

Memorandum 86-61

Study L-1046 - Estate and Trust Code (Nonresident Decedent)

Attached to this Memorandum is a staff draft of provisions concerning nonresident decedents. The Commission considered the provisions now contained in Chapters 3 and 4 of the draft at the June 1984 meeting. The staff has revised these provisions to reflect Commission decisions made at that meeting. The Commission has not previously seen Chapter 2. Except as noted below, Chapter 2 generally continues existing law. Chapter 1 contains definitions included for convenience in drafting.

Equal Powers for Personal Representative From Foreign Country?

The major new policy question is whether a personal representative appointed in a foreign country should have the same summary collection powers in California, and the same right to receive court-ordered distribution of California property, as a personal representative appointed in another state. Under existing law, a personal representative appointed in another state may use the summary collection procedure, but a personal representative appointed in a foreign country may not. See Prob. Code §§ 1043, 1043a. Similarly, existing law permits the California court in ancillary proceedings to order distribution of estate property to a personal representative in another state, but not in another country. See Prob. Code §§ 1000, 1040.

In a 1983 law review article, a vice-president and counsel for California First Bank in San Francisco argued that this discrimination is unfair, unwarranted, and is not needed to protect California creditors. 17 U.S.F.L. Rev. 655, 656 (1983). Under the summary procedure, notice is published, and creditors may protect themselves by objecting to removal of the property. Prob. Code §§ 1043, 1043a. Thus it should not matter whether the property is being removed to another state or to another country.

The attached draft implements the recommendation of the law review article by expanding the summary collection provisions to permit their use by a personal representative appointed in a foreign country (proposed

Section 12550), and by expanding the distribution provisions to permit distribution to such a personal representative (proposed Section 12530).

Does the Commission approve this expansion?

Eliminate Published Notice for Small Deposits?

The attached draft does not include a suggestion made in the law review article to eliminate published notice to creditors if the amount on deposit in the financial institution is \$1,000 or less. For such a small deposit, the article recommends a 30-day waiting period to permit a creditor, heir, or beneficiary to appear and assert a claim. If no claim is made during the 30-day waiting period, the article would permit the financial institution to deliver the funds to a personal representative from another state or country without any showing that notice has been published. The article argues that, in the case of such a small account, the cost of publication is too great in relation to the size of the account. Does the Commission want to revise the draft to accept this recommendation?

Respectfully submitted,

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NONRESIDENT DECEDENT

Primary administration of a decedent's estate is at the decedent's domicile. If a nonresident decedent leaves property in California, ancillary administration (secondary probate) may be necessary in California to protect local creditors or to transfer title to real property. Ancillary administration is time-consuming, expensive, and should be avoided if possible.¹

Existing Summary Procedures to Avoid Ancillary Administration

California has a number of procedures that may be used to avoid ancillary administration:

(1) Close relatives of the decedent who are entitled to the decedent's personal property under the will or under the intestate succession laws of the decedent's domicile may use California's summary procedure for collection of personal property by affidavit.²

(2) If the decedent's estate is worth \$20,000 or less, the decedent's surviving spouse or minor children may use California's small estate set-aside provisions to collect the decedent's California real and personal property, whether or not there is an inconsistent will.³

(3) The decedent's surviving spouse may use California's summary procedure for collecting salary or other compensation due to the decedent for personal services, and for collecting real and property passing to the surviving spouse by will or intestate succession.⁴

(4) The personal representative appointed at the decedent's domicile ("foreign personal representative") may come into California, collect the decedent's personal property and debts owed to the decedent, and remove the property from California without court proceedings in California, if the following steps are followed: The foreign personal representative

¹ Kimbrough & Lingren, Ancillary Administration, in 2 California Decedent Estate Administration §§ 34.21-34.22, at 1356-57 (Cal. Cont. Ed. Bar 1975).

² Prob. Code §§ 13100-13115; see Kimbrough & Lindgren, supra note 1, § 34.22, at 1357.

³ Prob. Code §§ 6600-6614; see Kimbrough & Lindgren, supra note 1, § 34.22, at 1357.

⁴ Prob. Code §§ 13600-13606.

must publish a notice to creditors, wait three months for possible objections, and if there are no objections may collect the property by showing proof of appointment and presenting an affidavit containing various matters, including a statement that no local administration is pending.⁵

Recommended New Summary Procedures

Ancillary administration in California will most often be needed to transfer marketable title to California real property.⁶ Existing procedures that avoid the need for ancillary administration should be supplemented by the following new procedures, drawn from the law of other states:

Summary authorization to sell real property. If a nonresident decedent owns real property in California and the foreign personal representative wants to sell the property and take the proceeds to the decedent's domicile, the foreign personal representative must commence an ancillary proceeding in California. The ancillary proceeding is conducted in the same manner as administration of the estate of a resident decedent. The foreign personal representative must petition for probate of the will or for letters of administration,⁷ publish notice,⁸ prove the validity of the will, if any,⁹ give bond if not waived,¹⁰ and file an inventory and appraisalment of the estate¹¹ before selling the property. Thus the foreign personal representative must do a second time what has already been done in the foreign proceeding.

5 Prob. Code § 1043. If a creditor, heir, or devisee objects, this procedure may not be used. Id.

6 See Kimbrough & Lindgren, supra note 1, § 34.16, at 1354; 2 A. Bowman, Ogden's Revised California Real Property Law § 29.27, at 1449 (Cal. Cont. Ed. Bar 1975).

7 Prob. Code §§ 323, 440.

8 Prob. Code §§ 327, 441.

9 Prob. Code §§ 329, 361.

10 Prob. Code § 541; see also Prob. Code § 481.

11 Prob. Code § 600.

It would save time and expense to the estate to permit the foreign personal representative to file in California authenticated copies of his or her appointment in the foreign proceeding, of any bond given there, and of the decedent's will, if any, instead of commencing another estate proceeding.¹² The sale would be conducted in the same manner as an estate sale generally.¹³ The foreign personal representative would be able to remove the proceeds of sale from California after publication of notice, four month wait, and an opportunity for creditors to object.¹⁴

Summary authorization to bring suit in California. Under existing law, if a foreign personal representative wants to bring suit in California to collect a debt due to the decedent or other property of the decedent, he or she must first be appointed as a local personal representative in California ancillary proceedings.¹⁵ This involves unnecessary duplication of procedural steps already accomplished in the foreign estate proceeding.¹⁶ It would save time and expense to the estate to permit the foreign personal representative to sue in California upon filing proof of his or her appointment in the other jurisdiction,

¹² The State of Ohio has such a provision. Ohio Rev. Code Ann. §§ 2129.02, 2129.25 (Page 1976).

¹³ Estate sales of real property generally are made after notice of sale, court confirmation, and possible overbid (see, e.g., Prob. Code §§ 755-756, 780, 784-787), or, if the court so authorizes, under the Independent Administration of Estates Act (Prob. Code §§ 591-591.9).

¹⁴ Prob. Code § 1043. Existing law provides for a three-month waiting period. Id. The proposed law increases this to four months, consistent with the general creditor claims period. See Prob. Code § 700.

¹⁵ Under existing law, a foreign personal representative who has not also been appointed in California ordinarily may not sue in California. Code. Civ. Proc. § 1913; 7 B. Witkin, Summary of California Law Wills and Probate § 58, at 5581 (8th ed. 1974); 4 B. Witkin, California Procedure Pleading § 98, at 134 (3d ed. 1985). Appointment of the foreign personal representative in a California ancillary proceeding confers the same powers he or she would have in a California domiciliary proceeding. Kimbrough & Lindgren, supra note 1, § 34.47, at 1372. Such powers include the power to maintain actions or proceedings in California. 7 B. Witkin, Summary of California Law Wills and Probate § 337, at 5813 (8th ed. 1974); see Prob. Code §§ 573-577.

a copy of any bond given in the other jurisdiction, and a copy of the decedent's will, if any.¹⁷

Summary proceeding for small estate based on foreign decree. When a final decree of distribution is made in estate proceedings at the decedent's domicile, the California courts will accept that decree as binding with respect to movable property of the decedent, but not with respect to real property in California.¹⁸

When a final decree of distribution has been made in the domiciliary proceeding and the value of the decedent's real property in California is small (gross value of \$60,000 or less), the foreign personal representative should be able to file in a California court a copy of the final decree, publish a notice of a petition to dispense with ancillary administration, and, absent an objection by a creditor or other interested person, have the California court determine that the foreign decree is binding with respect to the California real

16 See supra text accompanying notes 7-11.

17 The Uniform Probate Code has similar provisions. Uniform Probate Code §§ 4-204, 4-205; see also Uniform Probate Code § 4-206 (substitution of local personal representative for domiciliary foreign personal representative in actions or proceedings). Under the proposed law as under these Uniform Probate Code provisions, the foreign personal representative submits to the jurisdiction of the California courts by filing the papers required before suing in California.

18 Redwood Inv. Co. v. Exley, 64 Cal. App. 455, 459, 221 P. 973 (1923); cf. Civil Code § 755; Kimrough & Lindgren, supra note 1, § 34.16, at 1354. This is consistent with the rule in the U. S. generally. See G. Stumberg, Principles of Conflict of Laws 402 (3d ed. 1963). However, a foreign decree directing a conveyance of California real property may be pleaded as the basis of a California cause of action, and is entitled to the "force and effect of record evidence of the equities therein determined." Redwood Inv. Co. v. Exley, supra. See generally 8 B. Witkin, California Procedure Enforcement of Judgment § 402, at 342-44 (3d ed. 1985) (action on sister state judgment).

property.¹⁹

Powers of Personal Representative Appointed in Another Country

Under existing law, the provisions for summary collection by a foreign personal representative of the decedent's personal property in California may be used by a personal representative appointed in another state, but not by one appointed in another country.²⁰ This discrimination has been called "unfair, unwarranted," and unnecessary to protect California creditors.²¹ Similarly, existing law permits the California court in ancillary proceedings to order distribution of estate property to a personal representative in another state, but not in another country.²² The proposed law expands these provisions to permit summary collection by a foreign personal representative, and to permit distribution in ancillary proceedings to a foreign personal representative, whether appointed in another state or in another

¹⁹ A probate decree made at the decedent's domicile affecting property in another state is usually accepted as binding by the situs state with respect to movables. See G. Stumberg, *Principles of Conflict of Laws* 402 (3d ed. 1963); Civil Code § 755; Kimbrough & Lindgren, *supra* note 1, § 34.16, at 1354. However, the situs state is usually less willing to accept a probate decree made at the decedent's domicile as binding with respect to real property. See 3 W. Bowe & D. Parker, *Page on the Law of Wills* § 28.7, at 386-87 (rev. ed. 1968). The domiciliary court may be expected to apply California law to determine the disposition of California land. 6 W. Bowe & D. Parker, *supra* § 60.3, at 445. The value of the proposed law in making a final decree of distribution in another state binding in California is therefore to prevent relitigation of settled issues with respect to California land. These provisions of the proposed law are drawn from Section 2-11-201 of the Wyoming Statutes of 1977 and from Sections 30-12-1, 30-12-3, 30-12-4, and 30-12-5 of the South Dakota Codified Laws, 1984 Revision.

²⁰ See Prob. Code §§ 1043, 1043a.

²¹ Kitada & Rokaw, Shedding the Cloak of Ancillary Administration: Application of Summary Probate Procedures to Estates of Decedents Formerly Domiciled in Foreign Countries, 17 U.S.F.L. Rev. 655, 656 (1983).

²² See Prob. Code §§ 1000, 1040.

- 23 Other technical and substantive revisions should be made: (1) The requirements for the validity of a foreign will (valid under law of testator's domicile at death or under California law, Prob. Code § 362) should be liberalized to conform to the new rules for determining the validity of a California will (valid under law of place of execution or place where at time of execution or death testator was domiciled, had abode, or was a national, Prob. Code § 6113); (2) the provisions for informal collection of the decedent's personal property (Prob. Code § 1043) should be revised to delete the requirement that the State Controller must consent to removal of the property from California in view of the repeal of inheritance taxes in California (Rev. & Tax. Code § 13301) and to make clear that the requirement that the foreign personal representative show that no other letters on the decedent's estate are then outstanding applies to letters "in this state"; (3) provisions drawn from Sections 4-301 and 4-302 of the Uniform Probate Code should be enacted to make clear that a foreign personal representative who does specified acts in California thereby submits to the jurisdiction of the California courts, consistent with Section 410.10 of the Code of Civil Procedure; (4) a provision drawn from Section 4-401 of the Uniform Probate Code should be enacted to bind a California personal representative by an adjudication in favor of or against any personal representative in another state to avoid multiplicity of actions (the adjudication should not be binding if made in ancillary proceedings elsewhere and the California personal representative did not have notice and an opportunity to defend, since the matter is less likely to have been vigorously litigated in ancillary proceedings where the amounts involved may be small).

Staff Draft

PART 13. NONRESIDENT DECEDENT

CHAPTER 1. DEFINITIONS

- § 12500. Application of definitions
- § 12501. Ancillary administration
- § 12502. Authenticated copy
- § 12503. Foreign jurisdiction
- § 12504. Foreign personal representative
- § 12505. Local personal representative
- § 12506. Nonresident decedent

CHAPTER 2. ANCILLARY ADMINISTRATION PROCEEDINGS

Article 1. Opening Ancillary Administration

- § 12510. Commencement of proceedings
- § 12511. Jurisdiction and venue
- § 12512. Procedure

Article 2. Probate of Will of Nonresident Decedent

- § 12520. Procedure not exclusive
- § 12521. Petition for probate of will
- § 12522. Admission of will to probate

Article 3. Distribution of Property to Foreign Personal Representative

- § 12530. Conditions for distribution
- § 12531. Sale of real property and delivery of proceeds

CHAPTER 3. PROCEEDINGS WITHOUT ANCILLARY ADMINISTRATION

Article 1. Collection of Personal Property

- § 12550. Informal collection authorized
- § 12551. Notice of intent to collect
- § 12552. Payment or delivery to foreign personal representative
- § 12553. Discharge from liability

Article 2. Distribution Based on Foreign Order

- § 12560. Conditions for recognition of foreign order
- § 12561. Petition
- § 12562. Publication of notice
- § 12563. Hearing
- § 12544. Order

Article 3. Miscellaneous Powers of Foreign Personal Representative

- § 12570. Filing proof of authority
- § 12571. Sale of real property
- § 12572. Maintaining actions and proceedings

CHAPTER 4. JURISDICTION OVER FOREIGN PERSONAL REPRESENTATIVE

- § 12590. Jurisdiction by act of foreign personal representative
- § 12591. Jurisdiction by act of decedent
- § 12592. Effect of adjudication for or against personal representative

CONFORMING REVISION

DISPOSITION OF EXISTING SECTIONS

PART 13. NONRESIDENT DECEDENT

CHAPTER 1. DEFINITIONS

§ 12500. Application of definitions

12500. Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this part.

Comment. Section 12500 is comparable to Section 20.

§ 12501. Ancillary administration

12501. "Ancillary administration" means proceedings in this state for administration of the estate of a nonresident decedent.

Comment. Section 12501 is new. It is intended for drafting convenience.

CROSS-REFERENCES

Definitions

Nonresident decedent § 12506

Note. "Ancillary administration is used in Sections 12510-12, 12520, 12530, 12552, 12560, 12563, 12570-71, 12590.

§ 12502. Authenticated copy

12502. "Authenticated copy" means a copy of a writing that satisfies the requirements of Article 2 (commencing with Section 1530) of Chapter 2 of Division 11 of the Evidence Code.

Comment. Section 12502 is drawn from a portion of the first sentence of former Probate Code Section 361. It is intended for drafting convenience.

Note. "Authenticated copy" is used in Sections 12521, 12561, 12570.

§ 12503. Foreign jurisdiction

12503. "Foreign jurisdiction" means the jurisdiction of the nonresident decedent's domicile.

Comment. Section 12503 is new. It is intended for drafting convenience.

Note. "Foreign jurisdiction" is used in Sections 12504, 12521-22, 12550, 12552, 12560-61, 12563-64, 12570.

§ 12504. Foreign personal representative

12504. "Foreign personal representative" means a personal representative appointed in a foreign jurisdiction.

Comment. Section 12504 is new. It is intended for drafting convenience.

CROSS-REFERENCES

Definitions

Foreign jurisdiction § 12503

Personal representative § 58

Note. "Foreign personal representative" is used in Sections 12530-31, 12550-52, 12561-62, 12570-72, 12590-91.

§ 12505. Local personal representative

12505. "Local personal representative" means a nonresident decedent's personal representative appointed in this state.

Comment. Section 12505 is new. It is intended for drafting convenience.

CROSS-REFERENCES

Definitions

Nonresident decedent § 12506

Personal representative § 58

Note. "Local personal representative" is used in Sections 12510, 12572, 12592.

§ 12506. Nonresident decedent

12506. "Nonresident decedent" means a person who dies domiciled in a jurisdiction other than this state.

Comment. Section 12506 is new. It is intended for drafting convenience.

Note. "Nonresident decedent" is used in Sections 12501, 12503, 12505, 12510, 12520-12522, 12530, 12550, 12560-61, 12564, 12571, 12591-92.

CHAPTER 2. ANCILLARY ADMINISTRATION

Article 1. Opening Ancillary Administration

§ 12510. Commencement of proceedings

12510. Any interested person may commence ancillary administration by a petition to the proper court for either or both of the following:

- (a) Probate of the decedent's will.
- (b) Appointment of a local personal representative.

Comment. Section 12510 supersedes former Probate Code Section 360, and continues a portion of the first sentence of former Probate Code Section 361 without substantive change. As used in Section 12510, "interested person" includes the person named as executor in the decedent's will. See Section 48. For the proper court, see Section 12511.

CROSS-REFERENCES

Definitions

Ancillary administration § 12501
Interested person § 48
Local personal representative § 12505
Nonresident decedent § 12506
Will § 88

§ 12511. Jurisdiction and venue

12511. Ancillary administration shall be in the superior court in one of the following counties:

(a) If property of the decedent is located in the county in which the decedent died, the county in which the decedent died.

(b) If no property of the decedent is located in the county in which the decedent died or if the decedent did not die in this state, any county in which property of the decedent is located, regardless where the decedent died. If property of the decedent is located in more than one county, the proper county is the county in which a petition for ancillary administration is first filed, and the superior court in that county has exclusive jurisdiction of the administration of the estate.

Comment. Section 12511 restates former Probate Code Section 301(2)-(3) without substantive change.

CROSS-REFERENCES

Definitions

Ancillary administration § 12501
Property § 62

§ 12512. Procedure

12512. Notice of ancillary administration shall be given and, except as provided in Article 2 (commencing with Section 12520), the same proceedings had as in the case of a petition for the probate of a will or appointment of a personal representative of a person who dies domiciled in this state.

Comment. Section 12512 restates the last sentence of former Probate Code Section 361 without substantive change.

CROSS-REFERENCES

Definitions

Ancillary administration § 12501
Personal representative § 58
Will § 88

Article 2. Probate of Will of Nonresident Decedent

§ 12520. Procedure not exclusive

12520. A petition for probate of the will of a nonresident decedent in ancillary administration may be made either pursuant to Part 2 (commencing with Section 8000) or pursuant to this article.

Comment. Section 12520 is new. It codifies case law. See Estate of Glassford, 114 Cal. App. 2d 181, 188-92, 249 P. 2d 908 (1952).

CROSS-REFERENCES

Definitions

Ancillary administration § 12501
Nonresident decedent § 12506
Will § 88

§ 12521. Petition for probate of will

12521. A petition for probate of a nonresident decedent's will pursuant to this article shall include both of the following:

(a) An authenticated copy of the will.

(b) An authenticated copy of the order admitting the will to probate in the foreign jurisdiction or other evidence of the establishment or proof of the will in accordance with the law of the foreign jurisdiction.

Comment. Section 12521 supersedes a portion of the first sentence of former Probate Code Section 361. For the persons who may petition under Section 12521, see Section 12510.

CROSS-REFERENCES

Definitions

Authenticated copy § 12502
Foreign jurisdiction § 12503
Nonresident decedent § 12506
Will § 88

Note. Proposed Section 12521 requires authentication of the foreign order or decree admitting the will to probate, while existing Section 361 appears not to require such authentication. However, under Sections 1401 and 1530 of the Evidence Code, such orders and decrees must be authenticated before being admitted into evidence in California courts. So this change is merely clarifying, not substantive.

§ 12522. Admission of will to probate

12522. (a) The nonresident decedent's will shall be admitted to probate in this state and no contest or revocation of probate shall be permitted if it appears from the order admitting the will to probate in the foreign jurisdiction or otherwise that all of the following conditions are satisfied:

(1) The will was admitted to probate or established or proved in accordance with the laws of the foreign jurisdiction.

(2) All interested persons were given notice and an opportunity for contest in the foreign jurisdiction.

(3) The determination in the foreign jurisdiction is final, is not subject to revocation, and is based on a finding that the decedent was domiciled at death in the foreign jurisdiction.

(4) The will was valid at the time of execution under the law of any of the following jurisdictions:

(A) This state.

(B) The place where the will was executed.

(C) The place where at the time of execution or at the time of death the decedent was domiciled, had a place of abode, or was a national.

(b) If a nonresident decedent's will is admitted to probate pursuant to this section, the will shall have the same force and effect as the will of a person who dies domiciled in this state that is admitted to probate in this state, and a personal representative shall be appointed to execute the will.

Comment. Section 12522 restates former Probate Code Section 362 and a portion of the first sentence of former Probate Code Section 361. The requirement of former Probate Code Section 362 that the will must be valid under the law of the testator's domicile at death or under the law of this state is broadened to require that the will be valid under the law at the time of execution of the place where the will was executed, under the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode, or is a national, or under the law of this state. This change makes Section 12522 consistent with the rule for determining the validity of a will first offered for probate in California. See Section 6113.

CROSS-REFERENCES

Definitions

Foreign jurisdiction § 12503
Interested person § 48
Nonresident decedent § 12506
Order § 53
Personal representative § 58
Will § 88

It is linguistically unclear in Section 362 whether "it was valid" refers to the will or to the foreign court's determination. However, as the section was enacted in 1931 it is clear that "it was valid" refers to the will as provided in (a)(4) above. It is also linguistically unclear in Section 362 whether "is not subject to revocation" refers to the will or to the foreign court's determination. However, it could not refer to the will since the decedent is dead, and it is clear from the legislative history that this language refers to the foreign court's determination as provided in (a)(3) above. See 4 Pac. L.J. at 233 (1973).

Article 3. Distribution of Property to Foreign Personal Representative

§ 12530. Conditions for distribution

12530. (a) In ancillary administration, the court may make an order for preliminary or final distribution to the decedent's foreign personal representative of all or a portion of the property of a nonresident decedent in this state if distribution is for the best interest of the estate or interested persons.

(b) The court order shall be made in the manner and pursuant to the procedure provided in, and is subject to the provisions of, Chapter 1 (commencing with Section 11600) of Part 10 (order for distribution).

Comment. Section 12530 supersedes portions of former Probate Code Section 1000, a portion of the first sentence of former Probate Code Section 1040, the last sentence of former Probate Code Section 1041, and former Probate Code Section 1042.

Under Section 12530 a petition may be made by the local personal representative, a beneficiary, or other interested person. Section 11600 (petition for distribution). Notice of the hearing on the petition is given in the manner provided in Section [1200.5]. Any interested person may oppose the petition. Section 11602 (opposition to petition). Preliminary distribution may not be ordered unless two months have elapsed and distribution may be made without loss to creditors or injury to the estate or any interested person. Sections 11620 (time for petition) and 11621 (order for distribution). Final distribution may not be ordered unless the estate is in a condition to be closed. Section 11640 (petition and order). Distribution may be made to a personal representative in another country as well as in another state. See Section 12504 ("foreign personal representative" defined). Distribution in compliance with the court order entitles the local personal representative to a full discharge, and when the order becomes final it is conclusive against all interested persons. Sections 11753 (filing receipts and discharge) and 11605 (conclusiveness of order).

CROSS-REFERENCES

Definitions

Ancillary administration § 12501
Foreign personal representative § 12504
Interested person § 48
Nonresident decedent § 12506
Order § 53
Property § 62

§ 12531. Sale of real property and delivery of proceeds

12531. If necessary to make distribution pursuant to this article, the court may direct that real property in the estate be sold and the proceeds distributed to the foreign personal representative. Such a sale shall be made in the same manner as other sales of real property of a decedent.

Comment. Section 12531 restates the last portion of the first sentence and all of the second sentence of former Probate Code Section 1040, and broadens those provisions so that the court may order a sale of real property of the estate by way of either preliminary or final distribution.

CROSS-REFERENCES

Definitions

Foreign personal representative § 12504
Real property § 68
Sales of real property of decedents generally §§ 10050-10142

CHAPTER 3. PROCEEDINGS WITHOUT ANCILLARY ADMINISTRATION

Article 1. Collection of Personal Property

§ 12550. Informal collection authorized

12550. A foreign personal representative may, pursuant to the procedure prescribed in this article, collect any claim or receive any personal property of a nonresident decedent in this state and remove the property collected or received to the foreign jurisdiction.

Comment. Section 12550 restates the first portion of former Probate Code Section 1043, and extends it to foreign personal representatives of other countries. See Section 12504 ("foreign personal representative" defined).

CROSS-REFERENCES

Definitions

Foreign jurisdiction § 12503
Foreign personal representative § 12504
Nonresident decedent § 12506
Personal property § 57

§ 12551. Notice of intent to collect

12551. (a) The foreign personal representative shall publish a notice that includes all of the following information:

(1) The name and address of the decedent.

(2) The name and address of the person in this state indebted to or holding personal property of the decedent.

(3) A statement that the foreign personal representative intends to collect the claim or receive the personal property and remove the property collected or received from this state, and that any creditor or beneficiary may object to removal of the property in the following manner:

(A) Except as provided in paragraph (B), by making written objection to the person indebted to or holding personal property of the decedent within four months after first publication of the notice.

(B) If the property consists of funds in an account in a financial institution, by making written objection to the financial institution at the office or branch where the account is located within 30 days after first publication of the notice.

(b) Publication shall be in a newspaper of general circulation published in the county where the debtor resides or where the property is located, or if there is no such newspaper, in a newspaper of general circulation in the county. For this purpose, funds in an account in an office or branch of a financial institution are deemed to be located in the county in which the office or branch is located. Publication shall be pursuant to Section 6063 of the Government Code.

Comment. Section 12551 restates the first, second, third, and sixth sentences of former Probate Code Section 1043 and all of former Probate Code Section 1043a with the following changes:

(1) Publication of all notices under Section 12531 is pursuant to Section 6063 of the Government Code. Under prior law, publication under former Probate Code Section 1043a was made pursuant to Section 6063 of the Government Code, but publication under former Probate Code Section 1043 was made pursuant to Section 6064 of the Government Code.

(2) The requirement of the sixth sentence of former Probate Code Section 1043 that a claimant's consent to transfer be given at the branch office where the property is located is not continued. Such a consent is effective wherever it may be received by the holder of the property.

(3) Objection must be made within four months rather than three.

For a suggested form of notice, see Kimbrough & Lindgren, Ancillary Administration, in 2 California Decedent Estate Administration § 34.24, at 1359-60 (Cal. Cont. Ed. Bar 1975).

CROSS-REFERENCES

Definitions

- Account § 21
- Beneficiary § 24
- Financial institution § 40
- Foreign personal representative § 12504
- Person § 56
- Personal property § 57

Note. *The three month period for objections is changed to four months, for consistency with the general creditor claims period, as suggested by the State Bar and L.A. County Bar.*

§ 12552. Payment or delivery to foreign personal representative

12552. The person indebted to or holding personal property of the decedent shall pay the debt or deliver the property to the foreign personal representative if all of the following conditions are satisfied:

(a) The time prescribed in Section 12551 has expired and the person has not received written objection from any person claiming as a creditor or beneficiary.

(b) The foreign personal representative has presented to the person all of the following documents:

(1) An affidavit of publication of notice.

(2) An authenticated copy of the letters of the foreign personal representative and an affidavit that the foreign personal representative was validly appointed by a court of competent jurisdiction in the foreign jurisdiction.

(3) An affidavit that in this state there is no other personal representative of the decedent, no petition for appointment of a personal representative is pending, and no ancillary administration will be commenced.

Comment. Section 12552 restates the fourth sentence of former Probate Code Section 1043 with the following changes:

(1) The State Controller's consent to transfer required under former Probate Code Section 1043 is not continued, since the California inheritance tax has been repealed. See Rev. & Tax. Code § 13301. However, the State of California may be a creditor of the estate under paragraph (3) of subdivision (b).

(2) In paragraph (3) of subdivision (b), it is made clear that the affidavit must relate to other activities "in this state." This is the same in substance as Section 4-201 of the Uniform Probate Code.

(3) The former provision concerning discharge from liability is continued in Section 12553.

(4) The references to consent of creditors are omitted.

(5) Payment or delivery is mandatory rather than permissive.

For special requirements for an affidavit executed in a foreign country, see Code Civ. Proc. §§ 2014-2015. A declaration under penalty of perjury may be used in lieu of the affidavit required by this section. See Code Civ. Proc. § 2015.5.

CROSS-REFERENCES

Definitions

Ancillary administration § 12501
Authenticated copy § 12502
Foreign jurisdiction § 12503
Beneficiary § 24
Foreign personal representative § 12504
Letters § 52
Person § 56
Personal property § 57
Personal representative § 58

§ 12553. Discharge from liability

12553. A person who makes payment or delivery pursuant to this article is discharged from further liability and responsibility for the debt or property without the necessity of inquiring into the truth of any of the facts stated in the documents presented to the person.

Comment. Section 12553 continues a portion of paragraph (4) of former Probate Code Section 1043.

CROSS-REFERENCES

Definitions

Person § 56

Property § 62

Article 2. Distribution Based on Foreign Order

Note. This chapter affords a summary procedure for distribution of decedent's real property in this state, based on a final decree of distribution in another jurisdiction. Thus this chapter will be useful only if foreign decrees in fact do deal with California real property. The staff does not know how often this occurs in practice. If this is rare, then this chapter is not useful. The staff solicits the views of California probate practitioners on this question.

§ 12560. Conditions for recognition of foreign order

12560. If the gross value of a nonresident decedent's property in this state does not exceed sixty thousand dollars (\$60,000), a final order for distribution of the decedent's real property in this state may be entered by a court in this state pursuant to this article, based on a final order for distribution made in the foreign jurisdiction, without the need for ancillary administration.

Comment. Section 12560 is drawn from a portion of Section 2-11-201 of the Wyoming Statutes of 1977 and from Section 30-12-1 of the South Dakota Codified Laws, 1984 Revision.

CROSS-REFERENCES

Definitions

Ancillary administration § 12501

Foreign jurisdiction § 12503

Nonresident decedent § 12506

Order § 53

Property § 62

Real property § 68

§ 12561. Petition

12561. (a) The foreign personal representative may petition to the superior court in any county in this state in which real property of the nonresident decedent is located for entry of a final order for distribution of the property.

(b) The petition shall be accompanied by an authenticated copy of each of the following documents from the foreign jurisdiction:

- (1) The petition for administration of the decedent's estate.
- (2) The order for appointment of the foreign personal representative.
- (3) Any bond given by the foreign personal representative.
- (4) Any will of the decedent.
- (5) The inventory and appraisal of the decedent's property.
- (6) The final order for distribution of the decedent's estate.

Comment. Section 12561 is drawn from a portion of Section 2-11-201 of the Wyoming Statutes of 1977 and from Section 30-12-1 of the South Dakota Codified Laws, 1984 Revision.

CROSS-REFERENCES

Definitions

Authenticated copy § 12502
Foreign jurisdiction § 12503
Foreign personal representative § 12504
Nonresident decedent § 12506
Order § 53
Real property § 68
Verification required § 7203

§ 12562. Publication of notice

12562. (a) The foreign personal representative shall publish notice of the petition in a newspaper of general circulation in the county where the petition is filed and shall file proof of publication with the court. Publication shall be pursuant to Section 6063 of the Government Code.

(b) The notice shall be in substantially the following form:

NOTICE OF PETITION FOR DISTRIBUTION

UNDER FOREIGN DECREE

To all heirs, devisees, beneficiaries, creditors, contingent creditors, and persons who may otherwise be interested in the estate of (specify all names by which decedent was known).

A petition was filed by (name of petitioner) in the Superior Court of California, County of (name of county), requesting that the final order for distribution made in the jurisdiction of the decedent's domicile be recognized for purposes of distribution of the decedent's real property in this state.

CROSS-REFERENCES

Definitions

Ancillary administration § 12501
Foreign jurisdiction § 12503

§ 12564. Order

12564. (a) If no objection is made or if the court determines against any objection made, the court shall make a final order for distribution of the nonresident decedent's real property in this state based on the final order for distribution made in the foreign jurisdiction. The order has the same force and effect as a final order for distribution made in proceedings for administration of a decedent's estate under this division.

(b) The court may make any other orders that may be necessary, including a description of the nonresident decedent's real property in this state, the identities of the persons entitled to the property, and provision for payment of expenses of proceedings under this article.

Comment. Section 12564 is drawn from a portion of Section 2-11-201 of the Wyoming Statutes of 1977 and from Sections 30-12-3, 30-12-4, and 30-12-5 of the South Dakota Codified Laws, 1984 Revision.

CROSS-REFERENCES

Definitions

Foreign jurisdiction § 12503
Nonresident decedent § 12506
Order § 53
Person § 56
Real property § 68

Article 3. Miscellaneous Powers of Foreign Personal Representative

§ 12570. Filing proof of authority

12570. If ancillary administration has not been commenced, a foreign personal representative may exercise the powers provided in this article upon filing in the superior court in any county in this state in which property of the decedent is located an authenticated copy of each of the following documents from the foreign jurisdiction:

- (a) The order for appointment of the foreign personal representative.
- (b) Any bond given by the foreign personal representative.
- (c) Any will of the decedent.

Comment. Section 12570 is new. It is drawn from Section 4-204 of the Uniform Probate Code and from Sections 2129.02 and 2129.25 of the Ohio Revised Code. A filing under Section 12550 permits the foreign personal representative to sell the decedent's real property without the need for ancillary administration (Section 12571), to maintain actions and proceedings in this state (Section 12572), to be sued here in any proceeding relating to the estate (Section 12590), and to clear title to the decedent's real property by publishing notice to creditors (Section 12564).

CROSS-REFERENCES

Definitions

Ancillary administration § 12501
Authenticated copy § 12502
Foreign jurisdiction § 12503
Foreign personal representative § 12504
Order § 53
Property § 62
Will § 88

§ 12571. Sale of real property

12571. A foreign personal representative who has made the filing authorized by Section 12570 in a county where real property of the nonresident decedent is located may:

(a) Sell the property in the same manner as other sales of real property of decedents, including, upon petition, the Independent Administration of Estates Act, without the need for ancillary administration.

(b) Remove the proceeds of sale from this state in the manner provided in Article 1 (commencing with Section 12550).

Comment. Section 12571 is new. It is drawn from Section 2129.25 of the Ohio Revised Code.

CROSS-REFERENCES

Definitions

Ancillary administration § 12501
Foreign personal representative § 12504
Nonresident decedent § 12506
Real property § 68
Sales of real property generally §§ 10100-10113

§ 12572. Maintaining actions and proceedings

12572. (a) A foreign personal representative who has made the filing authorized by Section 12550 may maintain actions and proceedings in this state, subject to any conditions imposed on nonresident parties generally.

(b) A local personal representative may be substituted for the foreign personal representative in any action or proceeding in this state.

Comment. Section 12572 is new. It is drawn from portions of Sections 4-205 and 4-206 of the Uniform Probate Code. Section 12572 supersedes the former rule under Section 1913 of the Code of Civil Procedure, pursuant to which a foreign personal representative ordinarily could not sue in California. See 4 B. Witkin, California Procedure Pleading § 98, at 134 (3d ed. 1985).

CROSS-REFERENCES

Definitions

Foreign personal representative § 12504

Local personal representative § 12505

CHAPTER 4. JURISDICTION OVER FOREIGN PERSONAL REPRESENTATIVE

§ 12590. Jurisdiction by act of foreign personal representative

12590. A foreign personal representative submits [personally] to the jurisdiction of the courts of this state in any proceeding relating to the estate by doing any of the following:

(a) Filing a petition for ancillary administration under Chapter 2 (commencing with Section 12510).

(b) Receiving payment of money or taking delivery of personal property pursuant to Article 3 (commencing with Section 12530) of Chapter 2, Article 1 (commencing with Section 12550) of Chapter 3, or Article 2 (commencing with Section 12560) of Chapter 3. Jurisdiction under this subdivision is limited to the amount of money and value of personal property collected.

(c) Filing an authenticated copy of the order for appointment of the foreign personal representative pursuant to Section 12570.

(d) Doing any act in this state as a personal representative that would have given the state jurisdiction over the foreign personal representative as an individual.

Comment. Section 12590 is new and is drawn from Section 4-301 of the Uniform Probate Code.

CROSS-REFERENCES

Definitions

Ancillary administration § 12501
Authenticated copy § 12502
Foreign personal representative § 12504
Personal representative § 58

This section states that a foreign personal representative submits "personally" to the jurisdiction of state courts by doing certain acts. We are not sure that "personally" adds anything, and it seems to imply that the foreign personal representative may be subject to state court jurisdiction on unrelated matters. Perhaps the phrase should be deleted.

§ 12591. Jurisdiction by act of decedent

12591. A foreign personal representative is subject to the jurisdiction of the courts of this state to the same extent that the nonresident decedent was subject to jurisdiction at the time of death.

Comment. Section 12591 is new. It is drawn from Section 4-302 of the Uniform Probate Code and is consistent with Section 410.10 of the Code of Civil Procedure and with case law. See *Mitsui Manufacturers Bank v. Tucker*, 152 Cal. App.3d 428, 199 Cal. Rptr. 517 (1984). The jurisdiction conferred by this section is in addition to jurisdiction conferred by Section 12560.

CROSS-REFERENCES

Definitions

Foreign personal representative § 12504
Nonresident decedent § 12506

§ 12592. Effect of adjudication for or against personal representative

12592. (a) Except as provided in subdivision (b), an adjudication in any jurisdiction in favor of or against any personal representative of a nonresident decedent appointed in that jurisdiction is as binding on the local personal representative as if the local personal representative were a party to the adjudication.

(b) If the adjudication was made in ancillary proceedings in the other jurisdiction against the local personal representative, the adjudication is binding on the local personal representative only if the local personal representative had reasonable notice of the proceedings in the other jurisdiction and an opportunity to defend.

Comment. Subdivision (a) of Section 12592 is drawn from Section 4-401 of the Uniform Probate Code. Subdivision (b) is new.

Section 12592 is based in part on the well-accepted principle that a probate decree in another jurisdiction binds all persons. See 7 B. Witkin, *California Procedure Judgment* § 231, at 668-69 (3d ed. 1985).

Under the full faith and credit clause of the United States Constitution, a judgment rendered by a court of another state is entitled to the same res judicata effect in California as it would have in the forum state. Id. § 203, at 640. See also Code Civ. Proc. § 1908 (judgment binding on successors in interest); Walker v. Hansen, 218 Cal. 619, 24 P.2d 764 (1933) (judgment against administrator binding on trustee of same estate).

CROSS-REFERENCES

Definitions

Local personal representative § 12505
Nonresident decedent § 12506
Personal representative § 58

CONFORMING REVISION

Code of Civil Procedure § 1913 (amended). Effect of judicial record of
sister state

SEC. _____. Section 1913 of the Code of Civil Procedure is amended to read:

1913. The effect of a judicial record of a sister state is the same in this state as in the state where it was made, except that it can only be enforced here by an action or special proceeding, and except also that the authority of a guardian, conservator, or committee ~~of an executor or administrator~~ does not extend beyond the jurisdiction of the government under which such person was invested with authority.

Comment. Section 1913 is amended to delete the former reference to an executor or administrator. The authority in California of a foreign executor or administrator is governed by Sections 12500-12592 of the Estate and Trust Code. The authority in another state of a California executor or administrator is governed by the law of that other state.

DISPOSITION OF EXISTING SECTIONS

CHAPTER 1. PROBATE OF WILLS AND
APPLICATION FOR LETTERS

Article 1. Jurisdiction

§ 301 (repealed). Jurisdiction and venue

Comment. . . . Paragraphs (2) and (3) of former Probate Code Section 301 are restated in Estate and Trust Code Section 12511 without substantive change.

Article 4. Foreign Wills

§ 360 (repealed). Authority to probate foreign will

Comment. Former Probate Code Section 360 is superseded by Estate and Trust Code Section 12510.

§ 361 (repealed). Procedure; notice

Comment. The first sentence of former Probate Code Section 361 is continued in Estate and Trust Code Sections 12510 and 12520 without substantive change.

§ 362 (repealed). Effect of probate of foreign will

Comment. Former Probate Code Section 362 is restated in Estate and Trust Code Section 12521 with the following change: The former rule that the will must be valid under the law of the testator's domicile at death or under the law of this state is broadened in Section 12521 to require that the will be valid under the law at the time of execution of the place where the will was executed, under the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode, or is a national, or under the law of this state. This change makes Section 12521 consistent with the rule for determining the validity of a will first offered for probate in California. See Section 6113.

CHAPTER 16. DISTRIBUTION AND DISCHARGE

Article 1. Preliminary Distribution

§ 1000 (repealed). Petition for preliminary distribution

Comment. . . . The portion of the first sentence of former Probate Code Section 1000 applicable to estates of nonresident decedents is superseded by Estate and Trust Code Section 12530.

Article 4. Estates of Nonresidents

§ 1040 (repealed). Court order for delivery of property to foreign personal representative

Comment. The first sentence of former Probate Code Section 1040 is superseded by Estate and Trust Code Sections 12530 and 12531. The second sentence of former Probate Code Section 1040 is restated in the second sentence of Estate and Trust Code Section 12531 without substantive change.

§ 1041 (repealed). Petition; notice; objections

Comment. The first sentence of former Probate Code Section 1041 is superseded by Estate and Trust Code Section 12530(c). The portion of the second sentence of former Probate Code Section 1041 that required the clerk to set the petition for hearing is continued in Estate and Trust Code Sections 7202. The portion of the second sentence of former Probate Code Section 1041 concerning notice, and all of the third sentence, is superseded by subdivision (c) of Estate and Trust Code Section 12530.

§ 1042 (repealed). Discharge of local personal representative; effect of order

Comment. Former Probate Code Section 1042 is superseded by subdivision (c) of Estate and Trust Code Section 12530. The former provision is broadened to apply to preliminary distributions as well as final distributions.

§ 1043 (repealed). Informal collection of personal property

Comment. The first, second, and third sentences of former Probate Code Section 1043 are continued in Estate and Trust Code Sections 12550 and 12551 without substantive change, except as follows:

(1) Informal collection may be made under the new provisions by a personal representative appointed in a foreign country as well as by one appointed in another state.

(2) Publication of notice under Section 12551 is pursuant to Section 6063 of the Government Code instead of Section 6064.

(3) The required waiting period (formerly three months) is increased to four months, consistent with the general creditors' claims period. See Section [].

The fourth sentence of former Probate Code Section 1043 is restated in Estate and Trust Code Section 12552 with the following changes:

(1) The State Controller's consent to transfer required under former Probate Code Section 1043 is not continued, since the California inheritance tax has been repealed. See Rev. & Tax. Code § 13301.

(2) In paragraph (3) of subdivision (b) of Section 12552, it is made clear that the affidavit must allege that "in this state" there is no other personal representative of the decedent. This is the same in substance as Section 4-201 of the Uniform Probate Code.

The provision in the fourth sentence of former Probate Code Section 1043 concerning discharge from liability is continued in Estate and Trust Code Section 12553 without substantive change.

The fifth sentence of former Probate Code Section 1043 ("person" defined) is continued in Estate and Trust Code Section 56 without substantive change. The sixth sentence of former Probate Code Section 1043 is restated in Estate and Trust Code Section 12551 without substantive change, except that the former requirement that a claimant's consent to transfer be given at the branch office where the property is located is not continued. Such a consent is effective wherever it may be received by the holder of the property.

§ 1043a (repealed). Informal collection of accounts

Comment. Former Probate Code Section 1043a is restated in Estate and Trust Code Section 12551 without substantive change, except that informal collection of accounts may be made under the new provisions by a personal representative appointed in a foreign country as well as by one appointed in another state.