

Memorandum 89-58

Subject: Study L-1025 - Probate Law and Procedure (Claim Requirement for Specific Performance)

In connection with creditor claims, the Commission deferred consideration of whether the claim requirements should apply to demands for specific performance of obligations, as well as to demands for payment of debts. Existing law applies claim requirements only to payment of debts.

How does a person who seeks specific performance of an obligation enforce it? Obligations personal to the decedent are not enforceable against the personal representative, but those that survive death are enforceable against the personal representative. Basically this means that a contract to transfer or convey real or personal property is specifically enforceable against the personal representative. This may be accomplished either in an ordinary action for specific performance or in a special proceeding in probate court under Section 9860 (conveyance or transfer of property claimed to belong to decedent or other person). See 7 B. Witkin, Summary of California Law, Wills and Probate, § 332 at 5810 (8th ed. 1974). A claim is not prerequisite to maintaining either the action or the proceeding. If the property is sold during administration, or if the property is distributed, without a claim to the property having been made, the sale or distribution remains subject to the rights of the claimant, which may be enforced against the purchaser or distributee. See, e.g., *O'Donnell v. Lutter*, 68 Cal. App. 2d 376, 156 P. 2d 958 (1945); *Estate of Roche*, 202 Cal. App. 2d 295, 20 Cal. Rptr. 775 (1962).

Would there be any advantage to requiring a claim as prerequisite to specific performance against the estate? The advantage of a claim requirement for the estate is that it enables the personal representative to flush out and cut off claims promptly, thereby enabling disposition of estate assets without concern that a creditor will assert a prior right and disrupt the asset distribution. This

could be done for specific performance demands as well, but would also require notice to persons who might claim an interest in estate property.

The staff's basic feeling here is one of inertia. While there may be some advantage to a claim procedure for specific performance, the existing law appears to have worked satisfactorily. Thus, the staff is not inclined to add a new provision to the law that imposes such a claim procedure.

Perhaps a middle ground, in the form of an optional claim procedure, would be appropriate. The personal representative would have the option to serve a notice on any person who may claim property in the estate. If the person fails to make a claim within four months thereafter, the claim is barred. This would in effect make available the creditor claim mechanisms for specific performance, without imposing a requirement in every case.

Respectfully submitted,

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