Leg. Prog.

ns130
03/18/93

Memorandum 93-19

Subject: 1993 Legislative Program

Attached to this memorandum is a chart showing the status of the Commission's 1993 legislative program. The following matters are noteworthy.

AB 22055 (Assembly Judiciary): Quieting Title to Personal Property

Unexpected opposition has surfaced to this recommendation previously thought to be noncontroversial. The opposition must be removed if the recommendation is to remain in the Committee bill. This matter is discussed in Memorandum 93-26.

AB 2209 (Assembly Judiciary): Parent and Child Relationship for Intestate Succession

AB 2209 was supposed to have contained the Commission's parent/child inheritance recommendation. It would have been the basis of the Judiciary Committee miscellaneous noncontroversial probate bill. Instead, AB 2209 as introduced contains old Commission recommendations limiting inheritance by in-laws and by remote relatives. See Exhibit pp. 1-6. These recommendations have not previously been enacted due to opposition of the heir tracers. The parent/child intestate succession material should be amended into AB 2209 in due course.

Special Needs Trusts

An inconsistency in the special needs trust legislation enacted last session on Commission recommendation has been called to our attention. The legislation requires that notice be given to various state officers when a guardian or conservator petitions for a special needs trust. Prob. Code § 3602(f). But no notice is required when there is no guardian or conservator and a guardian ad litem petitions for a special needs trust. Prob. Code § 3611.

There is no apparent reason for this inconsistency, and the staff proposes to add the missing language to Section 3611:

Prob. Code § 3611 (amended). Order of court

SEC. _____. Section 3611 of the Probate Code is amended to read:

3611. In any case described in Section 3610, the court making the order or giving the judgment referred to in Section 3600 shall order any one or more of the following:

(a) That a guardian of the estate or conservator of the estate be appointed and that the remaining balance of the money and other property be paid or delivered to the person so appointed.

(b) That the remaining balance of any money paid or to be paid be deposited with the county treasurer, provided that (1) the county treasurer has been authorized by the county board of supervisors to handle the deposits, (2) the county treasurer shall receive and safely keep all money deposited with the county treasurer pursuant to this subdivision, shall pay the money out only upon the order of the court, and shall credit each estate with the interest earned by the funds deposited less the county treasurer's actual cost authorized to be recovered under Section 27013 of the Government Code, (3) the county treasurer and sureties on the official bond of the county treasurer are responsible for the safekeeping and payment of the money, (4) the county treasurer shall ensure that the money deposited is to earn interest or dividends, or both, at the highest rate which the county can reasonably obtain as a prudent investor, and (5) funds so deposited with the county treasurer shall only be invested or deposited in compliance with the provisions governing the investment or deposit of state funds set forth in Chapter 5 (commencing with Section 16640) of Part 2 of Division 4 of Title 2 of the Government Code, the investment or deposit of county funds set forth in Chapter 4 (commencing with Section 53600) of Part 1 of Division 2 of Title 5 of the Government Code, or as authorized under Chapter 6 (commencing with Section 2400) of Part 4 of this code; or in an insured account in a financial institution in this state, or in a single-premium deferred annuity, subject to withdrawal only upon the authorization of the court, and that the remaining balance of any other property delivered or to be delivered be held on such conditions as the court determines to be in the best interest of the minor or incompetent person.

(c) ~~That~~ If notice of the time and place of the hearing is mailed to the State Director of Health Services, the Director of Mental Health, and the Director of Developmental Services at the office of each director in Sacramento at least 15 days before the hearing, that the remaining balance of any money be paid to a special needs trust established under Section 3604 for the benefit of the minor or incompetent person.

(d) If the remaining balance of the money and other property to be paid or delivered does not exceed twenty thousand dollars ($20,000) in value, that all or any part of the money and other property be held on such other conditions as the court in its discretion determines to be in the best interest of the minor or incompetent person.

(e) If the remaining balance of the money and other property to be paid or delivered does not exceed five thousand dollars ($5,000) in value and is to be paid or delivered for the benefit of a minor, that all or any part of the money and the other property be paid or delivered to a parent of the minor, without bond, upon the terms and under the conditions specified in Article 1 (commencing with Section 3400) of Chapter 2.

(f) If the remaining balance of the money or other property to be paid or delivered is to be paid or delivered for the benefit of the minor, that all or any part of the money and other property be transferred to a custodian for the benefit of the minor under the California Uniform Transfers to Minors Act, Part 9 (commencing with Section 3900).

Comment. Subdivision (c) of Section 3611 is amended to require notice to the Director of Health Services, the Director of Mental Health, and the Director of Developmental Services before a hearing under that subdivision. This parallels the comparable requirement under Section 3602(f).

This could be added to the Judiciary Committee probate bill (AB 2209) or another probate bill.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

STATUS OF 1993 COMMISSION LEGISLATIVE PROGRAM
(as of March 17, 1993)

AB 209 (Horcher): Deposit of Estate Planning Documents
AB 1500 (Speier): Family Code Cleanup
AB 1704 (Horcher): Litigation Involving Decedents Cleanup
AB 2205 (Assembly Judiciary): Quieting Title to Personal Property
AB 2209 (Assembly Judiciary): Parent and Child Relationship for Intestate Succession
AB 2211 (Assembly Judiciary): Maintenance of Codes [includes 3 CLRC technical revisions]
SCR 4 (Senate Judiciary) Continuing Authority to Study Topics [includes 3 new topics]

BILL STATUS		AB 209	AB 1500	AB 1704	AB 2205	AB 2209	AB 2211				SCR 4
Introduced		Jan 25	Mar 4	Mar 4	Mar 5	Mar 5	Mar 5				Jan 7
Last Amended		Mar 16									
First House	Policy Committee	[Mar 24]									Feb 9
	Fiscal Committee			----	----	----	----				Mar 1
	Passed House										Mar 4
Second House	Policy Committee										
	Fiscal Committee			----	----	----	----				
	Passed House										
Concurrence											
Governor	Received										
	Approved										
Chaptered by Secretary of State	Date										
	Ch. #										

• Unless otherwise noted, all dates are in 1993. [ ]: scheduled ----: not applicable

ASSEMBLY BILL No. 2209

Introduced by Committee on Judiciary as presented by Assembly Member Weggeland on behalf of the committee (Archie-Hudson, Caldera, Collins, Connolly, Epple, Goldsmith, Horcher, Isenberg, Snyder, Speier, and Statham)

March 5, 1993

An act to amend Section 6402 of, and to repeal Section 6402.5 of, the Probate Code, relating to probate law.

LEGISLATIVE COUNSEL'S DIGEST

AB 2209, as introduced, Committee on Judiciary. Probate: intestate succession.

Existing law prescribes the heirs of a decedent to whom the estate of the decedent that was not effectively disposed of by will passes.

This bill would delete certain of these provisions relating to the part of an estate not passing to the surviving spouse, and would delete provisions relating to a decedent who had a predeceased spouse.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 SECTION 1. Section 6402 of the Probate Code is
2 amended to read:
3 6402. ~~Except as provided in Section 6402.5, the~~ *The*
4 part of the intestate estate not passing to the surviving
5 spouse under Section 6401, or the entire intestate estate
6 if there is no surviving spouse, passes as follows:
7 (a) To the issue of the decedent, the issue taking

equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take in the manner provided in Section 240.

(b) If there is no surviving issue, to the decedent's parent or parents equally.

(c) If there is no surviving issue or parent, to the issue of the parents or either of them, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take in the manner provided in Section 240.

~~(d) If there is no surviving issue, parent or issue of a parent, but the decedent is survived by one or more grandparents or issue of grandparents, to the grandparent or grandparents equally, or to the issue of such grandparents if there is no surviving grandparent, the issue taking equally if they are all of the same degree of kinship to the decedent, but if of unequal degree those of more remote degree take in the manner provided in Section 240.~~

~~(e) If there is no surviving issue, parent or issue of a parent, grandparent or issue of a grandparent, but the decedent is survived by the issue of a predeceased spouse, to such issue, the issue taking equally if they are all of the same degree of kinship to the predeceased spouse, but if of unequal degree those of more remote degree take in the manner provided in Section 240.~~

~~(f) If there is no surviving issue, parent or issue of a parent, grandparent or issue of a grandparent, or issue of a predeceased spouse, but the decedent is survived by next of kin, to the next of kin in equal degree, but where there are two or more collateral kindred in equal degree who claim through different ancestors, those who claim through the nearest ancestor are preferred to those claiming through an ancestor more remote.~~

~~(g) If there is no surviving next of kin of the decedent and no surviving issue of a predeceased spouse of the decedent, but the decedent is survived by the parents of a predeceased spouse or the issue of such parents, to the parent or parents equally, or to the issue of such parents if both are deceased, the issue taking equally if they are~~

~~all of the same degree of kinship to the predeceased spouse, but if of unequal degree those of more remote degree take in the manner provided in Section 240.~~

SEC. 2. Section 6402.5 of the Probate Code is repealed.

~~6402.5. (a) For purposes of distributing real property under this section if the decedent had a predeceased spouse who died not more than 15 years before the decedent and there is no surviving spouse or issue of the decedent, the portion of the decedent's estate attributable to the decedent's predeceased spouse passes as follows:~~

~~(1) If the decedent is survived by issue of the predeceased spouse, to the surviving issue of the predeceased spouse; if they are all of the same degree of kinship to the predeceased spouse they take equally, but if of unequal degree those of more remote degree take in the manner provided in Section 240.~~

~~(2) If there is no surviving issue of the predeceased spouse but the decedent is survived by a parent or parents of the predeceased spouse, to the predeceased spouse's surviving parent or parents equally.~~

~~(3) If there is no surviving issue or parent of the predeceased spouse but the decedent is survived by issue of a parent of the predeceased spouse, to the surviving issue of the parents of the predeceased spouse or either of them, the issue taking equally if they are all of the same degree of kinship to the predeceased spouse, but if of unequal degree those of more remote degree take in the manner provided in Section 240.~~

~~(4) If the decedent is not survived by issue, parent, or issue of a parent of the predeceased spouse, to the next of kin of the decedent in the manner provided in Section 6402.~~

~~(5) If the portion of the decedent's estate attributable to the decedent's predeceased spouse would otherwise escheat to the state because there is no kin of the decedent to take under Section 6402, the portion of the decedent's estate attributable to the predeceased spouse passes to the next of kin of the predeceased spouse who~~

~~shall take in the same manner as the next of kin of the decedent take under Section 6402.~~

~~(b) For purposes of distributing personal property under this section if the decedent had a predeceased spouse who died not more than five years before the decedent, and there is no surviving spouse or issue of the decedent, the portion of the decedent's estate attributable to the decedent's predeceased spouse passes as follows:~~

~~(1) If the decedent is survived by issue of the predeceased spouse, to the surviving issue of the predeceased spouse; if they are all of the same degree of kinship to the predeceased spouse they take equally, but if of unequal degree those of more remote degree take in the manner provided in Section 240.~~

~~(2) If there is no surviving issue of the predeceased spouse but the decedent is survived by a parent or parents of the predeceased spouse, to the predeceased spouse's surviving parent or parents equally.~~

~~(3) If there is no surviving issue or parent of the predeceased spouse but the decedent is survived by issue of a parent of the predeceased spouse, to the surviving issue of the parents of the predeceased spouse or either of them, the issue taking equally if they are all of the same degree of kinship to the predeceased spouse, but if of unequal degree those of more remote degree take in the manner provided in Section 240.~~

~~(4) If the decedent is not survived by issue, parent, or issue of a parent of the predeceased spouse, to the next of kin of the decedent in the manner provided in Section 6402.~~

~~(5) If the portion of the decedent's estate attributable to the decedent's predeceased spouse would otherwise escheat to the state because there is no kin of the decedent to take under Section 6402, the portion of the decedent's estate attributable to the predeceased spouse passes to the next of kin of the predeceased spouse who shall take in the same manner as the next of kin of the decedent take under Section 6402.~~

~~(c) For purposes of disposing of personal property~~

~~under subdivision (b), the claimant heir bears the burden of proof to show the exact personal property to be disposed of to the heir.~~

~~(d) For purposes of providing notice under any provision of this code with respect to an estate that may include personal property subject to distribution under subdivision (b), if the aggregate fair market value of tangible and intangible personal property with a written record of title or ownership in the estate is believed in good faith by the petitioning party to be less than ten thousand dollars ($10,000), the petitioning party need not give notice to the issue or next of kin of the predeceased spouse. If the personal property is subsequently determined to have an aggregate fair market value in excess of ten thousand dollars ($10,000), notice shall be given to the issue or next of kin of the predeceased spouse as provided by law.~~

~~(e) For the purposes of disposing of property pursuant to subdivision (b), "personal property" means that personal property in which there is a written record of title or ownership and the value of which in the aggregate is ten thousand dollars ($10,000) or more.~~

~~(f) For the purposes of this section, the "portion of the decedent's estate attributable to the decedent's predeceased spouse" means all of the following property in the decedent's estate:~~

~~(1) One/half of the community property in existence at the time of the death of the predeceased spouse.~~

~~(2) One/half of any community property, in existence at the time of death of the predeceased spouse, which was given to the decedent by the predeceased spouse by way of gift, descent, or devise.~~

~~(3) That portion of any community property in which the predeceased spouse had any incident of ownership and which vested in the decedent upon the death of the predeceased spouse by right of survivorship.~~

~~(4) Any separate property of the predeceased spouse which came to the decedent by gift, descent, or devise of the predeceased spouse or which vested in the decedent upon the death of the predeceased spouse by right of~~

~~survivorship.~~

~~(g) For the purposes of this section, quasi-community property shall be treated the same as community property.~~

~~(h) For the purposes of this section:~~

~~(1) Relatives of the predeceased spouse conceived before the decedent's death but born thereafter inherit as if they had been born in the lifetime of the decedent.~~

~~(2) A person who is related to the predeceased spouse through two lines of relationship is entitled to only a single share based on the relationship which would entitle the person to the larger share.~~

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