

Memorandum 90-38

Subject: Study L-100 - Unclaimed Distribution

If the probate court orders distribution to a person whose identity is known but whose whereabouts is unknown, the personal representative may deposit the property with the county treasurer. Prob. Code § 11850. The distributee may claim the property by petitioning the probate court which ordered the distribution. *Id.* § 11854. If the property is unclaimed, the county ultimately turns it over to the state. Code Civ. Proc. § 1444.

If the distributee's identity is unknown, the probate court orders distribution directly to the state. Prob. Code § 11900.

After the property is turned over to the state, a claimant has five years to claim it. After five years, the property belongs to the state. *Id.* § 11903.

Exhibit 1 is a letter from attorney Jeffrey Altman of Los Angeles. He thinks that when a distributee cannot be found, the property should go to an alternate taker, not escheat to the state. The staff agrees. Mr. Altman suggests that:

(1) The order of distribution should name an alternate taker if the property is not claimed by the primary distributee.

(2) The alternate taker should be allowed to make the claim before expiration of the five-year period for escheat.

These seem like good suggestions, and may be implemented by the draft in Exhibit 2.

Mr. Altman also suggested the alternate taker be allowed to make the claim with the state in the county where the probate took place. The draft (Exhibit 2) allows three years for the primary distributee to claim the property. By the end of the three-year period, the county almost certainly will have turned the property over to the state. See Code Civ. Proc. § 1444 (county turns property over to state at "time of the next county settlement following the expiration of one year from the date of its deposit in the county treasury"). After the property is turned over to the state, a claimant must file his or her claim in

Sacramento. Code Civ. Proc. § 1352-1353, 1355. The staff has chosen not to create special procedures to allow an alternate taker to file the claim in the county where the probate took place. Although it would be more convenient for the alternate taker to be able to file the claim locally, it seems better to rely on well-established procedures, with the filing to be made in Sacramento.

Respectfully submitted,

Robert J. Murphy III
Staff Counsel

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January 4, 1990

John H. DeMouilly
Executive Director
California Law Revision Commission
4000 Middlefield Road - Room D-2
Palo Alto, CA 94303

RE: Unclaimed Property in Probate Proceedings

Dear Mr. DeMouilly:

It has recently come to my attention that a change from the present statutory scheme for unclaimed probate property would serve to carry out more closely the intention of deceased testators.

As I understand that present law, under Probate Code § 1027 if an heir, devisee or legatee's whereabouts are unknown, the property is to be delivered to the state treasurer for the benefit of the State of California.

Property is held for five years, unless it is claimed pursuant to § 1300 of the Code of Civil Procedure. If no claim is made within five years, the property vests in the State of California. For purposes of making a claim the Superior Court in Sacramento has jurisdiction.

I believe that it would more closely approximate a testator's intent, if a bequest to a beneficiary went unclaimed, that the property would then pass in the following priority:

1. To the taker(s) in default named with respect to the specific bequest.
2. The residuary beneficiary(ies).
3. State of California.

Obviously there are several issues which are raised by the proposed change. It is my suggestion that the new statute indicate that the alternative takers (if the property is not claimed within the five year period) be named in the Petition for Distribution in Probate, and subsequently be named in the Order for Distribution. This would avoid having to reopen a probate proceeding to accomplish the transfer.

John H. DeMouilly
California Law Revision Commission
January 4, 1990
Page 2

In addition, a window period of 6 months to one year could be allowed for the alternate taker to make the claim to the state treasurer in the county where the probate took place and the property has been deposited. A simple form could be devised to enable the alternate taker to make his/her claim. It would probably include presenting a certified copy of the Court Order, as well proof of identification together with a declaration under penalty of perjury that they are the person entitled as the alternate taker.

This plan would seem to more closely adhere to the testator's intent. It would also have the advantage of allowing the alternate taker to make their claim in the county where the decedent's probate was held, rather than in Sacramento.

Finally, if properly drafted, I believe the statute could provide for a what would be a self-executing system for distribution of the property.

I would appreciate hearing from you as to whether you think this suggestion is meritorious, and if so what steps may be taken to implement it.

Very truly yours,

REIFMAN, ALTMAN, SHERMAN & WEINER

By:  JEFFREY A. ALTMAN

JAA/ms

Exhibit 2

Probate Code § 11603 (amended). Order for distribution

11603. (a) If the court determines that the requirements for distribution are satisfied, the court shall order distribution of the decedent's estate, or such portion as the court directs, to the persons entitled thereto.

(b) The order shall:

(1) Name the distributees and the share to which each is entitled.

(2) Provide that property distributed subject to a limitation or condition, including, but not limited to, an option granted under Chapter 16 (commencing with Section 9960) of Part 5, is distributed to the distributees subject to the terms of the limitation or condition.

(c) If the identity of a distributee is unknown, or if the distributee's identity is known but his or her whereabouts is unknown, the order shall:

(1) Provide that if the distributee does not claim his or her share within three years from the date of the order, the distributee shall be deemed to have predeceased the decedent for the purpose of this section.

(2) Name the distributees and the share to which each is entitled if the primary distributee does not claim his or her share within the time provided in paragraph (1).

Comment. Section 11603 is amended to add subdivision (c). Under subdivision (c), a distributee whose identity or whereabouts is unknown has three years within which to claim his or her share. If the distributee fails to do so, the alternate distributees have an additional two years to claim their shares before the property will escheat to the state. See Section 11903.

Note. Is the proposed three-year period for the primary distributee to claim his or her share too short? Should it be four years?