

Memorandum 87-67

Subject: Study L-655 - Inventory and Appraisal (Review of Revised Provisions Before Approval for Printing)

At the July meeting in Irvine the Commission approved the recommendation relating to inventory and appraisal for printing and submission to the Legislature, but requested that the provisions relating to the time for filing the inventory and appraisal be brought back for review before final approval of those provisions. Attached to the memorandum as Exhibit 1 are the affected provisions.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

EXHIBIT 1

§ 8800. Inventory and appraisal required

8800. (a) The personal representative shall file with the court clerk an inventory of the property to be administered in the decedent's estate and an appraisal of the property in the inventory. The inventory and appraisal may be combined in a single document.

(b) The inventory shall be filed within three months after letters are first issued to a general personal representative. The appraisal shall be filed within six months after letters are first issued to a general personal representative or within such further time as is reasonable under the circumstances of the particular case.

Comment. Section 8800 restates the first portion of the first sentence of former Section 600, extending the time for filing the appraisal (as opposed to the inventory) to six months or such further time as is reasonable. A further time might be reasonable, for example, in an estate for which a federal estate tax return is necessary and additional time is required in order to ensure that the property is valued consistently.

The inventory and appraisal procedure provided in this part applies to valuation in administration of decedents' estates, but may be incorporated in other proceedings. For example, in a small estate set-aside proceeding under Chapter 6 (commencing with Section 6600) of Part 3 of Division 6, an inventory and appraisal of the decedent's estate is required as provided in Section 6608. No inventory and appraisal of the decedent's estate is required where it is disposed of without administration under Division 8 (commencing with Section 13000) except to the extent an inventory and appraisal is required pursuant to Section 13103 (real property), subdivision (b) of Section 13152 (real property), subdivision (c) of Section 13200 (affidavit procedure), or Section 13658 (property passing or belonging to surviving spouse).

See also Code of Civil Procedure § 166 (actions in chambers).

GROSS-REFERENCES

Definitions

Letters § 52

Personal representative § 58

§ 8801. Supplemental inventory and appraisal

8801. If after the inventory is filed the personal representative acquires knowledge of property to be administered in the decedent's estate that is not included in the inventory, the personal representative shall file a supplemental inventory and an appraisal or supplemental appraisal of the property in the manner prescribed for the

original inventory and original appraisal. The supplemental inventory shall be filed within three months after the personal representative acquires knowledge of the property. The supplemental appraisal shall be filed within six months after the personal representative acquires knowledge of the property or within such further time as is reasonable under the circumstances of the particular case.

Comment. Section 8801 restates former Section 611, extending the two month time for filing to three and six months, paralleling Section 8800 (inventory and appraisal required). For enforcement of this requirement, see Section 8804 (failure to timely file inventory and appraisal).

CROSS-REFERENCES

Definitions

Personal representative § 58

Property § 62

§ 8804. Failure to timely file inventory and appraisal

8804. If the personal representative negligently or intentionally fails to file an inventory or appraisal within the time provided in this chapter, upon petition of an interested person:

(a) The court may compel the personal representative to file an inventory or appraisal pursuant to the procedure prescribed in Section 921.

(b) The court may remove the personal representative from office.

(c) The personal representative is personally liable for injury to the estate or to an interested person that directly results from the failure. The liability may include attorney's fees, in the court's discretion. Damages awarded pursuant to this subdivision are a liability on the bond of the personal representative, if any.

Comment. Section 8804 restates former Section 610 and a portion of former Section 611, codifying the case law rule that the statute applies to failure to timely file the appraisal as well as failure to timely file the inventory. Section 8804 is limited to negligent or intentional noncompliance by the personal representative and is not intended to apply where the personal representative was unable to file the appraisal due to the probate referee's delay, or where the personal representative made a good faith effort to file but was unable to due to circumstances beyond the personal representative's control. For delay caused by the probate referee, see Article 3 (commencing with Section 8940) of Chapter 3.

Subdivision (a) is new.

Subdivision (b) provides for removal as an independent sanction. For the removal procedure, see Article 4 (commencing with Section 520) of Chapter 6 of Division 3. This supplements the removal sanction that is part of the procedure under subdivision (a) to compel a filing.

Under subdivision (c) liability for injury arising from the failure of the personal representative to timely file the inventory and appraisal may include attorney's fees incurred in proceedings to compel the filing. Liability of the personal representative and of the sureties on the bond is joint and several. See Code Civ. Proc. § 996.410 et seq.

CROSS-REFERENCES

Definitions

Interested person § 48

Personal representative § 58