

Second Supplement to Memorandum 91-33

Subject: Study L-812 - Preliminary Distribution Without Court
Supervision Under Independent Administration of Estates
Act (Revised Staff Draft)

Attached to Memorandum 91-42 are the comments of Team 1 of the State Bar Probate Section, in which Team 1 suggests revisions to the draft of proposed Probate Code Section 10520 (Independent Administration of Estates Act) set out in Memorandum 91-33. Some of the revisions suggested by Team 1 are technical. The staff has revised proposed Section 10520 as set out below to incorporate most of these.

Two of the suggested revisions are substantive: (1) to determine value on the basis of the inventory and appraisal, and (2) to permit use of the distribution procedure in intestate estates. The first of these appears to present no problem, but the second may. The staff has included these substantive revisions in the revised draft of Section 10520 set out below, but the Commission should review the policy questions presented.

Determining Value on the Basis of the Inventory and Appraisal

If value of the property to be distributed is based on the inventory and appraisal, might this delay a distribution under this section? The Commission's *Recommendation Relating to Inventory and Appraisal (October 1987)* observed that, "Usually any delay caused is not due to the referee's appraisal but to time spent by the personal representative in preparing the inventory." On the other hand, proposed Section 10520 provides that the time for filing claims must have expired before making a distribution under the section. This is usually four months after letters are first issued. Prob. Code § 9100. This seems to be ample time for the personal representative to prepare the inventory. So the proposal of Team 1 to use the inventory and appraisal for valuation would not seem to delay a distribution under this section.

Application to Intestate Estates

Team 1 wants to expand proposed Section 10520 to apply to intestate estates. This appears to present no problem where there is only one intestate taker, such as a surviving spouse. But a surviving

spouse is likely to use the community property set-aside procedure under Section 13650, rather than the Independent Administration of Estates Act. Perhaps proposed Section 10520 would be used in an intestate estate where there is only one surviving child, and no other issue of the decedent. Does proposed Section 10520 present a problem if there are multiple intestate takers? In that case, each intestate taker would be entitled to a proportionate undivided interest in each item of tangible personal property. Is this something that intestate takers would resolve by agreement? Or should Section 10520 say that it applies in intestate estates only if there is not more than one intestate taker?

Revised Draft

If the substantive revisions are acceptable to the Commission, the draft of Section 10520 in the basic Memo should be revised as follows. This revised draft includes both the suggestions of Team 1 (Memo 91-42), and of the Executive Committee of the Probate Section of the Los Angeles County Bar (First Supplement to Memo 91-33).

Prob. Code § 10520 (added). Preliminary distribution of specified personal property

10520. (a) If the time for filing claims has expired and it appears that the distribution may be made without loss to creditors or injury to the estate or any interested person, the personal representative has the power to ~~do~~ make preliminary distributions of the following:

~~(a) To make preliminary distribution of income~~

(1) Income received during administration to the persons entitled under Chapter 8 (commencing with Section 12000) of Part 10.

~~(b) To make preliminary distribution of household~~

(2) Household furniture and furnishings, automobiles motor vehicles, clothing, jewelry, and other tangible articles of a personal nature to the devisees persons entitled to the property under the decedent's will or under the laws of intestate succession, not to exceed a an aggregate fair market value to all persons of fifty thousand dollars (\$50,000) ~~to all devisees in the aggregate~~ computed cumulatively through the date of distribution. Fair market value shall be determined on the basis of the inventory and appraisal.

~~(c) To make preliminary distribution of cash~~

(3) Cash to general pecuniary devisees entitled to it under the decedent's will or to the persons entitled to it under the laws of intestate succession, not to exceed ten thousand dollars (\$10,000) to any one devisee.

(b) A personal representative who makes distribution of a motor vehicle is not liable as owner of the motor vehicle for negligent operation by another person.

Comment. Section 10520 is new. The section permits the personal representative to take the specified action after giving notice of proposed action, but without court approval. Sections 10500, 10510. A person given notice of proposed action who fails to object waives the right to have the court later review the proposed action. Section 10590.

Section 10520 is permissive. See Section 10510. The personal representative may seek court approval if the personal representative so desires. Section 10500(b). If the personal representative seeks court approval of a preliminary distribution, the personal representative may proceed under Section 11623 which requires less notice than the general provision for a court-supervised distribution (Section 11601).

Subdivision (b) codifies the rule of *Fountain v. Bank of America*, 109 Cal. App. 2d 90, 95, 240 P.2d 414 (1952).

The staff recommends substituting this revised draft of Section 10520 for the section in the *Tentative Recommendation* attached to the basic memo, and distributing the revised TR for comment.

Respectfully submitted,

Robert J. Murphy III
Staff Counsel