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#L-1029

Memorandum 86-21

Subject: Study L-1029 - Estates and Trusts Code (Closing Estate
Administration--staff draft of statute)

Attached to this memorandum as Exhibit 1 are redrafted provisions relating to closing estate administration. Notes and Queries concerning the redraft appear below the applicable provisions. Disposition of provisions of existing law governing closing estate administration is indicated in Exhibit 2.

Respectfully submitted,

Nathaniel Sterling

Exhibit 1

PART 11. CLOSING ESTATE ADMINISTRATION

CHAPTER 1. TIME FOR CLOSING ESTATE

- § 12200. Time required for closing or status report
- § 12201. Report of status of administration
- § 12202. Failure to make petition or report
- § 12203. Continuation of administration to pay family allowance
- § 12204. Failure of personal representative to comply with order
- § 12205. Sanction for failure to timely close estate
- § 12206. Testamentary limitation of time for administration

CHAPTER 2. DISCHARGE OF PERSONAL REPRESENTATIVE

- § 12250. Receipt for distributed property
- § 12251. Decree of discharge
- § 12252. Discharge without administration
- § 12253. Administration after discharge

[CHAPTER 3. STATUTES OF LIMITATION/EFFECT OF DISCHARGE]
[TO BE DRAFTED]

PART 10. CLOSING ESTATE ADMINISTRATION

CHAPTER 1. TIME FOR CLOSING ESTATE

§ 12200. Time required for closing or status report

12200. The personal representative shall, not later than the following times, either petition for an order for final distribution of the estate or make a report of status of administration:

(a) In an estate not required to file a federal estate tax return, within one year after the date of issuance of letters.

(b) In an estate required to file a federal estate tax return, within 18 months after the date of issuance of letters.

Comment. Section 12200 restates the first sentence of former Probate Code Section 1025.5 without substantive change.

CROSS-REFERENCES

Verification required § 7203

QUERY. A question has been raised, why the added time in subdivision (b)? The estate tax return is due in 9 months, so a uniform one-year period would seem appropriate.

§ 12201. Report of status of administration

12201. If a report of status of administration is made pursuant to Section 12200:

(a) The report shall show the condition of the estate and the reasons why the estate cannot be distributed and closed.

(b) The report shall be filed with the court. Notice of hearing of the report shall be given in the manner provided in Section [1200.5].

(c) Upon the hearing of the report, the court may order either of the following:

(1) That the administration of the estate continue for the time and upon the terms and conditions that appear reasonable, if the court determines that continuation of administration is in the best interests of the estate or of interested persons.

(2) That the personal representative must petition for final distribution.

Comment. Section 12201 restates the second, third, and fourth sentences of former Probate Code Section 1025.5 without substantive change.

CROSS-REFERENCES

Verification required § 7203

§ 12202. Failure to make petition or report

12202. (a) If the personal representative does not make a petition or report within the time required by this chapter or prescribed by the court, the court may, upon petition of any interested person or upon its own motion, cite the personal representative to appear before the court and show the condition of the estate and the reasons why the estate cannot be distributed and closed.

(b) Upon the hearing of the citation, the court may either order the administration of the estate to continue, as provided in Section 12201, or order the personal representative to petition for final distribution.

Comment. Section 12201 restates the second paragraph of former Probate Code Section 1025.5 without substantive change.

QUERY. Should the court be able to remove the personal representative for an initial failure to file the report?

§ 12203. Continuation of administration to pay family allowance

12203. For purposes of this chapter, continuation of the administration of the estate in order to pay a family allowance is not in the best interests of the estate or interested persons unless the court determines both of the following:

(a) The family allowance is needed by the recipient to pay for necessities of life, including education so long as pursued to advantage.

(b) The needs of the recipient for continued family allowance outweigh the needs of the decedent's heirs or devisees whose interests would be adversely affected by continuing the administration of the estate for this purpose.

Comment. Section 12203 restates former Probate Code Section 1026 without substantive change. Nothing in Section 12203 limits the power of the court to order a preliminary distribution of the estate.

NOTE. This provision was enacted in 1983 on Commission recommendation, which stated, "this new provision recognizes the strong public policy in favor of early closing of estates and at the same time gives the court authority to exercise its discretion to mitigate the serious hardships caused by terminating the family allowance in a case where the equities are in favor of the family allowance."

§ 12204. Failure of personal representative to comply with order

12204. Failure of the personal representative to comply with an order made under this chapter is ground for removal from office.

Comment. Section 12204 restates the third paragraph of former Probate Code Section 1025.5 without substantive change.

§ 12205. Sanction for failure to timely close estate

12205. If the time taken for administration of the estate exceeds the time required by this chapter or prescribed by the court, the court may, upon the hearing for final distribution or for an allowance upon the commissions of the personal representative or upon the fees of the attorney, reduce the fees or commissions by an amount the court deems appropriate, regardless of whether the fees or commissions otherwise allowable under the provisions of Sections [901 and 910] would be reasonable compensation for the services rendered, if the court determines that the time taken was within the control of the personal representative or attorney and was not in the best interest of the estate or interested persons.

Comment. Section 12205 restates the fourth paragraph of former Probate Code Section 1025.5 without substantive change.

NOTE. We have received a comment from Luther J. Avery that, "I believe the public needs protection from lawyer neglect. Therefore, there is need to provide for more protection than that attempted by [Estates and Trusts Code Section 12205] (reduction of fees for extending period for administration beyond 12 to 18 months)." Mr. Avery offers no specific suggestions.

§ 12206. Testamentary limitation of time for administration

12206. A limitation in a will of the time for administration of an estate is directory only and does not limit the power of the

personal representative or the court to continue administration of the estate beyond the time limited if the continuation is necessary or convenient.

Comment. Section 12206 restates former Probate Code Section 1025 without substantive change.

CHAPTER 2. DISCHARGE OF PERSONAL REPRESENTATIVE

§ 12250. Receipt for distributed property

12250. (a) The personal representative shall obtain the receipt of the distributee for all property of the estate distributed by the personal representative. In the case of real property, recordation of the court order for distribution is deemed to be a receipt for the property.

(b) The personal representative shall file receipts for all property of the estate at the time of or before the petition for discharge. In the case of real property, the petition shall identify the record location of the court order for distribution.

Comment. Section 12250 is new. Failure of the personal representative to record the court order for distribution of real property does not affect title of the distributee.

NOTE. Existing Section 1065 provides for a life tenant to acknowledge the life tenancy to the remainderman. The State Bar wonders whether this document should be filed. The Bar also wonders (as does the Los Angeles County Bar) whether the section is necessary if the decree of distribution itself lists the property being distributed to the life tenant; perhaps further receipt should be made only if the decree of distribution is not specific.

The staff has replaced the acknowledgment with a requirement in Section 12250 that the personal representative file the receipt of the distributee. In the case of real property, this would be done by filing the record location of the court order of distribution.

§ 12251. Decree of discharge

12251. When the personal representative has complied with the terms of the final order for distribution and has filed the appropriate receipts, the court shall, upon petition therefor, make an order discharging the personal representative from all liability incurred thereafter.

Comment. Section 12551 restates former Probate Code Section 1066. The provision for production of vouchers is not continued. The estate is fully administered for purposes of this section when all sums of money due from the personal representative have been paid, all property of the estate has been distributed to the persons entitled pursuant to court order, and all the acts lawfully required of the personal representative have been performed.

NOTE. Existing law requires the personal representative to produce satisfactory "vouchers" before obtaining discharge. We have omitted this requirement at the suggestion of the State Bar and the Los Angeles County Bar, who point out that vouchers are no longer required or used in practice. The receipt procedure of Section 12250 should be sufficient.

§ 12252. Discharge without administration

12252. (a) At any time after appointment of a personal representative and whether or not letters have been issued, the personal representative may sign and file a petition setting forth the fact that it appears there is no property of any kind belonging to the estate and subject to administration, and praying for the termination of further proceedings and for discharge of the personal representative.

(b) If it appears to the satisfaction of the court upon the hearing that the facts stated in the petition are true, the court shall make an order terminating the proceeding and discharging the personal representative.

Comment. Section 12252 restates former Probate Code Section 1068 without substantive change. Proceedings may be taken under this section without the return of an inventory provided for by [Chapter 9 (commencing with Section 600) of Division 3]. See subdivision (a) ("at any time").

NOTE. Notice of hearing requirements are being reviewed in connection with this section. It would seem that the same notice provisions should apply as for a petition for final distribution. The extent to which another person should be able to act for the personal representative will be governed by general provisions.

CROSS-REFERENCES

Verification required § 7203

§ 12253. Administration after discharge

12253. If subsequent administration of an estate is necessary after the personal representative has been discharged because other property is discovered or because it becomes necessary or proper for any cause:

(a) The court shall appoint as personal representative the person entitled to appointment in the same order and manner as is directed in relation to original appointment, except that the person who served as personal representative at the time of the order of discharge has priority.

(b) If property has been distributed to the State of California, a copy of any petition for subsequent appointment of a personal representative and the notice of hearing shall be served upon the State Controller at the time and in the manner prescribed by Section [1200].

Comment. Section 12253 restates former Probate Code Section 1067 without substantive change.

NOTE. Notice requirement is being reviewed. Status of state and county treasurers is being reviewed.

[CHAPTER 3. STATUTES OF LIMITATION/EFFECT OF DISCHARGE]

[TO BE DRAFTED]

Exhibit 2

DISPOSITION OF REPEALED PROVISIONS

Probate Code § 1025 (repealed)

Comment. Former Section 1025 is restated without substantive change in Section 12206 (testamentary limitation of time for administration).

Probate Code § 1025.5 (repealed)

Comment. The first sentence of the first paragraph of former Section 1025.5 is restated without substantive change in Sections 12200 (time required for closing or status report), 7203 (verification required), and 12201 (report of status of administration). The substance of the second, third, and fourth sentences is restated without substantive change in Section 12201 (report of status of administration).

The second paragraph is restated without substantive change in Section 12202 (failure to make petition or report). The third paragraph is restated without substantive change in Section 12204 (failure of personal representative to comply with order). The fourth paragraph is restated without substantive change in Section 12205 (sanction for failure to timely close estate).

Probate Code § 1026 (repealed)

Comment. Former Section 1026 is continued without substantive change in Section 12203 (continuation of administration to pay family allowance).

Probate Code § 1065 (repealed)

Comment. Former Section 1065 is not continued. For the receipt of the distributee, see Section 12250 (receipt for distributed property).

Probate Code § 1066 (repealed)

Comment. Former Section 1066 is restated without substantive change in Section 12251 (decree of discharge), except that the provision for production of vouchers is not continued.

Probate Code § 1067 (repealed)

Comment. Former Section 1067 is restated without substantive change in Section 12253 (administration after discharge).

Probate Code § 1068 (repealed)

Comment. Former Section 1068 is restated without substantive change in Sections 12252 (discharge without administration), 7203 (verification required), and 7202 (clerk to set matter for hearing).