

Memorandum 87-57

Subject: Study L-655 - Inventory and Appraisal (Approval for Printing)

Attached is a draft of the inventory and appraisal provisions in form to be approved for printing and submitted to the Legislature. The draft reflects all Commission decisions through June 1987.

The draft has been circulated to the State Bar and to the Probate Referees for final review. We have so far received no further comments from the Probate Referees.

We have received the comments of Charles A. Collier, Jr. attached as Exhibit 1. The draft incorporates technical changes suggested by Mr. Collier, which are indicated in strikeout and underscore for ease of review. There are also a number of notes following sections in the draft indicating the reason a change suggested by Mr. Collier was not made, either for technical reasons or because the suggestion is substantive in nature.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

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June 29, 1987

Mr. John H. DeMouilly
Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-2
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Re: Recommendation Relating to
Inventory and Appraisal
Study L-655

Dear John:

The following are some technical comments with reference to the above-mentioned Recommendation. These are my personal comments. I hope they will be helpful to the Commission and the Staff.

1. Section 400(b): On line 3 after the word "or," the words "if there is no regularly qualified applicant" might be inserted. That language is now found in Section 1305, and I believe provides further clarification.

2. Section 403(a): The first sentence, which is taken from existing law, states "The term of office of a probate referee is four years, expiring June 30." I would assume that there are situations where, because of death, resignation or removal of a probate referee, a new referee is appointed, for example, in December. Would that referee's term then be four years from the date of appointment in December or a period ending on the fourth June 30 after the date of appointment? In the latter case, the actual term would be about three and a half years. Perhaps this is covered by deeming the person appointed as filling an unexpired term rather than constituting a new appointment. If that is so, the language is correct.

3. Section 405(b): The last sentence might be clearer if the words "to another referee" were added at the end of the sentence.

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Mr. John H. DeMouilly
June 29, 1987
Page Two

4. Section 406(a): The fourth line uses the word "concerned." Although this word is used in the existing statute, it seems rather awkward. Is not the word "involved" more descriptive?

5. Section 406(d): Should this paragraph also refer to subdivision (c), the reporting requirement?

6. Section 451(b): This refers to CCP Section 2020. Section 2020 deals with depositions upon written interrogatories. I believe that the correct reference would be Section 2019 which does deal with subpoenas in connection with depositions.

7. Section 452(b): I believe the reference to CCP Section 2020 should be changed to CCP Section 2019.

8. Section 453(a): If the petitioner is not the personal representative, it would appear appropriate to mail notice of hearing on the petition, not only to the probate referee, but to the personal representative. Therefore, I would suggest that language be added in the second sentence of paragraph (a) after the word "probate referee" as follows: "and to the personal representative if not the petitioner."

9. Section 8800: Until I read this Recommendation, I had not been aware of the decision to treat the "inventory" as a separate document from the "appraisal." As now written, this section would provide that a listing of assets, that is, an inventory would be filed within three months, presumably without any values, even those which would normally show on Attachment 1, that is, the items valued by the personal representative (cash items essentially), and a second document called the "appraisal" would be filed within an additional three months listing values on each of the assets. If this concept of two separate documents, or two separate filings, is retained, there need to be a number of technical wording changes as indicated hereinafter.

In most instances, the personal representative will probably continue to file a combined inventory and appraisal. The wording of various sections therefore, it would seem, would have to refer to the inventory, to the appraisal, or to the inventory and appraisal (one document). The last sentence of Section 8800, for example, I believe therefore requires some rewording to state essentially as follows: "The court may,

Mr. John H. DeMouilly
June 29, 1987
Page Three

for reasonable cause, allow a further time for filing the inventory, for filing the appraisal, or for filing a combined inventory and appraisal." An earlier version, which I had seen, provided for a four month period of time within which to file an inventory and appraisal. It did not contain this two-document concept now embodied in Section 8800.

10. Section 8801: The first sentence, if two separate documents, namely, an inventory and an appraisal, are involved, has some ambiguity. It would suggest that, if an item is not included in the inventory, it could not be included in the appraisal filed three months later without a supplemental inventory. The first sentence speaks of "a supplemental inventory and appraisal" as a single document. If two documents are contemplated, it should refer to "a supplemental inventory" and "a supplemental appraisal" or, if the supplemental document is both an inventory and appraisal, the reference should be to a supplemental combined inventory and appraisal. The second sentence of Section 8801 does not provide for a further time for filing the supplemental inventory and/or appraisal "for reasonable cause," as is provided in Section 8800. Is this difference intended?

11. Section 8802: If two separate documents are contemplated or a combined document, I believe the language again has to be clarified to refer to the inventory, the appraisal or a combined inventory and appraisal. Obviously, the inventory as a separate document would not list "each item with the fair market value of the item," as presumably the inventory would have no values at all. Again, the concept of two separate documents requires rewording.

12. Section 8803: If two separate documents are required, would both be sent to each person who has requested special notice or only the appraisal?

13. Section 8804: Although this follows existing law as to when an interested party may file a written objection to an appraisal, is it appropriate to allow a written objection to the value of an asset which has already been distributed pursuant to a court order for a preliminary distribution?

14. Section 8805(a): Again, it raises the question of the "inventory and appraisal". Again, if two separate documents are required, the language should be modified.

Mr. John H. DeMouilly
June 29, 1987
Page Four

Subparagraph (a)(1) in the second line should refer to "inventory and the appraisal or either of them or a combined inventory and appraisal."

Subparagraph (a)(3), second line, uses the word "the" referring to an interested person. Should that be "any?" Existing Section 610 refers to "any." The last sentence of this paragraph (a)(3) perhaps should be supplemented to be consistent with Section 610 by adding the following language at the end of the sentence: "or if there is no bond, or the bond is insufficient, the personal representative is personally liable for such damages." Similar language is now found in Section 610.

Subparagraph (b) requires clarification to refer to "an inventory and an appraisal" in the first line. In the third line, the word "the" should be inserted before "appraisal" and the word "is" on the same line should be replaced with the word "are."

The Comment, second sentence, refers to an intentional noncompliance by the personal representative with the filing requirements. As indicated previously, in many estates where a federal estate tax return is filed, the inventory is not filed with the court until after the federal estate tax return values have been established. In that case, the referee is normally given the values used for tax purposes and, in most instances, will use those values for inventory purposes. This avoids discrepancies in values between the probate inventory and the tax values. That is certainly intentional and is intended to benefit the estate particularly from a tax point of view. On audit, any significant discrepancies between federal estate tax values and probate values may cause problems.

The last sentence of the first paragraph of the Comment states that "A reasonable time may be longer or shorter than the time provided in Sections 8800 and 8801, in the circumstances." Section 8805(a) does not make direct reference to Section 8800 or Section 8801 but merely refers to "a reasonable time." It would seem unreasonable to require the filing of an inventory in less time than that provided in Sections 8800 and 8801 as a ground for removal or imposition of liability for damages.

The last paragraph in the Comment, second sentence, makes it clear that the liability of the personal representative and of the sureties on the bond is joint and several. The language suggested above for paragraph (a)(3) would clarify that in the text of the statute itself.

Mr. John H. DeMouilly
June 29, 1987
Page Five

15. Section 8852(a): Although this language is similar to what is found in existing Section 604, it does not accurately reflect the practice of filing a series of partial inventories. This language contemplates a single inventory containing "all property to be administered." Because of delays in valuing certain assets, a personal representative will often file a series of partial inventories as the value of various assets are established. In those instances, the representative obviously knows that there are additional assets which are not included in the partial inventory. Therefore, the personal representative would not be in a position to subscribe an oath if the partial inventory contains a true statement "of all property to be administered."

16. Section 8870(a): This refers to a citation being issued to a person "to answer interrogatories and to appear before the court and be examined under oath." Those two concepts, I believe, are somewhat distinct, and some clarification of the wording is suggested. Presumably, the interrogatories might be served on the party, so that it would be, in essence, a deposition upon written interrogatories similar to CCP Section 2020 or it might simply be written interrogatories as a matter of general discovery similar to CCP Section 2030. As now worded, it appears that the citation would be to answer interrogatories and to testify before the court, as though that was one combined procedure. There appear to be two distinct procedures, one obtaining information on written interrogatories from a person cited and the other, oral examination of the person cited before the court. Some clarification is needed in this area.

17. Section 8871: See comments to Section 8870. This section appears to allow the use of the citation merely to make the person cited a party to the proceedings, so that written interrogatories pursuant to CCP Section 2030 may be utilized. Perhaps the Comment should make some reference to the appropriate sections of the CCP.

18. Section 8873: In the third line, the word "in" might be replaced by the words "belonging to." That language would be consistent with the language now found in Section 615.

19. Section 8874: Existing Section 612 uses words, such as "embezzles," "smuggles" or "fraudulently disposes of." Section 8874 refers only to one who has "wrongfully" taken, concealed or disposed of property in bad faith. Is all property "wrongfully taken" taken in bad faith or does bad faith restrict the scope of "wrongfully taken?" The Comment

IRELL & MANELLA

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

Mr. John H. DeMouilly

June 29, 1987

Page Six

indicates that this section restates former Section 612 without change except for the bad faith limitation addition. Is there, in fact, a substantive change in this area?

20. Section 8900: The Comment states that the appraisal is made of the fair market value of the property at the time of the decedent's death, referring to Section 8800. 8800 does not set forth that the values are to be fair market values at date of death. It would seem desirable to add to Section 8900 a further sentence which states "The appraisal shall be of the fair market value of property at the date of decedent's death."

21. Section 8902(a): There appears to be an ambiguity in this paragraph, because it does not limit the supporting data to those items in the inventory to be appraised by the referee. It speaks of the "property in the inventory." Arguably, the referee could demand back-up data on, for example, a money market account, even though appraised by the personal representative. Paragraph (a) might be reworded slightly to refer to an appraisal of the property in the inventory which is to be appraised by the probate referee.

22. Section 8903: In many instances, a probate referee is automatically appointed by the court at the commencement of probate. If a probate referee has been appointed, I believe that a number of courts require that notice also be given to the probate referee of the petition for waiver. Therefore, I would suggest that paragraph (c) have a new paragraph (4) added to it providing for notice to the probate referee if one has been appointed by the court in the proceeding.

23. Section 8904: The Comment indicates that an appraisal by an independent expert must be filed in the form of a Judicial Council form for the inventory and appraisal. Most independent experts who, for example, appraise jewelry will list each item and the value thereof on the expert's stationery. Would it be permissible simply to attach that listing of items of jewelry, for example, to a Judicial Council form for purposes of filing with the court and having the expert sign the verification on the Judicial Council form?

24. Section 8906: The Comment appears inaccurate. Existing Section 605(c) precludes the administrator or his attorney from seeking extraordinary compensation for appraising items that otherwise would be appraised by the probate referee, if the referee had not been waived. Obviously, the appraisal of cash items by the personal representative, so far as known,

Mr. John H. DeMouilly
June 29, 1987
Page Seven

has not been the basis of any extraordinary compensation. Perhaps the Comment would be more accurate if it stated in the first sentence as follows: "Section 8906 restates former Section 605(c) by precluding extra compensation for appraising property in the estate which otherwise would have been appraised by the probate referee had the referee not been waived. It also codifies the fact that extra compensation to the personal representative or attorney has not been allowed for appraisal of cash items."

25. Section 8908: There appears to be an ambiguity in this section. The first sentence requires that the probate referee retain all appraisal reports and back-up data for three years. The requirement is mandatory. The second sentence indicates that during that three-year period that material is to be offered to the personal representative. When these two sentences are read together, is the probate referee authorized to deliver the appraisal reports and back-up data before the end of the three years, since the referee is required to retain those items for three years? Some clarification of language is suggested.

26. Section 8920: The first sentence states "The court shall designate the probate referee from among the persons appointed by the State Controller to act as a probate referee for the county." Does the language "shall designate" allow the court not to designate a probate referee unless there is a request for designation of a probate referee? For example, in Los Angeles County, a probate referee is not automatically appointed by the court at the commencement of probate. The referee is appointed only on a second application for appointment of the referee. Can the language of the first sentence be construed to require the appointment of a probate referee in every estate? Perhaps some clarification is needed.

27. Section 8923: Paragraph (a) refers to the county clerk. The Comment states that that includes deputy clerks. However, existing Code Section 606 refers to the "county clerk or any deputy clerk." Is this language not worth retaining, even though there apparently is a definition in the Government Code that would bring deputy clerks within the meaning of the term "court clerk?" The Comment states that this section restates former Section 606 without substantive change. The reference to a "commissioner" has been added and represents some change. Perhaps this should be noted in the Comment.

Mr. John H. DeMouilly
June 29, 1987
Page Eight

28. Section 8924(a)(2): This allow the personal representative to remove the first probate referee designated by the court "regardless of cause." Does the phrase "regardless of cause" indicate that there must be a cause but the nature of that cause is irrelevant? Perhaps the first sentence could end with the word "court" on line 2, and a new sentence inserted "No cause need be shown for such removal."

29. Section 8940(a): Perhaps there should be some cross-reference to 8904(b) which allows a notation on the inventory of items to be appraised by the independent expert.

30. Section 8941(c)(4): The Comment suggests that a personal representative might be removed for failure to supply necessary information to allow the probate referee to complete the appraisal. Paragraph (4) therefore might be rephrased to provide essentially as follows: "That the personal representative be ordered to deliver to the probate referee all information necessary to allow the probate referee to complete the appraisal. Failure to comply with such order would be a ground for removal of the personal representative."

31. Section 8960(a): This provides for payment of compensation and expenses to the referee "from the estate appraised by the referee." Taken literally, if the estate had cash which was appraised by the personal representative, the referee could not be paid from the cash in the estate because that was not part of the estate "appraised by the referee." Perhaps the sentence should be revised to provide for a payment by the estate for which the appraisal was done.

32. Section 8961(b): This refers to expenses "allowed by the court." While this is language from an existing statute, I am not aware of any procedure by which the court actually allows those expenses except where they might appear on an accounting. Is there any procedure by which a court allows those expenses merely by having them listed on the inventory?

33. Section 8962: Perhaps the phrase "in the aggregate" should be added at the end of the sentence to make sure that that limit would not be construed to apply to a single security.

34. Section 8963(b): Notice should also be given to the personal representative and probably also to those persons whose interest is affected by the requested additional fees.

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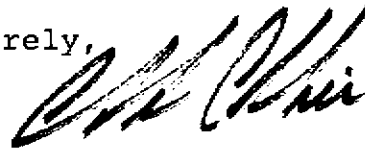
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

Mr. John H. DeMouilly
June 29, 1987
Page Nine

Although not covered by the section specifically, one area of complaint from clients and lawyers is the reappraisal fee which referees charge when they reappraise an asset for purposes of sale. For example, if a house is appraised at \$500,000 in the inventory but not sold for more than a year, a reappraisal is required. If it is sold for \$500,000, the referee will make a charge of \$500 for that reappraisal, even though in almost all instances the referee's appraisal is simply based on the letter from the attorney advising of the sale price.

It is hoped that the above technical comments will be of assistance.

Sincerely,



Charles A. Collier, Jr.

CAC:vjd

cc: Lloyd Homer, Esq.
James Devine, Esq.
James Quillinan, Esq.
James Opel, Esq.
Irwin Goldring, Esq.
William Schmidt, Esq.
Sterling L. Ross, Jr., Esq.

Staff DraftRECOMMENDATION
Relating to
INVENTORY AND APPRAISAL

BACKGROUND

The major changes made by the new law affecting the inventory and appraisal relate to the role of the probate referee.

The 1982 legislation governing probate referees¹ made specific reference to the California Law Revision Commission study of the administration of estates of decedents, and directed that the study be monitored by the appropriate legislative policy committees.² The Commission has devoted substantial resources to investigating the functioning of the probate referee system, including reviewing material from legislative hearings concerning probate referees, surveying inventory and appraisal systems in other jurisdictions, and considering the views of the probate bar (including the State Bar, Los Angeles County Bar, Beverly Hills Bar, and other bar associations), as well as communications from many interested individuals and groups (including the California Probate Referees' Association, California Bankers Association, California Appraisers Council, and American Institute of Real Estate Appraisers). The Commission has also allocated substantial public meeting time to presentations by interested persons.

In addition, the Commission distributed widely throughout the probate community both a questionnaire concerning the functioning of the probate referee system and the need for reforms and a tentative recommendation for revision of the law. The Commission received more than 100 completed questionnaire responses and more than 35 tentative recommendation comments, including group responses from a number of probate bar associations, and responses from judges, court

1. Prob. Code §§ 1300-1313, enacted by 1982 Cal. Stat., ch. 1535, § 13.
2. Prob. Code § 1313.

commissioners, public administrators, and practicing lawyers. Responses came from persons in more than 20 counties, both rural and urban.

The Commission has taken into account this substantial volume of information in developing the following recommendations for changes in the role of the probate referee in administration of decedents' estates.

RETENTION OF PROBATE REFEREE

The Commission considered removing the probate referee from decedent estate administration entirely, relying instead on appraisal by the personal representative. It has been argued that this would save money for most estates by eliminating the probate referee's fees and would simplify estate administration by eliminating an unneeded third party, with its attendant delays, from the process.

The Commission's investigation reveals that the cost to the estate of the probate referee appraisal is relatively small. The referee's fee is a statutory commission of one tenth of one percent of the value of the estate, plus actual expenses.³ This costs the estate substantially less than an independent appraisal by a private appraiser where such an appraisal is needed for tax or other reasons, and is one of the smaller costs associated with probate.

If an appraisal is not otherwise needed, however, the probate referee's fee is an unnecessary cost to the estate. The Commission recommends, below, a number of changes directed at this problem, relating to assets that may be appraised by the personal representative and procedures for waiver of a probate referee appraisal and reduction of fees.

The Commission's investigation also reveals that the probate referee's involvement causes little complexity or delay in the ordinary case. The probate referee's appraisal is fairly expeditious in the ordinary case. Usually, any delay caused is not due to the referee's appraisal but to time spent by the personal representative in preparing the inventory.

3. Prob. Code § 609. The commission is subject to a statutory maximum of \$10,000 and minimum of \$75.

There are cases in which a particular probate referee is dilatory or not performing up to standards. The Commission recommends, below, procedures to force expeditious appraisals in such cases, including sanctions against and procedures for removal of inadequate probate referees.

The probate bar generally believes the probate referee works efficiently and expedites and facilitates the probate process in the usual case. Most judges and practitioners think the referee provides a useful and ordinarily high quality service at modest cost to the estate, and that the referee system should be retained. Problems in the system should be resolved by attacking the problems directly, not by scrapping what is a basically sound system. The Commission concurs with these views, and recommends the following changes to cure problems in the probate referee system.

QUALIFICATIONS FOR APPOINTMENT AS PROBATE REFEREE

In order to ensure that a person appointed as a probate referee is qualified to appraise probate estates, existing law requires the State Controller to appoint only from among persons passing a qualification examination⁴ and permits the Controller to establish standards of training, performance, and ethics.⁵ The new law strengthens these requirements by making adoption of standards mandatory rather than permissive. The standards should help ensure the usefulness and accuracy of probate referee appraisals.

Existing law also limits the political patronage aspect of probate referee appointment by excluding persons who have been involved in or have contributed to a campaign for election of the State Controller or for other partisan state political offices.⁶ The new law strengthens enforcement of these limitations by requiring the probate referee to file an annual disclosure statement indicating relevant contributions or participation during the preceding year.

4. Prob. Code §§ 1305-6.

5. Prob. Code § 1307.

6. Prob. Code §§ 1311-12.

ASSETS APPRAISED BY REFEREE

In some estates the appraisal of assets is simple and does not call for an appraisal expert such as a probate referee. These are estates in which most assets are liquid and easily valued, and could well be appraised by the personal representative without resort to services of the probate referee.

Existing law recognizes this situation by permitting the personal representative to appraise bank accounts, lump-sum insurance payments, cash accounts, and a few other liquid assets.⁷ The new law expands these items to include lump-sum annuities, cash deposits and money market funds and accounts, including brokerage cash accounts, and refund checks issued after the decedent's death.

One area the Commission has examined closely is the appraisal of publicly traded stock listed on the New York, American, or Pacific stock exchange. Although it appears that the personal representative rather than the probate referee might properly appraise such assets, the Commission does not recommend that this be done as a matter of course. The economy of scale that enables low-cost probate referee appraisals in the ordinary case would be substantially impaired by removing publicly traded stock as a routine matter. In addition, a major reason the probate referee system works efficiently is that the referee simply appraises all non-cash assets *en masse* and cheaply, without the time and expense of making distinctions between what particular items are and are not subject to referee appraisal. The savings achieved by attempting to distinguish among the many varieties of stock are not significant compared to the procedural costs involved, and could be counterproductive in many cases. Finally, experience has shown that appraisals of publicly traded and listed stock by inexperienced persons are frequently inaccurate, due to such problems as value fluctuations on the date of death, failure to take into account x-dividend dates, and misidentification of the class of stock.

The Commission believes a better approach to appraisal of stock of all kinds, whether publicly traded or closely held, is to require as a matter of course that the referee be the appraiser, subject to waiver

7. Prob. Code § 605.

for good cause. This is existing law,⁸ and appears to work well in the ordinary case. In the unusual case, such as where the only major asset is stock in a difficult to value family corporation, it may be appropriate to waive the probate referee or to refer the matter to an independent expert for appraisal.⁹

The Commission also recommends that the probate referee's commission for appraisal of all stock traded on the New York, American, and Pacific stock exchanges be subject to a \$250 maximum in each estate. This limitation recognizes that stock of this type is relatively easy to appraise and protects against an unreasonably high probate referee commission in an estate with a large amount of publicly traded stock.

WAIVER AND RELATED MATTERS

The Commission has found the existing procedure for waiver of the probate referee in appropriate cases to be basically sound. The one substantial revision in the waiver procedure made by the new law is to require that a waiver be made before the inventory is delivered to the probate referee. This will expedite administration by encouraging prompt action by the personal representative and avoid having the probate referee invest substantial work on an appraisal only to have the appraisal later waived.

The new law supplements the waiver procedure by a provision to permit a unique, artistic, unusual, or special item of tangible personal property to be appraised by a qualified independent expert. This would enable the personal representative to avoid appraisal by the probate referee and to select the appraiser in a case where there is need for a special expert. The propriety of an independent appraisal would be subject to review by the probate referee, and the property would be excluded in computing the referee's fees.

8. Prob. Code § 605(a).

9. See discussion below under "Waiver and Related Matters."

SELECTION AND REMOVAL OF PROBATE REFEREE

Although most people who work with probate referees are satisfied with the operation of the system, there are some instances of dissatisfaction. The Commission has concluded that existing remedies for incompetent or otherwise inadequate referees are not sufficient,¹⁰ and the new law supplements the existing remedies.

Initially, the new law enables the personal representative to avoid appointment of a probate referee known to provide poor service by application to the court to appoint some other referee. The new law makes clear that the court has authority and discretion not to designate a particular probate referee, and need not designate a referee merely because that referee happens to be next in rotation on a panel.

The new law also enables the personal representative to select a particular probate referee, to a limited extent. This authority is limited in order to avoid favoritism and to prevent influencing the appraisal through a known bias of the referee. However, selection of a particular probate referee may be appropriate in some situations where, for example, the same referee has recently appraised the same property or will be making related appraisals of the same property in another proceeding. Selection of a particular referee by the personal representative is subject to court discretion and a showing of good cause by the personal representative.

Where a referee has already been appointed, the new law provides two new removal procedures. First, the personal representative may remove the first referee appointed as a matter of right, without the need for a showing of cause. This is similar to a peremptory challenge of the first judge appointed, and should be an expeditious and effective remedy to ensure the competence of probate referees (by making incompetence easily avoided). Second, the personal representative may seek removal by the court for cause. Cause in this context includes incompetence and undue delay. This will supplement the State Controller's removal authority with local control over appointments in individual cases.

10. Existing remedies are generally under the State Controller. Prob. Code § 1308.

TIME FOR APPRAISAL

The probate referee's appraisal is ordinarily made expeditiously and causes little delay in probate. This is not always the case, however, and the new law adds provisions to ensure that all probate referee appraisals are completed quickly.

The new law creates a statutory duty on the probate referee to appraise the property promptly and with reasonable diligence. The code does not set a specific standard, since the time required for the appraisal may vary with the size, character, and difficulty of assets in the estate.

Under the new law, if 60 days have elapsed since delivery of the inventory and the probate referee has not returned the appraisal, the probate referee must report the status of the appraisal showing why the property has not been appraised and estimating the time needed to complete the appraisal.¹¹ The report is filed with the court and delivered to the personal representative, who may have the report set for hearing. Actions the court may take for a dilatory referee include reduction of fees and removal.

It is current practice for some probate referees to withhold delivery of the appraisal, even though completed, until their fees have been paid. This is inappropriate because it delays probate and, in an illiquid estate, it may make it impossible to proceed since payment must come from proceeds of sale of appraised property. The new law prohibits a probate referee from withholding an appraisal until

11. This is analogous to the report made by the personal representative in the event of delay in closing the estate. See Prob. Code § 1025.5. The 60 day period was selected in recognition of the fact that in many cases it takes at least 30 days for the probate referee to obtain necessary appraisal information from the personal representative where the information has not been delivered with the inventory.

In this connection, the new law extends the time within which the personal representative must file the inventory and appraisal from three months to four. See Prob. Code § 600. The four month period is more realistic under current conditions. For uniformity, the time for filing a supplemental inventory and appraisal is also extended to four months. See Prob. Code § 611.

payment, but also makes clear that the probate referee's fees are an expense of administration, included in the highest statutory priority for payment in the administration proceedings.¹²

JUSTIFICATION OF APPRAISAL

If the probate referee's appraisal is questioned, there is no easy way to obtain the appraisal data used by the probate referee or for supporting the appraisal. The new law takes a number of steps to remedy this problem.

On demand by the personal representative or the beneficiary of property, the probate referee must provide any appraisal report or backup data concerning the property in the referee's files. This information must be provided without charge as part of the referee's regular services.

The referee may also be called upon to justify the appraisal at a hearing for a tax audit or otherwise. Because of the substantial time and effort that may be involved in this situation, the probate referee may be entitled to an additional fee, to be negotiated between the referee and person requiring the justification or, if they are unable to agree, to be fixed by the court.

These two remedies should be sufficient where a question concerning the appraisal arises within a shortly after the appraisal is made. However, existing law does not clearly require record-keeping, so that if an audit or other question arises later, the referee's files may no longer be available. The new law addresses this problem by requiring the referee to offer the files to the personal representative. If the personal representative does not request the files within three years, the files may be destroyed.

12. See Prob. Code § 950.

DIVISION 2. GENERAL PROVISIONS

PART 12. PROBATE REFEREES

CHAPTER 1. APPOINTMENT AND REVOCATION

- § 400. Appointment by Controller
- § 401. Qualifications for appointment
- § 402. Qualification examination
- § 403. Term of office of probate referee
- § 404. Standards for probate referee
- § 405. Termination of authority
- § 406. Political activities of probate referee

CHAPTER 2. POWERS OF PROBATE REFEREE

- § 450. General powers
- § 451. Compelling appearance
- § 452. Examination, testimony, and production of documents
- § 453. Protective orders and enforcement

DIVISION 7. ADMINISTRATION OF ESTATES OF DECEDENTS

PART 3. INVENTORY AND APPRAISAL

CHAPTER 1. GENERAL PROVISIONS

- § 8800. Inventory and appraisal required
- § 8801. Supplemental inventory and appraisal
- § 8802. Form of inventory and appraisal
- § 8803. Notice of filing of inventory and appraisal
- § 8804. Failure to timely file inventory and appraisal

CHAPTER 2. INVENTORY

Article 1. General Provisions

- § 8850. Contents of inventory
- § 8851. Discharge or devise of claims
- § 8852. Oath of personal representative

Article 2. Discovery of Property of Decedent

- § 8870. Citation to appear and be examined concerning decedent's property
- § 8871. Interrogatories
- § 8872. Examination
- § 8873. Citation to appear and account
- § 8874. Wrongful taking, concealment, or disposition of property in estate

CHAPTER 3. APPRAISAL

Article 1. Procedure

- § 8900. Appraisal by personal representative, probate referee, and independent expert
- § 8901. Appraisal by personal representative
- § 8902. Appraisal by probate referee
- § 8903. Waiver of appraisal by probate referee
- § 8904. Appraisal by independent expert
- § 8905. Verification of appraisal
- § 8906. Objection to appraisal
- § 8907. Fee for appraisal by personal representative
- § 8908. Appraisal report, backup data, and justification of appraisal
- § 8909. Retention of records by probate referee

Article 2. Designation and Removal of Probate Referee

- § 8920. Designation by court
- § 8921. Designation at request of personal representative
- § 8922. Discretion not to designate person as probate referee
- § 8923. Disqualification of probate referee
- § 8924. Removal of probate referee

Article 3. Time For Probate Referee Appraisal

- § 8940. Time required for appraisal or status report
- § 8941. Hearing and order

Article 4. Commission and Expenses of Probate Referee

- § 8960. Payment of commission and expenses
- § 8961. Amount of commission and expenses
- § 8962. Limitation on commission and expenses for publicly traded stock
- § 8963. Maximum and minimum commissions
- § 8964. Division of commission between referees

DIVISION 2. GENERAL PROVISIONS

PART 12. PROBATE REFEREES

CHAPTER 1. APPOINTMENT AND REVOCATION

§ 400. Appointment by Controller

400. (a) The State Controller shall appoint at least one person in each county to act as a probate referee for the county.

(b) If there are fewer than three qualified applicants to serve in a county, the State Controller may designate a probate referee from another county or make an interim appointment, to serve until the vacancy has been filled by a qualified applicant.

Comment. Subdivision (a) of Section 400 continues a portion of the first sentence of the first paragraph of former Section 1305 without change. Subdivision (b) supersedes the third sentence of the first paragraph of former Section 1305. For qualification of an applicant, see Section 401.

Note. Mr. Collier notes that the reference in subdivision (b) to "no regularly qualified applicants" has been omitted. The Commission omitted this phrase because zero is fewer than three and because the law seems, without good reason, to distinguish between designation of another probate referee and an interim appointment in this situation.

§ 401. Qualifications for appointment

401. (a) Appointment shall be from among persons passing a qualification examination administered by the State Personnel Board. A person who passes the examination is eligible for appointment for a period of five years from the date of the examination.

(b) Appointment shall be on the basis of merit without regard to sex, race, religious creed, color, national origin, ancestry, marital status, or political affiliation.

Comment. Subdivision (a) of Section 401 restates a portion of the first sentence of the first paragraph and the fifth sentence of the second paragraph of former Section 1305 without substantive change. Subdivision (b) continues the second sentence of the first paragraph of former Section 1305 without change.

§ 402. Qualification examination

402. (a) The qualification examination for applicants for appointment to act as a probate referee shall be held at times and places within the state determined by the State Controller.

(b) The State Controller shall contract with the State Personnel Board to administer the qualification examination. Administration of the examination shall include:

- (1) Development of standards for passage of the examination.
- (2) Preparation of examination questions.
- (3) Giving the examination.
- (4) Scoring the examination.

(c) Each applicant shall pay a fee established by the State Personnel Board for taking the qualification examination. The State Personnel Board shall transmit to the State Controller a list of candidates who have received a passing score in the examination. The list is a public record.

Comment. Section 402 restates former Section 1306 without substantive change.

§ 403. Term of office of probate referee

403. (a) The term of office of a probate referee is four years, expiring June 30. A person may be appointed to complete the unexpired term of office of a probate referee whose appointment is revoked or is otherwise terminated. For a period of five years from the date of expiration of the term of office, a person appointed to act as a probate referee is eligible for reappointment.

(b) If the State Controller increases the number of probate referees in a county, the State Controller shall stagger the terms of the new appointees so that one-quarter or as close to one-quarter as possible of the terms of the probate referees in that county expire on June 30 of each succeeding year.

Comment. Section 403 restates the second, third, and sixth sentences of the second paragraph of former Section 1305, with the addition that a probate referee's eligibility for reappointment lasts until five years after expiration of the referee's term of office. Section 403 also makes clear that an appointment may be for a term less than four years in the case of an appointment for the purpose of completion of the term of another probate referee.

§ 404. Standards for probate referee

404. (a) The State Controller shall establish and may amend standards of training, performance, and ethics of probate referees. The standards shall be a public record.

(b) The State Controller may revoke the appointment of a person to act as a probate referee for noncompliance with any standard of training, performance, or ethics established under subdivision (a). The State Controller may revoke an appointment under this subdivision without notice or a hearing, but the revocation is subject to review by writ of mandate to a court of competent jurisdiction.

Comment. Subdivision (a) of Section 404 restates former Section 1307, making the adoption of standards mandatory rather than permissive. This codifies existing practice. Subdivision (b) restates former Section 1308(a) without substantive change.

§ 405. Termination of authority

405. (a) The authority of a person to act as a probate referee ceases immediately upon expiration of the person's term of office, revocation of the person's appointment, or other termination pursuant to law.

(b) Upon cessation of authority of a person to act as a probate referee, the State Controller shall notify the court of the county for which the probate referee was appointed. Upon receipt of notice, or if it otherwise comes to the attention of the court that the authority of a person to act as a probate referee has ceased, the court shall reassign any estate for which the person had been designated as probate referee to another probate referee.

Comment. Subdivision (a) of Section 405 restates former Section 1309 without substantive change. Subdivision (b) codifies existing practice. Other termination pursuant to law includes resignation.

§ 406. Political activities of probate referee

406. (a) A probate referee, or any person who is an applicant for or seeking appointment or reappointment to act as a probate referee, shall not, directly or indirectly, solicit, receive, or contribute, or be in any manner ~~concerned~~ involved in soliciting, receiving, or contributing, any of the following:

(1) Any assessment, subscription, or contribution to any party, incumbent, committee, or candidate exceeding two hundred dollars (\$200) in any one year for any partisan public office of this state.

(2) An assessment, subscription, contribution, or political service for the office of State Controller in any amount, notwithstanding paragraph (1).

(b) A violation of subdivision (a) is a misdemeanor, and the State Controller shall revoke the appointment of a probate referee who violates subdivision (a).

(c) Upon a person's application for appointment as a probate referee, and thereafter annually during the person's eligibility for appointment, during the person's tenure as a probate referee, and during the person's eligibility for reappointment, the person shall file with the State Controller a verified statement indicating whether the person has done any act described in subdivision (a)(1) or (a)(2) during the preceding two-year period.

(d) The State Controller may not appoint or reappoint as a probate referee any person who, within the two-year period preceding the date of the appointment or reappointment, ~~does any act described in subdivision (a)(1) or (a)(2)~~ violates any provision of this section, and any such appointment or reappointment is void and shall be revoked. However, all acts not otherwise invalid performed by the person before revocation of the person's appointment are valid.

Comment. Subdivisions (a) and (b) of Section 406 restate former Section 1311, with the addition of references to incumbency, reappointment, and committees, and the deletion of references to campaigns. The two hundred dollar limitation of paragraph (a)(1) does not apply to the State Controller; solicitation, receipt, or contribution of any amount to a State Controller campaign is absolutely prohibited by paragraph (a)(2).

Subdivision (c) is new. It is intended to facilitate compliance with the other requirements of this section.

Subdivision (d) restates former Section 1312, with the added requirement of removal from office. The transitional provision is omitted because it is no longer necessary.

CHAPTER 2. POWERS OF PROBATE REFEREE

§ 450. General powers

450. Upon designation by the court, the probate referee has all the powers of a referee of the superior court and all other powers provided in this chapter.

Comment. Section 450 restates subdivision (b) of former Section 1301 without substantive change. For general provisions relating to referees of the court, see Code Civ. Proc. §§ 638-645.1.

§ 451. Compelling appearance

451. (a) For the purpose of appraisal of property in the estate, the probate referee may require, and may issue a subpoena to compel, the appearance before the referee of the personal representative, guardian, conservator, or other fiduciary, an interested person, or any other person the referee has reason to believe has knowledge of the property.

(b) A subpoena issued under subdivision (a) is subject to the provisions of Section 2020 of the Code of Civil Procedure governing deposition subpoenas.

Comment. Subdivision (a) of Section 451 restates subdivision (a) of former Section 1301 and former Section 1302, with the addition of the reference to a guardian, conservator, or other fiduciary, since the probate referee may appraise estates other than decedents' estates. Subdivision (b) is new.

CROSS-REFERENCES

Definitions

- Interested person § 48
- Person § 56
- Personal representative § 58
- Property § 62

Note. *Mr. Collier questions whether the reference to CCP § 2020 should in fact be to CCP § 2019. Under the new discovery act effective July 1, what was previously in Section 2019 is now in Section 2020.*

§ 452. Examination, testimony, and production of documents

452. (a) The probate referee may examine and take the testimony under oath of a person appearing before the referee, or require, and issue a subpoena to compel, the person to produce any document in the person's possession or control, concerning the value of any property in the estate.

(b) A subpoena issued under subdivision (a) is subject to the provisions of Section 2020 of the Code of Civil Procedure governing deposition subpoenas.

Comment. Subdivision (a) of Section 452 restates former Section 1303, with the addition of the reference to production of documents. See Section 453 (protective orders and enforcement). Subdivision (b) is new.

GROSS-REFERENCES

Definitions

Person § 56

Property § 62

Note. Mr. Collier questions whether the reference to CCP § 2020 should in fact be to CCP § 2019. Under the new discovery act effective July 1, what was previously in Section 2019 is now in Section 2020.

§ 453. Protective orders and enforcement

453. (a) On petition of a person required to appear before the probate referee pursuant to this chapter, the court may make a protective order to protect the person from annoyance, embarrassment, or oppression. The petitioner shall mail notice of the hearing on the petition to the probate referee and to the personal representative at least 15 days before the date set for the hearing. Any subpoena issued by the probate referee is stayed during the pendency of the petition.

(b) On petition of the probate referee, the court may make an order to show cause why a person who is required, but fails, to appear before the probate referee pursuant to this chapter, should not be compelled to do so. The probate referee shall mail notice of the hearing on the petition to the person at least 15 days before the date set for the hearing.

Comment. Subdivision (a) of Section 453 is drawn from Code of Civil Procedure Section 2037.8, with the addition of an automatic stay of enforcement during pendency of the petition. Subdivision (b) is new.

GROSS-REFERENCES

Definitions

Person § 56

Mailed notice § 1215

Person need not give notice to self § 1201

DIVISION 7. ADMINISTRATION OF ESTATES OF DECEDENTS

PART 3. INVENTORY AND APPRAISAL

CHAPTER 1. GENERAL PROVISIONS

§ 8800. Inventory and appraisal required

8800. (a) The personal representative shall file with the court clerk an inventory of the property to be administered in the decedent's estate and an appraisal of the property in the inventory. The inventory and appraisal may be combined in a single document.

(b) The inventory shall be filed within three months, and the appraisal shall be filed within six months, after letters are first issued to a general personal representative. The court may, for reasonable cause, allow a further time for filing the inventory and or appraisal or both.

Comment. Section 8800 restates the first portion of the first sentence of former Section 600, extending the time for filing the appraisal (as opposed to the inventory) to six months.

The inventory and appraisal procedure provided in this part applies to valuation in administration of decedents' estates, but may be incorporated in other proceedings. For example, in a small estate set-aside proceeding under Chapter 6 (commencing with Section 6600) of Part 3 of Division 6, an inventory and appraisal of the decedent's estate is required as provided in Section 6608. No inventory and appraisal of the decedent's estate is required where it is disposed of without administration under Division 8 (commencing with Section 13000) except to the extent an inventory and appraisal is required pursuant to Section 13103 (real property), subdivision (b) of Section 13152 (real property), subdivision (c) of Section 13200 (affidavit procedure), or Section 13658 (property passing or belonging to surviving spouse).

See also Code of Civil Procedure § 166 (actions in chambers).

CROSS-REFERENCES

Definitions

Letters § 52

Personal representative § 58

§ 8801. Supplemental inventory and appraisal

8801. If after the inventory is filed the personal representative acquires knowledge of property to be administered in the decedent's estate that is not included in the inventory, the personal representative shall file a supplemental inventory and an appraisal or supplemental appraisal of the property in the manner prescribed for the original inventory and appraisal. The supplemental inventory shall be filed within three months, and the supplemental appraisal within six months, after the personal representative acquires knowledge of the property.

Comment. Section 8801 restates former Section 611, extending the two month time for filing to three and six months, paralleling Section 8800 (inventory and appraisal required). For enforcement of this requirement, see Section 8804 (failure to timely file inventory and appraisal).

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

Note. Mr. Collier notes that the times provided in this section are absolute and do not admit of court extension for reasonable cause. Compare Section 8800. The staff believes this difference was intended: A supplemental inventory and appraisal are required sufficiently long after administration is commenced that further extensions would not be appropriate.

§ 8802. Form of inventory and appraisal

8802. The inventory ~~and appraisal shall be in the form of a separate listing of~~ shall separately list each item with . The appraisal shall state the fair market value of ~~the item~~ each item in the inventory at the time of the decedent's death in monetary terms opposite the item.

Comment. Section 8802 restates the fifth sentence of former Section 600.

§ 8803. Notice of filing of inventory and appraisal

8803. Upon the filing of the inventory and appraisal, the personal representative shall, pursuant to Section 1252, mail a copy to each person who has requested special notice.

Comment. Section 8803 is new.

CROSS-REFERENCES

Definitions

Person § 56

Personal representative § 58

Request for special notice § 1250

Note. Mr. Collier raises the issue whether copies of both inventory and appraisal, if the two are filed separately, should be sent to persons who have requested special notice. The staff believes that both documents should be sent, as provided in the current draft, since either may affect people's rights.

§ 8804. Failure to timely file inventory and appraisal

8804. (a) If the personal representative negligently or intentionally fails to file the inventory and or appraisal within a reasonable time, upon petition of an interested person:

(1) The court may compel the personal representative to file the inventory and or appraisal pursuant to the procedure prescribed in Section 921.

(2) The court may remove the personal representative from office.

(3) The personal representative is personally liable for injury to the estate or to the an interested person that directly results from the failure. The liability may include attorney's fees, in the court's discretion. Damages awarded pursuant to this subdivision are a liability on the bond of the personal representative, if any.

(b) For purposes of this section, if an inventory and appraisal ~~is~~ are filed within the ~~time~~ times provided in Section 8800 or 8801, the inventory and appraisal ~~is~~ are presumed to be filed within a reasonable time. The presumption created by this subdivision is a presumption affecting the burden of proof.

Comment. Section 8804 restates former Section 610 and a portion of former Section 611, codifying the case law rule that the statute applies to failure to timely file the appraisal as well as failure to timely file the inventory. Section 8804 is limited to negligent or intentional noncompliance by the personal representative and is not intended to apply where the personal representative was unable to file

the appraisal due to the probate referee's delay, or where the personal representative made a good faith effort to file but was unable to due to circumstances beyond the personal representative's control. For delay caused by the probate referee, see Article 3 (commencing with Section 8940) of Chapter 3. The determination of a reasonable time under this section is flexible, depending on the circumstances of the particular estate. A reasonable time may be longer or shorter than the time provided in Sections 8800 and 8801, in the circumstances.

Subdivision (a)(1) is new.

Subdivision (a)(2) provides for removal as an independent sanction. For the removal procedure, see Article 4 (commencing with Section 520) of Chapter 6 of Division 3. This supplements the removal sanction that is part of the procedure under subdivision (a)(1) to compel a filing.

Under subdivision (a)(3) liability for injury arising from the failure of the personal representative to timely file the inventory and appraisal may include attorney's fees incurred in proceedings to compel the filing. Liability of the personal representative and of the sureties on the bond is joint and several. See Code Civ. Proc. § 996.410 et seq.

CROSS-REFERENCES

Definitions

Interested person § 48

Personal representative § 58

Note. Mr. Collier questions the propriety of imposing sanctions on the personal representative for intentionally delaying the inventory beyond the statutory times in estates where a federal estate tax return is filed. In such a case, "the inventory is not filed with the court until after the federal estate tax return values have been established. In that case, the referee is normally given the values used for tax purposes and, in most instances, will use those values for inventory purposes. This avoids discrepancies in values between the probate inventory and the tax values. That is certainly intentional and is intended to benefit the estate particularly from a tax point of view. On audit, any significant discrepancies between federal estate tax values and probate values may cause problems." The answer to Mr. Collier's question is that sanctions are only imposed under this section if the personal representative's delay is beyond a "reasonable time"; presumably if a delay for estate tax purposes is reasonable, the personal representative will be able to convince the court of that. The counter-argument then would be that if a delay for estate tax purposes is reasonable, why not write it into the statute and avoid litigation?

Mr. Collier also questions whether a "reasonable time" could ever be shorter than the 3-month inventory and 6-month appraisal requirements provided by statute. The Commission set these time limits with the concept that they were fairly liberal in the ordinary case, and that an inventory and appraisal often could be accomplished much more quickly than that. In a very simple estate a three or six month delay could be considered unreasonable.

CHAPTER 2. INVENTORY

Article 1. General Provisions

§ 8850. Contents of inventory

8850. (a) The inventory shall include all property to be administered in the decedent's estate.

(b) The inventory shall particularly specify the following property:

(1) Debts, bonds, mortgages, deeds of trust, notes, and other security for the payment of money to the decedent, with the name of each debtor, the date, the sum originally payable, and the endorsements, if any, with their dates. If security for the payment of money is real property, the inventory shall include a reference to the place in the records where the security interest is recorded or, if not recorded, a legal description of the real property.

(2) A statement of the interest of the decedent in a partnership in which the decedent was a member, appraised as a single item.

(3) An account of all money of the decedent.

(c) The inventory shall show, to the extent ascertainable by the personal representative, the portions of the property that are community, quasi-community, and separate property of the decedent.

Comment. Subdivisions (a) and (b) of Section 8850 restate the third and fourth sentences of former Section 600 without substantive change. Subdivision (b)(1) includes a requirement of precise identification of real property security in order to achieve an accurate inventory for appraisal of the underlying obligation. Subdivision (c) restates former Section 601, with the addition of the reference to quasi-community property.

CROSS-REFERENCES

Definitions

- Community property § 28
- Personal representative § 58
- Property § 62
- Quasi-community property § 66

§ 8851. Discharge or devise of claims

8851. The discharge or devise in a will of any debt or demand of the testator against the executor or any other person is not valid against creditors of the testator, but is a specific devise of the debt or demand. The debt or demand shall be included in the inventory. If necessary, the debt or demand shall be applied in the payment of the debts of the testator. If not necessary for that purpose, the debt or demand shall be distributed in the same manner and proportion as other specific devises.

Comment. Section 8851 restates former Section 603 without substantive change.

CROSS-REFERENCES

Definitions

Devise § 32

Will § 88

§ 8852. Oath of personal representative

8852. (a) The personal representative shall take and subscribe an oath that the inventory contains a true statement of all property to be administered in the decedent's estate of which the personal representative has knowledge, and particularly of money of the decedent and debts or demands of the decedent against the personal representative. The oath shall be endorsed upon or attached to the inventory.

(b) If there is more than one personal representative, each shall take and subscribe the oath. If the personal representatives are unable to agree as to property to be included in the inventory, any personal representative may petition for a court order determining whether the property is to be administered in the decedent's estate. The determination shall be made pursuant to the procedure provided in Chapter 11 (commencing with Section 9860) of Part 5 or, if there is an issue of property belonging or passing to the surviving spouse, pursuant to Chapter 5 (commencing with Section 13650) of Part 2 of Division 8.

Comment. Subdivision (a) of Section 8852 restates former Section 604 without substantive change. The requirement of an oath may be satisfied by a written affirmation. Code Civ. Proc. § 2015.6.

Subdivision (b) is new. It is an exception to the rule of Section 9630 (where there is more than one personal representative, a majority may act).

CROSS-REFERENCES

Definitions

Personal representative § 58

Note. Mr. Collier notes that the personal representative must take an oath that the inventory lists all property in the decedent's estate. He observes that in practice, however, there may be a series of partial inventories; "Because of delays in valuing certain assets, a personal representative will often file a series of partial inventories as the value of various assets are established." The staff believes Mr. Collier's problem is ameliorated by the concept of the inventory and appraisal not having to be in a single document. Thus the personal representative may know there will be delays in appraising some assets, but can still file an inventory of all assets known at the time.

Article 2. Discovery of Property of Decedent

§ 8870. Citation to appear and be examined concerning decedent's property

8870. (a) On petition by the personal representative or an interested person, the court may order that a citation be issued to a person to answer interrogatories and, or to appear before the court and be examined under oath, or both, concerning any of the following allegations:

(1) That the person has wrongfully taken, concealed, or disposed of property in the estate of the decedent.

(2) That the person has knowledge or possession of any of the following:

(A) A deed, conveyance, bond, contract, or other writing that contains evidence of or tends to disclose the right, title, interest, or claim of the decedent to property.

(B) A claim of the decedent.

(C) A lost will of the decedent.

(b) If the person does not reside in the county in which the estate is being administered, the superior court either of the county in which the person resides or of the county in which the estate is being administered may issue a citation under this section.

(c) Disobedience of a citation issued pursuant to this section may be punished as a contempt of the court issuing the citation.

Comment. Subdivisions (a) and (b) of Section 8870 restate the first two sentences of former Section 613. See also Code Civ. Proc. § 166 (actions in chambers).

Subdivision (c) supersedes the first sentence of former Section 614.

GROSS-REFERENCES

Definitions

Interested person § 48

Personal representative § 58

Property § 62

Will § 88

Verification required § 1284

§ 8871. Interrogatories

8871. Interrogatories may be put to a person cited to answer interrogatories pursuant to Section 8870. The interrogatories and answers shall be in writing. The answers shall be signed under penalty of perjury by the person cited. The interrogatories and answers shall be filed with the court.

Comment. Section 8871 restates the third sentence and a portion of the first sentence of former Section 614 without substantive change.

GROSS-REFERENCES

Definitions

Person § 56

Written interrogatories, Code Civ. Proc. § 2030

§ 8872. Examination

8872. (a) At an examination witnesses may be produced and examined on either side.

(b) If upon the examination it appears that the allegations of the petition are true, the court may order the person to disclose the person's knowledge of the facts to the personal representative.

(c) If upon the examination it appears that the allegations of the petition are not true, the person's necessary expenses, including a reasonable attorney's fee, shall be charged against the petitioner or allowed out of the estate, in the discretion of the court.

Comment. Subdivisions (a) and (b) of Section 8872 restate the second and fourth sentences of former Section 614. Subdivision (c) supersedes the third sentence of former Section 613. The court order of disclosure is enforceable in the same manner as other court orders. See, e.g., Code Civ. Proc. § 1209 (contempt); see also Section 1283 (rules of practice).

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 8873. Citation to appear and account

8873. (a) On petition by the personal representative, the court may issue a citation to a person who has possession or control of property in the decedent's estate to appear before the court and make an account under oath of the property and the person's actions with respect to the property.

(b) Disobedience of a citation issued pursuant to this section may be punished as a contempt of the court issuing the citation.

Comment. Section 8873 restates former Section 615 without substantive change. See also Code Civ. Proc. § 166 (actions in chambers). The duty to account under this section includes both property entrusted to a person and property that comes into the person's possession, including money, accounts, and other property and papers. For general provisions governing issuance and enforcement of citations, see Sections 1240-1242.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

Note. Mr. Collier suggests replacing the reference to property "in the decedent's estate" with a reference to property "belonging" to the estate. We have avoided this usage because the estate is theoretically not a legal entity that can own property; title to the property passes immediately to the beneficiaries subject to possession and control of the personal representative for purposes of administration. This theoretical scheme may not be wholly satisfactory, but until we have thought through and worked through all the implications of changing it, we should adhere to the existing concepts.

§ 8874. Wrongful taking, concealment, or disposition of property in estate

8874. A person who, in bad faith, has wrongfully taken, concealed, or disposed of property in the estate of the decedent is liable for twice the value of the property, recoverable in an action by the personal representative for the benefit of the estate.

Comment. Section 8874 restates former Section 612 with the addition of a bad faith limitation.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

Note. Mr. Collier notes that this section replaces embezzlement, smuggling and fraudulent disposition with wrongful taking in bad faith. He wonders if "bad faith" restricts the scope of "wrongful taking" and whether this is a substantive change. The Commission thought that the wrongful taking concept was more comprehensive than embezzlement, etc., but that only a bad faith wrongful taking should be culpable since a wrongful taking could be based on a mistaken belief of right or title. The staff believes this section is sound as drafted.

CHAPTER 3. APPRAISAL

Article 1. Procedure

§ 8900. Appraisal by personal representative, probate referee, and independent expert

8900. The appraisal of property in the inventory shall be made by the personal representative, probate referee, or independent expert as provided in this chapter.

Comment. Section 8900 restates the introductory clause of former Section 605(a) with the addition of the reference to an independent expert. See Section 8904 (appraisal by independent expert). Designation of a probate referee is made pursuant to Article 2 (commencing with Section 8920). The appraisal is made of the fair market value of the property at the time of the decedent's death. See Section ~~8800-(inventory-and-appraisal-required)~~ 8802 (form of inventory and appraisal).

CROSS-REFERENCES

Definitions

Personal representative § 58

§ 8901. Appraisal by personal representative

8901. The personal representative shall appraise the following property, excluding items whose fair market value is, in the opinion of the personal representative, an amount different from the face value of the property:

(a) Money and other cash items. As used in this subdivision, a "cash item" is a check, draft, money order, or similar instrument issued on or before the date of the decedent's death that can be immediately converted to cash.

(b) The following checks issued after the date of the decedent's death:

(1) Checks for wages earned before death.

(2) Refund checks, including tax and utility refunds, and Medicare, medical insurance, and other health care reimbursements and payments.

(c) Accounts (as defined in Section 21) in financial institutions.

(d) Cash deposits and money market funds or accounts, whether in a financial institution or otherwise, including a brokerage cash account.

(e) Proceeds of life and accident insurance policies and retirement plans and annuities payable on death in lump sum amounts.

Comment. Subdivisions (a), (c), and (e) of Section 8901 restate former Section 605(a)(1) with the addition of annuities in subdivision (e).

The definition of "cash item" in subdivision (a) is consistent with existing practice. California Probate Referees' Ass'n, Probate Referees' Procedures Guide 9 (1976).

Subdivisions (b) and (d) are new. The personal representative may appraise an item listed in subdivision (b) or (d), as well as items listed in subdivisions (a), (c), and (e), only if its fair market value can be determined solely from its face without calculation or reference to other sources. See introductory clause of Section 8901.

CROSS-REFERENCES

Definitions

Account § 21

Financial institution § 40

Personal representative § 58

Property § 62

§ 8902. Appraisal by probate referee

8902. Except as otherwise provided by statute:

(a) The personal representative shall deliver the inventory to the probate referee designated by the court, together with necessary supporting data to enable the probate referee to make an appraisal of the property in the inventory to be appraised by the probate referee.

(b) The probate referee shall appraise all property other than that appraised by the personal representative.

Comment. Subdivision (a) of Section 8902 codifies existing practice. A statutory exception to the duty to deliver an inventory to the probate referee occurs in the case of a waiver of appraisal by the probate referee. See Section 8903. The personal representative must furnish the referee such information as the referee requires concerning the assets appraised by the personal representative or to be appraised by the probate referee. See Sections 450-453 (powers of probate referee).

Subdivision (b) restates a portion of former Section 605(a)(2). The probate referee may serve an appraisal function in areas outside of decedent estate administration. See Comment to Section 8800 (inventory and appraisal required). There are statutory exceptions to appraisal by the probate referee. See, e.g., Section 2610 (inventory and appraisal of conservatorship under Lanterman-Petris-Short Act). For waiver of the probate referee, see Section 8903. For appraisal by an independent expert, see Section 8904.

Designation of a probate referee is made pursuant to Article 2 (commencing with Section 8920).

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 8903. Waiver of appraisal by probate referee

8903. (a) The court may, for good cause, waive appraisal by a probate referee in the manner provided in this section.

(b) The personal representative may apply for a waiver together with the petition for appointment of the personal representative or together with another petition, or may apply for a waiver in a separate petition filed in the administration proceedings, but the application may not be made later than the time the personal representative delivers the inventory to the probate referee, if a probate referee has been appointed. A copy of the proposed inventory and appraisal and a statement that sets forth the good cause that justifies the waiver shall be attached to the petition.

(c) The hearing on the waiver shall be not sooner than 15 days after the petition is filed. Notice of the hearing on the petition shall be given as provided in Section 1220, together with a copy of the petition and a copy of the proposed inventory and appraisal. In addition to the notice required by this subdivision, notice of the hearing, together with a copy of the petition and a copy of the proposed inventory and appraisal, 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 waiver.

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

(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 waiver.

(4) The probate referee, if a probate referee has been appointed.

(d) If the petition is granted, the inventory and appraisal attached to the petition shall be filed pursuant to Section 8800.

Comment. Section 8903 restates former Section 605(a)-(b), with changes to make clear that the application for waiver is made by petition, to specify the time within which the petition must be made, and to make clear that the inventory and appraisal attached to the petition is to be filed pursuant to Section 8800 (inventory and appraisal required). A waiver petition may be made under Section 8903 at any time before an inventory is delivered to the probate referee, including a combined waiver and petition to open administration or a combined waiver and petition for final distribution.

GROSS-REFERENCES

Clerk to set matter for hearing § 1285

Definitions

Letters § 52

Person § 56

Personal representative § 58

Property § 62

Mailed notice § 1215

Verification required § 1284

§ 8904. Appraisal by independent expert

8904. (a) A unique, artistic, unusual, or special item of tangible personal property that would otherwise be appraised by the probate referee may, at the election of the personal representative, be appraised by an independent expert qualified to appraise the item.

(b) The personal representative may make the election provided in subdivision (a) by a notation on the inventory delivered to the probate referee indicating the property to be appraised by an independent expert. The probate referee may, within five days after delivery of the inventory, petition for a court determination whether the property to be appraised by an independent expert is a unique, artistic, unusual, or special item of tangible personal property. On the determination, the court shall award litigation expenses, including reasonable attorney's fees, to the prevailing party.

Comment. Section 8904 is new. If the Judicial Council adopts a form for the inventory and appraisal filed with the court, the independent expert appraisal must be filed in that form or otherwise comply with Judicial Council rules for completing the form. See Section ____ (Judicial Council authority); see also Section 8802 (form of inventory and appraisal).

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 8905. Verification of appraisal

8905. A person who appraises property, whether a personal representative, probate referee, or independent expert, shall sign the appraisal as to property appraised by that person, and shall take and subscribe an oath that the person has truly, honestly, and impartially appraised the property to the best of the person's ability.

Comment. Section 8905 restates former Section 608, with the inclusion of an independent appraisal expert. See Section 8904. The requirement of subscription of an oath may be satisfied by a written affirmation or a declaration under penalty of perjury. Code Civ. Proc. §§ 2015.5-2015.6

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 8906. Objection to appraisal

8906. (a) At any time before the hearing on the petition for final distribution of the estate, an interested person may file with the court a written objection to the appraisal.

(b) The clerk shall fix a time, not less than 15 days after the filing, for a hearing on the objection.

(c) The person objecting shall give notice of the hearing, together with a copy of the objection, as provided in Section 1220. If the appraisal was made by a probate referee, the person objecting shall also mail notice of the hearing and a copy of the objection to the probate referee at least 15 days before the date set for the hearing.

(d) The person objecting to the appraisal has the burden of proof.

(e) Upon completion of the hearing, the court may make any orders that appear appropriate. If the court determines the objection was filed without reasonable cause or good faith, the court may order that the fees of the personal representative and attorney and any costs incurred for defending the appraisal be made a charge against the person filing the objection.

Comment. Section 8906 restates former Section 608.5, but requires an objection at or before the hearing on the petition for final distribution, replaces the 10 day minimum hearing time with 15 days consistent with the general notice provisions, and provides for an award of fees and costs in the event of a frivolous objection. It is drawn from Section 927 and from former Revenue and Taxation Code Sections 14510-14513. See also Sections 8908 (appraisal report, backup data, and justification of appraisal) and 927 (exceptions to account, including objection to appraisal). For objection to the inventory, other procedures are available. See, e.g., Section Chapter 11 (commencing with Section 9860) of Part 5 (conveyance or transfer of property claimed to belong to decedent or other person).

CROSS-REFERENCES

Definitions

Interested person § 48

Person § 56

Request for special notice § 1250

Note. Mr. Collier asks, "Is it appropriate to allow a written objection to the value of an asset which has already been distributed pursuant to a court order for a preliminary distribution?" The staff's inclination is that an objection may be appropriate here; for example, a beneficiary's total share at final distribution may depend on the value of property received by way of preliminary distribution.

§ 8907. Fee for appraisal by personal representative

8907. Neither the personal representative nor the personal representative's attorney is entitled to receive compensation for extraordinary services by reason of appraising any property in the estate.

Comment. Section 8907 restates former Section 605(c) and expands it to preclude extra compensation not only for appraising cash items but also for appraising other property in the estate (for example where the probate referee is waived pursuant to Section 8903). It should be noted that the limitation in this section applies only to appraisal of property; it does not affect estate tax work performed by the attorney.

CROSS-REFERENCES

Definitions

Personal representative § 58
Property § 62

Note. This section might be relocated to the provisions governing personal representative and attorney fees in probate.

§ 8908. Appraisal report, backup data, and justification of appraisal

8908. A probate referee who appraises property in the estate shall, upon demand by the personal representative or by a beneficiary:

(a) Provide any appraisal report or backup data in the possession of the probate referee used by the referee to appraise an item of property. The probate referee shall not disclose any information that is required by law to be confidential. The probate referee shall provide the appraisal report or backup data without charge. The cost of providing the appraisal report or backup data shall not be allowed as an expense of appraisal but is included in the commission for services of the probate referee.

(b) Justify the appraisal of an item of property if the appraisal is contested, whether by objection pursuant to Section 8906, by tax audit, or otherwise. The probate referee may be entitled to an additional fee for services provided to justify the appraisal, to be agreed upon by the personal representative or beneficiary and referee. If the personal representative or beneficiary and the probate referee are unable to agree, the court shall determine what fee, if any, is appropriate.

Comment. Section 8908 is new. Backup data required pursuant to subdivision (a) might include, for example, a listing of comparable sales used in the appraisal. Confidential information that may not be disclosed includes tax assessor information obtained by the probate referee pursuant to Section 408 of the Revenue and Taxation Code. The determination of an appropriate fee under subdivision (b) will depend in part upon the quality of the appraisal and whether the contest of the appraisal is reasonable.

CROSS-REFERENCES

Definitions

Beneficiary § 24
Personal representative § 58
Property § 62

§ 8909. Retention of records by probate referee

8909. A probate referee who appraises property in an estate shall retain possession of all appraisal reports and backup data used by the referee to appraise the property for a period of three years after the appraisal is filed. The probate referee shall, during the three year period, offer the personal representative the reports and data used by the referee to appraise the property and deliver the reports and data to the personal representative on request. Any reports and data not requested by the personal representative may be destroyed at the end of the three year period without further notice.

Comment. Section 8909 is new.

CROSS-REFERENCES

Definitions

Beneficiary § 24

Property § 62

Article 2. Designation and Removal of Probate Referee

§ 8920. Designation by court

8920. The court, on petition by the personal representative, shall designate the probate referee, The designation shall be from among the persons appointed by the State Controller to act as a probate referee for the county. If there is no person available who is able to act or if, pursuant to authority of Section 8922 or otherwise, the court does not designate a person appointed for the county, the court may designate a probate referee from another county.

Comment. Section 8920 restates a portion of former Section 605(a)(2), and makes clear that the probate referee is designated from the panel appointed for the county by the State Controller. See Section 400 (appointment by Controller). Where there is no person able to act, whether because all are disqualified or removed or because there are an insufficient number appointed or because the court elects not to designate a particular probate referee or otherwise, the court may appoint a probate referee from another county. This codifies existing practice. For designation of a probate referee for sale of real property, see Section 10309 (minimum price for private sale of real property). The designation of a probate referee may be made by the judge in chambers. Section 166.

CROSS-REFERENCES

Definitions

Property § 62

§ 8921. Designation at request of personal representative

8921. The court may designate a person requested by the personal representative as probate referee, on a showing by the personal representative of good cause for the designation. The following circumstances are included within the meaning of good cause, as used in this section:

(a) The probate referee has recently appraised the same property that will be appraised in the administration proceeding.

(b) The probate referee will be making related appraisals in another proceeding.

(c) The probate referee has recently appraised similar property in another proceeding.

Comment. Section 8921 is new.

GROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 8922. Discretion not to designate person as probate referee

8922. The court has authority and discretion not to designate a particular person as probate referee even though appointed by the State Controller to act as a probate referee for the county.

Comment. Section 8922 is new. The court may, but is not required to, designate probate referees in rotation from the panel for the county, or may use any other system of designation. The court may refuse to designate a particular person as probate referee if experience with that person is unsatisfactory, if experience with that person's office or staff (including office or staff shared with other probate referees) is generally unsatisfactory, or for other proper reasons in the court's discretion. Among the proper reasons for refusal to designate a particular person as probate referee is that the person is habitually unduly slow in making appraisals, due to overwork or otherwise. This example is given by way of illustration and is not intended as a comprehensive listing of reasons. Where there is no satisfactory probate referee for the county, or a sufficient number of satisfactory probate referees for the county is lacking, the court may designate a probate referee from the panel appointed for another county. Section 8920 (designation by court).

§ 8923. Disqualification of probate referee

8923. The court may not designate as probate referee any of the following persons:

(a) The court clerk.

(b) A partner or employee of the judge or commissioner who orders the designation.

(c) The spouse of the judge or commissioner who orders the designation.

(d) A person, or the spouse of a person, who is related within the third degree either (1) to the judge or commissioner who orders the designation or (2) to the spouse of the judge or commissioner who orders the designation.

Comment. Section 8923 restates former Section 606 without substantive change with the addition of references to a commissioner. The prohibition in subdivision (a) includes deputy clerks as well. Gov't Code § 24100.

Note. Mr. Collier notes that existing law refers to the clerk or "deputy clerks", and asks whether this language is not worth retaining. The Commission deleted the reference to deputies because the extent to which deputies and agents are affected by statutes that refer to the principals is a problem that runs throughout the law and is not limited to this section, and should be addressed by general principles.

§ 8924. Removal of probate referee

8924. (a) The court shall remove the designated probate referee in any of the following circumstances:

(1) The personal representative shows cause, including incompetence or undue delay in making the appraisal, that in the opinion of the court warrants removal of the probate referee. The showing shall be made at a hearing on petition of the personal representative. The personal representative shall mail notice of the hearing on the petition to the probate referee at least 15 days before the date set for the hearing.

(2) The personal representative shall have the right to remove the first probate referee who is designated by the court, ~~regardless of~~ cause. No cause need be shown for removal under this paragraph. The personal representative may exercise the right at any time before the personal representative delivers the inventory to the probate referee.

The personal representative shall exercise the right by filing an affidavit or declaration under penalty of perjury with the court and mailing a copy to the probate referee. Thereupon, the court shall remove the probate referee without any further act or proof.

(3) Any other cause provided by statute.

(b) Upon removal of the probate referee, the court shall designate another probate referee in the manner prescribed in Section 8920.

Comment. Section 8924 is new. Other causes provided by statute for removal of a probate referee include failure to make a timely appraisal or report. See Section 8941 (hearing and order). If experience with all the probate referees in a particular office is unsatisfactory, a referee from that office can be removed pursuant to Section 8924 or designation of a referee from that office can be avoided pursuant to Section 8922 (discretion not to designate a person as probate referee).

CROSS-REFERENCES

Definitions

Personal representative § 58
Mailed notice § 1215
Verification required § 1284

Article 3. Time For Probate Referee Appraisal

§ 8940. Time required for appraisal or status report

8940. (a) The probate referee shall promptly and with reasonable diligence appraise the property scheduled for appraisal by the probate referee in the inventory that the personal representative delivers to the referee.

(b) The probate referee shall, not later than 60 days after delivery of the inventory, do one of the following:

(1) Return the completed appraisal to the personal representative.

(2) Make a report of the status of the appraisal. The report shall show the reason why the property has not been appraised and an estimate of the time needed to complete the appraisal. The report shall be delivered to the personal representative and filed with the court.

Comment. Sections 8940 and 8941 are new. They are drawn from Section 1025.5 (time for closing estate). The personal representative must deliver an inventory together with supporting data to the probate referee. Section 8902 (appraisal by probate referee). Subdivision (a)

of Section 8940 requires the probate referee to act promptly and diligently in making the appraisal, which in the ordinary case should occur well before the 60-day period provided in subdivision (b) has run. The 60-day period provided in subdivision (b) should be viewed as an unusually long period and not as the norm for accomplishing the appraisal.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 8941. Hearing and order

8941. (a) The court shall, on petition of the personal representative or probate referee, or may, on the court's own motion, hear the report of the status of the appraisal. The court may issue a citation to compel the personal representative or the probate referee to attend the hearing.

(b) If the probate referee does not make the report of the status of the appraisal within the time required by this article or prescribed by the court, the court shall, on petition of the personal representative or may, on its own motion, cite the probate referee to appear before the court and show the reason why the property has not been appraised.

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

(1) That the appraisal be completed within a time that appears reasonable.

(2) That the probate referee be removed. Upon removal of the probate referee the court shall designate another probate referee in the manner prescribed in Section 8920.

(3) That the commission of the probate referee be reduced by an amount the court deems appropriate, regardless of whether the commission otherwise allowable under the provisions of Sections 8960 to 8964 would be reasonable compensation for the services rendered.

(4) ~~That the personal representative be removed.~~ That the personal representative deliver to the probate referee all information necessary to allow the probate referee to complete the appraisal. Failure to comply with such an order is grounds for removal of the personal representative.

(5) Such other orders as may be appropriate.

Comment. Sections 8940 and 8941 are new. They are drawn from Section 1025.5 (time for closing estate).

Reduction of the probate referee's commission under subdivision (c)(3) may be appropriate if the time taken was within the control of the referee and was not in the best interest of the estate or interested persons. In making such a determination, the court should take into account any previous action taken under this article as a result of the delay.

Removal of the personal representative under subdivision (c)(4) may be appropriate where the personal representative's failure to supply necessary information is hindering completion of the appraisal.

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

Verification required § 1284

Article 4. Commission and Expenses of Probate Referee

§ 8960. Payment of commission and expenses

8960. (a) The commission and expenses provided by this article as compensation for the services of the probate referee shall be paid from the estate ~~appraised by the referee~~.

(b) The probate referee may not withhold the appraisal until the commission and expenses are paid, but shall deliver the appraisal to the personal representative promptly upon completion.

(c) The commission and expenses of the probate referee are an expense of administration, entitled to the priority for payment provided by Section [11420], and shall be paid in the course of administration.

Comment. Subdivision (a) of Section 8960 restates a portion of the first sentence of the first paragraph of former Section 609 without substantive change.

Subdivisions (b) and (c) are new. Section 11420 provides the highest priority for payment of expenses of administration, which take precedence over all other debts.

§ 8961. Amount of commission and expenses

8961. As compensation for services the probate referee shall receive all of the following:

(a) A commission of one-tenth of one percent of the total value of the property for each estate appraised, subject to Sections 8962 and 8963. The commission shall be computed excluding property appraised by the personal representative pursuant to Section 8901 or by an independent expert pursuant to Section 8904.

(b) Actual and necessary expenses ~~allowed by the court~~ for each estate appraised. The referee shall file with the inventory a verified account of the referee's expenses.

Comment. Section 8961 restates a portion of the first sentence and the second sentence of the first paragraph, and the second paragraph, of former Section 609 without substantive change. The commission provided by this section is subject to a limitation for publicly traded stock pursuant to Section 8962 and a maximum and minimum pursuant to Section 8963. For court allowance of expenses, see Section (accounts).

CROSS-REFERENCES

Definitions

Property § 62

Note. Mr. Collier raises an issue that the Commission has heard before but declined to act on:

One area of complaint from clients and lawyers is the reappraisal fee which referees charge when they reappraise an asset for purposes of sale. For example, if a house is appraised at \$500,000 in the inventory but not sold for more than a year, a reappraisal is required. If it is sold for \$500,000, the referee will make a charge of \$500 for that reappraisal, even though in almost all instances the referee's appraisal is simply based on the letter from the attorney advising of the sale price.

§ 8962. Limitation on commission and expenses for publicly traded stock

8962. Notwithstanding Section 8961, the commission and expenses received by the probate referee for appraising securities listed as of the date of the decedent's death on the New York Stock Exchange, the American Stock Exchange, or the Pacific Stock Exchange shall not exceed two hundred fifty dollars (\$250) in the aggregate.

Comment. Section 8962 is new. It applies to stock listed on an exchange on the date of the decedent's death, whether or not the exchange was open or stock was traded on that date.

§ 8963. Maximum and minimum commissions

8963. (a) Notwithstanding Section 8961 and subject to subdivision (b), the commission of the probate referee shall in no event be less than seventy-five dollars (\$75) nor more than ten thousand dollars (\$10,000) for any estate appraised.

(b) Upon application of the probate referee and notice given as provided in Section 1220 and mailed to persons who have requested special notice, the court may allow a commission in excess of ten thousand dollars (\$10,000) if the court determines that the reasonable value of the referee's services exceeds that amount.

Comment. Section 8963 restates a portion of the first sentence of the first paragraph and the third paragraph of former Section 609 with the addition of the provision for notice in the case of an increase in commission.

Note. This section requires notice of hearing on an application for a commission in excess of the statutory maximum. Mr. Collier states that notice should include the personal representative and persons whose interest is affected. The effect of referring to Section 1220 in the statute is to require notice to the personal representative and to persons who have appeared in the probate proceeding. This may be adequate.

§ 8964. Division of commission between referees

8964. If more than one probate referee appraises or participates in the appraisal of property in the estate, each is entitled to the share of the commission agreed upon by the referees or, absent an agreement, that the court allows. In no case shall the total commission for all referees exceed the maximum commission that would be allowable for a single referee.

Comment. Section 8964 restates former Section 609.5 without substantive change. Reference to division of expenses is omitted, since each referee is entitled to actual and necessary expenses allowed by the court, regardless of the amount of the commission. It should be noted that the amount of the commission split by the referees may exceed the statutory maximum in a case where the court determines that the reasonable value of the services in the case exceeds the statutory amount. See Section 8963(b).

CROSS-REFERENCES

Definitions

Property § 62

COMMENTS TO REPEALED SECTIONS

CHAPTER 9. INVENTORY AND APPRAISEMENT

Probate Code § 600 (repealed)

Comment. The first portion of the first sentence of former Section 600 is restated in Section 8800 (inventory and appraisal required) without substantive change. See also Code Civ. Proc. § 166 (actions in chambers). The last portion of the first sentence is restated in Section ____ (change in ownership statement)

The second sentence is omitted because it no longer serves a useful purpose. The third and fourth sentences are restated in Section 8850 (contents of inventory) without substantive change. The fifth sentence is restated in Section 8802 (form of inventory and appraisal) without substantive change.

Probate Code § 601 (repealed)

Comment. Former Section 601 is restated in Section 8850 (contents of inventory), with the addition of a reference to quasi-community property.

Probate Code § 602 (repealed)

Comment. Former Section 602 is continued in Section 8407 (appointment of personal representative) without substantive change.

Probate Code § 603 (repealed)

Comment. Former Section 603 is restated in Section 8851 (discharge or devise of claims) without substantive change.

Probate Code § 604 (repealed)

Comment. Former Section 604 is restated in Section 8852 (oath of personal representative) without substantive change.

Probate Code § 605 (repealed)

Comment. The introductory portion of subdivision (a) of former Section 605 is superseded by Section 8900 (appraisal by personal representative, probate referee, and independent expert). Subdivision (a)(1) is superseded by Section 8901 (appraisal by personal representative). See also Sections 40 ("financial institution" defined) and 8800 (inventory and appraisal required).

Subdivision (a)(2) is restated in Sections 8902 (appraisal by probate referee), 8920 (designation by court), and Section 8903 (waiver of appraisal by probate referee) without substantive change.

Subdivision (a)(3) is restated in Section 8903(b)-(d) (waiver of appraisal by probate referee), with clarifying changes.

Subdivision (b) is superseded by Sections 450-453 (powers of probate referee). Subdivision (c) is restated in Section 8907 (fee for appraisal by personal representative) and expanded to preclude extra compensation not only for appraising cash items but also for appraising other property in the estate.

Subdivision (d) is omitted as unnecessary. See Section 6608. Subdivision (e) is omitted as unnecessary. See Sections 13103, 13152(b), 13200(c), and 13658.

Probate Code § 606 (repealed)

Comment. Former Section 606 is restated in Section 8923 (disqualification of probate referee) without substantive change.

Probate Code § 607 (repealed)

Comment. Former Section 607 is omitted; the procedure provided in the section was ignored in practice.

Probate Code § 608 (repealed)

Comment. Former Section 608 is restated in Section 8905 (verification of appraisal), with the addition of an independent appraisal expert.

Probate Code § 608.5 (repealed)

Comment. Former Section 608.5 is restated in Section 8906 (objection to inventory and appraisal), with the clarification that the procedure applies to the inventory as well as the appraisal.

Probate Code § 609 (repealed)

Comment. The first portion of the first sentence of the first paragraph of former Section 609 is restated in Sections 8960 (payment of commission and expenses) and 8961 (amount of commission and expenses) without substantive change. The last portion of the first sentence is restated in Section 8963 (maximum and minimum commissions) without substantive change. The second sentence is restated in Section 8961 (amount of commission and expenses) without substantive change. The third sentence is omitted because it was an obsolete relic from the inheritance tax function of probate referees.

The second paragraph is restated in Section 8961 (amount of commission and expenses) without substantive change. The third paragraph is restated in Section 8963 (maximum and minimum commissions), with the addition of a provision for notice.

Probate Code § 609.5 (repealed)

Comment. Former Section 609.5 is restated in Section 8964 (division of commission between referees) without substantive change.

Probate Code § 610 (repealed)

Comment. Former Section 610 is restated in Section 8804 (failure to timely file inventory and appraisal), which makes clear that failure to timely file the appraisal is included within the statute. Liability of the personal representative and of the sureties on the bond is joint and several. See Code Civ. Proc. § 996.410 et seq.

Probate Code § 611 (repealed)

Comment. Former Section 611 is restated in Sections 8801 (supplemental inventory and appraisal) and 8804 (failure to timely file inventory and appraisal) without substantive change.

Probate Code § 612 (repealed)

Comment. Former Section 612 is restated in Section 8874 (wrongful taking, concealment, or disposition of property in estate) with the addition of a bad faith limitation.

Probate Code § 613 (repealed)

Comment. The first two sentences of former Section 613 are restated in Section 8870 (subpoena to appear and be examined concerning decedent's property), substituting a petition for a complaint and a subpoena for a citation. The third sentence is superseded by Section 8872 (examination).

Probate Code § 614 (repealed)

Comment. The first sentence of former Section 614 is superseded by Section 8870(c) (subpoena to appear and be examined concerning decedent's property). The third sentence is restated in Section 8871 (interrogatories) without substantive change. The second and fourth sentences are restated in Section 8872 (examination).

Probate Code § 615 (repealed)

Comment. Former Section 615 is restated in Section 8873 (subpoena to appear and account), substituting a petition for a complaint.

CHAPTER 23. PROBATE REFEREES

Probate Code § 1300 (repealed)

Comment. Former Section 1300 is omitted; it no longer serves a useful purpose.

Probate Code § 1301 (repealed)

Comment. Subdivision (a) of former Section 1301 is restated in Section 451 (compelling appearance), with the addition of the reference to a guardian, conservator, or other fiduciary, since the probate referee may appraise estates other than decedents' estates. Subdivision (b) is restated in Section 450 (general powers) without substantive change.

Probate Code § 1302 (repealed)

Comment. Former Section 1302 is restated in Section 451 (compelling appearance) without substantive change.

Probate Code § 1303 (repealed)

Comment. Former Section 1303 is restated in Section 452 (examination, testimony, and production of documents), with the addition of the reference to production of documents.

Probate Code § 1304 (repealed)

Comment. Former Section 1304 is superseded by Section 453 (protective orders and enforcement).

Probate Code § 1305 (repealed)

Comment. The first sentence of the first paragraph of former Section 1305 is restated in Section 400(a) (appointment by Controller) and the first sentence of Section 401(a) (qualifications for appointment) without substantive change. The second sentence is restated in Section 401(b) (qualifications for appointment) without change. The third sentence is superseded by Section 400(b) (appointment by Controller).

The first sentence of the second paragraph is omitted; it is a transitional provision that no longer serves a function. The second sentence is restated in the first sentence of Section 403(a) (term of office of probate referee) without substantive change. The third sentence is restated in Section 403(b) (term of office of probate referee) without substantive change. The fourth sentence is omitted; it is a transitional provision that no longer serves a function. The fifth sentence is restated in the second sentence of Section 401(a) (qualifications for appointment) without substantive change. The sixth sentence is restated in the second sentence of Section 403(a) (term of office of probate referee) without substantive change.

Probate Code § 1306 (repealed)

Comment. Former Section 1306 is restated in Section 402 (qualification examination) without substantive change.

Probate Code § 1307 (repealed)

Comment. Former Section 1307 is restated in Section 404(a) (standards for probate referee), making adoption of standards mandatory rather than permissive. This codifies existing practice.

Probate Code § 1308 (repealed)

Comment. Subdivision (a) of former Section 1308 is restated in Section 404(b) (standards for probate referee) without substantive change. Subdivision (b) is omitted; the authority of the Controller to remove 10% of the probate referees in a county has not been used in modern times. Moreover, in a large county the terms of the probate referees are staggered so that the Controller will be able to replace probate referees continuously. See Section 403(b).

Probate Code § 1309 (repealed)

Comment. Former Section 1309 is restated in Section 405 (termination of authority) without substantive change.

Probate Code § 1310 (repealed)

Comment. Former Section 1310 is omitted; it relates to illegal activities in connection with the inheritance tax, which has been abolished.

Probate Code § 1311 (repealed)

Comment. Former Section 1311 is restated in Section 406(a)-(b) (political activities of probate referee) without substantive change.

Probate Code § 1312 (repealed)

Comment. Former Section 1312 (with the exception of the last sentence) is restated in Section 406(d) (political activities of probate referee). The last sentence is omitted; it is a transitional provision that no longer serves a function.

Probate Code § 1313 (repealed)

Comment. Former Section 1313 is omitted. For the report of the California Law Revision Commission concerning administration of estates of decedents, see _____.