

Memorandum 87-96

Subject: Study L-1046 - Nondomiciliary Decedents (Approval of Recommendation for Printing)

Attached to this memorandum is the *Recommendation Relating to Nondomiciliary Decedents*, which implements decisions made at the October meeting. This recommendation is submitted for approval to print, subject to any additional revisions made at the November meeting.

At the November meeting, we plan to consider only those sections that have been revised or that are new, specifically Probate Code Sections 12513, 12520-12523, 12541, 12542, 12572, and 12573. The following conforming revisions should also be reviewed: Financial Code Section 6950; Probate Code Sections 13051, 13103, 13111, and 13112.

Respectfully submitted,

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Staff Draft

Recommendation

relating to

NONDOMICILIARY DECEDENTS

Background

Primary administration of a decedent's estate is at the decedent's domicile. If a nondomiciliary decedent leaves property in California, ancillary administration (secondary probate) may be necessary in California to protect local creditors or to transfer title to real property.¹ Ancillary administration is time-consuming and expensive.²

California has a number of procedures that may be used as an alternative to ancillary administration:

(1) Close relatives of the decedent who are entitled to the decedent's personal property under the will or under the intestate succession laws of the decedent's domicile may use California's summary procedure for collection of personal property by affidavit.³

(2) If the decedent's estate is worth \$20,000 or less, the decedent's surviving spouse or minor children may use California's small estate set-aside provisions to collect the decedent's California real and personal property, whether or not there is an inconsistent will.⁴

1. See Durham, *Ancillary Administration*, in 3 California Decedent Estate Practice §§ 33.3-33.4 (Cal. Cont. Ed. Bar 1987); 2 A. Bowman, *Ogden's Revised California Real Property Law* § 29.27, at 1449 (Cal. Cont. Ed. Bar 1975).

2. Durham, *supra* note 1, §§ 33.16-33.17.

3. Prob. Code §§ 13100-13115; see Durham, *supra* note 1, § 33.17.

4. Prob. Code §§ 6600-6614; see Durham, *supra* note 1, § 33.17.

(3) The decedent's surviving spouse may use California's summary procedure for collecting salary or other compensation due to the decedent for personal services, and for collecting real and property passing to the surviving spouse by will or intestate succession.⁵

(4) The personal representative appointed in the nondomiciliary decedent's domicile ("foreign personal representative") may come into California, collect the decedent's personal property and debts owed to the decedent, and remove the property from California without court proceedings in California, if the following steps are followed: The foreign personal representative publishes a notice to creditors, waits three months for possible objections and, if there are no objections, collects the property by showing proof of appointment and publication and presenting an affidavit of relevant facts.⁶

Recommendations

Recognition of Foreign Administration Proceedings

Existing law treats orders admitting wills to probate in sister states the same as orders in foreign nations.⁷ An order admitting a will to probate in another jurisdiction is recognized in this state if the California court finds (1) that all interested parties were given notice and an opportunity for contest, (2) that the order is final and not subject to revocation, (3) that the order is based on a finding that the decedent was domiciled at death in the other jurisdiction, and (4) that the will was valid according to the law of nondomiciliary decedent's domicile or of California. In general, the first three requirements are conditions to granting full faith and credit to the judgment of a sister state as required by the United States

5. Prob. Code §§ 13600-13606.

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

7. Prob. Code § 362.

Constitution.⁸ The fourth requirement, which calls for reconsidering the validity of the nondomiciliary decedent's will, however, is not appropriate where a sister state has already determined its validity.

Sister State Domiciliaries. The proposed law grants automatic recognition to a sister state order admitting a nondomiciliary's will to probate, unless an opponent of the will shows one of the following: (1) that the sister state order is not based on a finding that the decedent was domiciled in the sister state at the time of death, (2) that all interested parties were not given notice and an opportunity for contest in the sister state proceedings, or (3) that the determination in the sister state is not final. This approach comports with the substance of the law governing full faith and credit.

Foreign Nation Domiciliaries. The full faith and credit clause does not apply to judgments of foreign nations, but states have typically recognized such judgments on the same grounds as sister state judgments.⁹ This has been the policy of California since 1851.¹⁰ The proposed law retains this aspect of existing law, but also gives the court discretion to deny recognition if the order admitting the will in the foreign nation was made under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law. This discretion is drawn from the statute applicable to recognition of money judgments rendered in

8. U.S. Const. art. IV, § 1. The constitutional provision applies by its terms only to states, but implementing legislation extends the coverage of the full faith and credit clause to territories and possessions of the United States. 28 U.S.C. § 1738 (1982). See generally 3 B. Witkin, *Summary of California Law Constitutional Law* §§ 16, at 3260, § 19-22, at 3262-66 (8th ed. 1974); E. Scoles & P. Hay, *Conflict of Laws* §§ 22.1-22.4 (1982).

9. See Smit, *International Res Judicata and Collateral Estoppel in the United States*, 9 UCLA L. Rev. 44, 45-56 (1962); Note, *Recognition of Foreign Country Judgments--A Case for Federalization*, 22 Tex. Int'l L. Rev. 331, 334-42 (1987). Courts in the United States have typically considered the following factors: (1) finality and conclusiveness, (2) jurisdiction, (3) claims of fraud, (4) notice and opportunity to be heard, (5) impartiality of the foreign judicial system, (6) public policy, (7) reciprocity. *Id.* at 336-42.

10. Code Civ. Proc. § 1324, as enacted by 1851 Cal. Stat. ch. 124, § 29.

foreign nations.¹¹ In the case of a foreign nation order, the burden is on the proponent of the will to show (1) that the decedent was domiciled in the foreign nation, (2) that all interested parties were given notice and an opportunity for contest in the proceedings in the foreign nation, and (3) that the determination in the foreign nation is final.

Affidavit Procedure for Collection of Small Estates

The existing summary procedure for collection of accounts in a financial institution by a foreign personal representative requires publication of notice to creditors and beneficiaries and a 30-day wait for objections before the funds may be released.¹² In the case of a small account (an account of \$1,000 or less) the cost of publication is unduly great in relation to the size of the account. In the case of a large account the 30-day wait is unreasonably short when compared with the normal four-month creditor claim period.

The proposed law abandons these procedures in favor of the affidavit procedure for collection of personal property of small estates without administration.¹³ Under this procedure, a sister state personal representative would be able to bring an action to compel the holder of property to pay or deliver it to the sister state personal representative¹⁴ without the need to first petition for

11. Code Civ. Proc. § 1713.4(a)(1) (Uniform Foreign-Money Judgments Recognition Act). See also Smit, *International Res Judicata and Collateral Estoppel in the United States*, 9 UCLA L. Rev. 44, 46-47 (1962) (suggesting that due process may prevent recognition of a foreign nation judgment in the United States if basic due process standards are not satisfied).

12. Prob. Code § 1043a.

13. See Prob. Code §§ 13100-13115. For this purpose, the sister state personal representative would be treated in the same manner as a trustee, guardian, or conservator pursuant to Probate Code Section 13051. The procedure would not be available under the proposed law to a foreign nation personal representative.

14. See Prob. Code § 13105. As provided in Section 13105, the sister state personal representative would be entitled to attorney's fees where the holder of property has acted unreasonably in refusing to pay, deliver, or transfer the property.

ancillary administration. Making this procedure available to the sister state personal representative puts the personal representative on essentially the same footing as a successor under the nondomiciliary decedent's will.¹⁵ The sister state personal representative would not be liable to creditors or other successors, however, if the property collected by affidavit is turned over to the nondomiciliary's estate for administration in the sister state.¹⁶

With the exception of this affidavit procedure, the proposed law retains the rule that a sister state or foreign nation personal representative who wants to bring suit in California to collect debts owed the decedent or other property of the decedent must first be appointed as a local personal representative in California ancillary proceedings.¹⁷

Other Technical and Substantive Revisions

The proposed law deletes the requirement that the State Controller must consent to removal of the property from California in the case of informal collection of the decedent's personal property.¹⁸ The repeal of the California inheritance tax¹⁹ makes this provision unnecessary.

15. See Prob. Code § 13006 ("successor of the decedent" defined).

16. See Prob. Code §§ 13109 (liability of transferee by affidavit to unsecured creditors), 13110 (liability of transferee to heir or devisee having superior rights).

17. Under existing law, a foreign personal representative who has not also been appointed in California ordinarily may not sue in California. Code. Civ. Proc. § 1913; 7 B. Witkin, *Summary of California Law Wills and Probate* § 58, at 5581 (8th ed. 1974); 4 B. Witkin, *Summary of California Law Pleading* § 98, at 134 (3d ed. 1985). Appointment of the foreign personal representative in a California ancillary proceeding confers the same powers the personal representative would have in a California domiciliary proceeding. Durham, *supra* note 1, § 33.41. Such powers include the power to maintain actions or proceedings in California. 7 B. Witkin, *supra*, § 337, at 5813; see Prob. Code §§ 573-577.

18. Prob. Code § 1043.

19. Rev. & Tax. Code § 13301.

The proposed law makes clear that a foreign personal representative who does specified acts in California thereby submits to the jurisdiction of the California courts.²⁰ This is consistent with general civil practice.²¹

20. This provision is drawn from Sections 4-301 and 4-302 of the Uniform Probate Code (1982).

21. Code Civ. Proc. § 410.10.

PART 13. NONDOMICILIARY DECEDENT

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CONFORMING REVISIONS AND REPEALS

PART 13. NONDOMICILIARY DECEDENT

CHAPTER 1. DEFINITIONS

§ 12500. Application of definitions

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

Comment. Section 12500 is comparable to Section 20.

§ 12501. Ancillary administration

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

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

CROSS-REFERENCES

Definitions

Nondomiciliary decedent § 12505

§ 12502. Authenticated copy

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

~~Comment. Section 12502 is drawn from part of the first sentence of former Section 361. It is intended for drafting convenience.~~

Note. See the Note following Section 12521.

§ 12502. Foreign nation

12502. "Foreign nation" means a jurisdiction other than a state of the United States.

Comment. Section 12502 is new. It is intended for drafting convenience. "State" is defined in Section 74 as "any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States." See also 28 U.S.C. § 1738 (1982) (implementing the full faith and credit clause of the U.S. Constitution).

CROSS-REFERENCES

Definitions

State § 74

§ 12503. Foreign nation personal representative

12503. "Foreign nation personal representative" means a personal representative appointed in a jurisdiction other than a state of the United States.

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

CROSS-REFERENCES

Definitions

Personal representative § 58

State § 74

§ 12504. Local personal representative

12504. "Local personal representative" means a nondomiciliary decedent's personal representative appointed in this state.

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

CROSS-REFERENCES

Definitions

Nondomiciliary decedent § 12505

Personal representative § 58

§ 12505. Nondomiciliary decedent

12505. "Nondomiciliary decedent" means a person who dies domiciled in a sister state or foreign nation.

Comment. Section 12505 is new. It is intended for drafting convenience. The term "nondomiciliary decedent" is not limited to a decedent who dies domiciled in a sister state (defined in Section 12506), but also includes a decedent who dies domiciled in a foreign nation (defined in Section 12502). However, some provisions of this part apply only to nondomiciliary decedents who die domiciled in a sister state. See Sections 12540-12541 (distribution of property to foreign personal representative) and 12570-12572 (collection of personal property of small estate without ancillary administration).

CROSS-REFERENCES

Definitions

Foreign nation § 12502

Sister state § 12506

§ 12506. Sister state

12506. "Sister state" means a state other than this state.

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

CROSS-REFERENCES

Definitions
State § 74

§ 12507. Sister state personal representative

12507. "Sister state personal representative" means a personal representative appointed in a sister state

Comment. Section 12507 is new. It is intended for drafting convenience.

CROSS-REFERENCES

Definitions
Personal representative § 58
Sister state § 12506

CHAPTER 2. ANCILLARY ADMINISTRATION

Article 1. Opening Ancillary Administration

§ 12510. Commencement of proceedings

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

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

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

CROSS-REFERENCES

Definitions
Ancillary administration § 12501
Interested person § 48
Local personal representative § 12504
Nondomiciliary decedent § 12505
Will § 88

§ 12511. Venue in case of nondomiciliary decedent

12511. The proper county for ancillary administration under this chapter is the county determined pursuant to Section 7052.

Comment. Section 12511 incorporates the nondomiciliary venue provision of Section 7052 and restates the last part of former Probate

Code Section 360 without substantive change. See also Section 7050 (jurisdiction and authority of court or judge).

CROSS-REFERENCES

Definitions

Ancillary administration § 12501

§ 12512. Procedure

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

Comment. Section 12512 restates the last sentence of former Section 361 without substantive change. See also Section 12530 (application of general provisions).

CROSS-REFERENCES

Definitions

Ancillary administration § 12501

Personal representative § 58

Will § 88

§ 12513. Preference for appointment as local personal representative

12513. If the decedent dies while domiciled in a sister state or foreign nation, a personal representative appointed by a court of the decedent's domicile has priority over all other persons except where the decedent's will nominates a different person to be the personal representative in this state. The sister state or foreign nation personal representative may nominate another person as personal representative and the nominee has the same priority as the sister state or foreign nation personal representative.

Comment. Section 12513 is a new provision drawn from Section 3-203 of the Uniform Probate Code (1982). This section deals only with priority; the sister state or foreign personal representative must still qualify for appointment pursuant to Section 8400 *et seq.*

CROSS-REFERENCES

Definitions

Foreign nation § 12502

Foreign nation personal representative § 12503

Personal representative § 58

Sister state § 12506

Sister state personal representative § 12507

Note. This section implements a decision made at the October meeting.

Article 2. Probate of Nondomiciliary Decedent's Will
Admitted to Probate in Sister State or Foreign Nation

§ 12520. Applicable procedure

12520. (a) If a nondomiciliary decedent's will has been admitted to probate in a sister state or foreign nation and satisfies the requirements of this article, probate of the will in ancillary administration is governed by this article.

(b) If a nondomiciliary decedent's will has been admitted to probate in a sister state or foreign nation, but does not satisfy the requirements of this article, ~~probate of the will~~ the will may be probated in ancillary administration ~~is governed by~~ pursuant to Part 2 (commencing with Section 8000).

Comment. Subdivision (a) of Section 12520 makes clear that the procedure of this article ~~is limited to situations where the will admitted to probate by an order that is entitled to recognition under this article. See Sections 12522 (sister state), 12523 (foreign nation).~~ applies only where a sister state or foreign nation order admitting a will to probate satisfies the requirements of Sections 12522 or 12523. As provided in subdivision (b), makes the general provisions concerning opening administration available apply where this article is not satisfied the sister state or foreign nation order is not entitled to recognition. See Section 8000 et seq.

CROSS-REFERENCES

Definitions

Ancillary administration § 12501
Nondomiciliary decedent § 12505
Will § 88

Note. This section has been revised as indicated to implement a decision at the October meeting.

§ 12521. Petition for probate of nondomiciliary decedent's will

12521. (a) A petition for probate of a nondomiciliary decedent's will under this article shall include both of the following:

(1) The will or an authenticated copy of the will.

(2) An authenticated copy of the order admitting the will to probate in the sister state or foreign nation or other evidence of the establishment or proof of the will in accordance with the law of the sister state or foreign nation.

(b) As used in this section, "authenticated copy" means a copy that satisfies the requirements of Article 2 (commencing with Section 1530) of Chapter 2 of Division 11 of the Evidence Code.

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

GROSS-REFERENCES

Definitions

Foreign nation § 12502
Nondomiciliary decedent § 12505
Sister state § 12506
Will § 88

Note. An earlier draft defined "authenticated copy" for drafting convenience since the term was used in more than one section. Later revisions have resulted in authentication being relevant only in Section 12521. Accordingly, the staff has dispensed with the definition and included its substance in subdivision (b) as indicated.

§ 12522. Admission of will admitted to probate in sister state

12522. If a will of a nondomiciliary decedent was admitted to probate, or established or proved, in accordance with the laws of a sister state, the court shall admit the will to probate in this state, and may not permit a contest or revocation of probate, ~~if it appears from the order admitting the will to probate in the sister state, or otherwise appears, that all~~ unless one or more of the following are satisfied is shown:

(a) The determination in the sister state is not based on a finding that at the time of death the decedent was domiciled in the sister state.

(b) All interested parties were not given notice and an opportunity for contest in the proceedings in the sister state.

(c) The determination in the sister state is not final ~~and is not subject to revocation~~.

Comment. Section 12522 supersedes former Section 362 to the extent that it applied to wills admitted to probate in sister states. Section 12522 presumes a sister state order admitting a will to probate to be valid. The burden is on an opponent of the will to show that the order is not entitled to full faith and credit in this state. The provision of former Section 362 that the will must be valid under the law of the testator's domicile at death or under the law of this state is not continued in Section 12522. For rules governing the validity of a will first offered for probate in this state, see Section 6113.

GROSS-REFERENCES

Definitions

Nondomiciliary decedent § 12505

Sister state § 12506

Will § 88

Note. This section has been revised as indicated to implement a decision at the October meeting.

§ 12523. Admission of will admitted to probate in foreign nation

12523. (a) Except as provided in subdivision (b), if a will of a nondomiciliary decedent was admitted to probate, or established or proved, in accordance with the laws of a foreign nation, the court shall admit the will to probate in this state, and may not permit a contest or revocation of probate, if it appears from the order admitting the will to probate in the foreign nation, or otherwise appears, that all of the following conditions are satisfied:

(1) The determination in the foreign nation is based on a finding that at the time of death the decedent was domiciled in the foreign nation.

(2) All interested parties were given notice and an opportunity for contest in the proceedings in the foreign nation.

(3) The determination in the foreign nation is final ~~and is not subject to revocation.~~

(b) The court may refuse to admit the will, even though it is shown to satisfy the conditions provided in subdivision (a), where the order admitting the will was made under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law.

Comment. Section 12523 supersedes former Section 362 to the extent that it applied to wills admitted to probate in foreign nations. Under subdivision (a), the proponent of the will admitted in the foreign nation has the burden of showing that the specified conditions are satisfied. The provision of former Section 362 that the will must be valid under the law of the testator's domicile at death or under the law of this state is not continued in Section 12523. For rules governing the validity of a will first offered for probate in this state, see Section 6113.

Subdivision (b) is a new provision drawn from the Uniform Foreign-Money Judgments Recognition Act. See Code Civ. Proc. § 1713.4(a)(1) (recognition of foreign nation money judgments).

CROSS-REFERENCES

Definitions

Foreign nation § 12502
Nondomiciliary decedent § 12505
Will § 88

Note. This section has been revised as indicated to implement a decision at the October meeting.

§ 12524. Effect of admission of nondomiciliary decedent's will

12524. A nondomiciliary decedent's will admitted to probate under this article has the same force and effect as the will of a person who dies while domiciled in this state that is admitted to probate in this state.

Comment. Section 12524 restates part of former Section 362 without substantive change.

CROSS-REFERENCES

Definitions

Nondomiciliary decedent § 12505
Will § 88

§ 12525. Appointment of personal representative

12525. If a nondomiciliary decedent's will is admitted to probate under this article, a personal representative shall be appointed to execute the will.

Comment. Section 12525 supersedes the last clause of former Section 362.

CROSS-REFERENCES

Definitions

Nondomiciliary decedent § 12505
Personal representative § 58
Will § 88

Article 3. Application of General Provisions

§ 12530. Application of general provisions

12530. Except to the extent otherwise provided in this chapter, ancillary administration of a decedent's estate is subject to all other provisions of this division, including but not limited to opening estate administration, inventory and appraisal, creditor claims, estate management, independent administration, compensation, accounts, payment of debts, distribution, and closing estate administration.

Comment. Section 12530 makes clear that the general provisions relating to estate administration apply to administration by a foreign personal representative under this chapter, except as otherwise provided. For exceptions, see, e.g., Section 12540 (conditions for distribution to sister state personal representative).

Article 4. Distribution of Property to
Sister State Personal Representative

§ 12540. Conditions for distribution to sister state personal representative

12540. (a) If a person dies while domiciled in a sister state, the court in ancillary administration may make an order for preliminary or final distribution of all or part of the decedent's personal property in this state to the sister state personal representative if distribution is in the best interest of the estate or interested persons.

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

Comment. Section 12540 supersedes parts of former Section 1000, part of the first sentence of former Section 1040, the last sentence of former Section 1041, and former Section 1042. This procedure applies only where the nondomiciliary decedent has died while domiciled in a sister state, not to person who was domiciled in a foreign nation. Consequently, distribution may be made to a sister state personal representative under this article, not to a foreign nation personal representative.

Under Section 12540 a petition may be made by the local personal representative, a beneficiary, or other interested person. See Section 11600 (petition for distribution). Notice of the hearing on the petition is given in the manner provided in Section 1220. Any interested person may oppose the petition. See Section 11602 (opposition to petition). Preliminary distribution may not be ordered unless two months have elapsed and distribution may be made without loss to creditors or injury to the estate or any interested person. See Sections 11620 (time for petition) and 11621 (order for distribution). Final distribution may not be ordered unless the estate is in a condition to be closed. See Section 11640 (petition and order). Distribution in compliance with the court order entitles the local personal representative to a full discharge, and when the order becomes final it is conclusive against all interested persons. Sections 11753 (filing receipts and discharge) and 11605 (conclusiveness of order).

It should be noted that distribution may be made to a sister state personal representative in ancillary administration only upon a court determination that the distribution is in the best interest of the estate or interested persons. In other cases, distribution is made

directly to the beneficiaries. See *In re Estate of Hudson*, 63 Cal. 454 (1883); Durham, *Ancillary Administration*, in 3 California Decedent Estate Practice § 33.50 (Cal. Cont. Ed. Bar 1987).

CROSS-REFERENCES

Definitions

- Ancillary administration § 12501
- Interested person § 48
- Nondomiciliary decedent § 12505
- Sister state § 12506
- Sister state personal representative § 12507

§ 12541. Distribution of real property or its proceeds

~~12541. The court may direct that real property in the nondomiciliary decedent's estate be distributed to the beneficiaries~~
or, If necessary to make distribution pursuant to this article, the court may direct that real property in the nondomiciliary decedent's estate be sold and the proceeds distributed to the sister state personal representative. The sale shall be made in the same manner as other sales of real property of a decedent.

Comment. Section 12541 supersedes the last part of the first sentence and all of the second sentence of former Section 1040. This section is an exception to the normal where distribution is made to the beneficiaries. See Section 12530 (application of general provisions, including distribution rules). Section 12541 broadens the former provisions so that the court may order a sale of real property of the estate in the course of either preliminary or final distribution.

CROSS-REFERENCES

Definitions

- Nondomiciliary decedent § 12505
- Real property § 68
- Sister state personal representative § 12507
- Sales of real property of decedents generally §§ 10050-10142

Note. This section has been revised as indicated to implement a decision at the October meeting. The staff has concluded that the introductory language shown in *strikeout* is unneeded, as explained in the comment, and we recommend its deletion.

§ 12542. Distribution where estate in sister state is insolvent

12542. If the nondomiciliary decedent's estate in the sister state where the decedent was domiciled is insolvent, distribution may be made only to the sister state personal representative and not to the beneficiaries.

Comment. Section 12542 is new.

CROSS-REFERENCES

Definitions

Beneficiary § 24

Nondomiciliary decedent § 12505

Sister state personal representative § 12507

Note. This section implements a decision made at the October meeting. Is it appropriate to apply this section where the estate in the sister state is insolvent, or should the determination be based on the decedent's estate, wherever located?

CHAPTER 3. COLLECTION OF PERSONAL PROPERTY OF SMALL ESTATE BY SISTER STATE PERSONAL REPRESENTATIVE WITHOUT ANCILLARY ADMINISTRATION

§ 12570. Collection of personal property of small estate without ancillary administration

12570. If a nondomiciliary decedent's property in this state satisfies the requirements of Section 13100, a sister state personal representative may, without petitioning for ancillary administration, use the affidavit procedure provided by Chapter 3 (commencing with Section 13100) of Part 1 of Division 8 to collect personal property of the decedent.

Comment. Section 12570 permits a sister state personal representative to collect personal property of a small estate by using the affidavit procedure set out in Sections 13100-13115. The sister state personal representative is a successor in interest for this purpose. See Section 13051(d). The affidavit procedure for real property (Sections 13200-13209) is not available to the sister state personal representative. Where the estate in California does not qualify for collection under Section 13100 or where real property is involved, the sister state personal representative must use other procedures. This simplified procedure applies where the value of the property in this state does not exceed \$60,000 (as determined pursuant to Sections 13050 and 13100). Transfer to the sister state personal representative under this procedure results in a transfer for the purposes of administration, whereas the general affidavit procedure results in transfer to the ultimate beneficiaries. This procedure is not available to foreign nation personal representatives. See Section 12507 ("sister state personal representative" defined).

CROSS-REFERENCES

Definitions

Ancillary administration § 12501

Nondomiciliary decedent § 12505

Sister state personal representative § 12507

§ 12571. Transfer of property to sister state personal representative

12571. The effect of payment, delivery, or transfer of personal property to the sister state personal representative pursuant to this chapter, and the effect of failure to do so, are governed by Chapter 3 (commencing with Section 13100) of Part 1 of Division 8.

Comment. Section 12571 makes clear that the rules concerning the effect of compliance with the affidavit procedure or refusal to comply are the same where the procedure is used by a sister state personal representative.

CROSS-REFERENCES

Definitions

Sister state personal representative § 12507

§ 12572. Action by sister state personal representative to compel payment, delivery, or transfer by holder

12572. The sister state personal representative may bring an action against a holder of the decedent's property, and may be awarded attorney's fees, as provided in subdivision (b) of Section 13105.

Comment. Section 12572 provides an exception to the general rule that a sister state personal representative may not bring an action in this state. See Code Civ. Proc. § 1913. Where property has been transferred to a successor by affidavit, the sister state personal representative does not have the power to bring an action under Section 13111(d) unless the sister state personal representative is appointed as the local personal representative in ancillary administration.

CROSS-REFERENCES

Definitions

Holder of the decedent's property § 13002

Sister state personal representative § 12507

Note. *The comment has been revised as indicated to clarify the role of the sister state personal representative in the context of the affidavit procedure. Section 13111(d) permits the personal representative to bring an action for restitution of property taken on affidavit. Since the sister state personal representative is in the shoes of beneficiaries for the purpose of using the affidavit procedure to collect personal property of a small estate, it follows that the sister state personal representative should not have the power to sue for restitution unless probate is commenced in California. Then the sister state personal representative would have the powers of a domestic personal representative, including the power to sue for restitution to the estate.*

§ 12573. Liability of sister state personal representative taking by affidavit

12573. A sister state personal representative who takes property by affidavit under this chapter is not liable as a person to whom payment, delivery, or transfer of the decedent's property is made under Sections 13109 or 13110 to the extent that the sister state personal representative restores the property to the nondomiciliary decedent's estate in the sister state in compliance with Section 13111.

Comment. Section 12573 provides a special rule governing the liability of a sister state personal representative who takes personal property by an affidavit under this chapter. Under this section, the sister state personal representative is liable to creditors under Section 13110 or to heirs or devisees under Section 13111 only if the property collected by affidavit is not put in the estate for purposes of administration in the sister state.

Note. This is a new provision.

CHAPTER 4. JURISDICTION OVER FOREIGN PERSONAL REPRESENTATIVE

§ 12590. Jurisdiction by act of foreign personal representative

12590. A sister state personal representative or foreign nation personal representative submits personally in a representative capacity to the jurisdiction of the courts of this state in any proceeding relating to the estate by any of the following actions:

(a) Filing a petition for ancillary administration.

(b) Receiving money or other personal property pursuant to Chapter 3 (commencing with Section 12570). Jurisdiction under this subdivision is limited to the amount of money and the value of personal property received.

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

Comment. Section 12590 is new and is drawn from Section 4-301 of the Uniform Probate Code (1982).

CROSS-REFERENCES

Definitions

Ancillary administration § 12501

Foreign nation personal representative § 12503

Personal representative § 58

Sister state personal representative § 12507

§ 12591. Jurisdiction by act of decedent

12591. A sister state personal representative or foreign nation personal representative is subject to the jurisdiction of the courts of this state in a representative capacity to the same extent that the nondomiciliary decedent was subject to jurisdiction at the time of death.

Comment. Section 12591 is new. It is drawn from Section 4-302 of the Uniform Probate Code (1982) and is consistent with Section 410.10 of the Code of Civil Procedure and with case law. See Mitsui Manufacturers Bank v. Tucker, 152 Cal. App. 3d 428, 199 Cal. Rptr. 517 (1984). Nothing in this section excuses a creditor from compliance with any applicable creditor claim requirements in ancillary administration proceedings.

GROSS-REFERENCES

Definitions

Foreign nation personal representative § 12503
Nondomiciliary decedent § 12505
Sister state personal representative § 12507

CONFORMING REVISIONS AND REPEALS

Code of Civil Procedure § 1913 (amended). Sister state judicial records

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

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

Comment. Section 1913 is amended to recognize that a specific statute may provide for limited authority in California of a sister state personal representative. See Prob. Code §§ 12570-12572 (collection of personal property of small estate without ancillary administration).

Financial Code § 6950 (amended). Payment of nondomiciliary's account to personal representative; tax exemption

6950. (a) When a savings account is held in any association or federal association by a person who dies while ~~a resident of another state or country~~ domiciled in a sister state or foreign nation, the

account, together with additions and interest, or any part of it, shall be exempt from any taxation otherwise imposed by this state and may.

(b) When a savings account is held in any association or federal association by a person who dies while domiciled in a sister state, the account, together with additions and interest, or any part of it, shall be paid to the administrator or executor appointed in the state or country where the account holder resided at the time of death sister state personal representative or other claimant under the Probate Code, provided the administrator, executor personal representative or other claimant has furnished the association or federal association with all of the documentation required under applicable provisions of the Probate Code and evidence of ownership of the account, if any, issued under Section 6652.

~~(b)~~ (c) Upon payment or delivery to the ~~administrator, executor,~~ personal representative or other claimant after receipt of the documents specified in subdivision ~~(a)~~ (b), the association or federal association is released and discharged to the same extent as if the payment or delivery had been made to a legally qualified ~~resident executor or administrator~~ local personal representative, and is not required to account for the application or disposition of the property.

Comment. Section 6950 is revised to conform to the procedures and terminology of the Probate Code. See Prob. Code §§ 58 (personal representative), 12502 (foreign nation), 12504 (local personal representative), 12506 (sister state), 12507 (sister state personal representative). The authority of a foreign nation personal representative to collect property under this section has been deleted because a foreign nation personal representative is without power to act in an official capacity in California unless appointed in this state. See Prob. Code § 12520 and the Comment thereto.

Note. *This section was not included in the draft of the recommendation reviewed at the October meeting. The staff has preserved the tax exemption in provided in subdivision (a), but we do not know what it refers to. If it refers to the inheritance tax, the exemption could be deleted.*

Probate Code § 301 (repealed), Jurisdiction and venue

Comment. The introductory clause of former Section 301 is restated in Section 7050 (jurisdiction) without substantive change. The provisions of former Section 301 relating to venue in cases involving domiciliaries is restated in Section 7051 (domiciliary venue) without substantive change. The provisions of former Section 301 relating to venue in cases involving nondomiciliaries are restated without substantive change in Section 12511 (venue in case of

nondomiciliary decedent). See the Comment to Section 12511. The substitution of "domicile" for "residence" in Sections 7051 and 12511 codifies existing law. See the Comment to Sections 7051 and 12511. The reference to "exclusive" jurisdiction in the last clause of former Section 301 is omitted as surplus. See Sections 7052(b), 12511(b).

Probate Code § 360 (repealed). Authority to probate foreign will

Comment. The first part of former Section 360 is superseded by Section 12510. The last part of former Section 360 is restated in Sections 12511 (venue in case of nondomiciliary) and 7050 (jurisdiction) without substantive change.

Probate Code § 361 (repealed). Procedure; notice

Comment. The first sentence of former Section 361 is superseded by Sections 12510, 12520, 12521, and 12522. See the Comments to these sections.

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

Comment. Former Section 362 is superseded by Sections 12522 (sister state proceedings) and 12523 (foreign nation proceedings). See the Comments to these sections. The provision relating to the validity of the will under the law of this state or other jurisdiction is omitted. In the case of sister state probate orders, it is contrary to full faith and credit principles to relitigate the validity of the will. In the case of foreign nation probate orders, the condition is automatically satisfied if probate has been granted and the order is to be given recognition.

Probate Code § 1000 (repealed). Petition for preliminary distribution

Comment. . . . The part of the first sentence of former Section 1000 applicable to estates of nondomiciliary decedents is superseded by Section 12540.

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

Comment. The first sentence of former Section 1040 is superseded by Sections 12540 and 12541. The second sentence of former Section 1040 is restated in the second sentence of Section 12541 without substantive change.

Probate Code § 1041 (repealed). Petition; notice; objections

Comment. The first sentence of former Section 1041 is superseded by Section 12540. The part of the second sentence of former Section 1041 that required the clerk to set the petition for hearing is continued in Section 7202. The part of the second sentence of former Section 1041 concerning notice and all of the third sentence are superseded by Section 12540.

Probate Code § 1042 (repealed). Discharge of local personal representative

Comment. Former Section 1042 is superseded by Section 12540. The former provision is broadened to apply to preliminary distributions as well as final distributions.

Probate Code § 1043 (repealed), Informal collection of personal property

Comment. Former Section 1043 is superseded by Sections 12570-12572 (collection of personal property of small estate without ancillary administration).

Probate Code § 1043a (repealed), Informal collection of accounts

Comment. Former Section 1043a is superseded by Sections 12570-12572 (collection of personal property of small estate without ancillary administration).

Probate Code § 13006 (amended), Successor of decedent

SEC. . Section 13006 of the Probate Code is amended to read:

13006. "Successor of the decedent" means:

(a) If the decedent died leaving a will, the sole beneficiary or all of the beneficiaries who succeeded to a particular item of property of the decedent under the decedent's will. For the purposes of this part, the trustee of a trust created during the decedent's lifetime is a beneficiary under the decedent's will if the trust succeeds to the particular item of property under the decedent's will.

(b) If the decedent died without a will, the sole person or all of the persons who succeeded to the particular item of property of the decedent under Sections 6401 and 6402 or, if the law of a sister state or foreign nation governs succession to the particular item of property, under the law of the sister state or foreign nation.

Comment. Subdivision (b) of Section 13006 is revised to cover the situation where the succession to property is governed by the law of a jurisdiction other than California. See Sections 12502 ("foreign nation" defined), 12506 ("sister state" defined).

Probate Code § 13051 (amended), Authority of guardian, conservator, trustee, custodian, or foreign personal representative

SEC. . Section 13051 of the Probate Code is amended to read:

13051. For the purposes of this part:

(a) A guardian or conservator of the estate of a person entitled to any of the decedent's property may act on behalf of the person without authorization or approval of the court in which the guardianship and conservatorship proceeding is pending.

(b) A trustee of a trust created during the decedent's lifetime may act on behalf of the trust.

(c) If the decedent's will nominates a custodian to receive a devise to a beneficiary under the Uniform Gifts to Minors Act or the Uniform Transfer to Minors Act of any state and the nomination has not

been revoked, the custodian may act on behalf of the beneficiary until such time as the custodianship terminates.

(d) A sister state personal representative may act on behalf of the beneficiaries as provided in Chapter 3 (commencing with Section 12570) of Part 13 of Division 7.

Comment. Subdivision (d) is added to Section 13051 to permit a sister state personal representative to collect or transfer personal property pursuant to Chapter 3 (commencing with Section 13100). See Section 12507 ("sister state personal representative" defined). Section 12570 limits the power of the sister state personal representative to collection of personal property.

Probate Code § 13103 (amended). Inventory and appraisement of real property required

SEC. . Section 13103 of the Probate Code is amended to read:

13103. If the estate of the decedent includes any real property in this state, the affidavit or declaration shall be accompanied by an inventory and appraisement appraisal of the real property. The form, content, and manner of making the inventory and appraisement appraisal of the real property shall be as set forth in ~~Chapter 9 (commencing with Section 600) of Division 3~~ Part 3 (commencing with Section 8800) of Division 7. The ~~inventory and appraisement~~ appraisal shall be made by a probate referee selected by the affiant or declarant from those probate referees appointed by the Controller under Section ~~1305 400~~ to appraise property in the county where the real property is located.

Comment. The phrase "in this state" is added in the first clause of Section 13103 for conformity with Section 13100. Section 13103 is also amended to correct terminology and section references.

Note. *This section is new to this recommendation. The amendment proposed in the context of nondomiciliary decedents is the addition of the phrase "in this state" in the first clause. This draft also sets out conforming revisions made for other purposes.*

Probate Code § 13111 (amended). Restitution if estate proceeding commenced

SEC. . Section 13111 of the Probate Code is amended to read:

13111. (a) Subject to subdivisions (b), (c), (d), and (e), if proceedings for the administration of the decedent's estate are commenced in this state, each person to whom payment, delivery, or transfer of the decedent's property is made under this chapter is liable for:

(1) The restitution of the property to the estate if the person still has the property, together with the net income the person received from the property.

(2) The restitution to the estate of the fair market value of the property if the person no longer has the property, together with (A) the net income the person received from that property and (B) interest on the fair market value of the property from the date of disposition at the rate payable on a money judgment. For the purposes of this subdivision, the "fair market value of the property" is the fair market value, valued as of the time of the disposition of the property, of the property paid, delivered, or transferred to the person under this chapter, excluding any liens and encumbrances on the property at that time.

(b) Subject to subdivision (c) and subject to any additional liability the person has under Sections 13109 to 13112, inclusive, if the person fraudulently secured the payment, delivery, or transfer of the decedent's property under this chapter, the person is liable under this section for restitution to the decedent's estate of three times the fair market value of the property. For the purposes of this subdivision, the "fair market value of the property" is the fair market value, valued as of the time the person liable under this subdivision presents the affidavit or declaration under this chapter, of the property paid, delivered, or transferred to the person under this chapter, excluding the amount of any liens and encumbrances on the property at that time.

(c) The property and amount required to be restored to the estate under this section shall be reduced by any property or amount paid by the person to satisfy a liability under Section 13109 or 13110.

(d) An action to enforce the liability under this section may be brought only by the personal representative of the estate of the decedent. In an action to enforce the liability under this section, the court's judgment may enforce the liability only to the extent necessary to protect the interests of the heirs, devisees, and creditors of the decedent.

(e) An action to enforce the liability under this section is forever barred three years after presentation of the affidavit or declaration under this chapter to the holder of the decedent's

property, or three years after the discovery of the fraud, whichever is later. The three-year period specified in this subdivision is not tolled for any reason.

(f) In the case of a nondomiciliary decedent, restitution under this section shall be made to the estate in ancillary administration.

Comment. Subdivision (a) of Section 13111 is revised and subdivision (f) is added to clarify the application of this section in the case of a nondomiciliary decedent. See Sections 12501 ("ancillary administration" defined), 12505 ("nondomiciliary decedent" defined).

Note. This section is new to this recommendation.

Probate Code § 13112 (amended). Limitation on liability under Sections 13109 and 13110

SEC. . Section 13112 of the Probate Code is amended to read:

13112. (a) A person to whom payment, delivery, or transfer of the decedent's property has been made under this chapter is not liable under Section 13109 or 13110 if proceedings for the administration of the decedent's estate are commenced in this state, and the person satisfies the requirements of Section 13111.

(b) Except as provided in subdivision (b) of Section 13110, the aggregate of the personal liability of a person under Sections 13109 and 13110 shall not exceed the fair market value, valued as of the time the affidavit or declaration is presented under this chapter, of the property paid, delivered, or transferred to the person under this chapter, less the amount of any liens and encumbrances on that property at that time, together with the net income the person received from the property and, if the property has been disposed of, interest on the fair market value of the property accruing from the date of disposition at the rate payable on a money judgment. For the purpose of this subdivision, "fair market value of the property" has the same meaning as defined in paragraph (2) of subdivision (a) of Section 13111.

Comment. Subdivision (a) of Section 13112 is revised to conform to the revision of Section 13111. See Section 13111(a). Proceedings in this state include ancillary administration. See the Section 13111(f) and the Comment thereto.

Note. This section is new to this recommendation.