

Fourth Supplement to Memorandum 86-1

Subject: Study L-1030 - Probate Code (Disposition of Estate Without Administration)

The Conference of Delegates of the State Bar adopted a resolution which has been placed on the State Bar's 1986 legislative program. The legislative representative of the State Bar asked that the Commission consider making the change proposed by the Conference of Delegates in the bill recommended by the Commission relating to disposition of estates.

The Conference of Delegates would revise Section 653 of the Probate Code (renumbered as Section 13655 in the Commission recommended bill) (relating to a proceeding for determination or confirmation of property passing or belonging to surviving spouse), so that the section in the Commission recommended bill would read substantially as follows:

§ 13655. Notice of hearing

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 all persons interested in a trust created under the decedent's will, as determined in cases of future interests pursuant to subdivision (1), (2), or (3) of Section 1215.1 .

(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.

(5) 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 (A) a testamentary trust of property for charitable purposes other than a charitable trust with a designated trustee, resident in this state, or (B) a devise for a charitable purpose without an identified devisee or beneficiary.

~~(6) All other persons who are named in the will of the deceased spouse 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.~~

The revision deletes subdivision (b)(6) (which requires that all other persons who are named in the will of the deceased spouse be given notice of hearing) and adds language to subdivision (b)(2) to require that notice of hearing be given to all persons interested in a trust created under the decedent's will (as determined in cases of future interests pursuant to subdivision (1), (2), Or (3) of Section 1215.1). A copy of Section 1215.1 is attached as Exhibit 1.

The following is the substance of the justification given by the Conference of State Bar delegates for the proposed change: Persons should be given notice of the hearing if they might be adversely affected by an order made under the procedure for determination or confirmation of property passing or belonging to the surviving spouse. Subdivision (b)(2) of the provision set out above requires that notice of the hearing of the petition be served upon or mailed to all devisees and heirs of the deceased spouse. In addition, subdivision (b)(1) requires that notice of hearing be served upon or mailed to any personal representative who is not the petitioner (that

is, all persons named as executors in the deceased spouse's will or appointed as administrator of the deceased spouse's estate). These notice requirements are the same as those for a petition for probate of a will. The proposed additional language in subdivision (b)(2) would require notice to all persons interested in a trust created under the decedent's will (as determined in cases of future interests pursuant to subdivision (1), (2), or (3) of Section 1215.1). With this addition, notice will be given to everyone who might be adversely affected by the petition.

Subdivision (b)(6), however, requires, in addition, that notice be served or mailed to "all other persons who are named in the will of the deceased spouse" (if, based upon the will, it is alleged that all or part of the estate of the deceased spouse is property passing to the surviving spouse upon the will). This requires notice to persons named in the will who are neither devisees nor named as executors of the will. As examples, the provision requires notice to a mortuary designated to handle funeral arrangements, a former spouse (where the will recites dissolution of a prior marriage), and contingent beneficiaries who would not share in separate property of the deceased spouse if the will were admitted to probate. Some wills contain references to and statements about many persons to whom notice clearly should not be required. Notice to these persons who have no interest in the estate is an unnecessary burden and should be deleted.

The staff believes that the suggested revision is a desirable one and we would also recommend that in preparing the new Estates and Trusts Code the same revision be made with respect to any other provision that requires notice to "all persons named in the will of the decedent."

Respectfully submitted,

John H. DeMouilly
Executive Secretary

PROBATE CODE SECTION 1215.1

§ 1215.1. Notice in future interests cases

Subject to other provisions of this article, it is a sufficient compliance with Sections 1120, 1120.1a, 1123.5, 1125, 1125.1, 1126, 1138.6, 1139.7, and 1139.15, insofar as they require notice to be given to the beneficiaries of, or persons interested in the trust, or to beneficiaries or remaindermen, including all persons in being who shall or may participate in the corpus or income of the trust, to give notice in the cases hereinafter provided, as follows:

(1) When an interest has been limited on any future contingency to persons who shall compose a certain class upon happening of a certain event without further limitation, notice shall be given to the persons in being who would constitute the class if such event had happened immediately before the commencement of the proceedings.

(2) When an interest has been limited to a living person, and the same interest, or a share therein, has been further limited upon the happening of a future event to the surviving spouse or to persons who are, or may be, the distributees, heirs, issue or other kindred of such living person, notice shall be given to such living person.

(3) Except as otherwise provided in subdivision (2) when an interest has been limited upon the happening of any future event to a person, or a class of persons, or both, and the same interest, or a share of such interest, has been further limited upon the happening of an additional future event to another person, or a class of persons, or both, notice shall be given to the person or persons in being who would take the interest upon the happening of the first such event.