

#L-100

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09/05/90

First Supplement to Memorandum 90-93

Subject: Study L-100 - Alternate Beneficiaries for Unclaimed
Distribution (Comments of State Controller)

Attached to this memorandum is a copy of a letter from the State Controller opposed to the tentative recommendation relating to alternate beneficiaries for an unclaimed distribution. The reasons given for opposition are (1) public policy favors escheat to the state rather than to a private person, (2) criteria for selection of an alternate beneficiary are not prescribed, (3) three years is too short a period within which the primary beneficiary must claim the distribution, and (4) the proposal would cause a loss of state revenues.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

SEP 05 1990

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**GRAY DAVIS****Controller of the State of California**

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September 4, 1990

Robert J. Murphy III, Esq.
California Law Revision Commission
4000 Middlefield Road, Suite D-2
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Re: Proposal to Amend Law Concerning Escheat

Dear Mr. Murphy:

This is in regard to the Law Revision Commission's proposal to amend Probate Code Section 11603 to allow the probate court to designate an alternate distributee where the identity of the actual distributee is unknown or the identity of such distributee is known but the distributee cannot be located.

The Controller's Office opposes the proposed amendment for the following reasons:

1. **The proposal is contrary to long-standing principles of law and public policy in California.** While there is some case law to the effect that escheats are not favored (Estate of Spinosa, 117 Cal. App. 2d 364), other authorities point out that the power of escheat is one vested in the State and such power should prevail over attempts to escheat unclaimed property to private interests. (Screen Actors Guild v. Cory, 91 Cal. App. 3d 111; In Re Mercantile Guarantee, 238 Cal. App. 2d 426.)
2. **The proposed amendment sets forth no criteria or standard for the court to follow in selecting an alternate distributee.** Courts would be free to select any distributee(s) it chose, without limitation, under this proposal. At a very minimum, there should be some criteria for eligibility of alternative distributees, such as relatives of the deceased, other locatable and identifiable legatees or devisees, charities, etc.
3. **Only three years would be allowed for primary distributees to claim their distributive shares.** This contrasts with the minimum of five years allowed for claim of escheated estates under Probate Code Section 11903, and approximately eleven years under Probate Code

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Section 11850 and Code of Civil Procedure Sections 1444, 1351 and 1430 (known but unlocated distributees). The Controller's Office believes it is in the public interest to allow a long period for rightful owners, such as named distributees, to have substantially more than three years to claim their property.

4. The proposed amendment would result in a loss of revenue to the State. While the amount of money received by the State from decedents' estates under these circumstances is a relative small portion of total State revenue, the current fiscal difficulties of the State could be exacerbated by this measure.

I hope this information will be of assistance to you. If you have any questions, please contact me.

Very truly yours,



D. ROBERT SHUMAN
Chief Counsel

cc: Yeoryios Apallas
: Cleatta Simpson
: Thomas F. Holland, Jr.