

First Supplement to Memorandum 86-15

Subject: Study L - Amendments to Assembly Bill 2625 (Manner of Giving Notice)

Prior to 1980, Section 1200 of the Probate Code required the giving of notice both by posting and by mail. In 1980, the provisions for notice by mail were split out of Section 1200 and relocated in a new Section 1200.5. See 1980 Cal. Stat. ch. 955, §§ 29, 31.

The section relating to posting of notice (Section 1200) was amended so that the posting requirement applies only to the following:

- (1) A petition for the sale of stocks or bonds.
- (2) A petition for confirmation of a sale or a petition to grant an option to purchase real property.
- (3) A petition for leave to enter into an agreement to sell or give an option to purchase a mining claim or real property worked as a mine.
- (4) A petition for leave to lease or to exchange property, or to institute an action for the partition of property.

A new subdivision (d) was added to Section 1200 in 1982. The new subdivision provides that, notwithstanding any other provision of the Probate Code which requires the clerk to post notice of a hearing in accordance with Section 1200, the posting shall not be required, except for those matters specifically enumerated above. A few sections contain a reference to Section 1200 even though the sections do not deal with the matters specifically enumerated in Section 1200. The now-obsolete reference to Section 1200 should be eliminated from these sections.

New Section 1200.5 requires that, at least 10 days before the time set for hearing of the petition or account, the petitioner or the person filing the account shall cause notice of the time and place of hearing to be mailed to the following:

- (1) The personal representative (when not the petitioner).
- (2) All persons (or their attorneys if they have appeared by attorney) 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.

Section 1200.5 lists in 22 paragraphs matters that are to be noticed in the manner provided in the section and also prescribes that notice shall be given in the manner provided in Section 1200.5 in any other proceeding under the Probate Code in which notice is required and no other time or method is prescribed by law or by court or judge.

Section 1200.5 includes this provision: "The notice required by this section shall be in addition to the notice, if any, required to be given in the manner specified by Section 1200."

In 1980, when Section 1200 was split into two sections, conforming revisions were not made in all the other sections that were affected when the portion relating to mailing of notice was split off into Section 1200.5. As a result, a number of sections still exist that require notice to be given in the manner provided in Section 1200, even though the effect of this requirement is that notice need not be given in the manner provided in Section 1200 (except for a few matters specifically listed in that section) but instead must be given in the manner provided in Section 1200.5.

In preparing the new Estates and Trusts Code, the staff has been substituting references to Section 1200.5 for references to Section 1200 where appropriate. However, we think we should make this substitution now by amending our comprehensive probate bill (AB 2625). The needed amendments are attached as Exhibit 1 to this supplement.

There are two reasons for this recommendation. First, the existing situation is confusing because a reference to Section 1200 is converted to a reference to Section 1200.5 by the special provisions of Sections 1200 and 1200.5. Second, making the substitution now will avoid the need to explain in detail in the Comments to the new Estates and Trusts Code why the substitution is being made.

The Commission previously decided to include in AB 2625 an amendment to Probate Code Section 854 (see lines 34-40 on page 6 and lines 1-26 on page 7 of the bill) to add a reference to Section 1200.5. The amendment should also have deleted from Section 854 the obsolete reference to Section 1200. This oversight is corrected by the amendments set out in Exhibit 1.

The recommended amendments in Exhibit 1 are nonsubstantive, technical amendments that will eliminate confusion. They should cause concern to no one. For Comments to the amended sections, see Exhibit 2.

Respectfully submitted,

John H. DeMouly
Executive Secretary

AMENDMENTS TO ASSEMBLY BILL 2625

AMENDMENT ____

In line 2 of the title, after "Sections" insert:

584.2, 584.5, 584.6,

AMENDMENT ____

In line 2 of the title, after "605," insert:

718.6, 771.3, 851.5,

AMENDMENT ____

In line 2 of the title, strike out "and" and insert:

1191,

AMENDMENT ____

In line 2 of the title, after "1200.5" insert:

, and 1469

AMENDMENT ____

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

SEC. 2. 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 1200.5, but the court may order the notice to be given for a shorter period, or dispensed with.

SEC. 3. 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. 4. 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. 5.

AMENDMENT

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

AMENDMENT

On page 6, line 32, strike out "SEC. 4." and insert:
SEC. 7.

AMENDMENT

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

SEC. 8. 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. ~~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. 9. 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 1200.5, 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. 10. 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. 11.

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 27, strike out "SEC. 6." and insert:
SEC. 12.

AMENDMENT ____

On page 7, line 39, strike out "SEC. 7." and insert:
SEC. 13.

AMENDMENT ____

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

Code

AMENDMENT ____

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

SEC. 14. 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. 15.

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. 16. 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. 17.

AMENDMENT ____

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

SEC. 18.

AMENDMENT ____

On page 49, line 22, strike out "SEC. 11." and insert:
SEC. 19.

AMENDMENT ____

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

OF

AMENDMENT ____

On page 59, line 9, strike out "SEC. 12." and insert:
SEC. 20.

AMENDMENT ____

On page 60, line 17, strike out "SEC. 13." and insert:
SEC. 21.

COMMENTS TO AMENDED NOTICE PROVISIONS OF AB 2625

Probate Code § 584.2 (technical amendment). Exercise of restricted stock options

Comment. Section 584.2 is amended to substitute a reference to Section 1200.5 (giving notice of hearing by mail) in place of the reference to Section 1200 (posting notice of hearing). This is a technical, nonsubstantive revision.

Prior to 1980, Probate Code Section 1200 required notice both by posting and by mail. In 1980, the provisions for notice by mail were split out of Section 1200 and relocated in a new Section 1200.5 (see 1980 Cal. Stat. ch. 955, §§ 29, 31), but conforming revisions were not made to all the sections of the Probate Code that made reference to Section 1200. The substitution in Section 584.2 of a reference to Section 1200.5 (giving notice by mail) in place of the former reference to Section 1200 (posting notice of hearing) will effectuate legislative intent. Subdivision (d) of Section 1200 provides that notice by posting under that section is not required, notwithstanding any other provision of the Probate Code, except for a few matters specifically enumerated in that section, and subdivision (e) of Section 1200.5 provides that the notice by mail under that section is in addition to the notice, if any, required to be given in the manner specified in Section 1200.

Probate Code § 584.5 (amended). Investment of surplus moneys as provided in will

Comment. Section 584.5 is amended to substitute references to Section 1200.5 in place of the former references to Section 1200. This is a technical, nonsubstantive revision. See the Comment to Section 584.2.

Probate Code § 584.6 (technical amendment). Order authorizing investment of surplus moneys as provided in will

Comment. Section 584.6 is amended to substitute a reference to Section 1200.5 in place of the former reference to Section 1200. This is a technical, nonsubstantive revision. See the Comment to Section 584.2.

Probate Code § 718.6 (technical amendment). Acceptance of deed in lieu of foreclosure or trustee's sale

Comment. Section 718.6 is amended to substitute a reference to Section 1200.5 in place of the former reference to Section 1200. This is a technical, nonsubstantive revision. See the Comment to Section 584.2.

Probate Code § 771.3 (technical amendment). Purchase of securities or commodities sold short

Comment. Section 771.3 is amended to substitute a reference to Section 1200.5 in place of the former reference to Section 1200. This is a technical, nonsubstantive revision. See the Comment to Section 584.2.

Probate Code § 851.5 (technical amendment). Conveyance or transfer of property claimed to belong to decedent or another

Comment. Section 851.5 is amended to delete the language that requires the clerk to give notice as provided in Section 1200 (notice by posting). The posting requirement was eliminated by the addition of subdivision (d) to Section 1200. Subdivision (d) provides that notice by posting under Section 1200 is not required unless the hearing is on a petition listed in subdivision (a) of Section 1200.

Section 851.5 also is amended to substitute a reference to Section 1200.5 in place of the former reference to Section 1200. This is a technical, nonsubstantive revision. See the Comment to Section 584.2.

Probate Code § 854 (amended). Option to purchase given in will

Comment. Section 854 is amended to make the following changes:

(1) To delete the language that requires the clerk to give notice as provided in Section 1200 (notice by posting). The posting requirement was eliminated by the addition of subdivision (d) to Section 1200. Subdivision (d) provides that notice by posting under Section 1200 is not required unless the hearing is on a petition listed in subdivision (a) of Section 1200.

(2) To substitute a reference to Section 1200.5 in place of the former reference to Section 1200. This is a technical, nonsubstantive revision. See the Comment to Section 584.2.

(3) To delete the fourth sentence which required either a court finding that all inheritance taxes had been paid or consent by the State Controller. Inheritance taxes have been eliminated in California. See Rev. & Tax. Code § 13301.

Probate Code § 1191 (technical amendment). Petition to determine heirship

Comment. Section 1191 is amended to delete the language that requires the clerk to give notice as provided in Section 1200 (notice by posting). The posting requirement was eliminated by the addition of subdivision (d) to Section 1200. Subdivision (d) provides that notice by posting under Section 1200 is not required unless the hearing is on a petition listed in subdivision (a) of Section 1200.

Section 1191 also is amended to substitute a reference to Section 1200.5 in place of the former reference to Section 1200. This is a technical, nonsubstantive revision. See the Comment to Section 584.2.

Probate Code § 1200.5 (amended). Notice by mail or personal service

Comment. Subdivision (a) of Section 1200.5 is amended to make the following changes:

(1) To add a reference in paragraph (6) to a petition to authorize a transfer or conveyance to one given an option to purchase the decedent's property given in a will duly admitted to probate. See Section 854.

(2) To amend paragraph (22) to recognize that various sections in the Probate Code may require that notice of hearing be given for the period and in the manner required by Section 1200.5 although the subject of the hearing is not listed in paragraphs (1) to (21).

Probate Code § 1469 (technical amendment). Notice under guardian-
ship-conservatorship law

Comment. Section 1469 is amended to add a reference to Section 1200.5. The effect of this addition is to require that notice be given under the provisions of the guardianship-conservatorship law where this division applies provisions of the Probate Code that contain a reference to Section 1200.5.