

Memorandum 86-202

Subject: Study L-1025 - Probate Code (Creditor Claims and Payment of Debts--comments on tentative recommendation)

The Commission distributed for comment in July its tentative recommendation relating to creditor claims and payment of debts. We have received 17 letters commenting on various aspects of the tentative recommendation, attached to this memorandum as Exhibits:

| <u>Exhibit No.</u> | <u>Author</u> |
|--------------------|--|
| 1 | Henry Angerbauer |
| 2 | Keith P. Bartel (Chairman, Probate Section, San Mateo County Bar Assn.) |
| 3 | Rawlins Goffman |
| 4 | James Efting |
| 5 | Irving Kellogg |
| 6 | Beverly Hills Bar Assn., Probate, Trust and Estate Planning Section) |
| 7 | Benjamin D. Frantz |
| 8 | Warren L. Sanborn |
| 9 | Howard Serbin |
| 10 | Warren L. Coats |
| 11 | Beryl A. Bertucio |
| 12 | Florence J. Luther |
| 13 | Benjamin D. Frantz |
| 14 | James C. Opel |
| 15 | State Bar Special Team on Creditor Claims and Payment of Debts |
| 16 | Los Angeles County Bar Assn., Probate and Trust Law Section, Executive Committee |
| 17 | State Bar Special Committee on Creditor Claims and Final Distribution |

The comments on the tentative recommendation generally were favorable. Henry Angerbauer of course agreed with the conclusions of the Commission. James Efting found the tentative recommendations well thought out and heartily recommends them. The Beverly Hills Bar Association generally supports the proposed revisions. Beryl A. Bertucio also generally agrees with the changes; "The proposed procedure seems more efficient and realistic." And the Los Angeles County Bar Association finds the claims provisions very much improved.

The comments also addressed specific points in the tentative recommendation. Attached to this memorandum is a revised version of the tentative recommendation, to which the staff has appended notes analyzing the comments following the relevant sections. The revised version also incorporates technical changes and corrects typographical errors noted in the comments.

Our objective is to make whatever changes in the draft appear appropriate in order to prepare a final recommendation on this topic for submission to the 1987 legislative session. Please note that we are preparing the draft as an amendment to the Probate Code rather than as part of the Estate and Trust Code.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

HENRY ANGERBAUER, CPA
4401 WILLOW GLEN CT.
CONCORD, CA 94521

8/8/86

Juan C Rogers:

Dear Juan:

Thanks for sending the material related to the new estate and trust code on Creditors claims and Payment of Debts. I hope you will continue to send me the proposed revisions, the Commission will make to the new code.

I agree with the conclusions of the Commission related to Creditors claims and the Payment of debts and I ~~strongly~~ suggest you propose those to the legislature pending any revisions you care to make. Best Personal Regards
Sincerely
Henry

CARR, MCCLELLAN, INGERSOLL, THOMPSON & HORN

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June 4, 1986

Law Revision Commission
 400 Middlefield Road, Suite D-2
 Palo Alto, California 94303-4739

Dear Ladies and Gentlemen:

On May 30, 1986, I sent you a letter discussing certain aspects of the matters raised in your studies L-1010 and L-1028.

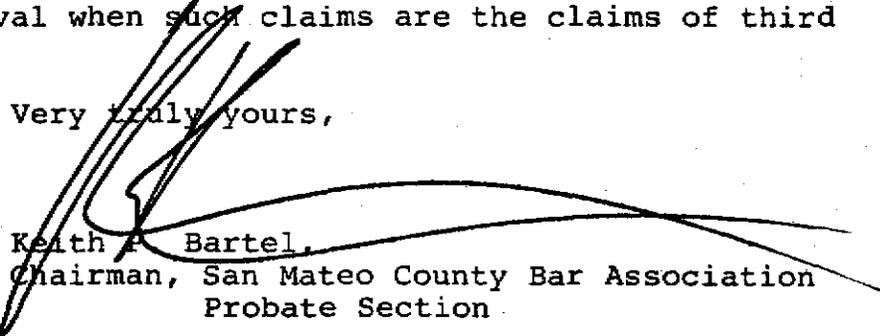
One of the matters discussed dealt with creditor's claims and with my belief that the proposed changes to the creditor's claims statute ought not to be made and the creditor's claims provisions retained as they presently stand.

I have recently had an opportunity to discuss this matter with the Honorable Harlan K. Veal, the Superior Court Judge in San Mateo County who has been handling probate matters for the past 18 months.

Judge Veal pointed out to me the considerable frustration faced by a probate judge in dealing with the massive numbers of creditor's claims submitted to the Judge for approval after approval by the personal representative. This requirement is curious since almost always the Judge has no independent basis on which to do anything other than approve the claim.

While it is certainly appropriate that claims of personal representatives and perhaps the estate beneficiaries be submitted to the court for approval, the Commission should consider recommending the abolition of creditor's claims submission for judicial approval when such claims are the claims of third parties.

Very truly yours,


 Keith A. Bartel,
 Chairman, San Mateo County Bar Association
 Probate Section

KPB:sh

cc: Honorable Harlan K. Veal

| | |
|-----------------------|-------------------------|
| ROBERT R. THOMPSON | LUTHER M. CARR |
| ALBERT J. HORN | FRANK B. INGERSOLL, JR. |
| DAVID C. CARR | CYRUS J. MCMILLAN |
| ARTHUR H. BREDENBECK | OF COUNSEL |
| NORMAN I. BOOK, JR. | |
| QUENTIN L. COOK | E. H. COSGRIFF |
| ROBERT A. NEBRIG | (1880-1947) |
| RICHARD C. BERRA | J. ED MCCLELLAN |
| L. MICHAEL TELLEEN | (1895-1985) |
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| EDWARD J. WILLIG III | |

RAWLINS COFFMAN

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August 12, 1986

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Ref: Study L-1025

Ladies and Gentlemen, Judges and Jurors:

Permit me to comment on Study L-1025.

With reference to Section 9150 I see two problems:

First: The clerks are overworked and cannot do a proper job of notifying the attorney of record or the personal representative;

Second: Where will the "amendment or revision of claim" referred to in section 9104 be filed?

The NOTICE OF DEATH OF _____ AND OF PETITION TO ADMINISTER ESTATE form approved by the Judicial Council, DE-121, currently provides in paragraph no. 7 as follows:

"7. If you are a creditor or a contingent creditor of the deceased, you must file your claim with the court or present it to the personal representative appointed by the court within four months from the date of first issuance of letters as provided in section 700 of the California Probate Code. The time for filing claims will not expire prior to four months from the date of the hearing noticed above."

Why not provide that all claims (whether original or amended and revised) be filed with the personal representative or the attorney of record whose address appears on the Notice of Death?

Query? Many clerks will assume the responsibility of determining the validity, both as to form and content, of each claim and return it to the claimant for revision without notifying the personal representative or the attorney of record. Is the clerk to determine the "status" of a late claim?

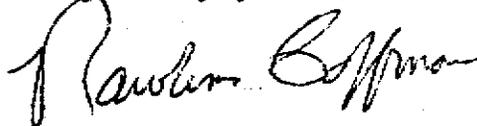
Under proposed section 9050 the personal representative "shall serve notice" if he or she "has actual knowledge of a creditor of the decedent". At the outset the personal representative must check the courthouse and involve the clerk in a preliminary inquiry to determine whether a claim has been filed. This again will impose a duty on the busy clerk which is bound to be resented.

With respect to section 9306: When does the 30 days commence to run? Does it commence when the claim is filed with the clerk or does it commence when the clerk notifies the personal representative or the attorney of record?

My suggestion is that all claims, whether original or amended, be filed with the Petitioner or the Attorney for Petitioner who signs Form DE-121, NOTICE OF DEATH OF _____ AND PETITION TO ADMINISTER ESTATE at the address set forth on that formal notice. This would resolve the problems suggested above.

Thank you for retaining me on your mailing list.

Very truly yours,



RAWLINS COFFMAN

RC:tm

JACKSON, BROWN & EFTING

ATTORNEYS AT LAW

485 SOUTH MATHILDA AVENUE, SUITE 304
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TELEPHONE 732-3114

RICHARD A. BROWN
HUGH JACKSON
JAMES H. EFTING
KEITH C. WATSON

8 August 1986

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Re: Tentative Recommendation relating to
The New Estate and Trust Code
(Creditor Claims and Payment of Debts)

Dear Commission Members:

Thank you for providing me with a copy of the tentative recommendation regarding creditor's claims and payment of debts.

Over all, I found the tentative recommendations well thought out and heartily recommend them.

Very truly yours,



JAMES EFTING

JE:kt

Irving Kellogg
Attorney at Law
821 Monte Leon Drive
Beverly Hills, Ca 90210

August 10, 1986

John DeMouilly
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, Ca 94303-4730

Re: Creditor Claims and Payment of Debts - Tentative
Recommendation relating to The New Estate and Trust Code

Dear Mr. DeMouilly:

Enclosed is the draft with my comments and suggested
drafting changes noted in the body of the draft.

These are my additional comments:

Page 2. The word, only, belongs in front of the word, persons,
not in front of the words, be required.

Page 3. 1st paragraph. The new procedure burdens the probate
court even further. To have the clerk send out the notice to the
personal representative or attorney will lead to delay,
omissions, and postal failures.

Why not shift the burden to the claimant with the requirement
that the claimant must send the claim to both the clerk and the
personal representative by certified mail?

After all, claimants file very few claims in their lifetimes or
business careers, but the court would be filing and mailing
thousands of them. Imagine the chances for delays, omissions and
postal failures under that system.

Sec. 9001. page 1.

Change "pursuant to" to "under". Modern drafting eschews
the archaic "pursuant to". This comment applies to all places in
the proposed code where "pursuant to" appears.

Put a comma after the word, part, in the last line.
Otherwise it is not clear on the first reading that the word,
and, connects two clauses rather than is a connective for part
and publication.

Sec. 9001. page 2.

Eliminate the word, commencing. It is stuffy and is not as easy to comprehend as, beginning.

Why not eliminate, constitute, and put, are, in its place?

Put a comma after "public entity" because "required by....," refers to notice or request and does not refer to public entity.

In the Note, put the clause "after the staff....." at the beginning of the sentence to notify the reader that the action does not occur until the event of consultation. The event is the important trigger for the action.

Sec. 9002 (a).

Do not separate the subject from the verb. The reader will comprehend better if you place the clause, "whether....." at the start of the sentence.

(c). Insert after the word, unless, these words: "the holder first makes a claim as required in this part." The words, unless first made as prescribed in this part, are not instantly clear.

9050. (a).

In the first sentence, move the clause, before expiration...., to the space before the subject of the sentence because, again, it is condition precedent and should be put there as a warning to the reader that the actor does not act unless that condition is fulfilled.

Mr. DeMouilly, I have noted my corrections in the body of the text, and I do not think you need any further explanations of my reasoning. I would, however, call your attention to one more correction on page 4, Sec. 9052, Notice. Add the word, DECEDENT, to the heading. The probate court filings and the judicial council forms either require it or ask for it to avoid confusion with the estate of a Conservatee. So it would be with a creditor and the court when the court would receive a claim.

I did not edit the entire report because of a lack of time, but I believe I have communicated the essence of what I think should be done. I hope that your draftpersons are not offended by my concern about precision in drafting, but it is a very serious interest for me. As you know, I was involved in drafting the original Statutory Will, and I have written about plain English.

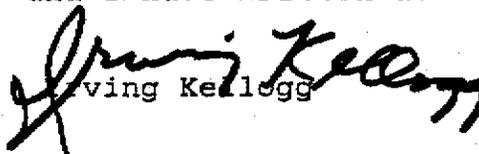

Irving Kellogg

EXHIBIT 6

BEVERLY HILLS BAR ASSOCIATION
PROBATE, TRUST AND ESTATE PLANNING SECTION
LEGISLATION COMMITTEE
Ralph Palmieri, Esq.
Phyllis Cardoza, IIA,
Kenneth G. Petrulis, Esq.

CALIFORNIA LAW REVISION COMMISSION
Study L-1025 - Estate and Trust Code (Creditors
Claims and payment of debts)
Memorandum dated 7/25/86

BHBA Suggested Changes - Sections 9000-9354
and Sections 11400-11446*

General comments

The BHBA generally supports the proposed revisions of the LRC, particularly those set forth at Chapter 2 dealing with due process rights and the actual notice to creditors requirements. Similarly, we believe the creation of a single process for presentation of claims, by requiring that they be filed with the court as set forth in Chapter 7, is an improvement on the present dual system.

Usage of the terms "filed" and "made": The new code revisions introduced the concept of the "making of a claim". The term "make" or "made" implies the coming into existence of a claim when it is filed. This, however, conflicts with new Section 9000, which defines a claim as being in existence whether it is filed or not. Further, it is not clear from the definition of claim, set forth in Section 9150, that there is any difference between the term "made" and "filed" as it was intended to be used in the revised code. The term "claim" by definition means

creating or causing to come into existence. This implies that a claim does not exist before it is "made". There are no such problems with the term "file". We therefore suggest that the use of the term "made" in the code be suppressed and the term "filing" be appropriately substituted.

§9002. Claim requirement

9002. Except as otherwise provided by statute:

(a) All claims, whether due, not due, or contingent, and whether liquidated or unliquidated, shall be made in the manner and within the time prescribed in this part.

(b) A claim that is not made as prescribed in this part is barred.

(c) No holder of a claim shall maintain an action on the claim unless the claim is first made as prescribed in this part..

BHBA Comments

The proposed addition clarifies the antecedent of the term "first made".

*Deletions lined through; additions underlined.

§9050 Notice required

BHBA Comment

1. Section 9050(a) uses the term "actual knowledge of a creditor" and later defines creditor as a person who has demanded payment by the decedent or from the estate. We believe it would help to define the term actual knowledge to show just which elements must be known to the personal representative in order to constitute actual knowledge of a creditor. For example, if a personal representative has knowledge of the existence of a person who regularly did business with the decedent, is it also necessary that the personal representative have "actual knowledge" of a demand for payment by the decedent.

2. Perhaps it would be desirable to add a subsection (c) which includes the existing definition of "creditor", as set forth in subdivision (a), and the definition of the term "actual knowledge of a creditor".

§9103. Late claims

BHBA Comment

1. Some of our members feel that the term "claimant who does business in the state", as used in §9103(a)(1), is unclear and that the standard or test for doing business in the state should be stated.

2. The comment to the section referring to subdivision (a)(1) does not appear correctly to reflect the substance of that subdivision. It should be revised to read: "But limits subdivision (a)(1) to non-business claimants who are out of state during the entire claim period, and business claimants who do not do business in the state."

§9153. Waiver of formal defects

9153. Notwithstanding any other provision of this part, if a creditor demands payment within the time prescribed in Section 9100 ~~and the amount demanded does not exceed \$500~~, the personal representative may waive formal defects and elect to treat the demand as a claim by paying the amount demanded within the time prescribed in Section 9100.

BHBA Comments

1. Present law and practice allow payment of claims within the claims period by the personal representative without the presentation of a formal claim, subject to the approval of the court. No limitation presently exists, except that implicit in the risk that the personal representative takes in paying the claim without court approval. We believe this limitation has worked well in practice and that the setting of a \$500 limit would imply that claims paid under that amount are not subject to court approval, while under the present system, all such amounts paid are subject to court approval.

2. The \$500 limit is unrealistic, considering that many monthly bills, including doctors, mastercharge, loan payments, etc., may exceed the \$500 limit.

*Deletions lined through; additions underlined.

§9252. Limitation on application of chapter

9252. This chapter does not apply to liability for the restitution of amounts illegally acquired through the means of a fraudulent, false, or incorrect ~~claim~~ application or representation, or a forged or unauthorized endorsement.

BHBA Comment

The word "claim" is a term of art which is defined in this part at §9000. It may avoid confusion to substitute some alternative word, where use of the term of art is not intended.

*Deletions lined through; additions underlined.

§11423. Interest

11423. (a) Interest accrues on a debt from the date the court orders approves payment of the debt until the date the debt is paid. Interest accrues at the legal rate on judgments.

(b) Notwithstanding subdivision (a), in the case of a debt based on a written contract, interest accrues at the rate and in accordance with the terms of the contract, but in no event shall the rate be greater than the legal rate on judgments. The personal representative may, by order of the court, pay all or part of the interest accumulated and unpaid at any time when there are sufficient funds, whether the debt is then due or not.

*Deletions lined through; additions underlined.

BHBA Comments

1. We generally feel that creditors should be protected, whatever their interest. However, there are periods, such as those at the beginning of administration, when it is impossible for the estate to act because the availability of assets to pay claims and the amount of claims are not yet known. We suggest, therefore, that consideration be given to the relative rights of various types of creditors, including those with interests set by contract, at either high or low rates, and those creditors without any interest rate set by contract who will be affected because their debt bears no interest until the court orders an approval. Some of us feel that the present rule, as stated in Probate Code §733, has worked well and equitably and see no need for a revision. The present section protects the estate and treats all creditors equally.

2. Present law provides that interest shall accrue from the date a claim is approved by the court. In this respect, all claims are treated the same. All will accrue interest. The change recommended by the LRC would delay the accrual of interest on many claims until the date a claim is ordered paid by the court. This is usually much later than the date of approval.

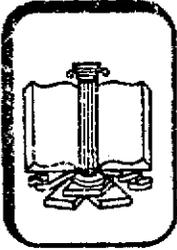
3. Present law, §733 of the Probate Code, limits the rate of interest on claims to the legal rate. We believe this is desirable for two reasons. First, the approval of

a claim by the court gives the debtor security that the claim will be paid. Second, the period of probate administration is a condition usually not contemplated by the parties and will often result in a delay of payment of a debt. Payment of a rate higher than the legal rate of interest not only unfairly favors some creditors over others, but may work a hardship on the estate when administration of the estate extends over a long period.

3. General comments

The BHBA generally supports the proposed revisions of the LRC, particularly those set forth at Chapter 2 dealing with due process rights and the actual notice to creditors requirements. Similarly, we believe the creation of a single process for presentation of claims, by requiring that they be filed with the court as set forth in Chapter 7, is an improvement on the present dual system.

EXHIBIT 7



McGEORGE SCHOOL OF LAW

UNIVERSITY OF THE PACIFIC 3200 Fifth Avenue, Sacramento, California 95817

September 3, 1986

California Law Revision Commission
4000 Middlefield Road, #D2
Palo Alto, CA 94303-4739

Attention: Mr. John H. DeMouilly
Executive Secretary

Re: Tentative Recommendation Relating to the New
Estate and Trust Code dated July 17, 1986

Dear Mr. DeMouilly:

The system of presenting claims directly to the personal representative has been for a long time and is now working very successfully. I see no reason to burden the county clerk with the additional work of handling every creditor's claim. I see no reason for the two-step process.

Should proposed section 9304 refer to the exception set forth in proposed section 9153?

Very truly yours,

Handwritten signature of Benjamin D. Frantz.

BENJAMIN D. FRANTZ
Professor of Law

BDF:bk

cc: Mr. James A. Willett

Apparently, I have misplaced my file with the previous drafts. Would it be a burden to send them to me?
BJ

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EVERETT HOUSER
WARREN L. SANBORN

September 8, 1986

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Re: Tentative Recommendation Estate and Trust Code
Creditor's Claims and Payment of Debts

Thank you for sending the Tentative Recommendation above referred to. I do have a few comments.

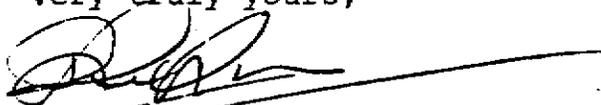
I feel that it would be a great assistance to counsel for the personal representative if §9302 were amended to provide that claims by said attorney would also require Court approval. It is not unusual, because of the nature of estate proceedings and the manner in which they often follow conservatorships or other representation of the Decedent, for the attorney to have a claim against the estate. Because of his fiduciary position and the influence which the attorney has over the personal representative, Court approval of his claims seems advisable.

Regarding §9307, (a)(2) seems an unnecessary extension of time. We are not discussing payment of the claim, merely filing of an action. It would be beneficial to determine the claim as early as possible; therefore, the time period provided in (a)(1) appears more than sufficient.

I am quite convinced that there should be a thirty (30) day grace period before interest starts accruing as provided in §11423(a). It is next to impossible to make payment on the same day that the Court approves payment of the debt. Granted it could be an Ex Parte request and possible, but it is extremely unlikely. It does not seem proper to penalize the estate for a normal delay in payment that would be satisfactory if done other than by an estate.

Thank you again for allowing these comments.

Very truly yours,



WARREN L. SANBORN

WLS:ec

P. O. Box 1379
Santa Ana, California 92702-1379
September 23, 1986

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Dear Commission:

Thank you for sending me your tentative recommendations regarding the proposed creditor claims and payment of debts sections of the new Estate and Trust Code.

My comments follow. Please understand that these are my individual views and that I do not write here as a representative of the Orange County Counsel, the Orange County Public Administrator, or the County of Orange.

Proposed Section 9053:

I believe this is an essential component of the proposed new notice to creditors system, and I strongly support it.

Proposed Section 9100:

The one-year time period could create a delay in the paying of approved claims. It delays the time in which a representative can know whether an estate is solvent and whether approved claims can safely be paid in full (although there was always this delay in the sense that claims from out-of-state claimants could arise). Proposed Section 11421 partially obviates the problem--at least certain types of claims can (and should) be paid immediately. However, I would certainly not want sub-section (b) to allow more than one year from issuance of letters, and from an administrative standpoint I would prefer the time to be less.

Proposed Section 9103(a)(2):

I strongly support this addition. Current law creates uncertainty as to whether a person who was out of state for part of the notice period has a year to present a claim. Your proposal clarifies the situation.

Proposed Section 9104:

I believe the one year should also run when special letters with general powers have been issued. I would prefer a time limit less than one year.

Proposed Section 9150:

I strongly support this change. Under current law, there can be problems when the person petitioning for personal representative is not the one appointed. His name has been in the notice and therefore he may receive the claim. There is no insurance that such person will transfer the claim to the representative. Your proposed system avoids that problem.

Proposed Section 9153:

I support this provision.

Proposed Section 9306:

Current law provides far too little time; I support your proposed change.

Proposed Section 11420:

I question whether last illness claims of the Director of Health Services pursuant to (former) Section 700.1 should have the same priority as other expenses of last illness. Perhaps they should be between priority (4) and priority (5). While I have not researched the legislative history, I question whether 700.1 was intended to adhere to the detriment of other priority creditors in an insolvent estate. It may be these claims should be considered general debts. They are often large claims that leave little left for other creditors.

Proposed Section 11421:

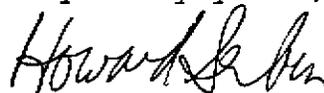
I support this proposal.

Proposed Section 11423:

Perhaps this could explicitly provide that court approval of a claim does not start interest accruing.

I look forward to receiving your further recommendations.

Very truly yours,



Howard Serbin
Deputy County Counsel
Orange County

WILBUR L. COATS
ATTORNEY AND COUNSELOR AT LAW

TELEPHONE (619) 748-6512

September 22, 1986

California Law Revision Commission
4000 Middlefield Rd., Suite D-2
Palo Alto, Ca 94303-4739

Gentlemen:

Reference is made to Tentative Recommendation relating to The New Estate and Trust Code, Study L-1025 Page 16.

Chapter 7 Allowance and Rejection of Claims
Section 9300. Procedure by personal representative

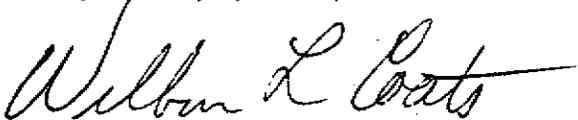
In subparagraph (b) delete the second sentence and substitute the following.

(b) The personal representative shall serve the allowance or rejection on the claimant and shall retain a copy in the personal representatives file for a period of six (6) months after final distribution has been approved by court order.

COMMENT

The filing of creditor's claims as proposed in the Tentative Recommendations will add to the court filing system. The alternative by requiring the personal representative to retain a copy of the creditor's claim will reduce the court workload and will provide for a written record if required by the court.

Very truly yours,



Wilbur L. Coats



**Matthew Bender
& Company, Inc.**
2101 Webster Street
Post Office Box 2077
Oakland, CA 94604
(415) 446-7100

September 29, 1986

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Re: Study L-1025: Tentative Recommendations Relating to
Creditor Claims and Payment of Debts

Gentlemen:

Thank you for the above-referenced proposal.

I generally agree with all the changes regarding claims and payment of debts. The proposed procedure seems more efficient and realistic.

§ 9050(a) (notice to creditors who have demanded payment from estate) I think the comment that this section applies only to creditors who demand payment during administration should be incorporated into § 9050(a) to make clear that the personal representative does not have a duty to search through all decedent's old bills.

§ 9100 (claim period) I think the decision not to limit creditors who have received § 9050 notice to a 30-day filing period is appropriate in that a shorter period seems discriminatory and unfair to creditors who cannot bill until they receive billing from suppliers or, in the case of credit card issuers, member merchants.

§ 9103(a)(1) (late claim by business creditor) The provision seems unfair to sole-proprietorships and small businesses when the owner, principal, or only person with authority to make a claim is out of state during the entire period.

§ 9150 (filing of claims with clerk) I applaud the single filing provision, but I think filing with the personal representative or with the attorney for the personal representative would lessen the burden on the courts and might be more convenient for the creditor since the address of the attorney for the personal representative is shown on the published notice but the address of the court is not.



Matthew Bender

§ 9152(b) (documentary support of claim secured by line on real property) § 9152(b) seems inconsistent with the the comment to § 9000 that claim need not be made in the case of foreclosure of a line on property in the decedent's estate.

§ 9302 (claims of personal representative) Although I have appeared before judges who held an evidentiary hearing on the personal representative's claim, with notice to the beneficiaries, I do not recall whether there is specific authority for such a procedure. It does seem a reasonable intermediate measure before things escalate to litigation. Will §§ 9620 and 9621 apply only after rejection?

Sincerely,

Beryl A. Bentucio
Senior Legal Writer

cc: George Meier

CHARLES W. LUTHER
FLORENCE J. LUTHER

LAW OFFICES OF
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October 6, 1986

California Law Revision Commission
4000 Middlefield Road, Suite E-2
Palo Alto, California 94303-4739

Re: **The New Estate and Trust Code**

Dear Sir or Madam:

Thank you for forwarding to me the tentative recommendations relative to the new Estate and Trust Code.

I would like to suggest that the Commission consider the problem with respect to Special Administrators, or what could be a problem, with respect to the right of a Special Administrator to make final distribution of an estate.

Under the present case law (Estate of Davis, (1917) 175 Cal. 198,) even when distribution is the only remaining step, a General Administrator or Executor must be appointed for that purpose even though a Special Administrator may have completed all of the work necessary in the probate proceedings, including the filing of notice to creditors.

It would seem it may create an unnecessary delay in an estate, where all the creditors have in fact been protected, and there is no other controversy in the estate, to delay the distribution of the estate simply for the formality of appointing a General Administrator or Executor, where no contest exists.

It is possible the law may be limited to the cases where the Special Administrator and the person who would be the Executor under the Will are one and the same, or some other limitation, but it does seem there should be some circumstances under which a Special Administrator with general powers should be able, upon court approval, to distribute the estate to the persons entitled thereto.

In cases of a Will contest or where the admission of a Will would be a prerequisite to distribution, these requests for a Special Administrator to terminate the Estate may not be feasible, but at least it is something I think the Commission should consider.

I would also like to comment with respect to requiring the personal representative to serve personal notice on known creditors. If the Commission feels that is a necessity, then I think the Commission should limit the definition of a "known creditor" to someone who is known to the personal representative within four months from the date of the appointment of the representative.

The new Code establishing outside limits for entertaining creditor's claims "one year after the personal representative is appointed or the time and order for final distribution is made, whichever occurs first" seems much too long a period to allow the uncertainty of creditor's claims to continue.

Thank you for your review of these comments.

Very truly yours,

LUTHER & LUTHER
A Professional Corporation

By: 
FLORENCE J. LUTHER

FJL:saw

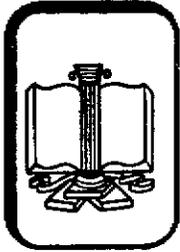


EXHIBIT 13

McGEORGE SCHOOL OF LAW

UNIVERSITY OF THE PACIFIC 3200 Fifth Avenue, Sacramento, California 95817

October 15, 1986

California Law Revision Commission
4000 Middlefield Road, #D2
Palo Alto, CA 94303-4739

Attention: Mr. John H. DeMouly
Executive Secretary

Dear Mr. DeMouly:

Having given further thought to the matter since my letter to you of September 3, 1986, I enclose my suggestions with respect to the presentation of payment of claims.

Very truly yours,

A handwritten signature in cursive script that reads "Benjamin D. Frantz". The signature is written in dark ink and is positioned above the typed name.

BENJAMIN D. FRANTZ
Professor of Law

BDF:bk
enc.

cc: James A. Willett

SUGGESTED CHANGES IN PROPOSED SECTIONS

9003. Except for a claim that may be paid immediately, a claim that is established pursuant to this part shall be included among the debts to be paid in the course of administration.

9051. The notice shall be served within four months after letters are first issued to a general personal representative; and proof of service shall be filed within 30 days thereafter.

(Comment: There appears to be no reason to shorten the time for service to accommodate the time it takes to file the proof of service.)

9052. The notice shall be in substantially the following form:

NOTICE OF ADMINISTRATION OF
ESTATE OF _____

To creditors of _____:

Letters were issued on _____, 198__ in Estate No. _____ in the Superior Court of California, County of _____, for the administration of the estate of the decedent. You must file your claim with the court within four months from the date of issuance of the letters or 30 days from the date of mailing or delivery of this notice, whichever is later, as provided in Section 9100 of the California Estate and Trust Code.

(Name and address of personal representative or attorney)

9150. (a) A claim filed with the clerk before being presented to the personal representative shall be filed in duplicate. The clerk shall immediately mail to the personal representative or his or her attorney one of the copies of the claim. The personal representative's allowance or rejection must be writing and filed with the clerk. An allowed claim, endorsed with the date of presentation, shall immediately be presented to the judge, who shall endorse upon the claim his approval or rejection, with the date thereof.

(b) When a claim is presented to the personal representative before filing, he or she must endorse thereon his or her allowance or rejection. If the personal representative allows the claim, it must be presented to the judge, who shall endorse upon it his approval or rejection; and, if approved, the claim shall be filed with the clerk within 30 days thereafter.

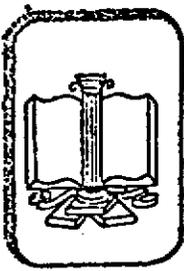
Comment: As noted in my letter to you of September 3, 1986, "if it ain't broke, don't fix it." I have deleted from my copying of present section 711 "with the date thereof" because the Judicial Council form does not use it.)

9153. If the personal representative pays a claim of less than \$500, no claim need be filed or presented or approved by the judge. Such payment shall be reported in the next accounting by

the personal representative and shall be approved by the court in the absence of evidence of fraud or deceit.

9304. When an allowed claim for funeral expenses, expenses of last illness, or wage claim of less than \$2,000 has been approved by the judge, it shall be immediately paid by the personal representative if there are sufficient funds available for that purpose; and such claim cannot be contested or protested by any person. Except for any such claim and except for a claim established by a judgment, the validity of an allowed and approved claim may be contested by any interested person at any time before settlement of the account of the personal representative in which it is first reported.

(Comment: Since a claim must be both allowed and approved before it is payable in the course of administration, it would appear that such reference should be made.)



McGEORGE SCHOOL OF LAW

UNIVERSITY OF THE PACIFIC 3200 Fifth Avenue, Sacramento, California 95817

September 3, 1986

California Law Revision Commission
4000 Middlefield Road, #D2
Palo Alto, CA 94303-4739

Attention: Mr. John H. DeMouilly
Executive Secretary

Re: Tentative Recommendation Relating to the New
Estate and Trust Code dated July 17, 1986

Dear Mr. DeMouilly:

The system of presenting claims directly to the personal representative has been for a long time and is now working very successfully. I see no reason to burden the county clerk with the additional work of handling every creditor's claim. I see no reason for the two-step process.

Should proposed section 9304 refer to the exception set forth in proposed section 9153?

Very truly yours,

BENJAMIN D. FRANTZ
Professor of Law

BDF:bk

cc: Mr. James A. Willett

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August 26, 1986

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ALBERT CRUTCHER, 1860-1931

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NEWPORT BEACH, CALIFORNIA 92660
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(619) 231-1100

SAN JOSE

ONE ALNADEN BOULEVARD
SAN JOSE, CALIFORNIA 95113
(408) 988-3000

WRITER'S DIRECT DIAL NUMBER

(213) 229-7524

OUR FILE NUMBER

C 1536-41
87015-0044-0

Mr. James V. Quillinan
444 Castro Street
Suite 900
Mountain View, California 94041

Dear Jim:

This will confirm the discussion which we had in our telephone call on August 26, 1986. I continue to be concerned about the potential liability of the personal representative to creditors to whom a notice is not sent. Section 9053 covers liability only for giving a notice. I would favor some provision that in the absence of clear and convincing evidence of a specific intent to defraud a creditor, no creditor shall have any right against the personal representative nor the attorney for the personal representative as a result of any failure to give notice to a creditor.

Very truly yours,



James C. Opel

JCO:ejk

OSCAR LAWLER
1896-1866
MAX FELIX
1822-1884
JOHN M. HALL
1818-1873

LAW OFFICES OF
LAWLER, FELIX & HALL

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LOS ANGELES, CALIFORNIA 90017
(213) 628-9300

H. NEAL WELLS III
PARTNER

TELECOPIER: (714) 853-0425

September 3, 1986

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

Re: Creditor Claims and Payment of Debts

Dear Jim:

The special team on creditor claims and payment of debts has reviewed the July 1986 tentative recommendation study L-1025. Our comments concerning the tentative recommendation are as follows:

Section 9000--"Claim Defined": The study team does not understand the purpose of subparagraph 2, particularly the exclusion of "property taxes, special assessments, assessments, gift taxes and estate taxes" from the definition of "claim." Accordingly, we are unable to comment upon the advisability of the subparagraph.

Section 9001--Notice to Creditors: When the staff consults with the public agencies concerning actual notice, the staff may want to raise the question of a uniform time period for filing claims following the expiration of which the agencies' claims would be barred. The 90-day time period presently accorded for Medi-Cal claims would seem sufficient.

Section 9051--Time of Notice: The notice should be served within four months as provided in the section. However, it may

James V. Quillinan, Esq.
September 3, 1986
Page 2

not be practical to file the proof of service within the four-month period, particularly if notice is given to a creditor on the last day after the court is closed. An additional time, perhaps 30 days, should be allotted for filing the proof of service.

Section 9052--Form of Notice: The form of proof of service set forth in this section contemplates an individual proof of service for each claim. It would be more efficient and entail less paper work if a single proof of service was filed for a number of creditors. To encourage this practice, the sample proof of service should be drafted to have columns for the listing of numerous creditors. It could then be used for both single and numerous creditors.

Section 9150--How a Claim is Made: The study team and the Executive Committee still respectfully oppose the requirement that a claim must be filed with the court. See my letter of May 4, 1986 concerning this issue (copy enclosed). Moreover, the procedure of court notification to the attorney by postcard will require attorneys to obtain copies of the claims at a cost of \$.50 per page in order to review them. The burden and expense of doing so is not warranted.

Section 9153--Waiver of Formal Defects: The study team does not favor the \$500.00 limit imposed by this section as drafted. The study team also opposes the requirement of payment of the claim within the four-month creditor's claims period. Under existing

case law, a personal representative may pay any bill within the four-month period with no formal claim having been filed and obtain approval of the payment at the time of the accounting reflecting the expenditure. The primary reason for permitting the personal representative to waive technical defects was to avoid unnecessary telephone calls and correspondence with the creditors when the personal representative is satisfied as to the correctness of the claim but desires to withhold payment of the item until the claims period has expired and the solvency of the estate is known. The section as now drafted defeats this purpose and is less flexible than existing law.

The study team was unable to ascertain whether Probate Code Section 704.2 was preserved in the newly drafted sections. The comment to section 9200 eludes to its preservation but we could not find it.

Section 9201--Claim by Surviving Spouse for Payment of Debt of Surviving Spouse: Many probate lawyers lack a sufficient understanding as to the precise workings of Probate Code Section 704.4 and will be equally baffled by Probate Code Section 9201. If time permits, additional work in clarifying these sections would be of benefit to the bar.

Section 9302--Where Personal Representative is Creditor: The comment to this section implies that the personal representative must pay all costs including attorneys' fees, whereas Section

James V. Quillinan, Esq.
September 3, 1986
Page 4

9307 indicates that the imposition of attorneys' fees is discretionary with the court. The comment should be corrected accordingly.

Disposition of Repealed Sections: The study team has not had sufficient time to review in detail the disposition of repealed sections. The problem with respect to former Section 704.2 is noted above.

The study team hopes to perform an in-depth review following the September State Bar meeting.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "J. Neal Wells".

HNW:svl

Probate and Trust Law Section

Mailing address:
P.O. Box 55020
Los Angeles, California 90055

August 25, 1986

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, California 94303-4739

Re: Meeting Scheduled for September 4-5, 1986

Dear Sirs:

On behalf of the Executive Committee of the Probate and Trust Law Section of the Los Angeles County Bar Association, we submit the following comments on matters listed on the tentative agenda for the meeting scheduled for September 4-5, 1986.

Study L - 1025 - Estate and Trust Code (Creditor Claims - Pending Actions Involving Decedent) Memorandum 86-65 and Minutes:

We believe that new Section 9050 strikes an appropriate balance between the constitutional requirements of due process and the practical concerns of estate administration.

An absolutely minor matter is that there is a typographical error in the declaration under penalty of perjury at the end of Section 9052.

As we pointed out in our comments when this matter was in an earlier draft, the current law's provision of allowing a claim to be filed either directly with the court or presented to the personal representative has serious problems. As we pointed out at that time, one of the serious problems is that claims filed with the court are often never transmitted to the personal representative. It is an unfortunate fact of life that the personnel who normally receive such a claim in the filing office of a court clerk's office make mistakes in judgment. The heading of the claim is often filled out with the name of the attorney submitting the claim. It has not been uncommon in the past for the court personnel to send the extra copy of the claim back to the attorney submitting the claim rather than on to the attorney for the personal representative. Proposed Section 9150 would allow that kind of common mistake to be perpetuated. It is uncommon that the filing clerks will pull the actual file in order to ascertain the correct name of the attorney of record in order to notify them. That being so, we think it puts an undue burden on court personnel which is incapable of complying with it.

We recognize that the existing law also has had the problem of the claim being filed with the personal representative and no copy ever being presented to the court either from oversight or from deliberate concealment. Recognizing both of those problems in the existing law, the Beverly Hills Bar Association proposed a solution which would solve both problems and be simple and workable. That solution would be to have the claim mailed to the personal representative and/or his or her attorney with proof of mailing to be filed with the claim at the courthouse. In that situation, there is nothing for the court personnel to do other than to file the document in the file, the same as they file any other document. That does not present any undue burden or extra costs in the court system. It also reduces the ability of the personal representative to say, "I never got it." There is an affidavit under penalty of perjury that the document has been mailed to the personal representative. Under those circumstances it shifts the burden of proof to the personal representative to prove it was not received. The proposal of the Beverly Hills Bar Association is vastly superior to the existing law and to the provision in Section 9150 set forth in the tentative recommendation.

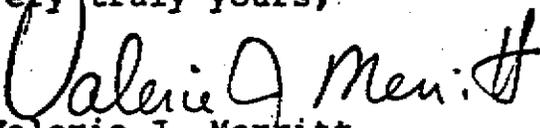
It is our understanding from our representative who was at the last meeting and from the minutes that the concern was raised that it is difficult for members of the lay public to perform service by mail. We feel that that is less of a burden than the burdens on the courts of the proposed provision. We feel that if the instructions for the claim form were made sufficiently clear by the Judicial Council, it should not be difficult for the claimant to mail out a copy of the claim to the personal representative and to fill out the proof of service form. Under current law, claimants frequently mail such documents to the personal representative without any difficulty whatsoever. It should be further pointed out that since the advent of the Independent Administrations of Estates Act, the overwhelming majority of claims are filed by funeral homes, mortuaries, hospitals, and other claimants who have benefit of counsel. They are certainly familiar with personal service provisions.

Furthermore, individuals have shown themselves able to perform service by personal service or service by mail for purposes of the small claims court and other situations where individuals are frequently acting in pro per. There is no reason why they can not perform the same services in the situation of claims. Furthermore, the person with the most at stake in the issue is the claimant. The claimant has the highest incentive to make sure that the claim is properly filed because the claimant is interested in being paid. Any "burden" should be placed on the person with the highest incentive to perform the job correctly. We feel strongly that it is wrong to place that burden on a low level employee of the court clerk rather than on the claimant. We strongly recommend that Section 9150 be changed.

Generally the claims provisions are very much improved. We are a little bit concerned that the successor provision to current Probate Code Section 929 has not been drafted. As a practical matter, that Section is an integral part of the way personal representatives and their counsel decide on the payment of debts with or without claims.

In that regard, we would assume that a debt as defined in Section 11401 includes an amount paid under current Probate Code Section 929.

Very truly yours,


Valerie J. Merritt
Co-chair of New Legislation
Committee

VJM:rhy

ESTATE PLANNING, TRUST AND
PROBATE LAW SECTION
THE STATE BAR OF CALIFORNIA



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P.O. Box 1461
Fresno, CA 93716
(209) 442-0600

October 6, 1986

Mr. Lloyd W. Homer
Attorney at Law
1999 S. Bascom Avenue, Suite 1010
Campbell, California 95008-2297

Re: Special Committee on Creditor's
Claims and Final Distribution

Dear Lloyd:

On October 1, 1986, Harley Spitler, Neal Wells and I held a conference call to define the issues relating to the ability of a creditor to tie up distribution of an estate. We concluded that it would be desirable to draft legislation to protect estate beneficiaries from the delays which may be caused by the creditor, and to protect creditors from having their position jeopardized by the death of the debtor. Before drafting legislation, we wish to present to the Executive Committee the policy issues which we defined, along with our recommendations. If the Executive Committee approves our recommendations, we will then undertake the drafting responsibility.

1. Our primary goal is to not improve the position of a creditor as a result of a debtor's death. We believe present law does improve the creditor's position, and we propose to eliminate that benefit without improving the debtor's position at the risk of the creditor.

2. Approved creditor's claims of certain amounts which are currently due. If the creditor's claim is in a definite amount, and is due, we believe the claim should be paid before closing the estate. One of the primary purposes of a probate estate is to settle the decedent's affairs. That includes paying his debts. Ordinarily, it is desirable to liquidate the estate if necessary to pay debts. In some

Mr. Lloyd W. Homer
October 6, 1986
Page Two

cases, liquidation of the estate may be inequitable. If the estate has assets that will potentially increase substantially in value, or has assets that will generate income sufficient to pay a debt in a reasonable time, or if immediate liquidation of assets will sacrifice value, it may be inequitable to require liquidation to satisfy a creditor's claim. In that situation, we recommend looking to the bankruptcy court policies which allow for time to generate income or for orderly liquidation to prevent sacrifice of estate values. In any event, even though it may be necessary to prolong the administration of the estate, we believe that fixed and due liabilities should be paid under supervision of the Probate Court. In no such event should the estate be closed without the creditor's consent. (We would allow preliminary distribution so long as there remained sufficient assets to pay claims.)

3. Contingent obligations, or obligations not yet due. It is inequitable to require that the estate be kept open until contingent or deferred creditor's claims are paid. An example is where the decedent may have guaranteed the obligation of another. The decedent's obligation is contingent upon the failure of a third person to meet the obligation. It is inequitable to require that the estate remain open until the contingency either occurs or lapses. A similar situation occurs where a decedent may have concurrent liability (as where the decedent is a partner in a general partnership and is equally liable with all other partners for all partnership liabilities); or where a decedent is actually liable on an obligation not yet due (such as a promissory note which, by its own terms, is due in 1990). In these cases, we believe it is inequitable to deprive the estate beneficiaries of enjoyment of their interests until the obligation is paid.

From the creditor's viewpoint, the creditor may have extended credit based on the decedent's ability to pay or on the decedent's integrity. It is unfair to the creditor to allow distribution of the estate and require the creditor either to look to heirs for payment, or to stand in line with all other unsecured creditors of the heir.

Our recommendations are:

(a) where there are approved claims which are not yet due, the estate be closed upon providing a fund which is adequate to pay the obligation when it comes due;

(b) where there are contingent obligations, the Court should have discretion to determine the manner in which the contingent creditor should be protected. In some cases, this may require the giving of security, or the posting of a bond, or the deposit of funds. In other cases, it might involve nothing more than looking to other entities. (Example: the decedent has guaranteed the debt of another, but there are other guarantors or assets which provide adequate protection for the creditor.) We believe that the Courts can fashion the appropriate protections on a case-by-case basis where the decedent's obligation is contingent.

4. Rejected creditor's claims involving pending litigation. Present law may result in estates being kept open for many years during litigation. Creditors of a decedent who are engaged in litigation are in a better position than they were while the decedent was alive, because the estate is tied up in probate until the litigation is settled. Thus, although the decedent could have enjoyed the use of his property during litigation, the beneficiary is denied the enjoyment of the property. We believe this is unfair to the beneficiary, and works to the psychological advantage of the creditor. Keeping the estate open during litigation affects not only the beneficiary but also the Probate Court, whose active case load is thereby increased; and the executor and the attorney, who typically cannot be paid more than 3/4 of the statutory fee until the estate is closed.

On the other hand, it would be inappropriate to allow the estate to be closed and distributed without providing some protection for the creditor-plaintiff.

We recommend that estates defending litigation be closed upon providing a surety bond in an adequate amount to be agreed upon by the parties, or if they are unable to agree, then in an amount determined by the Court. The cost of the bond should be paid by the creditor-plaintiff, to be recovered as a cost of litigation if the plaintiff is successful. We further believe that as an alternative to the bond, the plaintiff and the estate (i.e., the heirs who are the real parties in interest) may agree to security other than a bond. For example, perhaps a lis pendens or deed of trust on real property, a pledge of stock, or a deposit into escrow would be more desirable to the parties than the cost

Mr. Lloyd W. Homer
October 6, 1986
Page Four

of a bond premium. If the parties cannot agree, then we believe a bond would be appropriate protection, so long as the bond premium is treated as a cost of litigation to be assessed against the losing party.

5. Conclusion. We favor a policy which encourages and allows for the closing of estates, so long as the claimant remains protected. The above recommendations should be available if the claimant and the estate are unable to agree on another remedy. If all parties agree that the estate be kept open, that should be an alternative. Whenever an estate is closed with an outstanding claim, each heir should assume the decedent's liability (if any) to the extent of the value (on date of distribution) of the property received by that heir, similar to spousal liability under §650.

Very truly yours,



Kenneth M. Klug

cc: H. Neal Wells III
Harley J. Spitler

Staff Revision

Tentative Recommendation Relating To:

CREDITOR CLAIMS
PAYMENT OF DEBTS

The provisions of the proposed legislation governing creditor claims and payment of debts generally follow both the organization and substance of existing law. The proposed legislation accomplishes some reorganization and also makes many simplifications and technical and clarifying changes. Minor substantive changes are noted in the Comments to the specific provisions of the proposed legislation; major changes are described below.

CREDITOR CLAIMS

Notice to Creditors

Under existing law, the only notice required to be given to creditors is published notice of the commencement of administration proceedings.¹ The effect of published notice is that claims of creditors are barred if not presented within four months.² Even if the existence of a creditor is actually known to the personal representative, existing law enables the personal representative to bar the creditor's claim simply by publication and passage of time.

The existing law on this point is inequitable and is of questionable constitutionality. Recent developments in the United States Supreme Court and in sister state jurisdictions raise the

1. Prob. Code §§ 333, 700.

2. Prob. Code § 707.

likelihood that the existing scheme violates due process of law.³ The proposed legislation replaces the existing scheme with provisions for actual notice to creditors.

Under the proposed legislation, the personal representative would continue to publish notice to creditors; this will help achieve *in rem* effect in probate.⁴ In addition, the personal representative would serve notice within four months after commencement of administration proceedings on creditors actually known to the personal representative. For this purpose, the personal representative would not be charged with a duty to make a special search for creditors or to speculate as to potential creditors who might have a claim against the decedent, but the personal representative would be required only to notify persons who have actually demanded payment by the decedent or the estate in the form of a bill, request for payment, or the like. To minimize the notice burden, the personal representative would not be required to give notice where the personal representative waives formal probate claim requirements and pays a bill or request for payment without a claim.⁵ A creditor would have 30 days after receipt of actual knowledge of probate in which to make a formal claim, but in no case would the creditor be barred before the standard four month claim period has run. The proposed legislation also establishes outside limits for entertaining creditor claims--one year after the personal representative is appointed or the time an order for final distribution is made, whichever occurs first.

The Law Revision Commission believes this scheme to be both fair and constitutional, as well as workable within the context of decedent estate administration.

3. See, e.g., *Mennonite Board of Missions v. Adams*, 130 S.Ct. 2706 (1983) and *Continental Insurance Co. v. Mosely*, 653 P.2d 158 (1982) and 683 P.2d 20 (1984).

4. See discussion, *infra*.

5. See discussion of "How a Claim is Made", *infra*.

How Claim is Made

Existing law requires claims to be either filed directly with the court or presented to the personal representative.⁶ This dual procedure introduces unnecessary complexity into what should be a basically simple scheme. The proposed legislation initiates a single procedure: the claim must be filed with the court clerk, who notifies the personal representative or attorney of record that a claim has been made.

Often a creditor may demand payment through presentation of a monthly statement or other routine bill. As a matter of practice, the personal representative may pay the bill, even though not made as a formal claim. The proposed legislation recognizes this practice by expressly authorizing the personal representative to waive formal requirements where the amount demanded is less than \$500 and pay the demand as if it were a properly made claim. This procedure would apply only during the four month formal creditor claim period.

Time for Making Claims

Existing law requires a creditor's claim to be made within four months after first issuance of letters to a personal representative.⁷ The proposed legislation revises this requirement consistent with provisions for actual notice to creditors, discussed above. In addition, the proposed legislation permits subsequent amendment or revision of a claim after the time for making the claim has expired. However, an amendment or revision may not be made after either a year has passed since the claim period began to run or the court has made an order for final distribution. This will add flexibility to the law without impairing the ability to close estates expeditiously.

Late Claims

A creditor who was out of state during the claim period and did not receive notice is entitled to make a late claim.⁸ The proposed legislation limits this procedure to a non-business creditor who was out of state during the entire claim period. A creditor doing business in the state should be held to the same requirements as other creditors.

6. Prob. Code § 700.

7. See discussion *supra* under "Notice to Creditors".

8. Prob. Code § 707(a).

Time for Personal Representative or Court to Act

Existing law provides that a creditor may treat a claim as rejected and bring an action on the claim if the personal representative or court fails to act on the claim within 10 days after the claim is made.⁹ As a practical matter, this period is unrealistically short. The proposed legislation allows the personal representative and the court 30 days in which to act.

Allowance or Rejection of Claim

The proposed legislation provides for a single document for allowance or rejection of a claim. This will simplify the forms and papers used and will help ensure uniformity of procedure among the various jurisdictions. The proposed legislation encourages the Judicial Council to develop official forms for allowance and rejection of claims.

Alternative Resolution of Disputed Claim

Existing law provides a means for referring a disputed claim to a disinterested person for determination.¹⁰ This procedure is inefficient, since it provides an unsatisfied party with the opportunity to have the court overrule the determination, thereby perpetuating the dispute. The proposed legislation eliminates this procedure in favor of a conclusive determination by a court commissioner or judge pro tempore,¹¹ and adds an alternative procedure for binding arbitration of the disputed claim. The arbitration procedure is drawn from the guardianship and conservatorship law.¹² The proposed legislation also generalizes these procedures for use in resolving other disputes besides creditor claims, and relocates them among general estate management provisions.

9. Prob. Code § 712.

10. Prob. Code § 718(1).

11. Prob. Code § 718(2).

12. Prob. Code § 2406.

Action on Rejected Claim

If a creditor brings an unsuccessful action to enforce a claim that has previously been rejected, the proposed legislation gives the court discretion to impose reasonable attorney's fees on the creditor. This provision will help minimize unnecessary litigation over a claim that has already been reviewed and rejected once before by the personal representative or the court. The provision is drawn from the requirement in existing law that a personal representative who is also a creditor must pay reasonable attorney's fees if the personal representative brings an unsuccessful action on the claim.¹³

PAYMENT OF DEBTS

Priority Debts

The existing Probate Code prescribes statutory priority for payment of certain debts, such as funeral expenses, expenses of last illness, and wage claims.¹⁴ However, other state laws, as well as federal laws, may provide supervening priorities.¹⁵ The proposed legislation gives explicit recognition to the supervening priority of federal and other state laws.

The existing wage claim priority is \$900.¹⁶ This amount was set more than 25 years ago and fails to take into account the change that has occurred in the value of the dollar during that period. The proposed legislation increases the wage claim priority to \$2,000, consistent with the current bankruptcy code wage claim priority.¹⁷

13. Prob. Code § 703.

14. See, e.g., Prob. Code § 950.

15. See, e.g., Estate of Muldoon, 128 Cal.App.2d 284, 275 P.2d 597 (1954) (federal preference); Estate of Jacobs, 61 Cal.App.2d 152, 142 P.2d 454 (1943) (state preference).

16. Prob. Code §§ 950, 951.

17. 11 U.S.C. § 507(a)(3).

Court Order for Payment of Debts

Existing law makes clear that the personal representative is not obligated to pay a general debt until so ordered by the court, but fails to clarify the status of the practice of a personal representative to pay routine debts subject to subsequent court confirmation. The proposed legislation makes an express statement of law that the personal representative is not precluded from properly making payment of a debt without prior court authorization.

Allocation of Debts Between Spouses

Existing law provides a mechanism for allocating responsibility for marital debts between a surviving spouse and property in the estate of a deceased spouse.¹⁸ Notwithstanding this procedure, the law fails to make clear the substantive basis for the allocation. There is some indication that allocation may be based on the character of the debt as community or separate, but this practice is not supported by statutory language.¹⁹

The proposed legislation makes clear that the allocation is to be based on the liability the spouses would have had for the debt at the time of death. This has the effect of incorporating a known body of law governing liability for marital debts,²⁰ and avoids the problems inherent in litigation over "separate" versus "community" character of a debt.²¹

18. Prob. Code § 980.

19. See, e.g., Reppy, Debt Collection from Married Californians: Problems Caused by Transmutations, Single-Spouse Management, and Invalid Marriage, 18 San Diego L.Rev. 143, 180-181 (1981).

20. Civ. Code §§ 5120.010-5122.

21. Whether a marital debt is separate or community in character is highly problematical. Such a determination made after one of the spouses is deceased and no longer able to testify is suspect.

OUTLINE OF STATUTE

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- § 9200. Claim by surviving spouse for payment of debt of decedent
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- § 9302. Where personal representative is creditor
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- § 9350. Money judgment against decedent
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PART 9. PAYMENT OF DEBTS

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CHAPTER 3. ALLOCATION OF DEBTS BETWEEN ESTATE AND SURVIVING SPOUSE

- § 11440. When allocation may be made
- § 11441. Petition for allocation
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REPEALERS

APPENDIX

CREDITOR CLAIMS AND PAYMENT OF DEBTS

Probate Code §§ 9000-11456 (added). Administration of estates of
decedents

SEC. . Division 7 (commencing with Section 9000) is added to the
Probate Code, to read:

DIVISION 7. ADMINISTRATION OF ESTATES OF DECEDENTS

PART 4. CREDITOR CLAIMS

CHAPTER 1. GENERAL PROVISIONS

§ 9000. "Claim" defined

9000. As used in this division:

(a) "Claim" means a demand for payment for any of the following:

(1) Liability of the decedent whether arising in contract, tort,
or otherwise.

(2) Liability for taxes incurred before the decedent's death,
other than property taxes, special assessments, assessments, gift
taxes, and estate taxes.

(3) Liability of the estate for funeral expenses of the decedent.

(b) "Claim" does not include a dispute regarding title of a decedent to specific property alleged to be included in the decedent's estate.

Comment. Section 9000 is new. It is drawn from Section 1-201(4) of the Uniform Probate Code.

Subdivision (a)(1) defines "claim" broadly to include all claims against the decedent whether in contract, tort, or otherwise, including claims for damages for injuries to or death of a person or injury to property and all claims against the personal representative of a decedent who in his or her lifetime has wasted, destroyed, taken or carried away or converted to his or her own use, the property of another person or committed any trespass on the real property of another person.

Subdivision (a)(2) restates former Section 707.5(c) without substantive change.

While the term "claim" does not include administration expenses such as personal representative and attorney fees, it does include funeral expenses under subdivision (a)(3). This continues a provision of former Section 707(a).

A claim need not be made in the case of foreclosure of a lien on property in the decedent's estate. See Section [716(b)] (enforcement of security interest). With regard to title to property, see Section [851.5].

Note. The State Bar team (Exhibit 15) does not understand the purpose of subdivision (a)(2) and particularly the exclusion of certain taxes from the definition of claim. The short answer to this query is that this is the effect of existing law (Probate Code § 707.5(c)). As a matter of policy, property taxes and assessments which are secured by real property tax liens should not be processed through the estate proceedings but through the ordinary property tax mechanisms. Gift and estate taxes on the death of the decedent are not taxes levied against the decedent during lifetime, and hence are not liabilities of a type the creditor claim procedure is intended to cover. In the staff's view, it does not hurt to statutorily exclude gift and estate taxes, but perhaps a better approach is simply to eliminate them from the draft and rely on the general definition of "claim" as including tax liability incurred before death.

§ 9001. Notice to creditors

9001. (a) Service of notice of administration of the estate of the decedent under Chapter 2 (commencing with Section 9050) of this part, and publication or posting of the notice of hearing of the petition to administer the estate under Chapter 2 (commencing with Section 8100) of Part 2, constitute notice to creditors of the requirements of this part.

(b) Nothing in this subdivision affects a notice or request to a public entity required by Chapter 6 (commencing with Section 9250).

Comment. Subdivision (a) of Section 9001 restates the first portion of former Section 700, with the addition of the reference to service of notice on creditors. Subdivision (b) is intended for cross-referencing purposes only.

Note. The matter of claims by public entities is dealt with in the First Supplement to Memorandum 86-202.

§ 9002. Claim requirement

9002. Except as otherwise provided by statute:

(a) All claims, whether due, not due, or contingent, and whether liquidated or unliquidated, shall be made in the manner and within the time prescribed in this part.

(b) A claim that is not made as prescribed in this part is barred.

(c) The holder of a claim may not maintain an action on the claim unless the claim is first made as prescribed in this part.

Comment. Section 9002 generalizes a portion of the first sentence of former Section 707 and a portion of former Section 716(a). Section 9002 applies to all claims, whether in contract, tort, or otherwise, including claims for funeral expenses and claims for damages for injuries to or death of a person or injury to property and all claims against the executor or administrator of any testator or intestate who in his or her lifetime has wasted, destroyed, taken or carried away or converted to his or her own use, the property of another person or committed any trespass on the real property of another person. See Section 9000 ("claim" defined).

The requirement that a claim be made as prescribed in this part is subject to exception under other provisions. See Section 9300 (personal representative may allow claim not made as prescribed in this part). See also Sections [716(b)] (enforcement of security interest), [721] (claim covered by insurance).

CROSS-REFERENCES

Definition

Claim § 9000

Note. The Beverly Hills Bar Association (Exhibit 6) is concerned about the usage in this and other sections of claims "made" pursuant to the creditor claim procedure, rather than "filed". As originally drafted, claims were either filed or presented, so that the making of a claim could have involved either filing or presentation. Under the current draft claims may only be filed, so "filed" may be preferable to "made". However, there is substantial opposition to elimination of the presentation option. See Note following Section 9150 (how claim is made). The usage question cannot be resolved until the underlying substantive question is resolved.

9003. Payment of claims

9003. A claim that is established under this part shall be included among the debts to be paid in the course of administration.

Comment. Section 9003 restates the first portion of the first sentence of former Section 713 without substantive change. For payment of debts, see Part 9 (commencing with Section 11400).

CROSS-REFERENCES

Definitions

Claim § 9000

Note. Professor Frantz (Exhibit 13) would add at the front of this section a cross reference to Section 11421 (immediate payment of priority debts).. "Except for a claim that may be paid immediately". The staff believes that Professor Frantz' suggestion is technically inaccurate, although the cross-reference to immediate payment may be useful. The staff will include such a cross reference in the Comment.

CHAPTER 2. NOTICE TO CREDITORS

§ 9050. Notice required

9050. (a) If the personal representative has actual knowledge of a creditor of the decedent before expiration of the time prescribed in Section 9051, the personal representative shall serve notice of administration of the estate of the decedent on the creditor, subject to Section 9054. As used in this section, "creditor" means a person who has demanded payment from the decedent or the estate.

(b) Service of the notice shall be in addition to publication or posting of the notice of hearing of the petition to administer the decedent's estate under Chapter 2 (commencing with Section 8100) of Part 2.

Comment. Section 9050 is new. It is designed to satisfy due process requirements by ensuring reasonable notice to creditors within the practicalities of administration of the estate of a decedent.

The personal representative is not required to make a search for possible creditors under this section or to serve persons who are potentially creditors because of possible liability of the decedent. The personal representative is required only to serve actual creditors who are known to the personal representative either because the personal representative becomes aware of the obligation in the course of administration or otherwise or because the creditor has demanded payment during administration. In a case where there is doubt whether notice to a particular person is required under this standard, the

personal representative should give notice. The personal representative is protected from liability in this event. Section 9053 (immunity of personal representative and attorney).

The purpose of the notice is to alert creditors to the need to make a formal claim. For this reason, the personal representative need not give notice to a creditor who makes a formal claim or to a creditor whose demand for payment the personal representative elects to allow as a claim notwithstanding the creditor's failure to comply with formal claim requirements. Section 9054 (when notice not required).

CROSS-REFERENCES

Definitions

Personal representative § 58

Note. The concept of actual notice to known creditors was well-received by the commentators. The Beverly Hills Bar Association (Exhibit 6) particularly supports these due process provisions, and the Los Angeles County Bar Association (Exhibit 16) believes that the section strikes an appropriate balance between the constitutional requirements of due process and the practical concerns of estate administration.

The Beverly Hills Bar Association notes a defect in the drafting of this section. The section requires notice if the personal representative has actual knowledge of a "creditor", defined as a person who has demanded payment. However, the personal representative may have actual knowledge of a person with whom the decedent had business dealings and who has in fact made a demand for payment of a debt, but may be unaware that the person has demanded payment. We do not mean to require notice in such a case. The staff would cure this problem by combining the two concepts thus: "If, before expiration of the time prescribed in Section 9051, the personal representative has actual knowledge of a creditor who has demanded payment from the decedent or the estate, the personal representative shall serve notice ..."

Beryl A. Bertucio (Exhibit 11) is concerned that the section may be read to require the personal representative to make a search for old bills. He notes that the Comment limits the notice to creditors the personal representative acquires knowledge of because of a bill presented during administration or otherwise becomes aware of in the ordinary course of administration. He suggests that the Comment be put in the statute itself. The staff believes this is a delicate area. Clearly we do not want either to state directly or imply that the personal representative may purposely ignore a shoe box labeled "bills", nor do we want to impose a duty to make an extra-ordinary search for possible creditors. The staff believes the current draft achieves a nice balance between statute and Comment, and would not tamper with it. Perhaps the revision suggested above cures part of the concern.

Florence Luther (Exhibit 12) suggests that "known creditors" be limited to those known to the personal representative within four months after appointment. The current draft already does this by incorporating Section 9051 (time of notice).

§ 9051. Time of notice

9051. The notice shall be served and proof of service filed within four months after letters are first issued to a general personal representative.

Comment. Under Section 9051, if letters are issued by more than one court or if subsequent letters are issued by the same court, notice must be served within four months after the first issuance of letters to a general personal representative.

CROSS-REFERENCES

Definitions

Letters § 52

Personal representative § 58

Note. Both Professor Frantz (Exhibit 13) and the State Bar team (Exhibit 15) suggest that it would be desirable to allow an additional 30 days for filing proof of service. The staff believes this is appropriate and will make the suggested change.

§ 9052. Form of notice

9052. The notice shall be in substantially the following form:

NOTICE OF ADMINISTRATION OF

ESTATE OF _____, DECEDENT

To creditors of _____:

Letters were issued on _____, 19____, in Estate No. _____ in the Superior Court of California, County of _____, for the administration of the estate of the decedent. You must file your claim with the court within four months from the date of issuance of the letters or 30 days from the date of mailing or delivery of this notice, whichever is later, as provided in Section 9100 of the California Probate Code.

(Name and address of personal
representative or attorney)

PROOF OF SERVICE

I am at least 18 years of age and not a party to the proceeding.

I served a copy of the notice on the following persons:

(list)

Service was made by one of the following means (check appropriate space):

_____ personally delivering the copy to the person served at:

1. _____ (date) 2. _____ (time) 3. _____ (address)

_____ placing the copy in the United States mail, in a sealed envelope with postage fully prepaid at:

1. _____ (date) 2. _____ (place) 3. _____ (mailing address)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

_____ (date) _____ (type or print name) _____ (signature)

CROSS-REFERENCES

Judicial Council authority § 7201

Note. A number of minor technical changes in the form have been made in response to comments of Irving Kellog (Exhibit 5), Professor Frantz (Exhibit 13), the State Bar team (Exhibit 15), the Los Angeles County Bar Association (Exhibit 16), and others.

§ 9053. Immunity of personal representative and attorney

9053. If the personal representative or attorney reasonably believes notice to a particular creditor is or may be required by this chapter and gives notice based on that belief, neither the personal representative nor the attorney is liable to any person for giving the notice whether or not required by this chapter.

Comment. Section 9053 is intended to encourage full and adequate notice in cases where it is a close question whether a personal representative has actual knowledge of a creditor within the meaning of Section 9050. If, for example, the personal representative reasonably believes that notice may be required and if the notice given generates claims or litigation that would not otherwise have arisen, Section 9053 immunizes the personal representative from liability even though notice turns out not to have been legally required.

CROSS-REFERENCES

Definitions

Personal representative § 58

Note. Howard Serbin (Exhibit 9) believes this provision is essential to the new creditor notice requirements and strongly supports it.

James C. Opel (Exhibit 14) is concerned about the opposite of the situation dealt with in this section--liability of a personal representative who fails to give notice to a creditor in a situation where notice is required. He would favor addition of a provision that in the absence of clear and convincing evidence of a specific intent to defraud a creditor, no creditor shall have a right against the personal representative or attorney as a result of a failure to give notice. The staff believes there are several relevant policy considerations on this issue. First, is it wise to encourage negligence and sloppy practices by personal representatives and their lawyers on this matter? Second, the bond, if there is one, should cover just this sort of problem.

Existing law provides that if the personal representative has failed to give notice to creditors as required by law, the creditors may not require other creditors who have been paid or distributees to make contribution; the creditor's recovery is on the bond of the public administrator. Probate Code § 955. The Commission's draft makes clear that an omitted creditor may recover against the personal representative whether or not there is a bond. Section 11429.

Regardless of the Commission's decision on immunity for a negligent personal representative or attorney, the staff believes that the statute should provide further that if notice is not given to a creditor, the creditor is not barred but may still recover against the distributees of the property. We see no reason to protect distributees at the expense of a creditor in this situation, and this is also the treatment given claims of public entities after property is distributed. See Probate Code §§ 700.1(c) and 707.5(b). Such a provision could be along the following lines:

Notwithstanding any other provision of this part, if notice is not given to a creditor as required by this part, the creditor's claim is not barred and a distributee of property in the estate is personally liable for the creditor's claim in the same manner and to the same extent as if the property were paid, delivered, or transferred to the distributee pursuant to Chapter 3 (commencing with Section 13100) of Part 1 of Division 8 (disposition of property without administration).

Of course, this provision would not solve the problem of the insolvent estate. But we are not inclined to require contribution from lower priority creditors who may have been paid, in this situation. We would simply let the loss fall on the omitted creditor.

§ 9054. When notice not required

9054. Notwithstanding Section 9050, the personal representative need not serve notice on a creditor actually known to the personal representative in any of the following cases:

- (a) The creditor has made a claim as prescribed in this part.
- (b) The creditor has demanded payment and the personal representative elects to treat the demand as a claim under Section 9153.

Comment. Section 9054 eliminates the need for notice to a creditor who has made a satisfactory claim in the administration proceeding. The personal representative may waive formal defects in a demand for payment made during the four month claim period and accept the demand as a statutory claim, thereby avoiding the need for additional service of notice on the creditor. Section 9153.

CROSS-REFERENCES

Definitions

Claim § 9000

Personal representative § 58

CHAPTER 3. TIME FOR MAKING CLAIMS

§ 9100. Claim period

9100. (a) A creditor shall make a claim within the later of the following times:

(1) Four months after the date letters are first issued to a general personal representative.

(2) Thirty days after the date of service of notice or other receipt of actual knowledge of the administration of the estate of the decedent.

(b) In no event may a creditor make a claim after the time the court makes an order for final distribution of the estate or one year after letters are first issued to a general personal representative, whichever occurs first.

Comment. Section 9100 supersedes the last portion of subdivision (a) and subdivision (c) of former Section 700 and portions of former Sections 704.2 and 704.4.

If letters are issued by more than one court or if subsequent letters are issued by the same court, the four month period of subdivision (a)(1) commences on the first issuance of letters to a general personal representative. In the case of a special administrator granted the powers of a general personal representative, the claim period commences to run on first issuance of letters reciting the general powers of the special administrator.

The notice referred to in subdivision (a)(2) is prescribed in Chapter 2 (commencing with Section 9050) (notice to creditors).

CROSS-REFERENCES

Definitions

Claim § 9000

Letters § 52

Personal representative § 58

Note. Under this draft a creditor given actual notice at the beginning of administration would nonetheless have 4 months, rather than 30 days, to make a claim. Beryl A. Bertucio (Exhibit 11) believes this approach is appropriate--a shorter period seems discriminatory and unfair to creditors who cannot bill until they receive billing from suppliers or, in the case of credit card issuers, member merchants.

Subdivision (b) puts an outside limit on creditor claims of one year after commencement of administration. Both Howard Serbin (Exhibit 9) and Florence J. Luther (Exhibit 12) are concerned that one year is too long and creates uncertainty. "It delays the time in which a representative can know whether an estate is solvent and whether approved claims can safely be paid in full." The staff disagrees; the one year limit is simply an outside cutoff, and the estate may always be closed earlier if it's in a condition to be closed. If it's not in a condition to be closed, it is appropriate that a creditor's claim be honored.

§ 9101. Time not extended by vacancy in office

9101. A vacancy in the office of the personal representative that occurs before expiration of the time for making a claim does not extend the time.

Comment. Section 9101 restates former Section 700(b) without substantive change. A vacancy includes the resignation, death, or removal of the personal representative from office. See, e.g., Sections 520-526 (resignation, suspension, and removal).

CROSS-REFERENCES

Definitions

Claim § 9000

Personal representative § 58

§ 9102. Where personal representative acts on claim after expiration of time

9102. A claim that is made before expiration of the time for making the claim is timely made even though acted on by the personal representative or by the court after expiration of the time.

Comment. Section 9102 restates the last sentence of former Section 712 without substantive change.

CROSS-REFERENCES

Definitions

Claim § 9000

Personal representative § 58

§ 9103. Late claims

9103. (a) A claim may be made at any time within one year after the time prescribed in Section 9100 and before an order for final distribution has been made if it appears to the satisfaction of the court that any of the following conditions is satisfied:

(1) The claimant was out of the state during the entire period prescribed in Section 9100 and did not receive notice. This paragraph does not apply to a business claimant who does business in the state.

(2) The claimant in good faith filed a claim in another proceeding for the same decedent that is not consolidated with the present proceeding and in which letters are not issued.

(b) Property distributed under court order and payments properly made before a claim is made under this section are not subject to the claim, regardless whether the claim is later established in whole or in part.

Comment. Section 9103 restates the second and third sentences of former Section 707(a), but limits subdivision (a)(1) to nonbusiness claimants who were out of state during the entire claim period.

CROSS-REFERENCES

Definitions

- Claim § 9000
- Letters § 52
- Property § 62

Note. Section 9103(a)(1) gives a one year extension to an out of state creditor who did not receive notice, except for a business creditor who does business in the state. Howard Serbin (Exhibit 9) strongly supports the clarification made by the draft that the creditor must have been out of state for the entire creditor claim period.

Some members of the Beverly Hills Bar Association (Exhibit 6) feel that the standard or test for doing business in the state should be elaborated. The staff does not believe this is a simple matter, and would leave it to court decision on a case by case basis. However, we would make the clarification in the Comment suggested by the Association that subdivision (a)(1) is limited to "non-business claimants, and business claimants who do not do business in the state, who were out of state during the entire claim period."

Beryl A. Bertucio (Exhibit 11) believes that business claimants should be allowed to make late claims also. "The provision seems unfair to sole-proprietorships and small businesses when the owner, principal, or only person with authority to make a claim is out of state during the entire period." The reason given for this limitation in the tentative recommendation is that a creditor doing business in the state should be held to the same requirements as other creditors.

§ 9104. Amended or revised claim

9104. If a claim is made within the time prescribed in Section 9100, the creditor may later amend or revise of the claim. An amendment or revision may not be made after the earlier of the time the court makes an order for final distribution of the estate or one year after letters are first issued to a general personal representative.

Comment. Section 9104 is new.

CROSS-REFERENCES

Definitions

Claim § 9000

Letters § 52

Personal representative § 58

Note. This section allows amendments or revisions of claims up to one year after commencement of administration if final distribution is not ordered before then. Howard Serbin (Exhibit 9) would prefer a shorter time limit. The staff believes that if we allow a creditor to make an initial claim up to one year after commencement of administration, it is appropriate to allow a creditor who has already made a claim to amend or revise the claim within the same period.

As drafted, the one year period starts to run from the date letters are first issued to a "general personal representative." Mr. Serbin believes it should also run when special letters with general powers have been issued. In fact, "general personal representative" is defined in Section 58 to exclude a special administrator except "a special administrator granted the powers, duties, and obligations of a general personal representative." This definition was not available to commentators on the tentative recommendation, but will be included with the creditor claim legislation to be submitted in 1987.

CHAPTER 4. MAKING OF CLAIMS

§ 9150. How claim is made

9150. (a) A claim is made by filing the claim in the office of the clerk. The clerk shall notify the attorney of record or, if none, the personal representative, if a claim is made.

(b) A claim may be made by the claimant or a person in behalf of the claimant.

Comment. Subdivision (a) of Section 9150 supersedes former Section 700(a). Notification by the clerk may be of an individual claim or that a number of claims have been filed. Subdivision (a) does not specify the manner of notification, which may be by mail (e.g., post card).

Subdivision (b) generalizes a provision of former Section 704.2. A person acting in behalf of the claimant may include the personal representative or the guardian or conservator of the estate of the claimant.

CROSS-REFERENCES

Definitions

Claim § 9000

Person § 56

Personal representative § 58

Note. This section proved to be the most controversial of the tentative recommendation. It requires that all creditor claims be submitted to the court clerk, who in turn notifies the attorney of record or, if none, the personal representative. This limits existing law which permits a claim to either be filed with the court or presented to the personal representative. The reason for this change was to simplify the system through use of a single claim procedure.

This change was supported by the Beverly Hills Bar Association (Exhibit 6), which believes the creation of a single process for presentation of claims by filing with the court is an improvement on the present dual system. Howard Serbin (Exhibit 9) also strongly supports the change--"Under current law, there can be problems when the person petitioning for personal representative is not the one appointed. His name has been in the notice and therefore he may receive the claim. There is no insurance that such person will transfer the claim to the representative. Your proposed system avoids that problem."

On the other hand, six of our commentators strongly opposed the provision for filing the claim with the clerk: Rawlins Coffman (Exhibit 3), Irving Kellog (Exhibit 5), Benjamin D. Frantz (Exhibits 7 and 13), Beryl A. Bertucio (Exhibit 11), State Bar team (Exhibit 15), and Los Angeles County Bar Association (Exhibit 16). Typical objections were:

--It unnecessarily burdens the court administrative staff. (Exhibits 3, 5, 7, 11, 16). "I see no reason to burden the county clerk with the additional work of handling very creditor's claim." "Claimants file very few claims in their lifetimes or business careers, but the court would be filing and mailing thousands of them."

--It increases the likelihood of error. (Exhibits 3, 5) "The clerks are overworked and cannot do a proper job of notifying the attorney of record or the personal representative." "To have the clerk send out the notice to the personal representative or attorney will lead to delay, omissions, and postal failures." "One of the serious problems is that claims filed with the court are often never transmitted to the personal representative. It is an unfortunate fact of life that the personnel who normally receive such a claim in the filing office of a court clerk's office make mistakes in judgment...We think it puts an undue burden on court personnel which is incapable of complying with it."

--It imposes additional cost and expense on personal representatives and their attorneys by requiring them to obtain copies of the claims at a cost of \$.50 per page in order to review them. (Exhibit 15) "The burden and expense of doing so is not warranted."

--It will present complications as to when claim periods have been satisfied or what the appropriate claim periods should be. (Exhibit 3)

--"Many clerks will assume the responsibility of determining the validity, both as to form and content, of each claim and return it to the claimant for revision without notifying the personal representative or the attorney of record. Is the clerk to determine the "status" of a late claim?" (Exhibit 3)

--The system of presenting claims directly to the personal representative has been in place for a long time and works successfully; there is no reason for a two-step process. (Exhibits 7, 13) "If it ain't broke, don't fix it."

Not all the negative commentators agreed with this last point--that existing law is fine. A number felt existing law has problems, but that the Commission's tentative recommendation was not a sound solution to the problems. Beryl A. Bertucio (Exhibit 11), for example, applauded the single filing provision; however, he felt the single filing should be with the personal representative or attorney and not with the clerk of court. This would also "be more convenient for the creditor since the address of the attorney for the personal representative is shown on the published notice but the address of the court is not." This is also the position of Rawlins Coffman (Exhibit 3), who points out that the notice of death includes the address of the petitioner or attorney of record; if all claims, whether original or amended, were presented to the petitioner or attorney at the address on the notice of death, the problems caused by filing with the court clerk would be solved.

The Los Angeles County Bar Association (Exhibit 16) also notes the problem of existing law that claims filed with the personal representative are never presented to the court either from oversight or deliberate concealment. They believe that the best solution is not to put the burden on the court, but to require the creditor to file the claim both with the personal representative or attorney and with the court (together with proof of service). "In that situation, there is nothing for the court personnel to do other than to file the document in the file, the same as they file any other document. That does not present any undue burden or extra costs in the court system. It also reduces the ability of the personal representative to say, 'I never got it.'...We feel that if the instructions for the claim form were made sufficiently clear by the Judicial Council, it should not be difficult for the claimant to mail out a copy of the claim to the personal representative and to fill out the proof of service form. Under current law, claimants frequently mail such documents to the personal representative without any difficulty whatsoever...The person with most at stake is the claimant. The claimant has the highest incentive to make sure the claim is properly filed because the claimant is interested in being paid. Any "burden" should be placed on the person with the highest incentive to perform the job correctly. We feel strongly that it is wrong to place that burden on a low level employee of the court clerk rather than on the claimant."

The same point is made by Irving Kellogg (Exhibit 5). "Why not shift the burden to the claimant with the requirement that the claimant must send the claim to both the clerk and the personal representative by certified mail."

§ 9151. Documentary support of claim

9151. (a) A claim shall be supported by the affidavit of the claimant or a person in behalf of the claimant stating:

(1) If the claim is due, that the amount is justly due, that no payments have been made on the claim that are not credited, and that there are no offsets to the claim.

(2) If the claim is not due, or is contingent, the particulars of the claim.

(3) If the affidavit is made by a person other than the claimant, the reason it is not made by the claimant.

(b) The personal representative may require satisfactory vouchers or proof to be produced to support the claim. If the claimant includes an original voucher with the claim, the claimant may withdraw the voucher after a copy is attached to the claim.

Comment. Section 9151 restates former Section 705 without substantive change. The claim may be supported by a declaration under penalty of perjury in lieu of an affidavit. Code Civ. Proc. § 2015.5. The affidavit may be made on information and belief. Cf. Code Civ. Proc. § 446.

CROSS-REFERENCES

Definitions

Claim § 9000

Person § 56

Personal representative § 58

§ 9152. Claim based on written instrument

9152. (a) If a claim is based on a written instrument, either the original or a copy of the original with all endorsements shall be attached to the claim. If a copy is attached, the original instrument shall be exhibited to the personal representative or court on demand unless it is lost or destroyed, in which case its loss or destruction shall be stated in the claim.

(b) If the claim or a part of the claim is secured by a mortgage, deed of trust, or other lien that is recorded in the office of the recorder of the county in which the property subject to the lien is situated, it is sufficient to describe the mortgage, deed of trust, or lien and refer to the date or volume and page of its record.

Comment. Section 9152 restates former Section 706 without substantive change.

CROSS-REFERENCES

Actions in chambers § 7061
Definitions
Claim § 9000
Personal representative § 58
Enforcement of security interest § 716(b)

Note. Beryl A. Bertucio (Exhibit 11) notes a discrepancy between the Comment to Section 9000, which states that a claim need not be made to foreclose a lien, and this section, which refers to a claim secured by a lien. The answer is that a claim need not be made if the creditor waives the right to a deficiency, but that a claim may be made if the creditor is not willing to make the waiver. We will add appropriate cross-references to the Comments on this point.

§ 9153. Waiver of formal defects

9153. Notwithstanding any other provision of this part, if a creditor demands payment within the time prescribed in Section 9100 and the amount demanded does not exceed \$500, the personal representative may waive formal defects and elect to treat the demand as a claim by paying the amount demanded within the time prescribed in Section 9100.

Comment. Section 9153 is new. It authorizes the personal representative to waive technical claim requirements such as the form and manner of making a claim if the amount demanded is less than \$500. This may be appropriate, for example, for regular bills received by the personal representative in the ordinary course of business concerning which there is no dispute. This authority enables the personal representative to avoid the need for additional service of notice on the creditor. Section 9054 (when notice not required). For approval of the personal representative's account where payment is made without prior court order, see Sections 11422 (payment of debts on court order) and 929.

CROSS-REFERENCES

Definitions
Claim § 9000
Personal representative § 58

Note. Section 9153 institutionalizes the procedure for payment of informal demands without requirement of a formal claim, but limits the procedure to debts under \$500 which are paid within four months after the opening of estate administration. Howard Serbin (Exhibit 9) supports this provision. Professor Frantz (Exhibit 13) would take it a step further and provide that "If the personal representative pays a claim of less than \$500, no claim need be filed or presented or approved by the judge. Such payment shall be reported in the next accounting by the personal representative and shall be approved by the court in the absence of evidence of fraud or deceit."

Both the Beverly Hills Bar Association (Exhibit 6) and the State Bar team (Exhibit 15) oppose the \$500 debt limit; the State Bar team also opposes the requirement that the debt be paid within four months. They point out that under existing law the personal representative may pay informal demands in any amount and obtain approval of the payment at the time of the accounting reflecting the expenditure. The \$500 limit makes it appear that the expenditure is not subject to court approval, and that informal payment of greater amounts is prohibited. This restricts existing law without good reason. The \$500 limit is unrealistic, considering that many monthly bills, including doctors, credit cards, loan payments, etc., may exceed the \$500 limit. "The primary reason for permitting the personal representative to waive technical defects was to avoid unnecessary telephone calls and correspondence with the creditors when the personal representative is satisfied as to the correctness of the claim but desires to withhold payment of the item until the claims period has expired and the solvency of the estate is known. The section as now drafted defeats this purpose and is less flexible than existing law."

The Los Angeles County Bar Association (Exhibit 16) is concerned that the successor provision to current Probate Code Section 929 has not been drafted. That section provides for allowance of informally paid demands in the accounting. "As a practical matter, that Section is an integral part of the way personal representatives and their counsel decide on the payment of debts with or without claims." The staff agrees that it would be good to have the redraft of that section available for review. However, it is part of accountings, which the Commission has not yet completed work on yet. This is one problem with introducing legislation to enact miscellaneous revised estate administration provisions without having the entire code drafted and integrated. However, that is the approach the Commission has decided on, so existing Section 929 will continue to be the relevant provision here, with whatever defects it may have.

CHAPTER 5. CLAIMS BY SURVIVING SPOUSE

§ 9200. Claim by surviving spouse for payment of debt of decedent

9200. (a) The surviving spouse may make a claim for payment of a debt of the deceased spouse to the extent the surviving spouse is personally liable for the debt under Section 13550.

(b) The claim shall include all of the following:

(1) The reason the debt is not barred by Section 13552.

(2) A statement whether the debt remains unpaid or has been paid by the surviving spouse.

(3) An inventory and appraisal of the separate property of the surviving spouse and any community and quasi-community property not administered in the estate, and a statement of the amount of the liens

and encumbrances on the property, as of the date of death of the deceased spouse. The statement may identify any property that is exempt from enforcement of a money judgment.

Comment. Section 9200 restates former Section 704.2, except that the claim may not be made after the order for final distribution and may be required to be made earlier. Section 9100 (claim period).

CROSS-REFERENCES

Definitions

Claim § 9000
Community property § 28
Property § 62
Quasi-community property § 66
Surviving spouse § 78

Note. The State Bar team (Exhibit 15) questions whether Probate Code Section 704.2 is in fact preserved by Section 9200. The staff believes it is, together with Section 9150 (how claim is made). If the Bar team will indicate what is missing, we will dispose of it.

§ 9201. Claim by surviving spouse for payment of debt of surviving spouse

9201. (a) The surviving spouse may make a claim for the payment of a debt of the surviving spouse for which property administered in the estate is liable.

(b) The claim shall include all of the following:

(1) A statement whether the debt remains unpaid or has been paid by the surviving spouse.

(2) An inventory and appraisal of the separate property of the surviving spouse and any community and quasi-community property not administered in the estate, and a statement of the amount of the liens and encumbrances on the property, as of the date of death of the deceased spouse. The statement may identify any property that is exempt from enforcement of a money judgment.

Comment. Section 9201 restates former Section 704.4 and broadens it consistent with general principles of liability of marital property for debts. See Civil Code §§ 5120.010-5122. The claim may not be made after the order for final distribution and may be required to be made earlier. Section 9100 (claim period).

CROSS-REFERENCES

Definitions

Claim § 9000
Community property § 28
Property § 62
Quasi-community property § 66
Surviving spouse § 78

Note. The State Bar team (Exhibit 15) states that many probate lawyers lack a sufficient understanding as to the precise workings of existing law and will be equally baffled by the restatement in this section. Additional work in clarifying this section would be of benefit to the bar. The staff is not certain what the Bar team has in mind, other than perhaps to add to the section language noting the substantive rule that the community property interest of the decedent is liable for debts incurred during marriage by the survivor, and that the precise proportion for which the decedent and survivor are liable is determined by the apportionment procedure of Section 980 (redrafted as Section 11440 (et seq.)). As it stands, the substantive rules are referred to in the Comment, and cross reference to the apportionment procedure is made in the next section.

§ 9202. Treatment of claim of surviving spouse

9202. (a) A claim of the surviving spouse made under this article shall be allowed in the proportion allocated to the estate under Chapter 3 (commencing with Section 11440) of Part 9.

(b) The claim may be discharged by any of the following means:

- (1) Payment to the surviving spouse.
- (2) Payment to the creditors of the surviving spouse or deceased spouse as identified in the claim.
- (3) A credit allowed the spouse in the order allocating debts made under Chapter 3 (commencing with Section 11440) of Part 9.

Comment. Section 9202 continues former Section 713.5 without substantive change.

CROSS-REFERENCES

Definitions

Claim § 9000
Surviving spouse § 78

CHAPTER 6. CLAIMS BY PUBLIC ENTITIES

§ 9250. Claim by public entity required

9250. (a) Except as otherwise provided in this chapter, a claim by a public entity shall be made within the time prescribed in this part. Any claim not so made is barred, including any lien imposed for the claim.

(b) As used in this section, "public entity" has the meaning provided in Section 811.2 of the Government Code.

Comment. Section 9250 restates former Section 707.5(a) without substantive change. "Public entity" is defined in Government Code Section 811.2 to include the State, the Regents of the University of California, a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the State. This section does not govern obligations owed to the United States.

CROSS-REFERENCES

Definitions

Claim § 9000

§ 9251. Claims governed by other statutes

9251. (a) A claim arising under a statute listed in subdivision (b) is barred only after written notice or request to the agency and expiration of the period provided in the applicable statute. If no written notice or request is made the claim is barred at the time otherwise provided in the statute.

| (b) | <u>Law or Code</u> | <u>Applicable Statute</u> |
|-----|---|---|
| | Sales and Use Tax Law (commencing with Section 6001 of the Revenue and Taxation Code) | Section 6487.1 of the Revenue and Taxation Code |
| | Bradley-Burns Uniform Local Sales and Use Tax law (commencing with Section 7200 of the Revenue and Taxation Code) | Section 6487.1 of the Revenue and Taxation Code |
| | Transactions and Use Tax Law (commencing with Section 7251 of the Revenue and Taxation Code) | Section 6487.1 of the Revenue and Taxation Code |
| | Motor Vehicle Fuel License Tax Law (commencing with Section 7301 of the Revenue and Taxation Code) | Section 7675.1 of the Revenue and Taxation Code |

| | |
|---|---|
| Use Fuel Tax Law (commencing with Section 8601 of the Revenue and Taxation Code) | Section 8782.1 of the Revenue and Taxation Code |
| Personal Income Tax Law (commencing with Section 17001 of the Revenue and Taxation Code) | Section 19266 of the Revenue and Taxation Code |
| Cigarette Tax Law (commencing with Section 30001 of the Revenue and Taxation Code) | Section 30207.1 of the Revenue and Taxation Code |
| Alcoholic Beverage Tax Law (commencing with Section 32001 of the Revenue and Taxation Code) | Section 32272.1 of the Revenue and Taxation Code |
| Unemployment Insurance Code | Section 1090 of the Unemployment Insurance Code |
| Welfare and Institutions Code | Section 7277.1 of the Welfare and Institutions Code |

Comment. Section 9251 continues former Section 707.5(b) without substantive change.

CROSS-REFERENCES

Definitions

Claim § 9000

Note. *The Franchise Tax Board (Exhibit 5 of 1st Supp. Memo. 86-202) points out a drafting defect in subdivision (a). If no written notice of death is given to the state taxing authority the claim is barred at the time provided in the applicable "law or code"; the reference to the time provided in the applicable "statute" is misleading, in context. The staff will make this change.*

§ 9252. Limitation on application of chapter

9252. This chapter does not apply to liability for the restitution of amounts illegally acquired through the means of a fraudulent, false, or incorrect claim or representation, or a forged or unauthorized endorsement.

Comment. Section 9252 continues former Section 707.5(e) without substantive change.

Note. The Beverly Hills Bar Association (Exhibit 6) notes that the word "claim" is used here in an undefined sense, and in order to avoid confusion it may be appropriate to substitute some other term such as "application." The staff is reluctant to do this, since "claim" is the term in common usage with respect to tax claims. We would preface the definition of claim in Section 9000 with, "Unless the provision or context otherwise requires."

§ 9253. Priority of claims not affected by chapter

9253. Except as provided in Section 9254, nothing in this chapter shall be construed to affect the order of priority of claims provided for under other provisions of law.

Comment. Section 9253 continues former Section 707.5(d) without substantive change.

CROSS-REFERENCES

Definitions

Claim § 9000

§ 9254. Claim by Director of Health Services

9254. (a) If the decedent has received or may have received health care under the provisions of Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code, a beneficiary, the personal representative, or a person in possession of property of the decedent shall give the Director of Health Services notice of the decedent's death no later than 90 days after the date of death. The notice shall be given by mail addressed to the director at the Sacramento office of the director.

(b) A notice given under this section shall include a copy of the decedent's death certificate.

(c) The director has four months after notice is given in which to make a claim. If assets of the estate have been distributed, the director is entitled to a claim against the distributees to the full extent of the director's claim, or each distributee's share of the distributed assets, whichever is less. The director's entitlement against distributees shall include interest at a rate equal to that earned in the Pooled Money Investment Fund from the date of distribution or the date of making the claim by the director, whichever is later, plus other accruing costs as in the case of enforcement of a money judgment.

(d) Failure to comply with the provisions of this section does not affect the validity of any proceeding under this division.

Comment. Section 9254 restates former Section 700.1 without substantive change.

CROSS-REFERENCES

Definitions

- Beneficiary § 24
- Claim § 9000
- Personal representative § 58
- Property § 62

CHAPTER 7. ALLOWANCE AND REJECTION OF CLAIMS

§ 9300. Procedure by personal representative

9300. (a) On notification that a claim has been made, the personal representative shall allow or reject the claim in whole or in part.

(b) The allowance or rejection shall be in writing. The personal representative shall file the allowance or rejection with the clerk and serve a copy on the claimant.

(c) The allowance or rejection shall contain the following information:

- (1) Name of claimant.
- (2) Total amount of claim.
- (3) Date of issuance of letters.
- (4) Date of death.
- (5) Estimated value of estate.
- (6) Amount allowed or rejected by personal representative.
- (7) Whether personal representative is authorized to act under the Independent Administration of Estates Act.
- (8) A statement that the claimant has three months in which to act on a rejected claim.

(d) The Judicial Council may prescribe an allowance or rejection form. Use of a form prescribed by the Judicial Council is deemed to satisfy the requirements of this section.

Comment. Section 9300 supersedes portions of former Sections 710, 711, and 714. Under Independent Administration of Estates the personal representative may allow, pay, reject, contest, or compromise any claim without court supervision. Section 10502(k) (specific independent administration powers). However, court supervision is necessary where the personal representative is the creditor. Section 9302.

CROSS-REFERENCES

Definitions

Claim § 9000

Letters § 52

Personal representative § 58

Independent Administration of Estates Act § 10400 et seq.

Note. Subdivision (b) requires the personal representative to file the allowance or rejection of the claim with the court clerk. The reason for this requirement is that the clerk must present allowed claims to the court for approval. Section 9301 (procedure by court). Wilbur L. Coats (Exhibit 10) objects to filing with the court; he suggests that the personal representative should serve the allowance or rejection on the claimant and retain a copy in the personal representative's file for six months after final distribution has been ordered. This proposal obviously won't work, since the filing with the court triggers the mechanism for court approval. Maybe he is objecting to the requirement of court approval--see discussion in the note to Section 9301. More likely he sees subdivision (b) as imposing a new requirement of filing in the case of independent administration, since (b) appears to require filing in all cases, whether or not court approval is required. The staff would clear up this confusion by adding express language to subdivision (b) that the procedure applies only if the personal representative is not authorized to act under the Independent Administration of Estates Act. Cf. Section 9301 (procedure by court). The Comment would note that allowance of a claim under independent administration may be reviewed in an accounting, and rejection of a claim under independent administration may be contested by an action on the claim in the same manner as under supervised administration.

§ 9301. Procedure by court

9301. If the personal representative is not authorized to act under the Independent Administration of Estates Act:

(a) Immediately on the filing of the allowance of a claim, the clerk shall present the claim and allowance to the court for approval or rejection.

(b) On presentation of a claim and allowance to the court, the court may, in its discretion, examine the claimant and others on oath and receive any evidence touching the validity of the claim. The court shall indorse approval or rejection on the claim, and the date of the approval or rejection.

Comment. Section 9301 supersedes portions of former Sections 708, 710, 711, and 713.

CROSS-REFERENCES

Actions in chambers, Code Civ. Proc. § 166

Definitions

Claim § 9000

Personal representative § 58

Independent Administration of Estates Act § 10400 et seq.

Register of actions and preservation of records, Gov't Code §§ 69845-6

Note. This section requires court approval of claims allowed by the personal representative. Keith P. Bartel (Exhibit 2), Chairman of the Probate Section of the San Mateo County Bar Association, suggests that the Commission consider eliminating submission of allowed creditor claims to the court, except where the claim is that of the personal representative or an estate beneficiary. He points out the frustration of some probate judges in dealing with approval of massive numbers of creditor claims after allowance by the personal representative. "This requirement is curious since almost always the Judge has no independent basis on which to do anything other than approve the claim." In this connection, the staff notes that regardless of court approval, the claim is reviewed again at the time of the accounting. Probate Code § 921 (account must include "the claims filed or presented against the estate, giving the name of each claimant, the nature of the claim, when it became due or will become due, whether it was allowed or rejected by him, or not yet acted upon"). Elimination of the additional court approval step would simplify much of the drafting of the creditor claims provisions. See, e.g., Note to Section 11423 (interest).

§ 9302. Where personal representative is creditor

9302. (a) If the personal representative is a creditor of the decedent, the clerk shall present the claim to the court for approval or rejection.

(b) If the court approves the claim, the claim shall be paid in the course of administration.

(c) If the court rejects the claim, the personal representative may bring an action against the estate. Summons shall be served on the judge, who shall appoint an attorney at the expense of the estate to defend the action.

Comment. Section 9302 restates former Section 703 without substantive change. An approved claim is paid as other claims in the course of administration. If the personal representative fails to recover on an action, the personal representative must pay all costs, including reasonable attorney's fees, to be fixed by the court. Section 9307 (action on rejected claim).

CROSS-REFERENCES

Actions in chambers, Code Civ. Proc. § 166

Definitions

Claim § 9000

Personal representative § 58

Note. This section requires the personal representative to present the personal representative's own claims against the estate directly to the court for approval or rejection. Warren L. Sanborn (Exhibit 8) proposes that this requirement be extended to claims of counsel for the personal representative as well. It is not unusual, because of the nature of estate proceedings and the manner in which they often follow conservatorships or other representation of the Decedent, for the attorney to have a claim against the estate. "Because of his fiduciary position and the influence which the attorney has over the personal representative, Court approval of his claims seems advisable."

Once the claim is presented to the court, there is no procedure provided. Compare Section 9301 (procedure by court). Beryl A. Bertucio (Exhibit 11) says that although he has appeared before judges who held an evidentiary hearing on the personal representative's claim, with notice to the beneficiaries, he does not recall whether there is specific authority for such a procedure. "It does seem a reasonable intermediate measure before things escalate to litigation."

The State Bar team (Exhibit 15) notes that the Comment to this section implies that a personal representative who unsuccessfully litigates a claim against the estate must pay attorney's fees, whereas the relevant statute makes attorney's fees discretionary with the court. The staff will correct the Comment.

§ 9303. Effect of statute of limitations

9303. (a) The making of a claim does not toll the statute of limitations otherwise applicable to the claim except during the time prescribed in Section 9306.

(b) A claim barred by the statute of limitations otherwise applicable to the claim may not be allowed by the personal representative or approved by the court.

(c) The allowance of a claim by the personal representative or approval by the court tolls the statute of limitations otherwise applicable to the claim during the administration of the estate.

Comment. Subdivision (a) of Section 9303 codifies existing case law. See, e.g., Nally v. McDonald, 66 Cal. 530, 6 P. 390 (1885). Subdivisions (b) and (c) restate the first and third sentences of former Section 708 without substantive change.

CROSS-REFERENCES

Actions in chambers, Code Civ. Proc. § 166

Definitions

Claim § 9000

Personal representative § 58

§ 9304. Allowed and approved claims

9304. The validity of an allowed or approved claim may be contested by any interested person at any time before settlement of the account of the personal representative in which it is first reported as an allowed or approved claim. This section does not apply to a claim established by a judgment.

Comment. Section 9304 restates a portion of the first sentence of former Section 713 without substantive change. For claims established by judgments, see Chapter 8 (commencing with Section 9350).

CROSS-REFERENCES

Definitions

Claim § 9000

Interested person § 48

Personal representative § 58

Note. Existing law requires the personal representative to make immediate payment of priority debts (funeral expenses, expenses of last illness, family allowance, wage claims). See Section 11421. Benjamin D. Frantz (Exhibit 13) believes it is appropriate in such a situation to preclude further contest by any person. After all, such a claim must be both allowed and approved before it is payable in the course of administration.

§ 9305. Partial allowance

9305. (a) The personal representative may allow a claim, or the court may approve a claim, in part. The allowance or approval shall state the amount for which the claim is allowed or approved.

(b) A claimant who refuses to accept the amount allowed or approved in satisfaction of the claim may bring an action on the claim in the manner prescribed in Section 9307. The claimant may not recover costs in the action unless the claimant recovers an amount greater than that allowed or approved.

Comment. Section 9305 continues former Section 717 without substantive change.

CROSS-REFERENCES

Definitions

Claim § 9000

Personal representative § 58

§ 9306. Failure of personal representative or court to act

9306. If within 30 days after a claim is made the personal representative or court has refused or neglected to act on the claim, the refusal or neglect may, at the option of the claimant, be deemed equivalent to service of notice of a rejection on the 30th day.

Comment. Section 9306 supersedes the first sentence of former Section 712. Section 9306 substitutes a 30-day period for the 10-day period formerly provided. For tolling of the statutory period, see Section 9303 (effect of statute of limitations).

GROSS-REFERENCES

Definitions

Claim § 9000

Personal representative § 58

Note. This section extends existing law from 10 days to 30 days. Howard Serbin (Exhibit 9) supports this proposed change, noting that "current law provides far too little time."

§ 9307. Action on rejected claim

9307. (a) A rejected claim is barred unless the claimant brings an action on the claim or the matter is referred to a referee or to arbitration within the following times, excluding the time during which there is a vacancy in the office of the personal representative:

(1) If the claim is due at the date of service of the notice of rejection, three months after the date of service.

(2) If the claim is not due at the date of service of the notice of rejection, three months after the claim becomes due.

(b) An action on the claim shall be brought in the county in which the proceeding for administration of the decedent's estate is pending.

(c) Within 10 days after the complaint is filed the plaintiff shall file a notice of the pendency of the action with the clerk in the estate proceedings, together with proof of mailing a copy of the notice to the personal representative. Personal service of a copy of the summons and complaint on the personal representative within the 10 day period is equivalent to the filing of the notice. Any property distributed under court order or any payment properly made before the notice is filed and mailed is not subject to the claim. The personal representative, distributee, or payee is not liable on account of the prior distribution or payment.

(d) If the claimant fails to recover, the claimant shall pay court costs and, in the court's discretion, reasonable litigation expenses (including attorney's fees).

Comment. Subdivisions (a) and (c) of Section 9307 restate a portion of the first sentence and the second, third, and fourth sentences of former Section 714 and of former Section 715, except that the time after which an action on a rejected claim that is not yet due must be brought is increased from two months to three months. In the case of an action on a rejected claim, or the fact that the time within which such an action must be brought has not expired, does not preclude closing estate administration where the amount in dispute is paid into court. See Section 11427 (trust for installment or contingent debt).

Subdivision (b) is new; the superior court sitting in probate has concurrent jurisdiction over an action on a creditor's claim. Section 301 (jurisdiction in superior court).

Subdivision (d) generalizes a provision of former Section 703.

A dispute over a claim may be submitted to a temporary judge or to arbitration under Sections 9620-9621 (summary determination of disputes).

CROSS-REFERENCES

Definitions

Claim § 9000

Personal representative § 58

Jurisdiction in superior court § 7050

Submission of dispute to arbitration § 9621

Submission of dispute to temporary judge § 9620

Note. Existing law requires an action on a rejected claim, if the claim is not yet due, to be brought within two months after it becomes due. The new statute extends this period to three months, for parallelism with the three month period for bringing an action on a rejected claim that is currently due. This extension seems to Warren L. Sanborn (Exhibit 8) unnecessary. "We are not discussing payment of the claim, merely filing of an action. It would be beneficial to determine the claim as early as possible; therefore, the time period provided in (a)(1) appears more than sufficient." In other words, he suggests that an action on a rejected claim not yet due should be required within three months after rejection, the same as an action on a claim that is due. This would certainly help prevent the estate from being tied up for long periods.

Once an action on a rejected claim is commenced, the creditor must file notice of pendency of the action within 10 days. Distributions and payments made before notice is filed are not subject to the pending action. What happens if the 10 day period is not complied with? The matter is not jurisdictional and the lawsuit may be prosecuted nonetheless; the relevant factor is that the estate may be validly depleted until the notice is filed. The 10 day limitation does not appear to serve a useful purpose, and the staff would eliminate it.

CHAPTER 8. CLAIMS ESTABLISHED BY JUDGMENT

§ 9350. Money judgment against decedent

9350. (a) Subject to Section 9353, after the death of the decedent the following money judgments are payable in the course of administration and are not enforceable against property in the estate of the decedent under the Enforcement of Judgments Act:

(1) A money judgment against the decedent during the decedent's lifetime.

(2) A money judgment against a decedent who died after trial and submission of the case to a judge sitting without a jury for decision or after a verdict.

(3) A money judgment against the personal representative on a claim against the estate of the decedent.

(b) Except as provided in Section 9351, a judgment referred to in subdivision (a) shall be filed in the same manner as other claims.

Comment. Section 9350 continues former Section 730(a)-(b) without substantive change. For an exception to the rule of Section 9350, see Section 9353. Section 9350 applies to federal as well as state judgments.

CROSS-REFERENCES

Definitions

Claim § 9000

Personal representative § 58

Note. This section lists the types of money judgments that may not be satisfied through the enforcement of judgments statute but must be satisfied in the normal course of estate administration. This listing implies that there are some judgments that are not to be satisfied in the course of administration. Yet the listing is nearly complete, and it doesn't make any sense to send the few judgments not listed through the enforcement of judgments statute rather than estate administration. The staff would revise this section to provide simply that all money judgments against the decedent or estate or against the personal representative on a claim against the decedent or estate are payable in the course of administration and are not enforceable under the enforcement of judgments statute.

§ 9351. Money judgment against personal representative

9351. When a money judgment against a personal representative in a representative capacity becomes final, it conclusively establishes the validity of the claim for the amount of the judgment. The judgment

shall provide that it is payable out of property in the decedent's estate in the course of administration. An abstract of the judgment shall be filed in the administration proceedings.

Comment. Section 9351 continues former Section 731 without substantive change.

CROSS-REFERENCES

Definitions

Claim § 9000

Personal representative § 58

§ 9352. Enforcement of non-money judgment

9352. (a) Notwithstanding the death of the decedent, a judgment for the possession of property or a judgment that requires a sale of property may be enforced under the Enforcement of Judgments Law. Nothing in this subdivision authorizes enforcement under the Enforcement of Judgments Law against any property in the estate of the decedent other than the property described in the judgment for possession or sale.

(b) After the death of the decedent, a demand for money that is not satisfied from the property described in the judgment for possession or sale shall be made as a claim in the same manner as other claims and is payable in the course of administration.

Comment. Section 9352 continues former Section 730(d) without substantive change.

CROSS-REFERENCES

Definitions

Claim § 9000

Property § 62

§ 9353. Property under levy of execution

9353. If property of the decedent is levied on under the Enforcement of Judgments Law before the decedent dies, enforcement of the property levied on may proceed under the Enforcement of Judgments Law to satisfy the judgment. The levying officer shall account to the personal representative for any surplus. If the judgment is not satisfied, the balance of the judgment remaining unsatisfied is payable in the course of administration.

Comment. Section 9353 restates former Section 730(c) without substantive change.

CROSS-REFERENCES

Definitions

Personal representative § 58
Property § 62

§ 9354. Converting attachment lien to judgment lien

9354. (a) An attachment lien may be converted into a judgment lien on property in the estate subject to the attachment lien, with the same priority as the attachment lien, in either of the following cases:

(1) Where the judgment debtor dies after entry of judgment in an action in which the property was attached.

(2) Where a judgment is entered after the death of the defendant in an action in which the property was attached.

(b) To convert the attachment lien into a judgment lien, the levying officer shall, after entry of judgment in the action in which the property was attached and before the expiration of the attachment lien do one of the following:

(1) Serve an abstract of the judgment and a notice that the attachment lien has become a judgment lien on the person holding property under the attachment.

(2) Record or file in any office where the writ and notice of attachment are recorded or filed an abstract of the judgment and a notice that the attachment lien has become a judgment lien. If the attached property is real property, the plaintiff or the plaintiff's attorney may record the required abstract and notice with the same effect as if recorded by the levying officer.

(c) After the death of the decedent, any members of the decedent's family who were supported in whole or in part by the decedent may claim an exemption provided in Section 487.020 of the Code of Civil Procedure for property levied on under the writ of attachment if the right to the exemption exists at the time the exemption is claimed. The personal representative may claim the exemption on behalf of such members of the decedent's family. The claim of exemption may be made at any time before the time the abstract and notice has been served, recorded, or filed under subdivision (b) with respect to the property claimed to be exempt. The claim of exemption shall be made in the same manner as an exemption is claimed under Section 482.100 of the Code of Civil Procedure.

Comment. Section 9354 continues former Section 732 without substantive change.

GROSS-REFERENCES

Definitions

Person § 56

Personal representative § 58

Property § 62

Real property § 68

PART 9. PAYMENT OF DEBTS

CHAPTER 1. DEFINITIONS

§ 11400. Application of definitions

11400. Unless the provision or context otherwise requires, the definitions in this chapter govern the construction of this part.

§ 11401. Debt

11401. "Debt" means:

(a) A claim that is established under Part 4 (commencing with Section 9000) or that is otherwise payable in the course of administration.

(b) An expense of administration.

(c) A charge against the estate including, but not limited to, taxes, expenses of last illness, and family allowance.

Comment. Section 11401 is new. It is intended for drafting convenience.

Subdivision (a) includes debts payable under the Independent Administration of Estates Act that are not established under Section 9000 et seq. (creditor claims), as well as other debts paid even though not presented through the formal claim procedure. See Sections 929 and 11422 (payment of demands on court order).

CROSS-REFERENCES

Definitions

Claim § 9000

Family allowance § 38

Note. The Los Angeles County Bar Association (Exhibit 16) notes that "debt" should include amounts paid under existing Probate Code Section 929 (debts paid informally without the standard claim process). Actually, Section 9153 (waiver of formal defects) may be a better reference. The staff will note in the Comment that informal demands paid by the personal representative are included in the meaning of "debt."

§ 11402. Wage claim

11402. "Wage claim" means a claim for wages, to the extent of two thousand dollars (\$2,000), of each employee of the decedent for work done or personal services rendered within 90 days before the death of the decedent.

Comment. Section 11402 restates the first sentence of former Section 950(6) and a portion of former Section 951, and increases the amount from \$900 to \$2,000.

CROSS-REFERENCES

Definitions

Claim § 9000

CHAPTER 2. GENERAL PROVISIONS

§ 11420. Priority for payment

11420. (a) Debts shall be paid in the following order of priority among classes of debt:

- (1) Expenses of administration.
- (2) Funeral expenses.
- (3) Expenses of last illness.
- (4) Family allowance.
- (5) Wage claims.

(6) Obligations secured by a mortgage, deed of trust, or other lien, including but not limited to a judgment lien, in the order of their priority, so far as they may be paid out of the proceeds of the property subject to the lien. If the proceeds are insufficient, the part of the obligation remaining unsatisfied shall be classed with general debts.

- (7) General debts.

(b) Except as otherwise provided by statute, the debts of each class are without preference or priority one over another. No debt of any class shall be paid until all those of prior classes are paid in full. If property in the estate is insufficient to pay all debts of any class in full, each debt in that class shall be paid a proportionate share.

(c) Notwithstanding any other provision of this chapter, debts having preference by the laws of the United States or of this state shall be given the preference required by such laws.

Comment. Section 11420 restates former Section 950 and a portion of former Section 952, except that Section 11420 makes clear that United States and California preferred debts must be recognized to the extent required by law. Subdivision (a)(7) includes judgments that are not liens rendered against the decedent during lifetime. See Section 9350 (money judgment against decedent). Subdivision (b) supersedes the third sentence of former Section 953.

CROSS-REFERENCES

Definitions

Debt § 11401
Family allowance § 38
Property § 62
Wage claim § 11402

Note. Expenses of last illness are given a high priority by statute. Howard Serbin (Exhibit 9) questions whether last illness claims of the Director of Health Services under Probate Code Section 700.1 should be included in this priority. "I question whether 700.1 was intended to adhere to the detriment of other priority creditors in an insolvent estate. It may be these claims should be considered general debts. They are often large claims that leave little left for other creditors."

The Franchise Tax Board (Exhibit 5 of 1st Supp. Memo. 86-202) points out that their tax claims are priority claims and should be specifically listed in the priority scheme in subdivision (a), rather than a general reference made to state and federal priority claims in subdivision (c). Unlike subdivision (a), subdivision (c) is really just a cross-referencing provision--it does not create priorities as subdivision (a) does. In fact, existing law does not even refer to federal and state priorities. It would make subdivision (a) difficult to deal with to try to include all the state and federal priorities that exist. The most the staff would do on this point would be to include a specific reference to the Franchise Tax Board priority in the Comment, thus: "See, e.g., Rev. & Tax. Code § 19265 (priority of claim for taxes under Personal Income Tax Law)."

§ 11421. Immediate payment of priority debts

11421. As soon as the personal representative has sufficient funds, after retaining sufficient funds to pay expenses of administration and debts having preference by the laws of the United States or of this state, the personal representative shall pay the following debts:

- (a) Funeral expenses.
- (b) Expenses of last illness.
- (c) Family allowance.
- (d) Wage claims.

Comment. Section 11421 restates the first portion of former Section 951, with the addition of the reference to other debts given preference by federal or state law. See, e.g., Estate of Muldoon, 128 Cal. App. 2d 284, 275 P.2d 597 (1954) (federal preference); Estate of Jacobs, 61 Cal. App. 2d 152, 142 P.2d 454 (1943) (state preference). Section 11421 is an exception to the rule of Section 11422 (payment of debts on court order) in that payment under Section 11421 is required even though the court has not ordered payment.

CROSS-REFERENCES

Definitions

Debt § 11401
Family allowance § 38
Personal representative § 58
Wage claim § 11402

Note. Howard Serbin (Exhibit 9) supports this proposal.

The Franchise Tax Board (Exhibit 5 of 1st Supp. Memo. 86-202) points out an inconsistency between this section and the Personal Income Tax Law, which precludes payment of any claims before tax claims are satisfied, except for expenses of administration, funeral expenses, and expenses of last illness. Rev. & Tax. Code § 19265. Thus the requirement of this section that wage claims be paid immediately conflicts with the prohibition of the Personal Income Tax Law. The Franchise Tax Board would resolve this discrepancy by requiring immediate payment of the tax. The staff thinks a better solution would be to revise the Personal Income Tax Law to be consistent with this section--after all, immediate payment is required under the section only after sufficient funds for payment of taxes have been reserved.

§ 11422. Payment of debts on court order

11422. (a) Except as provided in Section 11421 (immediate payment of priority debts), the personal representative is not required to pay a debt until payment has been ordered by the court.

(b) On the settlement of any account of the personal representative after the time prescribed in Section 9100 (claim period) has expired, the court shall order payment of debts, as the circumstances of the estate permit. If property in the estate is insufficient to pay all of the debts, the order shall specify the amount to be paid each.

(c) If the estate will be exhausted by the payment ordered, the account of the personal representative constitutes a final account, and notice of hearing shall be the notice given for the hearing of a final account. The personal representative is entitled to a discharge when the personal representative has complied with the terms of the order.

(d) Nothing in this section precludes settlement of an account of a personal representative for payment of a debt without payment having been previously ordered by the court.

Comment. Subdivision (a) of Section 11422 restates the last portion of former Section 951 without substantive change. Subdivisions (b) and (c) restate the first, second, and fourth sentences of former Section 952. Subdivision (d) is new.

Section 11422 makes clear that the notice of hearing of an account that will result in the estate being exhausted must comply with the requirements for notice of hearing of a final account. See Section 926 (final account). Discharge may be obtained by ex parte petition on filing the appropriate receipts. Section 12250 (order of discharge).

For approval of the personal representative's account where payment is made without prior court order, see Sections 9153 (waiver of formal defects) and 929.

CROSS-REFERENCES

Definitions

Debt § 11401
Personal representative § 58
Property § 62

§ 11423. Interest

11423. (a) Interest accrues on a debt from the date the court orders payment of the debt until the date the debt is paid. Interest accrues at the legal rate on judgments.

(b) Notwithstanding subdivision (a), in the case of a debt based on a written contract, interest accrues at the rate and in accordance with the terms of the contract. The personal representative may, by order of the court, pay all or part of the interest accumulated and unpaid at any time when there are sufficient funds, whether the debt is then due or not.

Comment. Section 11423 supersedes former Section 733. The legal rate of interest on judgments is provided in Code of Civil Procedure Section 685.010.

CROSS-REFERENCES

Definitions

Debt § 11401
Personal representative § 58

Note. Under existing Section 733, interest on contract debts accrues at the rate and time specified in the contract, whereas interest on other debts accrues at the legal rate (10%) upon approval of the debt by the court. The contract rate rule is subject to the limitation that in the case of an insolvent estate, interest may not exceed the legal rate from the date of first publication of notice to creditors. The tentative recommendation simplifies this scheme somewhat by running interest from the date the court orders payment and by eliminating the insolvent estate exception.

Some members of the Beverly Hills Bar Association (Exhibit 6) feel that the present rule has worked well and equitably and see no need for a revision. For instance, the change in time of accrual of interest on non-contract debts from the date of approval by the court to the date the court orders payment has the effect of delaying interest, since the date of the court order is usually much later than the date of approval. The date of approval is preferable since it protects creditors better and treats contract and non-contract debts more nearly alike.

This view is not shared by other commentators, however. Howard Serbin (Exhibit 9) suggests that the statute provide explicitly that court approval of a claim does not start interest running. Warren L. Sanborn (Exhibit 8) also believes the date of approval is inappropriate. "It is next to impossible to make payment on the same day that the Court approves payment of the debt....It does not seem proper to penalize the estate for a normal delay in payment that would be satisfactory if done other than by an estate." He suggests a 30 day grace period after approval before interest starts to accrue.

The staff has a different concern: tying accrual to court approval won't work for independent administration, since there is no court approval, only allowance by the personal representative and court ordered payment on approval of accounting. We don't know how this is handled under existing law, but we need to be sensitive to the independent administration situation in any proposals we come up with in this area.

The Beverly Hills Bar Association also believes the contract rate of interest should not exceed the legal rate. They state two reasons: "First, the approval of a claim by the court gives the debtor security that the claim will be paid. Second, the period of probate administration is a condition usually not contemplated by the parties and will often result in a delay of payment of a debt. Payment of a rate higher than the legal rate of interest not only unfairly favors some creditors over others, but may work a hardship on the estate when administration of the estate extends over a long period." The staff questions whether it is constitutionally permissible to impair the obligation of a contract in the way suggested by the Beverly Hills Bar Association.

The Franchise Tax Board (Exhibit 5 of 1st Supp. Memo. 86-202) observes that the Personal Income Tax Law provides for interest on unpaid taxes at an adjusted annual rate equal to the prime rate. The staff believes this case should be recognized by statute. A subdivision (c) could be added to provide: "(c) Notwithstanding subdivision (a), in the case of a debt for unpaid taxes or any other debt for which interest is expressly provided by statute, interest accrues at the rate and in accordance with the terms of the statute."

§ 11424. Enforcement of order for payment

11424. (a) The personal representative shall pay a debt to the extent of the order for payment of the debt.

(b) An order for payment of a debt may be enforced in the manner provided for the enforcement of a money judgment generally.

Comment. Section 11424 restates former Section 954. The personal representative is liable personally and on the bond for failure to make payment ordered by the court. See Sections 9601-9603 (general provisions on liability of personal representative). For provisions on abatement of devises, see Sections 750-753.

CROSS-REFERENCES

Definitions

Debt § 11401

Personal representative § 58

§ 11425. Disputed and contingent debts

11425. Except as otherwise provided in this part, if a debt is not due, or is contingent or disputed, the amount of the debt or the part that would be payable if the debt were due, established, or absolute, shall be paid into court. The amount paid into court shall remain there, to be paid over to the creditor when the debt is due, established, or absolute or, if the debt is not established, to be paid over or distributed as the circumstances of the estate require.

Comment. Section 11425 restates the first sentence of former Section 953 without substantive change. Payment into court under this section is subject to the general provisions of Section 11420 relating to priority of payment; if the estate is insolvent, payment may not be made under this section unless payment of proportionate shares is ordered. For other provisions relating to payment of installment and contingent debts and debts not yet due, see Sections 11426 (payment of debt not yet due) and 11427 (trust for installment or contingent debt).

CROSS-REFERENCES

Definitions

Debt § 11401

Note. This section in effect allows an estate to be tied up by any person claiming a debt, whether or not the claim has any validity. The staff has been concerned about this situation. We have now received a letter from a State Bar Special Committee on Creditor's Claims and Final Distribution. The letter indicates dissatisfaction with the existing state of the law, and suggests approaches the Special Committee is investigating to deal with the problems of existing law. The letter indicates that the Special Committee is planning to undertake drafting responsibility on this matter. The staff believes this is a fine approach, and recommends that the Commission simply follow the State Bar's activities in this area.

§ 11426. Payment of debt not due

11426. If a creditor whose debt is not due assents to a deduction from the debt of the legal interest for the time until the debt is due, the creditor is entitled to payment of the debt.

Comment. Section 11426 restates the second sentence of former Section 953 without substantive change.

CROSS-REFERENCES

Definitions

Debt § 11401

§ 11427. Trust for installment or contingent debt

11427. (a) Notwithstanding any other statute, the court may in its discretion appoint a trustee to whom payment of a debt that is payable in installments or on the occurrence or nonoccurrence of a stated event shall be made, with the direction that the trustee invest the payment in investments that would be proper for a personal representative or as authorized by the court. The court in determining the amount of the payment shall compute the present value of the debt, giving consideration to a reasonable interest rate on the amount to be invested.

(d) The trustee shall pay the debt as ordered by the court. On completion of payment, any excess in possession of the trustee shall be paid or distributed in accordance with the order for distribution.

Comment. Section 11427 restates former Section 953.1, omitting the transitional provision, which is no longer necessary, and authorizing investments that would be proper for a personal representative rather than for a savings bank.

CROSS-REFERENCES

Definitions

Debt § 11401

Personal representative § 58

§ 11428. Deposit with county treasurer

11428. (a) Whenever an estate is in all other respects ready to be closed, and it appears to the satisfaction of the court, on affidavit or evidence taken in open court, that a debt has not been and cannot be paid because the creditor cannot be found, the court shall make an order fixing the amount of the payment and directing the personal representative to deposit the payment with the county treasurer of the county in which the proceedings are pending.

(b) The county treasurer shall give a receipt for the deposit, for which the county treasurer is liable on the official bond. The receipt shall be treated by the court in favor of the personal representative with the same force and effect as if executed by the creditor.

(c) A deposit with the county treasurer under the provisions of this section shall be received, accounted for, and disposed of as provided by Section 1444 of the Code of Civil Procedure. A deposit in the State Treasury under the provisions of this section shall be deemed to be made under the provisions of Article 1 (commencing with Section 1440) of Chapter 6 of Title 10 of Part 3 of the Code of Civil Procedure.

Comment. Section 11428 restates former Section 738 without substantive change. The amount of the deposit under this section includes interest on the debt from the date payment was ordered. Section 11423 (interest).

CROSS-REFERENCES

Actions in chambers, Code Civ. Proc. § 166

Definitions

Debt § 11401

Personal representative § 58

§ 11429. Omitted creditor

11429. (a) When the accounts of the personal representative have been settled and an order made for the payment of debts and distribution of the estate, a creditor whose debt was not included in the order for payment has no right to require creditors who have been paid or distributees to contribute to the payment of the debt.

(b) Nothing in this section precludes recovery against the personal representative on the bond or otherwise by a creditor whose debt was not included in the order for payment.

Comment. Section 11429 supersedes former Section 955.

CROSS-REFERENCES

Definitions

Debt § 11401

Personal representative § 58

CHAPTER 3. ALLOCATION OF DEBTS BETWEEN ESTATE AND
SURVIVING SPOUSE

§ 11440. When allocation may be made

11440. If it appears that a debt of the decedent is also payable in whole or in part by the surviving spouse, the personal representative or any interested person may petition for an order to allocate responsibility for the debt at any time before an order for final distribution is made.

Comment. Section 11440 restates former Section 980(a) without substantive change, but allows the petition to be made at any time before the court order for final distribution. Under this section a petition may be made by a creditor of the surviving spouse in a case where the estate is also liable for the debt. See Section 48 ("interested person" defined).

CROSS-REFERENCES

Definitions

Debt § 11401
Interested person § 48
Personal representative § 58
Surviving spouse § 78

§ 11441. Petition for allocation

11441. The petition shall include a statement of all of the following:

(a) All debts of the decedent known to the petitioner that are alleged to be subject to allocation.

(b) The reason why the debts of the decedent should be allocated.

(c) The allocation and the basis for allocation alleged by the petitioner.

Comment. Section 11441 restates former Section 980(b) without substantive change.

CROSS-REFERENCES

Definitions

Debt § 11401

§ 11442. Inventory of property of surviving spouse

11442. If it appears from the petition that allocation would be affected by the value of the separate property of the surviving spouse and any community property and quasi-community property not

administered in the estate and if an inventory and appraisal of the property has not been provided by the surviving spouse, the court shall make an order to show cause why the information should not be provided.

Comment. Section 11442 restates former Section 980(c) without substantive change.

CROSS-REFERENCES

Definitions

Community property § 28
Property § 62
Quasi-community property § 66
Surviving spouse § 78

§ 11443. Notice of hearing

11443. Notice of the hearing of the petition and the order to show cause shall be given for the period and in the manner prescribed by Section 1200 and a copy of the petition and the order to show cause shall be served on the surviving spouse and the personal representative not less than 10 days before the time set for the hearing.

Comment. Section 11443 restates former Section 980(d) without substantive change.

CROSS-REFERENCES

Definitions

Personal representative § 58
Surviving spouse § 78

§ 11444. Allocation

11444. (a) The personal representative and the surviving spouse may provide for allocation by agreement and, on a determination by the court that the agreement substantially protects the rights of interested persons, the allocation provided in the agreement shall be ordered by the court.

(b) In the absence of an agreement, each debt of the decedent shall be apportioned based on all of the property of the spouses liable for the debt at the date of death that is not exempt from enforcement of a money judgment, in the proportion determined by the value of the property less any liens and encumbrances at the date of

death, adjusted to take into account any right of reimbursement that would have been available if the property were applied to the debt at the date of death, and the responsibility to pay the debt shall be allocated accordingly.

Comment. Section 11444 restates former Section 980(e) without substantive change. Section 11444 makes clear that allocation of liability is to be based on rules applicable to liability of marital property for debts during marriage. See Civil Code Sections 5120.010-5122.

CROSS-REFERENCES

Definitions

Debt § 11401
Interested person § 48
Personal representative § 58
Property § 62
Surviving spouse § 78

§ 11445. Order implementing allocation

11445. On making a determination as provided in this chapter, the court shall make an order that:

(a) Directs the personal representative to charge the amounts allocated to the surviving spouse against any property or interests of the surviving spouse that are in the possession of the personal representative.

(b) Summarily directs the surviving spouse to make payment of the allocation to the personal representative to the extent that property or interests of the surviving spouse that are in the possession of the personal representative are insufficient to satisfy the allocation.

(c) Directs the personal representative to make payment of the amounts allocated to the estate.

Comment. Section 11445 restates former Section 980(f) without substantive change.

CROSS-REFERENCES

Definitions

Personal representative § 58
Property § 62
Surviving spouse § 78

§ 11446. Funeral expenses and last illness expenses

11446. Notwithstanding any other statute, funeral expenses and expenses of last illness shall be charged against the estate of a deceased spouse and shall not be allocated to, or charged against the community share of, the surviving spouse, whether or not the surviving spouse is financially able to pay the expenses and whether or not the surviving spouse or any other person is also liable for the expenses.

Comment. Section 11446 restates former Section 951.1 without substantive change.

CROSS-REFERENCES

Definitions

Person § 56

Surviving spouse § 78

REPEALERS

Probate Code §§ 700-738 (repealed). Presentation and payment of claims

SEC. . Chapter 12 (commencing with Section 700) of Division 3 of the Probate Code is repealed.

Comment. For disposition of the provisions of this chapter, see the Appendix to this report.

Probate Code §§ 950-956 (repealed). Payment of debts, expenses, and charges

SEC. . Article 4 (commencing with Section 950) of Chapter 15 of Division 3 of the Probate Code is repealed.

Comment. For disposition of the provisions of this article, see the Appendix to this report.

Probate Code § 980 (repealed). Apportionment of taxes

SEC. . Article 5 (commencing with Section 980) of Chapter 15 of Division 3 of the Probate Code is repealed.

Comment. For disposition of Section 980, see the Appendix to this report.

APPENDIX

DISPOSITION OF REPEALED SECTIONS

CHAPTER 12. PRESENTATION AND PAYMENT OF CLAIMS

ARTICLE 1. PRESENTATION

Probate Code § 700 (repealed)

Comment. Subdivision (a) of former Section 700 is superseded by Sections 9001 (notice to creditors), 9100 (claim period), 9150 (how claim is made), and 58 ("personal representative" defined). Subdivision (b) is restated in Section 9101 (time not extended by vacancy in office) without substantive change. Subdivision (c) is restated in Section 9100 (claim period) without substantive change.

Probate Code § 700.1 (repealed)

Comment. Former Section 700.1 is restated in Sections 9254 (claim by Director of Health Services) and 7150 (mailing) without substantive change.

Probate Code § 703 (repealed)

Comment. Former Section 703 is restated in Sections 9302 (where personal representative is creditor) and 9307 (action on rejected claim) without substantive change.

Probate Code § 704 (repealed)

Comment. Former Section 704 is not continued. A judge who is a creditor is disqualified. Section 303 (disqualification of judge).

Probate Code § 704.2 (repealed)

Comment. Former Section 704.2 is restated in part in Sections 9200 (claim by surviving spouse for payment of debts of decedent) and 9150 (how claim is made) without substantive change, and is superseded in part by Section 9100 (claim period).

Probate Code § 704.4 (repealed)

Comment. Former Section 704.4 is restated in part in Section 9201 (claim by surviving spouse for payment of debt of surviving spouse) and broadened for consistency with general principles of liability of marital property for debts, and is superseded in part by Section 9100 (claim period).

Probate Code § 705 (repealed)

Comment. Former Section 705 is restated in Section 9151 (documentary support of claim) without substantive change.

Probate Code § 706 (repealed)

Comment. Former Section 706 is restated in Section 9152 (claim based on written instrument) without substantive change.

Probate Code § 707 (repealed)

Comment. The first sentence of subdivision (a) of former Section 707 is continued in Sections 9000 ("claim" defined) and 9002 (claim requirement) without substantive change. See also Section 9100 (claim period). The substance of the second sentence is continued in Sections 9002(b) (claim requirement) and 9103 (late claims). The remainder of subdivision (a) is restated and limited in Section 9103 (late claims), except for the last sentence, which is not continued. See Gov't Code §§ 69845-6 (register of actions, preservation of records).

Subdivision (b) is superseded by Section (claim covered by insurance).

Probate Code § 707.5 (repealed)

Comment. Subdivision (a) of former Section 707.5 is restated in Section 9250 (claim by public entity required) without substantive change. Subdivision (b) is continued in Section 9251 (claims governed by other statutes) without substantive change. Subdivision (c) is restated in Section 9000(a) ("claim" defined) without substantive change. Subdivision (d) is continued in Section 9253 (priority of claims not affected by chapter) without substantive change. Subdivision (e) is continued in Section 9252 (limitation on application of chapter) without substantive change.

Probate Code § 708 (repealed)

Comment. The first sentence of former Section 708 is restated in Section 9303(b) (effect of statute of limitations) without substantive change. The second sentence is restated in Section 9301(b) (procedure by court) without substantive change. The third sentence is restated in Section 9303(c) (effect of statute of limitations) without substantive change.

Probate Code § 709 (repealed)

Comment. Former Section 709 is restated in Sections (claim involving pending action) and (claim covered by insurance).

Probate Code § 709.1 (repealed)

Comment. Former Section 709.1 is superseded by Section (claim covered by insurance).

Probate Code § 710 (repealed)

Comment. The first two sentences of former Section 710 are not continued. The third sentence is superseded by Section 9300 (procedure by personal representative). The last two sentences are superseded by Section 9301 (procedure by court).

Probate Code § 711 (repealed)

Comment. The first sentence of former Section 711 is superseded by Section 9300 (procedure by personal representative). The second sentence is superseded by Section 9301 (procedure by court).

Probate Code § 712 (repealed)

Comment. The first sentence of former Section 712 is superseded by Section 9306 (failure of personal representative or court to act). The second sentence is not continued; the procedure was not used. The

last sentence is restated in Section 9102 (where personal representative acts on claim after expiration of time) without substantive change.

Probate Code § 713 (repealed)

Comment. The first sentence of former Section 713 is restated in Sections 9003 (payment of claims) and 9304 (allowed and approved claims). The second sentence is not continued. See Gov't Code §§ 69845-6 (register of actions, preservation of records).

Probate Code § 713.5 (repealed)

Comment. Former Section 713.5 is continued in Section 9202 (treatment of claim of surviving spouse) without substantive change.

Probate Code § 714 (repealed)

Comment. The first sentence of former Section 714 is superseded by Section 9300 (procedure by personal representative). The substance of a portion of the first sentence and the second, third, and fourth sentences is restated in Section 9307 (action on rejected claim). The fifth sentence is not continued).

Probate Code § 715 (repealed)

Comment. Former Section 715 is restated in Section 9307(a) (action on rejected claim).

Probate Code § 716 (repealed)

Comment. Subdivision (a) of former Section 716 is restated in Sections 9002 (claim requirement) and 9150 (how claim is made). The substance of subdivisions (b) and (c) is restated in Section (enforcement of security interest).

Probate Code § 717 (repealed)

Comment. Former Section 717 is continued in Section 9305 (partial allowance) without substantive change.

Probate Code § 718 (repealed)

Comment. Subdivision (1) of former Section 718 is not continued. Subdivision (2) is superseded by Section 9620 (submission of dispute to temporary judge).

§ 718.5 (repealed)

Comment. The portion of the first sentence of former Section 718.5 relating to compromises or settlements after the time for filing creditor's claims has expired is replaced by Section 9830. See the Comment to Section 9830. The portion of the first sentence of former Section 718.5 relating to compromises or settlements before the time for filing creditor's claims has expired is restated in Section 9831 without substantive change.

The second sentence of former Section 718.5 is restated in Section 9837 without substantive change. *The requirement that the clerk set the petition for hearing is continued in Section* *The requirement that the petition be verified is continued Section*

The last two sentences of former Section 718.5 are replaced by Section

§ 718.6 (repealed)

Comment. Former Section 718.6 is continued in Section 9850 without substantive change.

§ 718.7 (repealed)

Comment. Former Section 718.7 is continued without substantive change in Section 9851.

§ 719 (repealed)

Comment. Former Section 719 is; see also Code Civ. Proc. § 1026 (costs in actions by or against fiduciaries).

Probate Code § 720 (repealed)

Comment. Former Section 720 is restated in Section (claim for injury or death not involving pending action) without substantive change.

Probate Code § 721 (repealed)

Comment. Former Section 721, with the exception of subdivision (b), is restated in Section (claim covered by insurance). Subdivision (b) is superseded by the introductory portion of Section

ARTICLE 2. RULES AS TO PAYMENT OF CLAIMS

Probate Code § 730 (repealed)

Comment. Subdivisions (a) and (b) of former Section 730 are continued in Section 9350 (money judgment against decedent) without substantive change. Subdivision (c) is continued in Section 9353 (property under levy of execution) without substantive change. Subdivision (d) is continued in Section 9352 (enforcement of non-money judgment) without substantive change.

Probate Code § 731 (repealed)

Comment. Former Section 731 is continued in Section 9351 (money judgment against personal representative) without substantive change.

Probate Code § 732 (repealed)

Comment. Former Section 732 is continued in Section 9354 (converting attachment lien to judgment lien) without substantive change.

Probate Code § 733 (repealed)

Comment. [To be disposed of in another context.]

Probate Code § 736 (repealed)

Comment. [To be disposed of in another context.]

Probate Code § 737 (repealed)

Comment. [To be disposed of in another context.]

Probate Code § 738 (repealed)

Comment. Former Section 738 is restated in Section 11428 (deposit with county treasurer) without substantive change.

ARTICLE 4. PAYMENT OF DEBTS, EXPENSES, AND CHARGES

Probate Code § 950 (repealed)

Comment. Former Section 950 is restated in Sections 11401 ("debt" defined), 11402 ("wage claim" defined), and 11420 (priority for payment), which increase the amount of a preferred wage claim and make clear that debts given priority by other state law or by federal law retain their priority.

Probate Code § 951 (repealed)

Comment. Former Section 951 is restated in Sections 11402 ("wage claim" defined) and 11421 (immediate payment of priority debts) without substantive change.

Probate Code § 951.1 (repealed)

Comment. Former Section 951.1 is restated in Section 11446 (funeral expenses and last illness expenses), with the addition of a reference to state and federal priorities.

Probate Code § 952 (repealed)

Comment. Former Section 952 is restated in Sections 11420 (priority for payment) and 11422 (payment of debts on court order) without substantive change.

Probate Code § 953 (repealed)

Comment. The first sentence of former Section 953 is restated in Section 11425 (disputed and contingent claims) without substantive change. The second sentence is restated in Section 11426 (payment of debt not due) without substantive change. The third sentence is superseded by Section 11420(b) (priority for payment).

Probate Code § 953.1 (repealed)

Comment. Former Section 953.1 is restated in Section 11427 (trust for installment or contingent debt), with the exception of the transitional provision, which is no longer necessary.

Probate Code § 954 (repealed)

Comment. Former Section 954 is restated in Sections 11424 (enforcement of order for payment) and and superseded by Sections 9601-9603 (general provisions on liability of personal representative).

Probate Code § 955 (repealed)

Comment. Former Section 955 is superseded by Section 11429 (omitted creditor).

Probate Code § 956 (repealed)

Comment. Former Section 956 is superseded by Chapter 1 (commencing with Section 11600) of Part 10 of Division 7 of the (order for distribution) and Chapter 1 (commencing with Section 12200) of Part 11 of Division 7 of the (time for closing estate).

ARTICLE 5. APPORTIONMENT OF DEBTS

Probate Code § 980 (repealed)

Comment. The first sentence of subdivision (a) of former Section 980 is restated in Section 11440 (when allocation may be made), which allows petition at any time before the order for final distribution is made. The second sentence is superseded by Section 48 ("interested person" defined). Subdivision (b) is restated in Section 11441 (petition for allocation) without substantive change. Subdivision (c) is restated in Section 11442 (inventory of property of surviving spouse) without substantive change. Subdivision (d) is restated in Section 11443 (notice of hearing) without substantive change. Subdivision (e) is restated in Section 11444 (allocation) without substantive change, making clear that allocation of liability is to be based on rules applicable to liability of marital property for debts during marriage. Subdivision (f) is restated in Section 11445 (order implementing allocation) without substantive change.