

## Memorandum 84-45

Subject: Study L-800 - Probate Law and Procedure (Foreign Personal Representatives; Ancillary Administration)

## BACKGROUND

A decedent's estate is usually administered at the decedent's domicile. However, if the decedent leaves property in some other state, ancillary administration (secondary probate) may be needed there to protect local creditors or to transfer title to real property. Ancillary administration is time-consuming and expensive, and should therefore be avoided if possible. Kimbrough & Lindgren, Ancillary Administration, in 2 California Decedent Estate Administration §§ 34.21-34.22, at 1356-57 (Cal. Cont. Ed. Bar 1975).

Both California and the Uniform Probate Code have provisions designed to minimize the need for ancillary administration. The California provisions are Probate Code Sections 1040-1043a, attached to this Memorandum as Exhibit 1. The UPC provisions are UPC Sections 4-101 to 4-401, attached as Exhibit 2. This Memorandum recommends adopting some but not all of the UPC provisions, and recommends a summary procedure, drawn from Wyoming and South Dakota law, for avoiding ancillary administration by filing the final decree of distribution made at the decedent's domicile.

General California Scheme

California permits a foreign personal representative to come into California, collect the decedent's personal property and debts owed to the decedent, and remove the property from California without court proceedings, if prescribed steps are followed. Prob. Code § 1043. The foreign personal representative must publish a notice to creditors, wait three months for possible objections, and if there are no objections may collect the property by showing proof of appointment and presenting an affidavit containing various matters, including a statement that no local administration is pending. Id. If there is objection, this procedure may not be used. However, ancillary administration may still be avoided by having the eligible estate beneficiaries use other summary collection procedures which California law affords to residents and

nonresidents alike. See Prob. Code §§ 630-632 (collection of personal property by affidavit), 640-647 (summary set-side to surviving spouse or minor children), 650-657 (confirmation of community property); Kimbrough & Lindgren, supra § 34.22, at 1357.

If the statutory conditions for use of the summary procedures are not met, then ancillary administration is required in California. In such case, the estate may be administered under the Independent Administration of Estates Act (Prob. Code §§ 591-591.7). See, e.g., Watermaker, 2 California Decedent Estate Administration Supplement § 34.55, at 125 (Cal. Cont. Ed. Bar 1983). If authority to administer the estate under the Independent Administration of Estates Act is not granted, the ancillary proceeding will be a full, supervised administration.

#### General UPC Scheme

The UPC has provisions similar to California law for informal collection of the decedent's personal property by a foreign personal representative, except that no local notice to creditors is required. See UPC §§ 4-201 to 4-203. Under the UPC, publication of notice to creditors is accomplished in the state of the decedent's domicile. UPC § 3-801. This publication constitutes notice to all creditors wherever located, and the creditors have four months to present their claims in the domiciliary administration or the claims will be barred there. UPC § 3-803.

A creditor may elect to commence ancillary proceedings in the local jurisdiction rather than present the claim in the domiciliary proceeding. However, if the local jurisdiction is a UPC state, the creditor must commence ancillary proceedings within four months after publication of notice at domicile or be barred in the local jurisdiction as well as in the domiciliary proceeding. UPC § 3-803; 1 Uniform Probate Code Practice Manual 423 (1977).

The UPC also gives sweeping additional powers to a foreign personal representative in states where it is enacted. Under the UPC, if no local administration has been commenced, a foreign personal representative may file with a local court authenticated copies of the domiciliary appointment and of any official bond given there. Thereafter, the foreign personal representative may exercise in the local jurisdiction all powers that a local personal representative would have in an unsupervised administration under the UPC. UPC § 4-205; General Comment to UPC Article IV. This gives the foreign personal representative the same

power over the decedent's property that an absolute owner would have, which may be exercised without notice, hearing, or order of court. UPC § 3-711; 1 Uniform Probate Code Practice Manual 435 (1977).

The UPC also has "long-arm" provisions that give the local state maximum jurisdiction over foreign personal representatives. See UPC §§ 4-301 to 4-303. Conversely, the UPC makes an adjudication in another jurisdiction in favor of or against any personal representative of the estate as binding on the local personal representative as if the local personal representative had been a party to the adjudication. UPC § 4-401.

### STAFF ANALYSIS AND RECOMMENDATIONS

#### Informal Collection by Affidavit

The only important substantive difference between California's informal collection system and the UPC's is that California requires that notice to creditors be published in California. Under the UPC, publication at the decedent's domicile is sufficient. Although local publication entails some delay and expense, the staff thinks the local publication requirement is a useful protection to local creditors who otherwise may remain unaware of the decedent's death. Assuming that creditors have four months to file claims in the main proceeding at the decedent's domicile (see, e.g., UPC § 3-801), the three-month waiting period in California should not unduly delay closing of the estate. Accordingly, the staff recommends that we retain the substance of existing California provisions for informal collection (Prob. Code §§ 1043-1043a), and not adopt UPC §§ 4-201 to 4-203. In the staff draft (Exhibit 4), the California provisions are redrafted somewhat and relocated in Chapter 10 of Division 3 (disposition of estates without administration).

#### Local Powers of Foreign Personal Representative

The UPC section on powers of a foreign personal representative who has filed a copy of the foreign appointment and bond gives the representative (1) "all powers of a local personal representative," and (2) the power to "maintain actions and proceedings in this state." UPC § 4-205. The first of these powers seems unnecessary in California. At present, to have all powers of a local personal representative, a foreign personal representative must be appointed by a California court in ancillary proceedings. The UPC scheme permits the foreign personal

representative to deal with the decedent's property as absolute owner without court supervision. However, California does not have a UPC-type informal probate, so the UPC provision would not be appropriate for California.

The second power (maintain actions and proceedings) would be a desirable addition to California law. At present, California follows the increasingly obsolete concept that the authority of a foreign representative is confined to the state of appointment. See 3 B. Witkin, California Procedure Pleading § 90, at 1766-77 (2d ed. 1971). California law recognizes a number of exceptions to this general rule, including waiver of the objection, application of the doctrine of comity, and where the representative sues on a foreign judgment. Id. The UPC appears to state the better rule, and the staff recommends its adoption (see staff draft of Probate Code Section 658.030(c), set forth in Exhibit 4, attached).

#### Long-Arm Jurisdiction

The UPC gives local courts jurisdiction over a foreign personal representative who has filed with a local court an authenticated copy of his or her appointment, who collects the decedent's property in this state (jurisdiction limited to the value of the property collected), or who does any act in the state as personal representative which would have given the state jurisdiction over him or her as an individual. UPC § 4-301. In a separate provision, the UPC also provides that a foreign personal representative is subject to local jurisdiction to the same extent the decedent was subject to local jurisdiction immediately prior to death. UPC § 4-302.

These UPC long-arm provisions are consistent with California law. Section 410.10 of the Code of Civil Procedure provides that California courts "may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States." A recent California case held that this statute permits a California creditor to sue in California the foreign personal representative of the deceased debtor. *Mitsui Manufacturers Bank v. Tucker*, 152 Cal. App.3d 428 (1984). The staff recommends enactment in California of the substance of UPC Sections 4-301 and 4-302 (see staff draft of Probate Code Section 658.040, set forth in Exhibit 4, attached).

UPC Section 4-303 (service of process on foreign personal representative) seems unnecessary in California because of the broad scope of the provisions for service in the Code of Civil Procedure. See, e.g., Code Civ. Proc. §§ 415.30, 415.40.

#### Foreign Adjudication to Bind Local Personal Representative

The UPC provision which makes an adjudication in another jurisdiction in favor of or against any personal representative of the decedent's estate as binding on the local personal representative as if he or she were a party to the adjudication (UPC § 4-401) appears to be consistent with well-accepted principles. A probate decree in another jurisdiction has in rem effect and binds all persons. See 4 B. Witkin, California Procedure Judgment § 180, at 3321-22 (2d ed. 1971). In personam judgments are entitled to full faith and credit, and since various personal representatives of the same estate have identical interests, there is no unfairness in binding all by a judgment against one. See also Code Civ. Proc. § 1908 (judgment binding on successors in interest); Walker v. Hansen, 218 Cal. 619, 24 P.2d 764 (1933) (judgment against administrator binding on trustee of same estate). Accordingly, the staff recommends enactment in California of UPC Section 4-401 (see staff draft of Probate Code Section 658.060, set forth in Exhibit 4, attached).

#### Summary Proceeding Based on Foreign Decree of Distribution

South Dakota and Wyoming have statutes (attached as Exhibit 3 to this Memorandum) to facilitate the transfer of property of a nondomiciliary decedent without ancillary administration if the estate is less than a specified value (\$30,000 in Wyoming, \$10,000 in South Dakota). Under this procedure, after the foreign executor or administrator obtains a decree of final distribution in the original proceedings, he or she files a copy of the decree in the local jurisdiction and publishes a notice of intent to have the foreign decree admitted locally to determine rights in the estate. A creditor who has not filed a claim in the original proceedings may object to the summary local proceeding and petition for full ancillary administration. Absent an objection, the local court makes an order giving the foreign decree conclusive local effect without the need for ancillary administration. The staff thinks

similar provisions would be useful in California. A staff draft is included in Exhibit 4 as Section 658.050.

Respectfully submitted,

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## EXHIBIT 1

## CALIFORNIA PROBATE CODE §§ 1040-1043a

## ARTICLE 4. ESTATES OF NONRESIDENTS

**Sec.**

1040. Delivery of property or proceeds to executor or administrator to state of decedent's residence.
1041. Petition for delivery; hearing; notice; objections.
1042. Delivery as discharge of local executor or administrator.
1043. Collection of claim or receipt of personalty; removal of assets collected or received; notice; publication; discharge of liability.
- 1043a. Claims consisting of accounts; notice.

**§ 1040. Delivery of property or proceeds to executor or administrator to state of decedent's residence**

Upon application for distribution after final settlement of the accounts of the executor or administrator, if the decedent was a nonresident and left a will which has been duly proved or allowed in the state of his residence, and such will has been admitted to probate in this state pursuant to Article 4 (commencing with Section 360) of Chapter 1 of Division 3 of this code, or if he died intestate, and an administrator has been duly appointed and qualified in the state of his residence, and it is necessary in order that the estate, or any part thereof, may be distributed according to the will, or it is for the best interests of the estate, that the estate in this state or any part thereof should be delivered to the executor or administrator in the state of the decedent's residence, the court may order such delivery to be made, and, if necessary, direct a sale of the real property and a like delivery of the proceeds. Such sale must be made in the same manner as other sales of real property of decedents.

(Stats.1931, c. 281, § 1040. Amended by Stats.1970, c. 775, § 2.)

**Cross References**

Application for distribution, see §§ 1020, 1027.  
 Deposits with county treasurer for nonresidents, see § 1060 et seq.  
 Foreign wills, validity, see § 26.  
 Property, procedure for sale of, see § 750 et seq.  
 Sale of real property, generally, see § 780 et seq.  
 Setting account for settlement, distribution after, see § 926.

**§ 1041. Petition for delivery; hearing; notice; objections**

The order may be made on the petition of the executor or administrator or of any person interested in the estate. When the petition is filed, the clerk shall set the petition for hearing by the court, and the petitioner shall give notice thereof for the period and in the manner required by Section 1200.5. Any person interested in the estate may appear and contest the petition by filing written objections thereto.

(Stats.1931, c. 281, § 1041. Amended by Stats.1980, c. 955, § 25.1.)

**Cross References****Distribution of estate**

Application for, see § 1020.  
 Setting account for settlement, see § 926.  
 Time for, see § 1027.

**Persons interested in the estate**

Accounting by executor or administrator, see § 921.  
 Accounting, exceptions to, see § 927.  
 Allowed claims, contest of validity, see § 713.  
 Borrowing money and mortgaging of property, see § 831.  
 Contests before probate, see § 370.  
 Contests of petition for letters of administration, see § 442.  
 Distribution of legacy, devise or portion thereof, petition for, see § 1000.  
 Lease of property, see § 841.  
 Mining property, petition for order of sale, see § 810.  
 Petition for probate, see § 323.  
 Proration of federal estate taxes among, see § 970.  
 Removal of executor or administrator, see § 522.  
 Residue of estate, distribution of, see § 1020.  
 Sale of property, petition for order requiring, see § 758.

**§ 1042. Delivery as discharge of local executor or administrator**

The delivery, in accordance with the order of the court, is a full discharge of the executor or administrator in this state, in relation to all property embraced in the order, and when the order becomes final it binds and concludes all parties in interest. (Stats.1931, c. 281, § 1042.)

**§ 1043. Collection of claim or receipt of personalty; removal of assets collected or received; notice; publication; discharge of liability**

An executor or administrator to whom letters are issued on the estate of a nonresident decedent by a court of competent jurisdiction of any state or territory of the United States desiring to collect any claim or receive any personal property in this state of such decedent and remove that collected or received to the jurisdiction in which his letters are issued, shall publish in some newspaper of general circulation published in the county where the debtor resides or the property is located, if there be one, if not, then in some newspaper of general circulation in the county, notice to all persons interested in said estate as creditors or as heirs, legatees or devisees. The notice shall set forth the names and addresses of the decedent and the person in this state indebted to or holding personal property of the decedent, shall state that the executor or administrator desires to collect a claim or receive personal property and remove that collected or received, and shall require all persons having claims against the decedent or an interest in his estate and wishing to object to such removal to give written notice thereof to the person indebted to or holding personal property of the decedent within three months after the first publication of the notice. Publication shall be pursuant to Section 6064 of the Government Code.

Upon the expiration of three months after the first publication of said notice, if the person so indebted to or holding personal property of the decedent either has not received written notice from any person claiming as a creditor, heir, devisee or legatee and objecting to such removal, or has received the consent of such person, then he may pay such debt or deliver such personal property to the executor or administrator, upon receipt of the following:

(1) An affidavit of the executor or administrator that valid letters were issued to him by a court of competent jurisdiction of a named state or territory

of the United States on the estate of a nonresident decedent and averring to the best of his knowledge and belief that no other letters on said estate are then outstanding, that no petition for such letters is then pending in this state, that no ancillary proceedings will be brought, and that there are no unpaid creditors of the decedent or the estate in this state who have not consented to such removal;

(2) An authenticated copy of his letters;

(3) Consent to the transfer of the State Controller, or a person authorized by him to issue such consent; and

(4) An affidavit showing publication of the notice required under this section and be discharged from further liability and responsibility for, the debt or property, without the necessity of inquiring into the truth of any of the facts stated in the foregoing documents.

"Person" as used herein includes a partnership, association, firm or corporation.

If the person indebted to or holding personal property of the decedent maintains branch offices, the publication shall be in the county where it is located, and the notices and consents by claimants shall be given to, the office or branch at which the account evidencing the indebtedness or credit is carried, or at which the personal property is located or controlled.

(Added by Stats.1957, c. 563, § 1. Amended by Stats.1968, c. 594, § 1.)

**§ 1043a. Claims consisting of accounts; notice**

If the claim or property referred to in Section 1043 of this code consists of an account or accounts in any savings and loan association or bank doing business in this state, then publication of the notice specified in Section 1043 shall be pursuant to Section 6063 of the Government Code, and such notice shall require all persons having claims against the decedent or an interest in his estate and wishing to object to removal from this state of funds constituting such account or accounts, to give written notice thereof to such savings and loan association or bank within 30 days after the first publication of such notice.

(Added by Stats.1967, c. 946, § 1.)

EXHIBIT 2

UPC Sections 4-101 to 4-401

ARTICLE IV  
FOREIGN PERSONAL REPRESENTA-  
TIVES; ANCILLARY  
ADMINISTRATION

PART 1  
DEFINITIONS

Section  
4-101. [Definitions.]

PART 2  
POWERS OF FOREIGN PERSONAL REPRESENTATIVES

- 4-201. [Payment of Debt and Delivery of Property to Domiciliary Foreign Personal Representative Without Local Administration.]
- 4-202. [Payment or Delivery Discharges.]
- 4-203. [Resident Creditor Notice.]
- 4-204. [Proof of Authority-Bond.]
- 4-205. [Powers.]
- 4-206. [Power of Representatives in Transition.]
- 4-207. [Ancillary and Other Local Administrations; Provisions Governing.]

PART 3  
JURISDICTION OVER FOREIGN REPRESENTATIVES

- 4-301. [Jurisdiction by Act of Foreign Personal Representative.]
- 4-302. [Jurisdiction by Act of Decedent.]
- 4-303. [Service on Foreign Personal Representative.]

PART 4  
JUDGMENTS AND PERSONAL REPRESENTATIVE

- 4-401. [Effect of Adjudication for or Against Personal Representative.]

GENERAL COMMENT

This Article concerns the law applicable in estate problems which involve more than a single state. It covers the powers and responsibilities in the adopting state of personal representatives appointed in other states. Some provisions of the Code covering local appointment of per-

sonal representatives for non-residents appear in Article III. These include the following: 3-201 (venue), 3-202 (resolution of conflicting claims regarding domicile), 3-203 (priority as personal representative of representative previously appointed at domicile), 3-307(a) (30 days delay required before appointment of a local representative for a non-resident), 3-803(a) (claims barred by non-claim at domicile before local administration commenced are barred locally) and 3-815 (duty of personal representative in regard to claims where estate is being administered in more than one state). See also 3-308, 3-611(a) and 3-816. Also, see Section 4-207.

The recognition provisions contained in Article IV and the various provisions of Article III which relate to administration of estates of non-residents are designed to coerce respect for domiciliary procedures and administrative acts to the extent possible.

The first part of Article IV contains some definitions of particular relevance to estates located in two or more states.

The second part of Article IV deals with the powers of foreign personal representatives in a jurisdiction adopting the Uniform Probate Code. There are different types of power which may be exercised. First, a foreign personal representative has the power under Section 4-201 to receive payments of debts owed to the decedent or to accept delivery of property belonging to the decedent. The foreign per-

sonal representative provides an affidavit indicating the date of death of the nonresident decedent, that no local administration has been commenced and that the foreign personal representative is entitled to payment or delivery. Payment under this provision can be made any time more than 60 days after the death of the decedent. When made in good faith the payment operates as a discharge of the debtor. A protection for local creditors of the decedent is provided in Section 4-203, under which local debtors of the nonresident decedent can be notified of the claims which local creditors have against the estate. This notification will prevent payment under this provision.

A second type of power is provided in Section 4-204 to 4-206. Under these provisions a foreign personal representative can file with the appropriate court a copy of his appointment and official bond if he has one. Upon so filing, the foreign personal representative has all of the powers of a personal representative appointed by the local court. This would be all of the powers provided for in an unsupervised administration as provided in Article III of the Code.

The third type of power which may be obtained by a foreign personal representative is conferred by the priority the domiciliary personal representative enjoys in respect to local appointment. This is covered by Section 3-203. Also, see Section 3.611 (b).

Part 3 provides for power in the local court over foreign per-

sonal representatives who act locally. If a local or ancillary administration has been started, provisions in Article III subject the appointee to the power of the court. See Section 3-602. In Part 3 of this Article, it is provided that a foreign personal representative submits himself to the jurisdiction of the local court by filing a copy of his appointment to get the powers provided in Section 4-205 or by doing any act which would give the state jurisdiction over him as an individual. In addition, the collection of funds as provided in Section 4-201 gives the court quasi-in-rem jurisdiction over the foreign personal representative to the extent of the funds collected.

Finally, Section 4-303 provides that the foreign personal representative is subject to the jurisdiction of the local court "to the same extent that his decedent

was subject to jurisdiction immediately prior to death." This is similar to the typical non-resident motorist provision that provides for jurisdiction over the personal representative of a deceased non-resident motorist, see Note, 44 Iowa L.Rev. 384 (1959). It is, however, a much broader provision. Section 4-304 provides for the mechanical steps to be taken in serving the foreign personal representatives.

Part 4 of the Article deals with the res judicata effect to be given adjudications for or against a foreign personal representative. Any such adjudication is to be conclusive on a local personal representative "unless it resulted from fraud or collusion . . . to the prejudice of the estate." This provision must be read with Section 3-408 which deals with certain out-of-state findings concerning a decedent's estate.

## PART 1 DEFINITIONS

### Section 4-101. [Definitions.]

In this Article

(1) "local administration" means administration by a personal representative appointed in this state pursuant to appointment proceedings described in Article III.

(2) "local personal representative" includes any personal representative appointed in this state pursuant to appointment proceedings described in Article III and excludes foreign personal representatives who acquire the power of a local personal representative pursuant to Section 4-205.

(3) "resident creditor" means a person domiciled in, or doing business in this state, who is, or could be, a claimant against an estate of a non-resident decedent.

### COMMENT

Section 1-201 includes definitions of "foreign personal representative", "personal representative" and "non-resident decedent".

## PART 2

### POWERS OF FOREIGN PERSONAL REPRESENTATIVES

#### Section 4-201. [Payment of Debt and Delivery of Property to Domiciliary Foreign Personal Representative Without Local Administration.]

At any time after the expiration of sixty days from the death of a nonresident decedent, any person indebted to the estate of the nonresident decedent or having possession or control of personal property, or of an instrument evidencing a debt, obligation, stock or chose in action belonging to the estate of the nonresident decedent may pay the debt, deliver the personal property, or the instrument evidencing the debt, obligation, stock or chose in action, to the domiciliary foreign personal representative of the nonresident decedent upon being presented with proof of his appointment and an affidavit made by or on behalf of the representative stating:

- (1) the date of the death of the nonresident decedent,
- (2) that no local administration, or application or petition therefor, is pending in this state,
- (3) that the domiciliary foreign personal representative is entitled to payment or delivery.

#### COMMENT

Section 3-201(d) refers to the location of tangible personal estate and intangible personal estate which may be evidenced by an instrument. The instant section includes both categories. Transfer of securities is not covered by this section since that is adequately covered by Section 3 of the Uniform Act for Simplification of Fiduciary Security Transfers.

#### Section 4-202. [Payment or Delivery Discharges.]

Payment or delivery made in good faith on the basis of the proof of authority and affidavit releases the debtor or person having possession of the personal property to the same extent as if payment or delivery had been made to a local personal representative.

#### Section 4-203. [Resident Creditor Notice.]

Payment or delivery under Section 4-201 may not be made if a resident creditor of the nonresident decedent has notified the debtor of the nonresident decedent or the person having possession of the personal property belonging to the nonresident

decedent that the debt should not be paid nor the property delivered to the domiciliary foreign personal representative.

#### COMMENT

Similar to provision in Colorado  
Revised Statute, 153-6-9.

#### **Section 4-204. [Proof of Authority-Bond.]**

If no local administration or application or petition therefor is pending in this state, a domiciliary foreign personal representative may file with a Court in this State in a [county] in which property belonging to the decedent is located, authenticated copies of his appointment and of any official bond he has given.

#### **Section 4-205. [Powers.]**

A domiciliary foreign personal representative who has complied with Section 4-204 may exercise as to assets in this state all powers of a local personal representative and may maintain actions and proceedings in this state subject to any conditions imposed upon nonresident parties generally.

#### **Section 4-206. [Power of Representatives in Transition.]**

The power of a domiciliary foreign personal representative under Section 4-201 or 4-205 shall be exercised only if there is no administration or application therefor pending in this state. An application or petition for local administration of the estate terminates the power of the foreign personal representative to act under Section 4-205, but the local Court may allow the foreign personal representative to exercise limited powers to preserve the estate. No person who, before receiving actual notice of a pending local administration, has changed his position in reliance upon the powers of a foreign personal representative shall be prejudiced by reason of the application or petition for, or grant of, local administration. The local personal representative is subject to all duties and obligations which have accrued by virtue of the exercise of the powers by the foreign personal representative and may be substituted for him in any action or proceedings in this state.

#### **Section 4-207. [Ancillary and Other Local Administrations; Provisions Governing.]**

In respect to a non-resident decedent, the provisions of Article III of this Code govern (1) proceedings, if any, in a

Court of this state for probate of the will, appointment, removal, supervision, and discharge of the local personal representative, and any other order concerning the estate; and (2) the status, powers, duties and liabilities of any local personal representative and the rights of claimants, purchasers, distributees and others in regard to a local administration.

#### COMMENT

The purpose of this section is to direct attention to Article III for sections controlling local probates and administrations. See in particular, 1-301, 3-201, 3-202, 3-203, 3-307(a), 3-308, 3-611(b), 3-803(a), 3-815 and 3-816.

### PART 3

#### JURISDICTION OVER FOREIGN REPRESENTATIVES

##### Section 4-301. [Jurisdiction by Act of Foreign Personal Representative.]

A foreign personal representative submits personally to the jurisdiction of the Courts of this state in any proceeding relating to the estate by (1) filing authenticated copies of his appointment as provided in Section 4-204, (2) receiving payment of money or taking delivery of personal property under Section 4-201, or (3) doing any act as a personal representative in this state which would have given the state jurisdiction over him as an individual. Jurisdiction under (2) is limited to the money or value of personal property collected.

#### COMMENT

The words "courts of this state" are sufficient under federal legislation to include a federal court having jurisdiction in the adopting state.

A foreign personal representative appointed at the decedent's domicile has priority for appointment in any local administration proceeding. See Section 3-203(g). Once appointed, a local personal

representative remains subject to the jurisdiction of the appointing court under Section 3-602.

In 1975, the Joint Editorial Board recommended substitution of the word "personally" for "himself", in the preliminary language of the first sentence. Also, language restricting the submission to jurisdiction to cases involving the estate was added in 1975.

##### Section 4-302. [Jurisdiction by Act of Decedent.]

In addition to jurisdiction conferred by Section 4-301, a foreign personal representative is subject to the jurisdiction of the courts of this state to the same extent that his decedent was subject to jurisdiction immediately prior to death.

**Section 4-303. [Service on Foreign Personal Representative.]**

(a) Service of process may be made upon the foreign personal representative by registered or certified mail, addressed to his last reasonably ascertainable address, requesting a return receipt signed by addressee only. Notice by ordinary first class mail is sufficient if registered or certified mail service to the addressee is unavailable. Service may be made upon a foreign personal representative in the manner in which service could have been made under other laws of this state on either the foreign personal representative or his decedent immediately prior to death.

(b) If service is made upon a foreign personal representative as provided in subsection (a), he shall be allowed at least [30] days within which to appear or respond.

**COMMENT**

The provision for ordinary mail as a substitute for registered or certified mail is provided because, under the present postal regulations, registered mail may not be available to reach certain addresses, 39 C.F.R. Sec. 51.3(c), and also certified mail may not be available as a process for service because of the method of delivery used, 39 C.F.R. Sec. 58.5(c) (rural delivery) and (d) (star route delivery.)

**PART 4**

**JUDGMENTS AND PERSONAL REPRESENTATIVE**

**Section 4-401. [Effect of Adjudication for or Against Personal Representative.]**

An adjudication rendered in any jurisdiction in favor of or against any personal representative of the estate is as binding on the local personal representative as if he were a party to the adjudication.

**COMMENT**

Adapted from Uniform Ancillary Administration of Estates Act, Section 8.

## EXHIBIT 3

South Dakota Codified Laws (1976 Rev.)

## CHAPTER 30-12

ANCILLARY ADMINISTRATION OF NONRESIDENT  
DECEDENTS' ESTATES

- Section  
 30-12-1. Maximum nonresident estate subject to ancillary administration—Facts shown in petition—Publication of notice.  
 30-12-2. Omission from filing of papers not required in foreign administration.  
 30-12-3. Admission to record of copies of foreign proceedings—Conclusive evidence.  
 30-12-4. Postponement of hearing to permit creditor's application for letters.  
 30-12-5. Orders and decrees relating to property in state—Inheritance tax, claims and administration expense.  
 30-12-6. Validation of proceedings supported by final order in lieu of final decree.  
 30-12-7. Validation of prior proceedings based on defective notice—Assertion of vested rights.

## COMMISSION NOTE

Chapter 130, SL 1973, abolished all district county courts and vested jurisdiction of proceedings under this chapter in the circuit courts. See §§ 16-6-9 (5) and 16-6-9.1. The code commission has made text changes to show this change throughout this chapter.

## CROSS-REFERENCES

Declaratory judgment permitted as to rights in estate, § 21-24-5.      Jurisdiction as between courts, § 30-5-2.

30-12-1. Maximum nonresident estate subject to ancillary administration—Facts shown in petition—Publication of notice.—In case of a nonresident having property in this state not exceeding in value the sum of ten thousand dollars, which estate has been probated in another state, the District of Columbia, or any territory of the United States, the probate of said estate in this state may be dispensed with after one year from the death of said decedent on filing with the circuit court a petition under oath showing the facts in said case, together with authenticated or certified copies of the petition, order of appointment of executor or administrator, inventory, and final order or decree therein, and the circuit court giving notice by publication once a week for three successive weeks of the intention of said petitioner to have said probate proceedings admitted in this state as a probate of said estate.

Source: SL 1907, ch 125; RC 1919, § 3278; SDC 1939, § 35.0801; SL 1945, ch 153; 1949, ch 134; 1957, ch 184, § 1.

**Cross-References.**

Actions by or against foreign executors or administrators, § 30-15-5.

Agent for nonresident executor, § 30-13-2.

Conservatorships of absentees' estates, Chapter 30-34.

Fee chargeable by clerk of courts, § 16-2-29.

Filing foreign will for probate, § 30-6-37.

Proof of foreign will, § 30-6-38.

**Opinion of Attorney General.**

Clerk's fees in probate of foreign will, Report 1931-32, p. 603.

**30-12-2. Omission from filing of papers not required in foreign administration.**—If any part of the papers specified in § 30-12-1 are not required by, nor a part of, the probate procedure of the foreign state or the District of Columbia or any territory of the United States, the comparable papers of such foreign state or of the District of Columbia or any territory of the United States, may be used, or if there are none, the same may be omitted in either of which cases the certificate of the clerk or a judge of the foreign court or competent evidence to the effect that the papers attached and certified are the only comparable papers of the probate proceedings of the foreign state or the District of Columbia or any territory of the United States or that there is no such paper, or papers, required by such foreign probate procedure, shall be sufficient to authorize the court of this state to proceed with such ancillary probate as herein provided.

Source: SDC 1939, § 35.0801; SL 1945, ch 153; 1949, ch 134; 1957, ch 184, § 1.

**30-12-3. Admission to record of copies of foreign proceedings—Conclusive evidence.**—If on the day for hearing said petition no objection is made, the circuit court shall make an order admitting said authenticated or certified copies of the proceedings in said estate to record and they shall be considered and treated from that time as original proceedings in said court and shall be conclusive evidence of the facts therein shown.

Source: SL 1907, ch 125; RC 1919, § 3278; SDC 1939, § 35.0801; SL 1945, ch 153; 1949, ch 134; 1957, ch 184, § 1.

**30-12-4. Postponement of hearing to permit creditor's application for letters.**—If at such hearing any creditor shall object to said proceedings and show that the decedent is indebted to him, said hearing shall be postponed and such creditor or other person allowed to apply for letters of administration as in other cases.

Source: SL 1907, ch 125; RC 1919, § 3278; SDC 1939, § 35.0801; SL 1945, ch 153; 1949, ch 134; 1957, ch 184, § 1.

**30-12-5. Orders and decrees relating to property in state—Inheritance tax, claims and administration expense.**—The court of this state having jurisdiction of the ancillary probate shall have power to make all such orders and decrees as may be necessary to show the description of the property in this state and the heirs, devisees, legatees, or other persons entitled thereto, and the immunity of such estate from inheritance taxation, claims of creditors and administration expense, as the case may be, or to show the payment of any of the same.

Source: SDC 1939, § 35.0801; SL 1945, ch 153; 1949, ch 134; 1957, ch 184, § 1. **Cross-Reference.** Inheritance tax on nonresident estate, determination, §§ 10-41-50 to 10-41-60.

**30-12-6. Validation of proceedings supported by final order in lieu of final decree.**—In all instances in the ancillary administration of estates under the provisions of this law, where a certified or authenticated copy of a final order, in lieu of a certified or authenticated copy of a final decree of distribution has been filed, such proceedings are hereby legalized and validated.

Source: SL 1957, ch 184, § 2; SDC Supp 1960, § 65.0316-2.

**30-12-7. Validation of prior proceedings based on defective notice—Assertion of vested rights.**—In all proceedings relative to ancillary administration of estates of nonresidents where notice has been given in the manner ordered by § 30-12-1, except for the fact that publication of such notice has been only once a week for three successive weeks, all such proceedings are hereby legalized, cured and validated, and such notices are hereby declared to be in all respects of like force and effect as though such notices had been published for a period of three weeks.

If any person has any vested right in any property by reason of publication of notice having been made only once a week for three successive weeks, as referred to herein, if no action or proceeding to enforce such right was begun prior to July 1, 1946, such right shall be forever barred; and no action or proceeding so brought shall be of any force or effect, or maintainable in any court of this state unless, prior to July 1, 1946, there was recorded in the office of the register of deeds of the county in which the real estate affected is situated, a notice of the pendency of such action, in accordance with the provisions of chapter 15-10.

Source: SL 1945, ch 157; SDCSupp 1960, § 65.0316-1.

## ARTICLE 2. ANCILLARY ADMINISTRATION

### § 2-11-201. Probate of estates of nonresidents.

In case of a nonresident's estate having property in this state not exceeding in value the sum of thirty thousand dollars (\$30,000.00), which estate has been duly probated and settled in another state, the probate of the estate in this state may be dispensed with upon filing with the district judge in the proper county a petition under oath showing the facts in the case together with certified copies of the petition, order of appointment of executor or administrator, inventory and final decree of distribution of estate therein, and a full showing that debts of the estate have been paid and the district judge giving notice by publication for the period of three (3) weeks of the intention of the petitioner to have the probate proceedings admitted in this state as a probate of the estate. If on the day set for hearing the petition no objection is made, the judge shall make an order admitting the certified copies of the proceedings in the estate to record in his court and they shall be considered and treated from that time as original proceedings in his court and shall be conclusive evidence of the facts therein shown. If at such hearing any creditor objects to the proceedings and shows that the decedent is indebted to him, his claim not having been presented in the original state, the matter shall be postponed and the creditor or other person shall be allowed to petition for letters of administration as in other cases. This section shall not be construed to prevent the courts of this state from appointing a temporary administrator in this state to collect and preserve the property of the estate of the deceased person which may be located in this state. (Laws 1913, ch. 31, § 1; C.S. 1920 § 6746; R.S. 1931, § 88-918; C.S. 1945, § 6-2328; W.S. 1957, § 2-329; W.S. 1977, § 2-6-601; Laws 1979, ch. 142, § 3; 1980, ch. 54, § 1.)

**Repealing clauses.** — Section 2, ch. 34, Laws 1913, repealed all laws and parts of laws in conflict therewith.

**Effective dates.** — Section 3, ch. 31, Laws 1913, makes the act effective from and after passage. Approved February 21, 1913.

**Applied in** *Hawks v. Creswell*, 60 Wyo. 1, 144 P.2d 129 (1943).

**Law reviews.** — See "The Curative Act and the Probate Code," 3 Wyo. L.J. 204.

See article, "Wyoming's Law of Decedents' Estates, Guardianship and Trusts: A Comparison with the Uniform Probate Code — Part III," 9 Land & Water L. Rev. 567 (1974).

**Am. Jur. 2d, ALR and C.J.S. references.** — 31 Am. Jur. 2d Executors and Administrators §§ 680 to 712, 774 to 779; 79

Am. Jur. 2d Wills §§ 855, 857; 80 Am. Jur. 2d Wills §§ 1055 to 1062.

Constitutionality of statute allowing suit to be instituted or continued against foreign executors or administrators, 40 ALR 796.

Power to impound assets of nonresident decedent in state, 44 ALR 801.

Situs of corporate stock for purpose of appointment of ancillary administrator, ALR 179.

Discretion of court to refuse jurisdiction action against ancillary executor administrator, 79 ALR 1324.

Remission of assets by ancillary administrator to domiciliary executor administrator, 80 ALR 1043.

EXHIBIT 4

309 46

Probate Code §§ 658.010-658.060 (added). Collection of estates of nonresidents without ancillary administration

SECTION 1. Article 4 (commencing with Section 658.010) is added to Chapter 10 of Division 3 of the Probate Code, to read:

Article 4. Collection of Estates of Nonresidents  
Without Ancillary Administration

§ 658.010. Definitions

658.010. As used in this article:

- (a) "Account" has the same meaning as defined in Section 21.
- (b) "Domiciliary foreign personal representative" means a personal representative appointed in the state of the decedent's domicile, other than this state.
- (c) "Financial institution" has the same meaning as defined in Section 40.
- (d) "Local personal representative" means a personal representative appointed in this state.
- (e) "Person" has the same meaning as defined in Section 56.
- (f) "Personal representative" includes an executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.
- (g) "State" has the same meaning as defined in Section 74.

Comment. For convenience in drafting, Section 658.010 defines some terms used in this article. Subdivision (f) is drawn from Section 1-201(30) of the Uniform Probate Code.

309 51

§ 658.020. Informal collection of personal property

658.020. (a) A domiciliary foreign personal representative who desires to collect any claim or receive any personal property of the decedent in this state and remove it to the state of his or her appointment shall publish notice to all persons interested in the estate as creditors, heirs, legatees, or devisees. Publication shall be in a newspaper of

general circulation published in the county where the debtor resides or where the property is located, or if there is no such newspaper, then in a newspaper of general circulation in such county. For this purpose, funds in an account in an office or branch of a financial institution are deemed to be located in the county in which the office or branch is located. Publication shall be pursuant to Section 6063 of the Government Code.

(b) The notice shall state the name and address of the decedent, the names and addresses of the persons in this state indebted to or holding personal property of the decedent, that the domiciliary foreign personal representative desires to collect claims or receive personal property and remove it from this state, and that all persons having claims against the decedent or an interest in the estate and wishing to object to removal from this state of personal property of the decedent are required to give written notice thereof as follows:

(1) If the personal property consists of funds in an account in a financial institution doing business in this state, written notice of objection shall be given to the financial institution at the office or branch where the account is located within 30 days after the first publication of notice pursuant to subdivision (a).

(2) In the case of all other personal property, written notice of objection shall be given to the person indebted to or holding personal property of the decedent within three months after the first publication of notice pursuant to subdivision (a).

(c) The person indebted to or holding personal property of the decedent may pay the debt or deliver the personal property to the domiciliary foreign personal representative if the time specified in subdivision (b) has elapsed after the first publication of notice, the person indebted to or holding personal property of the decedent either has not received written notice from any person claiming as a creditor, heir, devisee, or legatee, objecting to the removal, or has received the consent of such person, and has received all of the following:

(1) An affidavit of the domiciliary foreign personal representative that valid letters were issued to him or her by a court of competent jurisdiction of a named state on the estate of a decedent resident in that state, and averring to the best of his or her knowledge and belief that no other letters on the estate are then outstanding in this state,

that no petition for such letters is then pending in this state, that no ancillary proceedings will be brought, and that there are no unpaid creditors (including the State of California) of the decedent or the estate who have not consented to the removal.

(2) An authenticated copy of his or her letters.

(3) An affidavit showing publication of the notice required by this section.

(d) For the purpose of this section, if the person indebted to or holding personal property of the decedent maintains branch offices, the notices and consents by claimants shall be given to the office or branch at which the account evidencing the indebtedness is located or at which the personal property is located or controlled.

(e) A person who makes payment or delivery as provided in this section is discharged from further liability and responsibility for the debt or property without the necessity of inquiring into the truth of any of the facts stated in the documents listed in subdivision (c).

Comment. Section 658.020 continues the substance of former Sections 1043 and 1043a, except as follows:

(1) Publication of all notices is pursuant to Section 6063 of the Government Code. Under prior law, publication under former Section 1043a was made pursuant to Section 6063 of the Government Code, but publication under former Section 1043 was made pursuant to Section 6064 of the Government Code. For a suggested form of notice, see Kimbrough & Lindgren, Ancillary Administration, in 2 California Decedent Estate Administration § 34.24, at 1359-60 (Cal. Cont. Ed. Bar 1975).

(2) Consent to the transfer of the State Controller under former Section 1043 is no longer required since the California inheritance tax has been repealed. However, the state may be a creditor of the estate under paragraph (1) of subdivision (c).

(3) In paragraph (1) of subdivision (c), it is made clear that the affidavit must allege that there are no other letters on the estate outstanding "in this state." This is the same in substance as Section 4-201 of the Uniform Probate Code.

A declaration under penalty of perjury may be used in lieu of the affidavit required by this section. See Code Civ. Proc. § 2015.5. See also Section 658.010 ("account," "financial institution," "foreign personal representative," "person," and "state," defined).

311 51

§ 658.030. Powers of foreign executor or administrator who files proof of authority

658.030. (a) If no proceedings for probate of the decedent's will or for administration of the decedent's estate have been had or are pending in this state, a domiciliary foreign personal representative may

file in the superior court of any county in this state in which property belonging to the decedent is located, an authenticated copy of his or her appointment, of any official bond he or she has given, and of the decedent's will, if any.

(b) If a domiciliary foreign personal representative has made the filing authorized by subdivision (a) in the county where the decedent's real property is located, the domiciliary foreign personal representative may sell the real property in the same manner as other sales of real property of decedents, including, when applicable, the Independent Administration of Estates Act, without the need for ancillary proceedings in this state. The domiciliary foreign personal representative may remove the proceeds of sale from this state in the manner provided in Section 658.020.

(c) A domiciliary foreign personal representative who has made the filing authorized by subdivision (a) may maintain actions and proceedings in this state subject to any conditions imposed on nonresident parties generally. A petition in this state for probate of the decedent's will or administration of the decedent's estate terminates the power of the domiciliary foreign personal representative to maintain actions or proceedings in this state. A local personal representative may be substituted for the domiciliary foreign personal representative in any action or proceeding in this state.

Comment. Subdivision (a) of Section 658.030 is drawn from Section 4-204 of the Uniform Probate Code and from Sections 2129.02 and 2129.25 of the Ohio Revised Code. A filing under subdivision (a) permits the domiciliary foreign personal representative to sell the decedent's real property without the need for ancillary administration (subdivision (b)), to maintain actions and proceedings in this state (subdivision (c)), to be sued here in any proceeding relating to the estate (Section 658.040), and to clear title to the decedent's real property by publishing notice to creditors (Section 658.050).

Subdivision (b) is drawn from Section 2129.25 of the Ohio Revised Code. For the provisions governing other sales of real property of decedents, see Sections 750-764, 780-794.

Subdivision (c) is drawn from a portion of Section 4-205 and a portion of Section 4-206 of the Uniform Probate Code. Subdivision (c) supersedes the former rule under Section 1913 of the Code of Civil Procedure, pursuant to which a foreign personal representative ordinarily could not sue in California. See 3 B. Witkin, California Procedure Pleading § 90, at 1766-67 (2d ed. 1971).

30678

§ 658.040. Jurisdiction over domiciliary foreign personal representative

658.040. (a) A domiciliary foreign personal representative submits personally to the jurisdiction of the courts of this state in any proceed-

ing relating to the estate by doing any of the following:

(1) Filing an authenticated copy of his or her appointment as authorized by Section 658.010.

(2) Receiving payment of money or taking delivery of personal property under this article, but jurisdiction under this paragraph is limited to the money or value of personal property collected.

(3) Doing any act in this state as a personal representative which would have given the state jurisdiction over him or her as an individual.

(b) In addition to jurisdiction conferred by subdivision (a), a domiciliary foreign personal representative is subject to the jurisdiction of the courts of this state to the same extent that his or her decedent was subject to jurisdiction immediately prior to death.

Comment. Subdivision (a) of Section 658.040 is the same in substance as Section 4-301 of the Uniform Probate Code. Subdivision (b) is the same in substance as Section 4-302 of the Uniform Probate Code, and is consistent with prior California law. See *Mitsui Manufacturers Bank v. Tucker*, 152 Cal. App.3d 428, \_\_\_ Cal. Rptr. \_\_\_ (1984).

311 52

§ 658.050. Summary proceedings for small estate

658.050. (a) Proceedings in this state for probate of the will of a nonresident decedent or for administration of the estate of a nonresident decedent may be dispensed with as provided in this section if all of the following conditions are satisfied:

(1) The gross value of the decedent's real and personal property in this state does not exceed sixty thousand dollars (\$60,000).

(2) A domiciliary foreign personal representative has been appointed for the decedent and a final decree of distribution has been made in the other state.

(3) The domiciliary foreign personal representative has filed in the superior court of any county in this state in which property belonging to the decedent is located a verified petition requesting admission of the final decree of distribution made in the other state as a settlement of the decedent's estate in this state, together with an authenticated copy of the petition in the other state, of his or her appointment, of any official bond he or she has given, of the decedent's will, if any, and of the inventory and final decree of distribution made in the other state.

(4) The domiciliary foreign personal representative has published a notice of the petition. Publication shall be in a newspaper of general circulation in the county where the filing was made pursuant to paragraph (3). Publication shall be pursuant to Section 6063 of the Government Code. A notice in the following form satisfies the requirements of this paragraph:

NOTICE OF PETITION FOR DISTRIBUTION  
UNDER FOREIGN DECREE

To all heirs, beneficiaries, creditors, contingent creditors, and persons who may otherwise be interested in the estate of \_\_\_\_\_  
(specify all names by  
\_\_\_\_\_ which decedent was known)

A petition has been filed by \_\_\_\_\_ in the Superior  
(name of petitioner)  
Court of \_\_\_\_\_ County requesting that the final decree of distribu-  
tion made in the state of the decedent's domicile be admitted in this state  
as a settlement of the decedent's estate in this state.

A hearing on the petition will be held on \_\_\_\_\_ at \_\_\_\_\_  
(date) (time)  
in \_\_\_\_\_ located at \_\_\_\_\_  
(department, division, or room number) (address of court)

If you object to the granting of the petition, you should either appear at the hearing and state your objections or file written objections with the court before the hearing. Your appearance may be in person or by your attorney.

Petitioner  Attorney for petitioner (name):

(address):

\_\_\_\_\_  
(Signature of  Petitioner  Attorney for  
petitioner)

(b) The clerk shall set the petition for hearing by the court. The domiciliary foreign personal representative shall file proof of notice with the court at or before the hearing.

(c) If no objection is made at the hearing, the court shall order that the documents filed under paragraph (3) of subdivision (a) be admitted in the proceeding under this section and shall thereafter be conclusive evidence of the facts stated therein. The court may make any other orders as may be necessary, including a description of the decedent's property in this state, the identities of the persons entitled to the decedent's property in this state, and provision for payment of expenses arising from the local proceeding.

(d) If at the hearing a creditor of the decedent objects to the proceedings and shows that the decedent is indebted to him or her and that the claim was not presented in the other state, the court shall order that the local proceedings be continued to permit the creditor to petition for letters as in other cases.

Comment. Section 658.050 is drawn from Section 2-11-201 of the Wyoming Statutes of 1977 and from Sections 3-12-1, 3-12-3, 3-12-4, and 3-12-5 of the South Dakota Codified Laws of 1976.

30172

§ 658.060. Effect of foreign adjudication for or against personal representative

658.060. An adjudication rendered in any jurisdiction in favor of or against any personal representative of the decedent's estate is as binding on the local personal representative as if he or she were a party to the adjudication.

Comment. Section 658.060 is the same in substance as Section 4-401 of the Uniform Probate Code. Section 658.060 is based in part on the well-accepted principle that a probate decree in another jurisdiction has in rem effect and binds all persons. See 4 B. Witkin, California Procedure Judgment § 180, at 3321-22 (2d ed. 1971). Under the full faith and credit clause of the United States Constitution, a judgment rendered by a court of another state is entitled to the same res judicata effect in California as it would have in the forum state. Id. § 156, at 3301. See also Code Civ. Proc. § 1908 (judgment binding on successors in interest); Walker v. Hansen, 218 Cal. 619, 24 P.2d 764 (1933) (judgment against administrator binding on trustee of same estate).

839 9

Probate Code § 1043 (repealed). Informal collection of personal property

SEC. 2. Section 1043 of the Probate Code is repealed.

~~1043. An executor or administrator to whom letters are issued on the estate of a nonresident decedent by a court of competent jurisdiction of any~~

state or territory of the United States desiring to collect any claim or receive any personal property in this state of such decedent and remove that collected or received to the jurisdiction in which his letters are issued, shall publish in some newspaper of general circulation published in the county where the debtor resides or the property is located, if there be one, if not, then in some newspaper of general circulation in the county, notice to all persons interested in said estate as creditors or as heirs, legatees or devisees. The notice shall set forth the names and addresses of the decedent and the person in this state indebted to or holding personal property of the decedent, shall state that the executor or administrator desires to collect a claim or receive personal property and remove that collected or received, and shall require all persons having claims against the decedent or an interest in his estate and wishing to object to such removal to give written notice thereof to the person indebted to or holding personal property of the decedent within three months after the first publication of the notice. Publication shall be pursuant to Section 6064 of the Government Code.

Upon the expiration of three months after the first publication of said notice, if the person so indebted to or holding personal property of the decedent either has not received written notice from any person claiming as a creditor, heir, devisee or legatee and objecting to such removal, or has received the consent of such person, then he may pay such debt or deliver such personal property to the executor or administrator, upon receipt of the following:

- (1) An affidavit of the executor or administrator that valid letters were issued to him by a court of competent jurisdiction of a named state or territory of the United States on the estate of a nonresident decedent and averring to the best of his knowledge and belief that no other letters on said estate are then outstanding, that no petition for such letters is then pending in this state, that no ancillary proceedings will be brought, and that there are no unpaid creditors of the decedent or the estate in this state who have not consented to such removal;
- (2) An authenticated copy of his letters;
- (3) Consent to the transfer of the State Controller, or a person authorized by him to issue such consent; and

(4) An affidavit showing publication of the notice required under this section and be discharged from further liability and responsibility for the debt or property, without the necessity of inquiring into the truth of any of the facts stated in the foregoing documents.

"Person" as used herein includes a partnership, association, firm or corporation.

If the person indebted to or holding personal property of the decedent maintains branch offices, the publication shall be in the county where it is located, and the notices and consents by claimants shall be given to, the office or branch at which the account evidencing the indebtedness or credit is carried, or at which the personal property is located or controlled.

Comment. Former Section 1043 is continued in substance in Section 658.020, except that under Section 658.020 publication is pursuant to Section 6063 of the Government Code rather than Section 6064.

322 89

Probate Code § 1043a (repealed). Informal collection of accounts

SEC. 3. Section 1043a of the Probate Code is repealed.

1043a. If the claim or property referred to in Section 1043 of this code consists of an account or accounts in any savings and loan association or bank doing business in this state, then publication of the notice specified in Section 1043 shall be pursuant to Section 6063 of the Government Code, and such notice shall require all persons having claims against the decedent or an interest in his estate and wishing to object to removal from this state of funds constituting such account or accounts, to give written notice thereof to such savings and loan association or bank within 30 days after the first publication of such notice.

Comment. Former Section 1043a is continued in substance in Section 658.020.

EXHIBIT 5

CONFORMING REVISION

405 963

Code of Civil Procedure § 1913 (amended). Effect of judicial record of sister state

1913. The effect of a judicial record of a sister state is the same in this state as in the state where it was made, except that it can only be enforced here by an action or special proceeding, and except also that the authority of a guardian, conservator, or committee, ~~or of an executor or administrator~~ does not extend beyond the jurisdiction of the government under which such person was invested with authority.

Comment. Section 1913 is amended to delete the reference to a foreign executor or administrator. The authority of a foreign executor or administrator is governed by Sections 658.010-658.050 and 1040-1042 of the Probate Code.