

Memorandum 82-42

Subject: Study L-604 - Probate Law (Small Estate Set-Aside)

At the last meeting, the Commission considered the staff recommendation to repeal the provisions requiring the court summarily to set aside to the surviving spouse (or if none, to the decedent's minor children) the decedent's net estate if the estate does not exceed a net value of \$20,000. See Probate Code Sections 640-647. Since these provisions do not require any showing of need, the staff thought they should be replaced by support provisions based on need. The State Bar representatives thought that this might be desirable if the provisions for heirs and devisees to collect personal property of the decedent by affidavit and without any administration when the decedent owns no real property in this state and the estate value is \$30,000 or less (Prob. Code §§ 630-632) were expanded to include real property.

The main problem with passing real property without administration is that the title of the heir or devisee is neither marketable nor insurable. 2 A. Bowman, *Ogden's Revised California Real Property Law* § 29.27, at 1449 (Cal. Cont. Ed. Bar 1975). As a result, other states which permit real property to pass without administration have statutory provisions for a petition for heirship to be filed which results in a court determination establishing title which is marketable and insurable. See, e.g., Basye, Determination of Heirship, 54 Mich. L. Rev. 737 (1956). Although it may be desirable to develop such provisions for consideration in California, the staff is of the view that it would be better to address this question when we study administration of estates generally, rather than now in the context of our wills and intestate succession study. Under the UPC, for example, personal property may be collected by affidavit where the estate is small, but real property is subject to summary administration rather than the affidavit procedure. See General Comment to Part 12 of Article III.

If the Commission concurs in this view, the staff will retain both the small estate set-aside provisions (Prob. Code §§ 640-647) and the provisions for collection of personal property by affidavit (Prob. Code §§ 630-632), subject to further study when we consider administration of estates.

Respectfully submitted,

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