

#L-1029

ns8
03/16/86

Memorandum 86-36

Subject: Study L-1029 - Estate and Trust Code (Distribution of Estate--
draft of tentative recommendation)

Attached to this memorandum is a draft of the provisions relating to distribution of the decedent's estate. The draft conforms to Commission decisions made at the January 1986 meeting.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

3/16/86

EXHIBIT 1

DISTRIBUTION OF ESTATE

The proposed law generally restates and reorganizes for clarity the existing provisions governing distribution of the decedent's estate. While the scheme of existing law is largely preserved, the proposed law does make numerous minor or technical changes that are noted in the Comments following the draft provisions. The more significant substantive changes are discussed below.

Time for preliminary distribution. Under existing law, an order for preliminary distribution of the decedent's estate may be made within two months after letters are issued if a bond is given or four months after letters are issued if all creditor claims are paid or adequately secured (with or without a bond, as the court determines).¹ This scheme is unduly complex and allows distribution before the time for filing creditors claims has run. The proposed law remedies these defects by providing for a uniform four month period after which preliminary distribution may be ordered if distribution can be made without loss or injury; a bond may be required in the court's discretion.

Preliminary distribution under independent administration. Preliminary distribution may be made under the Independent Administration of Estates Act upon reduced notice, but the distribution is limited to 50 percent of the "net value" of the estate.² The net value concept is undefined and difficult to administer. In the interest of simplicity, the proposed law limits distribution upon reduced notice under independent administration to 50 percent of the estate in the aggregate.

Costs of preliminary distribution proceeding. If a beneficiary petitions for preliminary distribution, existing law imposes the cost of the proceeding on the beneficiary.³ This may be inappropriate, for example, where the beneficiary is forced to make the petition because of undue delay by the personal representative. The proposed law gives the court discretion whether to impose costs on the beneficiary or to apportion them between the beneficiary and the estate, as may be appropriate to the circumstances.

Supplementary account. Even though there is a final order of distribution made upon the personal representative's final account, existing law provides for a supplementary account and settlement for receipts and disbursements occurring thereafter.⁴ The proposed law avoids this awkward arrangement by simply providing that the personal representative is responsible for distribution pursuant to the court order for final distribution. This responsibility includes responsibility for proper disposition of income accruing during the distribution period pursuant to the statutory omnibus clause.⁵

After-discovered property. Once the order for distribution is made, the property of the estate distributed, and the personal representative discharged, a problem may arise where additional property of the estate is discovered. If the order for distribution contains an omnibus clause providing for the manner of distribution of after-discovered property, no further court action is necessary. But if the order for distribution fails to contain such a clause, it may be necessary to reappoint a personal representative and obtain a further order for distribution of the property.⁶

The proposed law accomplishes this result automatically, without the need for further court action, by a statutory omnibus clause, that requires after-discovered property to be distributed in a manner consistent with the final order for distribution or pursuant to the laws of intestate succession. This provision would also apply to distribution of interest or other income that accrues after the order for distribution but before distribution is actually made.

Determination of persons entitled to distribution. Existing law provides a special procedure for determination of persons entitled to distribution.⁷ The procedure includes a jury trial and special evidentiary rules. There is nothing so unique about the determination made in such a proceeding that requires rules that differ from the general rules of civil practice that govern all other probate procedures, or that precludes the court from making the determination. The proposed law provides for court determination of persons entitled to distribution and eliminates the special evidentiary rules found in existing law.

Deceased distributee. A special problem occurs where a named distributee of the decedent's property dies before the property is distributed. Ordinarily in that situation the property must be distributed to the deceased distributee's estate for further probate. However, existing law avoids the need for a second probate by allowing direct distribution to the deceased distributee's heirs where the distributee was an unmarried minor who died intestate.⁸ It would also be appropriate to allow direct distribution to the deceased distributee's heirs where the amount to be distributed to the heirs is small and the heirs present an appropriate affidavit under the provisions governing distribution of small estates without administration.⁹ The proposed law implements such a procedure.

Unclaimed property. If personal property ordered distributed remains unclaimed a year after the order, the property may be sold and the proceeds deposited with the county treasury for safekeeping.¹⁰ The one year delay is unnecessarily long, and the proposed law reduces the period of delay to 90 days. When the distributee appears to claim the proceeds, however, existing law requires a court order upon noticed hearing even though the claim is routine.¹¹ The proposed law enables the order to be made ex parte, subject to court requirement of notice in appropriate cases.

¹Prob. Code § 1000.

²Prob. Code § 1004.

³Prob. Code § 1002.

⁴Prob. Code § 1020.5.

⁵See discussion below relating to "After-discovered property."

⁶Prob. Code § 1067.

⁷Prob. Code §§ 1080-1082.

⁸Prob. Code § 1023.

⁹Prob. Code §§ 13000 et seq. (currently §§ 630 et seq.).

¹⁰Prob. Code § 1062.

¹¹Prob. Code § 1064.

Outline

PART 9. DISTRIBUTION OF ESTATE

CHAPTER 1. ORDER FOR DISTRIBUTION

Article 1. General Provisions

- § 8700. Petition for distribution
- § 8701. Notice of hearing
- § 8702. Opposition to petition
- § 8703. Hearing and order
- § 8704. Distribution to person other than beneficiary
- § 8705. Conclusiveness of order and distribution
- § 8706. After-discovered and other property not covered by order

Article 2. Preliminary Distribution

- § 8720. Time for petition
- § 8721. Order for distribution
- § 8722. Distribution under Independent Administration of Estates Act
- § 8723. Costs of proceeding

Article 3. Final Distribution

- § 8740. Petition and order
- § 8741. Responsibility for final distribution

CHAPTER 2. DETERMINATION OF PERSONS ENTITLED TO DISTRIBUTION

- § 8800. Petition
- § 8801. Notice of hearing
- § 8802. Responsive pleading
- § 8803. Attorney General as party
- § 8804. Hearing
- § 8805. Court order

CHAPTER 3. DECEASED DISTRIBUTE

- § 8820. "Deceased distributee" defined
- § 8821. Distribution despite death of distributee
- § 8822. Manner of distribution

CHAPTER 4. DEPOSIT WITH COUNTY TREASURER

- § 8840. When deposit with county treasurer authorized
- § 8841. Sale of personal property and deposit of proceeds
- § 8842. Receipt by county treasurer
- § 8843. Copy of order of distribution
- § 8844. Distribution to fiduciary instead of deposit in county treasury
- § 8845. Claim of property deposited in county treasury

CHAPTER 5. DISTRIBUTION TO STATE

- § 8860. Distribution to State of California
- § 8861. Distribution in trust for a class
- § 8862. Disposition of property distributed to state
- § 8863. Claims against property distributed to state
- § 8864. No deposit in county treasury

CHAPTER 6. PARTITION OR ALLOTMENT OF PROPERTY

- § 8880. Right to partition or allotment
- § 8881. Petition
- § 8882. Parties and notice
- § 8883. Disposition of property
- § 8884. Referees
- § 8885. Costs
- § 8886. Effect of division

3/7/86

PART 9. DISTRIBUTION OF ESTATE
CHAPTER 1. ORDER FOR DISTRIBUTION
Article 1. General Provisions

§ 8700. Petition for distribution

8700. The personal representative, a beneficiary, or another interested person may petition the court pursuant to this chapter for an order for distribution of the decedent's estate to the persons entitled.

Comment. Section 8700 restates without substantive change a portion of the first sentence of former Probate Code Section 1000 and of a portion of the first paragraph of former Probate Code Section 1020, with the exception of the reference to distribution of "priorities." For the time and manner prescribed for making a petition, see Sections 8720 (petition for preliminary distribution) and 8740 (petition for final distribution). See also Sections 8910-8916 (time for closing estate).

CROSS-REFERENCES

Definitions

Beneficiary § 24
Court § 29
Interested person § 48
Person § 56
Personal representative § 58

§ 8701. Notice of hearing

8701. At least 10 days before the hearing of the petition notice of the hearing shall be served upon all of the following persons:

(a) Persons who have filed a request for special notice pursuant to Section [1202].

(b) The personal representative.

(c) Devisees whose interest in the estate is affected by the petition.

(d) Heirs of the decedent entitled to succeed to any portion of the estate.

(e) The State Controller, if property is to be distributed to the state because there are no known beneficiaries or if property is to be distributed to a beneficiary whose whereabouts is unknown. A copy of the latest account filed with the court shall be served with the notice.

Comment. Section 8701 restates without substantive change the third sentence of former Probate Code Section 1000, the second paragraph of former Probate Code Section 1020, and the second paragraph of former Probate Code Section 1027.

Subdivision (e) restates the third paragraph of former Probate Code Section 1027 without substantive change, except that the time of notice is reduced from 30 days to 10.

Notice must be delivered personally or sent by first-class mail, or in the case of a nonresident, by airmail. Sections 7150 and 7152. See also Sections 7307 (notice not required to be given to person giving notice) and 7142 (clerk to set matters for hearing).

CROSS-REFERENCES

Definitions

Beneficiary § 24
Court § 29
Devisee § 34
Heirs § 44
Person § 56
Personal representative § 58
Property § 62

Note. The notice provisions (Section 1200.5, etc.) will be coordinated later. There is an existing statutory conflict between the notice requirements of Sections 1200.5(11)-(12) and 926 and 1020. See letter from Santa Clara County Bar Association Estate Planning, Probate and Trust Section (April 3, 1985).

§ 8702. Opposition to petition

8702. Any interested person may oppose the petition.

Comment. Section 8702 restates without substantive change a portion of the last sentence of former Probate Code Section 1000 and a portion of the first paragraph of former Probate Code Section 1020.

CROSS-REFERENCES

Definitions

Interested person § 48

§ 8703. Hearing and order

8703. (a) If the court determines that the requirements for distribution are satisfied, the court shall order distribution of the decedent's estate, or such portion as the court may direct, to the persons entitled.

(b) The order shall:

(1) Name the distributees and the share to which each is entitled.

(2) Provide that real property subject to an option granted pursuant to Section [584.3] is distributed to the distributees subject to the terms and conditions of the option.

Comment. Section 8703 restates portions of former Probate Code Sections 584.3(e), 1001, and 1021 without substantive change. For the requirements for distribution, see Sections 8722 (preliminary distribution) and 8740 (final distribution).

CROSS-REFERENCES

Definitions

Court § 29

Order § 53

§ 8704. Distribution to person other than beneficiary

8704. (a) This section applies where distribution is to be made to any of the following persons:

(1) The transferee of a beneficiary.

(2) Any person other than a beneficiary pursuant to an agreement, request, or instructions of a beneficiary or the attorney-in-fact of a beneficiary.

(b) The court on its own motion, or on motion of an interested person or of the public administrator, may inquire into the circumstances surrounding the execution of, and the consideration for, the transfer, agreement, request, or instructions, and the amount of any fees, charges, or consideration paid or agreed to be paid by the beneficiary.

(c) The court may refuse to order distribution except upon such terms as it deems just and equitable if the court finds either of the following:

(1) The fees, charges, or consideration paid or agreed to be paid by a beneficiary are grossly unreasonable.

(2) The transfer, agreement, request, or instructions were obtained by duress, fraud, or undue influence.

(d) Notice of the hearing on a motion made pursuant to this section shall be served upon the beneficiary, and upon the persons claiming under the beneficiary, personally or by registered mail, as the court may direct, at least 10 days before the hearing.

Comment. Section 8704 restates former Probate Code Section 1020.1 without substantive change.

CROSS-REFERENCES

Definitions

Beneficiary § 24

Court § 29

Interested person § 48

Person § 56

Note. The notice provision is subject to further review.

§ 8705. Conclusiveness of order and distribution

8705. (a) When a court order made pursuant to this chapter becomes final, the order binds and concludes all interested persons.

(b) Distribution in accordance with the court order entitles the personal representative to a full discharge in relation to property included in the order.

(c) A distributee may demand, sue for, and recover the distributee's share from the personal representative or any person in possession of the property being distributed.

Comment. Section 8705 restates former Probate Code Section 1003 and portions of former Probate Code Sections 1021 and 1054 without substantive change, but eliminates the reference to a personal representative "in this state." The court may correct clerical errors in orders as entered. Code Civ. Proc. § 473.

CROSS-REFERENCES

Definitions

Court § 29

Interested person § 48

Order § 53

Person § 56

Personal representative § 58

Property § 62

Note. This section will be reviewed in connection with general provisions on the conclusive effect of order.

§ 8706. After-discovered and other property not covered by order

8706. Any after-discovered or after-acquired property not otherwise disposed of in the order for distribution shall be distributed in a manner consistent with the final order for distribution made pursuant to a will admitted to probate or if none, pursuant to the laws of intestate succession.

Comment. Section 8706 is new. It operates as a statutory omnibus clause in an order for distribution. Thus such matters as distribution of interest that accrues on estate property between the time of the order for distribution and the time distribution is actually made is governed by Section 8706, absent a specific provision in the order for distribution.

CROSS-REFERENCES

Definitions

Order § 53

Will § 88

NOTE. The Commission has not considered the issue of whether an after-discovered will should be admitted to probate if no previous will has been admitted to probate and there is after-discovered property to dispose of.

Article 2. Preliminary Distribution

§ 8720. Time for petition

8720. A petition may be made for an order for distribution of all or a portion, or for a payment on account, of the share of a decedent's estate to which a beneficiary is entitled, when two months have elapsed after letters are issued to a general personal representative.

Comment. Section 8720 restates a portion of the first sentence of former Probate Code Section 1000. Section 8720 extends the time before a preliminary distribution may be made from two months to four months, corresponding to the time for making claims. If the estate is not otherwise in a condition to be finally closed and distributed, or where it otherwise appears proper, the court may require the distributee to give a bond. See Section 8722 (order for distribution).

CROSS-REFERENCES

Definitions

Beneficiary § 24

Letters § 52

Order § 53

Personal representative § 58

§ 8721. Order for distribution

8721. (a) The court shall grant a petition made under this article if at the hearing it appears that the distribution may be made without loss to creditors or injury to the estate or any interested person.

(b) The court may order distribution with or without bond, as the court may require. Any bond required by the court shall be given by the distributee to the personal representative. The bond shall be in such amount as the court fixes, conditioned on payment, if required by the court, of the distributee's proper share of the debts of the estate, not exceeding the amount distributed.

Comment. Section 8721 restates former Probate Code Section 1001 without substantive change.

CROSS-REFERENCES

Definitions

- Court § 29
- Interested person § 48
- Order § 53
- Personal representative § 58

§ 8722. Distribution under Independent Administration of Estates Act

8722. Notwithstanding any other provision of this article:

(a) If authority is granted to administer the estate without court supervision under the Independent Administration of Estates Act, [citation], the personal representative may petition the court for authority [upon notice in the manner prescribed in Section 1200.5, or] ex parte, or upon such reduced notice as the court may prescribe, for an order for distribution.

(b) A petition pursuant to this section need not include an accounting for a distribution to a trustee if the trustee waives the accounting.

(c) The court shall make an order for distribution, if it appears, in addition to the other requirements of this article, that the time for making claims has expired and all uncontested claims have been paid or are sufficiently secured, but the estate is not in a condition to be closed. The total amount of property distributed pursuant to this section shall not exceed 50 percent of the estate in the aggregate.

Comment. Section 8722 restates former Probate Code Section 1004 without substantive change except the court order for distribution is limited to 50% of the aggregate rather than of the net value of the estate.

CROSS-REFERENCES

Definitions

Court § 29

Order § 53

Personal representative § 58

Property § 62

Note. The notice provisions are subject to further review, including whether request for special notice should be included expressly.

§ 8723. Costs of proceeding

8723. The cost of a proceeding under this article shall be paid as follows:

(a) If the petition is made by the personal representative, by the estate.

(b) If the petition is made by a person other than the personal representative, by the petitioner or the estate in such proportions as the court in its discretion determines.

Comment. Section 8723 supersedes former Probate Code Section 1002. Under this section the allocation of costs where the personal representative is not the petitioner is left to the court. One factor in the exercise of the court's discretion could be whether the personal representative was negligent in failing to make prompt distribution, necessitating a petition under this chapter. For costs of partition, see Section 8886.

CROSS-REFERENCES

Definitions

Court § 29

Person § 56

Personal representative § 58

Note. Whether petitions under this article are extraordinary services for purposes of fees is subject to later review.

Article 3. Final Distribution

§ 8740. Petition and order

8740. (a) When the estate is in a condition to be settled, a petition shall be made for, and the court shall make, a final order of distribution of the estate.

(b) The court shall hear and determine and include in the order all questions arising under Section 6174 (ademption) or Section 6409 (advancement).

Comment. Subdivision (a) of Section 8740 restates portions of the first paragraphs of former Probate Code Sections 1020 and 1027 without substantive change. Subdivision (b) restates a portion of former Probate Code Section 1054 without substantive change. Unless there has been a waiver of accounts, the estate is not in a condition to be settled until final settlement of the accounts of the personal representative.

CROSS-REFERENCES

Definitions

Court § 29

Order § 53

§ 8741. Responsibility for final distribution

8741. The personal representative is responsible for distribution pursuant to the court order for final distribution.

Comment. Section 8741 is new. In the case of a distribution to a trust, the trustee is the distributee. Section 8741 supersedes former Probate Code Section 1020.5 (supplementary account); a supplementary accounting for income on distributed property is not required because distribution of income is covered either by the final order of distribution or by the statutory omnibus clause. See Section 8705 (after-discovered and other property not covered by order).

CROSS-REFERENCES

Definitions

Court § 29

Order § 53

Personal representative § 58

CHAPTER 2. DETERMINATION OF PERSONS ENTITLED TO DISTRIBUTION

§ 8800. Petition

8800. At any time after letters are issued to a general personal representative and before a petition for final distribution is made, the personal representative, or any person claiming to be a beneficiary or otherwise entitled to distribution of a share of the estate, may file a petition for a court determination of the persons entitled to distribution of the decedent's estate. The petition shall include a statement of the basis for the petitioner's claim.

Comment. Section 8800 restates the first sentence of former Probate Code Section 1080 without substantive change.

CROSS-REFERENCES

Definitions

Beneficiary § 24
Court § 29
Letters § 52
Person § 56
Personal representative § 58

§ 8801. Notice of hearing

8801. Notice of hearing shall be given to the persons, for the period, and in the manner required by Section [1200.5]. In addition to the persons to whom notice is required to be given by Section [1200.5], notice of hearing shall be given to all devisees and to all known heirs of the decedent.

Comment. Section 8801 restates the second and third sentences of former Probate Code Section 1080 without substantive change. See also Sections 7142 (clerk to set matters for hearing) and [1200.5] (time and manner of notice of hearing).

CROSS-REFERENCES

Definition

Devisee § 34
Heirs § 44
Person § 56

Note. Coordination of notice provisions will be done later.

§ 8802. Responsive pleading

8802. Any person may appear and at or before the time of the hearing file a written statement of the person's interest in the estate. No other pleadings are necessary and the allegations of each claimant shall be deemed denied by each of the other claimants to the extent the allegations conflict.

Comment. Section 8802 restates the fourth and fifth sentences of former Probate Code Section 1080 without substantive change.

CROSS-REFERENCES

Definitions

Person § 56

§ 8803. Attorney General as party

8803. The Attorney General shall be deemed to be a person entitled to distribution of the estate for purposes of this chapter if the estate involves or may involve any of the following:

(a) A charitable trust, other than a charitable trust with a designated trustee that may lawfully accept the trust.

(b) A devise for a charitable purpose without an identified beneficiary.

(c) An escheat to the State of California.

(d) A trustee who does not accept the trust.

Comment. Subdivisions (a)-(c) of Section 8803 restate the last sentence of former Probate Code Section 1080 without substantive change. Subdivision (d) is new.

CROSS-REFERENCES

Definitions

Beneficiary § 24

Devise § 32

Person § 56

Trust § 82

Trustee § 84

§ 8804. Hearing

8804. (a) The court shall hear and consider all papers filed in the proceeding, including any petition filed pursuant to Section 8800 and any statement of interest filed pursuant to Section 8802. The court shall not hear or consider a petition filed after the time prescribed in Section 8800.

(b) The personal representative may file papers and otherwise participate in the proceeding as a party to assist the court.

Comment. Section 8804 restates without substantive change the second sentence and the first portion of the third sentence of former Probate Code Section 1081, except that prior court order is not required for participation of the personal representative. The provisions of former Probate Code Section 1081 for jury trial and special rules of evidence are not continued. The procedure applicable in a proceeding under this chapter is that applicable to civil actions generally. Section 7140 (general rules of practice govern).

CROSS-REFERENCES

Definitions

Court § 29

Personal representative § 58

§ 8805. Court order

8805. (a) The court shall make an order that determines the persons entitled to distribution of the decedent's estate and specifies their shares.

(b) When the court order becomes final it is conclusive as to the matters determined.

Comment. Subdivision (a) of Section 8805 restates the last portion of the second sentence of former Probate Code Section 1081 without substantive change. Subdivision (b) restates former Probate Code Section 1082 without substantive change.

Note. General provisions on the conclusive effect of orders have yet to be considered.

CHAPTER 3. DECEASED DISTRIBUTE

§ 8820. "Deceased distributee" defined

8820. As used in this chapter, "deceased distributee" means a beneficiary who survives the decedent but dies before distribution of the share of the decedent's estate to which the beneficiary is entitled.

Comment. Sections 8820 incorporates portions of former Probate Code Sections 1022 and 1023. It is intended for drafting convenience.

CROSS-REFERENCES

Definitions

Beneficiary § 24

§ 8821. Distribution despite death of distributee

8821. (a) Except as provided in subdivision (b), distribution of a deceased distributee's share of the decedent's estate shall be made pursuant to this chapter, whether or not the deceased distributee is named in the order of distribution, with the same effect as though the distribution were made to the deceased distributee while living.

(b) Distribution of the share of a deceased distributee shall not be made pursuant to this chapter pursuant to a will that provides that a person is entitled to take under the will only if the person survives the date of distribution, and any purported distribution of the share of a deceased distributee pursuant to this chapter is void.

Comment. Section 8821 restates the second paragraph of former Probate Code Section 1023 without substantive change.

CROSS-REFERENCES

Definitions

Order § 53
Person § 56
Will § 88

§ 8822. Manner of distribution

8822. The deceased distributee's share of the decedent's estate shall be distributed as follows:

(a) Except as otherwise provided in this section, distribution shall be made to the personal representative or the estate of the deceased distributee for the purpose of administration in the estate of the deceased distributee.

(b) If the deceased distributee was issue of the decedent and died intestate while under the age of majority and not having been married, distribution shall be made directly to the heirs of the deceased distributee without administration in the estate of the deceased distributee.

(c) If a person entitled to the deceased distributee's share makes application pursuant to Division 8 (commencing with Section 13000) (disposition of estate without administration), distribution shall be made pursuant to Division 8.

Comment. Subdivision (a) of Section 8822 restates the first paragraph of former Probate Code Section 1023 without substantive change. Subdivision (b) restates former Probate Code Section 1022 without substantive change. Subdivision (c) is new.

CROSS-REFERENCES

Definitions

Heirs § 44

Person § 56

Personal representative § 58

CHAPTER 4. DEPOSIT WITH COUNTY TREASURER

§ 8840. When deposit with county treasurer authorized

8840. (a) If property to be distributed consists of money, the personal representative may deposit the money in the name of the distributee with the county treasurer of the county in which the proceedings are pending in any of the following cases:

(1) The distributee cannot be found or refuses to accept the distribution or to give a receipt therefor.

(2) The distributee is a minor or incompetent person who has no guardian or conservator to receive the distribution or person authorized to give a receipt therefor.

(b) If property to be distributed consists of property other than money, the personal representative may deposit the property in the name of the distributee with the State Controller pursuant to the procedure prescribed in Chapter 5 (commencing with Section 8860).

Comment. Section 8840 restates the first portion of former Probate Code Section 1060, but omits reference to a distributee who resides out of the state. Distribution should be made to the named distributee or any known assignee of the named distributee, regardless of the place of residence of the distributee. Personal property other than money may be deposited with the State Controller. See Section 8862 (disposition of property distributed to state).

CROSS-REFERENCES

Definitions

Person § 56

Personal representative § 58

Property § 62

§ 8841. Sale of personal property and deposit of proceeds

8841. (a) The court shall order personal property sold, and the proceeds of sale, less expenses of sale allowed by the court, shall be deposited in the county treasury, in the cases provided in this section.

(b) The court shall order personal property sold if it appears to the court that sale will result in no injury to interested persons and the personal representative desires discharge.

(c) The court shall order personal property sold if it appears to the court that sale is for the benefit of interested persons and any of the following conditions is satisfied:

(1) The property remains in the possession of the personal representative unclaimed for 90 days after the final accounting.

(2) The distributee refuses to accept or give a receipt for the property.

(3) The distributee is a minor or incompetent person and has no guardian or conservator of the estate.

Comment. Section 8841 restates former Section 1062 without substantive change, except that (i) personal property need only be unclaimed for 90 days (as opposed to a year) before it is sold pursuant to subdivision (a)(1) and (ii) the provision relating to vouchers is not continued. Personal property not sold pursuant to this section may be deposited with the State Controller. See Section 8840 (when deposit with county treasurer authorized).

CROSS-REFERENCES

Definitions

Court § 29

Interested person § 48

Order § 53

Personal property § 57

Personal representative § 58

Note. Treatment of interest on deposit is under review.

§ 8842. Receipt by county treasurer

8842. The county treasurer shall give a receipt for a deposit made pursuant to this chapter and is liable on the official bond of the county treasurer for the money deposited. The receipt has the same force and effect as if executed by the distributee.

Comment. Section 8842 restates the last portions of former Probate Code Sections 1060 and 1062 without substantive change, except that the provision for a receipt having the effect of a voucher is not continued. Personal property may be deposited with the State Controller. See Section 8840 (when deposit with county treasurer authorized).

§ 8843. Copy of order of distribution

8843. If money is deposited or is already on deposit with the county treasurer, the personal representative shall give the county treasurer a certified copy of the order for distribution.

Comment. Section 8843 restates former Probate Code Section 1060.1 without substantive change. Personal property may be deposited with the State Controller. See Section 8840 (when deposit with county treasurer authorized).

CROSS-REFERENCES

Definitions

Order § 53

Personal representative § 58

§ 8844. Distribution to fiduciary instead of deposit in county treasury

8844. Notwithstanding Section 8840, if the distributee is a nonresident minor or nonresident incompetent person who has a guardian, conservator, or other fiduciary of the estate legally appointed under the law of another jurisdiction, the distribution of the person's share may be made to the fiduciary.

Comment. Section 8844 restates former Probate Code Section 1061 without substantive change, except that provision relating to a receipt with the effect of a voucher is not continued.

§ 8845. Claim of property deposited in county treasury

8845. (a) A person may claim property on deposit in the county treasury by filing a petition with the court. The petition shall show the person's claim or right to the property. The petition shall state the facts required to be stated in a petition filed under Section 1355 of the Code of Civil Procedure. Upon the filing of the petition, the same proceedings shall be had as are required by that section, except that the hearing shall be ex parte unless the court orders otherwise.

(b) At least [20] days before the hearing of the petition, a copy of the petition shall be served on the Attorney General. The Attorney General may answer the petition, at the Attorney General's discretion.

(c) If the court is satisfied of the claimant's right to the property claimed, the court shall make an order establishing the right. Upon presentation of a certified copy of the order, the county auditor shall draw a warrant on the county treasurer for the amount of money covered by the order.

(d) A claim for money distributed in the estate of a deceased person made after the deposit of the property in the State Treasury is governed by the provisions of Chapter 3 (commencing with Section 1335) of Title 10 of Part 3 of the Code of Civil Procedure.

Comment. Section 8845 restates subdivision (a) of former Probate Code Section 1064, but omits the provisions relating to property other than money deposited with the county treasurer. Such property may be deposited with the State Controller. See Section 8840 (when deposit with county treasurer authorized).

Unlike the former provision, Section 8845 provides for an ex parte order, and substitutes a court order for the certificate of right.

CROSS-REFERENCES

Definitions

Court § 29

Order § 53

Person § 56

Property § 62

Verification required § 7203

Note. The time for notice to A.G. will be reviewed in connection with the general Probate Code notice provisions, as will notice requirements for other persons.

CHAPTER 5. DISTRIBUTION TO STATE

§ 8860. Distribution to State of California

8860. (a) The court shall order distributed to the State of California property of the estate not ordered distributed to the known beneficiaries.

(b) Insofar as practicable, any real property or tangible personal property shall be converted to money before distribution to the state.

Comment. Section 8860 restates the last portion of the first paragraph of former Probate Code Section 1027 without substantive change.

CROSS-REFERENCES

Definitions

Court § 29
Personal property § 57
Property § 62
Real property § 68

§ 8861. Distribution in trust for a class

8861. If the court orders distribution of property in the decedent's estate to the State of California, and the order includes words that otherwise create a trust in favor of unknown or unidentified persons as a class, the distribution shall vest in the state both legal and equitable title to the property.

Comment. Section 8861 restates the fourth paragraph of former Probate Code Section 1027 without substantive change. The title of the state pursuant to this section is subject to the right of persons to claim the property as provided in this chapter. See Section 8863 (claims against property distributed to state).

CROSS-REFERENCES

Definitions

Court § 29
Order § 53
Person § 56
Property § 62
Trust § 82

§ 8862. Disposition of property distributed to state

8862. (a) If the court orders distribution to the State of California, the personal representative shall promptly:

- (1) Deliver any money to the State Treasurer.
- (2) Deliver any personal property other than money to the State Controller for deposit in the State Treasury.
- (3) Cause a certified copy of the order to be recorded in the office of the county recorder of each county in which any real property is situated.

(b) At the time of making a delivery of property or recordation pursuant to this section, the personal representative shall deliver to the State Controller the recorded certified copy of the order for distribution.

Comment. Section 8862 restates without substantive change the fifth and sixth paragraphs of former Probate Code Section 1027 and former Probate Code Section 1028.

CROSS-REFERENCES

Definitions

Court § 29
Order § 53
Personal property § 57
Personal representative § 58
Property § 62
Real property § 68

§ 8863. Claims against property distributed to state

8863. (a) Property distributed to the state shall be held by the State Treasurer for a period of five years from the date of the order for distribution, within which time any person may claim the property in the manner provided by Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.

(b) A person who does not claim the property within the time prescribed in this section is forever barred, and the property vests absolutely in the state, subject to the provisions of Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.

Comment. Section 8863 restates the eighth and ninth paragraphs of former Section 1027 without substantive change. It should be noted that under the general claim procedures of the Code of Civil Procedure, the limitations bar may be tolled as to minors and incompetent persons in some situations. See, e.g., Code Civ. Proc. § 1441.

CROSS-REFERENCES

Definitions

Order § 53
Person § 56
Property § 62

§ 8864. No deposit in county treasury

8864. No deposit of property of an estate shall be made in the county treasury by a personal representative if any other property of the estate is or has been distributed to the State of California pursuant to this chapter, but the property that would otherwise be deposited in the county treasury shall be transmitted forthwith to the State Treasurer or State Controller as provided in this chapter.

Comment. Section 8864 restates the seventh paragraph of former Probate Code Section 1027 without substantive change. See also Section 7642 (general rules governing administration of estates apply to public administrator). Section 8864 is intended for the convenience of the claimant of property in only having to deal with one governmental agency.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

CHAPTER 6. PARTITION OR ALLOTMENT OF PROPERTY

§ 8880. Right to partition or allotment

8880. If two or more beneficiaries are entitled to the distribution of undivided interests in property and have not agreed among themselves to a partition, allotment, or other division of the property, any of them, or the personal representative at the request of any of them, may petition the court to make a partition, allotment, or other division of the property that will be equitable and will avoid the distribution of undivided interests.

Comment. Section 8880 restates former Probate Code Section 1100 without substantive change. Both real and personal property are subject to division under this chapter. See Section 62 ("property" defined). It should be noted that partitioned property may not be distributed except pursuant to the general provisions for distribution.

CROSS-REFERENCES

Definitions

Beneficiary § 24

Court § 29

Personal representative § 58

Property § 62

§ 8881. Petition

8881. (a) A petition pursuant to this chapter may be filed with the clerk at any time before the distribution of the affected property has been ordered.

(b) The petition shall:

(1) Describe the property.

(2) Give the names of the persons having or claiming undivided interests.

(3) State what the undivided interests are, so far as known to the petitioner.

Comment. Section 8881 restates the first and second sentences of former Probate Code Section 1101 without substantive change, except that the petition may be filed before the time to make claims has expired.

CROSS-REFERENCES

Definitions

Clerk § 27

Person § 56

Property § 62

§ 8882. Parties and notice

8882. (a) Notice of the hearing shall be given to the persons entitled to distribution of the undivided interests and to the personal representative. An objection to the jurisdiction of the court shall be made and resolved in the manner prescribed in Section [851.5].

(b) When all persons in interest have appeared or are in default, the matter shall be heard by the court. The persons in interest who have filed written appearances shall be considered the parties to the proceeding and each is entitled to five days' notice of the hearing. No one shall be considered as a plaintiff or as a defendant.

Comment. Subdivision (a) of Section 8882 supersedes the third, fourth, and fifth sentences of former Probate Code Section 1101. Subdivision (b) restates former Probate Code Section 1102.

CROSS-REFERENCES

Clerk to set matter for hearing § 7202

Definitions

Court § 29

Person § 56

Personal representative § 58

§ 8883. Disposition of property

8883. (a) The court shall take evidence and shall partition, allot, and divide the property so that each party receives property of a value proportionate to the party's interest in the whole.

(b) The court may direct the personal representative to sell property when, under the circumstances, sale would be more equitable than partition and when the property cannot conveniently be allotted to any one party. The sale shall be conducted in the same manner as other probate sales.

(c) Any two or more parties may agree to accept undivided interests.

Comment. Section 8883 restates former Probate Code Section 1103 without substantive change.

CROSS-REFERENCES

Definitions

Court § 29

Personal representative § 58

Property § 62

§ 8884. Referees

8884. (a) The court, in its discretion, may appoint one or three referees to partition property capable of being partitioned, if requested to do so by a party. The number of referees appointed must conform to the request of at least one of the parties.

(b) The referees shall have the powers and perform the duties of referees in civil actions for partition, and the court shall have the same powers with respect to their report as in such actions.

Comment. Section 8884 restates former Probate Code Section 1104 without substantive change.

CROSS-REFERENCES

Definitions

Court § 29

Property § 62

§ 8885. Costs

8885. The expenses of partition shall be equitably apportioned by the court among the parties, but each party must pay the party's own attorney's fees. The amount charged to each party constitutes a lien on the property allotted to the party.

Comment. Section 8885 restates former Probate Code Section 1105 without substantive change. It is an exception to the general rules stated in Section 8724 (costs of proceeding).

CROSS-REFERENCES

Definitions

Court § 29

Property § 62

§ 8886. Effect of division

8886. (a) The partition, allotment, or other division made by the court shall control upon proceedings for distribution, unless modified for good cause upon reasonable notice.

(b) The proceedings leading to the partition, allotment, or other division may be reviewed upon appeal from the order for distribution.

Comment. Section 8886 restates former Probate Code Section 1106 without substantive change.

CROSS-REFERENCES

Definitions

Court § 29

Order § 53

3/7/86

COMMENTS TO REPEALED SECTIONS

Probate Code § 1000 (repealed)

Comment. The introductory portion of the first half of the first sentence of former Section 1000 is superseded by Section 8720 (time for petition). The remainder of the first half of the first sentence is restated without substantive change in Sections 8700 (petition for distribution) and 8720 (time for petition). [The second half of the first sentence will be disposed of later.]

The second sentence is restated without substantive change in Section 7142 (clerk to set matters for hearing). The third sentence is restated without substantive change in Section 8701 (notice of hearing). The fourth sentence is restated without substantive change in Sections 7150 (service) and 7152 (mailing). The last sentence is restated without substantive change in Sections 8702 (opposition to petition and ____ (joint personal representatives)).

Probate Code § 1001 (repealed)

Comment. Former Section 1001 is restated without substantive change in Sections 8703(a) (hearing and order) and 8721 (order for distribution).

Probate Code § 1002 (repealed)

Comment. Former Section 1002 is superseded by Section 8723 (costs of proceeding).

Probate Code § 1003 (repealed)

Comment. Former Section 1003 is restated without substantive change in Section 8705(a)-(b) (conclusiveness of order and distribution).

Probate Code § 1004 (repealed)

Comment. Former Section 1004 is restated without substantive change in Sections 8722 (distribution under Independent Administration of Estates Act), 7142 (clerk to set matters for hearing), and 8721 (order for distribution), with the addition of authority for distribution of greater than 50% of the net value of the estate.

Probate Code § 1020 (repealed)

Comment. The first sentence of former Section 1020 is restated without substantive change in Sections 8740 (petition and order) and 8700 (petition for distribution). The second sentence is restated without substantive change in Sections 8702 (opposition to petition) and ____ (joint personal representative). The third sentence is restated without substantive change in Section 8701 (notice of hearing). The fourth sentence is restated without substantive change in Sections 7150 (service) and 7152 (mailing).

Probate Code § 1020.1 (repealed)

Comment. Former Section 1020.1 is restated without substantive change in Section 8704 (distribution to person other than heir or devisee).

Probate Code § 1020.5 (repealed)

Comment. Former Section 1020.5 is not continued; it is superseded by Section 8741 (accountability until final distribution).

Probate Code § 1021 (repealed)

Comment. Former Section 1021 is restated without substantive change in Sections 8703(b) (hearing and order) and 8705(a) and (c) (conclusiveness of order and distribution).

Probate Code § 1022 (repealed)

Comment. Former Section 1022 is restated in Sections 8820-8822 (predeceased distributee) without substantive change.

Probate Code § 1023 (repealed)

Comment. Former Section 1023 is restated in Sections 8820-8822 (predeceased distributee) without substantive change.

Probate Code § 1024 (repealed)

Comment. Former Section 1024 is not continued, because it is unnecessary. Payment of taxes is an obligation of the personal representative (Section ____), and the estate may not be distributed unless obligations of the estate are accommodated (Section 8721 (order for distribution)).

Probate Code § 1025 (repealed)

Comment. Former Section 1025 is restated without substantive change in Section 8916 (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 8910 (time required for closing or status report), ____ (verification), and 8911 (report of status of administration). The substance of the second, third, and fourth sentences is restated without substantive change in Section 8911 (report of status of administration).

The second paragraph is restated without substantive change in Section 8912 (failure to make petition or report). The third paragraph is restated without substantive change in Section 8914 (failure of personal representative to comply with order). The fourth paragraph is restated without substantive change in Section 8915 (sanction for failure to timely close estate).

Probate Code § 1026 (repealed)

Comment. Former Section 1026 is continued without substantive change in Section 8913 (continuation of administration to pay family allowance).

Probate Code § 1027 (repealed)

Comment. The first sentence of former Section 1027 is restated without substantive change in Section 8740 (petition and order). The remainder of the first paragraph is restated without substantive change in Section 8860 (distribution to State of California).

The first sentence of the second paragraph is restated in Section 8701 (notice of hearing). The second sentence is restated without substantive change in Sections 7150 (service) and 7152 (mailing).

The third paragraph is restated without substantive change in Section 8701, except that the provision for 30 days notice is not continued. The fourth paragraph is restated without substantive change in Section 8861 (distribution to state in trust). The fifth and sixth paragraphs are restated without substantive change in Section 8862 (disposition of property distributed to state). The seventh paragraph is restated without substantive change in Sections 8864 (no deposit in county treasury) and 7642 (general rules governing administration of estates apply to public administrator). The eighth and ninth paragraphs are restated without substantive change in Section 8863 (claims against property distributed to state).

Probate Code § 1028 (repealed)

Comment. Former Section 1028 is restated without substantive change in Section 8862 (disposition of property distributed to state).

Probate Code § 1030 (repealed)

Comment. Former Section 1030 is continued without substantive change in Section 6190 (definitions).

Probate Code § 1031 (repealed)

Comment. Former Section 1031 is continued without substantive change in Section 6191 (application of chapter).

Probate Code § 1032 (repealed)

Comment. Former Section 1032 is continued without substantive change in Section 6192 (marital deduction gifts and charitable remainder unitrusts and annuity trusts).

Probate Code § 1033 (repealed)

Comment. Former Section 1033 is continued without substantive change in Section 6193 (satisfaction of a pecuniary devise).

Probate Code § 1034 (repealed)

Comment. Former Section 1034 is continued without substantive change in Section 6194 (maximum marital deduction for will dated September 13, 1981, or earlier).

Probate Code § 1035 (repealed)

Comment. Former Section 1035 is continued without substantive change in Section 6195 (marital deduction gift in trust).

Probate Code § 1036 (repealed)

Comment. Former Section 1036 is continued without substantive change in Section 6196 (survivorship requirement for marital deduction gift).

Probate Code § 1037 (repealed)

Comment. Former Section 1037 is continued without substantive change in Section 6197 (no inference as to prior law).

Probate Code § 1038 (repealed)

Comment. Former Section 1038 is continued without substantive change in Section 6198 (severability clause).

Probate Code § 1039 (repealed)

Comment. Former Section 1039 is continued without substantive change in Section 6199 (bona fide purchaser).

Probate Code § 1040 (repealed)

Comment. [To be drafted.]

Probate Code § 1041 (repealed)

Comment. [To be drafted.]

Probate Code § 1042 (repealed)

Comment. [To be drafted.]

Probate Code § 1043 (repealed)

Comment. [To be drafted.]

Probate Code § 1043a (repealed)

Comment. [To be drafted.]

Probate Code § 1054 (repealed)

Comment. Former Section 1054 is restated without substantive change in Sections 8740 (petition and order) and 8705 (conclusiveness of order and distribution).

Probate Code § 1055 (repealed)

Comment. [To be drafted. This provision should go among the transitional provisions.]

Probate Code § 1060 (repealed)

Comment. The first portion of former Section 1060 is restated without substantive change in Section 8840 (when deposit with county treasurer authorized). The last portion is restated without substantive change in Section 8842 (receipt by county treasurer), except that the provision for a receipt having the effect of a voucher is not continued.

Probate Code § 1060.1 (repealed)

Comment. Former Section 1060.1 is restated without substantive change in Section 8843 (copy of decree of distribution).

Probate Code § 1061 (repealed)

Comment. Former Section 1061 is restated without substantive change in Section 8844 (distribution to fiduciary instead of deposit in county treasury), except that the provision relating to a receipt with the effect of a voucher is not continued.

Probate Code § 1062 (repealed)

Comment. Former Section 1062 is restated without substantive change in Sections 8841 (sale of personal property and deposit of proceeds) and 8842 (receipt by county treasurer), except that personal property need not be unclaimed for a year before it is sold and the provision for a receipt having the effect of a voucher is not continued.

Probate Code § 1063 (repealed)

Comment. Former Section 1063 is not continued.

Probate Code § 1064 (repealed)

Comment. Subdivision (a) of former Section 1064 is restated without substantive change in Section 8845 (claim of money or property deposited in county treasury). Subdivision (b) is not continued; it provided an infrequently used alternate procedure.

Probate Code § 1065 (repealed)

Comment. Former Section 1065 is not continued. For the receipt of the distributee, see Section 8930 (receipt for distributed property).

Probate Code § 1066 (repealed)

Comment. Former Section 1066 is restated without substantive change in Section 8931 (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 8933 (administration after discharge).

Probate Code § 1068 (repealed)

Comment. Former Section 1068 is restated without substantive change in Sections 8932 (discharge without administration), (verification), and 7142 (clerk to set matters for hearing).

Probate Code § 1080 (repealed)

Comment. The first sentence of former Section 1080 is restated without substantive change in Section 8800 (petition). The second and third sentences are superseded by Section 8801 (notice of hearing). The fourth and fifth sentences are restated without substantive change in Section 8802 (responsive pleading). The last sentence is restated without substantive change in Section 8803 (Attorney General as party).

Probate Code § 1081 (repealed)

Comment. The first sentence of the first paragraph of former Section 1081, providing for jury trial, is not continued. The second and third sentences are restated without substantive change in Sections 8804 (hearing) and 8805 (court order). The second paragraph is superseded by Section 7140 (general rules of practice govern).

Probate Code § 1082 (repealed)

Comment. Former Section 1082 is restated without substantive change in Section 8805(b) (court order).

Probate Code § 1100 (repealed)

Comment. Former Section 1100 is restated without substantive change in Sections 8880 (right to partition or allotment) and 62 ("property" defined).

Probate Code § 1101 (repealed)

Comment. The first and second sentences of Section 1101 are restated without substantive change in Section 8881 (petition). The third, fourth, and fifth sentences are superseded by subdivision (a) of Section 8882 (parties and notice).

Probate Code § 1102 (repealed)

Comment. Former Section 1102 is restated without substantive change in Section 8882 (parties and notice).

Probate Code § 1103 (repealed)

Comment. Former Section 1103 is restated without substantive change in Section 8883 (disposition of property).

Probate Code § 1104 (repealed)

Comment. Former Section 1104 is restated without substantive change in Section 8884 (referees).

Probate Code § 1105 (repealed)

Comment. Former Section 1105 is restated without substantive change in Section 8885 (costs).

Probate Code § 1106 (repealed)

Comment. Former Section 1106 is restated without substantive change in Section 8886 (effect of division).