

First Supplement to Memorandum 89-29

Subject: Study L-1030 - Affidavit Procedure for Collection or Transfer  
of Personal Property

The affidavit procedure to collect personal property of a small estate (\$60,000 or less) without the need for administration of the decedent's estate can be used only after 40 days have elapsed after the decedent's death. See Prob. Code § 13100. This 40-day delay was included to preclude a person from collecting the decedent's assets before interested persons have knowledge of the decedent's death and an opportunity to protect their interests. Also, the affidavit procedure to collect personal property can be used only where there is or has been no proceeding to administer the decedent's estate.

Attached is a letter from Jeffrey A. Dennis-Strathmeyer suggesting that it may be necessary to appoint a special administrator to perform a specific act during the 40-day waiting period before the affidavit procedure can be used. He asks whether this constitutes a proceeding for the administration of the estate which then precludes subsequent collection of the estate by entitled persons using the affidavit procedure. He states: "It seems to me that we do not want to force an administration of the estate in this situation and the point should be clarified.

This letter raises the same basic question as is raised in Memorandum 89-29: To what extent, if at all, should we permit use of the affidavit procedure where the probate court already is involved in the decedent's estate?

Respectfully submitted,

John H. DeMouilly  
Executive Secretary



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CA LAWY REV. COMM'N

July 21, 1989

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California Law Revision Commission  
4000 Middlefield Road, Suite D-2  
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Re: Study L-1030; Affidavit Procedure for  
Collection of Personal Property

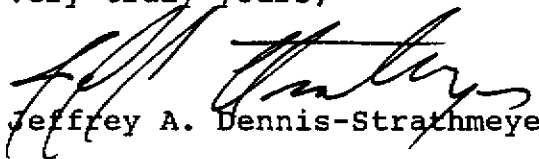
Dear John:

I noted Dick Kinnion's letter of October 26, 1988 in your last agenda mailing, suggesting that it should be possible to use summary procedures with the personal representative's consent. He was concerned with facilitating what he described as a "dry probate."

I have a modestly related concern. Suppose that it is necessary to appoint a special administrator to perform a specific act during the 40 day waiting period. This might be necessary in order to exercise an option to purchase property or to take possession of property in order to protect it, etc. Does this constitute a proceeding for the administration of an estate which then precludes subsequent collection of the estate by entitled persons? It seems to me that we do not want to force an administration of the estate in this situation and the point should be clarified.

Thank you for your consideration.

Very truly yours,

  
Jeffrey A. Dennis-Strathmeyer

JAD-S:kg