

Second Supplement to Memorandum 89-35

Subject: Study L - Miscellaneous Matters

In the process of reviewing the Probate Code for final reenactment, we have discovered a couple of defects that could, and should, be easily corrected in the current legislative session. If the Commission approves these changes, we would seek to have them added to AB 158, the general probate bill.

Controlled Account

New Probate Code Section 8401 allows a petitioner for appointment as a personal representative to deposit money and other personal property with a financial institution that can be withdrawn only on court order, and new Section 8483 provides for a corresponding reduction in the amount of the personal representative's bond. These provisions are based on old Probate Code Section 541.1.

The new sections are defective because they imply that the deposit may only be made in an "insured account" in a financial institution, which is fine for money but doesn't work for other personal property. The old section does not have this defect, and in fact we have specifically amended it to cross-refer to the deposit procedure in Sections 9700-9705 (deposit of money and personal property with financial institutions). However, because the new section was drafted before the old section was amended, we failed to pick up the cross-reference.

The defect can be easily cured now by picking up the cross-reference, thus:

§ 8401. Deposit in controlled account

8401. (a) Notwithstanding Section 8400, a petitioner for appointment as personal representative may deliver money, securities, or personal property in the petitioner's possession to a financial institution, or allow a financial institution to retain money, securities, and personal property already in its possession, for deposit ~~in an insured account in the financial institution~~ in the manner provided

in Chapter 3 (commencing with Section 9700) of Part 5.

(b) The petitioner shall obtain and file with the court a written receipt including the agreement of the financial institution that the money, securities, or other personal property, including any earnings thereon, shall not be allowed to be withdrawn except on order of the court.

(c) In receiving and retaining money, securities, or other personal property under this section, the financial institution is protected to the same extent as though it had received the money, securities, or other personal property from a person who had been appointed personal representative.

Comment. Section 8401 is amended to refer to the procedures in Sections 9700 to 9705 for depositing money in an insured account in a financial institution and depositing personal property with a trust company. This continues a provision of former Section 541.1(b).

§ 8483. Reduction of bond by deposit of assets

8483. (a) This section applies where property in the estate has been deposited ~~in an insured account in a financial institution~~ pursuant to Chapter 3 (commencing with Section 9700) of Part 5 on condition that the property, including any earnings thereon, will not be withdrawn except on authorization of the court.

(b) In a proceeding to determine the amount of the bond of the personal representative (whether at the time of appointment or subsequently), on production of a receipt showing the deposit of property in the estate in the manner described in subdivision (a), the court may order that the property shall not be withdrawn except on authorization of the court and may, in its discretion, do either of the following:

(1) Exclude the property in determining the amount of the required bond or reduce the amount of the bond to an amount the court determines is reasonable.

(2) If a bond has already been given or the amount fixed, reduce the amount to an amount the court determines is reasonable.

Comment. Section 8483 is amended to refer to the procedures in Sections 9700 to 9705 for depositing money in an insured account in a financial institution and depositing personal property with a trust company. This continues a provision of former Section 541.1(a).

Finality of Court Order Settling an Account

There is an apparent conflict in the statutes governing the finality of a court order settling an account. Section 9612 states the general rule that when an order becomes final, it releases the personal representative from all claims of third persons. For the purposes of Section 9612, "order" includes an order settling an account of the personal representative.

On the other hand, Section 11006, which deals expressly with an order settling an account, states that "A person under legal disability has the right, at any time before entry of an order for final distribution of the estate, to move for cause to reopen and examine the account or to proceed by action against the personal representative."

Although the two provisions could be harmonized, they present a direct policy issue for Commission resolution. Should an order settling an account become "final" in the same way as most other orders in probate, or should such an order be subject to later reopening by a person under legal disability. The staff has argued in the past that finality is important, and that the rights of persons under legal disability are adequately protected by legal representatives such as guardians and conservators. The Commission should decide the policy and the statutes should clearly implement it.

Respectfully submitted,

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