

#L-625

6/24/82

Thirteenth Supplement to Memorandum 82-70

Subject: Study L-625 - Probate Code (Tentative Recommendation--
Escheat §§ 260.010-261.010)

Attached is the preliminary portion of the tentative recommendation relating to escheat and the portion of the proposed legislation relating to escheat.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

Right of Heirs of Predeceased Spouse to Escheated Property

California law gives certain relatives¹ of a predeceased spouse a right to inherit any portion of the decedent's estate that would otherwise escheat.² This scheme creates a burdensome problem of having to locate and give notice to relatives of a predeceased spouse in every case where there are such relatives, even though they may not be entitled to inherit in the particular case.³

The proposed law eliminates inheritance by relatives of a predeceased spouse in favor of a procedure permitting such persons to claim property that has escheated.⁴ This avoids the location and notice problem but still gives those who may have been close to the decedent (for example, the decedent's former stepchildren) a share of the decedent's property. The proposed law provides a simple administrative procedure for determining claims by relatives of a predeceased spouse to escheated property.

-
1. The relatives of the decedent's predeceased spouse who are entitled to inherit are the issue, parents, brothers, sisters, and issue of deceased brothers and sisters of the predeceased spouse. Prob. Code § 229(a).
 2. Prob. Code § 229(d). This supplements the ancestral property provisions of existing law. See Prob. Code § 229; see also Prob. Code § 296.4. See discussion supra at n. ____.
 3. See Prob. Code § 328.
 4. A relative of a predeceased spouse is entitled to receive the escheated property only if the property is not claimed by an heir or devisee of the decedent.

PART 4. ESCHEAT OF DECEDENT'S PROPERTY

CHAPTER 1. GENERAL PROVISIONS

§ 260.010. Escheat of decedent's property

260.010. (a) If a decedent, whether or not the decedent was domiciled in this state, leaves no one to take his or her estate or any portion thereof by testate succession, and no one other than a government or governmental subdivision or agency to take the estate or a portion thereof by intestate succession, under the laws of this state or of any other jurisdiction, the same escheats at the time of the decedent's death in accordance with this chapter.

(b) Property that escheats to the state under this chapter, whether held by the state or its officers, is subject to the same charges and trusts to which it would have been subject if it had passed by succession and is also subject to the provisions of Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure relating to escheated estates.

Comment. Section 260.010 continues the substance of subdivisions (a) and (b) of former Section 231.

992/915

§ 260.020. Real property

260.020. Real property in this state escheats to this state in accordance with Section 260.010.

Comment. Section 260.020 continues former Section 232.

992/916

§ 260.030. Tangible personal property wherever located

260.030. All tangible personal property owned by the decedent, wherever located at the decedent's death, that was customarily kept in this state prior to the decedent's death, escheats to this state in accordance with Section 260.010.

Comment. Section 260.030 continues former Section 233.

§ 260.040. Tangible personal property subject to control of superior court for purposes of administration

260.040. (a) Subject to subdivision (b), all tangible personal property owned by the decedent that is subject to the control of a superior court of this state for purposes of administration and disposition under Division 3 (commencing with Section 300) escheats to this state in accordance with Section 260.010.

(b) The property described in subdivision (a) does not escheat to this state but goes to another jurisdiction if the other jurisdiction claims the property and establishes all of the following:

(1) The other jurisdiction is entitled to the property under its law.

(2) The decedent customarily kept the property in that jurisdiction prior to the decedent's death.

(3) This state has the right to escheat and take tangible personal property being administered as part of a decedent's estate in that jurisdiction if the decedent customarily kept the property in this state prior to the decedent's death.

Comment. Section 260.040 continues former Section 234.

992/917

§ 260.050. Intangible personal property of decedent domiciled in state

260.050. All intangible property owned by the decedent escheats to this state in accordance with Section 260.010 if the decedent was domiciled in this state at the time of the decedent's death.

Comment. Section 260.050 continues former Section 235.

992/919

§ 260.060. Intangible personal property subject to control of superior court for purposes of administration

260.060. (a) Subject to subdivision (b), all intangible property owned by the decedent that is subject to the control of a superior court of this state for purposes of administration and disposition under Division 3 (commencing with Section 300) escheats to this state in

accordance with Section 260.010 whether or not the decedent was domiciled in this state at the time of the decedent's death.

(b) The property described in subdivision (a) does not escheat to this state but goes to another jurisdiction if the other jurisdiction claims the property and establishes all of the following:

(1) The other jurisdiction is entitled to the property under its laws.

(2) The decedent was domiciled in that jurisdiction at the time of the decedent's death.

(3) This state has the right to escheat and take intangible property being administered as part of a decedent's estate in that jurisdiction if the decedent was domiciled in this state at the time of the decedent's death.

Comment. Section 260.060 continues former Section 236.

992/920

§ 260.070. Benefits distributable from certain trusts

260.070. Notwithstanding any other provision of law, a benefit consisting of money or other property distributable from a trust established under a plan providing health and welfare, pension, vacation, severance, retirement benefit, death benefit, unemployment insurance or similar benefits does not pass to or escheat to the state under this chapter but goes to the trust or fund from which it is distributable, subject to the provisions of Section 1521 of the Code of Civil Procedure. However, if such plan has terminated and the trust has been distributed to its beneficiaries prior to the distribution of the benefit from the estate, the benefit from the estate passes to the state and escheats to the state under this chapter.

Comment. Section 260.070 continues subdivision (c) of former Section 231, as amended by 1982 Cal. Stats. ch. 182.

CHAPTER 2. RIGHT TO ESCHEATED PROPERTY

§ 261.010. Right of relatives of predeceased spouse to escheated property

261.010. (a) Subject to subdivision (c), if property in the estate of a decedent escheats and is distributed to the state, the following relatives of a spouse who predeceased the decedent while married to the decedent have a right to the escheated property:

(1) 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, then those of more remote degree take by representation.

(2) If there is no surviving issue, the predeceased spouse's parent or parents equally.

(3) If there is no surviving issue or parent, the issue of the parents of the predeceased spouse or either of them by representation.

(b) Notwithstanding any other statute:

(1) A person who claims property under subdivision (a) shall claim the property pursuant to this section, and the claim shall be determined and allowed, in the manner provided by subdivision (a) of Section 1352 of the Code of Civil Procedure.

(2) A claim pursuant to this section shall be made within five years after the date of the decree making the distribution to the state. A person who does not so claim the property is forever barred.

(3) A claim pursuant to this section shall not be determined until the time for making claims pursuant to this section has expired.

(c) A claim pursuant to this section shall be allowed only if no heir or named distributee of the decedent entitled to the property has claimed the property prior to the time the claim pursuant to this section is determined.

Comment. Section 261.010 supersedes former Section 229. The former provision gave inheritance rights to persons who are not relatives of a decedent on ancestral property principles or in order to prevent escheat. Section 261.010 reverses this scheme and provides rights for persons who are not heirs of a decedent to claim escheated property. Because the rights provided by Section 261.010 are not rights of inheritance and are subordinate to rights of heirs, no notice of either probate or escheat need be given and the persons provided the rights are not parties to the probate proceedings. See Section 328 (notice to each "heir").

Subdivision (a) prescribes the priority of classes of claimants to escheated property. Persons lower in priority are entitled to take only if there are no claimants higher in priority. See also Section 220.060

(taking by representation). Subdivision (b) is comparable to Section 1027 (claims of heirs and devisees against escheated property). It provides for an administrative determination of claims under this section. Subdivision (c) makes clear that the rights provided in this section are subordinate to the rights of the decedent's heirs and devisees.