

Second Supplement to Memorandum 86-36

Subject: Study L-1029 - Estate and Trust Code (Distribution of Estate--
more comments on draft)

Attached to this memorandum is a copy of a letter from one of the State Bar teams noting problems with the following provisions of the draft tentative recommendation relating to distribution of the estate:

§ 8720. Time for petition. The team is concerned with the proposed change of the time for preliminary distribution from two months to four months. They believe numerous tax problems will be created by this change and that the flexibility existing in the present law should be preserved.

§ 8721. Order for distribution. The draft statute gives the court discretion whether to order a bond in connection with the preliminary distribution. The Bar team thinks that criteria or threshold standards should be articulated. Presumably they visualize a standard such as, "it appears that the remaining estate may be insufficient to satisfy the remaining unpaid demands against the estate."

§ 8722. Distribution under Independent Administration of Estates Act. Existing law limits preliminary distribution under independent administration to 50 percent of the net value of the estate; the draft replaces this limitation with a standard of 50 percent of the estate in the aggregate. The Bar team thinks this is no improvement and suggests that federal estate tax terms be adopted. The staff wonders whether this suggestion is feasible, since the gross estate for federal estate tax purposes is different from the estate for probate purposes.

§ 8800 et seq. Determination of persons entitled to distribution. The Bar team asks whether there are changes that should be made to this procedure to make it more consistent with general law. The staff sees no particular problems with the draft as it stands.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

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FILE NO.

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April 1, 1986

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Director, Schneider, Lettner,
Lynn & Quillinan

James V. Quillinan, Esq.
444 Castro Street, #900
Mountain View, CA 94041

Re: LRC Memo 86-36, Distribution of Estate

Dear Jim:

On April 1, 1986, Janet Wright and I ("Team 4") held a telephone conference respecting LRC Memo 86-36, Distribution of Estate.

Team 4 discussed the proposed substantive changes in the order in which they appear on Exhibit 1 to the Memorandum. The topics of the proposed substantive changes and our comments follow:

1. "Time for Preliminary Distribution": Team 4 is concerned that numerous tax problems (e.g. distributions which effect D.N.I.; the ability to avoid having an estate enter into an installment sale) will be encountered if the extended time proposals are enacted into law. For this reason, Team 4 believes that the flexibility existing in the present law should be continued. With respect to giving the Court discretion to determine when a bond is required, Team 4 thought that criteria or threshold standards should be articulated.

2. "Preliminary Distribution under the Independent Administration of Estates Act": Team 4 believes that the proposed language "estate in the aggregate" does not represent a substantial improvement over existing language. Team 4 suggests that federal estate tax terms be adopted.

3. "Cost of the Preliminary Distribution Proceeding": Team 4 thinks that the proposed change will be beneficial.

4. "Supplementary Account" and "After Discovered Property": Both of the proposed changes will benefit practitioners.

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5. "Determination of Persons Entitled to Distribution": Team 4 approves of the proposed change. A question is whether or not there are any additional items which should be changed in order to make the 1080 procedures more consistent with other areas of law.

6. "Deceased Distributee" and "Unclaimed Property": Team 4 thinks that the proposed changes should be enacted.

If Team 4 may be of further assistance, please do not hesitate to contact us.

Cordially,

Kathryn A. Ballsun

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