

Memorandum 90-57

Subject: Study L-3033 - Notice in Probate Where Address Unknown (Draft of Tentative Recommendation)

At the March Meeting, the Commission decided to revise the general notice provisions in the Probate Code relating to how notice is given where a person's address is unknown. Attached to this memorandum is a draft tentative recommendation to implement this decision.

The staff recommends that this material be included in Senate Bill 1775 in this legislative session. The amendments are technical and should not be controversial. Accordingly, we do not believe that the recommendation needs to be distributed for comment. Amending the bill now would have the effect of revising the new Probate Code before it goes into effect.

Respectfully submitted,

Stan Ulrich
Staff Counsel

#L-3033

su594
03/21/90

Tentative Recommendation

relating to

NOTICE IN PROBATE WHERE ADDRESS UNKNOWN

Under the general provisions of the Probate Code, if the address of a person to be given notice is not known, notice is to be given "to the person at the county seat where the proceedings are pending."¹ The meaning of "county seat" is not clear,² but whatever it means, this provision is not likely to result in actual notice. In practice, notice under the county seat provision is permitted only if the person giving notice describes the search made in an affidavit.³

Under the Trust Law, if the address of a person is unknown, the court may dispense with notice or order that notice be given under Code of Civil Procedure Section 413.30 which provides for notice in a manner reasonably calculated to give actual notice.⁴ The Commission recommends that the general notice provisions in the Probate Code be revised to adopt the Trust Law scheme.

1. Prob. Code §§ 1215(d) (mailing in general), 1220(a)(3) (mailing notice of hearing) [as these sections are proposed to be enacted by Assembly Bill 759]. Both of these sections continue a provision found in former Section 1200.5(b), which continued nearly identical language in Section 1200 of the Probate Code as enacted in 1931 ("addressed to them . . . at the county seat of the county where the proceedings are pending").

2. The reference to the "county seat" originated in the 1873-74 amendments of Section 1304 of the Code of Civil Procedure, which added the language "addressed to them [heirs], and deposited in the Post Office at the county seat of the county where the proceedings are pending." 1873-74 Code Amend. ch. 383, § 164. On its face, this statute appears to provide for general delivery at the post office in the county seat. This language survived until 1929 when Section 1304 was amended to delete the reference to depositing the notice at the post office. (1929 Cal. Stat. ch. 78, § 1.)

3. See, e.g., Ross & Moore, California Practice Guide: Probate ¶¶ 3:209-3:211, 3:472-3:472.1 (Rutter Group, rev. ed. #1, 1989).

4. Prob. Code § 17102.

PROPOSED LEGISLATION

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to amend Sections 1215 and 1220 of, to add Section 1212 to, and to repeal Section 17102 of, the Probate Code, relating to probate law.

The people of the State of California do enact as follows:

Probate Code § 1212 (added). Manner of mailing notice of hearing

SECTION 1. Section 1212 is added to the Probate Code [as proposed to be enacted by Assembly Bill 759], to read:

1212. Unless the court dispenses with the notice, if the address of the person to whom a notice or other paper is required to be mailed or delivered is not known, notice shall be given as the court may require in the manner provided in Section 413.30 of the Code of Civil Procedure.

Comment. Section 1212 generalizes former Section 17102 (manner of giving notice under Trust Law where address is unknown) [as proposed to be enacted by Assembly Bill 759] as to mailed notice.

Probate Code § 1215 (amended). Manner of mailing

SEC. 1. Section 1215 of the Probate Code [as proposed to be enacted by Assembly Bill 759] is amended to read:

1215. Unless otherwise expressly provided:

(a) If a notice or other paper is required or permitted to be mailed to a person, notice shall be mailed as provided in this section or personally delivered as provided in Section 1216.

(b) The notice or other paper shall be sent by:

(1) First-class mail if the person's address is within the United States. First-class mail includes certified, registered, and express mail.

(2) Airmail if the person's address is not within the United States.

(c) The notice or other paper shall be deposited for collection in the United States mail, in a sealed envelope, with postage paid, addressed to the person to whom it is mailed.

(d) ~~In proceedings under this code concerning administration of a~~

~~decedent's estate, Subject to Section 1212, the notice or other paper shall be addressed to the person at the person's place of business or place of residence, if known, or, if neither address is known, to the person at the county seat where the proceedings are pending.~~

(e) When the notice or other paper is deposited in the mail, mailing is complete and the period of notice is not extended.

Comment. Subdivision (d) of Section 1215 is amended to delete the authority to mail notice to the person at the county seat where the proceedings are pending and to provide a cross reference to Section 1212 governing the manner of giving notice to a person whose address is unknown).

Probate Code § 1220 (amended). Manner of mailing notice of hearing

SEC. 3. Section 1220 of the Probate Code [as proposed to be enacted by Assembly Bill 759] is amended to read:

1220. (a) When notice of hearing is required to be given as provided in this section:

(1) At least 15 days before the time set for the hearing, the petitioner or the person filing the report, account, or other paper shall cause notice of the time and place of the hearing to be mailed to the persons required to be given notice.

(2) Unless the statute requiring notice specifies the persons to be given notice, notice shall be mailed to all of the following:

(A) The personal representative.

(B) All persons who have given notice of appearance in the estate proceeding in person or by attorney. If the person appeared by attorney, the notice shall be mailed to the attorney.

(3) ~~The Subject to Section 1212, the notice shall be addressed to the person required to be given notice at the person's place of business or place of residence, if known, or, if neither address is known, to the person at the county seat where the proceedings are pending.~~

(b) Subject to subdivision (c), nothing in this section excuses compliance with the requirements for notice to a person who has requested special notice pursuant to Article 6 (commencing with Section 1250).

(c) The court for good cause may dispense with the notice otherwise required to be given to a person as provided in this section.

Comment. Subdivision (a)(3) of Section 1220 is amended to adopt the general rule in Section 1212 applicable where notice is required to be mailed to a person whose address is unknown. See the Comment to Section 1212.

Probate Code § 17102 (repealed). Manner of notice where address is unknown

SEC. 4. Section 17102 of the Probate Code [as proposed to be enacted by Assembly Bill 759] is repealed.

~~17102. Unless the court dispenses with the notice, if the address of the person to whom a notice or other paper is required to be mailed or delivered is not known, notice shall be given as the court may require in the manner provided in Section 413.30 of the Code of Civil Procedure.~~

Comment. Former Section 17102 [as proposed to be enacted by Assembly Bill 759] is generalized in Section 1212 (manner of mailing notice where address is unknown). See Section 17100 (general notice provision apply to Trust Law).