three

AMENDMENT \_\_\_\_

On page 25, line 24, strike out ". This five-year period allowed for" and strike out lines 25 through 27, inclusive, and insert:  
, or three years after the discovery of the fraud, whichever is later. The three-year period specified in this subdivision is not tolled for any reason.

AMENDMENT \_\_\_\_

On page 25, line 39, after "interest" insert:  
from the date of disposition

AMENDMENT \_\_\_\_

On page 26, line 7, after "(c)" insert:  
and in addition to any other liability the person has under Sections 13109 to 13112, inclusive

AMENDMENT \_\_\_\_

On page 26, line 14, after the second "the" insert:  
person liable under this subdivision presents the

AMENDMENT \_\_\_\_

On page 26, lines 14 and 15, strike out "is presented"

AMENDMENT \_\_\_\_

On page 26, line 26, after "property" insert:  
, or three years after the discovery of the fraud, whichever is later

AMENDMENT \_\_\_\_

On page 27, line 1, after "time" insert:  
, together with the net income the person received from the property and, if the property has been disposed of, interest from the date of disposition at the rate payable on a money judgment on the fair market

value of the property. For the purpose of this subdivision, "fair market value of the property" has the same meaning as defined in paragraph (2) of subdivision (a) of Section 13111

AMENDMENT \_\_\_\_

On page 28, line 28, strike out "the names and addresses of all other" and strike out line 29 and insert:

, if the personal representative is the trustee of a trust that is a devisee under the will of the decedent, the names and addresses of all persons interested in the trust, as determined in cases of future interests pursuant to subdivision (1), (2), or (3) of Section 1215.1, so far as

AMENDMENT \_\_\_\_

On page 28, line 38, after "under" insert:  
paragraph (1) of subdivision (a) of

AMENDMENT \_\_\_\_

On page 29, line 12, strike out "findings" and insert:  
determinations

AMENDMENT \_\_\_\_

On page 29, line 20, strike out "findings" and insert:  
determinations

AMENDMENT \_\_\_\_

On page 29, line 33, strike out "finding" and insert:  
determination

AMENDMENT \_\_\_\_

On page 30, line 29, after "court" insert:  
in the same proceeding

AMENDMENT \_\_\_\_

On page 30, line 33, strike out "fees" and insert:  
fee

AMENDMENT \_\_\_\_

On page 30, line 37, after the first "court" insert:  
in the same proceeding

AMENDMENT \_\_\_\_

On page 31, line 23, strike out "lease" and insert:  
least

AMENDMENT \_\_\_\_

On page 32, line 35, strike out "designed" and insert:  
designated

AMENDMENT \_\_\_\_

On page 32, line 40, strike out the first "the" and insert:  
each

AMENDMENT \_\_\_\_

On page 33, line 24, strike out "If" and insert:  
In addition to any other liability the person has under Sections 13204  
to 13207, inclusive, if

AMENDMENT \_\_\_\_

On page 34, line 1, after "(d)" insert a comma

AMENDMENT \_\_\_\_

On page 35, line 25, strike out "five" and insert:  
three

AMENDMENT \_\_\_\_

On page 35, line 26, strike out ". The five-year" and  
insert:  
, or three years after the discovery of the fraud, whichever is  
later. The three-year

AMENDMENT \_\_\_\_

On page 36, line 2, after "time" insert:  
, together with the net income the person received from the property  
and, if the property has been disposed of, interest from the date of

disposition at the rate payable on a money judgment on the fair market value of the property. For the purpose of this subdivision, "fair market value of the property" has the same meaning as defined in paragraph (2) of subdivision (a) of Section 13206

AMENDMENT \_\_\_\_

On page 37, line 18, strike out "that" and insert:  
such

AMENDMENT \_\_\_\_

On page 38, line 6, after "in" insert:  
any statute of this state or in

AMENDMENT \_\_\_\_

On page 38, line 10, after "649.5," insert:  
inclusive, or Sections 650 to 658,

AMENDMENT \_\_\_\_

On page 41, line 14, strike out "thousnd" and insert:  
thousand

AMENDMENT \_\_\_\_

On page 43, line 39, strike out "A" and insert:  
In addition to any other liability the person has under this section, a

AMENDMENT \_\_\_\_

On page 44, line 22, strike out "to"

AMENDMENT \_\_\_\_

On page 46, line 33, after "spouse" insert:  
and, if the personal representative is the trustee of a trust that is a devisee under the will of the decedent, all persons interested in the trust, as determined in cases of future interests pursuant to subdivision (1), (2), or (3) of Section 1215.1

AMENDMENT \_\_\_\_

On page 46, strike out lines 38 to 40, inclusive

AMENDMENT \_\_\_\_

On page 47, strike out line 1

AMENDMENT \_\_\_\_

On page 47, line 14, strike out "devise" and insert:  
devisee

AMENDMENT \_\_\_\_

On page 48, line 25, strike out "limited, to" and insert:  
limited to,

AMENDMENT \_\_\_\_

On page 49, line 12, after "court" insert:  
in the same proceeding

AMENDMENT \_\_\_\_

On page 49, line 20, after the first "court" insert:  
in the same proceeding

AMENDMENT \_\_\_\_

On page 49, between lines 21 and 22, insert:  
SEC. 26. Section 13655, as added to the Probate Code by  
Section 25 of this act, is amended to read:

13655. (a) If a petition filed under this chapter is filed with a petition for probate of the deceased spouse's will, notice of the hearing on the petition shall be given in the manner prescribed by Sections 327 and 328 and shall be included in the notice required by those sections. If the petition filed under this chapter is filed with a petition for administration of the estate of the deceased spouse, notice of the hearing on the petition shall be given in the manner prescribed by Section 441 and shall be included in the notice required by that section.

(b) If proceedings for the administration of the estate of the deceased spouse are pending at the time a petition is filed under this chapter or, if the proceedings are not pending and if the petition filed under this chapter is not filed with a petition for probate of the deceased spouse's will or for administration of the estate of the deceased spouse, the clerk shall set the petition for hearing. At least 10 days before the hearing, notice of the hearing on the petition filed under this chapter shall be personally served upon the following persons by the petitioner or mailed, postage prepaid, by the petitioner to the following persons, addressed to the

addresses given in their request for special notice or notice of appearance, the addresses of their offices or places of residence, or, if neither of these addresses is known to the petitioner, the county seat of the county in which the proceedings are pending:

(1) Any personal representative who is not the petitioner.

(2) All devisees and known heirs of the deceased spouse and, if the personal representative is the trustee of a trust that is a devisee under the will of the decedent, all persons interested in the trust, as determined in cases of future interests pursuant to ~~subdivision~~ paragraph (1), (2), or (3) of subdivision (a) of Section 1215/1 15804.

(3) All persons or their attorneys who have requested special notice pursuant to Section 1202.

(4) All persons or their attorneys who have given notice of appearance.

(c) The notice specified in subdivision (b) shall also be mailed, as provided in subdivision (b) to the Attorney General, addressed to the office of the Attorney General at Sacramento, California, if the petitioner bases the allegation that all or part of the estate of the deceased spouse is property passing to the surviving spouse upon the will of the deceased spouse and the will involves or may involve either of the following:

(1) A testamentary trust of property for charitable purposes other than a charitable trust with a designated trustee, resident in this state.

(2) A devise for a charitable purpose without an identified devisee or beneficiary.

AMENDMENT \_\_\_\_

On page 49, line 22, strike out "SEC. 11." and insert:  
SEC. 27.

AMENDMENT \_\_\_\_

On page 49, line 25, strike out "TO" and insert:

OF

AMENDMENT \_\_\_\_

On page 49, line 35, strike out "esate" and insert:  
estate

[Note to Legislative Counsel: On page 50, line 6, the space following the first set of quotation marks should be removed.]



AMENDMENT \_\_\_\_

On page 50, strike out lines 13 to 17, inclusive, and insert:

(b) Notwithstanding the repeal of Article 4a (commencing with Section 970) of Chapter 15 of Division 3 of the Probate Code by the act that enacts this chapter, the provisions of that article remain applicable where the decedent died before January 1, 1987. No

AMENDMENT \_\_\_\_

On page 50, line 35, strike out the second "in"

AMENDMENT \_\_\_\_

On page 51, line 4, after "by" insert:

all

AMENDMENT \_\_\_\_

On page 51, line 9, strike out "of" and insert:

or

AMENDMENT \_\_\_\_

On page 51, line 12, strike out the second "a" and insert:

the

AMENDMENT \_\_\_\_

On page 51, line 27, after "in" insert:

income, or an estate for years, or for life, or other temporary interest in

AMENDMENT \_\_\_\_

On page 51, line 37, strike out the comma

AMENDMENT \_\_\_\_

On page 52, line 23, after "against" insert:

the persons who receive

AMENDMENT \_\_\_\_

On page 53, line 20, strike out "any" and insert:

the

AMENDMENT \_\_\_\_

On page 54, line 5, after "(2)" insert:

of

AMENDMENT \_\_\_\_

On page 54, line 32, strike out "estate" and insert:

state

AMENDMENT \_\_\_\_

On page 54, line 39, strike out "any" and insert:

the

AMENDMENT \_\_\_\_

On page 54, line 40, after "decedent" insert:

would

AMENDMENT \_\_\_\_

On page 55, line 18, strike out "mean" and insert:

means

AMENDMENT \_\_\_\_

On page 55, line 23, between "(d)" and "Trustee"" insert

quotation marks

AMENDMENT \_\_\_\_

On page 55, line 25, strike out "other wise" and insert:

otherwise

AMENDMENT \_\_\_\_

On page 55, line 27, after "means" insert:

fair market

AMENDMENT \_\_\_\_

On page 55, line 29, strike out "(A)" and insert:

(a)

AMENDMENT \_\_\_\_

On page 55, line 29, strike out "transfees" and insert:  
transferees

AMENDMENT \_\_\_\_

On page 57, line 1, after "pay" insert a comma

AMENDMENT \_\_\_\_

On page 57, line 3, strike out "the" and insert:  
that

AMENDMENT \_\_\_\_

On page 57, line 9, after "with" insert a comma

AMENDMENT \_\_\_\_

On page 57, line 23, strike out "any" and insert:  
the

AMENDMENT \_\_\_\_

On page 58, line 10, strike out "Civil Code" and insert:  
Code of Civil Procedure

AMENDMENT \_\_\_\_

On page 59, line 3, strike out "any" and insert:  
the

AMENDMENT \_\_\_\_

On page 59, line 6, strike out the second "the" and insert:  
an

AMENDMENT \_\_\_\_

On page 59, line 9, strike out "SEC. 12." and insert:  
SEC. 28.

AMENDMENT \_\_\_\_

On page 60, line 15, after "(c)" insert:

If the department is presented with the documents described in paragraphs (1) and (2) of subdivision (b), no liability shall be incurred by the department or any officer or employee of the department by reason of the transfer of registration of the vehicle pursuant to this section. The department or officer or employee of the department may rely in good faith on the statements in the certificate described in paragraph (2) of subdivision (b) and has no duty to inquire into the truth of any statement in the certificate. The person who secures the transfer of the vehicle pursuant to this section is subject to the provisions of Sections 13109 to 13113, inclusive, of the Probate Code to the same extent as a person to whom transfer of property is made under Chapter 3 (commencing with Section 13100) of Part 1 of Division 8 of the Probate Code.

(d)

AMENDMENT \_\_\_\_

On page 60, line 17, strike out "SEC. 13." and insert:  
SEC. 29.

AMENDMENT \_\_\_\_

On page 61, after line 21, insert:

(c) If the department is presented with the documents described in paragraphs (1) and (2) of subdivision (b), no liability shall be incurred by the department or any officer or employee of the department by reason of the transfer of registration of the vessel pursuant to this section. The department or officer or employee of the department may rely in good faith on the statements in the certificate described in paragraph (2) of subdivision (b) and has no duty to inquire into the truth of any statement in the certificate. The person who secures the transfer of the vessel pursuant to this section is subject to the provisions of Sections 13109 to 13113, inclusive, of the Probate Code to the same extent as a person to whom transfer of property is made under Chapter 3 (commencing with Section 13100) of Part 1 of Division 8 of the Probate Code.

SEC. 30. Section 13655 of the Probate Code as amended by Section 26 of this act shall become operative only if AB 2652 of the 1985-86 Regular Session is chaptered and adds Section 15804 to the Probate Code, and in that event Section 13655 as added to the Probate Code by Section 25 of this act shall remain operative only until July 1, 1987, and on that date Section 13655 shall be amended as provided in Section 26 of this act.

In addition to approving the foregoing amendments, the Commission also made the following decisions:

Blanket Authority to Correct Obsolete Cross-References

The Commission approved the staff request for authority to amend AB 2625 as needed to correct any cross-references to sections repealed

by the bill that the staff may find, without waiting for the next Commission meeting. The staff should report to the Commission any such amendments it makes.

#### Court Determination of Dispute Over Attorneys' Fees

The Comments to Sections 6613, 13157, and 13660 should make clear that a proceeding may be reopened for the court to determine a dispute over attorneys' fees.

#### Notarization of Affidavit

The California Bankers Association suggested that Sections 13104 and 13200 should require an affidavit which is notarized to be notarized within the United States. The Commission deferred this question until the staff determines whether such a requirement might conflict with most-favored nation treaties. The staff should report back to the Commission with this information.

#### Setting Aside Specific Assets

The Comment to Section 6609 should make clear that under subdivision (c) the court may distribute one asset to the spouse and another asset to a minor child.

#### Filing Fee for Set-Aside Petition

The Commission asked the staff to get the views of the County Clerks Association on subdivision (a) of Section 6605 (no additional fee where set-aside petition is filed in pending estate proceeding).

#### Valuation Date for Real Property Transferred Pursuant to Affidavit

Mr. Collier's letter asks what valuation date is used for real property transferred pursuant to affidavit (see Section 13200(c); cf. Section 13205(b) (valuation date for fixing treble damages)). The State Bar asked for time for the Executive Committee to study the matter. The State Bar will report back to the Commission at the March meeting. For the time being, no change is to be made in the bill.

#### Property Passing or Belonging to Surviving Spouse

The Beverly Hills Bar suggested amendments to Section 13650 (determination or confirmation of property passing or belonging to surviving spouse). See Exhibit 1 to Second Supplement to Memo 86-15. The Commission asked the staff to obtain the views of the Executive Committee of the Estate Planning, Trust and Probate Law Section of the State Bar and to report further to the Commission.

Suggestions Disapproved by the Commission

The Commission decided not to change the provision of Section 6604 requiring a set-aside petition to allege that expenses of last illness, funeral expenses, and expenses of administration have been paid.

The Commission decided not to revise Sections 6613, 13157, and 13660 to authorize the court to determine the reasonableness of attorneys' fees where the fee is fixed by agreement between the attorney and client.

The Commission decided not to write a limitation in Section 13105(a)(2) that the section applies only to a transfer agent in California. The section will apply to the maximum extent of state jurisdiction.

The Commission decided not to spell out in Section 13113 (remedies not exclusive) what the other remedies are for fraud or intentional wrongdoing.

The Commission decided not to change the provisions concerning selection and duties of a probate referee in Sections 13103, 13152(b), and 13200(c).

The Commission decided not to revise Section 13107 to provide that a court order directing a personal representative to pay money or deliver property pursuant to affidavit be made ex parte.

The Commission decided not to try to deal with the question of whether there must be an income tax adjustment for a person who receives property by affidavit and is later required to restore the property to the decedent's estate (Section 13111).

The Commission decided to keep the provisions concerning the right of the surviving spouse to dispose of real property (Sections 13540-13542, continuing existing Section 649.2), and decided not to amend Section 13541 (recording of notice by claimant of interest in the property).

STUDY L-655 - ESTATE AND TRUST CODE (PROBATE REFEREES)

The Commission considered Memorandum 86-18 and the First Supplement to Memorandum 86-18, together with a letter from Jeffrey A. Dennis-Strathmeyer (Exhibit 4 to these Minutes), relating to probate referees.

The California Probate Referees Association made a presentation to the Commission to the effect that the Association has reviewed the staff analysis of responses to the Commission's questionnaire and has the following recommendations to the Commission:

(1) The estate should be permitted a peremptory challenge to the first referee appointed.

(2) The probate court should be able to remove a referee from a particular estate upon a showing of cause at a hearing for that purpose.

(3) The referee should be required to provide backup data, upon additional compensation to be negotiated with the estate or upon court approval of extraordinary fees if the parties are unable to agree.

(4) There should be no provision for waiver of the probate referee.

(5) The probate referee should appraise all noncash assets, including publicly traded stocks.

(6) In the case of unique assets, the estate should be able to employ a specialist appraiser at estate expense, the appraisal to be subject to review by the probate referee.

(7) An express statutory provision for professional immunity of the probate referee should be adopted.

There was some discussion of these matters among the Commissioners, staff, probate referees, state bar representatives, and other interested persons present at the meeting. A number of other concepts were raised in the discussion, including the possibility of a reduced fee for appraisal of some noncash items such as publicly traded stocks (or an increased fee in the case of difficult to appraise items), how to handle unethical activities (fixed appraisals), whether changes that reduce the referee's fees will destroy the system and if so, whether the system should be preserved, and the philosophical tension between simplification of probate and protection of beneficiaries.

The Commission felt that further discussion of these matters should be deferred until there is a full Commission present. The Commission requested the Referees Association to consider procedures where an outside expert is needed (e.g., determination that outside appraisal is appropriate, adjustment of fees, etc.), and requested the State Bar Association to take give the Commission the benefit of its thoughts (which could be in the form of majority and minority or multiple reports) on waiver of the probate referee and changes in the waiver system.

The Commission will agendize these matters for further discussion next meeting, with the thought of working through the specifics that have been proposed, rather than formal testimony on these matters.

#### STUDY L-1010 - ESTATE AND TRUST CODE (OPENING ESTATE ADMINISTRATION)

The Commission considered Memorandum 86-17 relating to no contest clauses. The Commission's consultant Professor Niles discussed with the Commission some of the policy considerations and options available in dealing with such clauses. Among the matters discussed were the likelihood of encouraging litigation by adoption of a probable cause rule, the question of interpretation of "probable cause", the need for amelioration of a no contest clause in a case where the will or a devise clearly should be tested, the procedural posture of the parties and incentives to settlement, and the problem of ascertaining what actions amount to a contest (including possible pretrial determination of this issue, as well as possible limitations on the types of "contests" that can be precluded, as a matter of public policy).

The Commission requested Professor Niles to provide it with an initial draft for consideration that would codify the strict forfeiture rule of existing California law, but would allow a contesting beneficiary to petition for relief of forfeiture under the court's equitable powers. The standard for relief from forfeiture should be fairly strict, so that the no contest clause remains in fact a disincentive for unmeritorious litigation. However, it should also allow for relief, with the procedural burden on the contestant, in meritorious situations.



STUDY L-1029 - ESTATE AND TRUST CODE (MARITAL DEDUCTION GIFTS)

The Commission considered the First and Second Supplements to Memorandum 85-63, relating to marital deduction gifts. Robert Mills, draftsman of the existing California legislation on this subject, discussed with the Commission the background of the legislation and noted the need for change in four areas:

(1) The existing statute may have the unintended effect of reducing the marital deduction that is the objective of an "A" trust as a result of a QTIP election for a "B" trust, by virtue of the operation of Probate Code Section 1034(c). Mr. Mills suggested that the provision be revised so that a "B" trust QTIP election will not trigger a cutback of property intended to pass under a marital deduction formula to the "A" trust.

(2) There is a potential problem with Civil Code Sections 730.04(d) (Revised Uniform Principal and Income Act) and 731.06 (Legal Estates Principal and Income Law), which provide that upon the death of the income beneficiary, amounts accrued but not yet paid over at the date of death shall be paid to the remaindermen. These provisions could have the effect of disqualifying property for the QTIP election, depending upon the regulations ultimately adopted. Amendments to these provisions that anticipate this problem may be appropriate.

(3) Probate Code Section 1032(b) helps effectuate gifts to charitable remainder unitrusts and charitable remainder annuity trusts, but is unduly restrictive in failing to apply to other charitable gifts such as charitable lead trusts and outright charitable bequests. This provision probably should be broadened to apply in any situation where there is a demonstrated intent to make a charitable gift.

(4) The marital deduction gift provisions apply to trusts as well as to wills, but the location of the trust provision is obscure so that its application is unclear. Something should be done to make more apparent to users of the statutes that trusts are in fact covered by the provisions.

With respect to the first item, the Commission's consultant Professor Halbach suggested as an alternate way of dealing with this problem that property intended to pass under a marital deduction

provision is not to be affected by subsequent changes in tax law that would have the effect of reducing the property passing under the provision below the maximum applicable amount. With respect to the fourth item, the staff pointed out that the new trust law will prominently feature the applicability of the marital deduction gift provisions, and the Comment to the marital deduction gift provisions will note their applicability to trusts.

The Commission asked Mr. Mills if he would be willing to work with Professor Halbach and the staff to develop adequate language for inclusion in the Probate Code revision to deal with these problems. Mr. Mills agreed, and the staff will report back to the Commission on this matter at a future meeting.

APPROVED AS SUBMITTED \_\_\_\_\_

APPROVED AS CORRECTED \_\_\_\_\_ (for  
corrections, see Minutes of next  
meeting)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Executive Secretary



**Bank of America**

**Sandra S. Kass**  
Senior Counsel

Office of General Counsel  
(213) 228-9900

February 10, 1986

(213) 228-2502

John H. DeMouilly  
Executive Secretary  
California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
Palo Alto, CA 94303

RE: AB 2625

Dear John:

The California Bankers Association offers the following comments on various provisions of AB 2625:

**§6604(b)(7):**

A small estate set aside petition must allege that last illness, funeral and administration expenses have been paid or will be paid before the petition is heard. From whose funds are the expenses to be paid? Presumably, the petitioner will have to pay them from his or her own funds since he or she will not have access to the decedent's property unless and until the petition is granted. Since this procedure is designed for use in situations where the decedent's estate is small and the petitioner is in sufficient need to justify receiving the estate, we question whether the petitioner will often have the funds to pay these expenses. Further, if the petitioner pays the expenses in order to be able to bring the petition and the petition is denied, is it clear that the petitioner is entitled to reimbursement from those who receive the estate?

**§6613 (§§13157, 13660):**

If there is no agreement with regard to the attorney's fee for representing a petitioner in a set-aside proceeding, the court may resolve a dispute over the reasonableness of the fee charged. If there is an agreement, however, the court may resolve a dispute as to the meaning of the agreement but not as to the reasonableness of the fee

charged. A client signs a fee agreement at the inception of the attorney-client relationship, before any services are rendered. After the services have been rendered, the client may justifiably feel that the fee stated in the agreement is unreasonable. Since the set-aside procedure is intended for use in cases where the decedent's estate is small and the surviving spouse and/or minor children are in need, why should the court be limited to resolving disputes over the meaning of the agreement and not permitted to examine the reasonableness of the fee charged?

Usually, a fee agreement is considered desirable in order to protect the client. In this case, the client is better off without an agreement since the court may then resolve a dispute as to the reasonableness of the fee charged. If there is an agreement, the court is prevented from reviewing the fee charged.

§13104 (§13200):

The "notary public's certificate of acknowledgment" which establishes the identity of a person seeking possession of title to assets of the decedent should be acceptable only from a United States notary public. A certificate from a person in another country who uses the title of notary public may not have the same significance as one from a United States notary public.

§13105:

Subsection (a)(2) purports to require a transfer agent to whom an affidavit was presented to transfer title to the asset, and subsection (b) gives the decedent's successor a cause of action against a transfer agent who fails to do so within a reasonable time. If an action is brought and the court finds that the refusal to transfer the asset was unreasonable, the court shall award attorney's fees to the person bringing the action. This remedy is appropriate with respect to transfer agents in California but we see jurisdictional problems if a California court attempts to compel an out-of-state transfer agent to act.

§13110 (§13205):

A person who obtains the decedent's property pursuant to affidavit is personally liable to any person with a superior right to the property. An action to impose such liability may be brought up to five years after the affidavit is presented to the holder of the property. We question the reason for a five-year statute. That period is longer than

the great majority of statutes of limitations. Particularly since the statute is to be tolled during the minority of the person with the superior right, we find five years to be unnecessarily long. If proceedings are commenced for the administration of the estate, the statute of limitations is only three years. We favor a consistent statute of limitations for all instances in which property was acquired pursuant to an affidavit by someone other than the person with the superior right.

§13113:

We would prefer to see a comprehensive list of remedies, rather than a vague reference to "any remedies available."

§13501:

Property in which the surviving spouse receives a qualified ownership cannot pass to the surviving spouse without administration. A devise conditioned on survival for a particular period of time is not a qualified ownership interest if the time period has expired. Must the surviving spouse wait until the period has expired before seeking to obtain the property? If he or she fails to survive for that period, are probate proceedings then opened?

§20116(c):

A question has arisen as to the effect of the provision that a right of reimbursement "may be enforced through the personal representative or may be enforced directly by the person charged with or required to pay the greater amount." May the personal representative decline to pursue an heir's right of reimbursement against another heir? May the heir who has the right of reimbursement require the personal representative to pursue his right of reimbursement for him?

§13152:

Subsection (b)(7) requires that a petition for an order determining succession to real property contain the names and addresses of the heirs and devisees, all named executors and "all other persons named in the will." The last group would seem to include a former spouse (most wills for divorced persons recite the name of the former spouse and the date of the dissolution), the funeral home (if pre-need arrangements have been made), and the cemetery (if a plot has been purchased). Since §13153 requires notice to each person named in the petition, we question the need to include these

persons or entities. A petition to determine property passing to the surviving spouse must name only the heirs, devisees, named executors and any appointed personal representatives (§13651). We would prefer to see a similar provision in §13152.

§20223:

Subsection (b) provides that an order or refusal to make an order under this section may be appealed. Why is there a separate reference to appeal instead of inclusion in the general appeal provision (§1240)?

We also ask the Commission to review §1200.5. Although this is existing language, it contains a dangerous ambiguity. It requires notice to:

1. The executor or administrator, if he or she is not the petitioner;
2. Any co-executor or co-administrator who is not petitioning; and
3. All persons "who have requested notice or who have given notice of appearance in the estate in person or by attorney, as heir, devisee, legatee or creditor, or as otherwise interested."

A technical reading of this provision suggests that an heir who has neither requested notice nor given notice of appearance is not entitled to notice. Although courts and practitioners have read the provision more broadly than that, we suggest that the Commission clarify the notice requirements to avoid misleading the inexperienced practitioner in an area which is as important as the giving of proper notice.

Very truly yours,



Sandra S. Kass  
Senior Counsel

SSK:c1

## STANTON AND BALLSUN

A LAW CORPORATION

AVCO CENTER, SIXTH FLOOR

10860 WILSHIRE BOULEVARD

LOS ANGELES, CALIFORNIA 90024-4918

(213) 474-5267

FILE NO.

KATHRYN A. BALLSUN  
PAUL L. STANTON  
CORNELIA L. HEATHER

RECEIVED

FEB 12 1986

Diemer, Schneider, Jeffers,  
Luce & Quillinan

February 11, 1986

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FEDERAL EXPRESS

James V. Quillinan, Esq.  
444 Castro Street, #900  
Mountain View, CA 94041

Re: LRC Memo 86-15, First and Second Supps., AB 2625 Amendments

Dear Jim:

On February 11, 1986, Harley Spitler, Richard Polse and I ("Team 4") held a telephone conference respecting LRC Memo 86-15, Supplements one and two and AB 2625 and the amendments thereto. Before I summarize our conclusions, you need to be aware of the following. In view of our short review time, we did not evaluate AB 2625 nor the technical amendments involving Probate Code Sections 1200 and 1200.5. However, if the Law Revision Commission does not consider Memorandum 86-15 and its supplements during its next meeting, then we will be glad to do a line-by-line analysis.

Memorandum 86-15 presented a policy question of whether or not the Commission should approve amendments to certain Health and Safety Code Sections and to certain Vehicle Code Sections both relating to immunity from liability of certain officers and employees who transfer property pursuant to appropriate documentation. We felt that the proposed amendments should be adopted. We only want to make sure that the provisions apply to the transfer of all motor vehicles.

The first Supplement proposed a number of technical amendments involving Probate Code Section 1200. Team 4 believes that the technical amendments should be adopted.

Page Two  
February 11, 1986

The Second Supplement to Memorandum 86-15 raised a number of substantive issues. With respect to retaining Chapter 2, commencing with Section 13540, we felt that Chapter 2 should be retained. Two additional issues were raised in the Supplement. One concerned Section 13541 and the other, the use of the 13650 Procedure for Trusts. Considering the effort and diligence of the Legislative Committee of the Estate Planning, Probate and Trust Section of the Beverly Hills Bar Association, it was felt that both of these areas deserved further study by the Commission and that a request for additional information and explanations from the Committee should be made before a firm position was taken the Commission.

If Team 4 may be of further assistance, please do not hesitate to contact us.

Cordially,

*Kathryn A. Ballsun*

KATHRYN A. BALLSUN,  
A Member of  
STANTON and BALLSUN  
A Law Corporation

KAB/kf

c: Richard Polse, Esq.  
John McDonnell, Esq.  
Harley Spitler, Esq.  
Janet Wright, Esq.  
Chuck Collier, Esq.  
Jim Willett, Esq.  
Irv Goldring, Esq.  
Jim Devine, Esq.  
Jim Opel, Esq.



LAW OFFICES

IRELL &amp; MANELLA

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

1800 AVENUE OF THE STARS

SUITE 900

LOS ANGELES, CALIFORNIA 90067

(213) 277-1010 AND 879-2600

February 10, 1986

CABLE ADDRESS: IRELLA

TELEX 181258

TELECOPIER

(213) 277-5804 AND 853-9276

WRITER'S DIRECT DIAL NUMBER

ORANGE COUNTY OFFICE

840 NEWPORT CENTER DRIVE, SUITE 500

NEWPORT CENTER

POST OFFICE BOX 7310

NEWPORT BEACH, CALIFORNIA 92660

TELEPHONE (714) 760-0991

John H. DeMouilly  
California Law Revision Commission  
4000 Middlefield Road, Room D-2  
Palo Alto, California 94303

Re: AB 2625

Dear John:

I have reviewed AB 2625 and also the First Supplement and the Second Supplement to Memorandum 86-15.

The following are my personal comments and observations with reference to the bill and two supplemental memoranda:

1. The proposed corrections of a technical nature dealing with notice under Section 1200 or Section 1200.5 referred to in the First Supplement are appropriate. I recently had difficulty on a matter where the court in a county other than Los Angeles determined that posting was necessary on a petition even though under Section 1200(d) it was apparent that posting was no longer required. This arose because the existing code sections still made reference to notice pursuant to Section 1200, and the court was unwilling to proceed with the matter without posting of notice. Therefore, I believe the technical corrections shown on Exhibit 1 to the First Supplement to Memorandum 86-15 are appropriate and should be incorporated in AB 2625.

2. Proposed Section 6605(b) at page 12, lines 8 through 12, I believe could be clarified by stating that, if proceedings for the administration of the estate of a decedent have not yet been commenced, a petition under this chapter may be filed concurrently with the petition for probate of the decedent's will or for administration of the decedent's estate or, if no such petition for probate or for administration is being filed, a petition filed under this chapter may be filed independently.

John H. DeMouilly  
February 10, 1986  
Page Two

3. Proposed Section 6605(c), page 12, lines 13-14, might be clarified by inserting the words after "to" on line 14 "the entry of the order of." The word "the" on line 14 before the word "final" should be then stricken. The reason for this proposed clarification is that there may be a significant difference in time between actual final distribution and the entry of the order of final distribution. Actual distribution often takes a number of months after the date of the order, and the existing language therefore may be ambiguous.

4. Proposed Section 6608, page 13, lines 34 through page 14, line 4: As I understand this section, the provisions applicable to waiver of the appointment of a probate referee would not apply to this type of appraisal. Therefore, a probate referee would have to appraise any assets not of a cash or cash equivalent nature. Is a petition filed with the court ex parte for appointment of the referee to make this appraisal or does the petitioner have the right to obtain an appraisal from any probate referee of the petitioner's choosing?

5. Proposed Section 6609(c), page 14, lines 32-37: At line 33 the language refers to "assign the whole of the decedent's estate." Obviously it can be assigned to the surviving spouse, the minor children or any one or more of them. Does this contemplate that, if there are multiple takers, they each have an undivided interest in the "whole" estate or is the court given discretion to, for example, distribute one asset entirely to the spouse and another asset entirely to a minor child?

6. Proposed Section 13101(h), page 20, lines 31, and subsequent: This refers to "either" of the following choices as appropriate. If there are multiple declarants or affiants it may be that both (h)(1) and (h)(2) are applicable, as some declarants would execute the document as a successor of the decedent and other declarants might execute the document on behalf of a successor.

7. Proposed Section 13101(j), page 21, lines 4 through 6: The phrase "successor of the decedent" is defined in Section 13006(a) as referring to a single or multiple descendants. Paragraph (h)(1), Section 13101, refers to the affiant or declarant in the singular but refers in parenthesis to those persons in the plural. Is a similar reference to multiple affiants or declarants necessary in other parts of proposed Section 13101, such as in subsection (j)? Perhaps a new subsection (l) should be added to state that as used here the words "affiant or declarant refer to one or more persons executing the declaration or affidavit."

John H. DeMouilly  
February 10, 1986  
Page Three

8. Proposed Section 13103, page 21, line 36 through page 22, line 6: See my comments above relating to proposed Section 6608 dealing with the selection of a probate referee in connection with the set-aside procedure. Here, obviously there is no court procedure and the party presenting the affidavit or declaration can select any probate referee. Should this same procedure be applicable under Section 6608?

9. Proposed Section 13107, page 24, lines 13 through 30: I assume that the presentation of the affidavit or declaration to the court is on an ex parte basis and that no notice or hearing is required with reference thereto. If this assumption is correct, perhaps some clarifying language would be appropriate in this section.

10. Proposed Section 13110(b), page 25, lines 10 through 20: At line 17 it refers to "valued as of the time the affidavit or declaration is presented." Does that refer to the time the fraudulent affidavit or declaration is presented to the holder of the decedent's property or the time when the person having a superior right presents an affidavit to the person who had been holding the decedent's property as of the time of the decedent's death? Is the person liable for the income or interest in the property as well as three times the fair market value of the property? Compare the net income provisions of proposed Section 13111.

11. Proposed Section 13110(c), page 25, lines 21 through 27: I don't recall the reason why a five-year statute of limitations is used with reference to a person with a superior right asserting a claim while a three-year statute is used in connection with the recovery of property where there is a probate proceeding commenced under Section 13111(d). Is it not logical to have both of these periods the same whether three or five years?

12. Proposed Section 13111(1), page 25, lines 33 through 35: This refers to the "net income the person received from the property." Is it correct that the "net income" is before payment of tax and if the person who received the property pursuant to the affidavit paid tax then he is not entitled to any adjustment? His only remedy would be to file an amended tax return to seek a refund on the tax paid on that property. Is that correct?

John H. DeMouilly  
February 10, 1986  
Page Four

13. Proposed Section 13111(a)(2), page 25, line 36 through page 26, line 1: I believe the subparagraph requires the following additional words at the end of that section: "from the date of disposition of said property." As written, the paragraph seems to require restoration of the net income received from that property and interest at the rate payable on a money judgment on the fair market value of the property, during the period that the party held the property. This seems to say that he has to pay both the net income and the interest payable on a judgment. Therefore, the suggested language seems appropriate to eliminate a double charge against the property until the time of its disposition.

14. Proposed Section 13111(b), page 26, lines 7 through 18: Since under this subparagraph we are talking about only one affidavit being presented followed by an administration of the estate, the questions raised relating to proposed Section 13110(b) as to the time the affidavit or declaration was presented do not apply. However, is the person who obtained the property fraudulently liable for any income received on the property as well as three times the value of the principal? Is the person who received the property also liable for any capital gain realized from disposition of the property?

15. Proposed Section 13111(d), page 26, lines 23 through 27: See comments above with reference to proposed Section 13110(c) relating to the difference between the three-year and the five-year statute of limitations.

16. Proposed Section 13152(7), page 28, lines 25 through 30: This refers to listing of the names and addresses "of all other persons named in the will of the decedent." Does this refer to trustees, guardians, special trustees, etc.? Existing Section 650 refers specifically to persons named as executors or administrators but does not refer to other persons named. Obviously any devisees are already covered by subsection 7.

17. Proposed Section 13152(b), page 28, lines 31 through 38: Is a self-appraisal available under 605(a)(3)? Does the petitioner have the right to select any probate referee to do the appraisal or must the probate referee be appointed by the court? Note the differences between this subparagraph and the provisions of Section 13103 and Section 13200 dealing with selection and duties of a referee in connection with these appraisals. In all three situations is it not appropriate to have the referee of the petitioner's or declarant's choosing appraise all assets other than cash items and eliminate the possibility of a petition for self-appraisal?

John H. DeMouilly  
February 10, 1986  
Page Five

18. Proposed Section 13154, page 29, lines 12 through 40: This section in a number of cases refers to the court making "findings." Does this contemplate formal court findings as in a civil case or simply that the court makes certain "determinations" as a basis for its order?

19. Proposed Section 13200(a)(5), page 31, lines 23 through 25: This refers to attaching a certified copy of the decedent's death certificate to the affidavit relating to real property. Did the Commission consider also requiring a certified copy of the death certificate for the affidavit transferring personal property pursuant to proposed Section 13100? For example, Section 13101 requires a statement that "at least 40 days have elapsed since the death of the decedent." It would be easy to require that a copy of the death certificate be attached to that affidavit to verify that fact.

20. Section 13200(c), page 32, lines 2 through 13: If the provisions relating to transfer of real property interests by affidavit will apply to the estates of decedents who died prior to January 1, 1987, is the inventory and appraisal to appraise the property as of the date of decedent's death or, for example, within 60 days of the date of presentation of the affidavit to the court? As you will note from proposed Section 13205(b), the fair market value refers to the value at the time of the certified copy of the affidavit being issued. This does not appear to be the date of death value and might actually refer to a significantly different value than shown on the inventory and appraisal if the inventory and appraisal is the date of death value. As I am sure you are aware, there are many small interests in mineral rights and many interests in desert properties that were never transferred because the cost of transfer was prohibitive in reference to the value of the property. This type procedure is likely to be utilized to transfer a number of those interests for decedents who died some years ago. Therefore, I believe there should be some clarification as to the date that the inventory and appraisal refers to. It may be necessary to have a further valuation as of the period within 60 days from submission of the affidavit to the clerk to meet the requirements of 13205(b). Perhaps the inventory and appraisal should refer to the date of death value but, in the event the death occurred more than one year prior to the presentation of the affidavit, then it should refer both to date of death value and a current market value within 60 days of the date of the affidavit and the higher value would be the controlling one for purposes of use of this affidavit procedure.

John H. DeMouilly  
February 10, 1986  
Page Six

21. Proposed Section 13203(a), page 32, line 40: Should the word "the" which appears before the word "person" be changed to "each" for clarity?

22. Proposed Section 13205(b): See the comments above as to the date of valuation relating to proposed Section 13200(c). This section refers to the fair market value at the time the certified copy of the affidavit was issued. As noted above, that may not be established by the court file because the inventory and appraisement may refer to a date of death value which may not be the value as of the time this certified copy of the affidavit was issued. If the person fraudulently obtained the property by affidavit, is that person liable for any income received from the property? Is he liable for any gain on sale of the property? If the property was disposed of, is he liable for interest on the property proceeds at the rate provided by judgment?

23. Proposed Section 13205(c), page 33, lines 35 through 40: See my comments elsewhere as to the difference between the three-year statute and the five-year statute and why this difference applies as between one with a superior right versus where there is a probate proceeding.

24. Proposed Section 13206(a)(2), page 34, lines 12 through 22: Part (B) seems to properly state the rate of interest from the date of disposition of property as the rate payable on a money judgment. Compare the comments above with reference to the language in proposed Section 13111(a)(2).

25. Proposed Section 13206(b): See comments above as to the determination of fair market value at the time that the certified copy of the affidavit was issued referring to proposed Section 13205(b). Those same comments apply to this subparagraph.

26. Proposed Section 13207(b): This again refers to the fair market value at the time of the issuance of the certified copy of the affidavit. I believe that again has to be tied into either the date of death value or the value within 60 days of the date of the filing of the affidavit with the court.

27. Proposed Section 13503(a), page 37, lines 22 through 34: I believe language might be added at the end to make it even clearer that no probate administration is required of assets transferred directly to a testamentary trustee or an inter vivos trustee identified under the will.

John H. DeMouilly  
February 10, 1986  
Page Seven

28. Proposed Section 13650(b), page 44, line 22: The second word "to" at the beginning of the sentence should be deleted.

29. Proposed Section 13655(b)(5), page 46, line 38 to page 47, line 1: This again refers to notice to all other persons named in the will. As questioned earlier, does this refer to trustees, special trustees, guardians, etc. or contingent beneficiaries where the contingency has not arisen? Perhaps this phrase needs some clarification.

30. Proposed Section 20100(a), page 49, line 35: The word "estate" is misspelled.

31. Proposed Section 20122(a), page 53, lines 34 through 40: This refers to a ten-day notice where probate administration proceedings are pending.

32. Proposed Section 20222, which apparently relates to a trustee, seeking a court determination of the tax proration, refers to a 30-day notice. Presumably this is pursuant to the 30-day notice concepts of Section 1138. However, is this difference in notice necessary? Both sections, of course, have a 30-day notice requirement where a summons is issued against third parties who have some liability for the tax. If a summons is issued to third parties, do they have the right to demurrer or answer prior to the hearing? Do other persons who are interested in the estate who are perhaps beneficiaries of the trust or beneficiaries of the estate have similar rights?

33. Another miscellaneous typographical error is found on page 14, line 29. The word "justified" is misspelled.

34. With reference to the comments of the Beverly Hills Bar Association Legislative Committee, Estate Planning, Probate and Trust Section, I concur with the staff comments as far as proposed Section 13540. I believe that is a continuation of existing law and is helpful.

35. As to the Legislation Committee's comments and suggestions with reference to Section 13650, we will seek the views of the Executive Committee of the Estate Planning, Trust and Probate Law Section, State Bar. As a general observation, normally if property is transferred from a decedent's estate to a trust for the surviving spouse, that is not revocable. Generally it is placed in an irrevocable trust for tax purposes.

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John H. DeMouilly  
February 10, 1986  
Page Eight

The above comments I hope will be of assistance to you. Many of them are highly technical in nature. In some instances, they raise issues perhaps not raised in previous comments from the Estate Planning, Trust and Probate Law Section, State Bar. As noted at the beginning, these are my personal comments and observations.

Sincerely,



Charles A. Collier, Jr.

CAC:vjd

cc: James A. Willett, Esq.  
James V. Quillinan, Esq. ✓  
James D. Devine, Esq.  
H. Neal Wells, III, Esq.  
Kenneth M. Klug, Esq.



## JEFFREY A. DENNIS-STRATHMEYER

MAIL ADDRESS:  
POST OFFICE BOX 1581  
SALINAS, CA 93902

ATTORNEY AT LAW  
THREE SALINAS SQUARE  
344 SALINAS STREET - SUITE 111  
SALINAS, CALIFORNIA

TELEPHONE:  
(408) 757-2024  
757-9974

Feb. 11, 1986

Nathaniel Sterling, Esq.  
California Law Revision Comm.  
4000 Middlefield Road D-2  
Palo Alto, CA 94303

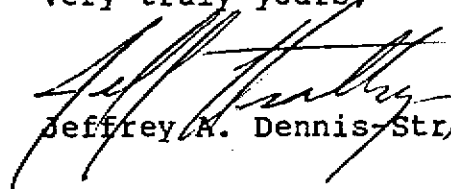
Re: Study L-655 Estates and Trusts Code (Probate  
Referees--waiver of probate referee

Dear Nat:

I am quite concerned about the proposal of the California Probate Referees Association to repeal Probate Code Section 605(a)(2)(C), which permits waiver of appointment of the referee. In many cases it is ridiculous to have a referee. For example, I am currently handling an estate in Monterey County in which the personal representative is the sole heir. The only asset requiring appraisal is a house which has already been sold under the Independent Administration of Estates Act.

The existing statute permits waiver of the referee in those cases where appraisal is clearly unnecessary and represents an improper government imposition on its citizens. The statute works well in my experience, and its original legislative history is quite irrelevant.

Very truly yours,

  
Jeffrey A. Dennis-Strathmeyer