

## Memorandum 79-43

Subject: Study D-310 - Probate Homestead (Staff Draft of Tentative Recommendation)

In connection with its study of creditors' rights, the Commission has tentatively determined to repeal the declared homestead in reliance upon a claimed dwelling exemption. One aspect of the declared homestead is the survivorship rights it creates upon the death of a spouse. The Commission plans to replace the survivorship rights in the declared homestead completely with the probate homestead and to make the probate homestead a more satisfactory remedy.

In accordance with the Commission's directions, the staff has prepared the attached draft of a tentative recommendation to repeal the survivorship right in the declared homestead and improve the probate homestead. The draft is designed as a recommendation separate from the general creditors' rights study. If the Commission approves this draft, we will distribute it immediately for comment to the State Bar Probate Committee and the title insurance companies as well as to other interested persons and groups, with the view to introducing legislation at the 1980 session.

The draft makes the basic changes previously considered and approved by the Commission: The probate homestead would be only for a limited term in the discretion of the court and would not vest in fee in the surviving spouse and minor children; the homestead could be set apart out of personal property (such as a mobilehome) as well as real property; the homestead could be set apart out of separate property of the decedent, if that property is most suitable for use as a homestead, despite the existence of available community or tenancy-in-common property; the court would have continuing jurisdiction to modify or terminate the homestead upon a showing by an interested party of changed circumstances.

The major problem encountered by the staff in preparing the draft was dealing with rights of creditors, since the homestead would be no longer a fee but a term of years subject to modification. The resolution adopted by the staff was: (1) Creditors of the estate can reach the

remainder interest but not the homestead right, unless they are secured creditors in which case they can reach the homestead right as well. The court would have discretion to require payment of secured creditors out of estate funds if necessary to protect the homestead. (2) Creditors of the surviving spouse and minor children cannot reach the homestead estate at all.

One other problem that caused us some trouble was the situation where the surviving spouse wanted to move, or where the property was no longer appropriate for a homestead for other reasons, such as a change in the surrounding neighborhood. The draft in this situation permits sale of the homestead and investment of the proceeds in other homestead property, upon noticed motion and court order. This is not permitted where the homestead was selected out of the separate property of the decedent, however, in deference to the greater claim of heirs or devisees to the particular piece of property.

Respectfully submitted,

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## TENTATIVE RECOMMENDATION

relating to

## THE PROBATE HOMESTEAD\*

Introduction

One of the major policies of the homestead laws, in addition to exempting the family home from the claims of creditors<sup>1</sup> and protecting the spouses from disposition or encumbrance of the family home without their consent,<sup>2</sup> is to assure that there will be a home after the death of one spouse for the surviving members of the family.<sup>3</sup> This policy operates to (a) limit the power of a deceased spouse to devise the family home and (b) protect the home from creditors for the benefit of the surviving members of a decedent's family.<sup>4</sup>

The California statutes contain two major sets of provisions to protect the family home after the death of a spouse: the survivorship right in the declared homestead and the probate homestead. The two sets of provisions exhibit significant differences and are outlined briefly below.

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\* This tentative recommendation is made as one facet of the Commission's study of creditors' remedies and related matters, authorized by 1974 Cal. Stats., Res. ch. 45.

1. See, e.g., Civil Code § 1240 ("The homestead is exempt from execution or forced sale.").
2. See, e.g., Civil Code § 1242 ("The homestead of a married person cannot be conveyed or encumbered unless the instrument by which it is conveyed or encumbered is executed and acknowledged by both husband and wife.").
3. See, e.g., Taylor v. Madigan, 53 Cal. App.3d 943, 968, 126 Cal. Rptr. 376, \_\_\_ (1975) ("The objective of the probate homestead statutes is protection of the family, as a social unit in the home, against demands of creditors and heirs, against the family's own improvidence.").
4. See Bayse, A Comparative Study of the Homestead Law and Probate Code Sections 640 to 646, 1 Cal. L. Revision Comm'n Reports 41 (1955).

If married persons have declared a homestead on property pursuant to Sections 1237 through 1304 of the Civil Code, upon the death of a spouse the survivor is entitled to have the homestead set apart unless it has been declared unilaterally by the survivor upon the separate property of the decedent.<sup>5</sup> The basic incidents of the survivorship right in the declared homestead are that title to the property vests in the surviving spouse and the homestead enjoys an exemption up to statutory limits from the claims of creditors.<sup>6</sup>

If no homestead has been declared or if it has been declared unilaterally by the survivor upon the separate property of the decedent, upon the death of a spouse the probate court must set apart property as a probate homestead for the use of the surviving spouse and minor children.<sup>7</sup> Title to the property may or may not vest in the survivors and may vest in different proportions depending upon the character of the property selected as a homestead and the status of the survivors; the homestead enjoys protection from the claims of creditors.<sup>8</sup>

This recommendation first analyzes the major differences between the survivorship right in the declared homestead and the probate homestead. The recommendation concludes that there is no justification for two separate bodies of law and proposes repeal of the survivorship right in the declared homestead. The recommendation then proposes a series of reforms and improvements in the probate homestead.

#### Comparison of Declared and Probate Homesteads

There are a number of basic differences between the survivorship right in the declared homestead and the probate homestead,<sup>9</sup> with the

5. Civil Code § 1265; Prob. Code § 660.
6. For a more detailed analysis of the operation of the survivorship right in the declared homestead, see, e.g., 7 B. Witkin, Summary of California Law Wills and Probate § 513 (8th ed. 1974).
7. Prob. Code § 661.
8. For a more detailed analysis of the operation of the probate homestead, see, e.g., 7 B. Witkin, Summary of California Law Wills and Probate § 514 (8th ed. 1974).
9. The commentators have catalogued the numerous differences. See, e.g., Bayse, A Comparative Study of the Homestead Law and Probate Code Sections 640 to 646, 1 Cal. L. Revision Comm'n Reports 41, 45-46 (1955); Comment, The Probate Homestead in California, 53 Calif. L. Rev. 655, 677-79 (1965); Adams, Homestead Legislation in California, 9 Pac. L.J. 723, 751 (1978).

result that the rights created by them are considerably different.<sup>10</sup>

The major differences involve the choice of property available for the homestead, the value of the property, the treatment of liens and encumbrances on the property, and the title to the property.

Choice of property. There is no choice available to the court in setting apart property by reason of a survivorship right in a declared homestead. Only the property upon which the homestead has been declared may be set apart.<sup>11</sup> The survivors may not waive the survivorship right and take a probate homestead instead.<sup>12</sup>

In contrast, the court has wide discretion in selecting appropriate property as a probate homestead.<sup>13</sup> Any property in the decedent's estate is available; the court is not limited to the property on which the spouses resided at the time of the decedent's death.<sup>14</sup>

Value of property. One major limitation on the survivorship right in the declared homestead is the value of the property that may be set apart. Section 664 of the Probate Code limits the value of the property to the amount of the homestead exemption in effect at the date of death of the decedent. If the value of the property exceeds the applicable homestead exemption, an inheritance tax referee must ascertain whether the premises can be divided without material injury. If so, the referee must determine the portion of the premises, including the dwelling house, equal in value to the amount of the exemption, which is then set apart to the surviving spouse.<sup>15</sup> If not, the court makes an order for sale of the property and the portion of the net proceeds equal to the applicable homestead exemption is set aside to the survivor and continues to retain exempt status.<sup>16</sup>

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10. Taylor v. Madigan, 53 Cal. App.3d 943, 968, 126 Cal. Rptr. 376, \_\_\_\_ (1975).

11. Prob. Code § 660.

12. Wayne, Exempt and Homestead Property, in 1 California Decedent Estate Administration § 12.51 (Cal. Cont. Ed. Bar 1971).

13. See, e.g., Estate of Nelson, 224 Cal. App.2d 138, 36 Cal. Rptr. 352 (1964).

14. See, e.g., Estate of Hennigsen, 199 Cal. 103, 247 P. 1082 (1926).

15. Prob. Code § 664.

16. Prob. Code § 665; Estate of Durham, 108 Cal. App.2d 148, 238 P. 1057 (1951).

There is no value limitation on property set apart as a probate homestead. Property valued in excess of the applicable homestead exemption may be set apart.<sup>17</sup>

Liens and encumbrances. The order setting apart a homestead does not impair or destroy liens and encumbrances on the property, which remains subject thereto.<sup>18</sup> Probate Code Section 735 provides for payment of claims secured by liens and encumbrances on homestead property from the funds of the estate if the funds are sufficient to pay all claims against the estate. Otherwise, the claims secured by liens and encumbrances are paid proportionately with other allowed claims; any deficiency continues to encumber the property.

Probate Code Section 735 applies to the survivorship right in the declared homestead but not to the probate homestead.<sup>19</sup> The result is that ordinarily liens and encumbrances on a declared homestead are exonerated from the funds of the estate, while a probate homestead passes to the surviving spouse and minor children subject to existing liens and encumbrances.<sup>20</sup>

Vesting of title. The right of survivorship in the declared homestead vests title generally in the surviving spouse alone. This is the case if the homestead was declared on community or quasi-community property or the separate property of the decedent in which the decedent joined; if the homestead was declared on the separate property of the decedent without the decedent's consent, title vests in the decedent's heirs or devisees, subject to the authority of the court to set a probate homestead apart for the surviving family for a limited time.<sup>21</sup>

Selection of a probate homestead vests title generally in the surviving spouse and minor children. If selected out of community or quasi-community property or property held in common by the decedent and

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17. See, e.g., Estate of Levy, 141 Cal. 646, 75 P. 301 (1904).

18. See, e.g., Estate of McCauley, 50 Cal. 544 (1875).

19. See, e.g., Estate of Huelman, 127 Cal. 275, 59 P. 776 (1899).

20. Adams, Homestead Legislation in California, 9 Pac. L.J. 723, 751 (1978).

21. Civil Code § 1265; Prob. Code § 663.

survivors, title vests one-half in the surviving spouse and one-half in the minor children equally; if there is no surviving spouse, title vests in the minor children equally, and if there are no children, title vests in the surviving spouse.<sup>22</sup> If the homestead is selected out of the separate property of the decedent, it may be set apart for the survivors only for a limited period and then vests in the heirs or devisees.<sup>23</sup>

#### Repeal of Declared Homestead

The basic policy of the homestead laws to protect the family home for the survivors after the decedent's death is implemented in different ways by the survivorship right in the declared homestead and the probate homestead. The protection afforded the surviving family varies with the type of homestead, without apparent reason for the variation. Commentators who have reviewed this situation have been able to discern no justification for the disparity in treatment and have urged that the law be changed so that the disposition of the family home on the death of its owner is handled in the same manner regardless of the type of homestead applicable.<sup>24</sup>

A comparison of the survivorship right in the declared homestead with the probate homestead reveals that the probate homestead affords generally greater protection to the survivors.<sup>25</sup> The flexibility of the court in selecting any property appropriate for the homestead, the absence of any value limitation on the homestead, and the vesting of

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22. Prob. Code § 667.

23. Prob. Code § 661.

24. See, e.g., Adams, Homestead Legislation in California, 9 Pac. L.J. 723, 751 (1978); Comment, The Probate Homestead in California, 53 Calif. L. Rev. 665, 677 (1965) ("Most of the differences which exist between the probate homestead and the marital homestead which has devolved on the surviving spouse have no rational basis. [Footnote.] Since the two forms of homestead protection serve the same purpose--to provide a secure home for the surviving family of a decedent--and involve the same classes of interested parties, a uniform system of homestead legislation is desirable."). See also Recommendation Relating to Summary Distribution of Small Estates Under Probate Code Sections 640 to 646, 1 Cal. L. Revision Comm'n Reports 50, 52 (1955).

25. *Taylor v. Madigan*, 53 Cal. App.3d 943, 968, 126 Cal. Rptr. 376, \_\_\_\_ (1975).

title in minor children as well as in the surviving spouse make the probate homestead more advantageous from the viewpoint of the survivors. One aspect of the declared homestead that favors the survivors is the provision for exoneration of liens, although this provision is out of step with today's economy and opposed to the modern trend which disfavors exoneration.<sup>26</sup>

The probate homestead was designed by the Legislature expressly for the purpose of preserving the family home for the surviving members of the decedent's family.<sup>27</sup> It is probable that probate homesteads are set apart far more frequently than survivorship rights in declared homesteads.

By way of contrast, the fundamental purpose of the declared homestead is to provide an exemption for the family home from claims of creditors; the survivorship function is merely incidental.<sup>28</sup> It is likely that persons who declare homesteads do so primarily for the purpose of protection against creditors; the survivorship consequences of the homestead declaration may be subsidiary or unintended. Where survivorship consequences are in fact knowingly intended by the homestead declarant, they can be achieved much more simply, directly, and effectively by appropriate inter vivos instrument or by will.

For these reasons, the Law Revision Commission recommends that the survivorship right in the declared homestead be repealed. The surviving family of any decedent should be eligible for a probate homestead regardless of the existence of a declared homestead. This recommendation would not disturb existing survivorship rights set apart out of declared homesteads, but would restrict any future survivors' protections to probate homesteads.

While the probate homestead is superior to the declared homestead as a survivors' protection device, it is not perfect. The Commission also recommends a number of improvements in the probate homestead.

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26. Adams, Homestead Legislation in California, 9 Pac. L.J. 723, 752 (1978).

27. See, e.g., Estate of Claussenius, 96 Cal. App.2d 600, 612, 216 P.2d 485, 494 (1950); Taylor v. Madigan, 53 Cal. App.3d 943, 968, 126 Cal. Rptr. 376 (1975).

28. Adams, Homestead Legislation in California, 9 Pac. L.J. 723, 751 (1978).



## Reform of Probate Homestead

Choice of property. Probate Code Section 661 permits the court to select the probate homestead out of community property or quasi-community property or out of real property owned in common by the decedent and the persons entitled to have the homestead set apart. If there is no such property, the court may select the homestead out of the separate property of the decedent.

The cases have held that, notwithstanding Section 661, the court may select the homestead out of the separate property of the decedent if the separate property is most suitable for use as a homestead, even though there may be other residential property in the estate.<sup>29</sup> This rule is sound; the probate homestead should be selected out of the most appropriate available property, regardless of its character. As between separate property and other forms of property, the other property should be preferred for the probate homestead. The statute should make clear the preference and should also codify the rule that separate property is eligible for selection as the homestead if it is most suitable.

The limitation of the probate homestead to real property is unduly restrictive. Many families reside in personal property such as mobile-homes and water vessels. The general exemption laws have recognized that a mobilehome or water vessel may serve as a dwelling and have provided exemptions from claims of creditors.<sup>30</sup> Personal property should likewise be eligible for selection as a probate homestead.

Vesting of title. If the probate homestead is selected out of community, quasi-community, or tenancy-in-common property, fee simple absolute title vests in the surviving spouse and minor children.<sup>31</sup> If the homestead is selected out of the separate property of the decedent, the court may set the homestead apart only for a limited time for the survivors, not to exceed the lifetime of the surviving spouse and the

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29. See, e.g., Estate of Raymond, 137 Cal. App.2d 134, 289 P.2d 890 (1955).

30. Code Civ. Proc. § 690.3.

31. Prob. Code § 667.

minority of minor children;<sup>32</sup> ultimately, the property goes to the decedent's heirs or devisees.<sup>33</sup>

Vesting of title in the surviving spouse and minor children creates a number of problems. As a general rule, the probate homestead operates to frustrate the estate plan of the decedent. The occasion for a probate homestead does not arise where the property passes by intestate succession to the survivors or where the decedent wills his or her interest in the property to the survivors. The homestead comes into play primarily where the decedent makes a testamentary disposition otherwise.

A common provision in a will is a trust for the lifetime of the surviving spouse with remainder to other beneficiaries, perhaps children of a previous marriage of the decedent. The probate homestead can effectively destroy this estate plan by giving the surviving spouse a fee interest and leaving the other beneficiaries nothing.

The title-vesting attribute of the probate homestead in effect substitutes the surviving spouse's ultimate disposition of the property for the decedent's. Besides abridging the decedent's right of testamentary disposition, this has a number of economic disadvantages for all persons concerned. The property may have to pass through probate twice--once through the decedent's estate and again through the surviving spouse's estate. There are also adverse tax consequences. A probate homestead that vests in fee will inevitably consume some or all of the marital deduction.<sup>34</sup> A probate homestead that vests in fee is also subject to full death taxes twice.<sup>35</sup>

The vesting characteristics of the probate homestead are also awkward in their treatment of surviving children. A probate homestead

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32. Prob. Code § 661.

33. See discussion in Comment, The Probate Homestead in California, 53 Calif. L. Rev. 655, 668-70 (1965).

34. See discussion in Wayne, Exempt and Homestead Property, in 1 California Decedent Estate Administration § 12.73 (Cal. Cont. Ed. Bar 1971).

35. See Rev. & Tax. Code § 13622 (probate homestead a transfer subject to inheritance tax).

vests in the surviving minor children, but not in surviving adult children. Where the decedent leaves both minor and adult children, the probate homestead may not only treat the children inequitably by vesting property in the minors but not in the adults, but may also frustrate the decedent's efforts to treat them equitably.

These problems are not present where the probate homestead is set apart out of the decedent's separate property. By statute, the homestead may be set apart only for a limited term, in the discretion of the court. This statutory treatment is more sensible than vesting title in fee. A term of years for the survivors satisfies the basic policy of providing a secure dwelling for the survivors during their time of need. It also effectuates to the greatest extent practical the basic policy of the state probate laws to permit a decedent full testamentary powers over the decedent's property.<sup>36</sup> It does not have the adverse probate and tax features of a homestead set apart in fee.

The Law Revision Commission recommends that the title vesting attributes of the probate homestead be repealed. The decision whether to set apart a homestead at all should be in the discretion of the court, dependent upon need.<sup>37</sup> The homestead should be set apart for the surviving spouse and and minor children only for a limited term, to be determined by the court, regardless of the character of the property from which the homestead is selected. The court should retain jurisdiction to modify the term of the homestead to accommodate changes in circumstances. The court's authority to modify the homestead should include authority to order sale and investment of the proceeds in new homestead property, where appropriate.<sup>38</sup> Ultimately, title should vest

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36. Cf. Estate of Walkerly, 108 Cal. 627, 653, 41 P. 772, 778 (1895).

37. Probate Code Section 661 provides that the homestead "must" be set apart by the court. Since under the recommended scheme title will not pass, setting apart the homestead should not be mandatory.

38. The authority of the court to order sale of the homestead and investment in a new homestead should extend only to homesteads selected out of community or quasi-community property or property owned in common by the decedent and homestead recipients. This is comparable to Probate Code Section 667, which vests such property in fee, thereby enabling the survivors to sell and move. The survivors are part owners of the homestead property in this situation and sale and reinvestment in case of changed circumstances is appropriate. This is not the case for separate property, which may have been specifically devised to another person, subject to the homestead right.

in accordance with the rules of testate and intestate succession. This will make the probate homestead responsive to the basic needs it is intended to serve.

Creditors' rights. The basis of existing problems concerning creditors' rights in the probate homestead is a lack of statutory definition of these rights; creditors must look to case law to determine their rights.<sup>39</sup> The statute should clarify and codify the rights of creditors. The rights of creditors may be viewed from three aspects: creditors of the decedent, creditors of the homestead recipient, and creditors of the heirs or devisees who take the property subject to the probate homestead.

Under existing law, the extent to which creditors of the decedent may satisfy their claims out of property set apart as a probate homestead depends upon the nature of the claim and the character of the homestead. A homestead set apart in fee for the surviving spouse and minor children is removed from estate administration and is not liable for claims of unsecured creditors of the decedent.<sup>40</sup> A homestead set apart for a limited term for the surviving spouse and minor children remains subject to administration,<sup>41</sup> and claims of unsecured creditors of the decedent may be enforced against the property, subject to the homestead right, notwithstanding the interest of the heirs or devisees.<sup>42</sup> Setting apart a probate homestead, regardless of its character, does not affect rights of secured creditors; liens and encumbrances continue to burden the homestead property and are enforceable against the property.<sup>43</sup>

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39. Comment, The Probate Homestead in California, 53 Calif. L. Rev. 655, 670 (1965).

40. See, e.g., Estate of Tompkins, 12 Cal. 114 (1859).

41. Prob. Code § 661.

42. See, e.g., Estate of Tittel, 139 Cal. 149, 72 P. 909 (1903).

43. See, e.g., Estate of McCauley, 50 Cal. 544 (1875); Estate of Huelsman, 127 Cal. 275, 59 P. 776 (1899).

The rules as to the liability of the probate homestead for claims against the decedent should be codified. Since the probate homestead will be set apart for the survivors only for a limited period in every case, the property will be subject to administration and to the claims of unsecured creditors in every case, subject to the homestead right. Where appropriate, the court should be authorized to order payment of liens and encumbrances on the homestead property out of general estate funds.<sup>44</sup>

Once the probate homestead has been set apart to the surviving spouse and minor children, the homestead right is subject to the claims of their creditors to the same extent a nonprobate homestead would be subject to claims of creditors.<sup>45</sup> This rule should be reversed. Under the Commission's proposals, the homestead will be set apart only for a limited period and only dependent upon need of the survivors. The homestead will be subject to modification and termination upon changed circumstances. The homestead right should be exempt absolutely during the survivors' time of need; a right of occupancy that may be terminated at any time should not be subject to enforcement processes.

The rights of creditors of the ultimate heirs or devisees who will receive the property after termination of the probate homestead is not clear. The law should make it clear that creditors of the ultimate recipients of the homestead property are permitted to satisfy their claims out of the property to the same extent as out of any other property, subject to the homestead right.

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44. The court should have discretion to select the most appropriate property as the homestead, taking into account, among other factors, liens and encumbrances burdening the property. Cf. Estate of Shively, 145 Cal. 400, 78 P. 869 (1904); Estate of Nelson, 224 Cal. App.2d 138, 145, 36 Cal. Rptr. 352, 356 (1964). Where it is necessary to protect the probate homestead by payment of secured claims against the property out of estate funds, the court should have authority to order this. Cf. Prob. Code § 735 (exoneration of liens and encumbrances on survivorship right in declared homestead).

45. See, e.g., Keyes v. Cyrus, 100 Cal. 322, 34 P. 722 (1893); MacQuiddy v. Rice, 47 Cal. App.2d 755, 118 P.2d 853 (1941).

Proposed Legislation

The Commission's recommendations would be effectuated by enactment of the following measure:

An act to amend Section 1265 of the Civil Code, to amend Sections 228, 229, 600, 660, 661, 662, 1200, 1202, and 1240 of, to repeal and add Sections 663, 664, 665, and 666 to, and to repeal Sections 667, 668, and 735 of, the Probate Code, and to repeal Section 13621 of the Revenue and Taxation Code, relating to the probate homestead.

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

12347

DECLARED HOMESTEAD

Civil Code § 1265 (amended)

SECTION 1. Section 1265 of the Civil Code is amended to read:

1265. From and after the time the declaration is filed for record, the premises therein described constitute a homestead. ~~If the selection was made by a married person from the community property, or from the quasi/community property, or from the separate property of the spouse making the selection or joining therein, and if the surviving spouse has not conveyed the homestead to the other spouse by a recorded conveyance which failed to expressly reserve his homestead rights as provided by Section 1242 of the Civil Code, the land so selected, on the death of either of the spouses, vests in the survivor, except in the case of a married person's separate homestead, subject to no other liability than such as exists or has been created under the provisions of this title; in other cases, upon the death of the person whose property was selected as a homestead, it shall go to the heirs or devisees, subject to the power of the superior court to assign the same for a limited period to the family of the decedent; but~~ In no case shall ~~it~~, the homestead or the products, rents, issues or profits thereof be held liable for the debts of the owner, except as provided in this title; and should the homestead be sold by the owner, the proceeds arising from such sale to the extent of the value allowed for a homestead exemption as provided in this title shall be exempt to

the owner of the homestead for a period of six months next following such sale.

Comment. The survivorship right in the declared homestead formerly provided by Section 1265 is not continued. A probate homestead may be set apart for the surviving spouse and minor children pursuant to Probate Code Sections 660-666.

18/321

#### SUCCESSION

##### Probate Code § 228 (amended)

SEC. 2. Section 228 of the Probate Code is amended to read:

228. If the decedent leaves neither spouse nor issue, and the estate or any portion thereof was community property of the decedent and a previously deceased spouse, and belonged or went to the decedent by virtue of its community character on the death of such spouse, or came to the decedent from said spouse by gift, descent, devise or bequest, or became vested in the decedent on the death of such spouse by right of survivorship in a homestead prior to January 1, 1981, or in a joint tenancy between such spouse and the decedent or was set aside as a probate homestead prior to January 1, 1981, such property goes in equal shares to the children of the deceased spouse and their descendants by right of representation, and if none, then one-half of such community property goes to the parents of the decedent in equal shares, or if either is dead to the survivor, or if both are dead in equal shares to the brothers and sisters of the decedent and their descendants by right of representation, and the other half goes to the parents of the deceased spouse in equal shares, or if either is dead to the survivor, or if both are dead, in equal shares to the brothers and sisters of said deceased spouse and to their descendants by right of representation.

If any of the property subject to the provisions of this section would otherwise escheat to this state because there is no relative, including next of kin, of one of the spouses to succeed to such portion of the estate, such property shall be distributed in accordance with the provisions of Section 196.4 of this code.

Comment. Section 228 is amended to reflect the elimination of the survivorship right in the declared homestead and the fact that the probate homestead no longer vests title in the person for whom it is set apart. See Section 661(c) and Comment thereto and Comment to Civil Code Section 1265.

10/920

Probate Code § 229 (amended)

SEC. 3. Section 229 of the Probate Code is amended to read:

229. (a) If the decedent leaves neither spouse nor issue, and the estate or any portion thereof was separate property of a previously deceased spouse, and came to the decedent from such spouse by gift, descent, devise or bequest, or became vested in the decedent on the death of such spouse by right of survivorship in a homestead prior to January 1, 1981 or in a joint tenancy between such spouse and the decedent, such property goes in equal shares to the children of the deceased spouse and to their descendants by right of representation, and if none, then to the parents of the deceased spouse, in equal shares, or if either is dead to the survivor, or if both are dead, in equal shares to the brothers and sisters of the deceased spouse and to their descendants by right of representation.

(b) If the decedent leaves neither issue nor spouse, that portion of the estate created by gift, descent, devise, or bequest from the separate property of a parent or grandparent shall go to the parent or grandparent who made such gift, devise, or bequest or from whom the property descended, or if such parent or grandparent is dead, such property shall go in equal shares to the heirs of such deceased parent or grandparent.

(c) If any of the property subject to the provisions of this section would otherwise escheat to this state because there is no relative, including next of kin, of one of the spouses to succeed to such portion of the estate, such property shall be distributed in accordance with the provisions of Section 296.4.

Comment. Section 229 is amended to reflect the elimination of the survivorship right in the declared homestead. See Comment to Civil Code § 1265.



INVENTORY AND APPRAISEMENT

Probate Code § 600 (amended)

SEC. 4. Section 600 of the Probate Code is amended to read:

600. Within three months after ~~his~~ appointment, or within such further time as the court or judge for reasonable cause may allow, the executor or administrator ~~must~~ shall file with the clerk of the court an inventory and appraisement of the estate of the decedent which has come to ~~his~~ the possession or knowledge of the executor or administrator . A copy of the ~~same~~ inventory and appraisement shall be transmitted by ~~such~~ the clerk to the county assessor if timely requested by ~~such~~ the assessor. The inventory ~~must~~ shall include ~~the homestead, if any, and~~ all the estate of the decedent, real and personal, particularly specifying all debts, bonds, mortgages, deeds of trust, notes and other securities for the payment of money belonging to the decedent, with the name of each debtor, the date, the sum originally payable, the indorsements thereon, if any, with their dates, and a statement of the interest of the decedent in any partnership of which ~~he~~ the decedent was a member, to be appraised as a single item. It ~~must~~ shall include an account of all moneys belonging to the decedent. The inventory and appraisement shall be prepared in such form as to set down each item separately with the fair market value thereof at the time of the decedent's death in dollars and cents in figures opposite the respective items.

Comment. The provision of Section 600 that related to the declared homestead is deleted in recognition of the elimination of the survivorship right in the declared homestead. See Comment to Civil Code § 1265. The other changes in Section 600 are technical.

10/919

PROBATE HOMESTEAD

Probate Code § 660 (amended)

SEC. 5. Section 660 of the Probate Code is amended to read:

660. (a) Until the inventory is filed, the ~~The~~ decedent's surviving spouse and minor children are entitled to remain in possession of the ~~homestead~~ family dwelling , the wearing apparel of the family, the

household furniture and other property of the decedent exempt from execution ~~until the inventory is filed~~ .

(b) Upon the filing of the inventory ~~Thereupon~~ ~~or at any subsequent time during the administration, the court, on petition therefor, may in its discretion set :~~

(1) Set apart to the surviving spouse, or, in case of his or her death, to the minor child or children of the decedent, all or any part of the property of the decedent exempt from execution ~~and must~~ .

(2) Select and set apart the a homestead selected by the spouses, ~~or either of them, and recorded while both were living, other than a married person's separate homestead,~~ in the manner provided in this article.

Comment. Section 660 is revised to make establishment of a probate homestead permissive rather than mandatory. The factors to be used in guiding the court in the exercise of its discretion are prescribed in Section 664.

The provisions of Section 660 that related to the declared homestead are deleted in recognition of the elimination of the survivorship right in the declared homestead. See Comment to Civil Code § 1265.

10/916

Probate Code § 661 (amended)

SEC. 6. Section 661 of the Probate Code is amended to read:

661. (a) The homestead may be set apart ~~if no homestead has been selected, designated and recorded, or in case the homestead was selected by the survivor out of the separate property of the decedent, the decedent not having joined therein, the court, in the manner hereinafter provided, must select, designate and set apart and cause to be recorded a homestead for the use of the surviving spouse and the minor children, or, if there be no surviving spouse, then for the use of the minor child or children~~ .

(b) The homestead may be selected out of the community or quasi-community property of or out of ~~real~~ property owned in common by the decedent and the person or persons entitled to have the homestead set apart, or ~~if there be no community property or quasi-community property and no such property owned in common, then~~ , subject to Section 664, out of the separate property of the decedent.

(c) The If the property set apart is the separate property of the decedent, the court can set it the property apart only for a limited period, to be designated in the order, and in no case beyond the lifetime of the surviving spouse, or, as to a child, beyond its minority ; and, subject to such . Subject to the homestead right, the property of the decedent remains subject to administration including testate and intestate succession .

**For the purposes of this section, the terms "quasi-community property and "separate property" have the meanings given those terms in Section 1237.5 of the Civil Code.**

Comment. The provisions of Section 661 that related to the declared homestead are deleted in recognition of the elimination of the survivorship right in the declared homestead. See Comment to Civil Code § 1265. The provision of Section 661 that related to recordation is continued in Section 1222.

Subdivision (a) does not preserve the provision of former Civil Code Section 1265 that permitted the court to assign the homestead for a limited period to the "family" of the head of a family other than the surviving spouse and minor children. The decedent is not ordinarily legally obligated for the support of such persons. A decedent who wishes to provide for such persons may do so by an inter vivos instrument other than the declared homestead or by a testamentary disposition.

Subdivision (b) and Section 666, which continue the former last paragraph of Section 661, do not require that the homestead be selected out of real property. The homestead may be selected out of personal property such as a mobilehome. Subdivision (b) also codifies the rule that the court may select a homestead out of separate property of the decedent despite the availability of community or tenancy-in-common property. See *Estate of Raymond*, 137 Cal. App.2d 134, 289 P.2d 890 (1935). However, the court must give preference to community or tenancy-in-common property. See Section 664.

Subdivision (c) requires that the homestead be set apart only for a limited period, regardless whether the homestead is selected out of the separate property of the decedent or otherwise. This changes the rule of former Section 667, which provided for vesting of the homestead property in fee. Under subdivision (c), the property remains subject to administration so that upon termination of the homestead right title to the property of the decedent set apart as a homestead vests in the heirs or devisees. Any portion of the homestead that is the property of the person for whom the homestead was set apart remains vested in the person at the termination of the homestead right. As to the rights of creditors during and after administration, see Section 663.

405/331

Probate Code § 662 (technical amendment)

SEC. 7. Section 662 of the Probate Code is amended to read:

662. When ~~such~~ the petition is filed, the clerk ~~must~~ shall set it for hearing by the court and give notice thereof for the period and in the manner required by ~~section~~ Section 1200 of this code .

Comment. The changes in Section 662 are technical.

100/908

Probate Code § 663 (repealed)

SEC. 8. Section 663 of the Probate Code is repealed.

~~663. If the homestead selected by the husband and wife, or either of them, during their coverture, and recorded while both were living, other than a married person's separate homestead, was selected from the community property or quasi/community property, or from the separate property of the person selecting or joining in the selection of the same, and if the surviving spouse has not conveyed the homestead to the other spouse by a recorded conveyance which failed to expressly reserve his homestead rights as provided by Section 1242 of the Civil Code, the homestead vests, on the death of either spouse, absolutely in the survivor.~~

~~If the homestead was selected from the separate property of the decedent without his consent, or if the surviving spouse has conveyed the homestead to the other spouse by a conveyance which failed to expressly reserve homestead rights as provided by Section 1242 of the Civil Code, the homestead vests, on death, in his heirs or devisees, subject to the power of the court to set it apart for a limited period to the family of the decedent as hereinabove provided. In either case the homestead is not subject to the payment of any debt or liability existing against the spouses or either of them, at the time of death of either, except as provided in the Civil Code.~~

~~For the purposes of this section, the terms "quasi/community property" and "separate property" have the meanings given those terms in Section 1237.5 of the Civil Code.~~

Comment. Section 663 is repealed in recognition of the elimination of the survivorship right in the declared homestead. See Comment to Civil Code § 1265.

100/939

Probate Code § 663 (added)

SEC. 9. Section 663 is added to the Probate Code, to read:

663. (a) Property of the decedent set apart as a homestead is subject to claims against the estate of the decedent, subject to the homestead right. The homestead right in property of the decedent is subject to claims against the estate of the decedent that are secured by liens and encumbrances on the property.

(b) The homestead right in the property of the decedent and in the property of the person for whose use the homestead is set apart is not subject to claims against the person.

(c) Property of the decedent set apart as a homestead is subject to claims against the testate or intestate successors of the decedent or other successors to the property after administration, subject to the homestead right.

Comment. Subdivision (a) of Section 663 states the rules governing liability of homestead property for debts of the decedent. The first sentence makes clear that such property may be used to satisfy debts of the decedent, but any sale is subject to the homestead right of occupancy by the surviving spouse and minor children. This codifies the rule of *Estate of Tittel*, 139 Cal. 149, 72 P. 909 (1903). The second sentence recognizes the common law rule that the homestead does not affect prior liens and encumbrances. See, e.g., *Estate of McCauley*, 50 Cal. 544 (1875); *Estate of Huelsman*, 127 Cal. 275, 59 P. 776 (1899). However, the court may order exoneration of the homestead from prior liens and encumbrances by payment out of estate funds. See Section 664(b). The court may also select as a homestead property not subject to liens and encumbrances or property whose liens and encumbrances will be discharged in probate. See Section 664(a) (discretion of court).

Subdivision (b) states the rule governing liability of the homestead right for debts of the surviving spouse and minor children. Subdivision (b) creates an absolute exemption for the homestead right, both as to prior and subsequently incurred debts, and regardless of liens created on the homestead right. This reverses the rule of *MacQuiddy v. Rice*, 47 Cal. App.2d 755, 118 P.2d 853 (1941). Subdivision (b) does not preclude a creditor of the surviving spouse or minor children from reaching any interest in the property they may have after termination of the homestead right; this may occur where the homestead was selected out

of community property or property held in common by the decedent and person for whom the homestead is set apart.

Subdivision (c) states the rule governing liability of homestead property for debts of the heirs or devisees or other persons who may have acquired the property through administration. The homestead property is subject to administration and devolves as any other property, subject to the right of use of the homestead by the surviving spouse and minor children. See Section 661(c). Under subdivision (c) of Section 663, the remainder interest but not the homestead right is subject to claims of creditors.

100/968

Probate Code § 664 (repealed)

SEC. 10. Section 664 of the Probate Code is repealed.

~~664. If the homestead so selected and recorded, as provided in Section 663, is returned in the inventory appraised at not over the amount of the homestead exemption, as provided in the Civil Code and in effect at the date of death of the decedent, or was previously appraised as provided in the Civil Code and such appraised value did not exceed that amount, the court shall order it set apart to the persons in whom title is vested by the preceding section. If it is returned in the inventory appraised at more than that amount, the inheritance tax referee must, before he makes his return, ascertain and appraise the value of the homestead at the time the same was selected, and if such value exceeds that amount, or if the homestead was appraised as provided in the Civil Code and such appraised value exceeded that amount, he must determine whether the premises can be divided without material injury, and if he finds that they can be thus divided, he must admeasure and set apart to the parties entitled thereto such portion of the premises, including the dwelling house, as will equal in value that amount, and make report thereof, giving an exact description of the portion set apart as a homestead.~~

Comment. Section 664 is repealed in recognition of the elimination of the survivorship right in the declared homestead. See Comment to Civil Code § 1265.

Probate Code § 664 (added)

SEC. 11. Section 664 is added to the Probate Code, to read:

664. (a) In selecting and setting apart the homestead, the court shall consider the suitability of the property for use as a dwelling, the needs of the surviving spouse and minor children, the liens and encumbrances on the property, the claims of creditors, and the needs of the heirs and devisees of the decedent. The property selected as a homestead shall be the most appropriate property available in light of the foregoing considerations and other relevant considerations, as determined by the court in its discretion, giving first preference to the community or quasi-community property or property owned in common by the decedent and the person entitled to have the homestead set apart.

(b) The court may order that any claims secured by liens or encumbrances on the property set apart as a homestead shall be paid out of funds of the estate. In ordering payment of claims, the court shall consider the value of the property, the estate plan of the decedent, the financial condition of the decedent's estate, and other relevant considerations, as determined by the court in its discretion.

Comment. Subdivision (a) of Section 664 codifies the principle that the court has broad discretion in selecting the homestead and may take into account a wide variety of factors in exercising its discretion. See, e.g., Estate of Barkley, 91 Cal. App. 388, 267 P. 148 (1928); Estate of Claussenius, 96 Cal. App.2d 600, 216 P.2d 485 (1950). The court may select the homestead out of the separate property of the decedent but must give a preference to community or tenancy-in-common property. See Section 661 and Comment thereto. The court may select any appropriate property as the homestead and is not limited to the existing dwelling. Under subdivision (a), unlike former Sections 664-666, there is no appraisal and division procedure required. The court will have available the appraised value of all the property returned in the inventory, and may select accordingly.

Subdivision (b) reverses the rule of Estate of Huelman, 127 Cal. 275, 59 P. 776 (1889), that precluded payment of liens and encumbrances out of estate funds. It supersedes former Section 735 which required exoneration in the case of a survivorship right in a declared homestead but not in the case of a probate homestead. See, e.g., McGahey v. Forrest, 109 Cal. 63, 41 P. 817 (1895) (predecessor statute).

Probate Code § 665 (repealed)

SEC. 12. Section 665 of the Probate Code is repealed.

~~665. If the inheritance tax referee finds that the value of the premises at the time of their selection exceeded the amount referred to in Section 664, and that they cannot be divided without material injury, he must report such finding, and thereafter the court may make an order for the sale of the premises and the distribution of the proceeds to the parties entitled thereto.~~

Comment. Section 665 is repealed in recognition of the elimination of the survivorship right in the declared homestead. See Comment to Civil Code § 1265.

Probate Code § 665 (added)

SEC. 13. Section 665 is added to the Probate Code, to read:

665. (a) The court may by order do any of the following at any time prior to termination of the homestead right if in the court's discretion to do so appears appropriate under the circumstances of the case:

(1) Modify the period of the homestead right or terminate the homestead right.

(2) If the homestead was selected out of property other than the separate property of the decedent, direct sale of the property and investment of the proceeds in other suitable property which shall be subject to the same rights and liabilities of the parties as the property set apart as a homestead.

(b) A court order under this section shall be made upon motion of any of the following parties and notice to the others:

(1) The persons for whom the homestead is set apart.

(2) The testate or intestate successors of the decedent or other successors to the property set apart as a homestead.

(3) Persons having claims secured by liens or encumbrances on the property set apart as a homestead.



Comment. Section 665 gives the court continuing jurisdiction to modify the homestead in recognition of the possibility of changed circumstances. The court may order sale and investment in new homestead property only if the homestead was selected out of community or quasi-community property of or property owned in common by the decedent and the person for whom the homestead is set apart. This is comparable to the provision of former Section 667 that vested such property in the homestead recipients in fee, thereby enabling subsequent transfer and reinvestment of the homestead property.

28/832

Probate Code § 666 (repealed)

SEC. 14. Section 666 of the Probate Code is repealed.

~~666. When the report of the inheritance tax referee is filed, the clerk shall set the same for hearing by the court and give notice thereof for the period and in the manner required by Section 1200 of this code. If the court is satisfied that the report is correct, it must be confirmed, otherwise rejected. In case the report is rejected, the court may appoint a new referee to examine and report upon the homestead, and similar proceedings may be had for the confirmation or rejection of his report, as upon the first report.~~

Comment. Section 666 is repealed in recognition of the elimination of the survivorship right in the declared homestead. See Comment to Civil Code § 1265.

28/835

Probate Code § 666 (added)

SEC. 15. Section 666 is added to the Probate Code, to read:

666. As used in this article:

(a) "Quasi-community property" means personal property, wherever situated, and real property situated in this state, heretofore or hereafter acquired in any of the following ways:

(1) By either spouse while domiciled elsewhere which would have been community property if the spouse who acquired the property had been domiciled in this state at the time of its acquisition.

(2) In exchange for real or personal property, wherever situated, which would have been community property if the spouse who acquired the property so exchanged had been domiciled in this state at the time of its acquisition.

(b) "Separate property" does not include quasi-community property.

Comment. Section 666 continues the substance of the former last paragraph of Section 661, which incorporated by reference former Civil Code Section 1237.5. Unlike former Civil Code Section 1237.5, however, Section 666 applies to personal property as well as real property. The homestead may be selected out of personal property such as a mobilehome.

28/836

Probate Code § 667 (repealed)

SEC. 16. Section 667 of the Probate Code is repealed.

~~667. When property, other than a homestead selected and recorded during the lifetime of the decedent, is set apart to the use of the family, in accordance with the provisions of this article, such property, if the decedent left a surviving spouse and no minor child, is the property of such spouse; if the decedent left also a minor child or children, one-half of such property belongs to the surviving spouse and the remainder to the child or in equal shares to the children; if there is no surviving spouse, the whole belongs to the minor child or children.~~

Comment. Former Section 667 is superseded by Section 661(c), which permits the homestead to be set apart only for a limited period, regardless of the character of the property from which the homestead is selected. See also Section 665(b) (sale and investment of proceeds of homestead selected out of property other than separate property of the decedent).

28/837

Probate Code § 668 (repealed)

SEC. 17. Section 668 of the Probate Code is repealed.

~~668. A person succeeding by purchase or otherwise to the interest of a surviving spouse in a homestead which has been declared in the lifetime of the decedent, shall have the same right to apply for an order setting aside the homestead to him as is conferred by law on the person whose interest he has acquired.~~

Comment. Section 668 is repealed in recognition of the elimination of the survivorship right in the declared homestead. See Comment to Civil Code § 1265.

PAYMENT OF CLAIMS

Probate Code § 735 (repealed)

SEC. 18. Section 735 of the Probate Code is repealed.

~~735. If there are subsisting liens or encumbrances on the homestead, and the funds of the estate are adequate to pay all claims against the estate, the claims secured by such liens and encumbrances, whether filed or presented or not, if known or made known to the executor or administrator, must be paid out of such funds. If the funds of the estate are not sufficient for that purpose, the claims so secured shall be paid proportionately with other claims allowed, and the liens or encumbrances on the homestead shall only be enforced against the homestead for any deficiency remaining after such payment.~~

Comment. Former Section 735 is superseded by Section 664(b). See Comment to Section 664(b).

28/839

NOTICES

Probate Code § 1200 (amended)

SEC. 19. Section 1200 of the Probate Code is amended to read:

1200. Upon the filing of the following petitions:

- (1) A petition under Section 641 of this code for the setting aside of an estate;
- (2) A petition to set apart a homestead or exempt property;
- (3) A petition relating to the family allowance filed after the return of the inventory;
- (4) A petition for leave to settle or compromise a claim against a debtor of the decedent or a claim against the estate or a suit against the executor or administrator as such;
- (5) A petition for the sale of stocks or bonds;
- (6) A petition for confirmation of a sale or a petition to grant an option to purchase real property;
- (7) A petition for leave to enter into an agreement to sell or give an option to purchase a mining claim or real property worked as a mine;
- (8) A petition for leave to execute a promissory note or mortgage or deed of trust or give other security;

(9) A petition for leave to lease or to exchange property, or to institute an action for the partition of property;

(10) A petition for an order authorizing or directing the investment of money;

~~(11)~~ A report of appraisers concerning a homestead;

~~(12)~~ (11) An account of an executor or administrator or trustee;

~~(13)~~ (12) A petition for partial or ratable or preliminary or final distribution;

~~(14)~~ (13) A petition for the delivery of the estate to a nonresident;

~~(15)~~ (14) A petition for determination of heirship or interests in an estate;

~~(16)~~ (15) A petition of a trustee for instructions;

~~(17)~~ (16) A petition for the appointment of a trustee;

~~(18)~~ (17) Any petition for letters of administration or for probate of will, or for letters of administration-with-will annexed, which is filed after letters of administration or letters testamentary have once been issued; and in all cases in which notice is required and no other time or method is prescribed by law or by court or judge, the clerk shall set the same for hearing by the court and shall give notice of the petition or application ~~or report~~ or account by causing a notice of the time and place of hearing thereof to be posted at the courthouse of the county where the proceedings are pending, at least 10 days before the day of hearing, giving the name of the estate, the name of the petitioner and the nature of the application, referring to the petition for further particulars, and stating the time at which the application will be heard.

At least 10 days before the time set for the hearing of such petition ~~or~~ or account ~~or report~~, the petitioner or person filing the account ~~or desiring the confirmation of a report of appraisers, must~~ shall cause notice of the time and place of hearing thereof to be mailed to the executor or administrator, ~~when he is~~ if not the petitioner, to any coexecutor or coadministrator not petitioning, and to all persons (or their attorneys, if they have appeared by attorney), who have requested notice or who have given notice of appearance in the estate in

person or by attorney, as heir, devisee, legatee or creditor, or as otherwise interested, addressed to them at their respective post office addresses given in their requests for special notice, if any, otherwise at their respective offices or places of residence, if known, and if not, at the county seat of the county where the proceedings are pending, or to be personally served upon such person.

Proof of the giving of notice must be made at the hearing; and if it appears to the satisfaction of the court that ~~said~~ the notice has been regularly given, the court shall so find in its order, and ~~such~~ the order, when it becomes final, ~~shall be~~ is conclusive upon all persons.

Comment. Section 1200 is amended to reflect the repeal of former Sections 664 through 666 relating to the report of appraisal of homestead property.

10165

Probate Code § 1202 (amended)

SEC. 20. Section 1202 of the Probate Code is amended to read:

1202. At any time after the issuance of letters testamentary or of administration, any person interested in the estate, whether as heir, devisee, legatee, creditor, beneficiary under a trust, or as otherwise interested, or the State Controller, may, in person or by attorney, serve upon the executor or administrator or trustee, or upon the attorney for ~~such~~ the executor, administrator, or trustee, and file with the clerk of the court where the proceedings are pending, with a written admission or proof of ~~such~~ service, a written request, stating that he the person desires special notice of the filing of any or all of the petitions ~~or~~ or accounts ~~or reports~~ mentioned in Section 1200 ~~of this code~~, and giving the post office address of the person making the ~~same, or his request or the person's~~ attorney. Thereafter ~~such~~ the person ~~shall be~~ is entitled to notice as provided in ~~said~~ Section 1200.

Comment. Section 1202 is amended to reflect the repeal of former Sections 664 through 666 relating to the report of appraisal of homestead property.

APPEALS

Probate Code § 1240 (amended)

SEC. 21. Section 1240 of the Probate Code is amended to read:

1240. An appeal may be taken from an order granting or revoking letters testamentary or of administration; removing or refusing to remove a trustee of a testamentary trust; admitting a will to probate or revoking the probate thereof; setting aside an estate claimed not to exceed twenty thousand dollars (\$20,000) in value; setting apart property as a homestead or claimed to be exempt from execution ~~confirming a report of an appraiser or appraisers in setting apart a homestead~~ ; granting or modifying a family allowance; directing or authorizing the sale or conveyance or confirming the sale of property; directing or authorizing the granting of an option to purchase real property; adjudicating the merits of any claim under Sections 851.5, 852 or 853; allocating debts under Section 980; settling an account of an executor or administrator or trustee, or instructing or appointing a trustee; instructing or directing an executor or administrator; directing or allowing the payment of a debt, claim, legacy or attorney's fee; fixing, directing or allowing payment of a trustee's compensation; determining heirship or the persons to whom distribution should be made or trust property should pass; distributing property; determining that property is community property passing or belonging to the surviving spouse pursuant to Section 655; refusing to make any order heretofore mentioned in this section; fixing an inheritance tax or determining that none is due; or authorizing a personal representative to invest or reinvest any surplus moneys pursuant to Section 584.5.

Comment. Section 1240 is amended to reflect the repeal of former Sections 664 through 666 relating to the report of appraisal of homestead property.

INHERITANCE TAX

Revenue & Taxation Code § 13621 (repealed)

SEC. 22. Section 13621 of the Revenue and Taxation Code is repealed.

SEC. 23

~~13621. The vesting in the surviving spouse or any other person of any property constituting a homestead created pursuant to the Civil Code is a transfer subject to this part.~~

Comment. Section 13621 is repealed in recognition of the elimination of the survivorship right in the declared homestead. See Comment to Civil Code § 1265.

28/845

TRANSITIONAL PROVISION

SEC. 23. (a) A homestead declared and recorded prior to the operative date of this act pursuant to Sections 1237 through 1304, inclusive, of the Civil Code shall, on the operative date, cease to have effect for the purpose of survivorship rights.

(b) A homestead set apart by order of the court prior to the operative date of this act pursuant to Sections 660 through 668, inclusive, of the Probate Code remains vested as provided therein and is a transfer subject to Part 8 (commencing with Section 13301) of the Revenue and Taxation Code.

32/576

SEVERABILITY CLAUSE

SEC. 24. If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.