

## Memorandum 90-99

Subject: Study L-3041 - Procedure for Creditor to Reach Nonprobate Assets (Report of State Bar Probate Section)

Probate law to a great degree is the process of discharging the decedent's debts so that the remaining property can pass to the decedent's beneficiaries. The Commission has long been concerned about the growth of nonprobate transfers of property and the extent to which they impact the rights of creditors of the decedent.

When the Commission obtained enactment of the new Trust Law in 1986, it included a provision that trust assets remain liable to creditors of the settlor after the settlor's death to the extent the settlor's probate estate is insufficient to satisfy the debts. Prob. Code § 18201. The Commission recognized at the time that this bare statement of the substantive rule lacked procedures for implementation, and that the problem of creditor rights against nonprobate assets extends far beyond trust assets. However, the State Bar Probate Section expressed an interest in the matter and a willingness to work on it, so the Commission deferred further study in deference to the Bar.

Because nothing has been enacted to deal with this problem during the past four years, the Commission at its March 1990 meeting decided to give this matter priority for Commission consideration. The staff presented some possible approaches at the April 1990 meeting, and the State Bar representative reported that a Bar team was then in the final stages of completing work on a draft statute that would provide a creditors' claims procedure for trusts. The Commission decided to defer consideration of this matter until its July meeting, when it would have a copy of the Bar team draft.

We have now received the Bar team draft. See Exhibit 1. We understand the Bar is in the process of refining the draft and circulating it for comment and possible further development. The draft provides a procedure, parallel to the procedure used in probate, for the trustee to identify and pay claims of creditors, after which further creditor claims would be barred against the trust estate.

This draft may protect the trust against potential open-ended liability for claims against the deceased settlor, and may be a useful technique to enable a trustee to cut off creditor claims with a short claim period. However, it does not respond to the issues that were of concern to the Commission. If the trustee does not initiate the notice and claim process, what rights do creditors have? May they proceed directly against trust assets or only through the personal representative in probate? Shouldn't other nonprobate assets be required to share in the payment of the settlor's debts? If so, should the sharing be done pro rata, or should the liability be joint and several, with reimbursement between the different funds? Does it make a difference if the trust is intended for support of a beneficiary?

It may be that the Bar team proposal in practice will handle the bulk of the problems that exist with nonprobate assets. But nonprobate transfers generally, not just trusts, are becoming more important--beneficiary designations in accounts, annuities, pension plans, insurance policies, etc. It would be a major undertaking, but a worthwhile one, for the Commission to draft a comprehensive statute that deals in an integrated way with application of these nonprobate assets to the decedent's debts.

The Commission needs to decide whether this is a matter it wishes to devote its resources to in light of the limited scope of the State Bar proposal.

Respectfully submitted,

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CA LAW REV. COMM'N

JUL 05 1990

R E C E I V E D

PART 7

PAYMENT OF CLAIMS, DEBTS AND EXPENSES  
FROM REVOCABLE TRUST OF DECEASED SETTLOR

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4

1 The people of the State of California do enact as follows:

2 SECTION 1. Section 17200 of the Probate Code is amended to  
3 read:

4 17200. (a) Except as provided in Section 15800, a trustee or  
5 beneficiary of a trust may petition the court under this chapter  
6 concerning the internal affairs of the trust or to determine the  
7 existence of the trust.

8 (b) Proceedings concerning the internal affairs of a trust  
9 include, but are not limited to, proceedings for any of the  
10 following purposes:

11 (1) Determining questions of construction of a trust  
12 instrument.

13 (2) Determining the existence or nonexistence of any  
14 immunity, power, privilege, duty, or right.

15 (3) Determining the validity of a trust provision.

16 (4) Ascertaining beneficiaries and determining to whom  
17 property shall pass or be delivered upon final or partial  
18 termination of the trust, to the extent the partial termination of  
19 the trust, to the extent the determination is not made by the trust  
20 instrument.

21 (5) Settling the accounts and passing upon the acts of the  
22 trustee, including the exercise of discretionary powers.

23 (6) Instructing the trustee.

24 (7) Compelling the trustee to report information about the  
25 trust or account to the beneficiary, if (A) the trustee has failed  
26 to submit a requested report or account within 60 days after

1 written request of the beneficiary and (B) no report or account has  
2 been made within six months preceding the request.

3 (8) Granting powers to the trustee.

4 (9) Fixing or allowing payment of the trustee's compensation.

5 (10) Appointing or removing a trustee.

6 (11) Accepting the resignation of a trustee.

7 (12) Compelling redress of a breach of the trust by any  
8 available remedy.

9 (13) Approving or directing the modification or termination of  
10 the trust.

11 (14) Approving or directing the combination or division of  
12 trusts.

13 (15) Amending or conforming the trust instrument in the manner  
14 required to qualify a decedent's estate for the charitable estate  
15 tax deduction under federal law, including the addition of  
16 mandatory governing instrument requirements for a charitable  
17 remainder trust as required by final regulations and rulings of the  
18 United States Internal Revenue Service, in any case in which all  
19 parties interested in the trust have submitted written agreement to  
20 the proposed changes or written disclaimer of interest.

21 (16) Authorizing or directing transfer of a trust or trust  
22 property to or from another jurisdiction.

23 (17) Directing transfer of a testamentary trust subject to  
24 continuing court jurisdiction from one county to another.

25 (18) Approving removal of a testamentary trust from continuing  
26 court jurisdiction.

1 (19) Reforming or excusing compliance with the governing  
2 instrument of an organization pursuant to Section 16105.

3 (20) *Determining the liability of the trust for any debts of*  
4 *a deceased settlor, provided, however, that nothing herein shall*  
5 *provide standing to bring such proceeding to a person whose only*  
6 *claim to assets of the decedent is as a creditor.*

7 Sec. 2. Section 18201 of the Probate Code is repealed.

8 ~~18201. Upon the death of a settlor who had retained the power~~  
9 ~~to revoke the trust in whole or in part, the property that was~~  
10 ~~subject to the power of revocation at the time of the settlor's~~  
11 ~~death is subject to the claims on creditors of the decedent~~  
12 ~~settlor's estate and to the expenses of administration of the~~  
13 ~~estate to the extent that the decedent settlor's estate is~~  
14 ~~inadequate to satisfy those claims and expenses.~~

15 SEC 3. Part 7 (commencing with Section 19000) is added to  
16 Division 9 of the Probate Code, to read:

1 PART 7. PAYMENT OF CLAIMS, DEBTS AND EXPENSES FROM  
2 REVOCABLE TRUST OF DECEASED SETTLOR  
3

4 CHAPTER 1. GENERAL PROVISIONS

5 19000. As used in this part:

6 (a) "Claim" means a demand for payment for any of the  
7 following, whether due, not due, or contingent, and whether  
8 liquidated or unliquidated:

9 (1) Liability of the deceased settlor, whether arising in  
10 contract, tort, or otherwise.

11 (2) Liability for taxes incurred before the deceased  
12 settlor's death, **whether assessed before or after the deceased**  
13 **settlor's death**, other than property taxes and assessments secured  
14 by real property liens.

15 (3) Liability for the funeral expenses of the deceased  
16 settlor.

17 (b) "Claim" does not include a dispute regarding title of a  
18 deceased settlor to specific property alleged to be included in the  
19 trust estate.

20 (c) "Claimant" means a person who may have a claim, as  
21 defined in subdivision (a), against trust property and who has  
22 filed a timely claim pursuant to Section 19100.

23 (d) "Trust" shall refer to a trust described in  
24 Section 18200, or, if a portion of such a trust, that portion that  
25 remained subject to the power of revocation at the deceased  
26 settlor's death.

1 (e) "Deceased settlor" shall refer to a deceased person who,  
2 at the time of his or her death, held the power to revoke the trust  
3 in whole or in part.

4 (f) "Debts" means all claims (as heretofore defined), all  
5 expenses of administration, and all other proper charges against  
6 the trust estate, including taxes.

7 19001. (a) Upon the death of a deceased settlor, the  
8 property of the deceased settlor that was subject to the power of  
9 revocation at the time of the settlor's death is subject to the  
10 claims of creditors of the deceased settlor's estate and to the  
11 expenses of administration of the estate to the extent that the  
12 deceased settlor's estate is inadequate to satisfy those claims and  
13 expenses.

14 (b) The deceased settlor, by appropriate direction in the  
15 trust instrument, may direct the priority of sources of payment of  
16 debts among subtrusts or other gifts established by the trust at  
17 the deceased settlor's death; notwithstanding the foregoing, no  
18 direction by the settlor shall alter the priority of payment, from  
19 whatever source, of the matters set forth in Section 11420 which  
20 shall be applied to the trust as it applies to a probate estate.

21 19002. (a) Except as expressly provided in this part, this  
22 part shall not be construed to affect the right of any creditor to  
23 recover from any revocable trust established by the deceased  
24 settlor.

1 (b) Nothing in this part shall be construed as a construction  
2 or alteration of any claims procedure set forth under Part 4  
3 (commencing with Section 9000) of Division 7.

4 19003. (a) At any time following the death of the deceased  
5 settlor, and during the time that there has been no filing of a  
6 petition to administer the estate of the deceased settlor in this  
7 state of which the trustee has actual knowledge, the trustee may  
8 file with the court a proposed notice to creditors. Upon the  
9 court's assignment of a proceeding number to the proposed notice,  
10 the trustee shall publish and serve notice to creditors of the  
11 deceased settlor in the form and within the time prescribed in  
12 Chapters 3 (commencing with Section 19040) and 4 (commencing with  
13 Section 19050). That action shall constitute notice to creditors  
14 of the requirements of this part.

15 (b) The filing shall be made with the Superior Court for the  
16 county in this state where the deceased settlor resided at the time  
17 of death, or if none, in any county in this state in which trust  
18 property was located at the time of the deceased settlor's death,  
19 or if none, in the county in this state that was the principal  
20 place of administration of the trust at the time of the deceased  
21 settlor's death.

22 (c) Nothing in subdivision (a) affects a notice or request to  
23 a public entity required by Chapter 7 (commencing with  
24 Section 19200).

25 19004. If the trustee files, publishes, and serves notice  
26 as set forth in Section 19003, then:

1           (a) All claims **against the trust** shall be filed in the manner  
2 and within the time provided in this part.

3           (b) A claim that is not filed as provided in this part is  
4 barred from collection from trust assets.

5           (c) The holder of a claim may not maintain an action on the  
6 claim against the trust unless the claim is first filed as provided  
7 in this part.

8           19005.       The trustee may at any time pay, reject, or contest  
9 any claim against the deceased settlor or settle any claim by  
10 compromise, arbitration, or otherwise. The trustee may also file  
11 a petition in the manner set forth in Chapter 2 (commencing with  
12 Section 19020) to settle any claim.

13           19006.   (a) If a trustee of a trust established by the  
14 deceased settlor files, publishes and serves notice as provided in  
15 Section 19003 the protection from creditors afforded that trustee  
16 and trust shall also be afforded to any other trusts established by  
17 the deceased settlor and the trustees and beneficiaries of those  
18 trusts.

19           (b) If the personal representative of the deceased settlor's  
20 estate has published notice under Section 8120 and given notice of  
21 **administration of the estate of the deceased settlor under**  
22 **Chapter 2 (commencing with Section 9050) of Part 4 of Division 7,**  
23 the protection from creditors afforded the personal representative  
24 of the deceased settlor's estate shall be afforded to the trustee  
25 and to the beneficiaries of the trust.

1 (c) In the event that, following the filing and publication  
2 of the notice set forth in Section 19003, there shall be commenced  
3 any proceeding under which a notice pursuant to Section 8120 is  
4 required to be **published**, then the trustee shall have a right of  
5 collection against that estate to recover the amount of any debts  
6 paid from trust assets that would otherwise have been satisfied  
7 (whether by law or by direction in the deceased settlor's will or  
8 trust) by the property subject to probate proceedings.

9 19007. Nothing in this part shall determine the liability  
10 of any trust established by the deceased settlor as against any  
11 other trust established by that settlor, except to the extent that  
12 the trustee of any such trust shall file, publish, and serve the  
13 notice specified in Section 19003 and thereafter seek a  
14 determination of relative liability pursuant to Chapter 2  
15 (commencing with Section 19020).

16 19008. If there is no proceeding to administer the estate of  
17 the deceased settlor, and if the trustee does not file a proposed  
18 notice to creditors pursuant to Section 19003 and does not publish  
19 notice to creditors pursuant to Chapter 3 of this part, then the  
20 liability of the trust to any creditor of the deceased settlor  
21 shall be as otherwise provided by law.

22 19009. Nothing in this part shall be construed to permit or  
23 require disclosure of the existence of the trust or the contents of  
24 any of its provisions to any creditor or beneficiary except as that  
25 creditor or beneficiary may otherwise be entitled thereto.

1           19010.       Nothing in this part imposes any duty on the trustee  
2 to initiate the notice proceeding set forth in Section 19003, and  
3 the trustee is not liable for failure to initiate such proceeding  
4 under this part.

5           19011.   (a) The Judicial Council may prescribe the form and  
6 content of the petition, notice, claim form, and allowance or  
7 rejection form to be used pursuant to this part. The allowance or  
8 rejection form may be part of the claim form.

9           (b) Any claim form adopted by the Judicial Council shall  
10 inform the claimant that the claim must be filed with the court and  
11 a copy mailed or delivered to the trustee. The claim form shall  
12 include a proof of mailing or delivery of a copy of the claim to  
13 the trustee, which may be completed by the claimant.

14          19012.   (a) This part applies to claims against any deceased  
15 settlor who dies on or after January 1, 1991.

16          (b) The applicable law in effect before January 1, 1991,  
17 continues to apply to claims against any deceased settlor who dies  
18 before January 1, 1991.

1                   CHAPTER 2. PETITION FOR APPROVAL AND  
2                   SETTLEMENT OF CLAIMS AGAINST DECEASED SETTLOR  
3

4           19020.     At any time after the filing and first publication  
5 of notice pursuant to Chapter 3 (commencing with Section 19040),  
6 and after expiration of the time to file claims provided therein,  
7 a trustee or beneficiary may petition the court under this chapter  
8 to approve either of the following:

9           (a) Allowance, compromise or settlement of any claims that  
10 have not been rejected by the trustee under the procedure provided  
11 in this part and for which trust property may be liable.

12           (b) An allocation of any amounts due by reason of an action  
13 described in subdivision (a) to two or more trusts which may be  
14 liable for such claims.

15           19021.     The petition shall be filed in that county as may be  
16 determined pursuant to Section 19003. In the event this action  
17 seeks approval of allocation to two or more trusts for which the  
18 notice proceeding in Section 19003 would prescribe superior courts  
19 for more than one county, the court located in the county so  
20 prescribed for the trustee initiating the proceeding under this  
21 chapter shall have jurisdiction.

22           19022. (a) A proceeding under this chapter is commenced by  
23 filing a verified petition stating facts showing that the petition  
24 is authorized under this chapter and the grounds of the petition.

25           (b) The petition shall set forth a description of the trust  
26 and the names of claimants with respect to which action is  
27 requested and a description of each claim, together with the

1 requested determination by the court with respect to the claims,  
2 provided, however, that this section does not require the filing of  
3 a copy of the trust or disclosure of the beneficial interests  
4 therein. That petition shall also set forth the beneficiaries of  
5 the trust, those claimants whose interest in the trust may be  
6 affected by the petition and the trustees of any other trust to  
7 which an allocation of liability may be approved by the court  
8 pursuant to the petition.

9 (c) The clerk shall set the matter for hearing.

10 19023. At least 30 days before the time set for the hearing  
11 on the petition, the petitioner shall cause notice of the time and  
12 place of the hearing and a copy of the petition to be served on  
13 each of the claimants whose interests in the estate may be affected  
14 by the petition in the manner provided in Chapter 4 (commencing  
15 with Section 413.10) of Title 5 of Part 2 of the Code of Civil  
16 Procedure.

17 19024. At least 30 days before the time set for the hearing  
18 on the petition, the petitioner shall cause notice of the time and  
19 place of hearing, together with a copy of the petition, to be  
20 mailed to any of the following persons who are not petitioners:

21 (a) All trustees of the trust and of any other trusts to  
22 which an allocation of liability may be approved by the court  
23 pursuant to the petition.

24 (b) All beneficiaries affected.

25 (c) The personal representative of the deceased settlor's  
26 estate, if any is known to the trustee.

1 (d) The Attorney General, if the petition relates to a  
2 charitable trust subject to the jurisdiction of the Attorney  
3 General, unless the Attorney General waives notice.

4 19025. (a) If any claimant, beneficiary, or trustee fails  
5 timely to file a written pleading upon notice, then the case is at  
6 issue, notwithstanding the failure; the case may proceed on the  
7 petition and written statements filed by the time of the hearing,  
8 and no further pleadings by other persons are necessary; such  
9 claimant, beneficiary, or trustee may not participate further in  
10 the proceeding for the determination requested, and such claimant,  
11 beneficiary, or trustee shall be bound by the decision in the  
12 proceeding.

13 (b) The court's order, when final, shall be conclusive as to  
14 the liability of the trust property with respect to the claims at  
15 issue in the petition. In the event of a subsequent administration  
16 of the estate of the deceased settlor, that order shall be binding  
17 on the personal representative of the estate of the deceased  
18 settlor as well as all claimants and beneficiaries who had notice  
19 of the petition.

20 19026. The court may dismiss a petition if it appears that  
21 the proceeding is not reasonably necessary for the protection of  
22 the interests of the trustee or any beneficiary of the trust.

23 19027. (a) The court in its discretion may make any orders  
24 and take any other action necessary or proper to dispose of the  
25 matters presented by the petition.

1 (b) If the court determines that the assets of the trust  
2 estate are insufficient to pay all debts, then the court shall  
3 order payment in the manner specified by Section 11420.

4 19028. An appeal may be taken from the grant or denial of  
5 any final order made under this chapter.

6 19029. The court may, on its own motion or on request of a  
7 trustee or other person interested in the trust, appoint a guardian  
8 ad litem in accordance with Section 17208.

9 19030. In a case involving a charitable trust subject to  
10 the jurisdiction of the Attorney General, the Attorney General may  
11 petition under this chapter.

1                   CHAPTER 3.   PUBLICATION OF NOTICE

2           19040.   (a)   Publication of notice pursuant to this section  
3 shall be for at least 15 days. Three publications in a newspaper  
4 published once a week or more often, with at least five days  
5 intervening between the first and last publication dates, not  
6 counting such publication dates, are sufficient. Notice shall be  
7 published in a newspaper of general circulation in the city in this  
8 state where the deceased settlor resided at the time of death, or  
9 if none, in the county in this state wherein trust property was  
10 located at the time of the deceased settlor's death, or if none, in  
11 the city in this state wherein the principal place of  
12 administration of the trust was located at the time of the deceased  
13 settlor's death. If there is no such newspaper published in the  
14 applicable city or county, notice shall be published in a newspaper  
15 of general circulation published in this state nearest to the  
16 applicable city or county seat, and which is circulated within the  
17 applicable city or county. If there is no such newspaper, notice  
18 shall be given in written or printed form, posted at three of the  
19 most public places within such community. For purposes of this  
20 section, "city" means a charter city as defined in Section 34101 of  
21 the Government Code or a general law city as defined in  
22 Section 34102 of the Government Code.

23           (b)   The caption of the notice, the deceased settlor's name,  
24 and the name of the trustee shall be in at least 8-point type, the  
25 text of the notice shall be in at least 7-point type, and the  
26 notice shall state substantially as follows:

1 NOTICE TO CREDITORS

2 OF \_\_\_\_\_

3 # \_\_\_\_\_

4 SUPERIOR COURT OF CALIFORNIA

5 COUNTY OF \_\_\_\_\_

6  
7  
8  
9  
10  
11 Notice is hereby given to the creditors and  
12 contingent creditors of the above-named  
13 decedent, that all persons having claims  
14 against the decedent are required to file them  
15 with the Superior Court, at \_\_\_\_\_  
16 \_\_\_\_\_, and mail a copy to \_\_\_\_\_  
17 \_\_\_\_\_, as trustee of the trust  
18 dated \_\_\_\_\_ wherein the decedent  
19 was the settlor, at \_\_\_\_\_  
20 \_\_\_\_\_, within the later of four months  
21 after \_\_\_\_\_ (the date of the  
22 first publication of notice to creditors) or,  
23 if notice is mailed or personally delivered to  
24 you, 30 days after the date this notice is  
25 mailed or personally delivered to you. A  
26 claim form may be obtained from the court  
27 clerk. For your protection, you are  
28 encouraged to file your claim by certified  
29 mail, with return receipt requested.  
30

31 \_\_\_\_\_  
32 (name of trustee or attorney)

33  
34 (c) An affidavit showing due publication of notice shall be  
35 filed with the clerk upon completion of the publication. The  
36 affidavit shall contain a copy of the notice, and state the date of  
37 its first publication.

38 19041. The Legislature finds and declares that to be most  
39 effective, notice to creditors should be published in compliance  
40 with the procedures specified in Section 19040. However, the  
41 Legislature recognizes the possibility that in unusual cases due to  
42 confusion over jurisdictional boundaries or oversights such notice

1 may inadvertently be published in a newspaper which does not meet  
2 these requirements. Therefore, to prevent a minor error in  
3 publication from invalidating what would otherwise be a proper  
4 proceeding, the Legislature further finds and declares that notice  
5 published in a good faith attempt to comply with Section 19040  
6 shall be sufficient to provide notice to creditors and establish  
7 jurisdiction if the court expressly finds that such notice was  
8 published in a newspaper of general circulation published within  
9 the county and widely circulated within a true cross section of the  
10 community in which the deceased settlor resided or wherein the  
11 principal place of administration of the trust was located or the  
12 property was located in substantial compliance with Section 19040.

1                   CHAPTER 4.   ACTUAL NOTICE TO CREDITORS

2           19050. (a) If the trustee has knowledge of a creditor of the  
3 deceased settlor, the trustee shall give notice to the creditor,  
4 unless notice is not required pursuant to Section 19054. The  
5 notice shall be given as provided in Section 1215. For the purpose  
6 of this subdivision, a trustee has knowledge of a creditor of the  
7 deceased settlor if the trustee is aware that the creditor has  
8 demanded payment from the deceased settlor or the trust estate.

9           (b) The giving of notice under this chapter is in addition to  
10 the publication of notice under Section 19040.

11          19051. (a) Except as provided in subdivision (b), the notice  
12 shall be given within four months after the first publication of  
13 notice under Section 19040.

14          (b) If the trustee first has knowledge of a creditor less  
15 than 30 days before expiration of the time provided in  
16 subdivision (a), the notice shall be given within 30 days after the  
17 trustee first has knowledge of the creditor.

1           19052.     The notice shall be in substantially the following  
2 form:

3                               NOTICE TO CREDITORS

4                               OF \_\_\_\_\_

5                               # \_\_\_\_\_

6                               SUPERIOR COURT OF CALIFORNIA

7                               COUNTY OF \_\_\_\_\_

8           Notice is hereby given to the creditors and  
9 contingent creditors of the above-named  
10 decedent, that all persons having claims  
11 against the decedent are required to file them  
12 with the Superior Court, at \_\_\_\_\_  
13 \_\_\_\_\_, and mail or deliver a  
14 copy to \_\_\_\_\_, as trustee  
15 of the trust dated \_\_\_\_\_ wherein  
16 the decedent was the settlor, at \_\_\_\_\_  
17 \_\_\_\_\_, within the later of  
18 four months after \_\_\_\_\_ (the  
19 date of the first publication of notice to  
20 creditors) or, if notice is mailed or  
21 personally delivered to you, 30 days after the  
22 date this notice is mailed or personally  
23 delivered to you. A claim form may be  
24 obtained from the court clerk. For your  
25 protection, you are encouraged to file your  
26 claim by certified mail, with return receipt  
27 requested.  
28

29 \_\_\_\_\_  
30 (Date of mailing  
31 this notice if  
32 applicable)

33 \_\_\_\_\_  
34 (name of trustee or attorney)

35           19053.     (a)   If the trustee believes that notice to a  
36 particular creditor is or may be required by this chapter and gives  
37 notice based on that belief, the trustee is not liable to any  
38 person for giving the notice, whether or not required by this  
39 chapter.  
40  
41  
42

1 (b) If the trustee fails to give notice required by this  
2 chapter, the trustee is not liable to any person for the failure,  
3 unless a creditor establishes all of the following:

4 (1) The failure was in bad faith.

5 (2) Neither the creditor nor the attorney representing the  
6 creditor in the matter had actual knowledge of the proceedings  
7 under Chapter 1 (commencing with Section 19000) sooner than one  
8 year after publication of notice to creditors under Section 19040,  
9 and payment would have been made on the creditor's claim if the  
10 claim had been properly filed.

11 (3) Within 16 months after the first publication of notice  
12 under Section 19040, the creditor did both of the following:

13 (A) Filed a petition requesting that the court in which the  
14 proceedings under Chapter 1 (commencing with Section 19000) were  
15 initiated make an order determining the liability of the trustee  
16 under this subdivision.

17 (B) At least 30 days before the hearing on the petition,  
18 caused notice of the hearing and a copy of the petition to be  
19 served on the trustee in the manner provided in Chapter 4  
20 (commencing with Section 413.10) of Title 5 of Part 2 of the Code  
21 of Civil Procedure.

22 (c) Nothing in this section affects the liability of the  
23 trust estate, if any, for the claim of a creditor, and the trustee  
24 is not liable to the extent it is paid out of the trust estate.

25 (d) Nothing in this chapter imposes a duty on the trustee to  
26 make a search for creditors of the deceased settlor.

1           19054.     Notwithstanding Section 19050, the trustee need not  
2 give notice to a creditor even though the trustee has knowledge of  
3 the creditor if either of the following conditions is satisfied:

4           (a)   The creditor has filed a claim as provided in this part.

5           (b)   The creditor has demanded payment and the trustee elects  
6 to treat the demand as a claim under Section 19153.



1 this part more than 15 days before expiration of the time provided  
2 in Section 19100, and the claimant's petition was filed within 30  
3 days after either the claimant or the claimant's attorney had  
4 actual knowledge of the proceeding whichever occurred first.

5 (2) Neither the claimant nor the attorney representing the  
6 claimant in the matter had knowledge of the existence of the claim  
7 more than 15 days before expiration of the time provided in  
8 Section 19100 and the claimant's petition was filed within 30 days  
9 after either the claimant or the claimant's attorney had knowledge  
10 of the existence of the claim whichever occurred first.

11 (b) The court shall not allow a claim to be filed under this  
12 section more than one year after the date of first publication of  
13 notice to creditors under Section 19040. Nothing in this paragraph  
14 authorizes allowance or approval of a claim barred by, or extends  
15 the time provided in, Section 353 of the Code of Civil Procedure.

16 (c) The court may condition the claim on terms that are just  
17 and equitable. The court may deny the claimant's petition if a  
18 payment to general creditors has been made and it appears the  
19 filing or establishment of the claim would cause or tend to cause  
20 unequal treatment among beneficiaries or creditors.

21 (d) Regardless of whether the claim is later established in  
22 whole or in part, property distributed under the terms of the trust  
23 subsequent to an order settling claims under Chapter 2 (commencing  
24 with Section 19020) and payments otherwise properly made before a  
25 claim is filed under this section are not subject to the claim and

1 the distributee is not liable on account of the prior distribution  
2 or payment except to the extent provided in Section 19401.

3 19104. (a) Subject to subdivision (b), if a claim is filed  
4 within the time provided in this chapter, the claimant may later  
5 amend or revise the claim. The amendment or revision shall be  
6 filed in the same manner as the claim.

7 (b) An amendment or revision may not be made to increase the  
8 amount of the claim after the time for filing a claim has expired.  
9 An amendment or revision to specify the amount of a claim that, at  
10 the time of filing, was not due, was contingent, or was not yet  
11 ascertainable, is not an increase in the amount of the claim within  
12 the meaning of this subdivision. An amendment or revision of a  
13 claim may not be made for any purpose after the earlier of the  
14 following times:

15 (1) The time the court makes an order approving settlement of  
16 the claim against the deceased settlor under Chapter 2 (commencing  
17 with Section 19020).

18 (2) One year after the date of first publication of notice to  
19 creditors under Section 19040. Nothing in this paragraph  
20 authorizes allowance or approval of a claim barred by, or extends  
21 the time provided in, Section 353 of the Code of Civil Procedure.



1 unless it is lost or destroyed, in which case the fact that it is  
2 lost or destroyed shall be stated in the claim.

3 (b) If the claim or a part of the claim is secured by a  
4 mortgage, deed of trust, or other lien that is recorded in the  
5 office of the recorder of the county in which the property subject  
6 to the lien is located, it is sufficient to describe the mortgage,  
7 deed of trust, or lien and the recording reference for the  
8 instrument that created the mortgage, deed of trust, or other lien.

9 19153. (a) Notwithstanding any other provision of this part,  
10 if a claimant makes a written demand for payment within the time  
11 specified in Section 19100, the trustee may waive formal defects  
12 and elect to treat the demand as a claim that is filed and  
13 established under this part by paying the amount demanded.

14 (b) Nothing in this section limits application of (1) the  
15 doctrines of waiver, estoppel, laches, or detrimental reliance or  
16 (2) any other equitable principle.

1                   CHAPTER 7. CLAIMS BY PUBLIC ENTITIES  
2

3           19200. (a) Except as provided in this chapter, a claim by a  
4 public entity shall be filed within the time otherwise provided in  
5 this part. A claim not so filed is barred, including any lien  
6 imposed for the claim.

7           (b) As used in this chapter, "public entity" has the meaning  
8 provided in Section 811.2 of the Government Code, and includes an  
9 officer authorized to act on behalf of the public entity.

10          19201. (a) Notwithstanding any other statute, if a claim of  
11 a public entity arises under a law, act, or code listed in  
12 subdivision (b):

13           (1) The public entity may provide a form to be used for the  
14 written notice or request to the public entity required by this  
15 chapter. Where appropriate, the form may require the decedent's  
16 social security number, if known.

17           (2) The claim is barred only after written notice or request  
18 to the public entity and expiration of the period provided in the  
19 applicable section. If no written notice or request is made, the  
20 claim is enforceable by the remedies, and is barred at the time,  
21 otherwise provided in the law, act, or code.

| 1  | (b) <u>Law, Act or Code</u>        | <u>Applicable Section</u>   |
|----|------------------------------------|-----------------------------|
| 2  |                                    |                             |
| 3  | Sales and Use Tax Law (commencing  | Section 6487.1 of the       |
| 4  | with Section 6001 of the Revenue   | Revenue and Taxation Code   |
| 5  | and Taxation Code)                 |                             |
| 6  |                                    |                             |
| 7  | Bradley-Burns Uniform Local Sale   | Section 6487.1 of the       |
| 8  | and Use Tax Law (commencing with   | Revenue and Taxation Code   |
| 9  | Section 7200 of the Revenue and    |                             |
| 10 | Taxation Code)                     |                             |
| 11 |                                    |                             |
| 12 | Transactions and Use Tax Law       | Section 6487.1 of the       |
| 13 | (commencing with Section 7251 of   | Revenue and Taxation Code   |
| 14 | the Revenue and Taxation Code)     |                             |
| 15 |                                    |                             |
| 16 | Motor Vehicle Fuel License Tax Law | Section 7675.1 of the       |
| 17 | (commencing with Section 7301 of   | Revenue and Taxation Code   |
| 18 | the Revenue and Taxation Code)     |                             |
| 19 |                                    |                             |
| 20 | Use Fuel License Tax Law           | Section 8782.1 of the       |
| 21 | (commencing with Section 8601      | Revenue and Taxation Code   |
| 22 | of the Revenue and Taxation Code)  |                             |
| 23 |                                    |                             |
| 24 | Personal Income Tax Law            | Section 19266 of the        |
| 25 | (commencing with Section 17001     | Revenue and Taxation Code   |
| 26 | of the Revenue and Taxation Code)  |                             |
| 27 |                                    |                             |
| 28 | Cigarette Tax Law (commencing      | Section 30207.1 of the      |
| 29 | with Section 30001 of the          | Revenue and Taxation Code   |
| 30 | Revenue and Taxation Code)         |                             |
| 31 |                                    |                             |
| 32 | Alcoholic Beverage Tax Law         | Section 32272.1 of the      |
| 33 | (commencing with Section 32001     | Revenue and Taxation Code   |
| 34 | of the Revenue and Taxation Code)  |                             |
| 35 |                                    |                             |
| 36 | Unemployment Insurance Code        | Section 1090 of the         |
| 37 |                                    | Unemployment Insurance      |
| 38 |                                    |                             |
| 39 | State Hospitals for the Mentally   | Section 7277.1 of the       |
| 40 | Disordered (commencing with        | Welfare and Institutions    |
| 41 | Section 7200 of the Welfare and    | Code                        |
| 42 | Institutions Code)                 |                             |
| 43 |                                    |                             |
| 44 | Medi-Cal Act (commencing with      | Section 9202 of the Section |
| 45 | 14000 of the Welfare               | Probate Code                |
| 46 | and Institutions Code)             |                             |
| 47 |                                    |                             |
| 48 | Waxman-Duffy Prepaid Health        | Section 9202 of the         |
| 49 | Plan Act (commencing with          | Probate Code                |
| 50 | Section 14200 of the Welfare       |                             |
| 51 | and Institutions Code)             |                             |

1           19202. (a) If the Trustee knows or has reason to believe  
2 that the deceased settlor received health care under the provisions  
3 of Chapter 7 (commencing with Section 14000) or Chapter 8  
4 (commencing with Section 14200) of Part 3 of Division 9 of the  
5 Welfare and Institutions Code, the trustee shall give the Director  
6 of Health Services notice of the deceased settlor's death in the  
7 manner provided in Section 215.

8           (b) The director has four months after notice is given in  
9 which to file a claim.

10          19203. If property in the trust is distributed before  
11 expiration of the time allowed a public entity to file a claim, the  
12 public entity has a claim against the distributees to the full  
13 extent of the public entity's claim or each distributee's share of  
14 the distributed property (as set forth in Section 19402), whichever  
15 is less. The public entity's claim against distributees includes  
16 interest at a rate equal to that earned in the Pooled Money  
17 Investment Account, Article 4.5 (commencing with Section 16480) of  
18 Chapter 3 of Part 2 of Division 4 of Title 2 of the Government  
19 Code, from the date of distribution or the date of filing the claim  
20 by the public entity, whichever is later, plus other accruing costs  
21 as in the case of enforcement of a money judgment.

22          19204. Nothing in this chapter shall be construed to affect  
23 the order of priority of debts provided for under other provisions  
24 of law.

25          19205. This chapter does not apply to liability for the  
26 restitution of amounts illegally acquired through the means of a

1 fraudulent, false, or incorrect representation, or a forged or  
2 unauthorized endorsement.

1                   **CHAPTER 8. ALLOWANCE AND REJECTION OF CLAIMS**

2  
3           19250. When a claim is filed, the trustee shall allow or  
4 reject the claim in whole or in part.

5           19251. (a) Any allowance or rejection shall be in writing.  
6 The trustee shall file the allowance or rejection with the court  
7 clerk and give notice to the claimant, together with a copy of the  
8 allowance or rejection, as provided in Section 1215.

9           (b) The allowance or rejection shall contain the following  
10 information:

11           (1) The name of the claimant.

12           (2) The date of the deceased settlor's death.

13           (3) The total amount of the claim.

14           (4) The amount allowed or rejected by the trustee.

15           (5) A statement that the claimant has 90 days from the time  
16 the notice of rejection is given, or 90 days after the claim  
17 becomes due, whichever is later, in which to bring an action on a  
18 claim rejected in whole or in part.

19           19252. The trustee shall have the power to pay any claim or  
20 portion thereof; any payment shall constitute allowance of the  
21 claim to the extent of the payment. The trustee shall have the  
22 power to compromise any claim or portion thereof. If the trustee  
23 or the attorney for the trustee is a claimant of the deceased  
24 settlor, the trustee shall have the same powers regarding  
25 allowance, rejection, payment or compromise set forth in this  
26 chapter.

1           19253. (a) A claim barred by the statute of limitations may  
2 not be allowed by the trustee.

3           (b) The filing of a claim tolls the statute of limitations  
4 otherwise applicable to the claim until the trustee gives notice of  
5 allowance or rejection.

6           (c) The allowance of a claim further tolls the statute of  
7 limitations as to the part of the claim allowed until the allowed  
8 portion of the claim is paid.

9           (d) Notwithstanding the statute of limitations otherwise  
10 applicable to a claim, if an action on a rejected claim is not  
11 commenced or if the matter is not referred to a referee or to  
12 arbitration within the time prescribed in Section 19255, it is  
13 forever barred.

14           19254. If within 30 days after a claim is filed the trustee  
15 has refused or neglected to act on the claim, the refusal or  
16 neglect may, at the option of the claimant, be deemed equivalent to  
17 the giving of a notice of rejection on the 30th day.

18           19255. (a) A rejected claim is barred as to the part  
19 rejected unless the claimant brings an action on the claim or the  
20 matter is referred to a referee or to arbitration within the  
21 following times, excluding any time during which there is a vacancy  
22 in the office of the trustee.

23           (1) If the claim is due at the time of giving the notice of  
24 rejection, 90 days after the notice is given.

25           (2) If the claim is not due at the time of giving the notice  
26 of rejection, 90 days after the claim becomes due.

1 (b) In addition to any other county in which an action on a  
2 rejected claim may be commenced, such an action may be commenced in  
3 the county wherein the principal place of administration of the  
4 trust is located.

5 (c) The claimant shall file a notice of the pendency of the  
6 action or the referral to a referee or to arbitration with the  
7 court clerk in the trust proceeding, together with proof of giving  
8 a copy of the notice to the trustee as provided in Section 1215.  
9 Personal service of a copy of the summons and complaint on the  
10 trustee is equivalent to the filing and giving of the notice.

11 (d) Any property distributed by the trustee under the terms  
12 of the trust after 120 days from the later of the time the notice  
13 of rejection is given or the claim is due and before the notice of  
14 pendency of action or referral or arbitration is filed and given is  
15 not subject to the claim. Neither the trustee nor the distributee  
16 is liable on account of such distribution.

17 (e) The prevailing party in the action shall be awarded court  
18 costs and, if the court determines that the prosecution or defense  
19 of the action against the prevailing party was unreasonable, the  
20 prevailing party shall be awarded reasonable litigation expenses,  
21 including attorney's fees. For the purpose of this paragraph, the  
22 prevailing party shall be the trustee if the creditor recovers an  
23 amount equal to or less than the amount of the claim allowed by the  
24 trustee, and shall be the creditor if the creditor recovers an  
25 amount greater than the amount of the claim allowed by the trustee.

1                   CHAPTER 9. CLAIMS ESTABLISHED BY JUDGMENT

2           19300. (a) Except as provided in Section 19303, after the  
3 death of the deceased settlor all money judgments against the  
4 deceased settlor on a claim against the deceased settlor are  
5 payable in the course of administration and are not enforceable  
6 against property in the trust estate of the deceased settlor under  
7 the Enforcement of Judgments Law.

8           (b) Subject to Section 19301, a judgment referred to in  
9 subdivision (a) shall be filed in the same manner as other claims.

10          19301. When a money judgment against a trustee in a  
11 representative capacity becomes final, it conclusively establishes  
12 the validity of the claim for the amount of the judgment. The  
13 judgment shall provide that it is payable out of property in the  
14 deceased settlor's trust estate in the course of administration.  
15 An abstract of the judgment shall be filed in the trust  
16 administration proceedings.

17          19302. (a) Notwithstanding the death of the deceased  
18 settlor, a judgment for possession of trust property or a judgment  
19 for sale of trust property may be enforced under the Enforcement of  
20 Judgments Law. Nothing in this subdivision authorizes enforcement  
21 under the Enforcement of Judgments Law against any property in the  
22 trust estate of the deceased settlor other than the property  
23 described in the judgment for possession or sale.

24          (b) After the death of the deceased settlor, a demand for  
25 money that is not satisfied from the trust property described in a  
26 judgment for sale of property shall be filed as a claim in the same

1 manner as other claims and is payable in the course of  
2 administration.

3 19303. If trust property of the deceased settlor is subject  
4 to an execution lien at the time of the deceased settlor's death,  
5 enforcement against the property may proceed under the Enforcement  
6 of Judgments Law to satisfy the judgment. The levying officer  
7 shall account to the trustee for any surplus. If the judgment is  
8 not satisfied, the balance of the judgment remaining unsatisfied is  
9 payable in the course of administration.

10 19304. (a) An attachment lien may be converted into a  
11 judgment lien on property in the trust estate subject to the  
12 attachment lien, with the same priority as the attachment lien, in  
13 either of the following cases:

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

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

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

22 (1) Serve an abstract of the judgment, and a notice that the  
23 attachment lien has become a judgment lien, on the trustee or other  
24 person holding property subject to the attachment lien.

25 (2) Record or file in any office where the writ of attachment  
26 and notice of attachment are recorded or filed an abstract of the

1 judgment and a notice that the attachment lien has become a  
2 judgment lien. If the attached property is real property, the  
3 plaintiff or the plaintiff's attorney may record the required  
4 abstract and notice with the same effect as if recorded by the  
5 levying officer.

6 (c) After the death of the deceased settlor, any members of  
7 the deceased settlor's family who were supported in whole or in  
8 part by the deceased settlor may claim an exemption provided in  
9 Section 487.020 of the Code of Civil Procedure for property levied  
10 on under the writ of attachment if the right to the exemption  
11 exists at the time the exemption is claimed. The trustee may claim  
12 the exemption on behalf of members of the deceased settlor's  
13 family. The claim of exemption may be made at any time before the  
14 time the abstract and notice are served, recorded, or filed under  
15 subdivision (b) with respect to the property claimed to be exempt.  
16 The claim of exemption shall be made in the same manner as an  
17 exemption is claimed under Section 462.100 of the Code of Civil  
18 Procedure.

1                   CHAPTER 10. ALLOCATION OF DEBTS BETWEEN  
2                   TRUST AND SURVIVING SPOUSE  
3  
4

5           19320.     If it appears that a debt of the deceased settlor  
6 has been paid or is payable in whole or in part by the surviving  
7 spouse, or that a debt of the surviving spouse has been paid or is  
8 payable in whole or in part from property in the deceased settlor's  
9 trust, then the trustee, the surviving spouse, the personal  
10 representative, if any, of a deceased settlor's probate estate, or  
11 a beneficiary may, petition for an order to allocate the debt.

12           19321.     A petition under Section 19320 shall include a  
13 statement of all of the following:

14           (a) All debts of the deceased settlor and surviving spouse  
15 known to the petitioner that are alleged to be subject to  
16 allocation and whether paid in whole or in part or unpaid.

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

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

20           19322.     If it appears from the petition under Section 19320  
21 that allocation would be affected by the value of the separate  
22 property of the surviving spouse and any community property and  
23 quasi-community property not administered in the trust, and if an  
24 inventory and appraisal of the property has not been provided by  
25 the surviving spouse, the court shall make an order to show cause  
26 why the information should not be provided.

27           19323.     (a) At least 30 days before the time set for the  
28 hearing on the petition, the petitioner shall cause notice of the

1 time and place of the hearing and a copy of the petition to be  
2 served on the surviving spouse in the manner provided in Chapter 4  
3 (commencing with Section 413.10) of Title 5 of Part 2 of the Code  
4 of Civil Procedure.

5 (b) At least 30 days before the time set for the hearing on  
6 the petition, the petitioner shall cause notice of the time and  
7 place of hearing, together with a copy of the petition, to be  
8 mailed to any of the following persons who are not petitioners:

9 (A) All trustees of the trust and of any trusts to which an  
10 allocation of liability may be approved by the court pursuant to  
11 the petition.

12 (B) All beneficiaries affected.

13 (C) The personal representative of the deceased settlor's  
14 estate, if any is known to the trustee.

15 (D) The Attorney General, if the petition relates to a  
16 charitable trust subject to the jurisdiction of the Attorney  
17 General, unless the Attorney General waives notice.

18 19324. (a) The trustee, the personal representative, if any,  
19 of a deceased settlor's probate estate, and the surviving spouse  
20 may provide for allocation of debts by agreement so long as the  
21 agreement substantially protects the rights of other interested  
22 persons. The trustee, the personal representative, or the spouse  
23 may request and obtain court approval of the allocation provided in  
24 the agreement.

25 (b) In the absence of an agreement, each debt of the deceased  
26 settlor shall be apportioned based on all of the property of the

1 spouses liable for the debt at the date of death that is not exempt  
2 from enforcement of a money judgment, in the proportion determined  
3 by the value of the property less any liens and encumbrances at the  
4 date of death, adjusted to take into account any right of  
5 reimbursement that would have been available if the property were  
6 applied to the debt at the date of death, and the debt shall be  
7 allocated accordingly.

8 19325. On making a determination as provided in this  
9 chapter, the court shall make an order that:

10 (a) Directs the trustee to make payment of the amounts  
11 allocated to the trust by payment to the surviving spouse or  
12 creditors.

13 (b) Directs the trustee to charge amounts allocated to the  
14 surviving spouse against any property or interests of the surviving  
15 spouse that are in the possession or control of the trustee. To  
16 the extent that property or interests of the surviving spouse in  
17 the possession or control of the trustee are insufficient to  
18 satisfy the allocation, the court order shall summarily direct the  
19 surviving spouse to pay the allocation to the trustee.

20 19326. Notwithstanding any other statute, funeral expenses  
21 and expenses of last illness, in the absence of specific provisions  
22 in a will or trust to the contrary, shall be charged against the  
23 deceased settlor's probate estate and thereafter against the  
24 deceased settlor's share of the trust and shall not be allocated to  
25 or charged against, the community share of the surviving spouse,  
26 whether or not the surviving spouse is financially able to pay the

1 expenses and whether or not the surviving spouse or any other  
2 person is also liable for the expenses.



1 CHAPTER 12

2 DISTRIBUTTEE LIABILITY

3 19400. Subject to the provisions of Section 353 of the Code  
4 of Civil Procedure, if there is no proceeding to administer the  
5 estate of the deceased settlor, and if the trustee does not file a  
6 proposed notice to creditors pursuant to Section 19003 and does not  
7 publish notice to creditors pursuant to Chapter 3 of this part,  
8 then a beneficiary of the trust to whom payment, delivery, or  
9 transfer of the deceased settlor's property is made pursuant to the  
10 terms of the trust is personally liable, to the extent provided in  
11 Section 19402, for the unsecured claims of the creditors of the  
12 deceased settlor's estate.

13 19401. Subject to Section 19402, if the trustee filed a  
14 proposed notice to creditors pursuant to Section 19003 and  
15 published notice to creditors pursuant to Section 19040, and if the  
16 identity of the creditor was known to, or reasonably ascertainable  
17 by, the trustee within four months of the first publication of  
18 notice pursuant to Section 19040, then a person to whom property is  
19 distributed is personally liable for the claim of the creditor,  
20 without a claim first having been filed, if all of the following  
21 conditions are satisfied:

22 (a) The claim of the creditor was not merely conjectural.

23 (b) Notice to the creditor was not given to the creditor  
24 under Chapter 4 (commencing with Section 19050) and neither the  
25 creditor nor the attorney representing the creditor in the matter  
26 had actual knowledge of the administration of the trust estate

1 sooner than one year after the date of first publication of notice  
2 pursuant to Section 19040.

3 (c) The statute of limitations applicable to the claim under  
4 Section 353 of the Code of Civil Procedure has not expired at the  
5 time of commencement of an action under this section.

6 19402. (a) In any action under this chapter, subject to the  
7 provisions of Section 353 of the Code of Civil Procedure, the  
8 distributee may assert any defenses, cross-complaints, or setoffs  
9 that would have been available to the deceased settlor if the  
10 deceased settlor had not died.

11 (b) Personal liability under this chapter is applicable only  
12 to the extent the claim of the creditor cannot be satisfied out of  
13 the trust estate of the deceased settlor and is limited to a pro  
14 rata portion of the claim of the creditor, based on the proportion  
15 that the value of the property distributed to the person out of the  
16 trust estate bears to the total value of all property distributed  
17 to all persons out of the trust estate. Personal liability under  
18 this chapter for all claims of all creditors shall not exceed the  
19 value of the property distributed to the person out of the trust  
20 estate. As used in this chapter, the value of the property is the  
21 fair market value of the property on the date of its distribution,  
22 less the amount of any liens and encumbrances on the property at  
23 that time.

24 19403. Nothing in this chapter affects the rights of a  
25 purchaser or encumbrancer of property in good faith and for value  
26 from a person who is personally liable under this section.