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jd330

05/03/87

Memorandum 87-36

Subject: Study L - Probate Code - Assembly Bill 708 (As Amended)

Attached is a copy of Assembly Bill 708 as Amended in Assembly April 23, 1987.

Also attached is a set of additional amendments -- primarily technical or clarifying -- that the staff recommends be made to the bill after it has passed the Assembly. Please check these amendments prior to the meeting. Except for the transitional provisions, we do not plan to discuss these amendments in detail at the meeting. If you need further information or wish to discuss a particular amendment at the meeting, please bring it up for discussion at the meeting.

Many of the amendments are designed to provide uniform provisions dealing with the giving of notice of hearing. We have amended various sections in Division 3 to use uniform language to describe the manner of giving notice of hearing. In addition, in view of the general requirement that notice of hearing on all petitions be given to persons who request special notice (unless the request for special notice otherwise requires), we have deleted a number of provisions that require notice of hearing to be given to persons who request special notice. These provisions are unnecessary in view of the general provision in the new notice statute covering this matter. We have also revised subdivision (f) of Section 1220 (on page 43 of the bill) to make clear that the court for good cause may dispense with notice otherwise required to be given to a person as provided in Section 1220.

Other amendments are designed to provide transitional provisions to cover various provisions of Assembly Bill 708 so that it will be clear the extent (if at all) that the provisions apply to proceedings pending when the bill becomes operative. These amendments will be discussed in the First Supplement to this Memorandum.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

AMENDMENTS TO ASSEMBLY BILL 708
AS AMENDED IN ASSEMBLY APRIL 23, 1987

AMENDMENT 1

On page 8, strike out lines 11 to 13, inclusive, and insert:
special administrator unless the special administrator has the powers,
duties, and obligations of a general administrator under Section 465.

AMENDMENT 2

On page 9, strike out line 30 and insert:
215. If a beneficiary or a person in possession of property of
the decedent knows or has reason to believe that the decedent

AMENDMENT 3

On page 9, line 34, strike out "a beneficiary or a" and insert:
the beneficiary or the

AMENDMENT 4

On page 16, lines 13 and 14, strike out "[under the Independent
Administration of Estates Act]"

AMENDMENT 5

On page 16, line 27, after "and" insert:
mail a copy to

AMENDMENT 6

On page 17, lines 31 and 32, strike out "[under the Independent
Administration of Estates Act]"

AMENDMENT 7

On page 18, between lines 12 and 13, insert:
(e) If the petition requests authority to administer the estate
under the Independent Administration of Estates Act, the notice
prescribed by subdivision (b) or subdivision (d) shall include the
statement required by subdivision (c) of Section 10451.

AMENDMENT 8

On page 27, line 25, after "904." insert:

(a)

AMENDMENT 9

On page 27, strike out lines 35 to 40, inclusive, and on page 28, strike out lines 1 to 12, inclusive, and insert:

(b) Notice of the hearing on the petition shall be given as provided in Section 1220.

(c) In addition to the notice required by subdivision (b), notice of the hearing shall be given as provided in Section 1220 to all of the following persons:

(1) Each known heir whose interest in the estate is affected by the payment of the commissions.

(2) Each known devisee whose interest in the estate is affected by the payment of the commissions.

(3) The State of California if any portion of the estate is to escheat to it and its interest in the estate is affected by the payment of the commissions.

AMENDMENT 10

On page 28, line 15, after "911." insert:

(a)

AMENDMENT 11

On page 28, strike out lines 25 to 40, inclusive, and on page 29, strike out lines 1 to 4, inclusive, and insert:

(b) Notice of the hearing on the petition shall be given as provided in Section 1220.

(c) In addition to the notice required by subdivision (b), notice of the hearing shall be given as provided in Section 1220 to all of the following persons:

(1) Each known heir whose interest in the estate is affected by the payment of the fees.

(2) Each known devisee whose interest in the estate is affected by the payment of the fees.

(3) The State of California if any portion of the estate is to escheat to it and its interest in the estate is affected by the payment of the fees.

AMENDMENT 12

On page 29, line 20, after "926." insert:

(a)

AMENDMENT 13

On page 29, strike out lines 28 to 40, inclusive, and on page 30, strike out lines 1 to 6, inclusive, and insert:

(b) Notice of the hearing on the account and petition shall be given as provided in Section 1220.

(c) In addition to the notice required by subdivision (b), notice of the hearing shall be given as provided in Section 1220 to all of the following persons:

(1) Each known heir whose interest in the estate is affected by the account and petition.

(2) Each known devisee whose interest in the estate is affected by the account and petition.

(3) The State of California if any portion of the estate is to escheat to it and its interest in the estate is affected by the account and petition.

AMENDMENT 14

On page 30, line 28, after "1000." insert:

(a)

AMENDMENT 15

On page 31, strike out lines 22 to 36, inclusive, and insert:

(b) Notice of the hearing on the petition shall be given as provided in Section 1220.

(c) In addition to the notice required by subdivision (b), notice of the hearing shall be given as provided in Section 1220 to all of the following persons:

(1) Each known heir whose interest in the estate is affected by

the petition for distribution.

(2) Each known devisee whose interest in the estate is affected by the petition for distribution.

(3) The State of California if any portion of the estate is to escheat to it and its interest in the estate is affected by the petition for distribution.

(d) Any person interested in the estate or any personal representative may resist the petition.

AMENDMENT 16

On page 32, line 37, after "1020." insert:

(a)

AMENDMENT 17

On page 33, strike out lines 6 to 17, inclusive, and insert:

(b) Notice of the hearing on the petition shall be given as provided in Section 1220.

(c) In addition to the notice required by subdivision (b), notice of the hearing shall be given as provided in Section 1220 to all of the following persons:

(1) Each known heir whose interest in the estate is affected by the petition.

(2) Each known devisee whose interest in the estate is affected by the petition.

(3) The State of California if any portion of the estate is to escheat to it and its interest in the estate is affected by the petition.

AMENDMENT 18

On page 35, line 28, after "1027." insert:

(a)

AMENDMENT 19

On page 36, strike out lines 1 to 11, inclusive, and insert:

(b) Notice of the hearing on the petition shall be given as provided in Section 1220.

(c) In addition to the notice required by subdivision (b), notice

of the hearing shall be given as provided in Section 1220 to all of the following persons:

(1) Each known heir whose interest in the estate is affected by the petition.

(2) Each known devisee whose interest in the estate is affected by the petition.

(3) The State of California if any portion of the estate is to escheat to it and its interest in the estate is affected by the petition.

AMENDMENT 20

On page 36, line 12, before "Whenever" insert:

(d)

AMENDMENT 21

On page 36, line 23, before "If" insert:

(e)

AMENDMENT 22

On page 36, line 31, before "Upon" insert:

(f)

AMENDMENT 23

On page 36, line 37, before "A" insert:

(g)

AMENDMENT 24

On page 37, line 2, before "No" insert:

(h)

AMENDMENT 25

On page 37, line 8, before "The" insert:

(i)

AMENDMENT 26

On page 37, line 14, before "Any" insert:

(j)

AMENDMENT 27

On page 39, lines 17 and 18, strike out "and (c)" and insert:
, (c), and (d)

AMENDMENT 28

On page 39, between lines 29 and 30, insert:

(d) This chapter does not apply to the giving of a particular notice where the notice was delivered, mailed, posted, or first published before July 1, 1988. The applicable law in effect before July 1, 1988, continues to apply to the giving of that notice, notwithstanding its amendment or repeal by the act that enacted this section.

AMENDMENT 29

On page 43, line 2, strike out both commas

AMENDMENT 30

On page 43, lines 15 and 16, strike out "under subdivision (c)" and insert:
as provided in this section

AMENDMENT 31

On page 62, between lines 18 and 19, insert:

SEC. 85.3. Section 6246 of the Probate Code is amended to read:

6246. In addition to the mandatory clauses contained in Section 6245, the California statutory will with trust form shall also incorporate the following mandatory clauses:

(a) **INEFFECTIVE DISPOSITION.** If, at the termination of any trust created in the California statutory will with trust, there is no effective disposition of the remaining trust assets, then the trustee shall distribute those assets to the testator's then living heirs at law, their identities and respective shares to be determined as though the testator had died on the date of the trust's termination and according to the laws of the State of California then in effect relating to intestate succession.

(b) **POWERS OF TRUSTEE.** (1) In addition to any powers now or hereafter conferred upon trustees by law, the trustee shall have all

the powers listed in ~~Section 1120.2~~ Article 2 (commencing with Section 16220) of Chapter 2 of Part 4 of Division 9 of the California Probate Code. The trustee may exercise those powers without court authorization.

(2) In addition to the powers granted in the foregoing paragraph, the trustee may:

(A) Hire and pay from the trust the fees of investment advisors, accountants, tax advisors, agents, attorneys, and other assistants for the administration of the trust and for the management of any trust asset and for any litigation affecting the trust.

(B) On any distribution of assets from the trust, the trustee shall have the discretion to partition, allot, and distribute the assets (i) in kind, including undivided interests in an asset or in any part of it, or (ii) partly in cash and partly in kind, or (iii) entirely in cash. If a distribution is being made to more than one beneficiary, the trustee shall have the discretion to distribute assets among them on a pro rata or non-pro rata basis, with the assets valued as of the date of distribution.

(C) The trustee may, upon termination of the trust, distribute assets to a custodian for a minor beneficiary under the Uniform Gifts to Minors Act of any state or the Uniform Transfers to Minors Act of any state.

(3) The trustee is free of liability and is discharged from any further accountability for distributing assets in compliance with the provisions of this paragraph.

(c) TRUST ADMINISTRATIVE PROVISIONS. The following provisions shall apply to any trust created by a California statutory will with trust:

(1) The interests of trust beneficiaries are not transferable by voluntary or involuntary assignment or by operation of law and shall be free from the claims of creditors and from attachment, execution, bankruptcy, or other legal process to the fullest extent permissible by law.

(2) The trustee is entitled to reasonable compensation for ordinary and extra ordinary services, and for all services in connection with the complete or partial termination of any trust created by this will.

(3) All persons who have any interest in a trust under a California statutory will with trust are bound by all discretionary determinations the trustee makes in good faith under the authority granted in the California statutory will with trust.

SEC. 85.7. Section 6247 of the Probate Code is amended to read:

6247. (a) Except as specifically provided in this chapter, a California statutory will shall include only the texts of the property disposition clauses and the mandatory clauses as they exist on the day the California statutory will is executed.

(b) Sections 6205, 6206, and 6226 apply to every California statutory will, including those executed before January 1, 1985.

(c) Notwithstanding Section 6222 and except as provided in subdivision (b), a California statutory will is governed by the law that applied prior to January 1, 1985, if the California statutory will is executed on or after January 1, 1985, on a form that (1) was prepared for use under former Section 56 to 56.14, inclusive, of the Probate Code and (2) satisfied the requirements of law that applied prior to January 1, 1985.

(d) If a California statutory will is executed on or after July 1, 1988, on a form that includes the mandatory clauses provided in Section 6246 which refer to Section 1120.2, the will is deemed to comply with subdivision (a) of this section and the trustee has the powers listed in Article 2 (commencing with Section 16220) of Chapter 2 of Part 4 of Division 9.

AMENDMENT 32

On page 67, line 39, after "law" insert:
governing the subject matter of this part

AMENDMENT 33

On page 68, line 3, strike out "part" and insert:
section

AMENDMENT 34

On page 69, line 5, strike out the comma

AMENDMENT 35

On page 75, strike out line 39 and insert:

9202. If the personal representative knows or has reason to believe that the decedent

AMENDMENT 36

On page 76, strike out lines 7 and 8 and insert:
first issued to a general personal representative. The director has four months after notice is

AMENDMENT 37

On page 88, between lines 4 and 5, insert:

Article 6. Transitional Provision

9645. (a) As used in this section:

(1) "Operative date" means July 1, 1988.

(2) "Prior law" means the applicable law in effect on June 30, 1988.

(b) Nothing in this part affects any order, judgment, or decree made, or any action taken, prior to the operative date. Notwithstanding the enactment of this part, any order, judgment, or decree made under prior law before the operative date shall continue in full force and effect in accordance with its terms or until modified or terminated by the court, and the validity of any action taken under prior law before the operative date is determined by prior law and not by this part.

(c) Subject to subdivision (b), any petition or other matter filed or commenced before the operative date shall be continued under this part, so far as applicable, except where the court determines that application of a particular provision of this part would substantially interfere with the effective conduct of the matter or with the rights of the parties or other interested persons, in which case the particular provision of this part does not apply and prior law applies.

AMENDMENT 38

On page 90, line 34, after "fees" insert a comma

AMENDMENT 39

On page 93, line 32, strike out "pursuant to" and insert:
under

AMENDMENT 40

On page 95, line 7, strike out "any of the following" and insert:
an annuity

AMENDMENT 41

On page 95, line 8, strike out the colon, strike out lines 9 to 13, inclusive, and insert:
to satisfy a devise of an annuity or other direction in the will for payment of an amount to a devisee.

AMENDMENT 42

On page 96, line 13, strike out "pursuant to" and insert:
under

AMENDMENT 43

On page 96, line 35, strike out "of appointment of the" and insert:
letters are first issued to a

AMENDMENT 44

On page 97, line 22, strike out "the" and insert:
any

AMENDMENT 45

On page 98, line 10, strike out "pursuant to" and insert:
under

AMENDMENT 46

On page 99, line 11, strike out "devisee" and insert:
heir

AMENDMENT 47

On page 103, line 12, strike out "pursuant to" and insert:
under

AMENDMENT 48

On page 107, line 31, strike out "uncollectable" and insert:
uncollectible

AMENDMENT 49

On page 109, strike out lines 1 and 2, and insert:
representative, or the personal representative's attorney, owing to or
in favor of the

AMENDMENT 50

On page 110, line 24, strike out the second comma

AMENDMENT 51

On page 112, strike out lines 17 and 18, and insert:
subdivision (a):

(1) Notice of the hearing also shall be given as provided in
Section 1220.

(2) In addition to the notice required by paragraph (1), notice of
the hearing, together with a copy of the petition, shall be given

AMENDMENT 52

On page 112, line 20, strike out "(1)" and insert:
(A)

AMENDMENT 53

On page 112, line 24, strike out "(2)" and insert:
(B)

AMENDMENT 54

On page 112, strike out lines 26 and 27

AMENDMENT 55

On page 114, line 33, after "representative" insert:
or the personal representative's attorney

AMENDMENT 56

On page 114, line 35, after "representative" insert:
or the personal representative's attorney

AMENDMENT 57

On page 115, strike out line 4, and insert:
as provided in Section 1220.

(d) In addition to the notice required by subdivision (c), notice of the hearing shall be given as provided in Section 1220 to all of the following persons:

AMENDMENT 58

On page 115, strike out lines 11 and 12

AMENDMENT 59

On page 115, line 13, strike out "(d)" and insert:
(e)

AMENDMENT 60

On page 116, line 4, strike out "made pursuant to" and insert:
obtained under

AMENDMENT 61

On page 116, line 23, strike out "pursuant to" and insert:
under

AMENDMENT 62

On page 118, strike out lines 29 to 34, inclusive, and insert:
10 years, in addition to the notice required by subdivision (a), notice of the hearing shall be given as provided in Section 1220 to all of the following persons:

(1) Each known heir whose interest in the estate is affected by the proposed lease.

(2) Each known devisee whose interest in the estate is affected by the proposed lease.

AMENDMENT 63

On page 119, line 20, strike out "of the following" and insert:
one or more of the following provisions

AMENDMENT 64

On page 121, strike out lines 26 to 33, inclusive, and insert:

(b) In addition to the notice required by subdivision (a), notice of the hearing shall be given as provided in Section 1220 to all of the following persons:

(1) Each known heir whose interest in the estate would be affected by the granting of the option.

(2) Each known devisee whose interest in the estate would be affected by the granting of the option.

AMENDMENT 65

On page 130, line 33, after "holding" insert:

the

AMENDMENT 66

On page 131, line 22, after "on" insert"

an

AMENDMENT 67

On page 137, strike out lines 30 to 32, inclusive, and insert:
decedent or all of the following have consented to the sale:

(A) Each known heir whose interest in the estate would be affected by the sale.

(B) Each known devisee whose has an interest in the property under the decedent's will.

AMENDMENT 68

On page 141, line 33, strike out "in the opinion of the court" and insert:

it is shown that

AMENDMENT 69

On page 142, strike out lines 2 to 5, inclusive, and insert:
Section 1230.

(c) In addition to the notice required by subdivision (b), notice of the hearing shall be given as provided in Section 1220 to all of the following persons:

(1) Each known heir whose interest in the estate would be affected by the sale.

(2) Each known devisee whose interest in the estate would be affected by the sale.

AMENDMENT 70

On page 143, line 20, strike out the first "the" and insert:
any

AMENDMENT 71

On page 143, line 20, strike out the second "the" and insert:
that

AMENDMENT 72

On page 143, line 21, strike out the second "is"

AMENDMENT 73

On page 143, line 22, after the period insert:
The court may issue a citation to compel the surviving partner to attend the hearing.

AMENDMENT 74

On page 158, strike out lines 1 to 9, inclusive, and insert:
Section 10450:

(1) Notice of the hearing on the petition shall be given as provided in Section 1220.

(2) In addition to the notice required by paragraph (1), notice of the hearing shall be given as provided in Section 1220 to all of the following persons:

(A) Each known heir whose interest in the estate is affected by the petition.

(B) Each known devisee whose interest in the estate is affected by the petition.

(C) Each person named as personal representative in the will of the decedent.

AMENDMENT 75

On page 171, line 19, strike out "any of the following" and insert:
an annuity

AMENDMENT 76

On page 171, line 20, strike out the colon, strike out lines 21 to 25, inclusive, and insert:
to satisfy a devise of an annuity or other direction in the will for payment of an amount to a devisee.

AMENDMENT 77

On page 174, line 12, strike out "of exchange or" and insert:
or exchange of

AMENDMENT 78

On page 175, strike out lines 25 to 29, inclusive, and insert:
10588. (a) Any person who is entitled to notice of proposed action for a proposed action described in subdivision (a) of Section 10580, or any person who is given notice of a proposed action described in subdivision (b) of Section 10580, may apply to the court having

AMENDMENT 79

On page 176, line 10, after "10587" insert:
to the proposed action

AMENDMENT 80

On page 176, line 22, after "action" insert:
or a restraining order issued under Section 10588

AMENDMENT 81

On page 176, line 33, after "Except" insert:
as provided in subdivision (c), only a person described in Section 10581 has a right to have the court review the proposed action after it has been taken or otherwise to object to the proposed action after it has been taken; and, except

AMENDMENT 82

On page 176, line 38, strike out "later"

AMENDMENT 83

On page 176, line 38, after "action" insert:
after it has been taken,

AMENDMENT 84

On page 177, strike out line 7 and insert:

(b) Unless the person has waived notice of or consented to the proposed action as provided in Sections 10582 to 10584, inclusive, the

AMENDMENT 85

On page 178, line 13, strike out "it is grounds for removal of" and insert:
the court in its discretion may remove

AMENDMENT 86

On page 178, line 22, strike out "It is grounds for removal of" and insert:
The court in its discretion may remove

AMENDMENT 87

On page 181, strike out line 19 and insert:

CHAPTER 1. DEFINITIONS AND PRELIMINARY PROVISIONS

Article 1. Definitions

AMENDMENT 88

On page 181, line 22, strike out "chapter" and insert:
article

AMENDMENT 89

On page 181, between lines 37 and 38, insert:

Article 2. Preliminary Provisions