

Memorandum 86-15

Subject: 1986 Legislative Program (AB 2625, Comprehensive Probate Bill)

Attached as Exhibit 1 to this Memorandum are proposed amendments to Assembly Bill 2625, the Commission's comprehensive probate bill. These are in addition to the amendments relating to notice proposed in the First Supplement to this Memorandum, previously sent to you. The staff will consolidate the two sets of amendments before sending them to the Legislative Counsel.

A copy of AB 2625 is attached to the First Supplement to this Memorandum. You may refer to that for the context of the amendments.

Exhibit 2 contains Comments revised to reflect the proposed amendments.

Immunity From Liability of Transferor of Property Pursuant to Affidavit

The only new policy question is presented by amendments relating to immunity from liability of one who pays money or delivers or reregisters property pursuant to affidavit.

Proposed new subdivision (c) of Health and Safety Code Section 18102 (page 2 of Exhibit 1), of Vehicle Code Section 5910 (page 12 of Exhibit 1), and of Vehicle Code Section 9916 (pages 12-13 of Exhibit 1) makes clear that the cognizant state department and its officers and employees are immune from liability if the department transfers registration of decedent's state-registered property pursuant to appropriate documentation.

Proposed new subdivision (b) of Probate Code Section 13106 (page 6 of Exhibit 1) makes clear that the holder of the decedent's property who transfers the property pursuant to affidavit does not thereby become liable for state taxes. This is consistent with existing law discharging the holder from liability generally (Prob. Code § 631) and with the Financial Code provision insulating savings and loan associations from liability for state taxes as a result of paying a fiduciary account, Totten trust account, or pay-on-death account (Fin. Code § 6855).

Does the Commission approve these amendments?

Technical Amendments

Most of the amendments either correct errors in the bill, or change cross-references in existing statute sections to reflect the substitution of new provisions in AB 2625 for the ones referred to in the existing sections.

The amendments to Probate Code Sections 584.3, 1406, and 13655 were approved by the Commission at the last meeting. The amendments to Section 13154 are the same as those approved by the Commission at the last meeting for Section 13655 (notice need not be given to persons named in the decedent's will if not otherwise interested).

Section 20 of the Probate Code is amended to apply the general definitions at the beginning of the Probate Code to the three new divisions to be added to the code by AB 2625 (probate) and AB 2652 (trust law).

Sections 6615 and 13053 are added, and Section 13506 is amended, to make clear that references in statutes and written instruments to provisions of old law will be deemed to be a reference to the corresponding provision of new law. Although the staff will correct all obsolete statutory references it can find, the suggested "catchall" provision will protect against missing any.

Request for Blanket Authority to Correct Obsolete Cross-References

The staff requests authority to amend AB 2625 as needed to correct any other cross-references to sections repealed by the bill that the staff may find, without waiting for the next Commission meeting. If the Commission grants this authority, the staff will report to the Commission any such amendments it makes.

Respectfully submitted,

Robert J. Murphy III
Staff Counsel

Exhibit 1

AMENDMENTS TO ASSEMBLY BILL 2625

AMENDMENT ____

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

AMENDMENT ____

In line 2 of the title, delete "605" and insert:
20, 584.3, 605, 707,

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. 4. 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. 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 121315~~ Chapter 4 (commencing with Section 884.010) of Title 5 of Part 2 of Division 2 of the Civil Code.

AMENDMENT ____

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

SEC. __. 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.

AMENDMENT _____

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

AMENDMENT _____

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

Code

AMENDMENT _____

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

SEC. 13. 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 or 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 or 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. __. 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.

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 19, strike out "fees" and insert:
fee

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 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 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 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 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 30, line 33, strike out "fees" and insert:

fee

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

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 "inclusive" insert:
or Sections 650 to 658, inclusive,

AMENDMENT ____

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

AMENDMENT ____

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

AMENDMENT ____

On page 46, line 33, strike out "spouse." and insert:
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 (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, between lines 21 and 22, insert:

SEC. ____ . Section 13655 is added to the Probate Code, 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 paragraphs (1), (2), or (3) of subdivision (a) of Section 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 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, lines 13 and 14, strike out "any provision by this code," and insert:

Article 4a (commencing with Section 970) of Chapter 15 of Division 3 of the Probate Code by the act that enacts this chapter,

AMENDMENT ____

On page 50, lines 16 and 17, strike out "1987, as to matters within the purview of this chapter." and insert:

1987.

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 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, before "value" 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 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 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. ____ . Section 13655 as added to the Probate Code by Section 16 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 15 of this act shall remain operative only until July 1, 1987, and on that date shall be further amended as provided in Section 16 of this act.

Exhibit 2

COMMENTS TO AMENDED SECTIONS OF AB 2625

Code of Civil Procedure § 353.5 (technical amendment). Action against decedent's surviving spouse

Comment. Section 353.5 is amended to replace the reference to former Section 649.4 of the Probate Code with a reference to the new provisions that have replaced it.

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

Comment. Section 18102 is amended to do the following:

(1) To add the provision for a 40-day delay after the decedent's death. This makes the section consistent with Probate Code §§ 13100 (affidavit procedure for collection or transfer of personal property), 13151 (court order determining succession to real property), 13540 (right of surviving spouse to dispose of real property); Veh. Code § 9916 (affidavit procedure for transfer of ownership of title or interest of decedent in vessel).

(2) To substitute references to the general provisions of the Probate Code governing intestate succession in place of the references to former Probate Code Section 630. Probate Code Section 630 has been repealed.

(3) To make clear that a beneficiary who takes a manufactured home, mobilehome, commercial coach, truck camper, or floating home under the decedent's will (whether or not the beneficiary is related to the decedent) may secure a transfer of registration of the title or interest of the decedent without the need to probate the decedent's estate. This is consistent with the practice of the department and with other comparable provisions. See Veh. Code §§ 5910 (vehicle), 9916 (vessel).

(4) To specify in somewhat more detail the contents of the certificate to be presented to the department and to limit to unsecured creditors the requirement that creditors have been paid. The section as amended is consistent with other comparable

provisions. See Veh. Code §§ 5910 (vehicle), 9916 (vessel).

(4) To add subdivision (c), drawn from the first sentence of former Section 631 of the Probate Code. For a comparable provision, see Prob. Code § 13106.

Probate Code § 20 (amended). Application of definitions

Comment. Section 20 is amended to apply the definitions in Sections 21 through 88 to Divisions 8 (disposition of estate without administration), 9 (trust law), and 10 (proration of taxes). The introductory clause of Section 20 recognizes that, in a particular context, special definitions may be used that differ from those provided in Sections 21-88. See, e.g., Sections 20100 ("person interested in the estate," "property"), 20200 ("property," "trustee").

Probate Code § 584.3 (technical amendment). Granting option to purchase real property

Comment. Section 584.3 is amended to delete the obsolete cross-reference to Section 1213.5 of the Civil Code which has been repealed, and to substitute a reference to the new Civil Code provisions which replaced the repealed section.

Probate Code § 707 (technical amendment). Time to file certain claims

Comment. Section 707 is amended to replace the reference to former Section 630 with a reference to the new provisions that have replaced it.

Probate Code § 1406 (repealed & added). Account in an insured savings and loan association

Comment. Section 1406 is repealed and reenacted to conform to the Financial Code provisions as revised by Chapter 1091 of the Statutes of 1983.

Probate Code § 6614. Applicability of chapter

Comment. Section 6614 supersedes former Section 647.5 and makes clear that Sections 6600 to 6613, inclusive, apply only if the decedent dies on or after January 1, 1987, the operative date of those

sections. If the decedent died before that date, the right to a small estate set-aside is determined under the law that was applicable prior to January 1, 1987. The application of Sections 6600 to 6613 is limited to cases where the decedent died on or after the operative date because in a case where the decedent died before the operative date there was a right to have a small estate set-aside. Under Sections 6600 to 6613, whether there is to be a small estate set-aside is discretionary with the court.

Probate Code § 6615. References to former sections deemed reference to new sections

Comment. Section 6615 is new and is drawn from Section 1490 and former Section 649.6. Section 6615 makes clear that, after the operative date of this chapter, a reference in a statute or written instrument to a provision of former law will be deemed to be a reference to the comparable provision of the new sections.

Probate Code § 13053. References to former sections deemed reference to new sections

Comment. Section 13053 is new and is drawn from Section 1490 and former Section 649.6. Section 13053 makes clear that, after the operative date of Sections 13100-13115, a reference in a statute or written instrument to a provision of former law will be deemed to be a reference to the comparable provision of the new sections.

Probate Code § 13106. Protection of transferor from liability

Comment. Subdivision (a) of Section 13106 continues the first sentence of former Probate Code Section 631 without substantive change but with the addition of clarifying language. Subdivision (b) is new and is drawn from Section 6855 of the Financial Code. See also Section 13102(b) (bond to protect person paying, delivering, or transferring property).

Probate Code § 13153. Notice of hearing

Comment. Section 13153 is drawn from subdivision (b) of Section 13655 (petition for order determining property is property passing to surviving spouse). See also the Comment to Section 13655.

Probate Code § 13506. Reference in statute or written instrument to repealed statutory provisions

Comment. Section 13506 is new and is drawn from Sections 649.6 and 1490 of the Probate Code. Section 13506 supersedes former Section 649.6. Section 13506 makes clear that, after the operative date of Sections 13500-13660, a reference in a statute or written instrument to a provision of former law will be deemed to be a reference to the comparable provision of the new sections.

Probate Code § 13655. Notice of hearing

Comment. Subdivision (a) of Section 13655 restates the substance of former Section 654 with two omissions:

(1) The last sentence of former Section 654, which required that a copy of the petition also be served, is not continued.

(2) The requirement of former Section 654 that notice of the hearing be given at least 20 days prior to the date of the hearing is not continued. By adopting the provisions of Sections 328 and 441, subdivision (a) of Section 13655 incorporates the requirement of those sections that notice of hearing be given at least 10 days before the hearing on the petition.

Subdivision (b) of Section 13655 restates the substance of former Section 653 with the following changes;

(1) The requirement of former Section 653 that a copy of the petition be served is not continued.

(2) The requirement of former Section 653 that notice of hearing be given at least 20 days prior to the hearing is replaced by a requirement that notice of hearing be given at least 10 days before the hearing.

(3) The requirement of former Section 653 that notice of hearing be given to "[a]ll 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" is not continued. This requirement is replaced by the addition of new language in paragraph (2) of subdivision (b) that requires notice, if the personal representative is the trustee of a trust that is a devisee under the decedent's will,

to all persons interested in the trust as determined in the case of future interests pursuant to the general statutory provision governing notice in future interests cases. Subdivision (b) requires notice to all persons who might be adversely affected by the order. The former requirement that required notice to all persons named in the will, however, apparently required notice to persons named in the will who were neither devisees nor named as executors of the will. Elimination of the requirement that notice be given to all persons named in the will avoids the need to give notice of hearing to persons who have no interest in the proceeding. For example, notice no longer needs to be given to a mortuary designated in the will to handle funeral arrangements, or to a former spouse where the will recites dissolution of a prior marriage.

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

Comment. Section 5910 is amended to do the following:

(1) To substitute references to the general provisions of the Probate Code governing intestate succession in place of the references to former Probate Code Section 630. Probate Code Section 630 has been repealed.

(2) To add a new subdivision (c), drawn from the first sentence of former Section 631 of the Probate Code, and to redesignate former subdivision (c) as subdivision (d). For provisions comparable to subdivision (c), see Prob. Code § 13106; Veh. Code § 9916.

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

Comment. Section 9916 is amended to do the following:

(1) To substitute references to the general provisions of the Probate Code governing intestate succession in place of the references to former Probate Code Section 630. Probate Code Section 630 has been repealed.

(2) To add a new subdivision (c), drawn from the first sentence of former Section 631 of the Probate Code. For comparable provisions, see Prob. Code § 13106; Veh. Code § 5910.

COMMENTS TO REPEALED SECTIONS

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

Comment. The first sentence of former Section 631 is continued without substantive change in of Section 13106(a) with the addition of clarifying language. The last sentence is continued without substantive change in Section 13108(b). See the Comment to that section. See also Section 13111 (restitution if estate proceeding commenced).